

# SOUREN MELIKIAN

**NEW YORK**—Looking at the results, you might think they must be feeling like dancing and singing in Sotheby's antiquities department. On June 5, sales added up to a huge \$6.4 million. And on June 3 and 4 at Christie's, where Max Bernheimer opened his department only seven years ago, they scored a creditable \$3.6 million. All, then, would appear to be for the best in the best of worlds.

Well, not quite. If Sotheby's came out having sold 85 percent of the lots, Christie's only managed 66 percent. Not everything goes as smoothly as one might wish. Far more worrying, though, are the questions that are increasingly being raised about the very legitimacy of such a trade. The reason lies in the nature of antiquities. The word does not describe a category. It used to be a cultural concept, and it is now a fig leaf.

Until the late 18th century, the concept described the sculpture of ancient Greece and Rome, the painted vases of Athens, the bronze vessels, the semiprecious stone cameos, everything that helped build up the image of the ancient world as admired since the Renaissance by those brought up to read the Classics.

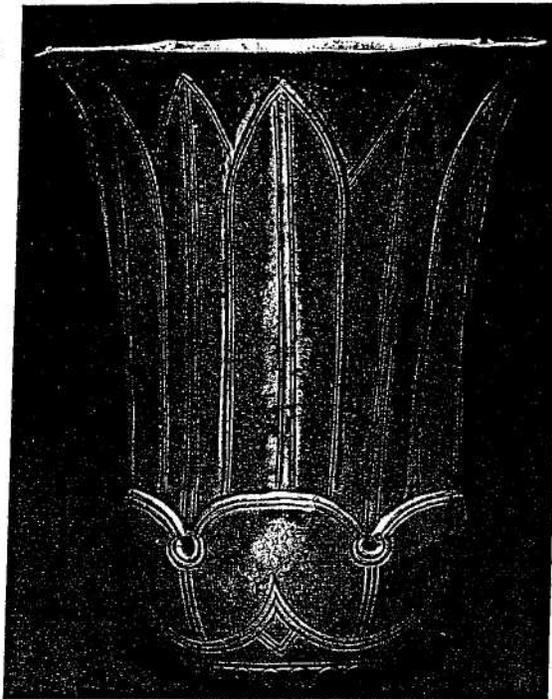
Today, the word antiquities has lost any cultural connotations to collectors, most of whom read neither Greek nor Latin. The label is applied to any object dug up from underground caches and any sculpture removed from open-air sites predating Christianity by diggers or hackers bent on making money. Therein lies the root of the problem. Not one of the main countries where these objects are found—Italy, Greece, Turkey, Iran or Egypt—allows such activities. With good reason.

All considerations of national property aside, the trail of destruction that accompanies commercial digging is terrifying. A huge proportion of the objects are destroyed. Ceramics, glass and thin bronze sheet vessels are often smashed. Ivories that need to be stabilized

before any attempt is made to handle them get lost altogether.

It is not just the majority of the objects that perish when pickaxes and shovels are wielded—to say nothing of dynamite increasingly used by clandestine diggers. It is the buried history of mankind. Whenever objects are pulled out without a verifiable record, gone is the priceless information that finding the pieces as they were buried—often accompanied by vegetal traces (wood, fabrics) that allow carbon 14 dating—represents.

Little wonder if a tidal wave of academic opinion is rising against the havoc wrought on the archaeological ecology of our world. In mid-April, a symposium on the theme "Who Owns Culture?" was held at Columbia University in New York. Symptomatically, one of the driving forces behind it was journalist



Increasing questions about the legitimacy of selling antiquities of unknown origin are beginning to have an effect. Nonetheless, this "Neo-Elamite" silver beaker, whose recovery is undocumented, brought \$43,700 at Christie's on June 4.

## Antiquities: A Market Future?

picked up the silver human mask and one silver leg of what had been a monumental mythical creature with a human head and the body of a winged quadruped of a type known in the ancient Middle East. Tipped off by informers, authorities later seized around 60 vessels, some in Tehran, others headed for the Iran-Turkey border on their way to being smuggled out of the country. Insiders say that more than 200 silver vessels reached the Western market, essentially London and, later, New York.

A number of the vessels carry names, inscribed in Elamite, of rulers who are otherwise unknown. What appears to have been found is a huge dynastic treasure—whether the site was some shrine, or the hoard had been taken there for safekeeping in some wartime emergency, we can no longer determine. Had it been

kept together, an entire chapter of Middle Eastern history could

now be written, throwing light on the Elamites, this mysterious non-Indo-European people who played an important role in the shaping of Iranian culture under the first Persian empire founded by the Achaemenid Dynasty (559–331 B.C.).

Now scattered across the world, the hoard can never be reconstructed in its entirety, starting with the pieces smashed by the explosion. On June 4, a "Neo-Elamite silver beaker," with an inscription in cuneiform characters, "for Annishilha, King of Samati, son of Dabala," sold at Christie's for \$43,700. The date put forward was "the second phase of the Neo-Elamite period, circa 585–539 B.C." (presumably meaning 585–559 B.C.). The entry was difficult to understand for anyone who did not know the background to the Kal Makareh find. It made no reference to

Hector Feliciano, who spent years investigating the trade in works of art stolen from Jews by the Nazis. The symposium was originally planned to draw attention to the usurpation of archaeological property. What came out of it was a heightened awareness of the destruction process.

I took part in the three-day event in my capacity as a cultural historian specializing in the art of the Iranian world, and I recounted one of the latest horror stories. It concerns the biggest single archaeological catastrophe since the end of World War II. In 1990, an archaeological team was sent out by the National Museum of Tehran to investigate a huge cache in a sealed cave high up in the mountains of Western Iran, at Kal Makareh, not far from the border with Iraq. Days before the team arrived, the cave, which could only be reached by using mountaineering devices, had been blown open.

When the archaeologists hoisted themselves into the place, they found it strewn with debris of silver and shards. They recovered a few bronze vessels and

◀ FROM PAGE 17

the 3rd millennium B.C. The gigantic price paid for it, \$211,500, confirms, together with the previous one, that for the time being the destruction of archaeological sites is no hindrance to commercial success.

Can this last? Some recent occurrences rather suggest the opposite. The museum world will not easily forget the protracted battle waged for two decades by the Turkish authorities in the New York courts against the Metropolitan. The bone of contention was a large group of silver vessels acquired in Germany by the museum's department of Greek and Roman antiquities under the stewardship of Dietrich von Bothmer. The distinguished German-American specialist in Greek vases published the group in the 1981 issue of the French journal *Comptes-Rendus de l'Académie des Inscriptions et Belles-Lettres*, where he wrote about "The Treasures of Eastern Greece in the Metropolitan Museum of Art."

Three years later, von Bothmer, focusing on the group, called it "A Greek and Roman Treasury" in the summer 1984 issue of the *Met Bulletin*. There was a snag, however. While some of the objects, such as a pyxis (a circular box with an inward-curving conical lid), indeed have Greek shapes, others, which include bowls, a scoop and two magnificent incense burners, can be matched, almost to a tee, to ancient Iranian silver of the 6th and 5th centuries (including carved representations at Persepolis, as I showed in my article "The International Achaemenid Style" in

Persepolis, stands. Foroughi, a cultivated man interested in history, would not have passed on the information to his friend Roman Ghirshman, the French archaeologist, had there been grounds for questioning it.

Ghirshman accordingly published the group in the journal *Artibus Asiae*, and later in the catalogue of the 1961 Paris exhibition "7,000 Years of Iranian Art," as coming from Fars. Sotheby's chose to place the black stone man in "Bactria [i.e., the district of Balkh in present-day Afghanistan] or East Persia," although these objects did not come out of Afghanistan or eastern Iran—Fars lies in southern Iran.

On loan to the Metropolitan Museum of Art in New York from 1985 to 1999, the standing figure, enhanced by the seal of museum approval, rose to a phenomenal \$800,000. In Sotheby's press release, it became "an Elamite figure of a god or mythological hero." How you identify a god or a mythological character when you do not know for sure what culture an object belongs to was not explained. The whole group cannot even be dated firmly—the 3rd millennium B.C. is a broad guess.

A stone vessel of circular tapering shape in the same sale, also dubbed Elamite, offered an even more fascinating enigma. It appears to represent a palatial structure largely made of bricks. The cruciform pattern halfway up persisted in Iranian brick architecture right down to the 12th century. The sunken rectangular openings, on the other hand, recur in Achaemenid architecture. Knowing the context in which such a vessel was found would yield data now lost forever. Merely being able to pinpoint its precise location would add one more bit of precious information to help draw up the cultural map of the Middle East in (perhaps) ▶

the 1993 volume of the *Bulletin of the Asia Institute*, published in Birmingham, Michigan). On the foot of an incense burner, an inscription incised after its completion is in the Lydian language, as a philologist noted in an appendix to von Bothmer's article. Combined with minor stylistic devices, this gives a clue to the probable origin of the whole lot—some Lydian site on the western side of central Anatolia, now Turkey.

More ominous for the museum, the scholar D.G. Mitten expressed the conviction, in a 1990 paper delivered at the University of Michigan, "Lydia in the Achaemenian Period" (i.e., under the Achaemenid Dynasty of Iran, which controlled the area), that the silver vessels had been dug up from a tomb on a site known as Ikiztepe. This added one more element to a body of circumstantial evidence that eventually persuaded the Met that it would be unwise to fight the case to the bitter end. The objects were returned to Turkey.

The Turkish government had considerable merit in pursuing the case with such dogged determination. It set a precedent that now puts an entirely different complexion on the case of objects that have wandered away from the countries of origin in circumstances unknown. The significant fact is that objects that all informed observers knew in their heart of hearts had been filched out of Turkey without being able to prove it in absolutely cogent terms—no one stepped forward to say "I did it" or "I saw it being done"—were deemed to be wrongfully held ▶



This vessel, dubbed Elamite (though its precise origins are unknown), sold for \$211,500 at Sotheby's.

by an institution. And they were released, albeit reluctantly.

A case presenting some similarities currently concerns a single object, a shallow gold bowl that reputedly passed through the hands of two Sicilian dealers and, later, other art professionals, before being acquired by the New York collector Michael Steinhardt. It is claimed by the Italian government and is now at the center of a case pending in the U.S. Court of Appeals in New York. Whatever its outcome, that too casts a long shadow over the many precious metal vessels floating around the market. No one acquiring one can feel quite as secure as they did in the old days.

Similar danger hovers over all the objects related to those that have come out of relatively recent excavations, say, since 1960. Bronzes such as the forequarters of a bronze bull described by Sotheby's as Sabeian, circa 1st century A.D., or earlier, which sold on June 5 for \$18,400, probably fall into that category. It may have come to light in Jordan, a country where proper archaeological work is bound to take off in coming years.

A different kind of risk affects a great deal of the marble sculpture dubbed Greek, Hellenistic or Roman that turns up at auction. A substantial proportion of it hails from sites now in western Turkey and Syria, where a school of Hellenistic-style sculpture thrived for centuries. The study of regional schools is in its infancy, but it is certain to develop. So is our knowledge of marble quarries. This will make it easier to trace some of the sculptures to their sites. When that happens, marble sculpture showing evidence of recent breaks will be that much harder to negotiate.

Already, signs of a new awareness of problems to come are spreading among professionals. A large premium is being paid for antiquities that can be proved to have been in Western col-

lections for several decades.

Evidence of the growing importance attached by bidders to established provenance from early collections came forth at Sotheby's on June 5. The upper part of an Egyptian coffin lid of the 18th Dynasty (1540-1292 B.C.) might not have fared so well, given the cracks in the painted wood and the losses in the gilding, had it not been part of a North American collection assembled between 1910 and 1932 with additions in 1954. At \$21,850, it more than doubled the high estimate. The next lot, a complete coffin made some time between 944 and 732 B.C., tripled its high estimate at \$112,500. The same was true of a wonderful bronze Greek figure of a horse of the 8th century B.C. from the estate of Mrs. John Hay Whitney, which sold for a stupendous \$189,500. The prestige of the Whitneys? In part, perhaps.

But the reason for the extraordinary \$244,500 paid for a Hellenistic figure of Alexander the Great of the 3rd century B.C. is not prestige. It comes from the collection of the late Ian Woodner, famous for Old Master drawings, not bronzes. Its virtue, beauty aside, is that Herbert Cahn illustrated it in his catalogue of antiquities sold at *Münzen und Medallien* in Basel on November 29, 1958.

To those concerned about the monetary aspect of their acquisitions, the risk lies not so much in court actions—bound for the moment to concern a limited number of works—as in the new climate that is being created. Owning important antiquities without proof that they came to light long ago will increasingly be seen as slightly dodgy. That kind of suspicion does not make reselling any easier. As an investment, the entire category is probably doomed in the long term.

SOUREN MELIKIAN is the international editor of *Art & Auction*.

002590

# United States District Court

EASTERN DISTRICT OF VIRGINIA

In the Matter of the Search of

(Name, address or brief description of person, property or premises to be searched)  
a 1989 Plymouth Van; Virginia registration  
XXX8888; vehicle identification number  
1R4PB5437RX519186 registered to N.O. GOOD

## APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

CASE NUMBER:

I \_\_\_\_\_ being duly sworn depose and say:

I am a(n) Park Ranger, National Park Service and have reason to believe  
Official Title

that  on the person of or  on the property or premises known as (name, description and/or location)

a 1989 Plymouth Van; Virginia registration XXX8888; vehicle identification number  
1R4PB5437RX519186 registered to N.O. GOOD

in the Eastern District of Virginia  
there is now concealed a certain person or property, namely (describe the person or property to be seized)

See Attachment A

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

evidence, fruits and instrumentalities of crimes against the United States  
concerning a violation of Title 16 United States code, Section(s) 470 ee (a) and (b)  
The facts to support a finding of Probable Cause are as follows:

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet and made a part hereof.  Yes  No

Sworn to before me, and subscribed in my presence

Date

at

Signature of Affiant

Park Ranger  
National Park Service

City and State

Name and Title of Judicial Officer

Signature of Judicial Officer

002591

# United States District Court

EASTERN DISTRICT OF VIRGINIA

In the Matter of the Search of

(Name, address or brief description of person, property or premises to be searched)

1234 STINKER'S HOUSE ROAD  
WOODBIDGE, VIRGINIA

a 1 1/2 story off-white Cape Cod believed to  
be the property of or under the control of  
one N.O. GOOD

## APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

CASE NUMBER:

I \_\_\_\_\_ being duly sworn depose and say:

I am a(n) Park Ranger \_\_\_\_\_ and have reason to believe  
Official Title

that  on the person of or  on the property or premises known as (name, description and/or location)

See above description

in the Eastern District of Virginia  
there is now concealed a certain person or property, namely (describe the person or property to be seized)

See Attachment A

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)

Evidence, fruits and instrumentalities of crimes against the United States  
concerning a violation of Title 16 United States Code, Section(s) 470 ee (a) and (b)  
The facts to support a finding of Probable Cause are as follows:

See Attached Affidavit

Continued on the attached sheet and made a part hereof.  Yes  No

Sworn to before me, and subscribed in my presence

\_\_\_\_\_ at \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Affiant

Park Ranger  
National Park Service

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Name and Title of Judicial Officer

\_\_\_\_\_  
Signature of Judicial Officer

002592

# United States District Court

EASTERN DISTRICT OF VIRGINIA

In the Matter of the Seizure of  
(Address or brief description of property or premises to be seized)  
a 1989 Plymouth Van; Virginia registration  
XXX8888; vehicle identification number  
1R4PB5437RX519186 registered to N.O. GOOD

## APPLICATION AND AFFIDAVIT FOR SEIZURE WARRANT

CASE NUMBER:

I \_\_\_\_\_ being duly sworn depose and say

I am a(n) \_\_\_\_\_ Park Ranger, National Park Service and have reason to believe  
Official Title

that in the \_\_\_\_\_ Eastern District of \_\_\_\_\_ Virginia

there is now certain property which is subject to forfeiture to the United States, namely (describe the property to be seized)

a 1989 Plymouth Van; Virginia registration XXX8888; vehicle identification number  
1R4PB5437RX519186 registered to N.O. GOOD

which is (state one or more bases for seizure under the United States Code)

a vehicle used in connection with the sale, exchange, transport and offer to sell  
archeological resources which were excavated and removed from public lands and Indian lands  
concerning a violation of Title \_\_\_\_\_ 16 United States Code, Section(s) \_\_\_\_\_ 470 ee (a) and (b)

The facts to support a finding of Probable Cause for issuance of a Seizure Warrant are as follows:

See Attached Affidavit

Continued on the attached sheet and made a part hereof.  Yes  No

Sworn to before me, and subscribed in my presence

Signature of Affiant

Park Ranger  
National Park Service

Date \_\_\_\_\_

at \_\_\_\_\_  
City and State

Name and Title of Judicial Officer \_\_\_\_\_

Signature of Judicial Officer \_\_\_\_\_

002593

# United States District Court

EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA

V.

WARRANT FOR ARREST

N.O. GOOD  
1234 STINKER'S HOUSE ROAD  
WOODBIDGE, VIRGINIA  
DOB: 07-25-55  
SSN: 111-55-6065

CASE NUMBER:

To: The United States Marshal  
and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest N.O. GOOD Name

and bring him or her forthwith to the nearest magistrate to answer a(n)

Indictment  Information  Complaint  Order of court  Violation Notice  Probation Violation Petition

charging him or her with (brief description of offense)

selling, exchanging, transporting and offering to sell archeological resources which were excavated and removed from public lands and Indian lands

In violation of Title 16 United States Code, Section(s) 470 ee (a) and (b)

Name of Issuing Officer

Title of Issuing Officer

Signature of Issuing Officer

Date and Location

Ball fixed at \$ \_\_\_\_\_ by \_\_\_\_\_ Name of Judicial Officer

### RETURN

This warrant was received and executed with the arrest of the above-named defendant at \_\_\_\_\_

DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER
DATE OF ARREST		

002594

# United States District Court

EASTERN DISTRICT OF VIRGINIA

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)  
1234 STINKER'S HOUSE ROAD  
WOODBIDGE, VIRGINIA  
off-white Cape Cod believed to be the  
property of or under the control of one  
N.O. GOOD

## SEARCH WARRANT

CASE NUMBER:

TO: \_\_\_\_\_ and any Authorized Officer of the United States

Affidavit(s) having been made before me by Park Ranger who has reason to  
believe that  on the person of or  on the premises known as <sup>1</sup>(name, description and/or location)  
Affiant

See Above Description

in the Eastern District of Virginia there is now  
concealed a certain person or property, namely (describe the person or property)

See Attachment A

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before \_\_\_\_\_  
Date

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime — 6:00 A.M. to 10:00 P.M.) (at any time in the day or night as I find reasonable cause has been established) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to \_\_\_\_\_  
as required by law. U.S. Judge or Magistrate Judge

\_\_\_\_\_ at \_\_\_\_\_  
Date and Time Issued City and State

\_\_\_\_\_ Signature of Judicial Officer  
Name and Title of Judicial Officer

002595

# United States District Court

EASTERN

VIRGINIA

DISTRICT OF

UNITED STATES OF AMERICA

V.

N.O. GOOD  
1234 STINKER'S HOUSE ROAD  
WOODBIDGE, VIRGINIA  
DOB: 07-25-55; SSN: 111-55-6065  
(Name and Address of Defendant)

## CRIMINAL COMPLAINT

CASE NUMBER:

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about January 10, 1994 in City of Fredericksburg County, in the Eastern District of Virginia defendant(s) did, (Track Statutory Language of Offense) knowingly, and unlawfully sell, exchange, transport, and offer to sell archeological resources which were excavated and removed from public lands and Indian lands

in violation of Title 16 United States Code, Section(s) 470 ee (a) and (b)

I further state that I am a(n) Park Ranger and that this complaint is based on the following facts:  
Official Title

See Attached Affidavit

Continued on the attached sheet and made a part hereof:

Yes  No

Reviewed and Approved:

Dennis M. Kennedy, AUSA

\_\_\_\_\_  
Signature of Complainant

Sworn to before me and subscribed in my presence,

Park Ranger  
National Park Service

\_\_\_\_\_  
Date

at

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Name & Title of Judicial Officer

\_\_\_\_\_  
Signature of Judicial Officer

002596

ATTACHMENT A

Items identified as prehistoric, historic, military, and Civil War artifacts to include any material remains of past human life or activities which are of archeological interest, including but not limited to: surface or subsurface structure(s); surface or subsurface artifact concentrations or scatters; whole or fragmentary tools; by-products, waste products, or debris; organic waste; human remains; rock carvings, rock paintings, etc.; rock shelters, cave; shipwrecks; or any portion of piece of the foregoing items(s); artifacts illegally taken from on or near the (name specific location), National Park Service property in (name state) including but not limited to the following items:

(LIST SPECIFIC ARTIFACTS BEING SEARCHED FOR)

All recordkeeping devices and tools, including but not limited to, computer hardware and software, data processing and storage devices and storage media, including but not limited to, removable storage discs, fixed disc drives, memory chips and cartridges, integrated circuits and other devices capable of data storage, peripheral input/output devices, such as keyboards, printers, video display monitors, optical readers, and related communication devices, together with system documentation, operating logs and documentation software.

Material and equipment related to the sale and/or purchase of stolen U.S. Government property and artifacts, including but not limited to the following items: photographic equipment, cameras, video recorders, camcorders, pictures, slides, film and negatives, invoices, billing statements, order forms, credit slips,

typewriters, price guides, catalogs, warehouse/storage facility receipts, keys, lock combinations, hotel receipts, trade show records for purchase and/or sale of artifacts, mail orders, maps, diagrams, metal detectors, tools, equipment that may have been used to locate or acquire Civil War or other illegally obtained artifacts, business and financial records relating to the valuation or offering for sale or purchase of illegally obtained artifacts, including but not limited to customer lists, ledgers, diaries, address books, books of accounts, bank records indicating deposits and withdrawals, safe deposit boxes, certificates of deposits, etc., calendar appointment books, tax records and related documents, telephone records, bills, answering machine tapes, warehouse records and receipts.

002598

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

AFFIDAVIT

I, \_\_\_\_\_, am a \_\_\_\_\_ Park Ranger with the UNITED STATES DEPARTMENT OF INTERIOR, NATIONAL PARK SERVICE (NPS), and have been employed since June, 1974. I have approximately nineteen and one-half years of Federal Law Enforcement experience. During that time, I have conducted investigations into violations of laws enforced by that agency that resulted in arrest, convictions, issuance of search warrants, seizure of evidence and assets, and forfeiture of assets for violation of laws. I have testified in state and Federal court about my investigations.

During my law enforcement career, I have attended in excess of 1,000 hours of special training, including 40 hours of training by the Federal Law Enforcement Training Center in the investigation of violations of the Archeological Resource Protection Act (ARPA) identified in Title 16, United States Code, Section 470 ee. During my employment with NPS, I have conducted or assisted in two investigations of violations of ARPA and have accompanied NPS archaeologists during visits to three other archeological sites that have been vandalized.

Based on personal experience from the aforementioned training and investigations, and from talking to experienced law enforcement personnel of the NPS and other experts in the law enforcement community, archaeologists and other recognized experts, I know that it is common practice for persons who collect artifacts to possess

002599

those items in their homes, along with labels, photographs, video film, maps, notes, correspondence, and other notations and documentation, including computerized records, describing the artifacts and where they were found. Furthermore, collectors often possess books and other printed material describing the artifacts and monetary value associated therewith; including listings identifying individuals who buy and sell artifacts. Collectors also often possess the equipment to search for artifacts including, but not limited to, metal detectors, digging tools, and other equipment related to the retrieval of artifacts.

\* \* \* \*

- A. Describe background of case leading to investigation
- B. Describe prohibited act(s) within your jurisdiction
- C. Describe Archeological Resource(s) involved
- D. Permit or no permit
- E. Value
  - a) archeological value
  - b) cost of restoration and repair
  - c) commercial value
- F. Articulate Probable Cause to Arrest Defendant(s)

\* \* \* \*

- G. Describe vehicle and/or equipment being used in prohibited act
- H. Articulate probable cause to search and/or seize artifacts, vehicle, and/or equipment

\* \* \* \*

- I. Describe house and/or storage facility holding artifacts, vehicle, and/or equipment

002600

J. Articulate probable cause to search house and/or storage facility for artifacts, vehicle, equipment, and other evidence, fruits and instrumentalities of crimes against the United States.

\* \* \* \*

Based on the foregoing, I believe that probable cause exists to

- 1) arrest defendant(s)
- 2) search house, vehicle, etc.
- 3) seize artifacts, vehicles, equipment, etc.

---

National Park Service  
U.S. Department of Interior

Subscribed and Sworn to  
Before me this \_\_\_\_\_  
Day of \_\_\_\_\_, 1994

---

UNITED STATES MAGISTRATE JUDGE  
Eastern District of Virginia  
Alexandria Division

002601

Mr. Patrick Wren  
Financial Management Branch  
Department of the Treasury  
941 North Capitol St., N.E. 7th Floor  
Washington, D.C. 20227

Dear Mr. Wren:

Pursuant to the Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470 gg, this letter provides certification to the Department of Treasury that with reference to the case(s) listed below, information was furnished leading to the conviction(s) of criminal violation(s) of ARPA (16 U.S.C. ee), with respect to which (a) fines(s) (was) (were) paid.

The information provided by officers of the organization named below was incorporated into the prosecution of (a) criminal violation(s) in

list case name(s), e.g. U.S. v. Defendant,  
list case number(s) e.g. CR 93-90-NN,  
list court location, e.g. E.D. Virginia (Norfolk)

(This) (These) case(s) involved [ e.g. the interstate trafficking in archeological resources looted from . . . ].  
(This) (These) case(s) resulted in a total of \$\_\_\_\_\_ in fines. Certification for reward is provided with the approval of (name and address of appropriate land manager).

Reward in the amount of \$\_\_\_\_\_ (up to \$500 if such fine was collected) should be appropriated to (land management agency, e.g. NPS) account number (e.g. NPS 14-4-1036). A remittance in the amount of \$\_\_\_\_\_ (up to \$500.00 will be made from that account) to:

Name of informant  
Address of informant

Thank you for your prompt assistance in this matter. If you have any questions, I may be reached at (202) 208-6953.

Sincerely,

Joseph W. Gorrell  
Associate Director, Budget and  
Administration  
Assistant to the Director for  
Human Resources

cc: Departmental Consulting Archeologist  
Attachments: Two certified Judgments and Commitment Orders from appropriate court of record.

002602

(another page with stolen property sites)

Stolen Art and Antiques on the Web (presented by Jonathan Sazonoff)

## **Index of the Cultural Property Loss Websites which publish losses and recoveries, effective August 1998- a guide for those who check cultural property availability on Internet**

### **REMINDER OF WHAT TO DO FIRST:**

1. When there is a loss, make the police report locally, not on Internet.
2. Use these websites to prevent illegal resale and encourage recovery. Do not enter sensitive information on email\Internet.
3. Consider sharing this by email with others who can use this information, with Internet and without Internet. Internet continues to grow and change without notice. Please bring useful additions and NOTE: In most countries, a search for lost or stolen property (clear "title" search) on websites is not legally sufficient ("due diligence") for purchase.

### **INDEX OF LOST AND STOLEN CULTURAL PROPERTY WEBSITES:**

- A. Registers with more than 1000 items
- B. Categorical loss sites
- C. Single theft or loss sites
- D. No site is too small

[All sites here were asked to cooperate and coordinate with each other and the police. This has already prevented illegal resale of property. It is a pleasure to assist people to check before buying. David Liston.]

#### **A. CULTURAL PROPERTY REGISTERS WITH MORE THAN 1000 ITEMS**

Items with \*\* do not have open registers on Internet.

**A1. ART LOSS REGISTER**, associated with International Foundation for Art Research, Inc, New York, NY, USA.

<http://www.artloss.com/>, Email [alnnewyork@aol.com](mailto:alnnewyork@aol.com),

Fax 0 212 262-4831

TO SEARCH a record: requires \$payment, requires TEL assistance

TO ENTER a record: requires \$payment, requires TEL assistance

INCLUDES: ALL categories

\*minimum property \$value for entry\\*uses Getty OBJECT ID format\\*ENGLISH

\*Download stolen object forms from the website.

\*Some losses published in Journal of Internat Foundation for Art Research.

**A2. COLLECTORS.ORG, with Antiques & Collectibles Dealer Association and the AntiqueWeek Newspapers, Gaithersburg, MD, USA.**

<http://www.collectors.org/doc/thefts.htm> , Email: [theft-info@collectors.org](mailto:theft-info@collectors.org), Fax 01 301-926-7648

TO SEARCH a record: requires NO\$ payment, requires NO assistance

TO ENTER a record: requires NO\$ payment, requires NO assistance

INCLUDES: American antiques

002603

\*ENGLISH

### **A3. INTERLOC, Southworth, WA, USA.**

<http://www.interloc.com/lost/index.htm>, Email [interloc@interloc.com](mailto:interloc@interloc.com), Fax 01 360-871-5626  
TO SEARCH a record: requires NO\$ payment, requires NO assistance  
TO ENTER a record: requires NO\$ payment, requires NO assistance  
INCLUDES: BOOKS and manuscripts  
\*Requires \$ to match buying and selling of rare books\\*ENGLISH

### **A4. INTERNATIONAL LEAGUE OF ANTIQUARIAN BOOKSELLERS**

, New York, NY, USA. <http://www.clark.net/pub/rmharris/stolen.html>, Email [erd@mhv.net](mailto:erd@mhv.net), Fax 01 212-944-8293  
TO SEARCH a record: requires NO\$ payment, requires NO assistance  
TO ENTER a record: requires NO\$ payment, requires NO assistance  
INCLUDES: BOOKS manuscripts and signatures\autographs  
\*Requires free registration with use of a password  
\*ENGLISH\ \*Autograph thefts at <http://www.abaa-booknet.com/usa/theft>

### **A5A.\*\*INTERPOL-GENERAL SECRETARIAT\*\***

, Lyon, FRANCE.  
<http://www.interpol.com>  
Enter "The most wanted works of art" and "Frequently Asked Questions (FAQ) about stolen works of art".  
Contact through your state or federal agency or non US Interpol office first.  
\*POLice information website \\*ENGLISH, FRENch, SPANish  
\*Enter "The Most Wanted Works of Art"  
\*Security equipment advertised as "Police Procurement Form."  
\*Websites also in CAN, ESP, JPN, NOR, SAF, TUR, and USA.

### **A5B.\*\*INTERPOL-WASHINGTON NATIONAL CENTRAL BUREAU (NCB)\*\***

, Washington, DC, USA.  
<http://www.usdoj.gov/usncb/cultural.htm>  
Contact through your state or federal agency or non US Interpol office first.  
TO SEARCH a record: requires NO\$ payment, requires TEL assistance  
TO ENTER a record: requires NO\$ payment, requires TEL assistance  
INCLUDES: ALL categories  
\*POLice information website \\*ENGLISH

### **A6. SAZ PRODUCTIONS, INC (50 items on line, 900 items in progress)**

, Chicago, IL, USA.  
<http://www.saztv.com> , Email [art-theft@webtv.net](mailto:art-theft@webtv.net)  
, Fax 01 773-772-8061  
TO SEARCH a record: requires NO\$ payment, requires NO assistance  
TO ENTER a record: requires NO\$ payment, requires NO assistance  
INCLUDES: ALL categories  
\*LIMited records\\*Connected to art theft investigator  
\*Great links to LIMited record websites elsewhere:\ \*ENGLISH

### **A7.\*\*TRACE MAGAZINE (Thesaurus) Active Crime Tracking System (ACTS)\*\***

, London, ENGLand, UK.  
[http://www.trace.co.uk/index\\_frame.htm](http://www.trace.co.uk/index_frame.htm), Email [Trace@thesaurus.co.uk](mailto:Trace@thesaurus.co.uk), Fax: 44 171-487-4211

TO SEARCH a record: requires NO\$payment, requires NO assistance  
 TO ENTER a record: requires \$payment, requires TEL assistance  
 INCLUDES: ALL categories  
 \*Provides auction schedules, valuers, products\services, and gallery.  
 Requires magazine subscription.\\*ENGLISH  
 \*Useful Code for Due Dilligence Checks (Title search before purchase)  
 \*See Council for the Prevention of Art Theft (CoPAT) under TRACE.

#### **A8.\*\*US FEDERAL BUREAU OF INVESTIGATION (FBI)\*\***

, Washington, DC, USA.

<http://www.fbi.gov/majcases/arttheft/art.htm>

Contact through your state or federal agency or non US Interpol office first.

TO SEARCH a record: requires NO\$ payment, requires TEL assistance

TO ENTER a record: requires NO\$ payment, requires TEL assistance

INCLUDES: ALL categories

\*POLice information website\\*Getty OBJect ID format\\*ENGLISH

\*Gardner Museum theft at <http://fbi.gov/majcases/artheft/boston/htm>

### **B. CATEGORICAL LOSS SITES:**

#### **B1. Afganistan and Nepal art**

(162 and 200 items), Huntington Archive of Buddhist and Related Arts, Ohio State University, Columbus, OH, USA. Afgan\Kabul Museum photographs from the Huntington Archive records.  
<http://kaladarshan.arts.ohio-state.edu/loststolen/losto.html> Email [glowski.1@osu.edu](mailto:glowski.1@osu.edu)

#### **B2. American antiques and fine art (50 items), Maine Antiques Digest Magazine**

, Waldoboro, ME, USA.

<http://ww.maineantiquedigest.com>, Email [mad@maine.com](mailto:mad@maine.com), Fax 01 207-832-7341

\*Provides auction\fair schedules, appraisers, links, links, auction catalogs.

\*Publicizes stolen, unclaimed articles in "Is this Yours?"

\*LIMited records\ \*ENGLISH

#### **B3. American Art (? items), Fine And Decorative Arts Online\Advanced Digital Images**

, Tulsa, OK, USA.

Requires TEL assistance. \*Downline stolen form online.

<http://www.fineanddecorativeart.com/theft.htm>

\*ENGLISH

#### **B4. American art and collectables.**

(12 items in 4 thefts), World-Wide Collectors Digest, Owings Mills, MD, USA.

<http://www.wwcd.com/tfra/tfra.html>, Email [prod@wwcd.com](mailto:prod@wwcd.com), Fax 01 410-363-8698

\*ENGLISH

#### **B5. American fine and applied art (10 items), TroubleShooters International security and recovery services, including investigations and security shipping**

, Gainesville, FL, USA.

<http://www.tshooters.com/stolen/misc.htm>, Email [snowflake@tshooters.com](mailto:snowflake@tshooters.com), Fax 01 352 343-3864

\*ENGLISH

#### **B6. American native pieces (150 items-mostly Navajo and Plains Indians), Antique Tribal Art Dealers Association (ATADA)**

002605

, Albuquerque, NM, USA,  
<http://www.atada.org/index.html>, Email [ramorris@monumental.com](mailto:ramorris@monumental.com)  
 \*ENGLISH

**B7. Ancient Greek and Roman coins (385 items), Kalat Archaeological Field School**

, Cordici Museum, Erice, ITALIA.  
<http://www.infcom.it/kalat/monetiére/indexuk.html>, Email [kalat@infsun.infcom.it](mailto:kalat@infsun.infcom.it), Fax 39 923.87.3844  
 \*ENGLISH, ITALIAN, ESPANISH

**B8. Belgian art (11 items), Antiques World Belgium**

, Brussels, Belgium  
<http://www.antiques-world.com/k>, Email [antiques.world@pophost.eunet.be](mailto:antiques.world@pophost.eunet.be), Fax 32 2 503 08 26  
 \*ENGLISH, \*FRENCH

**B9. Brazilian religious art (500 items), Instituto do Patrimonio Historica e Artístico Nacional (IPHAN), Brasilia, Brazil.**

<http://www2.iphan.gov.br/bensprocurados>, Email [rbruno@internetcom.com.br](mailto:rbruno@internetcom.com.br),  
 Pol cia Federal/INTERPOL Fax 55 61 223-6331, IPHAN Fax 55 61 414-6134  
 \* PORTUGUES

**B10. British antiques (40 items and references to more) The Antiques-Index, Sutton Winston Insurers, London, England, UK. Items wanted for purchase, for sale, and for auction on line.**

<http://www.antiques-index.com/>, Email [info@antiques-index.com](mailto:info@antiques-index.com)  
 \*ENGLISH

**B11. British applied\decorative art (187 items), Salvo Theft Alerts, Salvo Theft Database, County Police Alert Network**

, Berwick-upon-Tweed, England, UK.  
<http://salvo.theft-alerts.com>, Email [salvo@scotborders.co.uk](mailto:salvo@scotborders.co.uk), Fax 44 1890 820499  
 (RECOVERY RATES 1995: 14%; 1996: 19%; 1997: 11%; 1998(until Aug) Theft Alerts: 22;  
 Items stolen: 56; Items known recovered: 0; Recovery Rate: 0%)  
 \*ENGLISH

**B12. British London area art (28 stolen items and 112 recoveries), London Metropolitan Police\Scotland Yard Art & Antique Squad Operation Bumblebee Property Bank**

, London, England, UNITED KINGDOM.  
<http://www.met.police.uk/police/mps/mps/bumbleb/bis-0.htm#index>, Tel 44 171 230 3439  
 \*ENGLISH

**B13. European art (1 item), European Art Networks AB (EURAN)**

, Stockholm, SWEDEN.  
<http://www.euran.com/stolenart.htm>, Email [euran@swipnet.se](mailto:euran@swipnet.se)  
 \*ENGLISH

**B14. European-World War II Beutekunst-Looted Art (5 items) Research Catalog\Spoils of War Newsletter covering 10 countries, Koordinierungsstelle der Länder für die Rückführung von Kulturgütern\ CoordiTreasures**

, Magdeburg, DEUTSCHLAND.  
<http://www.dhh-3.de/biblio/>, Email [KSTdLfdRvK@aol.com](mailto:KSTdLfdRvK@aol.com), Fax 49 391 567-3857  
 \*ENGLISH, GERMAN

002606

**B15. European-World War II Stolen Art resources (no items) US Holocaust Museum**

, Washington, DC, USA.

<http://www.ushmm.org/assets/ushmm4.htm>, Email [wfisher@ushmm.org](mailto:wfisher@ushmm.org), Fax 01 202 488-2693

\*ENGLISH

**B16. French art (19 items), Exolart Art Services, Registration, and Newsletter, using PRAL Art System**

, Nice, FRANCE.

<http://www.imagnet.fr/exolart/pres-services/specialites/oeuvres/vol.html>

Email [exolart@usa.net](mailto:exolart@usa.net), Fax 33 493 870 038

\*FRENch, ENGLISH, GERman, ESPanish

**B17. French art (73 items), French National Police Central Office Against Illicit Trafficking of Cultural Property\l'Office Central de lutte contre le trafic des biens culturels (OCCB)**

, Paris, FRANCE

<http://www.interieur.gouv.fr/pages/informa/oa1.htm>, Fax 33 1.49.27.49.27

\*FRENch

**B18. French art (29 items), Robbed Art Webzine - Art Vole Magazine**

, Paris, FRANCE (managed from CA, USA).

<http://www.infozines.com/robbf.htm>, Email [actua@dial.oleane.com](mailto:actua@dial.oleane.com)

\*ENGLISH, FRENch

**B19. German art (24 items), German National Police Criminal Art Search\ Bundeskriminalamt meistgesuchte Kunstwerke Deutschlands**

, Wiesbaden, DEUTSCHLAND.

<http://www.bka.de/fahndung/kunstwerke/>, Email [kunstwerke@bka.de](mailto:kunstwerke@bka.de), Tel 49 6121 611 55-1

\*GERman

**B20. Italian applied art (9 items), Lineart**

, Tornio, ITALIA.

<http://www.lineart.it/index.html>, Email [info@lineart.it](mailto:info@lineart.it)

\*ITALian, ENGLISH

**B21. Modern paintings (3 items), Wysiwyg Internet Site for Artists**

, London, England, UK.

<http://www.wysi.demon.co.uk/pages/artmatte.htm>, Email [webmaster@wysi.demon.co.uk](mailto:webmaster@wysi.demon.co.uk), Tel 44 181 902 2675

\*ENGLISH

**B22. Polish paintings (6 items), Lapidarium Detective Service**

, Warszawa, POLONIA.

<http://viprofix.com/stolen/>, Email [kilinski@pol.pl](mailto:kilinski@pol.pl), Tel/Fax 48 22 635 68 28

\*POLish, ENGLISH, GERman, JPNese, FRENch, ESPanish

**B23. Spanish art (4 items), Spain's Guardia Civil**

, Madrid, ESPANA.

002607

<http://www.guardiacivil.org/gc/cua/robart2.htm>, Email [webmaster@guardiacivil.org](mailto:webmaster@guardiacivil.org), Tel 34 1 91-514 60 00  
\*ESpanish

**B24. Swedish insured art losses (17 items, Alert All AB Insurance Company**

, Stockholm, SWEDEN. Also lists automobiles and boats. Entering a record requires free registration.

<http://www.alert-all.se/>, Email [info@alert-all.se](mailto:info@alert-all.se), Fax 46 70 411 80  
\*ENGLish

**C. SINGLE THEFT AND LOSS SITES:**

**C1. 22 Jan 1998 and more book theft lookout broadcast for James Gilreath:**

<http://abebooks.com/theft.htm>

**C2. 26-27 Apr 1997 Merle Rosen Studio, Cincinnati, OH, USA, painting theft**

**C3. 16 Nov 1996 Austin Visual Arts Association, TX, USA painting theft**

<http://www.viewtopia.com/missing.htm>

**C4. 7 Aug 1996, 90 Indian baskets stolen from the Sierra Mono Indian Museum, North Fork, CA, USA,**

<http://www.bestinwest.com/bdir/cdir/basket.html>, Email [Roughcut@bestinwest.com](mailto:Roughcut@bestinwest.com), Tel 01 209 642-3201

**C5. 20 Nov 1995 Bayfront Gallery, San Francisco, CA, USA, painting theft**

<http://www.hia.com/bayfront/bg-home.html>

**C6. 26 Oct 1995, 23 Maitz and Wurts fantasy paintings from a Federal Express delivery van in Baltimore, MD, USA.**

<http://www.westol.com/~trystane/StolenArtwork/index.html>, Tel 01 410 396-2411.

**C7. 18 Mar 1990 Gardner Museum, Boston, MA, USA, painting theft**

<http://www.fbi.gov/majcases/arttheft/boston.htm>  
<http://www.ccsf.caltech.edu/%7eroy/vermeer/gyc.html>

**C8. 1977-1982 dates Medici-Lanza Gallery, Gluck Sandor Collection painting thefts**

<http://art-collector.com/sandor/stolen/stolenx.htm>

**C9. 16 Apr 1969 Museum of the Cross, Sarasota, FL, USA, Ben Stahl painting theft**

<http://www.freelaunch.com/museum/history.html>

**C10. Recently, 29 native art pieces, Gallery of Tribal Art, Vancouver, BC, CANADA.**

002608

<http://www.swiftly.com/stolen.html>, Email [woodman@pinc.com](mailto:woodman@pinc.com)

#### D. NO SITE IS TOO SMALL

to contribute or to overlook, even those in development and temporarily off line, especially if it contributes to a recovery or return. Internet changes every day. We ask you European art, (no items yet), Global Retrieval, Access and Information System for Property Items (GRASP), European Community 4th Framework RTD Programme, A Consortium of Metropolitan Police Service odeluke Politiediensten of NL, Ministerio de Cultura of ES, and Ministry of Culture of GRE.

<http://www.arttic.com/GRASP/default.html>, Email: [aw@arttic.com](mailto:aw@arttic.com), Fax 49 40 36 75 17  
\*ENGLISH

Belgian art (26 items) not yet completed

<http://star.glo.be/mcampo/>, Email [guy.campo@aldvalvas.be](mailto:guy.campo@aldvalvas.be)  
<http://www.art-finder.com/>  
<http://www.stolenart.com/>

Canadian native people cultural theft

<http://indy4.fdl.cc.mn.us/~isk.art/art.html>

Arthema (no losses or thefts posted: only items for sale)

<http://www.Arthema.com/cgi/WantedItems.asp>

TO SEARCH a record: requires NO\$payment, requires NO? assistance

TO ENTER a record: requires NO\$payment, requires NO? assistance

INCLUDES: ALL categories

\*Not stolen items but: wanted to buy ("Wanted") and for sale ("Items"),

\*Accepts commercial advertising.\*ENGLISH

\*Auction schedules "Events", products/services "Directories" and articles "News"

---

		<b>NATIONAL CONFERENCE of STATE LEGISLATURES</b>		<a href="#">Home</a> <a href="#">Press Room</a> <a href="#">Contact/Ask NCSL</a> <a href="#">Search</a> <a href="#">Site map</a>		<a href="#">Members Log-in</a>	
<a href="#">NCSL Profile</a>	<a href="#">Policy Issues</a>	<a href="#">State Legislatures</a>	<a href="#">State-Federal Relations</a>	<a href="#">Publications</a>	<a href="#">Meetings</a>		

## State Historic Preservation Legislation Database

---

Updated February 7, 2000



Arts, Culture & Historic Preservation

1999 State Historic Preservation Legislation Database

### Introduction to the Database

The *State Historic Preservation Legislation Database* was developed under a grant from the National Center for Public Training, National Park Service, by the National Conference of State Historic Preservation Officers in cooperation of State Legislatures. The content of the database was researched and written by Jeffrey P. Shrimpton, historic preservation officer, National Conference of State Historic Preservation Officers.

The *State Historic Preservation Legislation Database* contains a comprehensive listing and narrative summaries of constitution articles that contain *specific* references to:

- Historic properties;
- Archeological sites or materials collected from archeological sites; or
- Culturally significant unmarked human burials and associated burial objects.

The database contains citations from the legislative code books from the fifty states, the District of Columbia, American Samoa, Guam, Puerto Rico, where pertinent legislation has not been written into the state code, the act itself has been cited, if available. State constitution articles are also summarized by state, but may be cross-referenced online through a list of Query Topics or through specific word searches.

Each record in the database contains the following information:

- Name of the state code book;
- Citation;
- Title of the pertinent code section, act or constitutional article;
- Narrative summary;
- Topics by which the particular citation may be cross-referenced.

All entries in the database reflect enacted legislation. Whether or not the states have funded or otherwise followed through on individual legislated project. The user is advised to consult directly with the appropriate State Historic Preservation Officer for such information.

Each State Historic Preservation Officer has been provided an opportunity to review the database entries for legislation in his or her state.

002610



**Links**

National Conference of State Historic Preservation Officers

National Trust for Historic Preservation

National Center for Preservation Technology and Training

**Acknowledgements**

**Funding for this database was provided as a grant from the National Park Services's** National Center for Preservation Technology and Training, Natchitoches, Louisiana. Contents of the report are solely the responsibility of the grantee and do not necessarily represent the official position or policy of the National Center for Preservation Technology and Training.

The National Center for Preservation Technology and Training promotes and enhances the preservation of prehistoric and historic resources in the United States through the advancement and dissemination of preservation technology and training. NCPTT's Preservation Technology and Training Grants support nonprofit organizations, universities and government agencies throughout the United States to complete critical preservation work and lends significant support to the conservation and preservation community.

The following individuals assisted greatly in the completion of this project:

- Jennifer Moore-Evans of NCSL for designing the database and for providing tireless technical support;
- Doug Sacarto of NCSL for designing the website;
- Anita Zepp of NCSHPO for helping to create the initial data entry template;
- Eugene Itogawa of the California Office of Historic Preservation for his detailed review and helpful suggestions during the initial review;
- Jon Fernald, director of reader services at the at the Northeastern University Law School Library in Boston, Massachusetts, for grant collection;
- and Rebecca Shrimpton for editing and assistance in developing the list of Query Topics.



NCSL Home Page

**Visitor counts for this page.**

National Conference of State Legislatures  
INFO@NCSL.ORG (autoresponse directory)

Denver Office:	Washington Office:
1560 Broadway, Suite 700	444 North Capitol Street, N.W., Suite
	515
Denver, CO 80202	Washington, D.C. 20001
Tel: 303-830-2200	Tel: 202-624-5400
Fax: 303-863-8003	Fax: 202-737-1069

[unframe](#) | [reframe](#) | [help](#)

## ACRL/RBMS Standards and Guidelines

*ACRL Standards for Ethical Conduct for Rare Book, Manuscript, and Special Collections Libraries and Librarians, with Guidelines for Institutional Practice in Support of the Standards*, 2nd edition, 1994. [Approved Final Revision published in *College and Research Library News* (C&RL News) 54:4, April 1993]

*ACRL/SAA Joint Statement on Access to Original Research Materials*. [Revised ed. published in *C&RL News* 54:11, Dec. 1993]

*ACRL Guidelines for the Security of Rare Books, Manuscripts, and Other Special Collections*. Adopted at ALA Annual Meeting, New Orleans, 1999. [To be published in *C&RL News*; Review due: 2004]

*Guidelines Regarding Thefts in Libraries*. [Draft revision published in *C&RL News* 55:5, May 1994; Revision approved, June 1994; note: Security, Theft, and Exhibition Loan Guidelines were endorsed by the SAA Council on 30 January 1993]

*Guidelines for the Loan of Rare and Unique Materials*. [Draft version published in *C&RL News* 54:5, May 1993; Approved February 1994]

*Guidelines for Borrowing and Lending Special Collections Materials for Exhibition*. [Published in *C&RL News* 51:5, May 1990.]

*Guidelines on the Selection of General Collection Materials for Transfer to Special Collections*. [2nd ed. published in *C&RL News* 54:11, December 1993]

*Note:* Offprints of RBMS documents published in *C&RL News* are available while supplies last for \$2.00. They are listed each year on the "Official ACRL Documents" page of the ACRL Guide to Policies and Procedures, and in the September issue of *C&RL News*. For additional information, see [complete listing of ACRL Standards and Guidelines](#) on the ACRL Web site.

[^ return to top ^](#)

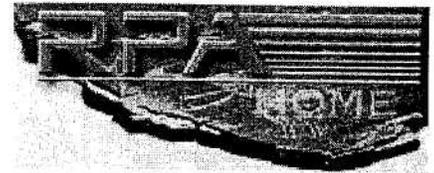
---

Rare Books and Manuscripts Section  
A unit of the Association of College & Research Libraries  
Copyright © 2001, American Library Association

This page was last modified on: 04 Apr 2001 at 09:19:57 EST  
URL: <http://www.nd.edu/standards/index.shtml>



## Code of Conduct and Standards of Research Performance



### Code of Conduct

Archaeology is a profession, and the privilege of professional practice requires professional morality and professional responsibility, as well as professional competence, on the part of each practitioner.

To review the Register of Professional Archaeologists Bylaws: [Click here](#)

#### I. The Archaeologist's Responsibility to the Public

##### 1.1 An archaeologist shall:

- a. Recognize a commitment to represent Archaeology and its research results to the public in a responsible manner;
- b. Actively support conservation of the archaeological resource base;
- c. Be sensitive to, and respect the legitimate concerns of, groups whose culture histories are the subjects of archaeological investigations;
- d. Avoid and discourage exaggerated, misleading, or unwarranted statements about archaeological matters that might induce others to engage in unethical or illegal activity;
- e. Support and comply with the terms of the UNESCO Convention on the means of prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property, as adopted by the General Conference, 14 November 1970, Paris.

##### 1.2 An archaeologist shall not:

- a. Engage in any illegal or unethical conduct involving archaeological matters or knowingly permit the use of his/her name in support of any illegal or unethical activity involving archaeological matters;
- b. Give a professional opinion, make a public report, or give legal testimony involving archaeological matters without being as thoroughly informed as might reasonably be expected;
- c. Engage in conduct involving dishonesty, fraud, deceit or misrepresentation about archaeological matters;
- d. Undertake any research that affects the archaeological resource base for which she/he is not qualified.

#### II. The Archaeologist's Responsibility to Colleagues, Employees, and Students

##### 2.1 An archaeologist shall:

- a. Give appropriate credit for work done by others;
- b. Stay informed and knowledgeable about developments in her/his field or fields of specialization;
- c. Accurately, and without undue delay, prepare and properly disseminate a description of research done and its results;
- d. Communicate and cooperate with colleagues having common professional interests;
- e. Give due respect to colleagues' interests in, and rights to, information about sites, areas, collections, or data where there is a mutual active or potentially active research concern;
- f. Know and comply with all federal, state, and local laws, ordinances, and regulations applicable to her/his archaeological research and activities;
- g. Report knowledge of violations of this Code to proper authorities.
- h. Honor and comply with the spirit and letter of the Register of Professional Archaeologist's Disciplinary Procedures.

##### 2.2 An archaeologist shall not:

- a. Falsely or maliciously attempt to injure the reputation of another archaeologist;
- b. Commit plagiarism in oral or written communication;
- c. Undertake research that affects the archaeological resource base unless reasonably prompt, appropriate analysis and reporting can be expected;

- d. Refuse a reasonable request from a qualified colleague for research data;
- e. Submit a false or misleading application for registration by the Register of Professional Archaeologists.

### III. The Archaeologist's Responsibility to Employers and Clients

#### 3.1 An archaeologist shall:

- a. Respect the interests of her/his employer or client, so far as is consistent with the public welfare and this Code and Standards;
- b. Refuse to comply with any request or demand of an employer or client which conflicts with the Code and Standards;
- c. Recommend to employers or clients the employment of other archaeologists or other expert consultants upon encountering archaeological problems beyond her/his own competence;
- d. Exercise reasonable care to prevent her/his employees, colleagues, associates and others whose services are utilized by her/him from revealing or using confidential information. Confidential information means information of a non-archaeological nature gained in the course of employment which the employer or client has requested be held inviolate, or the disclosure of which would be embarrassing or would be likely to be detrimental to the employer or client. Information ceases to be confidential when the employer or client so indicates or when such information becomes publicly known.

#### 3.2 An archaeologist shall not:

- a. Reveal confidential information, unless required by law;
- b. Use confidential information to the disadvantage of the client or employer;
- c. Use confidential information for the advantage of herself/himself or a third person, unless the client consents after full disclosure;
- d. Accept compensation or anything of value for recommending the employment of another archaeologist or other person, unless such compensation or thing of value is fully disclosed to the potential employer or client;
- e. Recommend or participate in any research which does not comply with the requirements of the Standards of Research Performance.

---

## Standards of Research Performance

The research archaeologist has a responsibility to attempt to design and conduct projects that will add to our understanding of past cultures and/or that will develop better theories, methods, or techniques for interpreting the archaeological record, while causing minimal attrition of the archaeological resource base. In the conduct of a research project, the following minimum standards should be followed:

- I. The archaeologist has a responsibility to prepare adequately for any research project, whether or not in the field. The archaeologist must:

- 1.1 Assess the adequacy of her/his qualifications for the demands of the project, and minimize inadequacies by acquiring additional expertise, by bringing in associates with the needed qualifications, or by modifying the scope of the project;
  - 1.2 Inform herself/himself of relevant previous research;
  - 1.3 Develop a scientific plan of research which specifies the objectives of the project, takes into account previous relevant research, employs a suitable methodology, and provides for economical use of the resource base (whether such base consists of an excavation site or of specimens) consistent with the objectives of the project;
  - 1.4 Ensure the availability of adequate and competent staff and support facilities to carry the project to completion, and of adequate curatorial facilities for specimens and records;
  - 1.5 Comply with all legal requirements, including, without limitation, obtaining all necessary governmental permits and necessary permission from landowners or other persons;
  - 1.6 Determine whether the project is likely to interfere with the program or projects of other scholars and, if there is such a likelihood, initiate negotiations to minimize such interference.
- II. In conducting research, the archaeologist must follow her/his scientific plan of research, except to the extent that unforeseen circumstances warrant its modification.
- III. Procedures for field survey or excavation must meet the following minimal standards:
- 3.1 If specimens are collected, a system for identifying and recording their proveniences must be maintained.
  - 3.2 Uncollected entities such as environmental or cultural features, depositional strata, and the like, must be fully and accurately recorded by appropriate means, and their location recorded.
  - 3.3 The methods employed in data collection must be fully and accurately described. Significant stratigraphic and/or associational relationships among artifacts, other specimens, and cultural and environmental features must also be fully and accurately recorded.
  - 3.4 All records should be intelligible to other archaeologists. If terms lacking commonly held referents are used, they should be clearly defined.
  - 3.5 Insofar as possible, the interests of other researchers should be considered. For example, upper levels of a site should be scientifically excavated and recorded whenever feasible, even if the focus of the project is on underlying levels.
- IV. During accessioning, analysis, and storage of specimens and records in the laboratory, the archaeologist must take precautions to ensure that correlations between the specimens and the field records are maintained, so that provenience contextual relationships and the like are not confused or obscured.
- V. Specimens and research records resulting from a project must be deposited at an institution with permanent curatorial facilities, unless otherwise required by law.
- VI. The archaeologist has responsibility for appropriate dissemination of the results of her/his research to the appropriate constituencies with reasonable dispatch.

002615

- 6.1 Results reviewed as significant contributions to substantive knowledge of the past or to advancements in theory, method or technique should be disseminated to colleagues and other interested persons by appropriate means such as publications, reports at professional meetings, or letters to colleagues.
- 6.2 Requests from qualified colleagues for information on research results directly should be honored, if consistent with the researcher's prior rights to publication and with her/his other professional responsibilities.
- 6.3 Failure to complete a full scholarly report within 10 years after completion of a field project shall be construed as a waiver of an archaeologist's right of primacy with respect to analysis and publication of the data. Upon expiration of such 10-year period, or at such earlier time as the archaeologist shall determine not to publish the results, such data should be made fully accessible to other archaeologists for analysis and publication.
- 6.4 While contractual obligations in reporting must be respected, archaeologists should not enter into a contract which prohibits the archaeologist from including her or his own interpretations or conclusions in the contractual reports, or from a continuing right to use the data after completion of the project.
- 6.5 Archaeologists have an obligation to accede to reasonable requests for information from the news media.

---

Register of Professional Archaeologists  
5024-R Campbell Blvd.  
Baltimore, MD 21236

[info@rpanet.org](mailto:info@rpanet.org)  
Phone: 410/933-3486  
Fax: 410/931-8111

# Reinwardt Academy

documentation services

## Bibliography Ethics in museology

This preliminary bibliography is 'a work in progress'. It will be supplemented regularly. Suggestions will be welcomed.

### Publications

- **General**
- **Collecting**
- **Conservation and restoration**
- **Deaccessioning**
- **Education**
- **Exhibition**
- **Fundraising**
- **Human remains**
- **Management**
- **Native/First Peoples - Co-management cultural resources**
- **Restitution and return**
- **Special topics**

### Codes of ethics

- **Charters, conventions, etc.**
- **Museum organizations, general**
- **Specialized codes: Collecting**
- **Specialized codes: Conservation and restoration**
- **Specialized codes: Couriering**
- **Specialized codes: Curatorship**
- **Specialized codes: Documentation**
- **Specialized codes: Education**
- **Specialized codes: Exhibition**
- **Specialized codes: Fundraising**
- **Specialized codes: Human remains**
- **Specialized codes: Museum shops**
- **Specialized codes: Public relations**
- **Specialized codes: Research**
- **Specialized codes: Training**
- **Individual institutions**
- **Related codes**

*this bibliography is maintained by Peter van Mensch (mensch@mus.ahk.nl)*

002617

**Asset Forfeiture Under the  
Archaeological Resources Protection Act of 1979  
16 U.S.C. §§ 470aa-470mm**

Nancy L. Rider, Deputy Chief<sup>1</sup>  
Asset Forfeiture and Money Laundering Section  
Criminal Division

---

<sup>1</sup> Thanks to Eric J. Kringel, Esquire, DynCorp attorney in the Asset Forfeiture and Money Laundering Section for his assistance in preparing this outline.

002618

## ARPA Forfeiture

## A. Prohibited Acts - 16 U.S.C. § 470ee

No Person May. . .

1. Excavate, remove damage or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource<sup>2</sup> located on public lands or Indian lands without a permit issued under 16 U.S.C. § 470cc, a permit referred to in 16 U.S.C. § 470cc(h)(2), or an exemption contained in 16 U.S.C. § 470cc(g)(1);
2. Sell, purchase, exchange, transport, receive, or offer to sell, purchase or exchange any archaeological resource that was involved in a violation of:
  - a. 16 U.S.C. § 470ee(a) (see A.1 above);
  - b. Any provision, rule, regulation, ordinance or permit in effect under any other provision of Federal law;
    - i. Federal laws which may provide a basis for forfeiture:
      - 18 U.S.C. § 371 - Conspiracy
      - 18 U.S.C. § 641 - Embezzlement or Theft
      - 18 U.S.C. § 1160 - Property Damaged in Committing Offense on Indian Lands
      - 18 U.S.C. § 1163 - Embezzlement of Theft from Indian Tribal Organizations
      - 18 U.S.C. § 1170 - Trafficking in Native American Human Remains and Cultural Items

---

<sup>2</sup> "Archaeological Resource" is defined under ARPA as "any material remains of past human life or activities which are of archaeological interest . . . [including but not limited to]: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal remains, or any portion or piece of any of the foregoing items . . . . No item shall be treated as an archaeological resource under . . . this paragraph unless such an item is at least 100 years of age." 16 U.S.C. § 470bb(1).

18 U.S.C. § 1361 - Malicious Mischief

18 U.S.C. § 2314 - Transportation of Stolen Goods

18 U.S.C. § 2315 - Sale or Receipt of Stolen Goods

The Terms of any Federal Permit

Federal Regulations governing activity on and the permitted use of public or Indian Lands

3. Sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange in interstate or foreign commerce, any archaeological resource if such resource was excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

- a. EXAMPLE: In United States v. Gerber, 999 F.2d 1112 (7<sup>th</sup> Cir. 1993), cert. denied, 510 U.S. 1071 (1994), the Seventh Circuit held that prosecution of a person under ARPA based on his trespass onto private property in violation of state law was proper. If a defendant commits an act on private property that would violate ARPA where performed on public or Indian lands, this provision allows prosecution under ARPA; therefore, it would permit forfeiture under ARPA.

- b. Types of State or local laws that would provide a basis for forfeiture

Trespass

Theft

Burglary

Any State Antiquities Protection laws

The terms of any State permit

B. Forfeiture - 16 U.S.C. § 470gg

1. All archaeological resources and all vehicles and equipment in the possession of any person, which were involved in a violation of 16 U.S.C. § 470ee (prohibited acts), may be forfeited to the United

States in the discretion of the court or administrative law judge, upon:

- a. The person's conviction of a violation under 16 U.S.C. § 470ee;
- b. Assessment of a civil penalty against the person by a Federal Land Manager pursuant to 16 U.S.C. § 470ff;
- c. A determination by any court that such property was involved in a violation of 16 U.S.C. § 470ee.

## 2. Interpretation

- a. ARPA Provides for civil administrative and judicial forfeiture as well as criminal forfeiture; The Government may obtain forfeiture:
  - i. As part of the sentence imposed by a U.S. District Court presiding over a criminal prosecution in which the defendant is charged with a count of forfeiture under 16 U.S.C. § 470gg(b) (1);
  - ii. As part of a civil penalty imposed by a Federal Land Manager pursuant to 16 U.S.C. §§ 470ff; 16 U.S.C. § 470gg(b) (2);
  - iii. In a civil in rem forfeiture action in U.S. District Court upon a showing that the defendant property was used in a manner prohibited by ARPA; 16 U.S.C. § 470gg(b) (3);

NOTE: ARPA is unique among modern forfeiture statutes to the extent that it does not explicitly state the mode of recovery in forfeiture cases<sup>3</sup>; In addition, the lack of procedural standards for

---

<sup>3</sup> Compare, 15 U.S.C. § 1177 (Gambling Devices); 17 U.S.C. § 509 (Copyright); 18 U.S.C. § 512 (Motor Vehicles); 18 U.S.C. § 981 (civil forfeiture); 18 U.S.C. § 982 (criminal forfeiture); 18 U.S.C. § 1467 (Obscene Material - Criminal Forfeiture); 18 U.S.C. § 1762 (Marking Packages); 18 U.S.C. § 1955 (Illegal Gambling Businesses); 18 U.S.C. § 1963 (RICO Forfeiture); 18 U.S.C. § 2253 (Sexual Exploitation of Children - Criminal Forfeiture); 18 U.S.C. § 2254 (Sexual Exploitation of Children - Civil Forfeiture); 21 U.S.C. § 881 (Drugs - Civil Forfeiture); 21 U.S.C. § 853 (Drugs - Criminal Forfeiture; 22 U.S.C. § 401 (War Materials).

administrative and criminal forfeitures may raise Due Process concerns;

C. Modes of Forfeiture

1. In Rem Forfeiture - Administrative

- a. Burden of Proof - the government must demonstrate that there is probable cause to believe that the subject property subject to forfeiture under ARPA 16 U.S.C. § 470ee;
- b. Declaration of Forfeiture - Proceedings culminate in a Declaration of Forfeiture issued by the Administrative Law Judge; if a claim and cost bond are filed for the property, the case must be referred to the United States Attorney for judicial action.

NOTE: To date, no administrative forfeiture actions have been pursued under ARPA; ARPA lacks any of the procedural standards typically found in modern forfeiture statutes, which generally incorporate 19 U.S.C. §§ 1902-1909<sup>4</sup>;

2. In Rem Forfeiture - Judicial

- a. Governed by the Supplemental Rules for Certain Admiralty and Maritime Claims; See 28 U.S.C. § 2461(b) and Fed. R. Civ. P. Supp. Rule A;
- b. Jurisdiction - is in the District Courts; 28 U.S.C. § 1355;
- c. Venue - is proper in:
  - i. The district in which forfeiture accrues or the defendant is found;
  - ii. The district in which the property is found;
  - iii. Any district into which the property is brought; 28 U.S.C. § 1395

---

<sup>4</sup> Compare, 15 U.S.C. § 1177 (Gambling Devices); 17 U.S.C. § 509 (Copyright); 18 U.S.C. § 512 (Motor Vehicles); 18 U.S.C. § 1762 (Marking Packages); 18 U.S.C. § 1955 (Illegal Gambling Businesses); 18 U.S.C. § 2254 (Sexual Exploitation of Children); 21 U.S.C. § 881 (Drugs); 22 U.S.C. § 401 (War Materials).

- d. Complaint - a civil In Rem proceeding is initiated by filing a Complaint for Forfeiture In Rem in the District Court; Fed. R. Civ. P. Supp. Rule C(2);
  - e. Notice - The Government must provide notice to the public and to any individuals who might have an ownership claim in the subject property; See Fed. R. Civ. P. 4(n) and Supp. Rule C(4);
  - f. Seizure - The subject property must be seized by the District Court to perfect jurisdiction; seizure is effected by service of a Warrant for Arrest In Rem based on probable cause to believe the property is subject to forfeiture; Fed. R. Civ. P. Supp. Rule C(3);
  - g. Claimants - All parties claiming an interest in the property must file a Claim and an Answer; Fed. R. Civ. P. Supp. Rule C(6);
    - i. Standing - All claimants must demonstrate a legally cognizable ownership or lienholder interest in the property;
  - h. Discovery - is conducted pursuant to the Fed. R. Civ. P. 26-36;
  - i. Burden of Proof - Initially, the burden is on the Government to show that the property is subject to forfeiture (i.e., that it was involved in a violation of 16 U.S.C. § 470ee); See 16 U.S.C. § 1615; See B.2.a above;
- Note: the shifting burden of proof typical in judicial civil forfeiture proceedings is required by 16 U.S.C. § 1615, which does not apply to ARPA forfeitures.
- j. Defense - Once the Government demonstrates probable cause, the burden shifts to the claimant(s) to show that either:
    - i. There is no probable cause on which to base the forfeiture; or,
    - ii. The property was not involved in a violation of 16 U.S.C. § 470ee;
    - iii. Uniform Innocent Owner Defenses: Where a claimant asserts an ownership interest that arose prior to the violation underlying forfeiture, the claimant may avoid forfeiture

upon a showing, by a preponderance of the evidence that:

- (A) The claimant was unaware that the property was used in a violation of ARPA; and,
- (B) Upon learning of the violation, the claimant did all that reasonably could be expected to terminate the illegal activity;

Where a claimant asserts an ownership interest that arose after the violation underlying the forfeiture action, the claimant may avoid forfeiture upon a showing, by a preponderance of the evidence, that the claimant:

- (A) Acquired the property as a Bona Fide Purchaser;
- (B) Did not know and reasonably was without cause to know that the property was subject to forfeiture;

NOTE: There is no "innocent owner" defense under ARPA<sup>5</sup>; See Bennis v. Michigan, 516 U.S. 442 (1996) (innocent owner protection not constitutionally required);

DOJ Policy: The Department of Justice will not seek to forfeit property of innocent owners where the applicable forfeiture statute does not provide for an innocent owner defense;

- k. Order of Forfeiture - Proceedings culminate in the issuance by the court of an Order for Forfeiture.

### 3. In Personam Forfeiture - Criminal

- a. ARPA is unique among criminal forfeiture statutes to the extent that it does not explicitly state that criminal forfeiture may be obtained as part

---

<sup>5</sup> However, Congress did express its expectation that "the courts and the administrative law judges would exercise their discretion to avoid unduly burdensome forfeitures of property belonging to persons who neither know nor could have known of the illegal activities." H.R. Rep. No. 311, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 1979, reprinted in, 1979 U.S.C.C.A.N. 1709.

of the sentence for violations of its criminal prohibitions;

- i. The criminal penalties provision and the forfeiture provisions are set out in separate subsections of ARPA; Compare 16 U.S.C. §§ 470ee, 470gg; if Congress intended criminal forfeiture, it could have included forfeiture as a penalty under Section 470ee;<sup>6</sup>
  - ii. The Sentencing Guidelines permit forfeiture to be ordered as part of a sentence "as provided by statute"; all modern criminal forfeiture statutes provide for imposition of forfeiture "as part of the sentence" whereas ARPA does not<sup>7</sup>;
  - iii. The ARPA statute does not limit forfeiture to felony convictions; Compare, 21 U.S.C. § 853(a);
  - iv. Where an Act of Congress provides for a penalty of forfeiture, but does not set out the mode of recovery, recovery may be had through a civil proceeding; 28 U.S.C. § 2461;
- b. Substitute Assets - Unlike some other modern criminal forfeiture statutes,<sup>8</sup> ARPA does not permit for the substitution of other assets in a forfeiture action;
  - c. ARPA lacks any of the procedural standards typically found in modern criminal forfeiture statutes; Compare, 18 U.S.C. §§ 853 (Drugs), 982 (Criminal Forfeiture Generally), 1963 (RICO);

---

<sup>6</sup> This argument cuts both ways, however, as the forfeiture provisions are set out in a separate subsection from the civil penalties as well. Compare, 16 U.S.C. §§ 470ff, 470ee, 470gg.

<sup>7</sup> See United States Sentencing Commission, Guidelines Manual, § 5E1.4 and comment (backg'd) (Nov. 1997); Compare, 18 U.S.C. §§ 18 U.S.C. §§ 853 (Drugs), 982 (Criminal Forfeiture Generally), 1963 (RICO), 3554 (Sentences -Order of Criminal Forfeiture), 3681-82 (Special Forfeiture of Collateral Profits of Crime).

<sup>8</sup> Compare, 18 U.S.C. §§ 1467(n), 1963(o), 2253(o), 21 U.S.C. § 853(p).

- d. Procedure - Criminal forfeitures are generally governed by the Federal Rules of Criminal Procedure
- i. Indictment - In a criminal forfeiture action, forfeiture must be alleged as a count in the indictment, specifically identifying the property subject to forfeiture and the legal basis for the forfeiture action;
  - ii. Special Verdict - The jury must return a verdict "as to the extent of the interest or property subject to forfeiture"; Fed. R. Crim. P. Rule 31(e);
    - (A) The Jury must find a nexus between the subject property and the criminal offense underlying the forfeiture count; See United States v. Sokolow, 81 F.3d 397 (3d Cir. 1996);
    - (B) The Jury must determine whether the defendant had some interest in the subject property; In the Fourth Circuit, the jury must determine the extent of the defendant's interest in the subject property; See United States v. Ham, 58 F.3d 78 (4<sup>th</sup> Cir. 1995);
  - iii. Sentence - Forfeiture must be included in the Judgment and Commitment Order as part of the defendant's sentence;
- e. Third Party Interests
- i. Intervention - Third Parties may not intervene in a criminal forfeiture action until after the entry of a final order of forfeiture<sup>9</sup>;
  - ii. Ancillary Hearing - In a typical criminal forfeiture, upon return of the verdict, the court will open an ancillary hearing to adjudicate the interests of any third party claimants;

---

<sup>9</sup> See United States v. Farley, 919 F. Supp. 276 (S.D. Ohio, 1996); United States v. BCCI Holdings (Luxembourg), S.A., 795 F. Supp. 477 (D.D.C. 1992).

NOTE: The procedures for ancillary proceedings are set out in 18 U.S.C. § 1963(1) and 21 U.S.C. § 853(n), neither of which apply to ARPA forfeitures; ARPA does not contain any statutory requirements regarding this process;

- iii. The lack of any process by which the court may adjudicate any third party ownership claims may, in certain cases, raise serious Procedural Due Process issues<sup>10</sup>;
  - (A) In an In Personam proceeding, the court may only order forfeiture to the extent of the convicted defendant's interest in the subject property;
  - (B) Without an ancillary hearing process, third parties (i.e., lienholders) may lose their interest without notice or an opportunity to be heard;

#### D. Disposition of Property

1. Relation Back Doctrine - Title to forfeited property vests by operation of law in the Government at the time of the violation underlying forfeiture. Thus, the "owner" of the property is precluded from passing good title after the commission of the illegal act<sup>11</sup>;

---

<sup>10</sup> Although there have been a number of criminal forfeitures under ARPA, most have resulted from plea agreements, and none has raised issues regarding Due Process concerns in connection with criminal forfeiture. See, e.g., United States v. Gerber, No. EV-91-19-CR (S.D. Ind. 1991), aff'd, 999 F.2d 1112 (7<sup>th</sup> Cir. 1993), cert. denied, 510 U.S. 1071 (1994) (both criminal and civil forfeiture was initiated, appeal did not raise forfeiture issues,); United States v. Rando, Cr. No. W90-00017(L) (S.D. Miss. 199 ) (plea agreement resulted in forfeiture of equipment); United States v. Newcamp, No. 87-1110-M (E.D.Va. 1987) (forfeiture of equipment through plea agreement); United States v. Estes, No. 87-1110-M (E.D. Va. 1988) (same); United States v. Hampton, (S.D. Fla. 1986) (same); United States v. Reynolds, No. CR-83-205 (D.Ariz. 1983) (same).

<sup>11</sup> But See, United States v. Stowell, 133 U.S. 1 (1890) (Innocent owners' interests are not abrogated by the Relation Back Doctrine); See United States v. A Parcel of Land Known as 92 Buena Vista Ave., 507 U.S. 111 (1993); supra at C.2.j.

2. Artifacts - With regard to any Archaeological Resources forfeited for a violation of ARPA:
  - a. Ownership reverts to the United States as the owner of the property; See, United States v. Shivers, 96 F.3d 120 (5<sup>th</sup> Cir. 1996); or,
  - b. In the case of property removed from Indian lands, the property shall be transferred to the Indian tribal organization; 16 U.S.C. § 470gg(c);
3. Equipment and Vehicles - With regard to any Equipment or Vehicles forfeited for a violation of ARPA:
  - a. Ownership reverts to the United States and the United States may dispose of the property in accordance with law; or,
  - b. In the case of property seized in connection with an ARPA violation committed on Indian lands, the property shall be transferred to the Indian tribal organization; 16 U.S.C. § 470gg(c);
    - i. The court or Administrative Law Judge must prepare a Declaration or Order of Forfeiture transferring the forfeited property to the United States for "disposition in accordance with law"; the United States then may proceed with summary sale, transfer to the Indian tribal organization or other appropriate disposition of the property;

Note: although it is not clear from ARPA's terms who acts in the Government's behalf with regard to forfeited property, this responsibility presumably falls to the Attorney General in criminal and judicial civil forfeiture actions, and to the involved cabinet Secretary in administrative cases.

4. Equitable Sharing - ARPA does not authorize the sharing of forfeited property among federal, State and local law enforcement agencies that participated in the investigation or prosecution of ARPA violations.<sup>12</sup>

---

<sup>12</sup>

Compare, 18 U.S.C. § 981(e), 21 U.S.C. § 881(e).



Society for American Archaeology

[Contact  
SAA](#)
[Site Map](#)
[Search  
SAAweb](#)

- [What's New?](#)
- [What is Archaeology?](#)
- [About SAA](#)
- [Careers, Opportunities,  
& Jobs in Archaeology](#)
- [Education](#)
  - [Curriculum  
Development](#)
  - [Professional  
Development](#)
  - [Public Education](#)
- [Government Affairs](#)
  - [Repatriation](#)
- [Meetings](#)
- [Membership](#)
- [Publications](#)
- [Public Relations](#)
- [SAA Marketplace](#)

Navigate this area

[Principles of Archaeological Ethics](#)

## Principles of Archaeological Ethics

At its April 10, 1996 meeting, the SAA Executive Board adopted the Principles of Archaeological Ethics, reproduced below, as proposed by the SAA Ethics in Archaeology Committee. The adoption of these principles represents the culmination of an effort begun in 1991 with the formation of the ad-hoc Ethics in Archaeology Committee. The committee was charged with considering the need for revising the society's existing statements on ethics. A 1993 workshop on ethics, held in Reno, resulted in draft principles that were presented at a public forum at the 1994 annual meeting in Anaheim. SAA published the draft principles with position papers from the forum and historical commentaries in a special report distributed to all members, *Ethics and Archaeology: Challenges for the 1990s*, edited by Mark J. Lynott and Alison Wylie (1995). Member comments were solicited in this special report, through a notice in *SAA Bulletin*, and at two sessions held at the SAA booth during the 1995 annual meeting in Minneapolis. The final principles, presented here, are revised from the original draft based on comments from members and the Executive Board.

The Executive Board strongly endorses these principles and urges their use by all archaeologists "in negotiating the complex responsibilities they have to archaeological resources, and to all who have an interest in these resources or are otherwise affected by archaeological practice (Lynott and Wylie 1995:8)." The board is grateful to those who have contributed to the development of these principles, especially the members of the Ethics in Archaeology Committee, chaired by Mark J. Lynott and Alison Wylie, for their skillful completion of this challenging and important task. The bylaws change just voted by the members has established a new standing committee, the Committee on Ethics, that will carry on with these crucial efforts.

### Principle No. 1: Stewardship

The archaeological record, that is, in situ archaeological material and sites, archaeological collections, records and reports, is irreplaceable. It is the responsibility of all archaeologists to work for the long-term

002629

conservation and protection of the archaeological record by practicing and promoting stewardship of the archaeological record. Stewards are both caretakers of and advocates for the archaeological record for the benefit of all people; as they investigate and interpret the record, they should use the specialized knowledge they gain to promote public understanding and support for its long-term preservation.

#### **Principle No. 2:**

### **Accountability**

Responsible archaeological research, including all levels of professional activity, requires an acknowledgment of public accountability and a commitment to make every reasonable effort, in good faith, to consult actively with affected group(s), with the goal of establishing a working relationship that can be beneficial to all parties involved.

#### **Principle No. 3:**

### **Commercialization**

The Society for American Archaeology has long recognized that the buying and selling of objects out of archaeological context is contributing to the destruction of the archaeological record on the American continents and around the world. The commercialization of archaeological objects - their use as commodities to be exploited for personal enjoyment or profit - results in the destruction of archaeological sites and of contextual information that is essential to understanding the archaeological record. Archaeologists should therefore carefully weigh the benefits to scholarship of a project against the costs of potentially enhancing the commercial value of archaeological objects. Whenever possible they should discourage, and should themselves avoid, activities that enhance the commercial value of archaeological objects, especially objects that are not curated in public institutions, or readily available for scientific study, public interpretation, and display.

#### **Principle No. 4:**

### **Public Education and Outreach**

Archaeologists should reach out to, and participate in cooperative efforts with others interested in the archaeological record with the aim of improving the preservation, protection, and interpretation of the record. In particular, archaeologists should undertake to: 1) enlist public support for the stewardship of the archaeological record; 2) explain and promote the use of archaeological methods and techniques in understanding human behavior and culture; and 3) communicate archaeological interpretations of the past. Many publics exist for archaeology including students and teachers; Native Americans and other ethnic, religious, and cultural groups who find in the archaeological record important aspects of their cultural heritage; lawmakers and government officials; reporters, journalists, and others involved in the media; and the general public. Archaeologists who are unable to undertake public education and outreach directly should encourage and support the efforts of others in these activities.

#### **Principle No. 5:**

# Intellectual Property

Intellectual property, as contained in the knowledge and documents created through the study of archaeological resources, is part of the archaeological record. As such it should be treated in accord with the principles of stewardship rather than as a matter of personal possession. If there is a compelling reason, and no legal restrictions or strong countervailing interests, a researcher may have primary access to original materials and documents for a limited and reasonable time, after which these materials and documents must be made available to others.

## Principle No. 6:

# Public Reporting and Publication

Within a reasonable time, the knowledge of archaeologists gain from investigation of the archaeological record must be presented in accessible form (through publication or other means) to as wide a range of interested publics as possible. The documents and materials on which publication and other forms of public reporting are based should be deposited in a suitable place for permanent safekeeping. An interest in preserving and protecting *in situ* archaeological sites must be taken in to account when publishing and distributing information about their nature and location.

## Principle No. 7:

# Records and Preservation

Archaeologists should work actively for the preservation of, and long term access to, archaeological collections, records, and reports. To this end, they should encourage colleagues, students, and others to make responsible use of collections, records, and reports in their research as one means of preserving the *in situ* archaeological record, and of increasing the care and attention given to that portion of the archaeological record which has been removed and incorporated into archaeological collections, records, and reports.

## Principle No. 8:

# Training and Resources

Given the destructive nature of most archaeological investigations, archaeologists must ensure that they have adequate training, experience, facilities, and other support necessary to conduct any program of research they initiate in a manner consistent with the foregoing principles and contemporary standards of professional practice.

Join SAA!

002631

## **T**HE LOOTING OF ARCHEOLOGICAL SITES

One type of larceny that has existed for centuries is increasingly an issue in this country. Unfortunately, many enforcement agencies lack awareness of its importance—or even its existence. “Archeological looting is defined as illegal unscientific removal of archeological resources.”<sup>79</sup> This nationwide problem has been studied primarily as it relates to public and tribal lands, but looting also take place on private land when objects are removed without the permission of the landowner.<sup>80</sup> On federal land (e.g., national parks, areas under the direction of the Bureau of Land Management, and national forests) there were 1,720 documented violations of laws protecting archeological resources between 1985 and 1987.<sup>81</sup> Because of the difficulty of even detecting the crimes in some areas, it is believed that this figure represents only 25 percent of the actual number of looting cases.<sup>82</sup> The looting of archeological resources is related to the widespread fascination with our past, the interest of individuals in collecting archeological materials, the high dollar value for which some archeolog-

ical works can be sold, the right to buy, possess, and sell legally obtained specimens, and the frequent difficulty of proving that the archeological materials were illegally obtained.<sup>83</sup>

Archeological resources are nonrenewable: when they are looted or vandalized, the information they contain is lost forever. The looting of archeological sites in the United States is happening on a vast scale. Stated bluntly, part of our history has been, and continues to be, stolen. In the process, thieves have damaged and destroyed the archeological sites which are the only way to learn about most of the 12,000-year history of humans in North America (see Figure 15-3). Such looting also means that some private collectors can withhold from the public precious and beautiful objects which they or others have stolen.

This problem is not isolated in one region of the country. It is occurring on public and private lands, in battlefield parks, and in historic cemeteries. Although a certain amount of the looting is done by individuals seeking to enhance their own collections, there is also significant illegal commercial trafficking in artifacts for personal

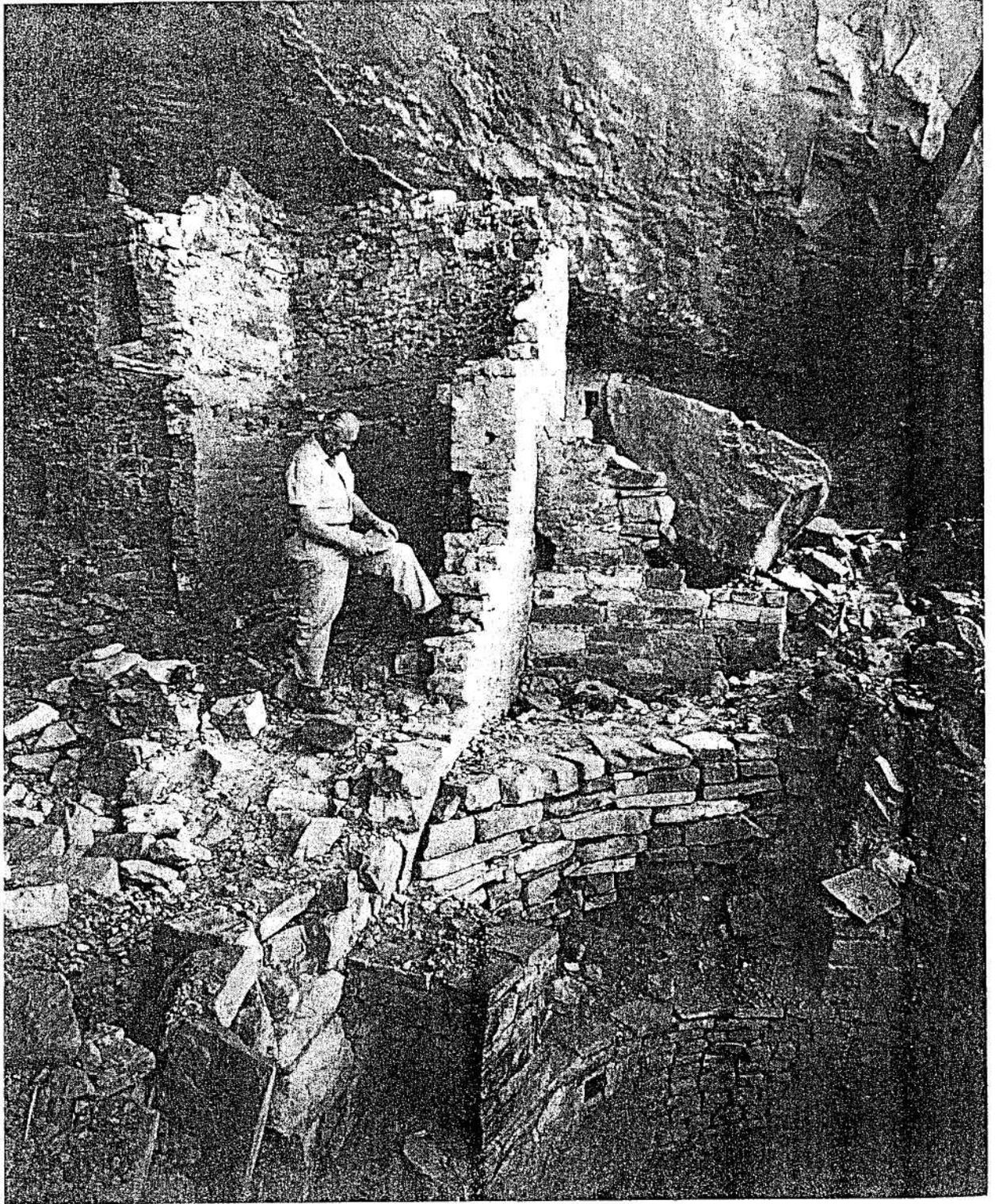
profit.<sup>84</sup> Persons bent on profiting are not the only offenders responsible for the loss of artifacts; the so-called casual looters and vandals also contribute significantly to the problem.<sup>85</sup> Vandalism may be intentional—as in the case of defacement of ancient rock art by graffiti or target shooting—or unintentional, as in accidental site damage from off-road vehicles.<sup>86</sup>

There is a substantial market for Indian artifacts in this country, as well as in Germany, Japan, and other countries: an ancient pot from the Southwest was sold for \$250,000 in Paris; a Mississippi stone ax was offered for sale for \$150,000 in New Orleans; and a single rare arrowhead has an appraised value of \$20,000.<sup>87</sup> In the Four Corners area alone (the point where Arizona, Colorado, New Mexico, and Utah meet), more than 44,000 known sites have been looted or vandalized in recent years.<sup>88</sup> On the Navajo Reservation, the number of archeological sites victimized increased 900 percent between 1980 and 1987.<sup>89</sup> One of the most spectacular Indian sites is the famous Cliff Palace in Mesa Verde National Park, Colorado (see Figure 15-4). This stone structure was built by the Anasazi (a Na-

**Figure 15-3** LOOTED  
GRAVE AT CHAVEZ  
PASS PUEBLO, ARIZONA  
(Courtesy National Park Service)



002633

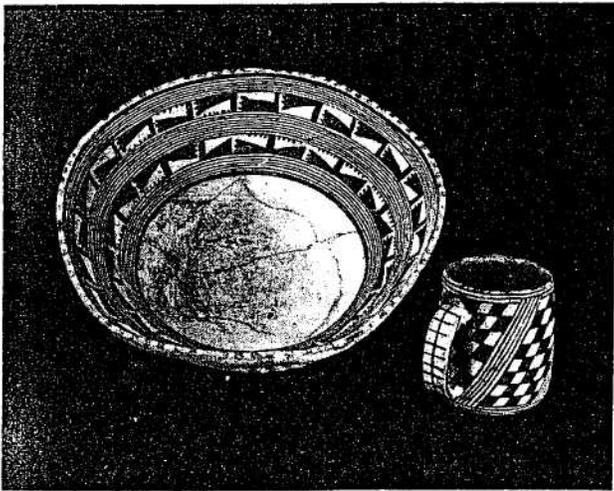


**Figure 15-4**

Archeologist in Mesa Verde National Park cliff dwelling. (Courtesy National Park Service)

002634

vajo word meaning "Ancient Ones") as home for 100 people nearly 900 years ago.<sup>90</sup> The Anasazi were the ancestors of the Pueblo, Hopi, Zuñi, and other tribes. The intricate designs of their pottery and woven baskets are stunning.<sup>91</sup> Today, an unbroken Anasazi mug or bowl crafted or painted not particularly well is worth \$150 to \$200, a piece of mid-range quality \$500 to \$800, and even a specimen that is just "pretty good" will bring several thousand dollars and up (see Figure 15-5).<sup>92</sup> In Oregon's Deschutes National Forest, a looter was apprehended with a trailer containing 3,000 artifacts, digging equipment, and site maps coded to where artifacts were most plentiful.<sup>93</sup> Other public lands which have suffered losses due to vandalism and theft of Indian artifacts include Pisgah National Forest, North Carolina, Chippewa National Forest, Minnesota, Tongass National Forest, Alaska, and Ocala National Forest, Florida, as well as sites such as Metichawon, an area in New Milford, Connecticut, and Shawnee National Forest, Illinois.



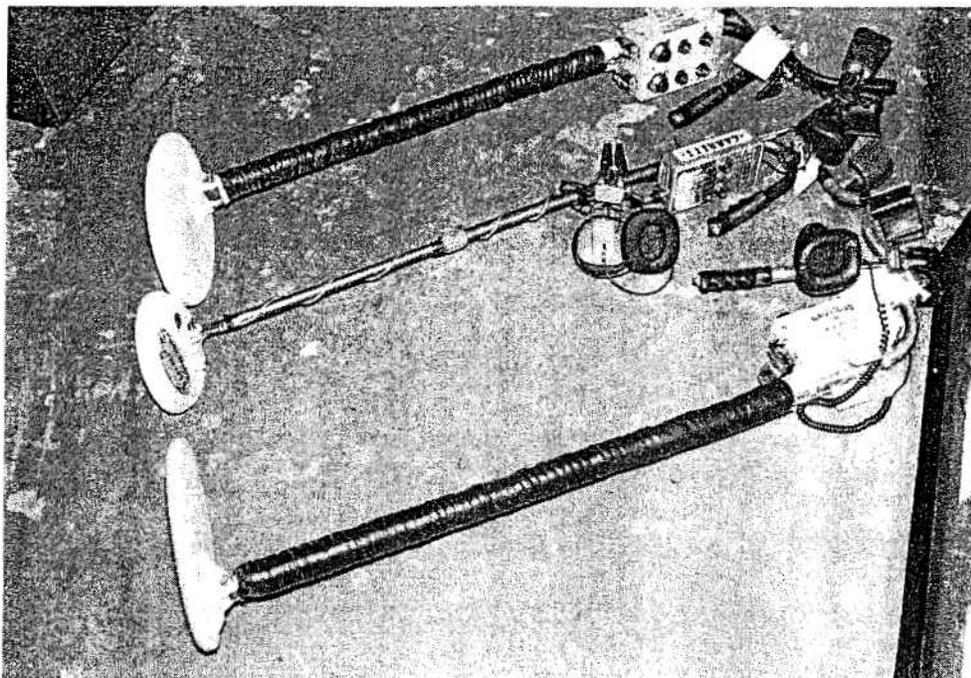
**Figure 15-5**  
Anasazi-Mesa Verde black-on-white bowl (left) and mug (right) from the Yellow Jacket area, southwestern Colorado. (Courtesy University of Colorado Museum, photograph by Earl Bolton)

It is not only prehistoric Indian artifacts that are being stolen; another target is historic Euro-American sites such as some of our national parks. In Virginia, park rangers spotted three men entering the Richmond National Battlefield Park at 1:30 A.M.<sup>94</sup> With the assistance of local deputy sheriffs, a stakeout was established. Four hours later, as the defendants left the park, they were arrested and charged with federal offenses. In their possession were state-of-the-art metal detectors and Civil War artifacts, including a bayonet, minnie balls, grapeshot, a button, and other associated items (see Figure 15-6). Physical evidence was gathered that connected the three men and the artifacts to freshly dug holes in the park's historic earthworks. A similar incident involving a different defendant occurred in the Fredericksburg and Spotsylvania National Military Park.<sup>95</sup> In Uncompahgre National Forest, Colorado, portions of a wooden cabin which was built around 1879 were taken for use as firewood; investigation of the case led to the execution of a search warrant and recovery of portions of the cabin.<sup>96</sup> California's Channel Islands Marine Sanctuary was the scene of underwater looting by scuba divers; the divers took hundreds of relics from the wreck sites of the *Winfield Scott* and the *Golden Horn*, fast sail transport ships which sank in the 1800s.<sup>97</sup>

## Legal Considerations

**Federal Provisions** Federal preservation laws date from the late nineteenth century; at that time the primary focus was to document information, to set aside land areas as monuments, and to collect items of importance related to national public figures, historic military events, and ancient cultures.<sup>98</sup> "Federal policy to preserve historic and prehistoric sites on federal land was first embodied in the Antiquities Act of 1906."<sup>99</sup> This act authorized a permit system for investigation of archeological sites on federal and Indian lands and gave the president the

002635

**Figure 15-6**

Metal detectors seized from looters who entered Richmond National Battlefield Park and located and removed a bayonet, bullets, and other objects. (Courtesy National Park Service)

power to establish national monuments on federal lands to protect historic landmarks, historic and prehistoric structures, and other objects of historical and scientific interest.<sup>100</sup> This federal law has misdemeanor (but no felony) provisions, and fines of up to \$500 and/or 90 days imprisonment can be 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 been issued a permit.<sup>101</sup> Between 1906 and 1979, the overall enforcement impact of the Antiquities Act was very small, totaling only 18 convictions and two 90-day jail sentences.<sup>102</sup> It is important, however, to note that the federal management of prehistoric and historic resources on national and Indian lands has always included the responsibility to protect the resources from violators. A great deal of good was accomplished through this responsibility, although it is not reflected in enforcement statistics.

The federal government passed other legislation related to historic sites in the years following 1906, but from an enforcement standpoint, the most far-reaching law was the Archaeological Resources Protection Act (ARPA) of 1979, as amended in 1988.<sup>103</sup> Both felony and misdemeanor charges can be made against persons who violate ARPA, as listed in the following provisions:

1. No person may excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any archeological resource located on public lands or Indian lands (without a permit, unless the resource is specifically exempt under law);
2. No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archeological resource (in violation of ARPA or any other federal law);
3. No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase,

or exchange, in interstate or foreign commerce, any archeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under state or local law; and

4. Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate any prohibition of the above shall be held accountable under the law.<sup>104</sup>

Archeological resources that are protected include pottery, basketry, bottles, weapons, weapon projectiles, tools, structures, pit houses, rock paintings and carvings, graves, skeletal materials, organic waste, by-products from manufacture, rock shelters, apparel, shipwrecks, or any part of such items.<sup>105</sup> If the value of the damage to the archeological resource or the value of the artifact(s) stolen is \$500 or more, then the act is a felony and conviction carries a fine of up to \$100,000 and/or a term of imprisonment not to exceed five years. Offenders may also be required to pay restitution, which is calculated on the basis of the actual archeological damage done and is often used to restore the site.<sup>106</sup> When a defendant has a prior ARPA conviction, whether for a misdemeanor or felony, all second and subsequent ARPA violations are treated as felonies regardless of the actual dollar damage or loss.<sup>107</sup>

In contrast to traditional federal criminal legislation, ARPA is located in land use and conservation legislation and also contains a provision for the forfeiture of equipment, vehicles, and tools used in the attempted or actual taking of protected archeological resources.<sup>108</sup> Protected resources can be characterized broadly as material remains of past human existence, of archeological interest, which are over 100 years old.<sup>109</sup> ARPA has several exemptions: paleontological resources (fossils) not located within an archeological site, arrowheads found on the surface of the ground, and the collection of rocks,

bullets, coins, and minerals for private purposes. However, a "savings clause" in ARPA provides that items not protected by ARPA are still subject to protection under other federal laws.<sup>110</sup> In short, materials on federal lands remain federal property and may not be removed without permission.<sup>111</sup> ARPA and the regulations under which it is implemented defer to American Indian tribal self-government and require close coordination with any tribe(s) affected when an excavation of potential tribal religious significance is contemplated outside of formal Indian lands.<sup>112</sup> A basic provision for permits to excavate on tribal lands is that the applicant must obtain the consent of the Indian tribe owning, or having jurisdiction over, those lands.

**State Laws** As of mid-1990, none of the states had a unified law under which all statutes protecting archeological resources were located.<sup>113</sup> Instead, states tend to categorize laws related to archeological resources under a variety of headings. These individual statutes may address such subjects as disturbance of marked and unmarked burial sites, prohibitions against forging antiquities, vandalism to cemeteries, and grave robbing. As seen in Figure 15-7, about two-thirds of the states have laws—resembling to some extent the federal ARPA—which protect archeological resources on state property.<sup>114</sup> Eleven states have passed legislation to discourage activities that damage archeological resources on private land.<sup>115</sup> In addition, several states have statutes providing protection to specific types of areas, such as underwater salvage sites (ten states), caves (four states), forts (two states), and ghost towns (Colorado only).<sup>116</sup> States also have statutes that provide for state archeologists, registers of historic places, requirements for the issuance of permits to conduct field investigations, obligations to report discoveries that may have historic or prehistoric significance, and protection of the confidentiality of site locations.

Under federal law there is no regulation of archeological resources on private land, and under most state laws, the types of "archeological"

002637



**Figure 15-8 LOOTING  
AT SLACK FARM,  
KENTUCKY**

(Courtesy National Park Service)



mains themselves or of objects buried contemporaneously with the remains.<sup>122</sup>

Note that this Kentucky criminal statute does not distinguish between acts committed on public and private lands. Also, while some state statutes regarding desecration of graves have been interpreted to apply to historic, but not prehistoric sites, the Kentucky law covers both types.

### **Conducting Enforcement Investigations**

Archeological resources protection investigations pose a number of challenges. Different laws apply when the violation occurs on federal land as opposed to state land and there are relatively few laws applicable to private lands as opposed to the more heavily protected public lands. Moreover, some historic areas are divided in such a manner that one portion is under federal jurisdiction while another section is on state and/or private land. As mentioned earlier, many offenses go undetected for long periods of time because of the difficulty in monitoring sites which are numerous and often very remote, such

as Alaska, with over 150,000 archeological sites. Because of this delay, opportunities to gather crucial physical evidence, which can associate the crime scene with the offenders, may be lost. Moreover, an offender may leave his or her vehicle outside the boundaries of a protected area and claim to be transporting the collection from one point to another or transporting artifacts gathered on private land. Although a law enforcement officer in such circumstances may have some reasonable suspicion, if the subject was not observed entering or leaving the protected area, it is not likely to rise to the level of probable cause. Additional indicators may be found in several areas: Would a claim that a person is transporting his or her personal collection be consistent with artifacts that appear to be freshly dug up? Does the subject claim to have been on private land but have maps of protected lands with site markings on them? Have digging tools been camouflaged to avoid reflecting light? How close was the subject's vehicle stopped in relationship to protected public lands? Does the subject seem unusually nervous? Can the subject's story of being on private

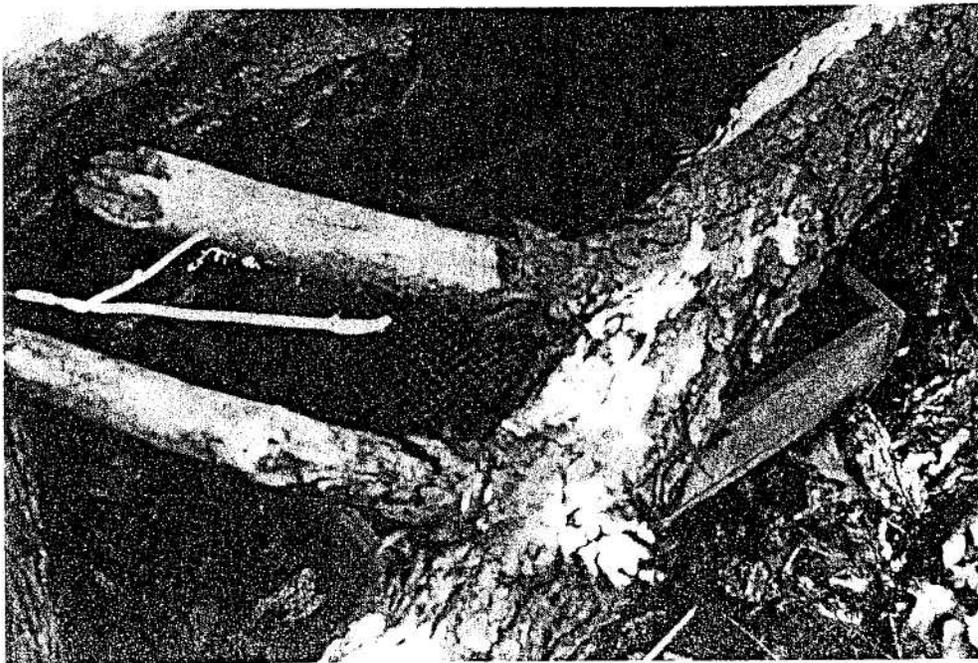
002639

land be verified with the owner? Is the subject's version credible if this occurs at 3:00 A.M.? Are there two or more subjects carrying two-way radios and scanners? Are the subjects known to have committed previous violations of archeological resource protection or related laws? It is from the totality of the circumstances that reasonable suspicion may rise to the level of probable cause.

Being able to recognize the tools commonly employed by looters is essential. Looters typically have shovels and metal rods up to five feet long with a T handle, which they use to probe for human remains, artifacts, and changes in soil density that suggest good places to examine. Offenders often carry pieces of screen through which they sift dirt, leaving artifacts on the screen, or the screen may have a wooden edge built around it for added strength. Other equipment includes trowels, small brushes to clean artifacts, a small hand-held metal "claw" to break the soil and with which to dig, lanterns and head lamps (for night work), backpacks in which to carry the stolen artifacts, and motorcycles and all-terrain vehicles (ATVs).<sup>123</sup> In his-

toric battlefield parks, suspects often carry metal detectors. Some small-time looters will appear innocent enough, walking along with a stick or staff in their hand, turning over apparent surface debris. The stick or staff is referred to as a "flipper," and as the subjects find articles of value, they pick them up and keep them.

Initial information about looting comes from a variety of sources. Hikers, farmers, campers, hunters, ranchers, and fishermen who see acts of vandalism or looting in progress or discover sites that have been victimized may contact a government agency with the information they have. Routine patrols by employees of the agency that manages the public land also may uncover crimes in progress, as well as those that have been completed. If there is evidence of fresh digging, the site or sites may be placed under surveillance. In examining a site that has been looted, one factor to consider is whether there is any evidence suggesting that the perpetrators may return. For example, has a supply of digging tools and screens been left behind, hidden in some way (see Figure 15-9)? Although subjects might have simply left the tools to avoid



**Figure 15-9**  
A hidden looter's screen found at Uwharrie National Forest, North Carolina. (Courtesy U.S. Forest Service)

002640

being seen leaving with them, if there are other significant sites in the immediate area which have not been disturbed, it is likely that the looters are planning to return.

Offenders conduct their looting operations using a variety of techniques. They may have someone drop them off and then pick them up there or at another location at a specified time. Looters frequently operate at night or on holidays when they are unlikely to encounter other people and enforcement staffing levels are traditionally low, and they may use snow or heavy rain as a cover. In the Four Corners area, one violator used a jet boat to get into and away from a site in the mistaken belief that the method and speed of the approach would make apprehension almost impossible. Offenders may also have dogs with them to warn them when someone approaches.

### **Crime Scene and Follow-Up Investigation**

Investigators occasionally come across looting operations in progress. In such situations investigators may let the operation go on so surveillance photographs of the crime, which make powerful evidence in court, can be taken. Or investigators may approach the subjects and halt the process to prevent large-scale destruction or to prevent a particularly important site from experiencing further damage. In either case, before acting the investigator must observe long enough to be able to evaluate the situation. How many subjects are there? Where are any lookouts located? What are the probable means and direction of flight if the subjects are approached? Are the subjects armed? Do some offenders in that region have a history of violently resisting arrest? How far away is assistance to the investigator? What law enforcement assets can be prepositioned along roads which the suspects must travel as they leave the area?

The principles discussed in Chapter 3, Crime Scene and Its Associated Procedures, and Chapter 4, Physical Evidence, apply to crime scene investigations in looting cases. There are, how-

ever, some differences in approach and emphasis that deserve attention here. Violations of federal and state laws related to the protection of archeological resources should be pursued, beginning with the crime scene investigation, by an archeologist and an investigator.<sup>124</sup> Because a crime has been committed, the investigator is in charge of the process. However, the archeologist makes a unique contribution by conducting the damage assessment, without which there is no ARPA case. The archeologist must demonstrate that there has been damage, how the damage was caused, and fix the dollar amount of damage, which if \$500 or more moves the offense from being a misdemeanor to a felony. In addition, the archeologist's considerable contributions include taking the crime scene photographs, making the crime scene sketch, and identifying, collecting, marking, and preserving physical evidence.<sup>125</sup> The archeologist can also offer tentative conclusions about the types of tools used by the suspects if they are not recovered at the scene, the amount of time the offenders spent on the site, the level of skill and knowledge of the perpetrators based on the type and amount of damage done to the site and the kinds of artifacts left behind (see Figure 15-10), the number of suspects involved, and whether the act was an opportunistic crime, an amateur's raid, or the work of commercial looters or serious private collectors. Both the archeologist and the investigator must be alert to the possibility that the offenders were unable to transport all the artifacts and are planning to return later to collect artifacts hidden nearby.

Soil evidence is of particular importance in looting offenses. Although soil is class characteristic evidence, in some looting cases it has achieved the status of individual characteristic evidence. A number of factors may interact to allow soil evidence to achieve individual characteristic status, including layers of soil in unusual combinations, pollen content, pottery shards (fragments) that are unique to particular locations, and the inclusion of material that allows for carbon dating. The careful collection of

002641

**Figure 15-10**

Bold looters simply left their "rejects," a trowel, and an empty beer can at one site in Uwharrie National Forest, North Carolina. (Courtesy U.S. Forest Service)

soil evidence will permit meaningful comparison with samples collected from suspects' clothes, from under their fingernails, from their tools, from artifacts found in their possession, and from the floorboards, trunks, tires, and undersides of their vehicles. Because vegetation can also be highly unusual alone or in combinations and may also be located only in particular areas or elevations, the investigator should also take samples of vegetation found at the scene.

To some extent, where stolen artifacts end up depends upon who took them and what was taken. Some people may take an arrowhead from the surface to keep as a memento. The offenders using flippers usually know they are on sites and have personal collections to which they want to add. Commercial looters steal artifacts to sell and may use a variety of channels, including dealer shows, auctions, and middlemen, or they may sell directly to collectors.

In the follow-up investigation the archeologist can be of particular assistance to the investigator in estimating the amount of time a commercial looter would need to turn artifacts into salable items and in speculating about the markets in which they might appear.<sup>126</sup> Also, when an application for a search warrant is being prepared, archeologists can be extremely helpful in specifying the shape, types, colors, the raw materials from which made, and the characteristic production process and appearance of artifacts which are normally associated with the looted site that has been looted. In this regard, they can make very useful diagrams.

It is essential for investigators to realize that although artifacts are typically stolen from remote, rural, or urban fringe sites, many of them will ultimately be sold in cities. Therefore, there is a considerable need for cooperation with, and coordination between, many types of agencies.

002642

## QUESTIONS

1. What two elements must be present for a larceny to occur?
2. What are the fine points a merchant should check when examining credit cards?
3. What are some of the possible indicators of check fraud?
4. Discuss the possible signs that people are acting as fences and other receivers.
5. The greatest deterrent to shoplifting can be a security education program for employees. What were some of the suggestions made?
6. Describe the techniques employed in the "pigeon drop" and "bank examiner" scheme.
7. Describe a pyramid sales scheme.
8. What is the purpose of laundering money?
9. Why are groceries and restaurants considered good businesses for laundering money?
10. How is archeological looting defined?
11. What are the major provisions of ARPA?
12. Summarize state laws pertaining to the protection of archeological resources.
13. Describe the respective roles of the investigator and the archeologist in crime scene and follow-up investigation.

## NOTES

1. Neil C. Chamelin and Kenneth R. Evans, *Criminal Law for Policemen* (Englewood Cliffs, N.J.: Prentice-Hall, 1971), p. 121.
2. Donald Shoultz, "Cardholders Would Forgo Perks for Lower Rates," *American Banker*, November 2, 1989, Vol. 154, p. 2.
3. Yvette D. Kantrow, "Card-Loan Growth at 3 Nonbanks Outpaced Other Top Issuers in '88," *American Banker*, September 18, 1989, Vol. 154, p. 1.
4. Ellen Memmelaar, "MasterCard Saw Fraud Drop in '89," *American Banker*, July 17, 1990, Vol. 155, p. 14.
5. William T. Neumann, "Busting Credit Card Crime Is Tough," *American Banker*, September 18, 1989, Vol. 154, p. 26.
6. Memmelaar, "MasterCard Saw Fraud Drop in '89," p. 14.
7. Jack Goldstein, "Protecting the Plastic," *Security Management Review*, September 1989, Vol. 33, p. 83.
8. Ibid.
9. Ellen Braitman, "More Focus on Cards with Photos," *American Banker*, November 1, 1990, Vol. 155, p. 6.
10. Neumann, "Busting Credit Card Crime Is Tough," p. 26.
11. Ellen E. Schultz, "Plastic Explosives: Ways to Defuse Credit-Card Fraud," *The Wall Street Journal*, November 16, 1990, p. C1.
12. Ibid.
13. John W. Merline, "Check Fraud," *Consumers' Research Magazine*, December 1989, Vol. 72, p. 2.
14. Karen Gullo, "Software to Detect Kiting Is Adapted for Use on PCs," *American Banker*, November 1, 1990, Vol. 155, p. 3.
15. Rebecca Cox, "Computer Sleuths," *American Banker*, July 24, 1989, Vol. 154, p. 79.
16. Ibid.
17. Gullo, "Software to Detect Kiting Is Adapted for Use on PCs," p. 3.
18. Chamber of Commerce of the United States, *White Collar Crime* (Washington, D.C.: Chamber of Commerce, 1974), pp. 75-77.
19. Ibid., pp. 45-48.
20. Steve Weiner and John Harris, "Hot Retailing," *Forbes*, August 7, 1989, p. 106.
21. Ibid.
22. Nancy Wride, "57 Arrested in Anaheim Fencing Sting," *The Los Angeles Times*, March 25, 1989, p. 19.
23. Rich Wilner, "Steal-to-Order Check, Credit Card Ring Is Broken," *Women's Wear Daily*, August 2, 1989, p. 23.
24. Weiner and Harris, "Hot Retailing," p. 106.

002643

25. Chamber of Commerce, *White Collar Crime*, pp. 45-46.
26. Ibid.
27. Weiner and Harris, "Hot Retailing," pp. 105-106.
28. James N. Baker and Peter Katel, "Rolling on the Miami River: Police Crack Down on a Stolen-Goods Pipeline," *Newsweek*, June 11, 1990, p. 31.
29. Chamber of Commerce, *White Collar Crime*, pp. 46, 47. Additional details about fences and other receivers are capsuled in *Cargo Theft and Organized Crime* (Washington, D.C.: Government Printing Office, October 1972). Also see *Criminal Redistribution Systems and Their Economic Impact on Small Business, Part I* (hearings before the Senate Select Committee on Small Business, May 1-2, 1973) (Washington, D.C.: Government Printing Office, 1973).
30. Ibid, pp. 80-82.
31. Weiner and Harris, "Hot Retailing."
32. Leonard A. Sipes, Jr., "And the Answer Is . . .," *Security Management Review*, May 1989, Vol. 33, p. 69.
33. Ibid, p. 34.
34. Ibid, p. 71.
35. "Shoplifting: Bess Myerson's Arrest Highlights a Multibillion-Dollar Problem that Many Stores Won't Talk About," *Life*, August 1988, Vol. 11, p. 34.
36. Ibid., p. 35.
37. Ibid, p. 36.
38. Ibid.
39. Ibid, p. 34.
40. Schuyler M. Meyer, "A Crusade against Shoplifting," *The Police Chief* June 1974, Vol. 41, No. 6, p. 34; Mary Owen Cameron, *The Booster and the Snitch* (New York: The Free Press of Glencoe, 1964), pp. 46-47; S. J. Curtis, *Modern Retail Security* (Springfield, Ill.: Charles C. Thomas, 1972), p. 80.
41. Dody Tsiantar, "Big Brother at the Mall, Retailers Go High Tech in the War on Shoplifters," *Newsweek*, July 3, 1989, Vol. 114, p. 44.
42. "American Notes: Police Presence," *Time*, January 8, 1990, Vol. 135, p. 53.
43. Tsiantar, "Big Brother at the Mall," p. 44.
44. Hassell Bradley, "Meet Miss Annie Droid, the Shoplifter's Nemesis," *Women's Wear Daily*, February 27, 1989, p. 18.
45. "Shoplifting: Bess Myerson's Arrest Highlights a Multibillion-Dollar Problem," p. 34.
46. Tsiantar, "Big Brother at the Mall," p. 44.
47. "Shoplifting: Bess Myerson's Arrest Highlights a Multibillion-Dollar Problem," p. 36.
48. Jack Acken Smith, "Shoplifters Hate Customer Service," *Gifts and Decorative Accessories*, October 1989, Vol. 90, p. 56.
49. "Shoplifting: Bess Myerson's Arrest Highlights a Multibillion-Dollar Problem," p. 36.
50. Delaney J. Stinson, "Attention, Retailers: Civil Law Provides Tonic," *Security Management Review*, September 1988, Vol. 32, pp. 131, 132.
51. "Con Men—A Sucker's Sampler of the Games People Play," *The Miami Herald*, April 21, 1977, p. 15.
52. Oattie Adkins, "Crime against the Elderly," *The Police Chief*, January 1975, Vol. 42, No. 1, p. 40.
53. Ibid.
54. R. Griffin, "Bunko Schemes—The Art of Flim Flam," *The National Centurion*, October 1983. (The remainder of this discussion of confidence games was obtained from this source pp. 38-42.)
55. Len Baldassano, *American Shipper*, February 1990, Vol. 32, p. 96.
56. Ibid.
57. Ibid.
58. Steve Bloom, "True Tales: Loose Change," *New York*, August 8, 1988, Vol. 21, p. 16.
59. Kim A. Lawton, "Swindlers Prey on Trust of Believers," *Christianity Today*, September 22, 1989, Vol. 33, p. 42.
60. Ibid.
61. Ibid.
62. Ibid.
63. Rebecca Cox, "Con Men Turn to Phone Scams to Fleece Credit Card Banks," *American Banker*, May 18, 1989, Vol. 154, p. 1.
64. Ibid.
65. "War Spurs Surge in Scams, Consumer League Reports," *Wall Street Journal*, January 23, 1991, p. A5.
66. Ibid.
67. Ibid.
68. Julia Anderson, "Legislation Aimed at Tele-

002644

- marketing fraud," *American Banker*, October 13, 1988, Vol. 153, p. 8.
69. Theodore Farace and Andrew Camera, "Operations Confidence Game," *The Police Chief*, January 1975, Vol. 42, No. 6, pp. 37-39.
  70. Edwin H. Sutherland, *White Collar Crime* (New York: Dryden Press, 1949), p. 9.
  71. U.S. Department of Justice, LEAA, *The Nature, Impact, and Prosecution of White-Collar Crime* (Washington, D.C.: Government Printing Office, 1970), pp. 4-6.
  72. Vincent P. Doherty and Monte E. Smith, "Ponzi Schemes and Laundering—How Illicit Funds Are Acquired and Concealed," *FBI Law Enforcement Bulletin*, November 1981, pp. 5-11. This discussion was taken from this source.
  73. Wayne Moquin and Charles Van Doren, *The American Way of Crime—A Documentary History* (New York: Praeger, 1976), p. 68.
  74. Richard Behar, "The Underworld Is Their Oyster," *Time*, September 3, 1990, Vol. 136, p. 54.
  75. Jonathan Beaty and Richard Hornik, "A Torrent of Dirty Dollars," *Time*, December 18, 1989, Vol. 134, p. 51.
  76. James Cook, "The Invisible Enterprise," *Forbes*, October 13, 1980, p. 125.
  77. Jim Drinkhall, "Con Men Are Raking in Millions by Setting Up Own Caribbean Banks," *Wall Street Journal*, March 23, 1981, p. 1.
  78. Robert E. Chasen and Arthur Sinai, "Currency and Foreign Transactions Reporting Act—A New Law Enforcement Tool," *FBI Law Enforcement Bulletin*, August 1979, pp. 1-5.
  79. Sherry Hutt, Elwood Jones, and Martin McAllister, *Archeological Resource Protection* (Washington, D.C.: National Park Service, review draft of October 23, 1990, to be published in the summer of 1991 by the Government Printing Office), p. 6.
  80. *Ibid.*, pp. 6-7.
  81. National Park Service, *Listing of Outlaw Treachery: Loot Clearinghouse*, on file, Archeological Assistance Division, 1990.
  82. Bennie Keel, Francis P. McManamon, and George S. Smith, *Federal Archeology: The Current Program* (Washington, D.C.: National Park Service, 1989), pp. 30-31.
  83. Hutt, Jones, and McAllister, *Archeological Resource Protection*, p. 5.
  84. The information in this paragraph is drawn, with restatement, from National Park Service, *Looting America's Archeological Heritage: An Update* (Washington, D.C.: U.S. Department of Interior, 1989), p. 1.
  85. Robert K. Landers, "Is America Allowing Its Past to Be Stolen?" In *Congressional Quarterly's Editorial Research Reports*. Marcus D. Rosenbaum, ed., January 18, 1991, p. 35.
  86. Hutt, Jones, and McAllister, *Archeological Resource Protection*, p. 6.
  87. Landers, "Is America Allowing Its Past to Be Stolen?" pp. 35, 37.
  88. Hutt, Jones, and McAllister, *Archeological Resource Protection*, p. 2.
  89. Landers, "Is America Allowing Its Past to Be Stolen?" p. 37.
  90. *Ibid.*, p. 37.
  91. *Ibid.*, p. 37.
  92. *Ibid.*, p. 37.
  93. National Park Service, *Looting America's Archeological Heritage: An Update*, p. 1.
  94. National Park Service, *Summary of Archeological Looting Cases* (Washington, D.C.: U.S. Department of the Interior, 1989); prepared for the Society for American Archeological Anti-Looting Working Conference, Taos, New Mexico, May 7-12, 1989, manuscript unnumbered, but apparently p. 111.
  95. *Ibid.*, p. 150.
  96. *Ibid.*, p. 70.
  97. *Ibid.*, p. 100.
  98. Christopher J. Duerksen, *A Handbook of Historic Preservation Law* (Washington, D.C.: The National Center for Preservation Law, 1983), p. 193.
  99. National Park Service, *Archeological Assistance Technical Brief No. 11: The Legal Background of Archeological Resources Protection* (Washington D.C.: U.S. Department of the Interior). Information on this law is from a pre-publication draft prepared by Carol Carnett, Legal Aid Bureau of Maryland, Inc., and scheduled for release in the summer of 1991. Quotation is from p. 2.
  100. *Ibid.*, p. 2.
  101. *Ibid.*, p. 2.
  102. Hutt, Jones, and McAllister, *Archeological Resource Protection*, p. 20.

002645

103. National Park Service, *Archeological Assistance Program Technical Brief No. 11*, pp. 3-4.
104. Hutt, Jones, and McAllister, *Archeological Resources Protection*, pp. 32-33.
105. *Ibid.*, pp. 26, 28, 42, 48.
106. *Ibid.*, p. 48.
107. *Ibid.*, p. 48.
108. *Ibid.*, p. 42.
109. *Ibid.*, p. 28.
110. *Ibid.*, p. 28.
111. *Ibid.*, p. 28.
112. *Ibid.*, p. 26.
113. National Park Service, *Archeological Assistance Program Technical Brief No. 11*, p. 7.
114. Landers, "Is America Allowing Its Past to Be Stolen?" p. 41.
115. National Park Service, *Archeological Assistance Program Technical Brief No. 11*, p. 7.
116. *Ibid.*
117. This example is from Landers, "Is America Allowing Its Past to Be Stolen?" p. 44.
118. *Ibid.*, p. 44.
119. *Ibid.*, p. 44.
120. *Ibid.*, p. 44.
121. *Ibid.*, p. 44.
122. Criminal Law of Kentucky, 525.105.
123. Hutt, Jones, and McAllister, *Archeological Resource Protection*, p. 63.
124. *Ibid.*, p. 59.
125. *Ibid.*, p. 60.
126. *Ibid.*, p. 93.

PERSONALIZE YOUR APB HOME PAGE  
Click Here

WANT TO KNOW MORE ABOUT SOMEONE?

USSEARCH.com

EMPLOYEE SCREENING  
PEOPLE LOCATE

and more...click here



Crime, Justice, Safety: 8 Channels -- 26 Programs

- ▶ NEWSCENTER
- ▶ SAFETY CENTER
- ▶ CRIME SOLVERS
- ▶ VIDEO CENTER
- ▶ CRIMINAL JUSTICE SYSTEM
- ▶ CRIMINAL JUSTICE PROFESSIONALS
- ▶ RESOURCE CENTER
- ▶ MEDIA AND ENTERTAINMENT

Breaking News Missing Internet Crime Can You Believe This? Major Cases In Depth

Free E-mail Alert

Live Police Scammers

Forums

Search



My APB

About APB

Contact APB

Newsletters

Downloads

APBNEWS.COM > NEWSCENTER > BREAKING NEWS > STORY

> E-MAIL THIS STORY TO A FRIEND E-MAIL THE EDITOR TALK ABOUT IT

# Tiffany Expert Sentenced in Grave Robberies

## Gets Two Years for Conspiring With Cemetery Window Thief

March 10, 2000

NEW YORK (AP) -- An expert on Tiffany windows was sentenced to more than two years in prison for teaming with a graveyard bandit to sell valuable stained glass stolen from cemeteries.

Alastair Duncan, 57, pleaded Thursday for leniency, telling a federal judge that his business was ruined, his family shattered and his earning potential destroyed.

"I've been shunned by my neighbors and art associates," he said. "I've paid a horrible, horrible price. I will certainly die spiritually if incarcerated, as will my children."

U.S. District Judge Thomas Griesa sentenced him to two years and three months in prison for conspiracy to export stolen property and other charges. He was ordered to make restitution of \$220,000, the value of a 9-foot-tall, 5-foot-wide Tiffany window stolen in 1993 from the Salem Fields cemetery. Duncan could have been sentenced to up to 20 years in prison.

### Co-defendant cooperated

The judge said Duncan knew the window was stolen when he resold it. Griesa said Duncan arranged with the graveyard bandit to get other glass created by the late Louis Comfort Tiffany.

The graveyard robber, Anthony Casamassina, testified against Duncan in a plea bargain and said he often broke into cemeteries and mausoleums. He admitted snatching 20 to 30 stained glass windows since the mid-1980s and said he used a book Duncan had written to learn about Tiffany glass.

Casamassina pleaded guilty to conspiracy to export stolen property and exporting stolen property and will be sentenced May 30. He faces up to 20 years in prison.

Duncan remains free on bail pending a surrender date.

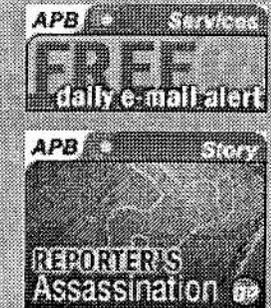
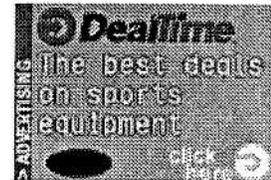
### More from APBnews.com:

[Judge Declares Mistrial, Jails Prosecutor](#)

[L.A. Cops Unhappy With Chief, Report Says](#)

### Related Story:

[Antiques Expert Accused of Grave-Robbing](#)



### > APB BREAKING NEWS

[Hackers Break In to Microsoft Computer Network](#)

[Bones May Be Those of Fugitive Cop Killer](#)

[Driving Teacher Convicted in Bribe Scheme](#)

[Congress OKs Clearinghouse for Missing Adults](#)

[Skinhead Convicted in Girl's Murder](#)

[School Violence on Decline, Feds Report](#)

[Adult Courts Easy on Juveniles, Study Says](#)

## Chapter 13

### UNITED STATES OF AMERICA

Ole Varmer and Caroline M. Blanco\*

#### 1. Introduction

The sea and its bed have provided a natural barrier to salvage of the underwater cultural heritage (UCH), which has been accumulating since the dawn of humankind. While much of the UCH is stable and preserved by the marine environment, it remains vulnerable to its greatest risk, unregulated salvage. Until the advent of SCUBA technology in World War II, access to these irreplaceable resources was limited to those who could hold their breath long enough to dive and return with goods from the wreck. In the 1960s, a cottage industry of treasure hunting and salvage evolved in Florida, particularly in Key West, where salvage of recent marine casualties had previously been part of the local industry and custom. Armed with SCUBA, remote-sensing devices and equipment able to blow away vast amounts of the seabed habitat, treasure hunters began to salvage gold, silver and jewels that had been lost for generations.

Archaeologists, historians and others decried the loss and destruction of the UCH and have suggested that various governments protect the public's interest in these resources. The United States (US) and the underlying coastal State governments have been entrusted with the protection and preservation of the UCH. These entities are therefore faced with the awesome task of protecting and managing the UCH for use by present and future generations.

Protection of our UCH is becoming increasingly difficult due to advances in deep water exploration and exploitation technology. Submersible vehicles now provide access to the deepest parts of the ocean. Even the *Titanic*, which is under 12,500 feet of water, is subject to potential loss or destruction by salvors. There is no US program or statute providing *comprehensive* protection of the UCH. The location, ownership and control of the UCH primarily determine which national or state preservation laws apply. For the most part, the national government has delegated to the individual states responsibility for the protection and management of the UCH on state submerged lands. Outside three nautical miles, the UCH is protected if it is in a National Marine Sanctuary. In addition, any UCH that is likely to be affected by activities of the national government, including the issuing of permits, is subject to environmental and historic preservation law considerations. However, these US preservation laws are limited in scope, and leave much of the UCH vulnerable to loss or destruction from private activities, such as salvage.

#### 2. Overview of Issues Concerning Protection and Salvage of UCH

In order to create legal rights to their finds, treasure salvors file *in rem* actions against the vessels and their cargo (hereinafter 'shipwrecks') in US federal district admiralty courts. Generally, they assert that – under the law of finds – title to an abandoned shipwreck is vested in the person

---

\* The views expressed in this chapter are the personal opinions of the authors and do not represent the official positions of the US government, the National Oceanic and Atmospheric Administration (NOAA), or the Department of Justice.

who finds it and reduces it to his or her possession.<sup>1</sup> Alternatively, they argue that, because the shipwrecks are in 'marine peril', the public interest would be best served by salvaging the shipwreck and returning it into the stream of commerce.<sup>2</sup> If successful, they obtain a salvage award for services rendered, which often amounts to the vast majority of the recovered treasure.<sup>3</sup>

The national and underlying state governments have countered the salvors' claims with various arguments, including their own claims of ownership of the UCH. The US government's initial position was that it owned abandoned shipwrecks on its outer continental shelf. In the landmark case, *Treasure Salvors v. The Unidentified Wrecked and Abandoned Sailing Vessel ("the Atocha")*,<sup>4</sup> however, the court determined that, while the US had ample authority to exercise its sovereign prerogative to claim ownership of abandoned shipwrecks, it had not done so under the Outer Continental Shelf Lands Act, the Antiquities Act, or the Abandoned Property Act.<sup>5</sup> The court explained that US control over the outer continental shelf was limited to exploration and exploitation of natural resources. The US had not asserted its sovereign prerogative over historic resources on the outer continental shelf under the Outer Continental Shelf Lands Act, or otherwise.<sup>6</sup> In support of its opinion that the Outer Continental Shelf Lands Act was limited to natural resources and did not include the UCH the court noted that the 1945 Truman Proclamation and the 1958 Convention on the Continental Shelf were both limited to natural resources.<sup>7</sup> The fallout from the *Treasure Salvors* case is significant and has affected US legislation on the UCH, including the Abandoned Shipwreck Act and the Archaeological Resources Protection Act, which are discussed below.

### 3. US Statutes Protecting Certain Underwater Cultural Heritage

#### 3.1 Abandoned Shipwreck Act of 1987

For decades, US state governments have asserted ownership rights to the UCH pursuant to the Submerged Lands Act and state historic preservation laws. In some cases, states have successfully argued that the Eleventh Amendment to the US Constitution, which recognizes states' sovereign immunity from suit, barred federal admiralty courts from determining the states' interests in shipwrecks on state submerged lands. In other cases, states waived their immunity and prevailed in convincing federal admiralty courts that they owned the shipwrecks in their sovereign state submerged lands. However, in a majority of the federal admiralty cases, salvors prevailed in getting ownership rights to the UCH under the law of finds.

1 *Treasure Salvors v. The Unidentified Wrecked and Abandoned Sailing Vessel (the 'Atocha')*, 569 F.2d 330, 337 (5th Cir. 1978): the court preferred law of finds over salvage as did the treasure hunter who got ownership of the shipwreck rather than an award of money or percentage of the salvaged objects.

2 The salvor obtains an award and a lien on the salvaged property for services rendered if three conditions are met: the shipwreck is in 'marine peril'; the salvor's services are voluntarily rendered; and the salvor achieves success in whole or in part in recovering shipwrecked property: see *The Sabine*, 101 U.S. [11 Otto] 384 (1879).

3 *See Columbus-America Discovery Group v. Atlantic Mut. Ins.*, 974 F.2d 450, 459 (4th Cir. 1992): the court preferred the law of salvage over finds; 90 percent of treasure was awarded to the salvors.

4 569 F.2d 330 (5th Cir. 1978).

5 Outer Continental Shelf Lands Act 43 U.S.C. s. 1331; Antiquities Act 16 U.S.C. s. 470; Abandoned Property Act 40 U.S.C. s. 310.

6 The rule in the US, largely established by this landmark case, is that the sovereign must expressly exercise its authority over the UCH.

7 *Treasure Salvors*, 569 F.2d at 338-40.

In response to the need to protect certain UCH and address this confusion over ownership, the role of admiralty law and other public interests, Congress passed the Abandoned Shipwreck Act (ASA).<sup>8</sup> Congressional findings support the view that the states already had the authority to manage the UCH pursuant to the Submerged Lands Act and that the ASA merely codified this minority view of admiralty cases.<sup>9</sup> However, confusion as to the scope of the ASA continues to cloud the governments' ability to protect and manage the UCH.

### 3.1.1 US asserting ownership over abandoned shipwrecks

In passing the ASA, the US Congress exercised its sovereign prerogative to protect certain UCH by asserting title to abandoned shipwrecks embedded in state submerged lands and to those located on state submerged lands and determined to be of historic significance.<sup>10</sup> Under section 6(c), title to these shipwrecks is then simultaneously transferred to the states.<sup>11</sup> Title to abandoned shipwrecks on certain federal public lands, such as national parks and Indian lands is reserved to the US from transfer to the states.<sup>12</sup> Many presumed that the ASA protected all historic shipwrecks in or on state submerged lands. However, subsequent litigation has shown the vulnerability of the ASA. In some cases, salvors shifted their strategy by arguing that the shipwrecks are not abandoned and, therefore, not covered by the ASA. In turn, they demanded liberal salvage awards or divided up the recovered goods pursuant to salvage contracts with owners/insurers. These cases revive the old dispute between salvors and sovereigns as to whether the law of salvage or historic preservation laws apply. The debate involves questions of what the states must demonstrate to prove that a shipwreck is 'abandoned' and, conversely, what a salvor must show to prove that the law of salvage applies. The results are mixed but clearly bring into question the scope of protection afforded by the ASA.

### 3.1.2 The issue of abandonment

The ASA protects "any abandoned shipwreck" that is "(1) embedded in submerged lands of a State; (2) embedded in coralline formations protected by a State on submerged lands of a State; or (3) on submerged lands of a State and is included in or determined eligible for inclusion in the National Register."<sup>13</sup> Unfortunately, the term "abandoned" is not expressly defined by the ASA.<sup>14</sup> This is because Congress relied on the *Treasure Salvors* case and its progeny where federal admiralty courts traditionally inferred the abandonment of long-lost shipwrecks by the passage of time and the absence of a claim therein.<sup>15</sup> Under admiralty law, the process for determining

8 43 U.S.C. ss. 2101-2106 (effective 28 April 1988).

9 43 U.S.C. s. 2101.

10 43 U.S.C. s. 2105 (a). The UCH is "historic" if it is eligible for listing on the National Register of Historic Places.

11 43 U.S.C. s. 2105(c).

12 43 U.S.C. ss. 2101, 2105. The ASA assertion of title and the transfer of that title to states with reservations for public lands is very similar to the transfer and reservations of title to submerged lands under the Submerged Lands Act.

13 43 U.S.C. s. 2105(a).

14 "Shipwreck" is defined to mean "a vessel or wreck, its cargo, and other contents": 43 U.S.C. s. 2102(d). It should be further noted that shipwrecks entitled to sovereign immunity, such as warships or other sovereign non-commercial vessels, are generally not considered to be abandoned by the flag nation, regardless of their location. US Navy vessels are not abandoned: ASA Guidelines Vol. 55 Fed. Reg. 50120 (4 Dec. 1990). See further, J. Ashley Roach "Sunken warships and military aircraft" (1996) 20 *Marine Policy* 351-354.

15 "The Committee notes that . . . abandonment . . . may be implied . . . by an owner never asserting any control over or otherwise indicating his claim of possession of the shipwreck." H.R. Rep. No. 100-514(I), at 2. See also *Moyer v. Wrecked & Abandoned Vessel, Known as the Andrea Doria*, 836 F. Supp. 1099, 1105 (D.N.J. 1993): an insurance company's failure to attempt salvage from 1956 to 1993 constituted abandonment.

abandonment is by express renunciation or by inference based on the totality of the circumstances.<sup>16</sup> With regard to long-lost historic shipwrecks, the inference of abandonment by the courts became tantamount to a presumption that such wrecks were abandoned by the mere passage of time.<sup>17</sup> However, by not codifying this meaning of "abandonment", Congress left the determination of its definition to the National Park Service, the entity charged with developing the ASA's implementing guidelines,<sup>18</sup> the individual states and ultimately federal admiralty courts. This has proved to be a perilous path as conflicting case law has subsequently developed which directly threatens the underlying historic preservation purpose of the ASA.

These shortcomings of the ASA came to a head in the Ninth Circuit case *Deep Sea Research (DSR), Inc. v. The Brother Jonathan and California*.<sup>19</sup> The *Brother Jonathan* is a double side-wheeled paddle steamer that sank off the coast of California in 1865. Shortly after it sank, five San Francisco insurance companies paid claims on approximately one-third of the cargo. The remaining two-thirds of the cargo and the vessel itself were uninsured.

The Ninth Circuit held that California did not prove by a preponderance of the evidence that "the vessel is abandoned and embedded in the subsurface or coralline formations of the territorial waters of the State" or, in the alternative, that the vessel "is abandoned" and "eligible for listing in the National Register". Even though there was no effort to salvage the vessel for well over 100 years, the court held that this long-lost historic shipwreck was not abandoned, was not subject to the ASA, and, therefore, could be salvaged under admiralty law. The court reasoned that technological advances and the payment of insurance on a third of the cargo made salvage possible. In effect, it presumed the law of salvage applied, instead of following the traditional admiralty cases where abandonment was presumed by the passage of time and absence of an ownership claim.

The Ninth Circuit's analysis of why it found that the *Brother Jonathan*<sup>20</sup> was not abandoned further reveals how other UCH is vulnerable. The court found no inference of abandonment from the fact that no action had been taken to recover the wreck or its cargo since 1865. The recent technological developments that enabled the discovery and recovery of the UCH negated the inference of abandonment that existed under traditional admiralty law. In other words, due to technological advances and corresponding interests in recovery by a salvor-subrogee of an insurer of part of the cargo, a shipwreck that was clearly abandoned and protected by the ASA in 1988 has subsequently been determined to be no longer abandoned and thus subject to the law of salvage. Citing the ASA guidelines, the court also stated that, if the full value of insurance is paid, the shipwreck should not be considered abandoned.

16 *Russell v. Forty Bales of Cotton*, 21 F. Cas. 42, 46 (S.D. Fla. 1872): abandonment was inferred by "the absence of a claimant or the neglect to claim"; *Commonwealth v. Maritime Underwater Surveys, Inc.*, 531 N.E.2d 549, 552 (Mass. 1988): "[S]ince the *Wydah* has rested undisturbed and undiscovered beneath the sea for nearly three centuries, it is proper to consider the wreck abandoned"; T. Schoenbaum, *Admiralty and Maritime Law* s. 16-7, at 240 (2nd ed. 1994): "In virtually all of the treasure salvage cases involving wrecks of great antiquity, the law of finds, not salvage is appropriate because '[d]isposition of a wrecked vessel whose very location has been lost for centuries as though its owner were still in existence stretches the fiction to absurd lengths" (quoting *Treasure Salvors*, 569 F.2d 330, 332(5th Cir. 1978)).

17 *Ibid.*; *Martha's Vineyard Scuba Headquarters, Inc. v. Unidentified, Wrecked & Abandoned Steam Vessel*, 833 F.2d 1059, 1065 (1st Cir. 1983): long-lost shipwreck presumed abandoned.

18 The definition of abandoned shipwreck in the ASA Guidelines follows the admiralty cases that presume abandonment by the passage of time and the absence of a claim therein. In addition, the definition adds that a shipwreck may be considered abandoned if an owner fails to either mark and subsequently remove the wrecked vessel and its cargo or to provide legal notice of abandonment to the US Coast Guard and US Army Corps of Engineers. Rivers and Harbors Act (33 U.S.C. s. 409). Such shipwrecks ordinarily are treated as being abandoned after the expiration of 30 days from the sinking.

19 102 F.3d 379 (9th Cir. 1996).

20 102 F.3d 379 (9th Cir. 1996).

In determining whether the owners and insurers had abandoned the vessel that sank in 1865, the court considered recent statements of the insurers, in their assignment of title to DSR, which assured DSR that they had title to one-third of the cargo. The court acknowledged that the remaining two-thirds of cargo were uninsured and therefore abandoned. However, the court ruled that, for purposes of judicial economy, the ship and cargo should be treated as a unified *res* and, therefore, allowed salvage of the entire shipwreck, including the two-thirds that the court indicated were abandoned. It reasoned that the application of the ASA to the abandoned portion and salvage law to the non-abandoned portion of the shipwreck would lead to separate legal proceedings in state and federal courts. While the court said that it was unlikely that Congress intended such a confusing and inefficient approach in adopting the ASA, the Ninth Circuit ruled that the law of salvage should apply, instead of the ASA.

In practice, the Ninth Circuit followed the *Columbus-America Discovery Group v. Atlantic Mutual Insurance Company* case by relying on a new factor, technological advance, to reject the presumption of abandonment.<sup>21</sup> The court reasoned that the development of deep water technology made locating and recovering the shipwreck possible, and thus there should no longer be an inference of abandonment. In place of the inference of abandonment, the court held that there was a presumption that the law of salvage should apply. The Sixth Circuit has similarly departed from the traditional admiralty approach to determining abandonment and followed the *Brother Jonathan* and *Columbus-America* cases.<sup>22</sup> In contrast, the traditional admiralty analysis of abandonment is the one that was followed by most of the other circuits prior to 1988 and the one Congress relied on when it enacted the ASA. It is also the approach to abandonment followed by the Seventh and Third Circuits in analyzing whether a shipwreck is abandoned under the ASA.<sup>23</sup>

Perhaps because of this confusion in the circuit courts, the US Supreme Court granted *certiorari* in the *Brother Jonathan* case on all three issues in the *writ*: 1) whether the Eleventh Amendment bars a federal court from deciding *in rem* admiralty action where a state asserts title to the shipwreck under the ASA; 2) whether the lower court erred in ruling that the ASA pre-empts<sup>24</sup> state laws which regulate shipwrecks which are not abandoned; and 3) whether the lower court erred in finding that a long-lost historic shipwreck is not protected by the ASA because an insurance company may have paid a claim on a portion of the ship's cargo.

With regard to the issue of abandonment, the US, California and others took issue with the Ninth Circuit's holding and analysis before the US Supreme Court. The US argued that the Ninth Circuit erred in its approach to determine whether a shipwreck is abandoned within the meaning of the ASA. Consistent with traditional admiralty case law and other ASA cases, the US argued that the Ninth Circuit erred in rejecting the inference of abandonment when a long period of time had passed and the owner of the vessel had not attempted to salvage the vessel or establish a

21 974 F.2d 450 (4th Cir. 1992).

22 *Fairport Int'l Exploration Inc. v. The Shipwrecked Vessel Known as The Captain Lawrence*, 105 F.3d 1078, 1085 (6th Cir. 1997); see also 913 F.Supp. 552, 558 (W.D. Mich. 1995); Michigan showed that the previous owner was a salvor; he made no effort to recover the vessel; he declined US Coast Guard offers of salvage assistance; he stated the uninsured wreck was a total loss, the damage assessment was greater or equal to the value of the vessel \$200; and finally, that technology was available to salvage the wreck at the time of the casualty.

23 See *Zych v. Unidentified, Wrecked and Abandoned Vessel (Seabird)*, 941 F.2d 525 (7th Cir. 1991); *Sunken Treasure, Inc. v. Unidentified, Wrecked & Abandoned Vessel*, 857 F.Supp. 1129 (D. St. Croix 1994). See also *Martha's Vineyard Scuba Headquarters, Inc. v. Unidentified, Wrecked & Abandoned Steam Vessel*, 833 F.2d 1059, 1065 (1st Cir. 1987) and *Treasure Salvors* (5th Cir. 1978).

24 California also argued that its historic preservation statute precluded the application of salvage law to California's UCH. The Ninth Circuit rejected the argument with little analysis holding that the California statute was pre-empted by the ASA to the extent it protected shipwrecks that were not abandoned within the meaning of the ASA.

claim therein. As the US noted, the primary flaw in the Ninth Circuit's rationale was that it did not infer abandonment because modern technology only recently enabled the shipwreck to be salvaged. This is not only a departure from traditional admiralty cases, but it effectively requires an express renunciation of title before the ASA may be applied. The US also questioned the treatment of the *Brother Jonathan* as a unified *res* and argued that the Ninth Circuit was clearly in error in ruling that the vessel and two-thirds of the cargo which the Ninth Circuit admitted were abandoned could nevertheless be subject to the law of salvage.

The US also explained how the Ninth Circuit erred in finding that the savings provision of the ASA (section 7) pre-empted California's historic preservation law. The US noted that the pre-emption issue need not be reached if, on remand, the lower court finds that the *Brother Jonathan* is abandoned and subject to the ASA.

The US argument before the Supreme Court was focussed primarily on the constitutional issue involving the Eleventh Amendment state sovereign immunity from federal court *in rem* actions under admiralty law. California argued that the Eleventh Amendment was a bar against such federal court actions and that the state's interest in the shipwreck should be determined in a state court. While concurring with California on the substantive issues of the ASA and the preservation of historic shipwrecks, the US disagreed with California on the issue of federal court jurisdiction. The US argued that the Eleventh Amendment was not a bar and that federal courts should determine whether the law of salvage or the ASA applied. The US then suggested that, if the lower court finds that all or some of the shipwreck is not abandoned, the case be remanded to the lower court to reconsider the issue of pre-emption.

Consistent with the suggestions of the US Solicitor General's Office, the Supreme Court vacated the Ninth Circuit ruling that the law of salvage applied to the *Brother Jonathan* and remanded the case for reconsideration of the issue of abandonment. The Court said that:

the meaning of 'abandoned' under the ASA conforms with its meaning under admiralty law. The District Court's full consideration of the ASA's application on remand might negate the need to address the issue of whether the ASA pre-empts [the California historic preservation statute].

Under the Supreme Court's rationale, it could easily have affirmed the Ninth Circuit's ruling, which was based on admiralty law. Instead, the Supreme Court vacated the ruling and remanded the case as suggested in the US brief. The Supreme Court subsequently vacated the *Fairport (Captain Lawrence)* decision to the Sixth Circuit in the light of its decision in the *Brother Jonathan* case. By vacating the Ninth and Sixth Circuits' rulings on abandonment, the Supreme Court's decision also implicitly calls into question the new approach to the abandonment analysis taken in the Fourth Circuit in the *Columbus-America* admiralty law case.

Regardless, the *Brother Jonathan* case is now before the US District Court in California where there will be a new trial on whether the *Brother Jonathan* is an abandoned shipwreck subject to the ASA, or not abandoned and subject to the law of salvage. If the lower court also follows the suggestions in the briefs filed by the US, it should find the shipwreck is abandoned and that the ASA applies instead of the law of salvage.

### 3.1.3 *Law of finds and salvage does not apply: constitutional issues of admiralty court jurisdiction under Article III and sovereign immunity of states under the Eleventh Amendment*

In addition to asserting and transferring title to abandoned shipwrecks, Congress in the ASA expressly stated that the "law of salvage and finds shall not apply to abandoned shipwrecks..."<sup>25</sup> In enacting the ASA, Congress sought to end the management of the UCH by

federal admiralty court, and instead rely on state and national agencies to protect and manage this important cultural heritage.<sup>26</sup> Salvors have attempted to elevate their activities above the province of Congress by arguing, albeit unsuccessfully, that this effort to prevent the application of the law of salvage to the UCH violates Article III<sup>27</sup> of the US Constitution because all cases of admiralty and maritime jurisdiction must be before federal admiralty courts, not state courts.

In *Zych v. Unidentified, Wrecked and Abandoned Vessel, Believed To Be The "Seabird"*,<sup>28</sup> the court held that Congress has the authority to define and even limit admiralty court jurisdiction. It specifically held that the ASA does not interfere with Article III's purpose of ensuring national control over navigation, as well as interstate and foreign commerce in federal admiralty courts. The court also noted that the result in this case was consistent with the result in maritime admiralty cases. "In fact, in a remarkable twist, this provision of the ASA [section 2106(a)] has no effect on the law of salvage because the law of salvage does not apply to abandoned shipwrecks."<sup>29</sup> Article III federal admiralty courts used to determine whether the maritime law of salvage or the common law of finds applied; now, at least in state waters, the Article III federal admiralty courts will determine whether the law of salvage or the ASA applies. The ASA codified the exception to the law of finds whereby the sovereign has constructive possession of abandoned property embedded in its submerged lands. So the abandoned shipwreck is the property of the state and not of the finder.

The *Zych* court held that, since the wreck was abandoned and owned by the state under the ASA, the Eleventh Amendment precluded a federal admiralty court from hearing litigation concerning a state-owned shipwreck.<sup>30</sup> The court acknowledged that the intent of the ASA is to have states, not admiralty courts, protect and manage abandoned shipwrecks, and rejected the salvors' arguments that admiralty courts should determine whether the ASA applies.

Since 1982, it was generally accepted that, because of the state's sovereign immunity under the Eleventh Amendment<sup>31</sup> of the US Constitution, a federal "court did not have the power . . . to adjudicate the State's interest in the property without the State's consent."<sup>32</sup> However, the Supreme Court has subsequently ruled in the *Brother Jonathan* case that the Eleventh Amendment does not bar federal courts from deciding whether the law of salvage or the ASA applies, unless the state is in "actual possession" of the shipwreck.<sup>33</sup> Citing decisions from the 1800s, the Court noted that the US and foreign sovereigns are not immune from an *in rem* admiralty case unless the sovereign is in "actual possession" of the vessel.<sup>34</sup> It then reasoned that the sovereign immunity of the several states under the Eleventh Amendment should be the same as the standard for US and foreign sovereigns.<sup>35</sup> As a result, Justice Stevens admitted that he had made an error in his

26 "The purpose of [the ASA] is to give states title to certain abandoned shipwrecks that are buried in state lands or have historical significance and are on state lands, and to clarify the regulatory and management authority of states for these abandoned shipwrecks": HR Rpt 98-887, 98th Cong. 2d Sess., page 2 (7/6/84).

27 "[T]he judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction": U.S. Const. art. III, @ 2, cl. 1.

28 746 F.Supp. 1334 (N.D. Ill. 1990), rev'd, 941 F.2d 525 (7th Cir. 1991), on remand, 811 F.Supp. 1300 (N.D. Ill. 1992) aff'd, 19 F.3d 1136 (7th Cir. 1994) cert. denied 513 U.S. 961 (1994).

29 *Ibid.* at 1141 citing *Chance v. Certain Artifacts Found and Salvaged*, 606 F.Supp. 801, 804 (S.D. Ga. 1984)(pre-ASA case) and *Columbus-America Discovery Group* (post-ASA case).

30 *Zych v. Seabird*, 19 F.3d at 1136 (7th Cir. 1994); see also *Zych v. Unidentified, Wrecked & Abandoned Vessel ("Lady Elgin")*, 755 F. Supp. 213 (N.D. Ill. 1991), rev'd, 960 F.2d 665 (7th Cir. 1992); both citing *Florida Department of State v. Treasure Salvors, Inc.*, 458 U.S. 670 (1982).

31 The Eleventh Amendment bars suits in federal court against states. States argue that disputes over their interests should be heard in the sovereign state courts and not in federal court.

32 *Florida Department of State v. Treasure Salvors, Inc.*, 458 U.S. 670, 682 (1982).

33 *California v. Deep Sea Research, Inc. (the 'Brother Jonathan')*, 118 S.Ct. 1464 (1998).

34 118 S.Ct. at 1470-1473.

35 118 S.Ct. at 1470-1473.

plurality decision in the 1982 Supreme Court *Treasure Salvors* case and agreed that California may be bound by a federal court's *in rem* adjudication of rights to the *Brother Jonathan* and its cargo.<sup>36</sup>

The meaning of "actual possession" in the context of shipwrecks in and on state submerged lands is likely to be litigated in the years to come. To trigger the Eleventh Amendment, states may now have to make a reasonable showing that they have control or custody of the shipwreck, or that they immediately occupy the shipwreck site. States are likely to argue that they are in "actual possession" of shipwrecks embedded in their state submerged lands which are controlled by state statutes and regulations concerning state natural and cultural resources. To the extent that such laws and management programs exercise control sufficient to exclude the unauthorized use of the UCH sites by others, such arguments may be successful.

Alternatively, states will need to provide reasonable evidence that the ASA applies. This would involve the state presenting circumstantial evidence that the shipwreck is abandoned and embedded in state lands. The sovereigns will argue that historic shipwrecks should be presumed to be abandoned if the owner did not attempt to salvage, or otherwise claim the shipwreck for a specified period of time, i.e., 60 years or more. If a state can show that the shipwreck is embedded in state submerged lands, the federal admiralty court should find that the shipwreck is abandoned and that the ASA applies. The state should also provide evidence of the historical significance of the shipwreck. If the shipwreck is not embedded, the state will need to show that the shipwreck has been determined eligible for inclusion in the National Register.

The ASA is alive and well. However, by not defining abandonment the *Brother Jonathan* Supreme Court decision ensures that historic shipwrecks will continue to be subject to challenge by the salvage industry in federal admiralty court. The ASA should ultimately prevail in protecting shipwrecks embedded in state submerged lands and perhaps other historic shipwrecks, but it may take years of litigation before this is fully realized. In the interim, the Supreme Court's decision also raises questions over the protection and management of historic shipwrecks by the sovereigns.

### 3.1.4 Protection and management of abandoned shipwrecks

The ASA directs states to protect abandoned shipwrecks and defers to the states the determination of how they should be managed consistent with some broad provisions. States are to offer recreational and educational opportunities to interested groups, including divers and researchers.<sup>37</sup> Unlike US land-based cultural heritage statutes, the ASA establishes a multiple use management regime for the protection of shipwrecks that also incorporates the protection of natural resources.<sup>38</sup> These provisions are consistent with integrated coastal management<sup>39</sup> and the multiple use management approach under the National Marine Sanctuaries Act which is discussed below. The ASA also encourages states to develop underwater parks to provide additional protection to the UCH and to apply for grants made available for such purposes.<sup>40</sup> To assist states and national managers of submerged lands, the ASA directs the National Park Service to develop guidelines for implementation of the ASA.<sup>41</sup>

36 118 S.Ct. at 1474.

37 43 U.S.C. s. 2103.

38 43 U.S.C. s. 2103.

39 The ASA guidelines urge states to integrate their UCH management into their state Coastal Zone Management Act (CZMA) plans to allow the use of section 307(c) consistency to protect historic wrecks and the use of CZMA grant money to fund research and management: 16 U.S.C. ss. 1451, 1456(c). (Section 307(c) requires that national government actions be "consistent" with approved CZMA programs). Thus, the CZMA presents another national procedural protection for national actions to comply with state UCH management programs.

40 43 U.S.C. s. 2103(b).

41 43 U.S.C. s. 2104.

The ASA guidelines<sup>42</sup> encourage states to assign their authority over abandoned shipwrecks to an appropriate and adequately staffed state agency. It is advised that states utilize advisory boards to consider the recommendations and advice of those who use or have an interest in the UCH. The long term management of the UCH should reflect the broad, diverse and often conflicting interests in the UCH. Consistent with the ASA, provisions are made for the recovery of shipwrecks for the public by the private sector, subject to the control of the appropriate state UCH management program. However, it is also advised that the unscientific use of treasure hunter technology should be banned because it destroys natural resources as well as valuable archaeological information.<sup>43</sup> Of particular import is the suggestion that states create and manage underwater parks or preserves to provide additional protection to historic shipwrecks.

The ASA guidelines have similar provisions for federal agency managers. These guidelines supplement the other US cultural heritage laws comprising the Federal Archaeological Program (FAP). The FAP and particularly the ASA guidelines have been instrumental in the development of the National Marine Sanctuary UCH management program as discussed below.

### 3.2 National Marine Sanctuaries Act

The National Marine Sanctuaries Act (NMSA)<sup>44</sup> authorizes the Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), to set aside discrete marine areas of special national – and sometimes international – significance.<sup>45</sup> NOAA protects and manages these “areas of the marine environment possess[ing] conservation, recreational, ecological, *historical*, research, education, or aesthetic qualities which give them special national significance.”<sup>46</sup>

The NMSA shows much promise in protecting historical sanctuary resources<sup>47</sup> because it is a far-reaching statute. Sanctuaries may be established out to 200 nautical miles offshore, the outer limits of the exclusive economic zone. To date, there are twelve national marine sanctuaries protecting significant natural resources and the UCH.<sup>48</sup> Most sanctuaries are in coastal waters where some of the most significant natural features are located and where most human uses occur. It is because of this human use that most of the UCH is located in coastal waters, including shipwrecks and submerged sites of early humans.<sup>49</sup> However, the only national marine sanctuary designated solely to protect an historic shipwreck is located some sixteen miles off the coast of North Carolina. Thus, in 1975, the ironclad Civil War vessel, *USS Monitor*, became the first national marine sanctuary and the cornerstone for the national marine sanctuary UCH management program.<sup>50</sup>

42 The guidelines are advisory and therefore non-binding upon the states and federal agencies: 55 Fed. Reg. 50116 (1990).

43 55 Fed. Reg. 50132 (1990).

44 Also known as Title III of the Marine, Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. s. 1431, *et seq.*

45 16 U.S.C. s. 1433 sets out the standards and factors to consider in the designation process set out in s. 1434.

46 16 U.S.C. s. 1431(a)(2) (emphasis added).

47 “Historical” means a resource possessing historical, cultural, archaeological, or paleontological significance, including sites, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events”: 15 C.F.R. s. 922.2(c).

48 15 C.F.R. Pt. 922 sets forth each sanctuary’s regulations.

49 B. Terrell, *Fathoming Our Past: Historical Contexts Of The National Marine Sanctuaries* (NOAA Publication 1994).

50 The Sanctuary Program was established in 1972 to protect natural resources. After the *Monitor* was found in 1973, it was designated as a sanctuary in 1975 as part of a strategy to prevent its salvage. The NMSA was subsequently amended in 1984 to expressly include the existence of the UCH as a factor for sanctuary designation: 16 U.S.C. s. 1433.

### 3.2.1 Protection and multiple use management

The *Monitor* was designated as a national marine sanctuary to protect this nationally significant resource from looting and salvage. For over fifteen years it was managed as an archaeological site; direct physical access was permitted only as part of proposed archaeological research on the *Monitor*. In the 1990s, NOAA denied requests for permission to dive in the sanctuary and photograph the *Monitor*. While NOAA's decisions withstood legal challenge,<sup>51</sup> the underlying policy restricting public access at this site came under the scrutiny of Congress and others. The restrictive access policy continues to be roundly criticized by the diving community which fears that there will be restrictions on diving in other sanctuaries.

Moreover, recent evidence has revealed that the *Monitor* was deteriorating much more rapidly than indicated by prior research.<sup>52</sup> As a result, NOAA began issuing 'special use' permits for non-intrusive diving in the sanctuary without requiring that scientific research be conducted on the *Monitor*. This permit practice reflects the change in the public's interest in how the *Monitor* should be managed, particularly in regards to public access. The current permit practice is consistent with the ASA requirement that divers and others be permitted access to our UCH. It also further facilitates the multiple use mandate of sanctuaries under the NMSA.

Generally, sanctuary management is required:

to facilitate to the extent compatible<sup>53</sup> with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities.<sup>54</sup>

In every sanctuary, the public is allowed to dive and enjoy viewing the UCH: no permit is required.<sup>55</sup> While such non-intrusive public access is clearly a compatible use of the sanctuary, any unauthorized removal of, or injury to, the UCH has been determined to be incompatible with the primary objective: resource protection.<sup>56</sup>

NOAA has very broad and comprehensive enforcement authority to protect and manage sanctuary resources<sup>57</sup> and uses under the NMSA. Injunctive relief is available to prevent the destruction of sanctuary resources.<sup>58</sup> For example, in *US v. Fisher*, treasure salvors were enjoined from using propeller wash deflection devices in the Florida Keys National Marine Sanctuary.<sup>59</sup>

51 *Gentile v. NOAA*, 6 O.R.W. a, 1990 NOAA LEXIS 50 (4 January 1990): research required for permit; facilitating multiple use does not entitle public to physical access; *Hess v. NOAA*, 6 O.R.W. 720a, 1992 NOAA LEXIS 53 (26 March 1992): denial of permit held reasonable because the application for "research" was inadequate and does not propose elements of the scientific approach and methodology to be used.

52 Congress directed NOAA to develop a plan for its stabilization, preservation and recovery of artifacts and materials from the *Monitor*.

53 For an analysis of uses of natural sanctuary resources see O. Varmer and A. Santin, *Ocean Management under the Marine Protection, Research and Sanctuaries Act: Sanctuaries, Dumping and Development* (Coastal Zone 1993 published papers): compatible uses include: research, education, recreation, and commercial fishing. Oil, gas, and mineral development, as well as ocean dumping, are generally considered to be incompatible uses.

54 16 U.S.C. s. 1431(b)(5).

55 With the exception of the aforementioned permits required to dive in the *Monitor* NMS.

56 The two regulations protecting the UCH are discussed in the text associated with the *Craft* case and footnotes 74-77.

57 Sanctuary resources are defined to mean "any living or non-living resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, *historical*, research, educational, or aesthetic value of the sanctuary": 16 U.S.C. s. 1432(8)(emphasis added). The 1972 Act did not define sanctuary resource; it was added in 1988 along with the liability provision for injury of sanctuary resources.

58 16 U.S.C. s. 1437(i).

59 Prop-wash deflectors (or 'mailboxes') can punch a hole in the seabed 30 feet across and several feet deep in hard packed sediment in fifteen seconds. In this case, the salvors uncovered and removed around 200 artifacts from the nearly 600 holes they made.

The preliminary injunction was primarily based on the irreparable harm caused by treasure hunting devices to natural sanctuary resources, particularly seagrass beds.<sup>60</sup> The court initially deferred making a decision on whether the salvage of historic sanctuary resources would continue under admiralty law. However, the court subsequently issued a permanent injunction against any salvage or removal of the UCH, unless expressly authorized by NOAA pursuant to a sanctuary permit.<sup>61</sup>

Within national marine sanctuaries, it is expressly prohibited to engage in any activity that destroys, causes the loss of, or injures sanctuary resources, including the UCH.<sup>62</sup> Under section 312,<sup>63</sup> those responsible for such injury<sup>64</sup> are held strictly liable for any response costs<sup>65</sup> and damages.<sup>66</sup> As litigation in these matters can continue for years, the NMSA also provides for the recovery of the accrued interest on the amount of damages and response costs.<sup>67</sup> In *US v. Salvors Inc.*, the court awarded \$351,648 based on NOAA's estimate for its seagrass restoration project, \$211,130 in damage assessment and response costs, and \$26,533 in interest accrued on NOAA's assessment and response costs for a total of \$590,311.<sup>68</sup> Because there is no requirement under the NMSA to show any negligence, intent or culpability of defendants, NOAA needed only to show that the defendants caused the destruction, loss of, or injury to, sanctuary resources, in order to establish that the defendants were strictly liable for all of the resulting damages, including response costs.<sup>69</sup> The NMSA does, however, provide defenses for such claims.

A person is not liable under section 312 if it can be shown that the injury to sanctuary resources: (1) was caused solely by an act of God, an act of war, or a third party, and the person acted with due care; (2) was caused by an activity authorized by federal or state law; or (3) was negligible.<sup>70</sup> In *US v. Fisher*, the salvors argued that they were not liable for any damages because, they claimed, their exploration and salvage activities were authorized by federal admiralty law and any injury caused was negligible. These arguments were rejected. The court held that neither general admiralty law nor particular admiralty court orders provide a defense for liability because they are not "federal law" within the meaning of the NMSA.<sup>71</sup> Rather, "federal law" was interpreted narrowly so as only to include licenses, permits, and other authorizations pursuant to federal statutes, and does not include authorizations developed under federal common law and its corresponding cases. The court further stated that the NMSA precludes the application of the laws of finds and salvage in the Florida Keys National Marine Sanctuary.<sup>72</sup>

60 22 F.3d 262 (11th Cir. 1994): US evidence that salvors used prop-wash deflectors to make 100 craters in the sanctuary seabed held to show a substantial likelihood of success on the merits sufficient for issuance of a preliminary injunction.

61 The court found that allowing the Fishers to continue to use mailboxes and remove artifacts was likely to cause further, irreparable, harm to the UCH. The court noted that this activity is now regulated by NOAA through the issuance of permits and, accordingly, the defendants were permanently enjoined from removing sanctuary resources or using prop-wash deflectors without a NOAA sanctuary permit: *US v. Salvors Inc.*, 977 F.Supp. 1193 (S.D. Fla. 1997).

62 16 U.S.C. s. 1436 (NMSA section 306).

63 16 U.S.C. s. 1443.

64 "Injure" means to change adversely, . . . [and] includes . . . to cause the loss of or destroy: 15 C.F.R. 922.3.

65 "Response costs" means the costs of actions taken by the US to minimize further loss, destruction or injury: s. 1432(7).

66 "Damages" includes: compensation for the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource, or the assessed value of the resource; and the cost for assessing the damage and monitoring the injured, restored or replaced resources: 16 U.S.C. s. 1432(6).

67 16 U.S.C. 1443(a): liability and interest.

68 NOAA sought damages for the injury to the UCH including the loss of contextual information and a proposed UCH restoration project. The court held that the loss of contextual information was negligible since the defendants recorded the location of the artifacts it removed. NOAA did not challenge the defendants' conservation methods which appeared to meet FAP standards.

69 *US v. Salvors Inc.*, 977 F.Supp. 1193 (S.D. Fla. 1997).

70 16 U.S.C. s. 1443(a)(3).

71 *US v. Fisher*, 22 F.3d at 270; *US v. Salvors Inc.*, 977 F.Supp. 1193 (S. D. Fla. 1997).

72 *US v. Salvors Inc.*, No. 92-10027 (S.D. Fla. 30 April 1997) p. 10 f.n. 4.

002658

Another argument made by the salvors and rejected by the *Fisher* court was that their rights to explore and salvage were authorized under admiralty law and the *MDM Salvage*<sup>73</sup> case, which preceded sanctuary designation and, therefore, could not be terminated by the NMSA. In support of their assertion, they cited section 304(c), which provides that any rights of access or subsistence use may not be terminated by sanctuary designation, but may be regulated.<sup>74</sup> The *Fisher* court's rejection of their argument is consistent with the holding of a Ninth Circuit sanctuary case in which harm to, and loss of, the UCH was at stake.

In *Craft v. US*, the National Park Service became aware of routine looting of the UCH by scuba divers and set up a 'sting' operation in the Channel Islands National Park and adjacent National Marine Sanctuary. They caught the divers excavating the sanctuary seabed and removing the UCH and seized their hammers, chisels and other excavation tools.<sup>75</sup> The *Craft* court ruled against the plaintiffs' argument that admiralty law provided a right to recover historic shipwrecks from "marine peril" under section 304(c) or otherwise. In particular the court held that:

even if defendants have a right under the statute [NMSA section 304(c)], the Secretary acted within its authority to regulate that right. . . . [A]nyone holding a pre-existing right [must] apply for a permit to ensure that recovery is done in an environmentally and archaeologically sound manner. . . .<sup>76</sup>

NOAA's authority under the NMSA to protect historic sanctuary resources from unwanted salvage has withstood every legal challenge to date. The courts have consistently ruled that admiralty law provides no legal haven for the removal of, or injury to, the historic sanctuary resources and, accordingly, have uniformly ordered salvors to strictly adhere to sanctuary regulations and NOAA's permitting regime.

There are two regulations implemented in all sanctuaries that provide broad protection of the UCH by prohibiting: 1) the removal of,<sup>77</sup> or injury to, historic sanctuary resources and 2) any alteration of the seabed. Both of these regulations were applied in the administrative enforcement proceedings against the divers caught excavating the seabed and looting historic sanctuary resources in the *Craft* case. An Administrative Law Judge assessed civil penalties in the amount of \$132,000 for violating these two regulations. The Judge assessed the maximum fine, \$50,000 per regulatory violation for a total \$100,000, against the dive master for establishing a system to warn divers of any approaching enforcement patrols.<sup>78</sup> The penalty was challenged as being unreasonably high. The district court found that the dive master's announcements about sanctuary rules against taking the UCH were made in a "mocking derision" of the law. In addition, the use of a bell to warn of the presence of enforcement patrols was found particularly egregious. The Ninth Circuit agreed, stating that "there can be no doubt that appellants were aware that their activities were prohibited . . . appellants' claims that they lacked fair warning that their actions were prohibited ring hollow." The court ruled that the fine was reasonably based on the heinous acts of the dive master.

73 *MDM Salvage*, 631 F. Supp. 308, 314 (S.D. Fla. 1988).

74 16 U.S.C. s. 1434(c).

75 6 O.R.W. 150 (NOAA 1990), 1990 NOAA LEXIS 29.

76 *Craft*, No. 92-1769 (C.D. Cal. 1992); 22 October 1992, Order of Judge Stephen Wilson, p 4.

77 Removal of any UCH in a national marine sanctuary requires a research and recovery permit which complies with professional archaeological standards and requirements as set forth in the FPA.

78 To date, this is the highest US assessment of civil penalties for the removal of any heritage resources, UCH or terrestrial. The cap on civil penalties has been raised from \$50,000 per violation to \$110,000 for each violation. Another important aspect of the NMSA's enforcement mechanisms is the authority under s. 307 to seek the forfeiture of vessels: s. 1437(d). Forfeiture is a rare occurrence; bonds are usually posted for vessels to ensure the recovery of civil penalties or damages. However, in some circumstances, particularly when the operator abandons the vessels, the authority is a potentially helpful management tool.

In *Craft*, the appellants also challenged the application of the regulation prohibiting alteration of the seabed to their removal of the UCH. *Craft* argued that the seabed regulation was intended to control oil, gas and mineral exploration and development, not the recovery of the UCH. As such, there was no notice to the public that this regulation would apply to the salvaging of the UCH from the seabed. Therefore, *Craft* argued that enforcement of this seabed regulation against salvaging the UCH was a violation of their rights to due process under the US Constitution. The court held that the language contained in the seabed regulation was sufficiently clear, especially as applied to the plaintiffs' activities.<sup>79</sup> The court read the prohibition broadly to include the defendants' excavation of the UCH and rejected the argument that the alteration of the seabed was *de minimus*. The court stated that, unless the activity falls within the two exceptions set forth in the regulation: anchoring and bottom trawling, any alteration of the seabed would clearly be prohibited. As a result, the regulation could technically be applied to activities such as handfanning without a permit. The sanctuary regulation of UCH was upheld and found to be consistent with the NMSA purposes to protect and preserve sanctuary resources as well as to promote research, education, recreation, and the aesthetic value of the area.

The court decisions in *US v. Salvors Inc.* and *Craft v. US* provide a very strong legal basis for the protection of the UCH in national marine sanctuaries. Consistent with article 303 of the United Nations Convention on the Law of the Sea 1982, these decisions should apply to the enforcement of sanctuary regulations against foreign salvage operations conducted in sanctuaries within 24 miles from the baseline used for measuring the territorial sea. Beyond that 24 miles, the enforcement of regulations prohibiting the removal of sanctuary UCH against foreign flagged treasure salvors may be deemed by some to be suspect. However, enforcement of the regulation protecting the seabed and other natural resources against foreign flagged vessels appears consistent with international law, including the 1982 Convention. Since treasure salvage operations generally involve disturbance of the marine environment, marine environmental regulations may provide indirect protection of the UCH from unwanted treasure salvage.

As mentioned earlier, and illustrated through the discussion of the sanctuary cases, it is unlawful to conduct an activity prohibited<sup>80</sup> by sanctuary regulations, unless it is conducted pursuant to a permit or other written authorization issued by NOAA under the sanctuary regulations. In all sanctuaries, activities that are intrusive to the UCH are permitted only if conducted pursuant to an archaeological research permit. In the first twenty years of the program, private recovery of the UCH was rare and permitted only when the UCH was threatened and could no longer be preserved *in situ*. The UCH would be removed pursuant to professional archaeological research and recovery requirements, and then be conserved and curated in an institution of public access, presumably in perpetuity.

79 On appeal, plaintiffs only argued the constitutionality of the regulation. The Ninth Circuit ruled that the regulation of the alteration of the seabed was neither overbroad nor unconstitutionally vague as applied to the appellants' conduct, and upheld the district court. The court noted that the degree of vagueness tolerated by the Constitution is greater for a statute providing for civil sanctions than for one involving criminal penalties, because the consequences of imprecision are less severe. Additionally, the court noted that a scienter requirement may mitigate vagueness. Finally, the court found that the most important factor to consider is whether the law threatens to inhibit the exercise of constitutionally protected rights, in which case a more stringent vagueness test applies: *Craft*, 34 F.3d 918, 922 (1994).

80 If an activity falls within a narrowly construed exception, it is not prohibited. Rather, it is an activity that is allowed to be conducted in the sanctuary without a permit from NOAA.

On 1st July 1997, the Florida Keys National Marine Sanctuary regulations became effective, including the permitting regime allowing the privatization of certain public resources.<sup>81</sup> At a minimum, all recovery must be supervised by a professional archaeologist and meet the other rigid FAP standards and requirements as to methodology and conservation. No UCH is permitted to be removed until it is determined to be in the public's interest: *in situ* preservation is preferred. Any UCH that is permitted to be recovered must be kept together in a collection and be made available for future research and other public access. Only after the archaeological research and recovery is completed and the UCH has been properly conserved and curated, permittees apply for a 'special use' permit to transfer certain objects to their custody. Such transfer will be granted if NOAA and Florida archaeologists determine that the objects are no longer of archaeological significance.<sup>82</sup> This permit system is the result of a compromise reached with Florida on how the UCH should be managed in the Florida Keys National Marine Sanctuary. NOAA has determined it is consistent with the NMSA and is primarily based upon the ASA directive for the inclusion of private recovery of shipwrecks as a multiple use for such UCH. NOAA, Florida<sup>83</sup> and the Advisory Council for Historic Preservation entered into a Programmatic Agreement pursuant to section 106 of the National Historic Preservation Act, which demonstrates that the Florida Keys National Marine Sanctuary permit system is in compliance with national historic preservation law and policies. It is very important, however, that the permittees conducting such activities strictly adhere to the permit conditions, regulations and Programmatic Agreement in order to protect and conserve the UCH for present and future generations. Time and experience will tell whether this compromise permit program furthers the public's interest in the UCH.

#### 4. US Land Based Cultural Heritage Statutes Applicable to Certain Underwater Cultural Heritage Sites

There are three historic preservation statutes that were primarily developed for the protection of terrestrial sites but which also apply to the protection of the UCH in certain circumstances. They are the Antiquities Act, the Archaeological Resources Protection Act, and the National Historic Preservation Act.

##### 4.1 Antiquities Act

The Antiquities Act of 1906<sup>84</sup> has two main components: (1) a criminal enforcement component, which provides for the prosecution of persons who 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 US; and (2) a component that authorizes examination of ruins, the

81 It should be noted that the NMSA does not assert ownership over the UCH or other sanctuary resources. NOAA is a trustee of sanctuary resources. NOAA is a co-trustee with Florida for the UCH located on state lands within the sanctuary. Florida owns the abandoned shipwrecks and other UCH pursuant to the ASA, the Submerged Lands Act and state historic preservation laws. Sixty-five percent of the Florida Keys National Marine Sanctuary is located within state lands and waters.

82 16 U.S.C. § 1441. Such special use permits are also referred to as "deaccession/transfer permits". Objects eligible for transfer under this permit include duplicative gold and silver bullion, unworked precious stones, and coins.

83 Most of the sanctuary is within Florida submerged lands and waters. Under the ASA, Florida owns the abandoned shipwrecks in the state submerged lands. Under the NMSA, NOAA is a trustee for the public's interest in sanctuary resources. There is no assertion of ownership of sanctuary resources in the NMSA. NOAA is a co-trustee with Florida for the UCH in and on Florida submerged lands.

84 16 U.S.C. s. 431, *et seq.*

excavation of archaeological sites and the gathering of objects of antiquity on lands owned or controlled by the US through the granting of a permit.

The Antiquities Act was unsuccessfully asserted to apply to the outer continental shelf in the matter of *Treasure Salvors*<sup>85</sup> but was subsequently determined to apply in a national seashore. The *Lathrop*<sup>86</sup> case turned on the Act's permitting provision, and did not concern the ownership of the UCH or seabed. The court ruled against the salvors who argued that requiring permits for dredging the seabed and salvaging the UCH within the boundaries of the national seashore interfered with Lathrop's rights under the admiralty law of salvage and the common law of finds. The court stated that:

Congressional enactments restricting the *manner* in which a potential salvor excavates property located on federally owned or managed lands does not offend these sound constitutional limitations [to maritime law and admiralty jurisdiction].<sup>87</sup>

The Antiquities Act permitting provision can, therefore, be used as a protection tool in waters over which the US has ownership or control, such as marine protected areas.

The Antiquities Act is still in effect, and its permitting provision remains a potentially useful tool for protecting the UCH. However, its enforcement was subject to a constitutional attack in two cases. In *US v. Diaz*,<sup>88</sup> the Ninth Circuit held that the Antiquities Act definitions of "object" could also include objects made recently and, as a result, provided insufficient notice to the public of the applicability of the Act's penalty provisions. The court held that the Act was unconstitutionally vague and therefore a violation of due process. However, the Tenth Circuit subsequently upheld the constitutionality of the Antiquities Act in *US v. Smyer*.<sup>89</sup> The court distinguished the *Diaz* case which involved face masks made only a few years before, from the objects appropriated in the *Smyer* case which involved artefacts that were 800-900 years old and taken from ancient sites. The court found that, as it applied to the case before it, the Act suffered "no constitutional infirmity" and must be considered "in the light of the conduct with which the defendant is charged."<sup>90</sup> These challenges to the Antiquities Act ultimately resulted in the enactment of the Archaeological Resources Protection Act in 1979.<sup>91</sup>

## 4.2 Archaeological Resources Protection Act

The Archaeological Resources Protection Act<sup>92</sup> also applies to "archaeological resources" of at least 100 years of age located in national parks, national wildlife refuges and other specific areas on national public lands. The Act requires a permit for any excavation, removal, or alteration of archaeological resources. The enforcement provision provides for the imposition of both civil and criminal penalties against violators of the Act. The criminal enforcement provision was successfully used in *US v. Hampton*.<sup>93</sup> In that case, a salvor was prosecuted for salvaging the UCH in Florida's Key Biscayne National Park. The matter resulted in a plea bargain. The

85 *Treasure Salvors*, 569 F.2d 330 (5th Cir. 1978) ruled that the US did not own or control the outer continental shelf for purposes of protecting the UCH. This ruling not only precluded the application of the Antiquities Act to the *Atocha*, but it also influenced subsequent legislation of the Archaeological Resources Protection Act and the ASA restricting their application beyond three miles from the shoreline.

86 *Lathrop v. The Unidentified, Wrecked & Abandoned Vessel*, 817 F. Supp. 953 (M.D. Fla. 1993).

87 *Lathrop*, 817 F. Supp. at 962 (emphasis in original).

88 499 F.2d 113 (9th Cir. 1974).

89 596 F.2d 939 (10th Cir. 1979).

90 *Ibid.*

91 It should be noted, however, that these cases addressed enforcement of the Antiquities Act, and not the permitting provision, which has never been subject to such a constitutional attack.

92 16 U.S.C. § 470ee *et seq.*

93 CRIM DOC. Nos. P169925, P169927, and P169928 (S.D. Fla. 1986).

Archaeological Resources Protection Act does not typically apply in the marine environment unless the US owns the seabed of the marine protected area. However, as the Act's prohibition against trafficking archaeological resources has been applied to such resources taken from private land, it may also be used to prohibit the trafficking of the UCH.<sup>94</sup>

### 4.3 National Historic Preservation Act

The National Historic Preservation Act of 1966 was enacted to recognize that the nation is "founded upon and reflected in its historic heritage."<sup>95</sup>

[T]he preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations. . . .<sup>96</sup>

The Act requires that national government agencies survey, inventory and assess the historical significance of heritage resources including the UCH, prior to undertaking any action, such as issuing permits, expending funds, developing projects, and taking other government actions.<sup>97</sup>

Section 106 of the National Historic Preservation Act requires that national government agencies take into account the effect of any proposed federal, federally assisted, or federally licensed "undertaking" on any historic property<sup>98</sup> that is included in, or eligible for inclusion in, the National Register of Historic Places.<sup>99</sup> In addition, such agencies must afford the Advisory Council on Historic Preservation and the State Historic Preservation Office a reasonable opportunity to comment on the proposed undertaking.<sup>100</sup> The agency must complete the section 106 process prior to issuing any license or permit, or going forward with any other undertaking.<sup>101</sup> Section 106 does not prevent the undertaking from occurring, but it does require that the adverse effects to heritage resources be minimized. To fulfil the section 106 requirements for a class of undertakings that would require numerous individual requests for comments, the national agency may enter into a Programmatic Agreement with the Advisory Council and the state.<sup>102</sup> As long as the activities are conducted in accordance with the Programmatic Agreement, no further consultations are required for compliance with section 106. The purpose of the section 106 process is to identify potential conflicts between historic preservation concerns and the needs for federal undertakings in the public interest.<sup>103</sup>

The other main provision of the National Historic Preservation Act is section 110(a)(2) which requires national government agencies to manage heritage resources under their jurisdiction

94 See *US v. Gerber* 999 F.2d 1112 (7th Cir. 1993).

95 16 U.S.C. ss. 470 *et seq.*, 470(b)(1).

96 16 U.S.C. s. 470(b)(4).

97 Another statute that requires national agencies to consider the effects of their activities on the environment, including heritage resources, is the National Environmental Policy Act: 42 U.S.C. s. 4321 *et seq.* Like the National Historic Preservation Act, the National Environmental Policy Act is procedural in nature and does not contain any enforcement mechanism to prevent harm to heritage resources committed by third parties.

98 "Historic property" means any prehistoric or historic district, site building, structure, remains or object eligible for inclusion on the National Register, i.e., meets the National Register listing criteria: 36 C.F.R. s. 800.2 (e).<sup>97</sup> "Historic property" means any prehistoric or historic district, site building, structure, remains or object eligible for inclusion on the National Register, i.e., meets the National Register listing criteria: 36 C.F.R. s. 800.3 (c).

99 16 U.S.C. s. 470f.

100 36 C.F.R. s. 800.1(a).

101 36 C.F.R. s. 800.3(c).

102 36 C.F.R. s. 800.13(a).

103 36 C.F.R. s. 800.1(b).

and control. Such management includes the obligation to survey, inventory, and determine the eligibility of historic properties for nomination to the National Register.<sup>104</sup> Section 110(a)(2) also requires that each agency exercise caution to assure that properties that may be eligible for inclusion are not "inadvertently" transferred or sold.<sup>105</sup>

## 5. Conclusions

As discussed throughout this chapter, the US has certain statutes that offer some protection to the UCH located within US waters, albeit they are limited in scope. For example, the ASA, while protective of certain categories of UCH, has proven to be vulnerable to legal attacks by treasure salvors. The NMSA, in contrast, has proven to be a strong legal tool, however, it only protects the UCH within national marine sanctuaries. Likewise, the application of the Antiquities Act is, arguably, limited to marine protected areas, such as national seashores, where the US has either ownership of, or expressly asserted control over, the UCH. The Archaeological Resources Protection Act is even more limited in scope. It only protects the UCH that is located in or on submerged lands owned by the US, and expressly exempts the outer continental shelf.

Furthermore, the reach of one of the most important pieces of federal historic preservation legislation, the National Historic Preservation Act, is also limited in its protection of the UCH. It merely requires national agencies to comply with the procedural requirements of that statute to ensure that federal agencies preserve and protect the UCH under their jurisdiction and consider the effects of their federal undertakings on the UCH. Accordingly, the UCH located in the vast majority of US waters is left unprotected and vulnerable to unregulated salvage.

Comprehensive legislation to protect the UCH is greatly needed. Such legislation should protect the UCH located in waters from the shoreline out to the 200 mile exclusive economic zone, and should include several important components: (1) a US assertion of its historic preservation interest in all UCH under its jurisdiction or control (including sunken US flagged vessels regardless of their location), without terminating any property rights of others including those of foreign sovereigns;<sup>106</sup> (2) a permitting regime to regulate research and recovery of the UCH in an environmentally and archaeologically sound manner; (3) a US assertion of title to abandoned<sup>107</sup> UCH located in the twelve mile territorial sea and a contiguous zone out to 24 miles consistent with international law; (4) an enforcement provision to prohibit unauthorized activities affecting the UCH and/or the marine environment; and (5) a provision stating that the maritime law of salvage and common law of finds shall be inapplicable to all UCH.

104 16 U.S.C. s. 470h-2(a)(2).

105 National agency compliance with the s. 106 process prior to any property transfer or sale would meet this requirement.

106 Another component could also include a provision authorizing the US Department of Justice to enter federal courts to represent foreign sovereign nations, at their request, in protecting UCH in which they have an interest located in US waters. One additional aspect of this proposed legislation is that it would favor a national policy of *in situ* preservation.

107 UCH which has been left on the seabed for over 50 years should be presumed abandoned.

**A**S FAR AS PUBLIC IMAGE GOES, 1998 WAS A tough year for the antiquities trade. Recent news stories have castigated Boston's Museum of Fine Arts (MFA) for acquiring numerous unprovenanced—and perhaps illegally excavated—objects from Guatemala and Italy. A high-profile New York legal case, currently under appeal, involved the purchase of a 3rd- to 4th-century A.D. gold bowl (phiale) allegedly looted and smuggled from Italy, and raised the specter of U.S. Customs seizing other contested objects from private homes and public institutions. In October, the Denver Art Museum returned to Guatemala a wooden lintel that it had possessed since 1973, after discovering that thieves had taken the piece from a Mayan temple in the 1960s. In an ongoing series of investigations, Italian police arrested the alleged kingpin of an international antiquities smuggling operation with links to the Mafia (see page 8). And Sotheby's New York pulled 19 items from its American Indian art sale in December after Native Americans claimed that some of the objects were culturally important to their tribes. Crows one critic of the trade, "These stories are showing the general public the kind of scandals that go on behind the closed doors of museums and dealers."

Indeed, antiquities dealers today are increasingly being portrayed as greedy plunderers mounting what one observer calls a "vast international network" to loot such art-rich "source" countries as Guatemala, Mexico, China, Italy, Mali, Turkey and Egypt. Others liken dealers to international drug traffickers and have claimed (erroneously) that they rake in nearly \$5 billion a year in illicit

# THE WAR ON

**Denounced as plunderers, the antiquities trade is taking heavy fire from its enemies in the press and academia. It's time, dealers and collectors say, to go on the offensive. By Steven Vincent**

profits (more realistic estimates place the entire international antiquities trade at around \$200 million annually). Still more critics of the trade call for activism to make the idea of collecting antiquities, in the words of one archaeologist, "as socially distasteful as smoking cigarettes, wearing fur or eating an endangered species."

Nor are dealers the only targets. "It's an utter scandal! The prestige of such American institutions as the MFA and [New York's] Metropolitan Museum stimulate much of the looting in the world," says Colin Renfrew, a member of Britain's House of Lords and, as professor of archaeology at Cambridge, an outspoken opponent of the trade in antiquities. Argues Boston University archaeologist Ricardo J. Elia, "Look at the issue of artworks looted by the Nazis—it shows that museum acquisition policies leave much to be desired."

Collectors, dealers and museum curators vehemently deny that they are responsible for the looting of many of the world's cultural sites and stress that the vast majority of the trade acts in a responsible, ethical manner. Yet critics' attacks have troubled many. Some collectors have spoken, half-facetiously, of wearing "flak jackets" because of their fear of antitrade fanatics. Others worry that the increasing antitrade rhetoric could eventually persuade museums to curtail the purchasing of antiquities (although that hasn't happened to a large degree yet), as well as to return contested objects to their countries of origin. (The Met is still haunted

002665

by the 1993 return of the so-called Lydian Hoard to Turkey.) And still more see the attacks as nothing less than a retreat from the heritage of the Enlightenment itself and the figure of the collector, one of its ideal types. "The criticisms against antiquities collecting are an assault on the universality of liberal humanism and an attempt to define the Self as something harmful to the general good," says celebrated antiquities collector George Ortiz. "These critics are trying to kill the free circulation of cultural knowledge and plunge the world into nationalism and ethnocentricity."

Many in the trade and museums, along with collectors, fear that their point of view is being drowned out by their enemies' rhetoric. "We're not doing enough to defend ourselves; we have to do more," says James Ede, a London antiquities dealer and chairman of the International Association of Dealers in Ancient Art. "We should make our case," says a high-placed museum source. "There's a growing feeling that only one side is telling the story. We need to counteract the smear campaign." In other words, it's time to fight back in the escalating war against collecting.

**W**HAT, EXACTLY, ARE THE charges leveled at the antiquities trade and why do they stir up such passion? Let's start with the source countries: to them, antiquities are a "cultural patrimony" that defines and embodies their national identities—in much the same way that the Liberty Bell symbolizes America to many U.S. citizens. Moreover, since many source countries are poor and frequently riven with internal conflicts, their leaders increasingly look to cultural property—and the institutions that house it—to unify their people and provide streams of much-needed income. "Museums in developing countries are fundamental to attracting tourism and acting as totems around which a



Egyptian polychrome limestone bust, 18th Dynasty, circa 1450 B.C., formerly in the Bay and Kalebjiian collections. Royal-Athena Galleries.

go kill the free circulation of cultural knowledge and  
nationalism and ethnocentricity." —COLLECTOR GEORGE ORTIZ

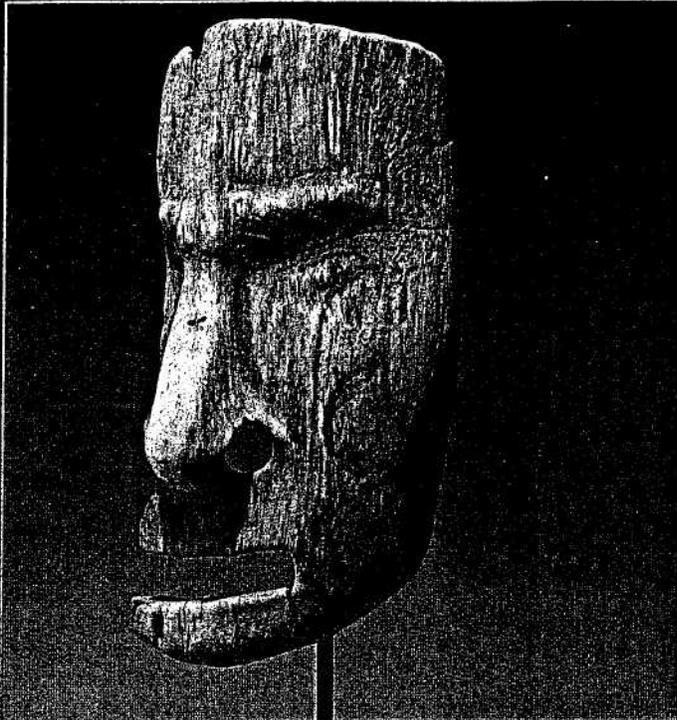
nation can build," says Arthur C. Danto, art critic for *The Nation* magazine and professor emeritus of philosophy at Columbia University. Understandably, then, these nations tend to favor a market in cultural property that is regulated, supervised and open to scrutiny, ideally by an international authority.

(Market regulation and the expansion of the cultural patrimony umbrella are not restricted to antiquities, of course: European Union mandates—recently characterized by Hamburg's weekly, *Die Zeit*, as "a relapse into narrow cultural nationalism"—threaten free trade in a broad variety of collecting fields. See page 10.)

Complaints about antiquities collecting are not new—indeed, since the early 19th century, critics have condemned the British Museum for possessing several Parthenon sculptures (the so-called Elgin Marbles) purchased by Lord Elgin in Greece and shipped back to England. What gives the criticisms added urgency, however, is the fact that for the last 30 years, source countries have seen their treasures systematically plundered by gangs of looters, often winding up in the possession of Western collectors and—as is apparently underscored by recent revela-

tions about Boston's MFA—museums. While no one knows the full extent of worldwide looting (one academic, however, believes that the number of people involved in at least part-time digging for antiquities in Mexico and Central America alone totals over one million), examples of desecrated sites stretch from Angkor Wat in Cambodia to Peruvian temples high in the Andes to tombs in the Niger River delta of Mali.

Enter the archaeologists, infuriated by the looting. To many of them, looting rips objects out of their indigenous context and renders them useless for study. "Large-scale looting destroys our hopes of learning about the past," Renfrew says. Renfrew and like-minded colleagues say that the only way to halt the plunder of archaeological sites is to close down the demand for the objects in the first place—that is, curtail interest in collecting antiquities. "The solution is to make collectors embarrassed," Renfrew says, adding that the U.S. is "out of its mind to give collectors tax breaks for donating looted antiquities to museums. If they didn't have tax advantages, they wouldn't collect." Elia is even blunter: "The bottom has to be knocked out of the entire antiquities market."



This circa 1510-1660 mask was one of the many disputed objects in the December sale of Native American art at Sotheby's New York. Citing concerns about preservation, the consignors rejected Aleut demands that the mask be withdrawn.

while demand continues to be high, create and stimulate a lucrative black market. Or, as Ede puts it, "Clandestine excavations are due to draconian export laws."

Because of their retentionist policies, many source countries maintain warehouses or storerooms filled with thousands of uncatalogued antiquities, many of them redundant and of little cultural value, that are "simply rotting away," says Ortiz. Or, as the late Bernard von Bothmer, professor of Egyptian art at New York University's Institute of Fine Arts, reportedly liked to say to his students, "Where should we excavate? The basement of the Cairo Museum!"

Worse, source countries are often too poor—or unwilling—to pay local people for any antiquities they happen to discover. According to André Emmerich, the noted New York contemporary art dealer who also specialized in pre-Columbian art, a great many antiquities are tomb objects, and "most tombs are discovered by accident—such as by a farmer tilling his field." If the farmer can't sell the object he discovers on a legitimate market, and if his own government won't buy it from him, he has two choices, Emmerich notes: "Destroy the object, or sell it on the black market."

Perhaps even more alarming, say trade supporters, source country export laws often blur the distinction between "looted," "illegally exported," "stolen" and "unprovenanced" objects—thereby making it appear as if dealers habitually and irremediably operate within some vast criminal enterprise—when, in fact, there are subtle, but very real, differences between those terms. For example, critics of the trade—including many members of the press—automatically assume that any antiquity that does not have a solid provenance was probably looted.

This is simply not the case, says Frederick Schultz, a New

## "The market endows things with value. If there's no market, there's no value—and no preservation

—DEALER ANDRÉ EMMERICH

**I**T'S A TROUBLING AND, TO SOME, A PERSUASIVE argument: the museums we love and the dealers we know are directly responsible for the pillage of culturally sensitive sites in poor and developing countries. But is it true? Hardly, say supporters of the trade. "It's the fantasies of fanatics," remarks Daniel Shapiro, a New York lawyer and president of the International Cultural Property Society, established in 1990 to sponsor and support consideration of issues concerning cultural property. Indeed, to many protrade observers, in the convoluted dispute over antiquities collecting, the true culprits responsible for much of the world's looting are the source countries themselves—in addition to the archaeologists who support them.

Take the thorny issue of export laws. In an attempt to stop the loss of their cultural property, many source countries—among them Turkey, Mexico, Egypt and Greece—claim that certain types of cultural objects are the property of the state and forbid any trade in these items. (Egypt and Turkey have even declared their ownership of certain objects in private collections within their borders, including some owned for generations.) Other countries, like China or Italy, set severe limitations on objects that people can export. But to scholars such as Stanford's John Henry Merryman, these export laws, by insuring that the supply of antiquities remains short

York antiquities dealer and president of the National Association of Dealers in Ancient, Oriental and Primitive Art: "For hundred of years, people have been buying and selling these objects without publishing or keeping proper records," he says. "Many people have built their collections decades ago and cannot remember from whom they purchased the works. Contrary to what the archaeology hezbollah maintains, these are bona fide old collections."

What's more, there are countless objects that turn up in chance finds in source countries that are unprovenanced yet ride their way legally onto the international market. How? Except for certain situations in countries such as Mexico, Peru and Mali, the U.S. does not generally restrict the import of antiquities (unless they are documented as being stolen) from foreign nations, despite the fact that many countries claim that anything found in or on their ground is state property. "Just because a country claims that an object belongs in its borders doesn't mean it's stolen property," notes Torkom Demirjian of New York's Ariadne Galleries. "Someday I'm going to have a show and advertise it as 'objects illegally excavated from Italy, but legally exported into the U.S.,'" he quips.

Demirjian should be careful, however: in a case that is sending chills through the trade, Italian officials seeking the

002667

return of an illegally excavated Sicilian gold phiale purchased in 1991 by collector Michael H. Steinhardt requested and obtained the support of U.S. Customs—which, under the U.S. National Stolen Property Act, entered Steinhardt's New York home and seized the object in November 1995. (One week later, Steinhardt went to court to retrieve his bowl, but lost; the case is now under appeal. See *Art & Auction*, September 21.)

What is particularly galling to the trade is what it perceives as hypocritical posturing on the part of many source countries. "The terms 'looted,' 'purloined,' 'illegally excavated' and 'stolen' all get mixed up by source countries who frequently play the victim," Emmerich says. "Cultural patrimony claims are part of a power struggle, a way for leaders to rouse anti-imperialist sentiments and unify their populations," remarks Arielle Kozloff, vice president of ancient art at New York's Merrin Gallery. "The idea of cultural patrimony is more important to them than any of the objects involved." Moreover, she adds, "Officials have told me that the reason they retain the objects is for tourism. That's why they don't deaccession—antiquities comprise a huge economic machine."

Yet who's to say what constitutes a country's cultural patrimony in the first place? For example, many of the antiquities claimed by Turkey were in fact created by ancient Greeks. Or, as Peter Marks, a New York dealer of South and Southeast Asian art, notes, "The Afghanistan of the current Islamic Taliban regime has nothing to do with the Buddhist cultures of the Kushan period, 2nd to 4th centuries, which produced much of the artistic heritage of Afghanistan, Pakistan and

tion by war or environmental disaster and a general ignorance on the part of the local population about the value of antiquities. Indeed, from the trade's perspective, instead of stimulating the destruction of antiquities, the market actually encourages their preservation.

"Countries didn't begin to care about their objects until they took on a market value," says New York dealer Sam Merrin. "The market endows things with value," notes Emmerich. "If there's no market, there's no value—and no preservation." Ortiz points out that Peruvian Indians once shattered ancient pots while treasure-hunting for gold or ancient stones. "But once the pots took on value," he adds, "the Indians began saving them for sale on the market."

The antiquities trade also preserves objects by dispersing them throughout the world to safer environments. For example, supporters say, the Elgin Marbles probably wouldn't have survived Napoleon's depredations or the Turkish occupation of Greece if Lord Elgin hadn't carted them to England. They point out that China's controversial Seven Gorges Dam project, scheduled for completion in a few years, will flood countless examples of that nation's cultural heritage into oblivion. Is it not preferable, they ask, to preserve at least some of them, even if they are in Western collections? Anyone who has seen the dilapidated state of Cambodia's National Museum in Phnom Penh must quail at the fate of the treasures held inside. And in the mid-1980s, Merrin reports, Jordanian construction crews building a new settlement in Jerash came across a trove of ancient objects.

**"Cultural patrimony claims are part of a power struggle to unify their populations. The idea of cultural patrimony is more important to them than any of the objects involved."—ARIELLE KOZLOFF, THE MERRIN GALLERY**

Central Asia." (Indeed not: many of Afghanistan's finest Buddhist and other works now lay strewn about the floors and collapsed shelves of the Kabul Museum, shuttered by the fundamentalist Taliban.) In 1993, Croatia and Hungary squared off in a Manhattan courtroom and tried to prove that a fabulous 14-piece silver hoard (the so-called Sevso Treasure) formed part of their respective cultural heritages—even though the objects originated from the 4th-century Roman Empire, before either country existed. (The court ordered the trove returned to its private owner, England's Lord Northampton.)

As befits this international custody battle, both the trade and source countries claim that they are the best guardians of the world's treasures. And while source countries base their claims on the presumed emotional and psychological bonds between cultural objects and national identity—a notion, incidentally, that has its roots in 19th-century German Romanticism—the trade argues that because of its resources, it can often provide a better "home" for the objects. It points to the corruption endemic in source countries and the disorganized state of many of their museums. (In 1995, for example, Interpol asked member-nations to supply data on objects stolen from their museums; of all the African nations, only one—Zimbabwe—could provide adequate information. "I've had the director of at least one African museum offer me things for sale," says one collector.) Other source country problems include archaeological sites in danger of destruc-

Working against a deadline, "they simply sealed the artifacts up in cement," rather than halt the construction work.

Indeed, the global circulation of art and culture is perhaps the trade's strongest and most passionate argument. "We live in an era where local interests are tearing countries apart," notes Shapiro. "What is one way of crossing borders? Art." Ortiz sees this issue as "crucial to the future of humanity. Cultural patrimony laws increase nationalism," he adds, "and nationalism is a monstrosity that wants to increase differences between people. Art diminishes those differences; it is a great communicator of mankind's essential unity." Indeed, to its supporters, the antiquities trade serves as a bulwark against an increasing Postmodern skepticism that reduces all human interaction to power relations and threatens to seal the individual in an inescapable trap of tribalism.

Restrictions on a strong international market can have a dreadful boomerang effect on the source countries themselves, many believe. "Italy devotes three-tenths of one percent of its budget to preserving its cultural sites," notes Marion True, curator of antiquities at Malibu's J. Paul Getty Museum and a self-professed moderate in the polemics between archaeologists and the trade. "They can't support the conservation needs of their own country. We're all responsible to help preserve the world's treasures. But if we don't educate a broader public, the future of antiquities is in doubt. Why will people give hundreds of millions of dollars

for preservation if they know nothing about ancient cultures?" (Or, as Marks asks, how many of today's archaeologists were attracted to their profession by museum collections—collections that the trade helped build?)

Hypocritical rhetoric and self-defeating policies are not limited to source countries, claim trade supporters—they also characterize the antitrade rhetoric of archaeologists. "The archaeologists are totally ideological," Ortiz complains. "You can't fight ideology."

Indeed, trade supporters frequently argue that archaeologists serve as tools for the antitrade dogma of the source countries. "No archaeologist will vouch for the trade, even if they agree with it," one dealer says. "Source countries would immediately revoke their permits to dig within their borders. So the archaeologists maintain a conspiracy of silence."

But if nothing else, archaeologists are performing a valuable scientific duty by excavating the past, right? Not always, critics say. "Most 'dirt' archaeologists would like to see everything remain in the ground until they can dig it up for study," says Dr. Jerome M. Eisenberg of New York's Royal-Athena Galleries, the publisher of *Minerva*, a bimonthly magazine dedicated to antiquities connoisseurship. "But stuff is piling up. There are literally thousands of garbage dumps dating back to ancient Egypt. How much does that increase our knowledge about the past? Or does it simply justify digging?" For the last nine years, Eisenberg has published in *Minerva* the annual reports of the Archaeological Institute of America. "I've discovered very little of interest in them," he admits.

## Is a way for leaders to... is more important to them RIN GALLERY

Trade supporters are nearly unanimous in rejecting the complaint of many archaeologists that once an object is taken from the ground it loses its scientific value. "Temple remains are few and far between," Ortiz contends. "So what's the context of most antiquities? A tomb! And most tombs are the same; they are enormously repetitive." They are also particularly irked by the many archaeologists who refuse to write about unprovenanced objects and call for the return of these purportedly "looted" objects back to their home countries. "They are taking a holier-than-thou position," Emmerich remarks. "You can't restore the context of an object by sending it back."

But perhaps the trade's most biting criticism of its critics is that archaeologists simply do not understand the beauty of antiquities—and they resent those who do. "Archaeologists spend long hours in school learning about what makes antiquities important, but they generally lack an aesthetic appreciation of the objects," Kozloff says. "Then they see some guy who is 'clueless' spending money on objects and claiming that he understands their beauty—it makes them angry." Says Ortiz, "I am totally self-taught in archaeology; I have no degree. But I can grasp the inner spirit of an object, its life force. Archaeologists cannot accept the freedom of one who feels like this. They'd rather control and restrict that freedom." Indeed, the trade frequently portrays archaeologists as if they were tone-deaf listeners to a Beethoven recording: unable

to appreciate the music, they concentrate instead on the age, "context" and informational value of the recording itself.

**ARE THERE NO SOLUTIONS TO THIS** bitter, high-stakes custody battle for mankind's cultural heritage?

In fact, there are. For example, observers on all sides of the dispute believe that source countries could make long-term, even indefinite loans of their cultural treasures to Western museums, making them accessible to the world while ensuring their protection and national retention. (The Mexican Gallery at the British Museum is a good example.)

As for creating a rational world antiquities market, many in the trade champion a system whereby someone wishing to export an object from a country would first declare its value to the source nation's government. The government would then have an opportunity to buy the artifact at that price; if the government passed, the exporter would then pay the government 20 to 25 percent of the object's value in order to receive an export permit. "If the exporter sets the value of the antiquity too low, he runs the risk of losing it to the government," Emmerich explains. "If he sets it too high, and the government passes, he must pay more to get his permit."

But to many observers, the cultural patrimony dispute is first and foremost an issue of economic development. To them, many source countries can neither develop a market for their antiquities nor adequately protect the ones they possess, because they lack developed market and political structures. As for looting, Dr. David Matsuda, an observer of the pre-Columbian art market for over a decade, proposes that "the reason so many people dig up archaeological sites in source countries is because they are poor." In Matsuda's view, the vast majority of people who loot cultural sites are actually farmers seeking to supplement their incomes during non-agricultural months or after bad harvests. "Who are the archaeologists to say that a peasant can't dig up the remains of his own ancestors to help feed his family?" he asks. All sides in this issue are equally at fault for concentrating so much time and resources on a country's past, while neglecting its current conditions, Matsuda believes. "We must shift our emphasis from moral outrage to compassion and economic development."

In the meantime, there are portentous omens for the future of the trade. In 1997, African officials complained to an academic conference in Amsterdam that international exhibitions and scholarly publication of Nigerian antiquities led to a rise in the looting and robbery of similar objects—in effect, suggesting that any public knowledge of artifacts can lead to their theft and destruction. Meanwhile, the president of the Archaeological Institute of America, Nancy C. Wilkie, recently wrote that in order to maintain their pristine contexts, archaeologists should "perhaps refrain from excavating certain sites altogether."

"Where does this end—in the complete suppression of knowledge of the past?" Ortiz wonders. We're not there yet, of course. But with the heightening rhetoric from enemies of the antiquities trade—supported in many cases by an ill-informed and scandal-mongering press—the worst can be foreseen: a closing of an essential part of the spirit of liberal humanism and the potential onset of a Postmodern Dark Age of nationalism and ethnocentricity.

STEVEN VINCENT is the senior correspondent of *Art & Auction*.

## Past Imperfect, Future Tense: Archaeology and Development

Karen D. Vitelli<sup>1,3</sup> and K. Anne Pyburn<sup>2</sup>

*Received November 15, 1996; accepted February 10, 1997*

Archaeological sites are valuable nonrenewable resources and they are being destroyed rapidly by modern development projects of all kinds, worldwide. The contextual information in these sites could tell surprising and valuable stories of human behavior over an enormous sweep of time and might contribute to a better future. Archaeologists' experience of site destruction and their recent efforts to work with local communities toward alternatives to site destruction may offer examples for others concerned with the treatment of nonrenewable resources.

**KEY WORDS:** Context; development; sustainability; ecotourism; preservation; community cooperation.

The Three Gorges Dam currently under construction on China's Yangtze River is the centerpiece of the world's largest hydroelectric development project. Forty thousand workers are already deployed in the initial stages of construction of the colossal dam, which will be nearly 610 feet high and over a mile wide (Childs-Johnson and others, 1996). The dam will eventually flood a vast area, creating a lake nearly 400 miles long and deep enough to permit ocean-going freighters along its length (Spence, 1997). Besides sea-going ports, the dam is expected to provide a 10% increase in China's electrical generating power and flood protection to millions of people (Tyler, 1996). "Thirteen cities, 140 towns, more than 300 villages, and 1,600 factories" (Childs-Johnson and others, 1996) will be inundated, and some 1.9 million people will have to be relocated (Topping, 1997), requiring, clearly, additional development projects. Other environmental, social, political, and economic impacts are legion, and include the loss of hundreds of cultural and archaeological sites to the flood waters.

The Three Gorges project is getting the world's attention, but similar projects on a smaller scale already flooded or threaten archaeological sites worldwide. A proposed dam on the Indus River in Northern Pakistan would submerge historically and culturally significant rock paintings (Schendzielorz, 1997). Authorities recently agreed to relocate the proposed Vila Nova de Fozzôa dam in Portugal because of enormous public outcry (Bahn, 1995), and the hundreds of paleolithic rock engravings that its original plan would have inundated will be spared (Dyson, 1997). In the U.S., a flurry of archaeological survey and salvage projects preceded the recent construction of the Roosevelt Dam in Arizona (McPherson, 1992). Similarly, international teams of archaeologists have been active since the late 1980s in southeastern Turkey, recording sites in anticipation of the flood waters from numerous dams being built along the Tigris and Euphrates and their tributaries as part of the huge GAP (Guneydogu Anadolu Projesi) development project (fig. 1). In fact, although many sites were, or will be submerged without being studied, these and similar development projects have spawned large-scale, productive archaeological activity. Unfortunately, the Chinese authorities have not provided archaeologists the requested funding for such archaeological work in Three Gorges, and have not allowed a request for the international assistance that could provide exploration and develop-

<sup>1</sup> Department of Anthropology, Indiana University, 408 N. Indiana Ave., Bloomington, Indiana 47408.

<sup>2</sup> Department of Anthropology, Student Building 130, Indiana University, Bloomington, Indiana 47405.

<sup>3</sup> Correspondence should be directed to Karen D. Vitelli, Department of Anthropology, Indiana University, 408 N. Indiana Ave., Bloomington, Indiana 47408.

rather than elimination, of the rich archaeological heritage in the area.

Still, one might argue that, for archaeological resources, submersion is one of the more benign outcomes of development projects. After all, sites located under deep, still waters are reasonably well protected from their worst enemy, humans. To the extent they survive under water, they might still be excavated at some future time.

Sites that stand in the way of other kinds of development projects tend to be bulldozed into oblivion. Development of all kinds and at every scale is rapidly destroying what remains of the archaeological past. Modern mechanized agricultural practices, housing developments, power plants, shopping malls; pipelines for water, gas, and oil; highways for information and transportation all obliterate or cut through archaeological sites with alarming frequency. In fact, the coincidence of new construction sites with already extant archaeological sites is powerful testimony to a preference we share with our ancient ancestors: where we choose to locate ourselves in the landscape.

Perhaps because so many archaeological sites are located near (or underneath) modern populations, the relationship between the present and the past is immediate and intense. Ask the Irish Dublin Corporation, which set out to build a complex of office buildings in downtown Dublin, until the construction hit Norman, and then pre-Norman Viking remains and the whole country got into the act (Lansaw, 1984). Or the General Services Administration of the U.S. Government that intended to build a 34-story office tower in New York City but found, when the foundations cut into the precolonial African-American Burial ground, just how strong the modern Black community's feelings are about its ancestors (Harrington, 1994). Dai Qing, one of the more vocal Chinese opponents of the Three Gorges project, recognizes the power of peoples' connections to their roots. She claims the biggest problem associated with the Chinese project will be "[t]he resettlements of displaced people without the promised compensation. There is no way to move them from their homes, away from the tombs of their ancestors and make them resettle peacefully" (Topping, 1997).

### SAVING THE ARCHAEOLOGICAL RECORD

In recent decades, most nations have enacted legislation designed to protect and preserve archaeologi-

cal information from destruction by development, by requiring an assessment of archaeological resources before any construction can begin, and providing for the preservation of sites deemed of major significance. Unfortunately, the good intentions of such laws often backfire. In Greece, and the same practice occurs elsewhere, developers moving in quickly with bulldozers, sometimes under the dark of night, scrape away all traces of potential antiquities—removing topsoil and all vegetation as well—lest they face the often long delays engendered by archaeological assessment and excavation. Even substantial fines may seem less costly than the delays occasioned by archaeological exploration. In the U.S., Transcontinental Gas Pipeline Corporation, based in Houston, ended up paying \$25.5 million in fines for damaging archaeological sites, when it installed a pipeline before the legally mandated archaeological survey and assessment of sites was completed and incorporated into the plan (Elia, 1992). Worldwide efforts to legislate protection for sites might be more effective if they adopted programs of incentives and rewards for cooperation and preservation of the cultural heritage, rather than the current approach that imposes penalties after the damage is done. It is already quite clear, however, that, while legal measures can help, they will not, by themselves, stop the destruction of archaeological sites. That will require a broader public concern, not only for the remains of their own ancestors, but for the whole of the world's cultural heritage and all that we might still learn from it.

What do we all really lose when archaeological sites are destroyed? Is the loss of archaeological resources, in the overall balance of gains and losses entailed in development projects of all kinds, really a substantial one? The affirmative answers from the archaeological community reflect more than self-interest—the field of archaeology is now so diverse that we could continue effective and productive, if limited research for decades without undertaking another new excavation. It is the very diversity of approaches and applications that convinces those of us who know the potential best that archaeological sites have extremely valuable contributions of many kinds still to make to the modern world.

The frightening rate at which modern development is destroying our limited and nonrenewable resource base is forcing archaeologists out of ivory towers and research labs, and into more direct contact with nonspecialists in the communities affected by our work. We are hearing about their needs and desires, even as we try to explain our own. The encounters

can be awkward, even difficult. But we are finding that the dialogue can be changed from one of antagonism among competing claims on resources to one of community-based cooperation, and when it does, the results can be exhilarating for all involved.

### ARCHAEOLOGY TODAY

So let us tell you a bit about what modern archaeology is and does, and then about how archaeologists are working with community development. First, discard the popular image of the archaeologist, spade or trowel in hand, unearthing, like Howard Carter in King Tut's tomb, "marvelous things" from exotic locations. Forget the opening scene of "The Exorcist." Though the image has popular appeal and includes some truth, it is itself a cultural relic, more appropriate to the late 19th than the late 20th century discipline of archaeology. The discipline has its roots in that kind of relic collecting, but over the last century it has become a science, hamstrung like all social science by the subject-object dilemma (we are what we study), but a scholarly approach to testable propositions nonetheless.

To begin with, the results of archaeological research are always stories about people. They are stories that can range from the heart-wrenching death of an undernourished slave girl and her wealthy infant charge in the volcanic fury of Mount Vesuvius, to specific details of the long-term social and economic consequences of clearing lands for agriculture, draining swamps, irrigating deserts, mining and processing ores, and all the other human manipulations of the natural environment that have been going on for millennia. The first sort of story engages the public interest in our cultural heritage and helps people connect with other people, however distant and superficially different from ourselves. The second sort provides crucial studies of the long-term effects of human choices, a chance to anticipate and test the consequences of our own modern manipulations of the natural world.

But archaeologists don't dig up stories. The stories must be pieced together by painstaking observation and analysis and inferred from all the small clues that are preserved in the associations of materials, carefully documented and analyzed in terms of their mutual spatial relationships in a given site. They cannot be reconstructed from isolated objects, however beautiful, plucked away from the approaching blade of a bulldozer.

An archaeological site contains the record of human modifications to and influence on a natural environment. Aside from intentional buildings and monuments, a site is made up of abandoned things, usually broken bits and pieces left over from the whole range of human activities. People take most of their valuables along with them when they leave an area, so most archaeological sites amount to a collection of garbage. But, since people don't edit their garbage, archaeological collections provide a record of what people actually did at a site. Even if written records survive, the archaeological record often tells quite a different story from the recorded one. Recently, for example, Native Americans disagreed with the U.S. Army about what happened at the Little Big Horn. Archaeological investigation of the site of Custer's Last Stand proved that the Native Americans were correct (Fox, 1993).

The debris contained in archaeological sites, if properly excavated and recorded, includes clues about even unconscious behavior, about aspects of life that historians, accountants, and poets didn't think to mention, or may never have noticed. Both documents and arrow points were produced in the context of a culture that gave them meaning and determined their trajectory. As such, they are both kinds of artifact that cannot be fully understood out of their context. Archaeology, called the science of garbage or the investigation of material culture, is not really the study of things at all, but the study of the context of things: the study of culture.

### THE IMPORTANCE OF ARCHAEOLOGICAL CONTEXT: AN EXAMPLE

To illustrate the value of context, we might take a quick look at an important archaeological site from which the individual artifacts are quite humble—certainly there is little that would interest a collector of ancient art—and the remains too old to inspire close ancestral feelings in any particular modern group.

Franchthi Cave is a prehistoric site in southern Greece with a record of human occupation stretching from 35,000 to 5000 BP. Its deeply stratified, undisturbed deposits were excavated and recorded over a ten year period in the late 60s and early 70s (e.g., Jacobsen, 1976). The team of specialists responsible for the study is still working on the analyses that are slowly but surely revealing the stories of some of

humanities' earliest experiences with exploiting the Mediterranean environment. Superimposed strata, each representing debris from one in a series of episodes of occupation, are full of flints shaped into tools and the debris generated by that manufacturing process, of the bones of the animals hunted with those tools, the charcoal and ash from the fires used for cooking, light, and warmth.

The bones can be identified as coming from particular species of wild animals, ancestors of those we know today. We know the habitats those animals require, so their presence in the cave deposits aids in reconstructing the environment around the cave that the human occupants had to cope with. Carbon from an undisturbed stratum can be dated by C-14, and the resulting date applied to the entire contents of the undisturbed stratum. The sequence of dated strata and the different kinds and quantities of, e.g., animal bones in each stratum begin to provide a picture of different hunting practices over time, practices that are responses to the changing environment and availability of prey.

We see, for example, the percentages of wild horse, *Equus*, in the deepest levels gradually decreased, replaced by bovid and red deer in middle levels. By ca. 10,000 BP the large bovids disappeared, while red deer increased, along with rabbit, birds, fox, and other small mammals. The equids of the earliest deposits would have lived in open, rather dry conditions. The large bovids that replaced them imply that increases in rainfall and temperature provided large areas of open grazing. The later dominance of red deer points to an expansion of tree cover to provide the habitat the deer required, and a reduction in the open grazing that the bovids needed.

Under these conditions, less favorable for the large mammals, the cave's occupants turned more often to hunting smaller mammals and birds (Payne, 1973), and had to change their tool kits, hunting practices, and diets, among other things, accordingly. Marine shells brought into the cave over the same period and found in the same stratified deposits contribute to the picture, with information about changing shoreline environments for mollusks and thus, the resources available for exploitation (Schackleton, 1988). Pollen grains, carbonized seeds, even the structure of the soils within the cave contribute additional clues to the changing landscape and the human responses—and to understanding the extent to which the human exploitation of resources may have contributed to those changes.

One of the most thrilling and significant finds at Franchthi was a series of small flakes of obsidian, no more than several mm in maximum dimension (fig. 2). The flakes themselves are quite ordinary, comparable to hundreds of thousands of others from the site, except that these were found in securely stratified Mesolithic deposits datable to ca. 12,000 BP (Perlès, 1987). Since the raw material, obsidian, comes from the island of Milos in the Cyclades, which was then, as now, an island, those small flakes in their undisturbed Mesolithic context constituted evidence that people had been building boats and navigating the Aegean several millennia earlier than anyone had imagined (fig. 3). Long before they had become farmers or shepherds, before they had begun to build permanent structures or make pottery, these people were sailing across difficult waters to acquire a special mineral resource that was superior to those available locally at less "cost." We are still exploring the social, economic, and environmental impacts of that early seaborne trade in obsidian—things like its relationship to boat-building technology and deep-water fishing, for the first examples of large vertebrae from deep water fish occur in strata with the earliest obsidian flakes.

But none of this story from Franchthi, which already fills nine volumes and countless articles, would have been possible if even one person with a shovel, much less a bulldozer, had preceded the archaeologists and disturbed the deposits that had lain untouched for millennia. The clues for the story provided by the bones, stones, shells, pollens, soils, ash, etc.—what archaeologists refer to as "environmental evidence"—come entirely from their undisturbed, ancient relationship to each other and the cultural materials. Those relationships are what archaeologists refer to with the term "context," and it is the context alone that gives those materials explanatory power. Even if our imaginary shoveler had removed none of those materials, but had left the bones and shells and all the rest in a pile next to his hole, there would still be no way left to establish ancient relationships of any meaningful sort among the materials, to relate the mammal bones to human activity, to determine a sequence of any events related to them. Their new context, with new associations created by the shoveler, would all date and relate to the time and activity of his shoveling. That kind of disturbance, of digging into already-extant deposits and rearranging the associations, creating a new "disturbed" context for the contained materials, happened often enough in antiquity and is a constant source of frustration and potential error ("contamina-

tion") for which archaeologists must be on the lookout. Even the destruction of archaeological sites is nothing new.

Today's bulldozers and mechanized deep ploughs destroy much more quickly and much more thoroughly than was ever possible in the past. Archaeologists are developing survey techniques that can speed up analyses and distinguish the significant from the trivial. We do not expect or want to preserve every site. But in a world of increasing demands on dwindling resources, it is foolish to irretrievably destroy resources without first determining what they are and whether we can afford to lose them.

### ARCHAEOLOGY AS DEVELOPMENT

When archaeologists use their knowledge about how culture works and what motivates human behavior, some solutions appear. Not surprisingly, contract archaeologists—archaeologists who mitigate preservation laws with land development needs—have done the best job of promoting archaeology to the public. Because much contract archaeology in the U.S. is funded by the Federal Government with tax dollars, contract archaeology has always been public archaeology. And because contract archaeologists must explain the importance of site preservation to land developers, hydraulic engineers, highway departments, agribusiness specialists, and other people who often have a vested interest in destruction, they have learned to articulate the significance of archaeological resources in plain English and in terms consonant with the values of their audience.

Applied Anthropology, the discipline that focuses on the welfare of cultural groups, is becoming increasingly important to archaeologists. While striving to be sensitive to cultural values and local needs, applied anthropologists attempt to help people improve lives. The preservation of archaeological resources can be seen as a very basic aspect of cultural survival.

Economic development, which is often the motive for site-destroying projects can also become an important motive for site-protection. Archaeologists, and others who wish to see resources protected, are now involved in developing alternative economic uses of cultural resources. Modern preservationists agree that the key to resource protection is in giving local people a stake in preservation, just as entrepreneurial developers promote their projects to local communities by offering jobs and community benefits.

Tourism is an obvious source of revenue that supports the preservation of archaeological sites. Tourist dollars in local areas give shop keepers, hotel owners, tour agencies, and all their employees a good reason to want to keep sites safe, and tourist revenue can go to government or civic organizations to fund reconstruction, consolidation, and guards. Archaeological tourism has a distinct advantage over ecotourism, which by definition has limited growth-potential. If too many tourists come to see unspoiled nature, their needs and numbers spoil the nature they came to see, and they end up only seeing each other. Archaeological sites, on the other hand, can be consolidated and tourism directed to areas reconstructed to withstand many feet. Delicate specimens, once recorded, can be put under glass, visible to everyone without jeopardy to their future.

But unless people understand what they are seeing and are motivated to protect resources, tourism can stimulate the desire to collect. If local groups do not have a stake in the system, tourists simply provide a market for looted artifacts. For tourism to become a sustainable industry, two requirements must be met: education and infrastructure. These are straightforward concepts, but require some planning and commitment. They are not independent processes, both must proceed together for either to have the desired effect.

Education must be directed at both local people and visitors (Watkins and others, 1995). People are not changed by leaflets and access to politically correct video tapes. Educational procedures have to be designed to fit local needs and local values. Christian fundamentalist children (and adults) will tune out a lecture full of jargon delivered by a woman archaeologist who talks about human evolution and wears culturally inappropriate clothing. Businessmen from developing nations will laugh at lectures given by environmentalists and preservationists from countries that have gotten rich by raping their own environments and cultural resources. If we want people to protect cultural resources, we must convince them that protection is worthwhile in terms that make sense to them; we must respect local needs and values to situate preservation in a viable local context.

Local people may reasonably resent the idea that outsiders know more about their ancestors or their needs than they do themselves. Certainly it is often the case that archaeologists can learn as much from a local community as they can teach. This is an area where the knowledge and methods of applied anthropology are especially important. First, although some

communities are eager for educational opportunities brought by visiting scholars, other communities are more comfortable with the idea of sharing knowledge. It is important that archaeologists discover whether archaeological information can be attractive or useful to local people, without assuming that it has the same inherent value for everyone. But archaeologists should also be prepared for local people to have a tremendous interest in and hunger for the archaeology of their ancestors and their area. Because cultural values vary, it is important not to refuse the role of educator, which some communities would interpret as intellectual snobbery or secretiveness, but not to automatically presume to educate until such outreach is deemed appropriate and welcome.

This means that archaeologists must share and communicate with local people near their research sites. Sometimes ethnographic information is available, and archaeologists can prepare themselves with library research on local values and customs. Other times, ethnographic analysis remains to be done, and must precede any attempts to capitalize on local interest in the past.

The education of visitors requires the training of local guides and the development of accessible materials such as site pamphlets and picture books. These take some time, but an initial investment that allows locals to take over the training themselves can have a long-term pay-off. Revenue from a small investment in published materials can quickly be used to increase and improve what is available for purchase.

The key to the success of information sharing with locals and visitors, as well as the successful protection of archaeological resources, lies in the infrastructure of the local communities. Occasionally small towns and settlements are already organized around an active and popular local governing body, such as a town council or village head, but often such organizations have a complex history and limited power. Again, an applied anthropological approach is appropriate.

Within the development community there is now a fair amount of literature on involvement of local communities in preservation. Some dramatic success stories are told. In South America a community of professional looters stopped selling artifacts, built a local museum, and now entertain a large, wealth-generating tourist industry. This was the happy result of a long-term relationship between the community and the archaeologist who helped educate people and suggest alternatives. All archaeologists have the right and the responsibility to be preservationists, and must begin

to see themselves as consultants who help local groups form the infrastructure they need before local preservation strategies can succeed. People deserve the chance to find out what their alternatives are and how to create new ones; they must be encouraged to consider the consequences of particular choices, and allowed to make the choices for themselves. This is more time consuming than doing favors, but it is the only way to succeed in protecting resources.

Government support and development funds are needed to start this sort of development, but the goal must be to place the future and the profits into the hands of the people whose proximity gives them perpetual access and whose participation in the global economy through sustainable tourism is a direct corollary of their human rights (Pyburn and Wilk, 1995).

#### THE IMPORTANCE OF CULTURAL CONTEXT: ANOTHER EXAMPLE

The idealism of the foregoing may make the goals of archaeological preservation and sustainable development seem out of reach. In the real world such goals can not always be met, but they provide suitable aspirations. Details of a project in which Pyburn is currently involved may help to illustrate our point that local involvement is challenging, but viable and satisfying.

In the early 1980s, the Belizean village of Crooked Tree collaborated with the Massachusetts Audubon Society to create a bird sanctuary around the village. The residents of Crooked Tree have been using the natural resources around their village wisely for many generations. The sanctuary serves mainly to allow the village to protect these resources from increasingly aggressive outsiders, who have no ties to the village and therefore no motive to make careful use of village property. The sanctuary creates a destination for tourists, who arrive in a steady trickle to see Jabiru storks, spoonbills, snail kites, and thousands of other waterbirds that crowd the lagoon. A few modest businesses are set up to take advantage of these visitors by selling food or souvenirs, and three small lodges now serve meals and invite overnight stays.

To some extent, the picture of a sleepy traditional village populated by unusually attractive and friendly people that Crooked Tree presents to the outside world is an accurate one. What outsiders usually fail to understand, and development workers may fail to remember, is that a great deal of competitiveness and downright

feuding is traditional in villages in most cultural settings. Achieving and maintaining a consensus among people with long histories of friendship or rivalry is extremely complex, and requires a great deal of local expert knowledge of village relations. The Audubon sanctuary, for instance, is as much a result of competitiveness as cooperation: if guides or wardens allow poaching in the preserve, they may be accused of stealing the livelihood of other villagers. The group support of the sanctuary stems from a desire for a fair distribution of the proceeds generated by land that belongs to the village as a whole.

In 1990, Pyburn was invited by the village of Crooked Tree to come see some "mounds" which they called "Indian Hill." There was good reason to believe that archaeological features in an area as accessible as Crooked Tree would have been looted. Pyburn almost passed up the opportunity to work at the site because she was sure that if it was known to local people, it was being mined for salable treasure and must be about played out if they were ready to bring in an archaeologist. Looting is as big a business in Belize as it now is all over the world.

To make a long story short, Pyburn was wrong. Although villagers had planted a few crops in the area and had run cows over the site occasionally, the large central precinct of the site they showed her was in excellent condition. One looter's trench had been dug about ten years earlier, but the villagers had caught the culprits and thrown them out. Pyburn made a preliminary map of the site center, and with agreement from the ethnically Creole villagers, dubbed the site Chau Hiix, a Maya word meaning jaguarundi. A new name was needed, since there are several Belizean sites already known as "Indian Hill," and the villagers felt a Maya name was appropriate and more likely to appeal to tourists.

Pyburn erred in assuming that because the site was pristine (and it was, with artifacts in situ all over the ground), the villagers didn't know it was an archaeological site. In reality, most villagers did know, but extended their protective group-ownership attitude toward it and had kept quiet about it for many years. It was months before Pyburn found out that the mild and quiet village chairman, Rudy Crawford, not only knew exactly what Chau Hiix was, but had decided with other members of the village council that the village could no longer protect it adequately. Crawford had gone to Belize's capital city, Belmopan, and spent a week in the library studying Belizean law and Maya history. He found out the village needed a Ph.D. to

carry out the research for the site to get government protection, so he was looking for one when Pyburn showed up in the neighborhood. Unbeknownst to her, Pyburn was being interviewed for two months before she was invited to see the "mounds."

Pyburn's next mistake was in thinking that private citizens in Belize would not care enough about archaeology in their country to come up with protection for the site. The surprising location of Chau Hiix was the immediately compelling reason to investigate, but to get funding Pyburn would have to publish the location. Obviously, this would be like publishing a treasure map for looters with an "X" on Chau Hiix: "Dig Here." And the village of Crooked Tree could not be left to fend for itself: a few years ago, it had taken the Guatemalan army to rid the site of Rio Azul of armed looters. Crooked Tree was looking to Pyburn for help; she could hardly subject them to a wave of armed bandits. But she had no idea how to get money to protect the site. NSF, National Geographic, and the PEW Charitable Trust were not interested. Finally her story was overheard by a tour guide with a Belizean father, a business man who wanted to do something for Belize. He gave \$10,000 to protect Chau Hiix for two years; enough time to get grant money started.

The Chau Hiix Project has been going for seven years now, and it is going well. The U.S. National Science Foundation has funded the scientific research for five seasons and Crooked Tree continues to be enthusiastic about the jobs the project brings and the increase in visitors to the village. But continuous communication and interaction with the village leaders and teachers has proved to be crucial to the program's success (fig. 4).

For example, after four years new people, who knew nothing about the original arrangements with the Chau Hiix Project came into the village. Some villagers were unsure of Belizean laws about antiquities (only a Ph.D. can head a project and dig in Belize, only a handful of Belizeans have Ph.D.s), and thought perhaps Pyburn was a foreigner coming in to steal treasure, having paid off the village chairman. Some people also thought Belizeans might be available to run the project.

Solving the problems that might have arisen in Crooked Tree turned out to be simply handled by continued open communication with the village. Pyburn asked the government of Belize to send a representative to explain to skeptics that Pyburn's presence was required by law and that Pyburn was, indeed, answerable to Belizean law. The archaeological commissioner himself took the time to come, and allayed

fears and helped Pyburn reestablish confidence in the Chau Hiix Project.

Pyburn has gotten two grants to benefit the village directly with money for site protection. She advertises Chau Hiix as a tourist destination and gives tours to all visitors who arrive during excavations at no charge. Special tours of the site are arranged for Crooked Tree residents, usually guided by Belizeans who work for the project.

Pyburn has been working in Belize for 15 years and has supported government educational programs as well as tourist development at the local level. Consequently, Belizean government archaeologists have reason to believe that Pyburn has a commitment to educational outreach and resource preservation, as well as to her scientific research and the advancement of her own career. Earning and maintaining the trust of both the government and the people of Crooked Tree has taken time away from Pyburn's academic pursuits, but the time has been well spent. The future of Chau Hiix now seems reasonably secure, and the economic opportunities in Crooked Tree seem poised to expand without undue damage to the local culture.

There is no doubt that the Chau Hiix Project has benefited from an unusually positive situation. Crooked Tree has educated, intelligent, charismatic leadership with far-sighted goals. The Belize government has a fair and generous policy toward foreign archaeologists. Nevertheless, all these advantages might have been lost had the Chau Hiix Project not been designed with the welfare of Belizeans and their archaeological resources as a priority (fig. 5).

Ecotourism and community development are not panaceas for the needs of all sites and communities, but they can offer real help. The Chau Hiix Project shows clearly that time and education, coupled with economic development and patience have the potential to pay off, where short term solutions, legal challenges, and bribes will not. An informed community can make better decisions about the use of its resources, both ecological and cultural. Although archaeologists and development workers will often be frustrated, the success of healthy development of any kind requires long-term commitment to solving economic problems from within the cultural system.

#### CONCLUSIONS: ARCHAEOLOGY IN THE ACTIVE VOICE

There will always be losses. The Chinese government has clearly decided to sacrifice the past for

the future. Some native communities have been so damaged and enraged by outside interference and exploitation that no amount or type of assistance or encouragement can make archaeological research or preservation tenable to them. Some people will always prefer to get rich now rather than leave something for our children. But many communities, like Crooked Tree, would love to have an archaeological project in their midst and would jump at the chance to better protect, learn about, and benefit from their archaeological heritage. Archaeologists are finding creative ways to make the best of these good situations, where archaeology can work with economic development rather than combat it. As archaeology achieves more success and more visibility as a source of knowledge, respect, and opportunity for local people, our task is certain to become easier. The world's cultural heritage is much too large a burden and too great a responsibility to be left to the small tribe of archaeologists.

#### REFERENCES

- Bahn, P. G., 1995, Portuguese scandal: *Archaeology* v. 48, p. 18-19.
- Childs-Johnson, E., Cohen J. L., and Sullivan L. R., 1996, Race against time: *Archaeology* v. 49 p. 38-43.
- Dyson, S. L., 1997, Archaeology be damned: *Archaeology* v. 50, p. 6.
- Elia, R. J., 1992, Houston company penalized: *Archaeology* v. 43, p. 25-26.
- Fox, R. A., Jr., 1993, *Archaeology, History and Custer's Last Battle: The Little Bighorn Reexamined*. University of Oklahoma Press, Norman.
- Harrington, S. P. M., 1994, Bones and bureaucrats. New York's great cemetery imbroglio: *Archaeology* v. 47, p. 28-38.
- Jacobsen, T. W., 1976, 17,000 Years of Greek prehistory: *Scientific American* v. 234, n. 6, p. 76-87.
- Lansaw, P., 1984, The wood quay question: *Archaeology* v. 37, p. 80.
- McPherson, C. G., 1992, Tonto mounds surprise: *Archaeology* v. 43, p. 16-17.
- Payne, S., 1973, Animal bones, in Jacobsen, Excavation in the Franchthi Cave, 1969-1971, Part I. *Hesperia* v. 42, p. 59-66.
- Perlès, C., 1987, *Les industries lithiques taillées de Franchthi (Argolide, Grèce)*. Tome I. Présentation générale et industries paléolithiques. Excavations at Franchthi Cave, Greece, Fascicle 3. Indiana University Press, Indianapolis and Bloomington.
- Pyburn, K. A. and Wilk, R. R., 1995, Responsible Archaeology is applied anthropology, in Mark J. Lynott and Alison Wylie, *Ethics in American Archaeology: Challenges for the 1990s*, p. 71-76. Society for American Archaeology, Special Report. Washington, D.C.
- Schendzielorz, U., 1997, Pakistani petroglyphs: *Archaeology* v. 50, p. 25.
- Shackleton, J. C., 1988, Marine Molluscan Remains from Franchthi Cave. Excavations at Franchthi Cave, Greece, Fascicle 4. Indiana University Press, Indianapolis and Bloomington.
- Spence, J., 1997, A Flood of Troubles. *The New York Times Magazine*, January 5, Section 6 p. 34-39.

002677

- Topping, A. R., 1997, Cracking the Wall of Silence. The New York Times Magazine, January 5, Section 6 p. 40.
- Trigger, B. G., 1988, A History of Archaeological Thought. Cambridge University Press, Cambridge.
- Tyler, Patrick E. 1996 Chinese Dam's Inexorable Future Dooms Rich Past, The New York Times, Sunday October 6 p. 1.
- Watkins, J., Goldstein L., Vitelli K., and Jenkins L., 1994, Accountability: responsibilities of archaeologists and other interests, *in* Mark J. Lynott and Alison Wylie, Ethics in American Archaeology: Challenges for the 1990s, p. 33-37. Society for American Archaeology, Special Report. Washington, D.C.

002678

PERSONALIZE  
YOUR APB  
HOME PAGE  
Click Here

make love in a new place  
CLICK HERE



- Crime, Justice, Safety: 8 Channels -- 26 Programs
- ▶ NEWSCENTER
  - ▶ SAFETY CENTER
  - ▶ CRIME SOLVERS
  - ▶ VIDEO CENTER
  - ▶ CRIMINAL JUSTICE SYSTEM
  - ▶ CRIMINAL JUSTICE PROFESSIONALS
  - ▶ RESOURCE CENTER
  - ▶ MEDIA AND ENTERTAINMENT

Breaking News Missing Internet Crime Can You Believe This? Major Cases In Depth

Free E-mail Alert Live Police Scanners Forums Search

My APB About APB Contact APB Newsletters Downloads

APBNEWS.COM > NEWSCENTER > BREAKING NEWS > STORY

> E-MAIL THIS STORY TO A FRIEND E-MAIL THE EDITOR TALK ABOUT IT

## Woman Charged in Mass. Grave Robberies

Sold Stolen Cemetery Urns to Antique Dealers, Cops Say

Sept. 12, 2000

By Frances Ann Burns

BROCKTON, Mass. (APBnews.com) -- A woman has been charged with stealing urns and at least one statue of a praying angel from graveyards and selling them to antique stores.

**Related Story:**

[Tiffany Expert Sentenced in Grave Robberies](#)

Katherine Spear, 42, was scheduled to appear in Plymouth County District Court today. She was arrested Tuesday night in Marshfield.

Spear, who used her parents' home in Scituate as an address, may have hit dozens of cemeteries in the South Shore suburbs of Boston and towns west of the city, said a spokeswoman for the East Bridgewater Police Department. Investigators tracked down stolen items by visiting antique dealers in the area.

**Victims notice missing items**

The investigation began when two cemeteries in East Bridgewater reported seeing graves that had been disturbed. Some thefts were reported by victims, who found items missing when they tended relatives' graves.

Spears would take flowers out of the urns, and if she saw someone, would pretend to be planting them, police said.

Spear allegedly sold urns for \$30 each to dealers who might be able to resell them for 10 times that amount. Police also found the praying angel in an antique store but have not yet located its rightful owner.

In recent years, cemeteries have become popular targets for thieves because they are easy to get into, generally lightly trafficked and contain decorative items that are sometimes valuable antiques.

Spear has been convicted of similar crimes in the past, police said.

Frances Ann Burns is an APBnews.com staff writer ([Frances.Burns@APBnews.com](mailto:Frances.Burns@APBnews.com)).



APB Services

**FREE** daily e-mail alert

APB Feature

**Sex Offender Registry**

> APB BREAKING NEWS

[Hackers Break In to Microsoft Computer Network](#)

[Bones May Be Those of Fugitive Cop Killer](#)

[Driving Teacher Convicted in Bribe Scheme](#)

[Congress OKs Clearinghouse for Missing Adults](#)

[Skinhead Convicted in Girl's Murder](#)

[School Violence on Decline, Feds Report](#)

[Adult Courts Easy on Juveniles, Study Says](#)

002679