



SOCIETY FOR AMERICAN ARCHAEOLOGY

March 8, 2001

The Honorable Diana E. Murphy, Chair
United States Sentencing Commission
One Columbus Circle, NE, Suite 2-500
Washington, DC 20002-7727

Dear Judge Murphy:

Last December, I wrote to you on behalf of the Society for American Archaeology (SAA) regarding the December 7, 2000 letter from Paul M. Warner, United States Attorney for the District of Utah to Laird Kirkpatrick, Commissioner Ex-Officio of the United States Sentencing Commission. (A copy of my earlier letter is attached.) The letter from Mr. Warner to Mr. Laird requests the establishment of specific sentencing guidelines for violations of the Archaeological Resources Protection Act of 1979 (16 USC 470aa-mm) (ARPA), the criminal provisions (18 USC 1170) of the Native American Graves Protection and Repatriation Act of 1990 (25 USC 3001-3013) (NAGPRA), and other statutes protecting our nation's heritage resources.

In response to the United States Sentencing Commission's Request for Public Comment (Federal Register, January 26, 2001, Volume 66, Number 18), the SAA is again urging the Sentencing Commission to establish specific sentencing guidelines for the laws protecting our nation's heritage resources. It is the position of the SAA that the Sentencing Guidelines are currently wholly inadequate to properly assess the nature, severity and resultant harm of offenses affecting the nation's archaeological resources and other cultural heritage property. In addition to specifically addressing these offenses in the Sentencing Guidelines, SAA strongly supports sentence enhancements for archaeological and other heritage offenses which involve the following aggravating factors or circumstances:

- 1) human remains;
- 2) pecuniary gain or commercial motivation;
- 3) more than minimal planning, rather than opportunistic conduct;
- 4) using sophisticated means, equipment, or techniques to commit the offense; and
- 5) discharging, brandishing, or possessing a dangerous weapon, including a firearm (varying levels of enhancement, depending on the nature of the conduct).

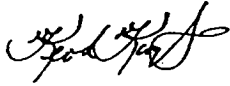
In addition to these aggravating factors or circumstances, it is of the utmost importance that the severity of the offense be gauged by the extent of the loss attributable to the ARPA or other cultural heritage property offense. For ARPA offenses, the SAA urges the Sentencing Commission to adopt the ARPA statutory and regulatory scheme by assessing loss in terms archaeological value or commercial value, whichever is greater, plus the cost of restoration and repair. This method of determining loss in an ARPA case under the existing Guidelines (utilizing the analogous guidelines 2B1.3 and 2B1.1) was upheld by the Tenth Circuit Court of Appeals in United States v. Shumway, 112 F.3d 1413, 1424-26 (10th Cir. 1997), the only court of appeals to address this issue. For cultural heritage property offenses not involving archaeological resources (a small minority of offenses to be covered by this new specific guideline), there should be a cross-reference to the loss provisions under the general property guideline (2B1.1).

The current lack of effective sentencing for these types of cases leaves the heritage resources of the United States poorly protected against the devastating effects of looting and vandalism. A new specific sentencing guideline covering these enhancements and loss determinations for these extremely serious

rectify this situation and help ensure the preservation of our heritage resources for future generations.

Thank you for your consideration of our position on this important matter. If SAA can be of any assistance to you in the effort to develop sentencing guidelines, please do not hesitate to contact me.

Sincerely,



Keith W. Kintigh
President

cc:

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SOCIETY FOR AMERICAN ARCHAEOLOGY

December 7, 2000

The Honorable Diana E. Murphy, Chair
United States Sentencing Commission
Suite 2-500, South Lobby
One Columbus Circle, NE
Washington, DC 20002

Dear Judge Murphy:

The Society for American Archaeology (SAA) has received a copy of the December 7, 2000 letter from Paul M. Warner, United States Attorney for the District of Utah to Laird Kirkpatrick, Commissioner Ex-Officio of the United States Sentencing Commission. This letter requests the establishment of sentencing guidelines for violations of the Archaeological Resources Protection Act of 1979 (16 USC 470aa-mm; ARPA), the criminal provisions (18 USC 1170) of the Native American Graves Protection and Repatriation Act of 1990 (25 USC 3001-3013; NAGPRA), and other statutes protecting our nation's heritage resources.

With more than 6600 members, the Society for American Archaeology is the leading professional organization of archaeologists working in the United States. Because the preservation of our nation's archaeological heritage has always been one of the Society's central objectives, SAA played an important role in the enactment of both ARPA and NAGPRA. The Society strongly supports the effective use of these and other statutes to protect heritage resources from the devastating and irreparable effects of looting and vandalism. As is noted in Mr. Warner's letter, the lack of appropriate sentencing guidelines has seriously weakened criminal prosecutions of looters and vandals. The unfortunate effect is exemplified by what we consider to be the overly lenient sentence imposed in the recent United States v. Hunter looting case in Utah.

On behalf of the Society for American Archaeology, I urge you to support the establishment of sentencing guidelines for the laws protecting our nation's heritage resources as requested in Mr. Warner's letter. These resources are the irreplaceable cultural heritage of the United States and must be protected from the damage and destruction resulting from the illegal acts of the selfish and thoughtless minority who engage in looting and vandalism. Without effective sentencing of violators, the protection afforded by the law is seriously impaired. Appropriate sentencing guidelines would be a major asset to law enforcement efforts directed to the protection of our irreplaceable cultural heritage for future generations of Americans.

Thank you for your consideration of our position on this important matter. If SAA can be of any assistance to you in the effort to develop sentencing guidelines, please do not hesitate to contact me.

Sincerely,

Keith W. Kintigh
President

cc:
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