

Archaeological Institute of America

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March 23, 2006

The Honorable Ricardo H. Hinojosa
Chair, United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500
Washington, DC 20002-8002

Dear Judge Hinojosa,

As President of the Archaeological Institute of America (AIA), I am writing to comment on the proposed amendments to Section 2B1.5 of the United States Sentencing Guidelines. The Archaeological Institute of America is the oldest and largest organization in the United States devoted to archaeology and the preservation of the human record. Founded in 1889 and chartered by an act of Congress in 1906, the AIA's 8,000 members include not only professional archaeologists and students but a majority of members from all walks of life united by a passion for archaeology and what it has to tell us about our shared human past. For over a century the AIA has cultivated the interests of and educated the American public about the past.

Of particular concern to both the professional and avocational members of the AIA is the preservation of archaeological sites, historic monuments and museum collections, which form the basis for our understanding and knowledge of the past. The AIA today leads the debate concerning the trade in illicit antiquities. It was one of the first organizations in the United States to call for adherence to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property and to incorporate UNESCO principles into its Code of Ethics. The AIA has been instrumental in the enactment of United States cultural heritage legislation from the Antiquities Act of 1906 to the Convention on Cultural Property Implementation Act of 1983 and the Emergency Protection for Iraqi Cultural Antiquities Act of 2004.

The AIA submitted comments to the Sentencing Commission in support of the original Cultural Heritage Resource Crimes Sentencing Guideline when it was proposed in 2002. Today I write in support of the new proposed amendment, which would refer a new offense, created under the Veterans' Memorial Recognition and Preservation Act of 2003, 18 U.S.C. § 1369, to § 2B1.5 (Theft of, Damage to, or Destruction of Cultural Heritage Resources). The AIA supports the addition of Veterans' Memorials to the list of culturally significant places in § 2B1.5(b)(2). The proposed amendment also raises the question of whether the enhancement for damage or destruction to a Veterans' Memorial should be raised to four or six levels instead of the current two-level enhancement provided under § 2B1.5(b)(2). The AIA strongly supports an increase in the amount of enhancement to four or six levels for all the offense characteristics listed in §

2B1.5(b)(2) (offenses involving specially protected places) and § 2B1.5(b)(3) (offenses involving specially protected cultural items). This type of uniform increase in the enhancement will send an even clearer message to those who loot, deface or destroy cultural sites and monuments that the United States government is serious about protecting our cultural heritage for future generations of Americans. However, the AIA does not support an increase in the enhancement level if it applies only to Veterans' Memorials, but only if it applies to all the special offense characteristics listed in § 2B1.5(b)(2) and § 2B1.5(b)(3).

Particularly with respect to the characteristics listed in § 2B1.5(b)(2), there seems to be no policy justification for treating one type of protected location differently from other types of protected locations. For example, § 2B1.5(b)(2) currently lists museums and sites listed on the World Heritage List. There is no apparent reason to subject an offense involving any of these different locations to different levels of punishment. The AIA has a particular interest in the sentence to be given to those involved in the trafficking of cultural items stolen from museums located both in the United States and in other countries. For example, the looting of the Iraq Museum in Baghdad in April 2003 and the world's reaction to that event illustrate the deep concern of the American public as well as that of museum professionals and archaeologists for the losses suffered from these types of thefts. The AIA feels strongly that all these types of cultural losses should be treated equally under the Cultural Heritage Resource Crimes Sentencing Guideline and none should be subjected to disparate or inconsistent treatment.

Congress has demarcated all of the cultural places and types of cultural resources listed in the special offense characteristics in § 2B1.5(b)(2) and § 2B1.5(b)(3) for heightened protection through specific statutory treatment. Therefore, the Sentencing Guidelines should also treat them in a uniform and consistent manner, particularly as one of the goals of the Sentencing Guidelines is to achieve consistency in the punishments given to similar crimes. In the past, when the sentence was determined primarily by market value, defendants involved in the trafficking of looted and stolen archaeological artifacts might receive a different sentence depending on whether the artifact involved was a Classical sculpture from Italy, a ceramic vessel from Peru or a Native American artifact from the Southwest, even though the cultural harm inflicted was comparable. The AIA would not want to see this type of inconsistency reintroduced to the Cultural Heritage Resource Crimes Sentencing Guideline through the proposed amendment. As the AIA commented in its 2002 letter to the Sentencing Commission, "the places and types of objects included have all been recognized by federal law, international agencies, or international conventions as having particular value to the cultural history of humankind."

An increase in the offense level enhancements will raise again the issue of the statutorily imposed maximum sentences contained in the Archaeological Resources Protection Act (ARPA), the Native American Graves Protection and Repatriation Act and the Theft from Indian Tribal Organizations act. This issue was addressed in the Sentencing Commission's statement on Reason for Amendment and in a letter from the former Chair of the Sentencing Commission, Judge Diana Murphy, to Congress at the time the Cultural Heritage Resource Crimes Sentencing Guideline was submitted to Congress in 2002. These statutory maxima can prevent imposition of the full sentence permitted under the Sentencing Guideline and therefore help to defeat the goals of the Guideline to achieve more meaningful punishment of cultural heritage resource crimes.

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The AIA has a particular interest in the sentence that can be imposed for violation of ARPA. While the primary goal of ARPA is the protection of archaeological sites located on federally owned and controlled lands, the trafficking provision of ARPA also pertains to archaeological resources that are stolen in other countries and brought to the United States. This section of ARPA has been applied, for example, to prosecutions involving manuscripts stolen from the Vatican library, ancient Etruscan ceramics looted from archaeological sites in Italy, and ancient Inca and Huari ceramics and textiles looted from Peru. The statutory maximum, however, can limit unreasonably the sentence that can be given in similar cases that may be prosecuted in the future. The AIA therefore urges you to suggest again to Congress that it take up the issue of changing the statutory maximum sentences provided in ARPA and the other affected legislation.

I thank you for this opportunity to provide comments on the proposed changes in the Sentencing Guideline for Cultural Heritage Resource Crimes. If any additional explanation or comments are requested, please feel free to contact me.

Sincerely,

Jane C. Waldbaum
President, Archaeological Institute of America
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