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'OPERATION CERBERUS ACTION' AND THE 'FOUR CORNERS' PROSECUTION

A. INTRODUCTION

For this special edition of the journal, contributions have been sought from disciplines other than criminology, and in this article a lawyer examines a recent prosecution brought against archaeological looters and traffickers for breaches of the Archaeological Resources Protection Act 1979 (ARPA) and theft of federal or Indian property in the 'Four Corners'[1] area of the in the United States (US) where there is a long history of excavation of sites by local people, who as will be explained, have come to consider their activities to be semi-legitimate. The prosecution followed a joint federal undercover operation by the Federal Bureau of Investigation (FBI) and the Bureau of Land Management (BLM) named 'Operation Cerberus Action' (OCA). Section 6 of ARPA makes it an offence without a permit to excavate, damage or deface sites on federal or Indian[2] lands, to remove archaeological resources from them, or to sell, purchase, exchange, transport, or receive illegally removed items.[3] Section 3 defines an archaeological resource as "any material remains of past human life or activities which are of archaeological interest" and which are at least 100 years old.[4] Section 6 (d) sets out the maximum penalties for these offences, which currently allow for fines of up to $20,000 and imprisonment for not more than two years, or both, where the commercial or archaeological value and the costs of restoration or repair of the resources affected by the offence exceed $500 (with lower penalties where these are assessed at less than $500).

[1] The 'Four Corners' region of the US is the area on the borders of the States of Utah, Colorado, Arizona and New Mexico.

[2] Although the accepted description is now 'Native American', many such people would describe themselves as 'Indian'. The term 'Indian lands' is used within ARPA to describe land owned by tribes, and many tribes employ an official called the 'Indian' or 'Tribal' Historic Preservation Officer. This article will therefore use the term Indian, rather than Native American, where this is appropriate.

[3] Note that under ARPA it is not an offence to remove artefacts from privately owned land, or to traffic in them.

[4] As all archaeological resources are declared to be federal or Indian property under the Act, offenders may also be charged with theft of federal or Indian property.

Ulph has argued that the "best way of deterring theft and subsequent dealings in stolen objects is to prosecute everyone who is knowingly involved: the thieves, their accomplices, dealers and the ultimate purchasers" (2011:40). In the Four Corners case the federal authorities brought the prosecution to send a clear message that looting and trafficking archaeological artefacts were offences which would be taken seriously, represented an affront to the religion and culture of Native American peoples and were a threat to archaeological resources of importance for all Americans. For this they are to be applauded, and the prosecution was a 'success' in that all of those who stood trial were convicted. With their case-based approach lawyers tend to 'argue by anecdote' and this case is something of a cautionary tale, showing how even a successful and well-intended prosecution can end up as a hostage to fortune. Some unpredictable events and a degree of mismanagement seem to have come together, with the result that rather than deterring future looting in the area, many of those involved in the illegal excavation of sites may feel themselves all the more justified in continuing their activities.

B. SOME BACKGROUND ON LOOTING[5] IN THE US AND OPERATION CERBERUS ACTION

Some artefacts, particularly those lying on the surface of the land, may be taken by individuals as 'souvenirs', but in the US (as in many other countries) the real problem is the excavation of sites (sometimes by mechanical diggers rather than by shovel or trowel) and removal of artefacts by people with specialized knowledge, seeking specific resources, with the intention of supplying collectors or dealers (Swaine 2008). Dealers and collectors who create a 'no questions asked' market for artefacts will often be acting in concert with individuals who are willing to break the law to supply those artefacts (Mackey 2006). Almost all looted artefacts disappear into private collections and even if

[5] In this article the term 'looting' is used to describe damage to archaeological sites and Native American burial sites and more particularly the unlawful removal of artefacts from them. It is accepted that the terms 'looter' and 'looting' cannot be regarded as a neutral description of these activities but they denote a useful and commonly used shorthand description. In the US, and in particular the Four Corners region with which this article will be concerned, many of those who remove and sell such artefacts refer to themselves as 'pot-hunters', a term which will also be used in this article to refer to the activities of those who remove artefacts when their perceptions of the activities are being considered.

subsequently recovered following a prosecution, the scientific information which could have been derived from a professional excavation will be lost as the objects will have been removed from their 'context' (i.e. from the stratigraphy of the site and relationship to other objects on the site). Looting is also expensive in terms of the costs of restoration or repair of the site: for example, when a remote site in Black Mountains, Wyoming was hit by looters in 2003, they removed as much soil as had been removed by the professional excavation of the site in 10 years, and the costs of reparation and repairs for the site were estimated at $1.9 million (Culture without Context, 2003). However looting may also be very profitable. The commercial value of artefacts removed from the Wyoming site was estimated at $4.8 million (Culture without Context, 2003). Loomis (2010) cites prices at an auction of American Indian artefacts held in San Francisco shortly after the OCA arrests: $2,800 for a set of Apache cloth dancing masks; $18,000 for a Pueblo shield; and a record price of $280,000 for a Hopi jar. In addition looting may have spiritual and cultural impacts: where Native American burial sites have been disturbed this can cause distress to modern Indian tribe members, who have profound religious and cultural beliefs that the dead should not be disturbed. Many of the sites in the Four Corners region are of the Ancestral Puebloan (Anasazi) Indian culture, which dates from about 800-1200 AD. Although most archaeologists consider this to have been a culture which predates that of the Navajo and the Hopi,[6] traditional religious and cultural beliefs make no such distinction: Two Bears quotes the Navajo Begay as saying, "Navajo people believe they have a sacred duty to protect archaeological sites, human remains, burial items, and cultural items found on sites. Navajo traditional history incorporates all aspects of Navajoland, and many traditional people believe that non-Navajo versions of history do not contain as much information about history as their own." (2006:381).

Despite the introduction of the criminal offences under ARPA, looting of archaeological sites remains a wide scale problem in the US. Data on breaches of ARPA collected by the US Department of the Interior shows an average of 840 incidents of looting each year over the first decade of the 21st century on land owned by the National Park Service (NPS), the BLM, the Fish and Wildlife Service

[6] These tribes are the most populous in the region where the Four Corners prosecution was brought, with the Navajo being in the majority.

(FWS), and the Forest Service (USFS), the four agencies which manage nearly all the public lands in the US (Swaine 2007). However it is unlikely that these figures give a full picture of the extent of looting and damage. Swaine notes that for a looting incident to become a recorded statistic, the looting or vandalism must be discovered, it must be documented and the documentation made at the local level must be found and forwarded to the Secretary of the Interior by the federal land management agency (2007:204). Carnett (1991) also argues that these statistics are unreliable, and that their completeness may depend on the interest and expertise of the person who has to fill out the necessary forms. McAllister considers that looting remains as insidious and widespread a problem as it was when ARPA became law (Wills 2010).

Despite the high incidence of looting, the number of prosecutions brought is low: Swaine suggests that the clear-up rate for reported offences under ARPA varies from the lowest clear up rate of 6% at the BLM to the highest rate of 26% at the FWS (2007: 205-207). Archaeological sites on federal land are 'policed' by rangers from the NPS, the USFS, the FWS, the BLM and the Indian tribes who face many problems in enforcing the Act. First, the rangers are each responsible for enormous areas of land. In 1987 the General Accounting Office reported that in the Four Corners area a total of 271 people were employed by the various agencies which enforce ARPA, and that each had to cover some 370,000 acres (GAO1987). Schiffman (2005) quotes a former enforcement officer at the BLM, as saying "We didn't exactly have them surrounded." [7] Today, cuts in the funding of the federal land management agencies mean that on average the BLM has one ranger on patrol for approximately every million acres of what is difficult terrain, often accessible only by ATV or on horseback (Wills 2010). These rangers enforce wildlife conservation law as well as ARPA, and spend a large percentage of their time managing visitors to the sites, dealing with illegal camping, off road driving and drunkenness as well as attending meetings, writing reports and drawing up budgets, leaving little time for enforcement work (Swaine 2007, 2008). Even where a suspect is identified, and a search of a suspect's premises leads to the discovery of artefacts, it will be essential to prove that the objects fall

[7] Many of the direct quotations in this article are taken from newspaper and magazine articles. For these page numbers are not available, but instead a link to where these sources may be accessed on-line is included in the references.

within the definition of 'archaeological resources' under the Act, and that the artefacts were removed from federal or Indian land. Swaine (2007:214) explains some of the difficulties: a typical looting incident is not witnessed, linking a suspect to the offence requires evidence such as cigarette butts with DNA, soil samples, foot prints and tyre marks, tool marks and analysis of seized documents; proving an artefact is an 'archaeological resource' may require the skills of specialist archaeologists or anthropologists, and unlike police departments, rangers may not have access to laboratories capable of dealing with this kind of evidence. The difficulties in securing sufficient evidence mean that the prosecution declines to take a third of reported breaches of ARPA to trial (Palmer 2007). As so few incidents are likely to result in what they call "viable prosecutions", Canaday and Swaine have argued that is there is a need "to aggressively pursue those cases that can be solved" (2005:30), as they consider a well-publicised conviction has the potential to deter others from committing similar offences and may be a good use of limited resources, giving what Swaine calls the "biggest bang for our buck" (2008:101).

OCA was concerned with looting of archaeological sites in the state of Utah, and subsequent trafficking of objects from those sites in breach of the provisions of ARPA. These sites came to the attention of American archaeologists in the late 19th century, when the opening of the interior of the country to European settlers led to reports of findings of magnificent ruins, including the magnificent cliff dwellings at Mesa Verde in Colorado (Lee 2006). Public interest in 'Indian remains' was also fostered at this time: by the publication in 1879 of an illustrated book describing these remains and the comprehensive display of American Indian artefacts at the World's Columbian Exposition in 1893 (Lee 1970). This led to an a demand for authentic artefacts from "collectors and dealers, exhibitors and curators, teachers and students" which together with what Lee calls the "native curiosity of cowboys, ranchers and travellers" would lead to many sites being systematically searched for artefacts to meet this demand (2006:22). When the University of Utah Museum started its own exhibit of Indian artefacts, the newly appointed director of the museum considered himself inexperienced in the practice of archaeology, and instead paid local people $2 for each pot collected, enabling him to assemble a museum collection of over 2,000 pots in five years (Woodbury 1993:405). Those

collecting articles for sale to museums and private collectors came to regard themselves rather than the professional archaeologists as the experts, with a perceived right to dig for artefacts which continues to be held by many in the area to this day (Goddard 2009). Even after the Antiquities Act 1906 made it a criminal offence to excavate, injure, or destroy historic or prehistoric[8] ruins designated as National Monuments under the Act, what had come to be called 'pot-hunting' continued to be a profitable occupation in the Four Corners area. In addition, the likelihood of prosecution under the Antiquities Act was low and provided little deterrent: between 1906 and 1972 there was a total of ten convictions for offences under the Act in the entire US (Hutt, Jones and McAllister 1992), and the maximum penalty of a $500 fine was small compared to the prices which could be obtained for artefacts. It became apparent that stronger protective legislation was needed, and the Archaeological Resources Protection Act (ARPA) became law in 1979.

Most of those prosecuted following OCA came from the small town of Blanding[9] in San Juan County in Utah, and all were from the Four Corners region of the US. San Juan County is predominantly Mormon, has a proud tradition of self-sufficiency, is conservative both socially and politically, and many local people are mistrustful of federal government authority. The introduction of ARPA was strongly resented in the Four Corners region, in particular the idea that all archaeological resources on federal land were now to be the province solely of professional archaeologists, as the only persons allowed to apply for a permit to excavate under ARPA. In January 1985 a community meeting in Blanding reached three conclusions which reflected the by now deep-seated attitudes of people in the area: that there was a need for a framework under which 'average people' could excavate and collect from federal land; that pot-hunting was 'harmless' and should be decriminalised, and that any excavation permit under ARPA should require objects to be retained in the same area as the objects had been found (Goddard 2009:179-180). Goddard cites two newspaper editorials published in a local

[8] In the American context 'prehistoric' refers to the period before European settlers and written records – that is to before AD1500.

[9] Which has a population of about 3,300.

newspaper in the months following this meeting, which reflected the popular conception of local pothunters as the experts. The first said that the archaeologists were wrong to fear that continued pot-hunting would mean that so many sites would be lost over the next few years, or that they would be "without a job" but that they would "have to learn as much as the pothunters know in order to understand this." The second decried the fact that the legislators had been misled by what it called "inexperienced plunderers (aka archaeologists)" and that, but for the pothunters who had carefully located and preserved the artefacts they found, little would ever have been known about the Anasazi culture (2011:180). In 1986 armed agents from several federal agencies acting under ARPA raided 16 homes in San Juan County, seizing more than 300 objects. This followed an undercover operation during which the informant had persuaded local pothunters to give information about unlawful trafficking on the pretext that he was trying to bring about the arrest of dealers who came from outside the community. Several of the homes searched belonged to people who had collaborated with the informant. (Goddard 2009:179). Despite the fact that no charges were ever brought, the seized objects were not returned, and this led to the view that the federal agents, acting with archaeologists, had 'stolen' artefacts which belonged to the community, and as Goddard puts it, also "sent the message that the artifacts[10] were so valuable that they would be taken at gunpoint" (2009:181). It also reinforced a 'them' and 'us' mentality, with federal authorities and archaeologists seen as 'them', in an area where there was already traditional opposition to intrusion by central government. However in an attempt to counter the prevailing attitudes, the local museum at the Edge of Cedars State Park in Blanding began an educational programme in the 1990s. The museum still contains a room dedicated to the display of artefacts recovered from looters, together with an explanation of the law and its purposes, including sections on the importance of context and the need to leave artefacts undisturbed.

C. OPERATION CERBERUS ACTION[11]

[10] In direct quotations American spelling will be retained.
[11] The facts of OCA are set out in the sample affadavit and search warrant application which was published on line in a redacted version (Brosnan 2009).

In 2006 the FBI received information from a former dealer that there was a close-knit network of individuals in the Four Corners area who regularly looted sites and trafficked in illegally excavated objects. The FBI and the BLM began a two year joint operation, codenamed Cerberus Action, which was to be the largest ever operation carried out in the US in relation to archaeological looting, costing nearly half a million dollars. During the operation the informant, acting on the direction of the FBI and the BLM 'bought' 256 items with a value of $335,685 from members of the dealer network. The informant collected evidence by wearing a 'wire' and carrying a concealed camera. Although the informant was shown the real location on a map, he was often supplied with documentation (a letter of provenience) which falsely stated the items had been found on privately owned land, and thus not subject to the provisions of ARPA. In June 2009, echoing the earlier raid in 1986, armed FBI agents, assisted by BLM agents and local and state police carried out a dawn raid, during which 24 people were arrested and later indicted by a federal grand jury. The indictments included 115 felony charges: mostly relating to offences under ARPA but also theft of federal property, theft of Indian tribal property and transporting stolen property. Many of those indicted were apparent pillars of the community, including the local doctor, a maths teacher at a local High School, the brother of the local sheriff, and several pensioners. However some also had 'form' for ARPA offences, having either been previously convicted or having been arrested but not charged. Others had close relatives with previous convictions under the 1979 Act.[12] At a press conference following the arrests, Secretary of the Interior Salazar said that the arrests should "serve notice to anyone who is considering breaking these laws and trampling our nations' heritage" that federal authorities would track them down and bring them to justice; Interior Assistant Secretary for Indian Affairs, Echo-Hawk described looters "robbing tribal communities of their cultural patrimony" as a "major law enforcement issue" and expressed the hope that the arrests would give American Indians and Alaska Natives assurance that the government was "serious about preserving and protecting their cultural property," and US Attorney Tolman spoke of

[12] For example, the Blanding doctor James Redd and his wife, Jeanne, in 1996 had been accused in state court of desecrating the grave of an ancient Indian while pot hunting, but the charge was struck out by the appeals because Utah law required the prosecution to prove the body had been intentionally buried, which they could not (Henetz 2009a). Three of the defendants were close relatives of Earl Shumway who had convictions under ARPA including one for which he received a custodial sentence of five and a half years.(Henetz 2009a, *United States v Shumway* 1997).

the importance of the artefacts to the nation, saying that those "who loot or damage public and American Indian resources for their own personal use or gain take something from all of us." (DoI 2009).

Hundreds of artefacts were seized following searches of the homes and businesses of the accused.[13] Examining the huge numbers of artefacts seized, and preparation of the evidence took some time. It was not until the summer of 2011 that the cases came to trial, and all those tried were convicted. Under ARPA very high penalties could have been imposed, particularly on those who had previous convictions.[14] The prosecution sought custodial sentences, relying on the Federal Sentencing Guidelines which provide for a sentence increase of twenty five per cent for any offence involving theft, damage or destruction of cultural heritage resources, with further increases to penalties if the offence involved human remains or were committed for pecuniary gain (both of which applied to some defendants in the Four Corners case). However the only defendant to receive a custodial sentence was a man who had threatened the informer with a baseball bat. The rest were given sentences of probation and some small fines, and periods of 'home confinement', although, perhaps more importantly, some had to forfeit their entire collections of artefacts.[15]

This brief description suggests a textbook example of a successful prosecution with a clear message to other potential offenders in the area. However events after the arrests soon made the situation more complex, and the authorities did not always manage things as well as they could have. The day after the arrests, one of the accused, the local doctor (James Redd) committed suicide, followed a week later by the suicide of another of the defendants. These suicides were unexpected, and it is highly unlikely that anything could have been done by the authorities to prevent them. The third suicide, of

[13] The curation of these artefacts would prove very expensive for the federal authorities as they had to be held in museum standard, climate controlled storage, with security cameras to protect them from theft. The more sacred items, such as ceremonial and funereal items, also had to be kept separately from the other items (Romboy 2011). Items subject to repatriation under the Native American Graves Repatriation Act 1990 also needed to be identified, and their cultural affiliation determined to enable them to be returned.

[14] Under section 6 of ARPA any second offence (felony or misdemenour) is subject to a maximum penalty of a fine of up to $100,000 and/or up to 5 years imprisonment.

[15] Section 8 of ARPA provides for the forfeiture of all archaeological resources connected to the ARPA offence, in the possession of any person, together with vehicles and equipment used in the offence.

the informant, is more of a problem and raises questions about the way the case was handled by the FBI. The affadavits clearly explained the part played by the informant, and the decision of the FBI to unseal these, together with the search warrant applications, meant that despite being known simply as 'The Source' in these documents, he was readily identifiable in the small town. These documents also revealed that he had been paid a total of $224,000 for his services during the undercover 'sting' operation, in an area where the average annual income is in the region of $15,000. This led to considerable hostility against him, and the threatened assault for which one of the defendants subsequently received a custodial sentence. The informant, a recovering alcoholic who had resumed drinking after maintaining his sobriety throughout his undercover work (Loomis 2011a) and who suffered from depression seems to have been given little protection or support by the authorities. With his death the FBI lost the 'star witness' and defence counsel began to challenge the admissibility of the evidence he had collected, now he was no longer alive to be cross examined (Wagner, 2010). Defence counsel also challenged the assessment of the value of the seized artefacts, arguing that inflated values were being used to justify felony charges, given the costs of the operation. The authorities then sought to facilitate the proceedings by obtaining guilty pleas, which resulted in 18 of the 24 charged entering into plea bargains under which the number of charges against them were reduced.

Local public opinion became almost universally hostile following the suicides of the defendants. Typical blog comments on the online discussion groups of the various newspapers which reported the case include**:** "the reason the whole town isn't in jail is because the rest of us didn't meet up with this guy"; "it's time for the FEDS to rethink their hard ball tactics and the archaeological community to rethink their unqualified support for the same," and "as long as the 'looting' is government sanctioned, then it's OK". Nor were the criticisms of the raid and arrests limited to anonymous bloggers. At the 4th July Parade, at which "Legalize Pot" T-shirts, emblazoned with images of ancient ceramic pots sold out, the town mayor opened ceremonies with a prayer beseeching God to keep Blanding citizens free from unreasonable searches and seizures (Loftholm 2009). In a Senate Judiciary Hearing Republican Utah Senator Hatch called the use of more than a 100 armed agents to

arrest a small number of people for non-violent crimes "unnecessary and brutal" and alleged this had directly led to the suicide of Redd (Main Justice, 2009). Alderman, an academic with an interest in law and cultural property matters criticised the way the case had been handled, also alleging that the prosecutors had 'overcharged' the defendants in an attempt to justify the immense resources that had been spent on the investigation, and calling the prosecution a 'witch-hunt' (Fincham 2011). A much smaller group of commentators on various blogs viewed OCA favourably. Comments include, "This town and its looters love to hide behind their banner of being religious and a 'patriotic throwback' as if that justifies being thieves"; "it is the continuation of cave and grave robbing after the law has been in effect for a generation that me me (sic) not grieve for these residents."

Eighteen months after the arrests Utah journalist Frank Loomis of the *Salt Lake Tribune* newspaper interviewed a number of people in the area for their views on whether the raid had been worth it (Loomis 2011a). The majority of those interviewed thought it would have little impact on looting activities. Pat Shea, a former head of the BLM told Loomis that given the current anti-federal feelings in the community, they were now up against "bandits" who view looting "almost as a revolutionary, if not patriotic, act." When Loomis asked John Scorup, a retired BLM ranger now living in Blanding whether the prosecution would stop people in the area from looting, he rather dryly commented, "Some of them will. The ones that are dead." Others interviewed by Loomis suggested that the prosecution might have produced some change in behaviour, with people now digging only on privately owned land where excavations are legal with the landowners' consent, but others thought that the only change had been to make people more discreet and wary about those to whom they would offer to sell artefacts.

D. HOW SUCCESSFUL WAS OPERATION CERBERUS ACTION?

On the positive side, OCA led to the recovery of substantial numbers of historical artefacts, including Anasazi pottery, and burial and ceremonial masks and other artefacts taken from Native American

burials, which although shorn of their context, can now be put on public display, or be repatriated to the Native American tribes. The prosecution can also be counted as a success in that it resulted in the conviction of all those who stood trial, and broke up an organised group who had systematically broken federal law by looting archaeological sites and had sought commercially to exploit the artefacts they removed. Despite the protestations of many in the local community they were, as the amounts paid by the informant for the artefacts show, no simple 'hobby' collectors. The case was well publicised in the region, as is evidenced by the many newspaper reports referred to in this article, and has made the provisions of ARPA much better known than they may have previously been. Although the sentences appear light, it should be remembered that felony convictions also have other implications, including the fact that a person cannot legally own a gun (this in an area where many people consider this to be the norm) and the sentences of probation included conditions barring entry to federal lands, a severe restriction in a state where two thirds of the land is federally owned, and where many recreational attractions lay on federal land. There is also some evidence that within the general population in Utah the prosecution is viewed with approval. In a 2011 survey of 625 registered voters in Utah carried out for the *Salt Lake Tribune* newspaper, nearly two-thirds of those polled saw the operation as justified. Men were slightly more likely than women to say the action was unjustified (27 per cent to 21 per cent) and Democrat voters polled were more supportive of the operation (77 per cent) than Republican voters (60 per cent) and independents (64 per cent). Whether someone was Mormon or non-Mormon appeared to have no influence on the opinions held. There was a greater divergence of opinion amongst those polled on the question of the sentences: 48 percent saw the sentences as fair, and 33 percent thought the sentences too lenient (Loomis 2011b).

Despite these positive outcomes, this author considers that in the immediate area where the offences were committed the prosecution has been counterproductive, serving only to reinforce anti-federal sentiments and opposition to the provisions of ARPA, as the opinions of those interviewed by Loomis in 2011 suggest. Even amongst those with support for the prosecutions there is doubt about their likely deterrent impact: the fear is that they will have taught not anti-looting lessons, but lessons on

avoiding criminal liability. Items offered for sale are now likely to be described as coming from private land, or to have been in collections since before ARPA came into force. Rather than deterring looting, one of the untoward results of the prosecution in the Four Corners case may have been to make more local people aware of the 'ARPA rules' and what the prosecution will have to prove to secure a conviction under the Act.

The case might also have been better managed by the federal authorities. The need to deter looting to protect the nation's heritage, identified at the press conference following the arrests, became swamped by the negative press reporting following the suicides, as were attempts to explain the reasons for the armed raids (several defendants were known to have guns on the premises, and the informer had warned them that there was an intention 'to 'shoot it out' if arrests were attempted). Over a year later when the defendants came to trial, press reports almost inevitably brought up the suicides of the defendants and the informer. The federal authorities might have put more effort into redressing the balance. Although the difficulties of detecting ARPA offences mean that there is a necessity to rely on informers, the hostility to the 1986 raid and its aftermath should have forewarned the authorities, who should have done more to protect the informer's identity. The failure to support the informant also suggests poor management of the case. Not only was this indefensible in human terms, from a purely legal standpoint, it also severely weakened the prosecution case, making plea bargains in which many of the charges against the defendants were dropped in return for guilty pleas almost inevitable. Had the full number of charges been successfully prosecuted, the sentencing outcome might have been different.

The prosecution had sought custodial sentences, to reflect the serious nature of the offences, but almost all defendants were sentenced to periods of probation. The director of the Utah Division of Indian Affairs saw the sentences as a lost opportunity to protect sacred burial grounds on Ute, Navajo, BLM, national forest and national park lands in southern Utah (Loomis 2011a). For the federal personnel who took part in the Operation, committing two and a half years of their time, the low

sentences must have been a slap in the face. Those holding the purse strings in the federal agencies charged with enforcing ARPA are likely to think twice before agreeing to fund similar expensive long term operations against illegal trafficking and excavation. A number of factors contributed to the low sentences. All of those charged entered a guilty plea (which generally results in a reduced sentence). The personal circumstances of the defendants would also be taken into consideration, and in Fincham's opinion (2011) it would be difficult to imagine a more sympathetic pair of defendants than the widow and daughter of Redd. Certainly the judiciary (all locally elected officials) seem to have had sympathy for the defendants, as evidenced by the justification given by Judge Waddoups for departing from the Federal Sentencing Guidelines for offences involving cultural property, when he said that "this is a community where this kind of conduct is commonly tolerated" and "has been justified for years", suggesting that this might excuse federal law breaking (Henetz 2009b). At the press conference following the arrests, Deputy Attorney Ogden said that the Department of Justice was conducting a training initiative with the Interior Department for federal prosecutors and law enforcement personnel on looting and trafficking of the cultural heritage (DoI 2009). It would seem that similar education initiatives could be extended to some members of the judiciary.

The relatively low sentences may also reflect the decision to charge the defendants not only with offences under ARPA but also with theft. The sentences imposed were consistent with sentencing guidelines for property offences for similar, although they are out of line with the general treatment of offences under ARPA. In 2007, for example, twenty of the eighty-three people convicted of ARPA offences received custodial sentences (Palmer 2007). It is also interesting to compare the Four Corners sentences with the contemporaneous two year jail sentence and $10,000 fine imposed by a Utah court on Tim DeChristopher, an environmental activist who disrupted a US auction for extraction rights in the oil and gas industry by putting in sham bids for drilling rights to fourteen parcels of land in remote areas of Utah (Goldenberg 2011, Loomis 2011c), suggesting that the Utah courts consider it to be more serious to disrupt an auction than to loot Indian burial sites.

Should the prosecution have been brought? Despite everything the answer must be 'yes': systematic flouting of laws intended to protect the nation's cultural heritage deserves to be punished. Did the outcome justify the expense of the operation? Here the answer is less clear, as arguably it might have been better spent on education and outreach initiatives in the area. In a 2009 interview for *Archaeology* magazine (Archaeological Institute of America 2009), the archaeologist Winston Hurst who grew up in Blanding considered that more could have been attained by what he called an "intelligent discourse" with the pothunters to change hearts and minds, although as he put it, it is "hard to measure the outcomes of fuzzy things like educational programs" whilst with a "bust... it's a lot easier to justify, it's a lot easier show results." Changing the hearts and minds of those whose families have a tradition of looting will be difficult, and given the innate hostility of many of those in the area to federal intervention, education programmes led by federal authorities may be as counterproductive as prosecutions, being seen as government 'propaganda' serving the needs of archaeologists wanting to keep all the 'goodies' for themselves, and rejecting what local pothunters see as their years of valuable experience and expertise. In England the introduction of the Portable Antiquities Scheme[16] has done much to improve relations between archaeologists and metal detectorists and perhaps something similar could be tried in Utah, with those who discover artefacts being encouraged to at least report their finds to the local museum (allowing sites to be identified and artefacts to at least be recorded). The museum has already had some success in educating local school children about the importance of leaving artefacts alone, suggesting that future generations may view the matter differently. After explaining that he too used to go pot-hunting as a child, in his interview for the magazine *Archaeology,* Hurst said

> "The first time I walked away and left artifacts where I found them was a deeply satisfying thing to me, because I understood the whole big picture of it. And I know the people here very well and I have the highest respect for most of them and I have absolutely no doubt that if they got it, they'd be perfectly happy to leave that stuff alone. The challenge is to get that into people's heads. And it's kinda hard, because they're not sitting in college classes. You

[16] For information on this see the Portable Antiquities Scheme website at http://finds.org.uk/.

> don't have that sort of environment. You have to get to them sort of quietly. You get into their heads by talking to them when they're little kids, by talking to them in the Boy Scouts, by talking to people in a conversational, quiet way. Not by beating them over the head with propaganda." (Archaeological Institute of America 2009)

However deserved the prosecutions, in the end, the 'biggest bang for the buck' may come from quiet long term education of people in San Juan County, rather than raids like that in Operation Cerberus Action.

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