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## THE GE MOUND: AN ARPA CASE STUDY

Cheryl Ann Munson, Marjorie Melvin Jones, and Robert E. Fry

*Prosecutions of looters under the U.S. Government's Archeological Resources Protection Act (ARPA) have heretofore come in cases involving federal or Indian land, thus limiting applications of the law and questions about both the law and the legal rights of artifact collectors. In this essay we examine the GE Mound case, the first prosecution and conviction of a group of looters under ARPA for interstate transport of artifacts illegally removed from private property. The GE Mound case serves as a textbook on issues that currently confront archaeology. The conflicting interests of archaeologists, looters, other artifact collectors, and Native Americans are illustrated in the legal proceedings and the controversies surrounding the prosecution. We review the proceedings and controversies to establish a factual record for this precedent-setting and politically sensitive case.*

*Hasta ahora el gobierno de los Estados Unidos ha perseguido legalmente a los saqueadores de sitios arqueológicos descubiertos en terrenos federales o territorios de tribus indias conforme a ley federal de Protección de Recursos Arqueológicos (ARPA). Por eso no hay precedente para casos que impliquen los derechos legales de coleccionistas de artefactos encontrados en terrenos particulares. En este ensayo examinamos el caso del saqueo del túmulo de la compañía General Electric (GE). Es el primer fallo bajo ARPA contra un grupo de saqueadores que transportaron de un estado a otros artefactos excavados ilegalmente de propiedad particular. El caso del túmulo de GE nos sirve como ejemplo excelente de las complejidades que la arqueología actual tiene que abordar. Las actas legales y las polémicas alrededor del litigio ilustran el choque de intereses entre arqueólogos, saqueadores, coleccionistas y nativos americanos. Revisamos las actas para aclarar hechos y corregir malas interpretaciones sobre un caso polémico que sentó precedentes legales.*

**I**n November 1992 Judge Gene E. Brooks, U.S. District Court for Southern Indiana, sentenced the last of five men charged in the looting of the GE Mound, a Middle Woodland Hopewell mound at the Mt. Vernon site (12PO885) in Posey County, Indiana. The convictions in the GE Mound case led to a precedent-setting case under the Archeological Resources Protection Act (ARPA; Public Law 96-95; 93 Statute 721; 16 U.S.C. 470aa-mm, as amended). These convictions are the

first under ARPA's prohibition against interstate trafficking in archaeological resources obtained in violation of state or local laws. The U.S. Court of Appeals issued a strong answer to questions concerning the interpretation and constitutionality of this ARPA provision, and the U.S. Supreme Court declined to consider the matter further.

This one case also illustrates the interconnections among some of the difficult current issues in American archaeology: reburial and

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the beliefs of Native Americans, state and federal legislation to protect and regulate use of archaeological resources, the misperceptions of artifact collectors about what ARPA means for the pursuit of their hobby, the proper roles of private-property owners concerning archaeological resources, the propriety of "secret science" involving archaeological materials that will not be available for further analysis, and the archaeologists' interests in the long-term preservation of the remaining portion of the site and the spectacular array of materials recovered from the mounds' looters.

As participant observers in the events following the looting, we have knowledge of the course of the judicial proceedings and the depth of misrepresentations about the nature of the offenses and about ARPA. Misrepresentations are being spread verbally and have appeared in publications of various organizations and the popular news media. Newsletters, magazines, and journals include not just those widely read by artifact collectors throughout the United States, but also those read by professional and avocational archaeologists. Our review of collectors' publications and other sources written in recent years has made it clear that there is a concerted effort to organize and finance campaigns to inhibit laws criminalizing looting and to support some of those arrested for archaeological crimes. Growing from this context are appeals to Congress from collectors about ARPA and the GE Mound case.

The legal significance of the case and controversies engendered by the looting and prosecution have import throughout the country and more generally for concerns about archaeological ethics.<sup>1</sup> Our purpose here is to outline the facts of the case to dispel the growing confusion and disinformation that is having the unfortunate result of alienating some avocational archaeologists from the professional community. We will describe the ARPA violations, the investigation and legal proceedings in the case, and the significance of the GE Mound site. Then we will review the issues raised during sentencing, including

those emanating from the "worldview" of artifact collectors. We believe that archaeologists concerned with site protection should have knowledge of the artifact collecting community,<sup>2</sup> for looters and other artifact collectors have both political clout and financial backing to support their interests. In order to answer the many questions about the GE Mound case that have been raised by professional and avocational archaeologists and collectors, as well as by government officials, our discussion will also address the judicial appeals, the efforts made to sway public opinion about ARPA, and the disposition of the site and artifacts.

### **The Looting and the Violation of ARPA**

The U.S. Congress passed ARPA in 1979, in response to the 1974 decision of the Ninth Circuit Court of Appeals in the case of *United States v. Diaz*, which found the U.S. Antiquities Act of 1906 to be unconstitutionally vague (Hutt et al. 1992:23-25). Unlike some other nations where identified archaeological resources on privately owned land become the property of the state, neither ARPA nor other federal laws regulate the excavation or collection of privately owned archaeological resources. Instead, such regulations are left to the jurisdiction of the states. ARPA specifically prohibits interstate or foreign traffic in illegally obtained artifacts, but it does not make reference to private lands. ARPA is a relatively new law, many archaeologists are not familiar with its provisions, and prosecutions have been limited relative to the number of reported looting incidents (Carnett 1991; McAllister 1991). With a few exceptions, ARPA prosecutions have taken place in western states, and until the GE Mound case, prosecutions were for violations occurring on federal or Indian lands.

According to documents on the GE Mound case filed in U.S. District Court for Southern Indiana, Evansville Division (USDC) (USDC EV-90-32-Cr, EV-91-12-Cr, EV-91-19-Cr, EV-91-20-Cr, EV-91-21-Cr, EV-92-14-Cr),

the looting took place in June, July, and August 1988 at a Hopewell mound located on the General Electric Company's property, at its plastics manufacturing plant near Mt. Vernon, Indiana. The property consists of a large area encompassing terraces and hills overlooking the Ohio River. The looting of the mound site followed by only a few months the widely publicized looting at the Slack Farm site, located just across the Ohio River in Kentucky and also privately owned (Pollack et al. 1988).

Artifacts from the GE Mound initially were unearthed by heavy equipment during the borrowing of soil for an adjacent construction project involving a new road. That project was supported by federal funds. The borrow pit location had been surveyed by a professional archaeologist using the standard procedure of shovel probes aligned on a grid, but not until after some earthmoving at the mound had taken place.<sup>3</sup> Evidence of the artificial nature of the mound was not found during that survey.<sup>4</sup> In the report to the construction company, the consulting archaeologist recommended that if artifacts were found during borrow work, an archaeologist with the state Division of Historic Preservation and Archaeology should be contacted immediately. The federal project permit also specified such notifications. When artifacts were subsequently uncovered, no one notified either state authorities or the landowner, and looting followed. Looters came onto General Electric's property to dig and remove artifacts without the company's permission, thereby violating state trespass and theft laws. Some artifacts were taken to other states in violation of ARPA, which states:

No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resources 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* [16 U.S.C. Sec. 470ee(c); emphasis added].

ARPA's provision against interstate trafficking is especially relevant for archaeolog-

ical resource protection in the eastern United States, where only a small percentage of land is in public ownership, and few states have laws designed to protect archaeological resources on private lands. In Indiana, for example, only three percent of the land is publicly owned. However, in Indiana as elsewhere, people not only take artifacts across state lines to sell, but travel out-of-state to acquire them from archaeological sites and at "Indian relic" shows or sales. The profits from the commerce in artifacts are a primary motive for pothunting (McAllister 1991; Meyer 1977). The annual "Owensboro Indian Art and Artifact Show" in Kentucky, for instance, boasts 300 tables and several thousand visitors every year (*Indian Artifact Magazine* 1993); in past years, archaeologists monitoring the show have noted antiquities for sale not only from the eastern and western United States, but from Mesoamerica and South America as well. By one estimate (King 1991:86) worldwide trade in artifacts is a billion-dollar-a-year business.

### **The Initial Investigation and Legal Proceedings**

In 1988 and 1989 state and local law enforcement made the initial criminal investigation of the looting and removal of artifacts from the GE Mound in response to anonymous reports of possible violations of state law (Munson and Pollack 1991). Several tips, in fact, came from artifact collectors who were knowledgeable about artifact types and chert types and appreciated something of the significance of the materials taken. Some people made reports because they deplored the way looters were treating the artifacts.

The looted site was identified and confirmed through test excavations directed by Curtis Tomak (1990), archaeologist with the Indiana Department of Highways; testing involved seven units, each comprising 2.3 m<sup>2</sup>, plus excavation of the fill of a hole dug by the looters. The U.S. Department of Justice began its investigation after Ray White, the late chief of the Miami Nation of Indiana,

expressed concern about the possibility of looted artifacts from the GE Mound being sold in other states. The news media soon learned that the looting of a large mound had occurred, and the case took on a higher profile. Professional archaeologists provided information and advice to General Electric and to local, state, and federal law enforcement officials. From the beginning a major focus of the investigation was the recovery of archaeological materials and contextual information. Other Native Americans in the region also urged investigations to identify and punish the culprits and to recover the looted artifacts for museum displays and public education. General Electric officials pledged full cooperation in the investigations and took initial steps to preserve and secure the site, already planted in grass, by installing fencing and motion detectors.

First arrested was an Indiana man who had stolen artifacts from the mound but had not taken them across state lines. Kirby Wilson was charged with trespass, but not ARPA violations. He agreed to cooperate with the authorities, to return the artifacts in his possession, to perform community service, and to be interviewed by archaeologist James Kellar (professor emeritus, Indiana University) about the site. Then, under the direction of Special Agent James Beck of the Evansville office, the Federal Bureau of Investigation (FBI) publicly solicited the cooperation of others who knew about the looting. As a result, several thousand artifacts eventually were turned over to federal authorities. Kellar made the initial inventory of the recovered materials.

Over the ensuing two and one-half years, information was obtained by the office of the U.S. Attorney, Southern District of Indiana, to win convictions of five men for violations of ARPA's interstate trafficking provision. Throughout the legal proceedings, the public was kept informed by U.S. Attorney Deborah Daniels, Chief of the Criminal Division Larry Mackey, and Assistant U.S. Attorney Scott Newman, who issued news releases and held press interviews.

### **Admissions of ARPA Crimes, Plea Bargains, and Sentences**

The sentencing hearings were held in July and November 1992. The first sentencing hearing, in the case of the *U.S. v. Arthur Joseph Gerber*, was a day-long presentation during which the admitted roles of looters were laid out and the archaeological significance of the site was covered in extensive testimony by an expert witness. Each of the five defendants pleaded guilty to ARPA violations, following a series of grand jury indictments and subsequent plea bargains.

1. John William Way (USDC EV-90-32-Cr, 91-13-Cr), an artifact collector and heavy equipment operator from Illinois, first discovered artifacts in the GE Mound in the course of borrowing dirt for the road construction project. He admitted that he did not report the discovery to his superiors, who were required to inform state highway construction authorities of any archaeological materials uncovered during the project. Way took artifacts across state lines to his home and contacted Gerber, a well-known artifact collector from Indiana and organizer of one of the largest Indian artifact shows and sales in the United States, the annual "Indian Relic Show of Shows" in Owensboro, Kentucky. Way sold GE Mound artifacts to Gerber for \$6,000 cash and took him to the site on two occasions.

Following his indictment in May 1990, Way petitioned the court to dismiss the case against him on the grounds that ARPA did not apply to artifacts taken from private land and that the statute is overly broad and vague. The judge denied the motion. In his plea bargain on one misdemeanor count, Way agreed in March 1991 to cooperate in the investigation and to amend his 1988 income tax return to reflect Gerber's payments. Way's sentence was 30 days' work release, a \$2,000 fine, and two years' probation.

2. and 3. John D. Towery (USDC EV-91-21-Cr) and Danny G. Glover (USDC EV-91-20-Cr), both from Kentucky, were recruited by Gerber to help him dig and to share in

what they found. They met Gerber and drove to Way's home, and then all four men went to the GE Mound. Way showed them where he expected the largest concentration of artifacts would be found and helped them dig. Towery, Glover, and Gerber returned on several occasions until a General Electric Plastics plant security guard ordered them off the site. The men agreed to initially store the artifacts at Towery's home in Kentucky. Some of the artifacts were sold at Gerber's 1988 Indian artifact show and the proceeds divided among them. Then, Gerber and Towery bought out Glover's remaining interest and split the "loot," with Gerber taking his share to Indiana. Towery later sold his portion to Gerber in exchange for \$2,000 cash and artifacts from another site that Gerber had in his collections. Towery and Glover were indicted in July 1991.

Towery pleaded guilty to one misdemeanor count and Glover to one felony count under ARPA at a hearing held December 1991. The monetary value of the artifacts determines the level of violation. They acknowledged that they knowingly had trespassed on General Electric's property and removed the artifacts without permission of the property owner, and they agreed to testify about the involvement of others. Both also agreed to amend their income tax returns. Towery's sentence was 60 days' work release, a fine in the range of \$1,000 to \$10,000, which was waived because of inability to pay, and two years' probation. Glover's sentence was 180 days' work release, a fine waived because of inability to pay, and two years' probation.

4. Arthur J. Gerber (USDC EV-91-19-Cr), a commercial photographer from Tell City, Indiana, was also indicted in July 1991. Federal authorities confiscated his two vehicles used in transporting the GE Mound artifacts. Gerber's attorney raised the same constitutional issues as Way's attorney, but Judge Brooks denied this motion as well. In April 1992, Gerber conceded his role in a plea bargain and admitted guilt to three counts of purchase and transport of unlawfully removed artifacts from the GE Mound, an ad-

ditional count of illegal transport, and unlawful commercial sale. He also admitted to all facts listed in the charge of conspiracy to purchase and sell unlawfully removed archaeological resources. These facts include knowing trespass upon private property belonging to General Electric and violations of the Indiana criminal conversion statute, recruiting others to join him in looting, refusing to surrender subpoenaed photographs of the looting to the grand jury, and attempting to persuade others not to cooperate with law enforcement authorities.

As part of his plea agreement, Gerber agreed to surrender the GE Mound artifacts he kept in safe deposit boxes and a heavily alarmed personal vault building, to relinquish photographs taken at the site, to pay \$4,750 to get back the forfeited vehicles, to submit a verified financial statement, and to testify before the grand jury. The government conceded in this agreement that Gerber reserved his right of appeal. The government made this concession because "[o]nly the published results of cases that are brought forward on appeal to the circuit courts of appeal or the Supreme Court may be used as precedence standards" (Hutt et al. 1992:73). Gerber's sentence for five misdemeanor ARPA violations was 12 months in prison on each count, terms to run concurrently; supervised release for three years during which he cannot engage directly or indirectly in the sale (except as noted below), purchase, barter, or excavation of any archaeological resources or sponsor, organize, or attend artifact shows or exhibits; and a \$5,000 fine, which he is allowed to meet by selling artifacts lawfully in his possession. The fine is in addition to the amount Gerber paid to recover his confiscated vehicles. The sentence was stayed while Gerber appealed his conviction, and therefore he was not prevented from sponsoring or promoting the annual Indian relic show in Owensboro, Kentucky (*Indian Artifact Magazine* 1993) until after the appeal.<sup>5</sup>

5. Randall R. Hansen (USDC EV-92-14), a local businessman and long-time collector of prehistoric Indian artifacts, is famous in

the region for carrying a business card that reads "Have Shovel, Will Travel." He dug on the GE site on several occasions from late June to August. In one of the photographs taken by Gerber and later obtained by federal authorities, Hansen is shown at the GE Mound holding up a quartz crystal blade. Hansen went to the Way residence in Illinois where he spoke to Mrs. Way and offered to buy GE Mound artifacts from her husband or to trade equipment or drugs for them. He also contacted employees of the borrow pit contractor to offer cash, guns, knives, or other property for artifacts they found. Hansen admitted taking the GE Mound artifacts he took from the site to the Central States Archaeological Show at the Kentucky Dam Village State Park resort in October 1988, where he offered to sell the collection for \$20,000. Hansen pleaded guilty in July 1992 to two misdemeanor counts of violating ARPA and agreed to return artifacts he had taken from the site. Hansen's sentence was four months' nonelectronic home detention, two years' probation on each count with concurrent terms, and a \$5,000 fine.

### The Significance of the GE Mound

At the request of the U.S. Attorney, Mark Seeman, archaeologist and professor of anthropology at Kent State University in Ohio, prepared an assessment of the age, affiliation, and significance of the GE Mound and testified for the government at Gerber's sentencing hearing. The prosecutors requested his testimony as a widely recognized authority on Hopewell. According to Seeman, the site is approximately 2,000 years old, and the mound is "one of the very largest Hopewell mounds ever constructed" (USDC U.S. v. Arthur J. Gerber, EV-91-19-Cr:Transcript[T]:17). Based on estimated dimensions, Seeman (1994) later noted that the loaf-shaped mound's construction would have required about 166,000 to 290,000 bushel basket loads of earth. Della Cook, physical anthropologist at Indiana University, analyzed human remains recovered during test exca-

vations from deposits disturbed by looters; based on her findings, the mound held inhumations of at least two individuals plus cremated human remains (Seeman 1992; U.S. Department of Justice 1992:4-5). The site has been linked to the Mann phase, A.D. 100-500, on the basis of temporally sensitive artifacts (Ruby 1993:34), and it has been determined eligible to be listed in the National Register of Historic Places, according to the Indiana State Historic Preservation Office (SHPO).

Seeman was able to examine most of the recovered artifacts. He also visited the site, interviewed the looters, and consulted with General Electric officials about the nature of the site and earthmoving operations. He drew from knowledge of such well-known Hopewell sites as Turner and the Hopewell site in Ohio for his assessment: "It is becoming increasingly clear that sites like the GE Mound actually served as the focus for a variety of ceremonial and social functions. . . . [T]he artifacts were among the more finely crafted products of the prehistoric period. Further, the presence of ornate artifacts made of uncarbonized leather and wood suggests that the preservation of normally perishable organic materials was unusually good. . . . Very few Hopewell mounds have produced more artifactual materials" (Seeman 1992:17-31).

The recovered artifacts included three copper panpipes (two silver covered), 23 copper celts (one weighing 6 kg), copper nuggets, copper pins, copper breastplates (one embossed with silver), 13 copper ear spools (8 silver covered), silver hemispheres, a silver carnassial effigy, more than 2,000 bifaces of local and exotic cherts, Ross-barbed spear points of obsidian and coal, quartz crystal spear points, mica, freshwater pearls, shell beads, bear canine ornaments, cut and polished human mandibles ("trophy jaws"), bone pins, pieces of wooden objects, tooled leather adornos, and pieces of leather and cloth (Seeman 1992, 1994).

Our understanding of the Hopewell phenomenon has been changed significantly by the recovery of artifacts from the looters (See-

man 1994), especially when combined with what is known of the nearby Mann site (Kellar 1979). As Seeman writes in a letter presented to a meeting of the Native American Council (NAC) in Indiana: "The importance of the GE Mound materials to the understanding of Native American society in prehistoric Indiana is very great. This is not just another Hopewell Mound. Ceremonial sites of the size and complexity of GE are rare; indeed, nothing like it has ever been found in Indiana" (letter from M. F. Seeman to NAC, November 9, 1992; Division of Historic Preservation and Archaeology, Indianapolis).

In Seeman's court testimony he responded to questions about the archaeological value of the GE Mound and what might have been its fate had state authorities and federal highway officials been notified about the site. In many ARPA prosecutions, the value of archaeological resources is commonly calculated in terms of the cost of conducting excavation and analysis, rather than the "market value" of artifacts (Hutt et al. 1992:65). In answering questions posed by the defense attorney and the judge, Seeman estimated that the cost of an archaeological investigation of the GE Mound would have been in the neighborhood of one million dollars, based on current costs for mound excavation, the extent and complexity of the deposits, and the array of materials deposited in the mound. He also stated that preserving rather than immediately excavating the site ensures that it remains a part of our heritage. Seeman concluded that the decision of state authorities about the excavation of a site such as the GE Mound would be a political one because Native Americans might object strongly to the excavation of a ceremonial site (USDC EV-91-19-Cr:T:48-53).

The discovery of organic artifacts including fabric, leather, reeds in panpipes, and wood is highly unusual. In some cases, these fragile materials had remarkable associations, for instance what appeared to be pearl-studded leather wrapped around a copper celt. We know of no other comparable examples

of preservation in the region; the normal fate of any organic artifacts in the acid soils and temperate climate is rapid disintegration. Additionally, metal artifacts of copper and silver quickly oxidize. Perhaps the organic and metal artifacts had some particular placement in a tomb or special cache pit containing soils or some substance having a preservative effect. Unfortunately, the destruction of the context of these materials makes it impossible to know what particular conditions were responsible for their preservation.

### **Other Issues at Gerber's Sentencing Hearing**

Gerber's sentencing hearing was widely covered by the regional news media. The packed court room looked much like a wedding, with many in attendance choosing to sit on the left side of the room behind the prosecution or the right side behind the defense. Both the prosecution and defense presented expert witnesses, similar to a trial, although the issue at hand was an appropriate sentence because Gerber had agreed to a guilty plea. Seeman, the only witness for the prosecution, summarized his written report and illustrated his testimony with slides and examples of the recovered artifacts. After the government completed its presentation, eight witnesses testified on Gerber's behalf. Richard Michael Gramly, archaeologist and former curator at the Buffalo Museum of Science and current owner and curator of the new private "Great Lakes Artifact Repository" (Gramly 1993), testified for Gerber as an expert witness and disagreed with various aspects of Seeman's assessment. The examination of Gerber's witnesses brought out a series of points that have been reiterated widely in print and sometimes misconstrued.

#### *"The State Was Responsible"*

Gramly asserted in his written statement for the court that the Indiana SHPO was "responsible. . . for not protecting the Mount Vernon [GE Mound] site from serious harm" (Gramly 1992a:8). He also claimed that the

“destruction was known to various people holding responsible offices, including senior staff members of the Division of Historic Preservation and Archaeology [the Indiana SHPO office]” (Gramly 1992a:12). In cross examination by the U.S. Attorney, Gramly admitted to making assumptions about what state officials might have known without any evidence to support those assumptions. The U.S. Attorney also elicited from Gramly information on several points, which may give perspective to his testimony in support of Gerber. Gramly answered that he has bought and sold artifacts, is a sales representative for *Indian Artifact Magazine*, and sets up booths at relic shows to sell the magazine and books (USDC EV-91-19-Cr:T:181-186). He explained that he did not renew his membership in the Society for American Archaeology (SAA) when he became curator of the museum because “It says quite clearly in the By-Laws of the Society of American Archaeology that transacting artifacts is not permitted” (USDC EV-91-19-Cr:T:187).

#### *“Recovery Archaeology”*

Other men who testified for Gerber included artifact collectors and dealers. Most of these witnesses think of themselves as amateur or avocational archaeologists. One collector described the “archaeological community” as being made up of archaeologists, dealers, and collectors (USDC EV-91-19-Cr:T:141). The testimony for the defense attempted to portray Gerber as a highly respected artifact collector who follows traditional practices, rather than a dealer. The witnesses downplayed the significance of admitted trespassing on private property to obtain artifacts and treated the illegal digging at the GE Mound as “artifact collecting” and “preservation.”

One witness stated: “I think Art [Gerber] was really doing recovery archaeology” (USDC EV-91-19-Cr:T:110). Another artifact collector, a member of the Ohio Archaeological Society, said Gerber has a collecting philosophy “of the old time collectors. . . . Those collectors were truly

dedicated to the preservation of the artifacts” (USDC EV-91-19-Cr:T:144). Even months after the sentencing, Gramly wrote in a letter to the editor of a regional newspaper: “I feel that Gerber was shocked at the destruction he observed and wanted to save objects for posterity” (Gramly 1992b).

Seeman interviewed Towery and Glover about the methods used in doing “recovery archaeology” at the GE Mound and concluded: “[T]he preservation of normally perishable organic materials was unusually good at the site, but trying to remove them with shovels and knives physically destroys them. . . . Towery, in fact, told me that many fragile artifacts, such as pearls and bear canine ornaments, were simply ignored if they appeared damaged, as he, Glover, and Gerber searched for ‘better’ artifacts. . . . The repair of a bear canine ornament with a bone dowel or the careful wrapping of an unused copper celt in a finely woven cloth [some examples of GE Mound artifacts] are details of a story that never will be fully told” (Seeman 1992: 27-28).

If Gerber were truly shocked and wanted to stop further damage from construction and from the preceding looters, we believe he would have notified state officials or any one of the archaeologists at state agencies or universities, some of whom he knows personally. In his public statements made before he went to the GE Mound, Gerber showed that he was aware of state and federal requirements concerning archaeological resource protection for highway construction projects, but dismissed them: “[T]hen they [archaeologists] take the objects [artifacts] and may be put them in the basement of some university. . . . We’ll never see them again” (television interview cited in Brief of Plaintiff-Appellee, U.S. Court of Appeals [USCA], Seventh Circuit, Cause No. 92-2741:20). Gerber also could have contacted reporters for either local and national news media who were covering the looting issue in the summer of 1988, or state legislators then working to draft legislation to protect archaeological resources in Indiana, if he had wanted to stop

the looting. Instead, Gerber was speaking to the news media and to legislative committees shortly before the looting at the GE Mound to defend artifact collectors in general and the Slack Farm site diggers in particular. Gerber continued to promote artifact collecting and oppose laws against looting even after the looting at the GE Mound was discovered. In fact, he testified with Hansen and others in legislative hearings against bills that would make what the defendants did at the GE Mound a felony under Indiana law.

Though some archaeologists recently have recognized that looters may have diverse perspectives and behaviors (Harrington 1991), the worldview of the GE Mound looters and their supporters seems to be common elsewhere. In Arkansas, for example, looters believe it is *they*, not archaeologists, who appreciate and preserve prehistoric Indian cultures for the public, while archaeologists hide collections from public view in storerooms; according to these looters, their focus on “saving” whole, beautiful objects from perceived destruction either by nature or man is their justification for ignoring archaeological context (Early 1989).

#### *Standard Operating Procedure on Private Property*

The issue of trespass by people obtaining artifacts from private property was explored more fully by Gerber’s attorney, who questioned the vice president of the Indiana Archaeological Society, an organization supported by artifact collectors. The witness said: “Well, a no trespassing sign is sort of a warning, but the way it is used many times in rural areas, it doesn’t mean anything” (USDC EV-91-19-Cr:T:B115). Another person testifying for Gerber was asked to consider that Gerber had previously pleaded guilty to trespass in two other cases that also involved digging for artifacts on private property. When asked whether he approved of such actions, he responded “Collecting is not, in my view, a crime” (USDC EV-91-19-Cr:T:102). He further told the court that “trespassing is not

much worse than speeding down I-64” (USDC EV-91-19-Cr:T:108).

Gramly also responded to questions about trespassing by people who wish to obtain artifacts, noting: “I have to ask for permission. . . . Now, I wouldn’t apply my sort of professional behavior to the behavior of amateurs and collectors. I don’t consider it [trespassing] wrong. I consider it wrong if you are told to get off the land and don’t get off. That is wrong” (USDC EV-91-19-Cr:T:185).

Hansen, who just the previous day pleaded guilty to his role in the GE Mound looting, used a similar argument to justify digging on General Electric property (USDC EV-91-19-Cr:T:117–138). He claimed to have been seen by individuals he assumed to be security guards. Because these people did not immediately order him or others off the borrow work area on the mound, he decided that he had the permission of General Electric to dig.

The proceedings make it clear that looters spent time from mid-July to August 1988 collecting and digging into the mound without permission from its owners. They kept their activities secret from anyone who could have put a halt to the ongoing destruction, quitting only when General Electric security guards ordered them off the site. Further evidence that they were not saving artifacts for posterity, let alone the undisturbed portions of the site, is clear from their sales of some of the artifacts, beginning at Gerber’s artifact show in Owensboro only a few days after the security guards stopped the looting.

#### *Gerber on the Stand*

Gerber took the stand with his lawyer leading him through his view of the facts in the case. Gerber explained that other artifact collectors had preceded him at the site, which “looked like a bombed out battle zone” (USDC EV-91-19-Cr:T:201) when he got there to dig. He admitted that he sold other artifacts from the GE Mound at several artifact shows in Kentucky and Indiana. He also admitted that he destroyed photographic evidence because it would incriminate him.

Gerber acknowledged giving incorrect statements to the court's probation officer about his previous guilty pleas to criminal trespass in the looting of Crib Mound, a major Archaic shell mound in Indiana, which also had a significant Hopewell component. Finally, at his attorney's urging Gerber agreed to deliver the GE Mound artifacts still in his possession to the FBI, with the hope that General Electric would create a museum to display them.

### *The Judge Speaks on the Issues*

Judge Brooks was not convinced that the GE Mound defendants were amateur/avocational archaeologists doing "recovery archaeology." He explained that he had researched other ARPA cases and was aware of the market for American antiquities. Before imposing sentence he said to Gerber: "The Court sees it as a vicious circle. You think you are not doing anything improper and there is nothing wrong with collecting. . . . What that does is to encourage people to go out and gather by whatever means so that you can buy it. . . . That is the problem as I perceive it throughout the country" (USDC EV-91-19-Cr:T:239).

The judge further commented that he had received more letters about this case than any other, including letters from the U.S. secretary of interior, professional and amateur archaeologists and their organizations, and Native Americans, noting: "They were all against you" (USDC EV-91-19-Cr:T:252). The judge told Gerber: "You are really stealing history. That is what you are doing. . . . I am concerned even now . . . that you really appreciate the seriousness of what you have been charged with and what you have been doing for twenty-five (25) years" (USDC EV-91-19-Cr:T:259-260).

Regardless of the penalties stipulated in ARPA, the judge related that he had little discretion in sentencing. In fact, sentencing guidelines specific to ARPA have not yet been issued. As a consequence, the judge explained that the court applied sentencing guidelines

for an analogous offense, which in this case was "receiving, transporting, transferring, transmitting, or possessing stolen property. . . . [I]n my opinion, and the Court's opinion, using this analogy is a break in favor of Mr. Gerber, because this [the analogy] applies to just stolen property like T.V. sets or something" (USDC EV-91-19-Cr:T:244).

### **U.S. Court of Appeals**

In October 1992 Gerber's attorneys filed an appeal in the United States Court of Appeals, Seventh Circuit (Chicago), challenging the constitutionality of the antitrafficking provision in ARPA, specifically Section 470ee(c).<sup>6</sup> None of the sentences in the GE Mound case was to be executed until the appeals process was completed.

Gerber's attorneys argued that the law applies only to archaeological resources on Indian or federal lands and was never meant to apply to archaeological resources on private lands. They further insisted that the local or state laws referred to in ARPA Sec. 470ee(c) must be state or local laws *specific to the protection of archaeological resources*. Because Indiana didn't have a law protecting archaeological resources on private property at the time of the offense, they contended that Gerber should not have been prosecuted under ARPA's trafficking provision. They also argued that Section 470ee(c) is unconstitutionally vague.

Three organizations joined as amicus curiae to file a "friend of the court" brief in support of Gerber's legal position. The organizations were: the Society for the Documentation of Prehistoric America (formerly the "Genuine Indian Relic Society"), the Indiana Archaeological Society (part of the Central States association), and the Three Rivers Archaeological Society. In their motion to proceed, they state that their organizations are comprised of "avocational archaeologists, students of archaeology, and professionals" (Brief of Amicus, USCA 92-2741).

In December 1992 the U.S. Attorney pre-

sented the government's brief in which it maintained that: (1) the antitrafficking provision of ARPA applies to archaeological resources whether from public or private lands; (2) the statute means exactly what it says and is neither over broad nor vague; and (3) a detailed examination of the legislative history and subsequent interpretation of ARPA supports the government's position.

A number of organizations concerned with archaeological resource protection joined as *amicus curiae* to present a brief in support of the U.S. government: the Council for the Conservation of Indiana Archaeology (CCIA), the Wabash Valley Archaeological Society, the Society for American Archaeology, the Society of Professional Archeologists, the Illinois Archaeological Survey, the Kentucky Organization of Professional Archaeologists, the Archaeological Society of Indianapolis, and the National Trust for Historic Preservation. The state archaeological organizations represent professional archaeologists, and the Wabash Valley and Indianapolis organizations are avocational archaeological societies with a longstanding commitment to research and preservation. C. Dean Higginbotham, as attorney for the Indiana Council, wrote the *amicus* brief with his law partner E. Dean Singleton. Higginbotham has both a law degree and a Ph.D. in anthropology with a specialization in archaeology.

A panel of three judges read the appeal briefs and the transcript from the district court and then heard oral arguments in June 1993. On July 20, 1993, the panel unanimously affirmed the lower court's decision, concluding that:

Subsection (c) appears to be a catch-all provision designed to back up state and local laws protecting archaeological sites and objects wherever located. It resembles the Mann Act, the Lindbergh Law, the Hobbs Act, and a host of other federal statutes that affix federal criminal penalties to state crimes that, when committed in interstate commerce, are difficult for individual states to punish or prevent. . . . The reference to interstate commerce would be superfluous if the subsection were limited to artifacts taken from federal or Indian lands. . . . Probably the subsection was added as an afterthought, so one is not surprised that it

does not jibe perfectly with the surrounding provisions; but that does not make it invalid, and it certainly is not vague. And we cannot see how the purposes of the Act would be undermined by our giving subsection (c) the interpretation that its words invite [USCA 92-2741:Decision:5-6].

The *amicus* briefs from the collectors' organizations argued that the application of ARPA as used in the GE Mound case would infringe on their liberty to enlarge archaeological knowledge by excavating on private lands. Cutting to the heart of this matter, the judges replied:

[T]here is no right to go upon another person's land, without his permission, to look for valuable objects buried in the land and take them. . . . At common law General Electric would have been the owner of the mound and its contents regardless of the fact that it was unaware of them. . . . [I]t is almost inconceivable that Congress would have wanted to encourage amateur archaeologists to violate state laws in order to amass valuable collections of Indian artifacts, especially as many of the amateurs do not appreciate the importance to scholarship of leaving an archaeological site intact and undisturbed until the location of each object in it has been carefully mapped to enable inferences concerning the design, layout, size, and age of the site, and the practices and culture of the inhabitants, to be drawn [USCA 92-2741:D:6-7].

In clarifying what kind of state or local law provides a proper link to ARPA's interstate trafficking provision, the court responded to the collectors' concerns that violations of ARPA could be triggered by unrelated violations such as failure to pay state sales tax or transporting artifacts in overweight trucks:

[T]he Act is limited to cases in which the violation of state law is related to the protection of archaeological sites or objects. A broader interpretation would carry the Act far beyond the objectives of its framers. . . . But we do not think that to be deemed related to the protection of archaeological resources a state or local law must be *limited* to that protection. A law that forbade the theft of Indian artifacts "and any other object having historical or artistic value" could not reasonably be thought a law unrelated to the protection of such artifacts merely because it had broader objectives. That is essentially what Indiana's laws forbidding trespass and conversion have: objectives that include but are not exhausted in the protection of Indian artifacts and other antiquities [USCA 92-2741:D:8; italics and quotation in original].

### U.S. Supreme Court

Despite the forceful ruling of the Court of Appeals, Gerber made a final appeal and petitioned the U.S. Supreme Court. Again Gerber's supporters filed a brief as amici curiae; this time they numbered 38 organizations and companies including Indian-Artifact Magazine, National Society of Metal Detectorists, Arkansas Treasure Seekers, Antique Tribal Arts Dealer Association, American Numismatic Association, South Mountain Relic and Coin Club, and the newly formed American Society for Amateur Archaeology (founded 1993; headed by Gramly) (U.S. Supreme Court, 93-635, Brief of Amici).

Gerber's brief and the U. S. government's response again dealt with whether ARPA's interstate trafficking provision: (1) requires that the state law violated must expressly address protection of archaeological resources; (2) applies to archaeological resources removed from private property without the owner's permission; and (3) is unconstitutionally vague (U.S. Supreme Court, Briefs, 93-635). On January 18, 1994, the Supreme Court denied the petition.

Shortly after the Supreme Court's announcement, Gerber's attorney filed motions in U.S. district court in Evansville to stay the execution of the sentence for medical reasons and to amend the sentence to spend the term under house arrest or in a community correction facility. The government responded that the court did not have the jurisdiction to modify its sentence after the sentence is imposed (USDC EV-91-19-Cr: Defendant's Motions and Government's Response [GR], 1994). Moreover, the government asserted: "It is now clear that his case is no longer only about one wayward overzealous collector. Many others have now invested their money and attention in this case. All the more reason exists, thanks to the audience which Art Gerber attracted, that this Court persist in the simple message first delivered: if you go onto someone else's land and take something which doesn't belong to you, you can go to jail—not to work during the day and the bunks at

the Salvation Army at night—but old fashioned jail" (USDC EV-91-19-Cr:GR 1994: 14). Judge Gene E. Brooks denied the defendant's motions and ordered that the sentence imposed in July 1992 be executed. The Federal Bureau of Prisons instructed Gerber to report to the Federal Correctional Institute in Fort Worth, Texas, on May 24, 1994 (*Evansville Press* [Evansville, Indiana] 1994a). One of Gerber's supporters reports that Gerber is being encouraged to write a book about the GE Mound case (Gifford 1994a).

### Halo Effect

The impact of the decision in the GE Mound case has already been felt at the state level. While the case against Gerber and his cohorts was wending its way through the federal courts, another case involving the relatively new (1989) Indiana state law protecting archaeological sites was tried and appealed. The law, which was passed partly in response to depredations at Slack Farm and the GE Mound, requires people intending to conduct excavations at archaeological sites to have a plan approved by the Indiana Department of Natural Resources. The department issues permits for approved projects through its Division of Historic Preservation and Archaeology. Robert Whitacre tested the applicability of this law to landowners by conducting an archaeological excavation without an approved plan. He and his wife purchased a site to excavate it and have uncovered Hopewell materials, as evidenced by photographs appearing in a 1993 newsletter published by the Indiana Archaeological Society. After contacting the natural resources department about the new law, they chose to continue digging without submitting the required plan. A local jury acquitted Whitacre of violating the state law, but in a related proceeding the judge denied Whitacre's petition for declaratory judgment that the state archaeological law did not apply to private property (Dearborn County Court, Indiana: Cause No. 15E01-9104-CP-037). Whitacre appealed this question of applicability to the Court of Ap-

peals of Indiana, Fifth District, which upheld the provisions of the state law in August 1993 and found support for the court's interpretation of the statute in the opinion on the GE Mound case by the U.S. Seventh Circuit Court of Appeals (Cause No. 15A05-9204-CV-128). The Supreme Court of Indiana rejected Whitacre's further appeal in March 1994 (Cause No. 15S05-9403-CV-217).

### Efforts to Sway Public Opinion

Within Indiana and the tristate region including Kentucky and Illinois, the GE Mound case took place within a context of changing public opinion. In part as a result of the high level of attention given to the looting of the Slack Farm site by the news media, the public view toward archaeological resources has increasingly become "protect *our* past" (Munson and Pollack 1991). This has been a remarkable turnaround from just six years ago, when comments about site destruction, including looting of prehistoric Native American burials, were typically "Who cares about that old Indian stuff." The archaeological preservation ethic and public appreciation of prehistoric Native American cultures as heritage resources have grown side by side with an interest in present-day Native Americans.

After newspaper reports and TV coverage publicly disclosed the looting of the GE Mound, a newspaper editorial says: "It seems to us this nonsense has gone far enough. Artifacts and historical sites which help us form a picture of our past should not be unprotected for every amateur digger—first come, first served. Indiana and Illinois must join Kentucky in making this ravaging of history a serious crime" (*Evansville Courier* [Evansville, Indiana] 1992). The GE Mound looting, in fact, became one of several highlighted incidents leading to state laws to protect archaeological resources in the tristate region. Public interest in protecting archaeological resources remains a regional concern. The week after Gerber's indictment, another regional newspaper ran an editorial stating:

"Unless an appeals court rules unfavorably, the case involving Indian artifacts collector Arthur Gerber should serve as a warning against looting of Indian burial and ceremonial sites" (*Evansville Press* 1992).

This newly popular view about looting, which has been advocated by avocational as well as professional archaeologists, is not shared by some of the more outspoken artifact collectors. In the Midwest, some collectors have mounted a campaign to sway opinion toward the view that the GE Mound defendants are victims of overzealous archaeologists and prosecutors, and that Gerber is fighting for the "rights" of all artifact collectors and does not deserve punishment. This regional effort has been extended to the national scene, as various organizations published articles, letters, and editorial opinions about the GE Mound ARPA case and ARPA itself. Other collectors who do not dig into sites but hunt for "arrowheads," usually in plowed fields, quietly deplore looting, whether on public or private land; they do not participate in buying or selling artifacts, and view the looters at GE Mound and elsewhere as giving their hobby a bad name. Many in this group assist archaeologists, and some are members of avocational organizations.

According to our discussions with avocational archaeologists and artifact collectors familiar with the anti-ARPA/pro-collecting literature, the effect of this rhetoric is divisive in American archaeology. A number of people outside the profession of archaeology who hold artifact collections, including both members of avocational organizations and artifact collectors who behave legally and much like avocational archaeologists, have become alarmed that archaeologists or the government may be "out to get them" and might seize any private artifact collections. This has created a reluctance in some cases to share knowledge with professional archaeologists. Moreover, the collectors' worries have led a few professional archaeologists to become reluctant to publicly advocate requirements for archaeological resource protection; they are concerned about alienating

collectors whose cooperation may be withdrawn because of such a stance.

### *ARPA Defense Fund*

Gerber and his supporters mounted a campaign to raise money to help pay for Gerber's legal expenses soon after his indictment. Solicitations for the "ARPA Defense Fund" were sent widely through journals and magazines. The *Central States Archaeological Journal*, a publication sponsored by an association of artifact collecting societies in 12 midwestern and southern states, included one example in 1992. The ad claimed that if Gerber lost his case, all artifact collecting would become illegal. At the annual Indian artifact show organized by Gerber, a number of people donated artifacts for an auction to raise money for the fund. The propaganda accompanying ads for the fund featured a staged photograph of a handcuffed man holding a spear point.

### *ARPA and Private Property Rights*

Disturbed by the GE Mound case, artifact collectors concerned about ARPA and constitutional rights to property sent petitions to members of the U.S. Congress. The petitioners asked for "assistance in resisting and repealing the efforts of certain federal officials and members of the archaeological community to circumvent and otherwise usurp the duly constituted authority of the United States Congress. . . . [Y]our immediate assistance is requested in putting an immediate end to the *unreasonable searches and seizures* by agents of the federal government" (copy of petition provided by Larry Mackey, Criminal Division, U.S. Attorney, Southern District of Indiana, personal communication 1993; emphasis in original). In fact, the Archeological Assistance Division of the National Park Service has received so many letters on the topic that it has developed a standard response. Though Gerber is now in prison, his supporters continue to believe his sentence is unwarranted and call for letters

to Congress to change ARPA to exempt private property (Banks 1994).

The sacred American maxim of private property rights has frequently been raised by Gerber's supporters. For example, the editor of the *Ohio Archaeologist* wrote: "It must be remembered, the crime [looting of the GE Mound], if there was one, occurred on private property. . . . The provision in the constitution regarding private property can be found in . . . the Bill of Rights. . . . It says: *nor shall private property be taken for public use without just compensation*" (Converse 1992:70; emphasis in original). In regard to ARPA, the editorial continued: "But any law, which on its face is passed by congress to control public property but which then can be convoluted to control something on private property, appears to be patently unconstitutional. . . . Extreme actions by the government, prompted by professional archaeologists, serve only to polarize the non-professional community. . . . However, when private property rights are endangered by over-zealous archaeologists, who often confuse self-interest with morality or even legality, then everyone must be concerned" (Converse 1992:70).

Other writers, both professional archaeologists and artifact collectors, raised alarms about ARPA and private property, seemingly because the violations of the state laws of trespass and conversion that triggered ARPA's interstate trafficking prohibition apply to private property. The *ACPAC Newsletter* editorialized that the GE Mound case "raises the specter of government confiscation of all privately held archaeological materials in the country" (American Committee for Preservation of Archaeological Collections 1992:6). An artifact collector, whose presentation to the Society for Pennsylvania Archaeology was published in the *North American Archaeologist*, wrote: "There is a clause in ARPA that allows for the application of ARPA if any state or local law is broken. This is scary. . . . The point . . . is that State and Federal authorities go far beyond legality in their frenzy to convict" (Fogelman 1993:329). A writer in a publication for collectors, *Prehistoric An-*

*tiquities*, commented: "He [Gerber] has refused to buckle and take a plea deal [though he did eventually], because he recognizes that if this precedent is set in the courts, that all our private land rights would be in jeopardy. . . . [W]e could all be in jail, lose our cars and collections and even lose the rights to farm and use our own land if an archaeological site existed on that land. . . . Never before has ARPA been brought against someone who was supposed to be on private property" (Browner 1992:7).

It is obvious that the above commentators either did not know the facts of the GE Mound case or chose to ignore them. To view Gerber as a champion of private property rights seems bizarre indeed, as he has a 25-year history of removing artifacts from private property without the owners' permission and previously has pleaded guilty to criminal trespass on two occasions (USDC EV-91-19-Cr:T:232-234, 257, 260). In one instance, a landowner sued him in civil court for removing artifacts valued at \$100,000, but the case was dismissed because the statute of limitations had expired (USDC EV-91-19-Cr:T:209). In the GE Mound case, the artifacts were on land owned by General Electric, not on property owned by Way, Towery, Glover, Gerber, or Hansen. The government's prosecution was a strike in *favor* of the rights to private property, which includes protection from trespass.

The concern of artifact collectors and avocational archaeologists that all private collections will be confiscated by the "arrowhead police" is groundless. While this fear seems to have been raised to distract attention from the facts of the GE Mound case, it stems from misunderstandings and misrepresentations about ARPA. ARPA's savings provision, quoted in full, says: "Nothing in this Act shall be construed to affect any land other than public land or Indian land *or the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land*" (16 U.S.C., Sec. 470kk(c); emphasis added). As long as persons collecting artifacts on nonfederal lands follow state and local laws and regulations,

then they have nothing to fear from ARPA's trafficking provision in Sec. 470ee(c). Surely most people understand that trespass, theft, and conversion are against laws in all states and that the federal government holds jurisdiction over interstate transportation of stolen property, including artifacts as well as TV sets.

### *The Cost Argument*

A second argument used by Gerber's followers to try to rally support for their cause, and against the prosecution of this case, was the cost issue. Converse, in the same editorial cited above, wrote: "[I]t seems incredulous [*sic*] that the forces of the FBI, the U.S. Marshal and the U.S. Attorney are marshalled against a non-violent, non-life-threatening, non-endangering, and what may be only an alleged, 'crime'. No one was hurt, no one was put in peril, no one was threatened and there was no danger to the public. . . . The people in Indiana . . . should deluge Senator Luger [*sic*] with mountains of mail protesting such a waste of money" (Converse 1992:70). The editor of *Indian-Artifact Magazine* asked, "Aren't there more important social issues that demand the attention that is being put into this anti-looting campaign? Aren't there other areas where the money being spent (sometimes in sting operations), could be better spent?" (Fogelman 1992:3). While we have not seen the cost argument previously applied against the enforcement of ARPA, it has been used widely to protest the FBI investigation and federal prosecution of political corruption, the Iran-Contra scandal, and various white-collar crimes, for example.

### *Casting Doubt*

A third tactic employed by supporters of the GE Mound looters was to create uncertainty about what transpired in the looting and selling. Even after the legal pleadings, Gerber's actions continued to be described as "alleged" and "supposed"; this implied uncertainty when the facts of the case in regard to trespass and removal of artifacts were not in

dispute because Gerber and his cohorts had admitted their guilt in a court of law.

Similarly, the significance of the site and the archaeological value of the artifacts removed were brought into doubt by Gerber's supporters. Tom Browner, in a publication read by collectors, says the bulldozer operator found a number of Hopewellian artifacts, mostly beads and small crude cache blades. "Allegedly, they [the looters] excavated some test areas and found about \$150 worth of artifacts between them. . . . Suddenly the site is called 'The second most important Hopewell site. . . .' It is obvious that no one ever read Squier and Davis or any other works on the Hopewell cultural sites" (Browner 1992: 7). He went on to misstate the positions of archaeologists and anthropologists on the nature of the mound and the evidence for human remains, and even claimed there were no burials and no mound. Despite the expert information presented in court about the small number of human-bone fragments as evidence of both inhumations and cremations, the position that there were no burials continues to persist in the collecting community (e.g., Gifford 1994a). Furthermore, the testimony of Gerber's own expert witness, Richard Gramly, contradicts Browner on the nature of the artifacts: "Many rare objects are rumored to be in private hands including unique art made in part of organic materials that is seldom seen in prehistoric North American archaeological sites. . . . [The] materials surrendered to the Federal Bureau of Investigation may be but a small sample of what existed (and still remains) on the mound floor" (Gramly 1992a:11-12).

*Somebody Else Did It (or "The Dog Ate My Homework")*

Gramly (1992b, 1992c), writing subsequent to his court testimony, has continued to downplay the looting of the mound, insisting that the major damage to the site and its contents was done by the construction company. We recognize that the company moved a greater volume of earth than the looters, but

that argument neither justifies the subsequent violation of state and ARPA laws nor mitigates the archaeological loss caused by looting and trafficking in artifacts. Other supporters of the looters have attempted to shift the blame to General Electric and state officials. In published commentaries about the looting, the writers see something like a conspiracy surrounding the archaeological survey, the construction of the road, and the use of the mound dirt for borrow soil and for landscaping around the GE plant. Some commentaries have been published and reprinted under a variety of titles such as "GE-Gate" (Gifford 1993, 1994b, 1994c). Another commentator wrote: "Perhaps the removal of artifacts by collectors was more expeditious when GE considered the alternatives? . . . At the very least, there is strong and conclusive evidence of incompetence followed closely by negligence and perhaps even corruption" (Green 1992:A7). We have no information to judge the validity of these scenarios, but surely if the attorneys for the accused men had had evidence of negligence or corruption, they would have presented it in court.

#### **Resource Protection and Disposition of the Artifacts**

General Electric took steps late in 1988 to have the site fenced and to increase security. Then, General Electric's plant manager, Brian Derry, and human resources manager, Joe Murphy, met with a number of archaeologists and with Native Americans, and some local supporters of Native Americans who had coalesced early in 1988, after the looting at the Slack Farm site. Although there are no longer any federally recognized tribes in the state, the Miami were in the process of pursuing recognition and were represented at meetings by Ray White, then chief of the Miami Nation of Indiana. Additionally, Tom Montezuma, a Cherokee who later became the chairman of Indiana's Native American Council, attended meetings. General Electric and the parties came to mutual verbal agreements, which were honored until shortly after

Gerber and Hansen relinquished artifacts to the government in July 1992.

### *Agreements Among the Parties*

1. General Electric would protect the site from further damage and install motion detectors for better security. At present, the site is located next to a public road and the new main entrance to the General Electric complex; a guard house commands a view of most of the mound. The perimeter is well lighted at night and patrolled by security guards. Additional measures to protect artifacts in and beneath redeposited site deposits around the mound remnant have been recommended by Seeman, and archaeologists in Indiana have urged GE to carry out further mitigative actions.

2. Native Americans in Indiana would hold a reconsecration ceremony at the mound; the ceremony occurred in May 1989 (Harris 1989), accompanied by extensive publicity.

3. General Electric and other parties would support the investigation and prosecution of the looters, in order to recover artifacts and information about the site and to discourage further depredations. Consistent rumors about artifacts included mention of cut and drilled human trophy jaws, but no substantial indication that the looters had taken human burials.

4. The materials recovered would be kept at a museum in the local area for study, and selected artifacts would be exhibited so that the public could learn more about the Native American cultures in the region.

5. Information about the GE Mound and its looting would be made generally available, so that the public could learn more about the value of protecting archaeological resources.

6. General Electric would testify in favor of pending state legislation supported by Native Americans and professional archaeologists that would make it illegal to intentionally disturb any burial sites, grave markers, or burial objects or to remove artifacts from any prehistoric or early historical-period archaeological sites on private property without a state permit and the landowner's con-

sent (state and federal property was already covered).

While the ARPA case was in litigation, the artifacts recovered from the looters were kept in the custody of the U.S. Department of Justice. Also during this time, key personnel changed at General Electric Plastics; Tim Ferguson became human resources manager and Richard McClish became the plant manager. In November 1991 Ferguson spoke on behalf of General Electric and announced to a joint annual meeting of the Board of Trustees of the University of Southern Indiana and the USI/New Harmony Foundation: "We agree with representatives of Native American groups that the artifacts should remain in Posey County, and should be used to help educate the public about the Native Americans who lived in our area. . . . We are pleased to accept Historic New Harmony's offer to exhibit the artifacts" (*Historic New Harmony Society* 1992:1). In July 1992 Ferguson reiterated the plan to exhibit the artifacts in New Harmony the following spring (Mitchell 1992:15).

### *The Last Act: Final Controversies*

Instead of being placed in a museum, the GE Mound artifacts were reburied, but not without confusion and controversy. Shortly after Ferguson's announcement and the sentencing of Gerber and other looters, the governor of Indiana established the Indiana Native American Council by executive order to advise state government. The council is administratively attached to the Division of Historic Preservation and Archaeology, the SHPO's office. Its voting members consist of five Native Americans who reside in the state; three anthropologists representing the disciplines of archaeology, physical anthropology, and cultural anthropology; and two other citizens. The deputy SHPO and the state archaeologist are ex-officio members of the council. The current Native American members include descendants of the Miami and Potawatomi tribes, which are historically associated with Indiana, as well as descendants

of the Cherokee, Chippewa, and Choctaw whose homelands are far from the state.

The Native American Council held its first meeting in July 1992 soon after Hansen had pleaded guilty and the judge had sentenced Gerber. John Hornbrook, an Evansville school principal who is affiliated with the Choctaw, moved that the council ask General Electric to rebury all the artifacts (Minutes of the Indiana NAC, 27 July 1992; Division of Historic Preservation and Archaeology, Indianapolis). A majority of the council's members in attendance voted to send a letter to General Electric recommending that "the artifacts ultimately be reburied after *sufficient time for professional analysis and recording*" (letter from Tom Montezuma, NAC chairman, to General Electric, Mt. Vernon, Indiana, August 4, 1992; Division of Historic Preservation and Archaeology, Indianapolis; emphasis added). At the second meeting of the council, archaeologists presented information about the significance of the GE Mound and the recovered artifacts, the need for full study, and the lack of known connections between Hopewell and historic Native American groups. After this meeting, news reports quoted Ferguson of General Electric: "We want to do what's right by the Native Americans. Perhaps we can be an arbiter between archaeologists and the Native Americans" (Niederpruem 1992:2).

As the successful ARPA case made clear, GE owned the mound and the artifacts taken from it. Thus, GE was recognized as the legitimate and sole arbiter of the fate of the materials recovered from the GE Mound looters; legally GE could preserve them, give them to another party, sell them, or even destroy them.

Meanwhile General Electric joined with officials of the University of Southern Indiana and Historic New Harmony to form a committee to give advice about the disposition of the artifacts and human remains recovered from the mound. The committee met once in fall 1992 with Ferguson to hear from Montezuma and Hornbrook. At that point it was clear that a process to present and weigh the

concerns of both archaeologists and Native Americans was needed. Archaeologists and their organizations advised General Electric to use procedures comparable to the Native American Graves Protection and Repatriation Act (NAGPRA). If GE donated the recovered materials to the University of Southern Indiana, as planned, or to other universities or museums carrying out archaeological research in the state, NAGPRA would be a requirement. NAGPRA, however, does not apply to private companies like GE.

Archaeologists in Indiana succeeded in having one other meeting with Ferguson and a representative of the University of Southern Indiana in February 1993 to discuss curation, the need for studies of the recovered materials, and a National Register nomination. Mark Seeman also attended this meeting to answer any questions GE might have about the significance of the site and the artifacts. At this time, Ferguson explained that GE would reconvene the advisory committee to discuss disposition of the artifacts when the legal proceedings were complete in the ARPA case.

There the issue rested until January 1994, when the U.S. Supreme Court denied Gerber's appeal. Shortly thereafter, Ferguson, accompanied by John Hornbrook and Tom Montezuma, retrieved the recovered artifacts from the FBI Office in Evansville and took them to the GE plant in Mt. Vernon. In this instance, Montezuma, chairman of the state's appointed Native American Council, and Hornbrook, a council member, were perhaps acting as vice president and president, respectively, of the American Indian Inter-Tribal Council, which was formed by the two men in March 1993 to educate "the people of Southern Indiana about Indian history" (Kinney 1993:5).

Once GE took the artifacts to its plant, concerned archaeologists and organizations, including the Society for American Archaeology, wrote letters concerning the disposition of the artifacts. Archaeologists in Indiana offered to meet with GE and to provide a list of Hopewell experts. However, GE did

not respond, nor did it reconvene its advisory committee as promised. GE's intentions regarding the study and disposition of the artifacts remained unknown to the authors, and to the state archaeologist, until late March 1994. At that time, reporters from Evansville newspapers contacted Native Americans and also several archaeologists in the state and elsewhere for comments, telling them that a study of the artifacts was nearly done and informing them that they had learned the reburial was imminent. Archaeologists also learned that several people had been invited to an April reburial. Montezuma told reporters that "there was no room for compromise as far as reburial," explaining that he had previously supported the idea of curation and study because otherwise the artifacts would be "packed in boxes and sent out East" (Raithel 1994a). Ferguson, on the other hand, declared then and later that GE had not made a decision yet about the artifacts (Raithel 1994a; Swanson 1994a). However, he then went to Indianapolis and took possession of the artifacts and the fragments of human bones that Tomak had recovered during his test excavations for the Indiana Department of Transportation.

Attempts by archaeologists to get information on the decision-making process were stonewalled by GE's spokesmen, who provided contradictory and confusing information about when and by whom a decision would be made about the disposition of the artifacts. The reburial may have been postponed a few weeks because of the public attention and perhaps the advice from archaeologists that reburial on the mound itself would require a permit from the state Division of Historic Preservation and Archaeology in accordance with Indiana's new archaeological site protection law.

In response to reporters' questions about reburial, Ferguson explained that the artifacts were being inventoried and photographed for a published catalog and other information would be made available on CD-ROM, but he would not name the archaeologists so that they "could be free to complete their work

without interference" (DeWitte 1994:A8). Seeman expressed the concern of many archaeologists about the secretive aspects of the study, saying that "this was very unusual in archaeological circles. . . . Peer review is a very important part of science" (*Indianapolis News* 1994).

Both GE representatives and Indiana's deputy SHPO requested that archaeologists present their case for analysis and curation of the GE Mound artifacts at the May 9 meeting of the Indiana Native American Council (NAC). But on April 29, the American Indian Inter-Tribal Council is reported to have said that NAGPRA mandates that the GE Mound artifacts be reburied, and Ferguson explained: "What we've been doing since 1988 is to try to do what Native Americans want us to do . . . and the right thing to do is to return these items to the earth" (*Herald-Times* [Bloomington, Indiana] 1994). He also announced GE's decision that it would give "American Indian groups the right to rebury" the artifacts, but not until after the May 9 NAC meeting (Swanson 1994a).

At the May 9 meeting the disposition of the GE artifacts was the first item on the agenda. Archaeologists and others who came to speak were shocked when Chairman Montezuma announced that NAC would take no action or vote on the issue, but would listen to public statements. He allotted 45 minutes for statements from each of the "two sides"—archaeologists and Native Americans. Though not all archaeologists present opposed reburial and not all Native Americans present wanted immediate reburial, those positions were most common (Minutes of the Indiana NAC, May 9, 1994; Division of Historic Preservation and Archaeology, Indianapolis). GE did not send a representative to the meeting.

The state archaeologist, James R. Jones III, as well as Mark Seeman and representatives of the Council for the Conservation of Indiana Archaeology, commented on the historical, cultural, educational, and scientific importance of the artifacts, the reasons for expert study, the unique nature of the site

and some of the materials, and the certain destruction of particular artifacts without placement in a controlled environment or a special reburial facility. Mark Schurr, archaeologist and member of NAC, also spoke eloquently about the information that could be gained from study; he reminded NAC that previously they had agreed to recommend a sufficient period of time for study of the recovered materials before reburial, and questioned why there was a rush and secrecy. Schurr then asked for a chance to review the results and the thoroughness of the study. Chairman Montezuma assured him and the state archaeologist that the reburial issue would be covered at the next meeting of the council (August 1994), and they would be able to review the study.

Larry Mackey, the government's lead prosecutor in the ARPA case, also spoke to NAC, explaining the difficulty that reburial would bring to the enforcement of preservation laws. He pointed out that if scientists lose the chance to study the artifacts, it gives credence to the claims of Gerber and others, who justify looting by saying that without their efforts artifacts would never be saved and available for study (Raithel 1994a).

The Native Americans who spoke at the meeting are affiliated with tribes from across the United States. According to Carlos Alvarado, a member of the Lakota tribe: "American Indians believe the reburial will allow the dead, who originally owned the objects and who may have been buried with them, to continue on their spiritual journey" (Raithel 1994b). Chico Dulak, of the American Indian Movement, explained he saw no difference between archaeologists and looters (Raithel 1994b). Cloudwalker Greywolf, a Cheyenne and director of the Indiana Indian Movement, remarked that "Native Americans have never benefited from . . . archaeological studies" (Minutes, May 9, 1994:5).

Montezuma disputed the judgments made by archaeologists that the GE Mound and other Hopewell and Middle Woodland sites have not been linked to particular historic or existing Native American tribes, explaining

that his tribe (Cherokee) and others have a common legend that "ties them to the ancient Hopewell people" (Raithel 1994b). He defended the study being carried out by GE, saying "The people who were put under contract have been told to do every possible thing that they can do" and "I think that General Electric is showing how fast a study can be done" (Raithel 1994a).

The reburial occurred the following weekend, on May 15, 1994. Two days earlier, Gary L. Rogers, president and chief executive officer of GE Plastics, mailed form letters responding to the many people and organizations who wrote to GE to urge preservation and study of the artifacts, explaining "We view the mound as a cemetery and feel that reburial of the items removed from it is the moral and ethical course of action" (letter from Rogers to CCIA, May 13, 1994, on file, CCIA Corporate Office, Owensville, Indiana).

On May 13 employees of the General Electric plant were allowed to see the artifacts, and newspaper and television reporters were invited to view them on the following day. At that time Ferguson announced that the archaeologist coordinating the study was Tom Beard, an archaeologist whose company, Landmark Archaeology and Environmental Services, is located in Lebanon, Indiana. Ferguson and Beard explained that "the experts haven't yet given permission to be identified," and Beard added "It's confidential information which is the client's privilege. That's just standard business practice" (Proske 1994:1). According to Gifford (1994d), GE also hired another archaeologist, Curtis Tomak of the Indiana Department of Transportation.<sup>7</sup>

Newspaper (*Indianapolis Star* 1994; Proske 1994; Swanson 1994b) and television accounts of the the May 15 reburial indicate that boxes and plastic buckets holding hundreds of artifacts were placed around a circular hole approximately 5 m in diameter. The hole had been dug with a backhoe near the guardhouse at the main entrance to the General Electric Plastics plant, some distance

from the mound itself but in an area where dirt from the mound was spread during the 1988 construction. GE will mark the reburial pit with a plaque. About 75 people representing 25 tribes came as invited attendants. (Miami leaders were not invited.) Tom Beard was present, as was James Gillihan, an artifact appraiser and former archaeologist who describes himself as “carrier of the pipe of Tatanka Iotanke since 1978” (Advertisement 1993; Johnston and Black 1962:9–12; S. Tuttle to computer network, May 16, 1994). Commentators have speculated that the appraiser was involved not only because of his friendship with Montezuma but because GE is planning to take a deduction from their corporate income taxes for donating the artifacts to a not-for-profit organization (e.g., Gifford 1994c).

The Lakota-Mandan men who presided over the ceremony were Ronald Little Owl from North Dakota and George Iron Shield of South Dakota. They were assisted by Montezuma, as well as a Blackfoot, a Comanche, and other Native Americans who applied red paint to the artifacts and placed them in the pit between layers of sand, along with offerings of food and sage. Iron Shield remarked on the beauty of many of the artifacts and appreciated that people might want them, but noted “the objects are not ours. They belong to the people who put them there” (Swanson 1994b:8). Spirit Woman, a Cheyenne, donated a shawl to put under the remains. A Choctaw nation flag flew on a pole near the site, and four Lakotas sang a traditional chant. Hornbrook was one of many Native Americans who commented on the reburial, saying: “For the first time we are being respected. It is marvelous that a corporate giant made a decision like this on moral grounds, not because they had to but because it was right” (Swanson 1994c:1).

C. Dean Higginbotham (1994), lawyer and archaeologist, expressed the views of many archaeologists in a published written commentary, which the newspaper entitled “GE’s ‘Quick and Dirty’ Study of Artifacts Loses History”: “Some day I think Native Amer-

icans, as well as the rest of the U.S. citizens, will want to know about the Native American past. And then they will realize what the re-burying of these artifacts and materials has truly meant: the loss of the history of Native Americans. I submit that true respect for the past is knowledge and understanding of it by respectful preservation.”

In fact, Native Americans in Indiana expressed their dismay and objections about reburial at the subsequent meeting of the state’s Native American Council on August 8, 1994. Council members criticized Chairman Montezuma; they also countered the claim that NAGPRA mandated reburial in this case and criticized GE for not following the “spirit” of NAGPRA, which requires consultation. Montezuma replied: “These are my people. I reburied them. That’s all I know. . . . I don’t care about your science.” (*Evansville Press* 1994b). Council members voted to send a letter to GE, stating: “A majority of the members of Indiana’s NAC protest in the strongest possible terms your company’s recent reburial of the artifacts from the site. . . . It is especially disheartening to see an international corporation act so cavalierly, ignoring the Native Americans of Indiana and repudiating the need for careful and scientific study of a prehistoric culture that is a crucial part of American patrimony. . . . The precipitous reburial deprived the Native Peoples of Indiana of a unique opportunity to learn about their prehistoric ancestors, just as it has deprived all people the opportunity to learn from and about the accomplishments of an important prehistoric culture” (letter from NAC to John F. Welch, chairman of the board, General Electric, September 15, 1994; Division of Historic Preservation and Archaeology, Indianapolis).

Artifact collectors have their own view of the reburial of the artifacts. According to Gifford (1994d), an unnamed collector from Illinois who attended the reburial seems to be the source of information on this event for other collectors. Gerber stated in a television interview shortly before he left for prison: “It seems that all the valuable artifacts are miss-

ing; that they didn't rebury the copper celts . . . ; they didn't rebury a lot of the bear teeth . . . and they didn't rebury especially the crystal clear Ross knife that Randy Hansen found. It's by far the most valuable piece in the mound. And when they were asked where it was, well, they said the piece got misplaced" (Wolford 1994).

Despite the diversity of views about the final disposition of the recovered artifacts, the irony that enforcement of laws designed to preserve the evidence of the past can lead to the opposite effect has not been lost on groups crucial to archaeological resource protection.<sup>8</sup> These groups include avocational archaeologists, law enforcement, and members of the general public.

### Lessons Learned

We have learned a number of "lessons" over our five-year-long involvement in this case, and believe it is useful to highlight several pertinent to future ARPA cases and the professional archaeological community.

#### *Risks*

Some of the individuals involved in the events which followed the looting of the GE Mound were subjected to various forms of intimidation, even threats of bodily harm. Trafficking in illegally obtained artifacts is big business, and looters also may be connected to other kinds of illegal activities; hence, undertaking an active role in archaeological resource protection is not for the naive, faint hearted, or vulnerable (or those who do not have a lawyer!). Both professional training and public education programs about archaeological resource protection laws should warn individuals not to approach looters but to make reports to law enforcement agencies.

#### *Consultation, Interim Curation, and Final Disposition Agreements*

The first artifacts in this case were recovered early in 1989, others as recently as 1992. Some artifacts were not completely inventoried, and

those artifacts comprised of organic materials or having organic residues warranted special treatment in a climate-controlled environment. Until the government turned the artifacts over to the landowner's representative in 1994, the recovered materials were stored in boxes in evidence vaults.

For future ARPA cases involving privately owned archaeological resources, it would be useful for archaeologists and the U.S. Department of Justice to jointly formulate operating guidelines so the necessary archaeological expertise will be available early in any case. The guidelines should focus on: (a) procedures for identifying professionals who could best advise investigators and prosecutors about site significance and past and future effects to the resource; (b) examples of interim curation plans for recovered archaeological materials that would maintain both the chain of evidence and scientific values; and (c) model legal agreements concerning appropriate final disposition of recovered artifacts, which would become effective if the government is successful in prosecuting the ARPA case.

#### *Education*

The GE Mound case underscores the importance of schools and special programs for giving the public a better understanding of the role of scientific archaeology as a source of information about past cultures and the value of conserving archaeological resources. In fact, members of the public with a special interest in the past have come to play key roles in resource protection because there are too few professional archaeologists to effectively inventory and monitor archaeological sites; avocational archaeologists and other organizations have demonstrated that they can play a vital role in these aspects of modern archaeology (Henry 1993; Hoffman 1991). Additionally, many artifact collectors are not looters and support scientific archaeology and site protection. Even some looters have become avocational archaeologists who adhere to a code of ethics and standards of perfor-

mance; each of us has had the experience of seeing former “pothunters” become responsible students of archaeology by participating in archaeological projects, formal education classes, or programs held by avocational organizations. Moreover, no matter how strong state and federal resource protection laws may be or how committed archaeologists are to preservation, effective resource protection will be based on public interest and support. The public must be willing to file reports about looting and other forms of site destruction. Landowners must agree to file complaints against looters with law enforcement officials. These officials must decide to spend time and public funds on investigations and prosecutions. Juries, whether trials be in local, state, or federal courts, are drawn from the local area and must be willing to convict fellow citizens of crimes against archaeological resources. And judges must impose meaningful sentences.

### *Sentencing Guidelines*

ARPA specifies certain penalties for particular violations but sentencing guidelines have not been established. Archaeologists and their professional organizations should urge the U.S. Sentencing Commission to develop specific sentencing guidelines for the range of ARPA violations, so penalties are clear and consistent and so the public can learn that crimes involving archaeological resources are not simply analogous to stealing “TV sets.”

### **Epilogue**

Based on Seeman’s (1994) preliminary inventory of the artifacts recovered from the GE Mound and his previous research on Hopewell, he now views certain Hopewell artifacts as symbols of belief, wealth, and prestige that were employed to validate the positions of local leaders. Other Hopewell artifacts and exotic materials were metaphors used to facilitate communication among peoples living in distant locales and having different beliefs and languages. Even the mound itself was a symbol, in this case, a symbol of

monumental labor and “group-orienting” symbolism.

Nearly 2,000 years later the ancient meanings of this large earthen icon are only dimly comprehended. But as archaeologists seek to improve their incomplete understanding of Hopewell earthworks, exotic goods, and exchange systems, the GE Mound and its contents are again powerful symbols, but symbols with a multiplicity of *new* meanings. In our view the metaphors vary according to the beliefs of five groups—archaeologists, artifact collectors, Native Americans, the public, and law enforcement—and to some extent according to the contexts within which these groups are interacting. Still, we think it is worthwhile to at least broadly sketch the range of present-day images.

1. To archaeologists, professional and avocational alike, the GE mound is not only another nationally significant site, but also an unfortunately redundant symbol of loss of irreplaceable data on archaeological associations and contexts. The site and artifacts also provide new symbols of concern to many archaeologists about the adequacy of historic preservation and resource management, from site survey through final documentation and treatment procedures. Finally, the GE Mound case reflects the divergence of opinion within the archaeological profession and its organizations about: (a) reburial of ancient human remains and of artifacts lacking a traced connection to any present-day Native American group, and (b) professionally acceptable research practices and peer review of studies involving remains and artifacts slated for reburial.

2. To artifact collectors in general, the GE Mound artifacts represent rare, collectible art forms that ought to be preserved for their aesthetic and monetary value, while the legal case about these artifacts is perceived as an attack on individual rights to pursue artifact collecting. The GE Mound artifacts that were never recovered by law enforcement and not reburied have become metaphorically the “big trophies” that have gained in status and market price, since they are uncommon speci-

mens from a now-famous site. The GE Mound case, on the other hand, has become a sign that traditional artifact collecting is less socially acceptable and more legally constrained.

3. To Native Americans, the recovered artifacts and the mound were used as symbols, manipulated to: (a) establish political power and gain social respect, both in terms of validating positions of local leaders and as "group-orienting" symbolism; (b) promote current Native American beliefs in heritage rights, spirit journeys, and the propriety of reburial; and (c) foster a sense of connection to perceived ancestors irrespective of historical, cultural, or biological connections. These symbols were employed in different ways depending on whether individuals or groups have historic connections to Indiana and adjacent states (e.g., Miami) or are descendants of groups whose traditional homelands are located far away (e.g., Lakota, Cheyenne, Apache).

4. As we read and hear from much of the public, the artifacts and the mound symbolize historic resources that should be preserved for all peoples in the state and the region. Individuals of European ancestry increasingly consider "Indian prehistory" to be part of *their* cultural heritage as well. These non-Native Americans attached greater meaning to the GE Mound site and artifacts depending on their ancestral, emotional, or intellectual connection to southern Indiana or the Ohio Valley, which they consider to be their "homeland." Thus, the mound and artifacts became strong geocentric heritage symbols, rather than scientific or ethocentric heritage symbols.

5. To law enforcement at the local, state, and federal levels, the GE mound case is a sign of the increased concern and success in investigating archaeological crime, winning convictions, and establishing deterrents. But most of all, the new legal precedent set by the GE Mound ARPA case signifies the illegality anywhere in the United States of interstate trafficking in unlawfully obtained archaeological resources.

We recognize that these metaphors are not exclusive to the groups most associated with them, given the divergence of belief within each. However, we think that deliberate reflection upon the multiple present-day meanings attached to the GE Mound artifacts and the ARPA case can foster communication, much like Hopewell artifacts did in the past, which will allow greater shared understandings among people with different backgrounds.

As a result of the GE Mound prosecution, ARPA has become a stronger legal tool that can aid federal, state, and local law enforcement in protecting archaeological resources, particularly those located on privately owned lands. The convictions have been upheld by the U.S. Court of Appeals in a precedent-setting decision that explicitly sustains interstate-transport prohibitions. An artifact collector or looter who buys, sells, or trades for artifacts in interstate commerce, or attempted interstate commerce, need only violate a state or local law or regulation that is related to archaeological resource protection. The state or local law does not have to explicitly cover archaeological resources or be limited to such resources. Laws of theft and trespass are appropriate triggers for ARPA's interstate trafficking provisions, and all states in the United States have laws against trespass and theft from public and private lands.

*Acknowledgments.* We were encouraged to write this article by archaeologists, government officials, and others, but assume full responsibility for our opinions and any errors. Sincere appreciation is due the artifact collectors and individuals, anonymous and otherwise, who gave reports to archaeologists and authorities about the looting; they made it possible to learn something about this important site. The late Raymond White (former chief of the Miami of Indiana), along with other Native Americans concerned with protecting prehistoric archaeological sites and putting a stop to the marketing of antiquities, helped create interest in the recovery and preservation of artifacts from the GE Mound. Brian Derry and Joe Murphy, formerly of General Electric Plastics of Mt. Vernon, were instrumental in bringing all interested parties together for initial agreements and in carrying out measures to better protect the site. Many people provided information to us about the GE Mound site, and the legal proceedings and controversies surrounding

the case; we are grateful to all, but especially to Deborah Daniels, Larry Mackey, and Scott Newman (Office of the U.S. Attorney, Southern District of Indiana) for making available copies of legal documents and information about other material in the public record. Countless professional and avocational archaeologists funneled us questions and commentary, as well as information, from the first news of the looting through the writing of this article; we are indebted on all accounts, but particularly to Mark F. Seeman and C. Dean Higginbotham. Diverse artifact collectors also freely talked with us about their views, including some whose ideas sharply diverge from ours; we are very thankful for their continuing cooperation. We also thank Michael Graves, Teresita Majewski, and Janet Walker of the editorial staff, and reviewers for *American Antiquity*, who provided helpful comments. Marjorie Melvin Jones translated the abstract into Spanish.

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## Notes

<sup>1</sup> An article of this length does not permit us to touch on all the pertinent issues of archaeological ethics and artifact collecting raised in the GE Mound case. We think published discourse on issues related to looting and artifact collecting is warranted for further education of professionals within our discipline as well as avocationalists and the public in general. Artifact collectors have considerable printed commentary and debate in a number of the magazines and journals; we cite a few of the numerous sources.

<sup>2</sup> It is difficult to briefly define the terms "artifact collector" and "looter" because there is a continuum of behavior—from a farmer picking up artifacts from the surface of one of the fields on his own property, to an "arrowhead hunter" who never digs or buys, to a hired digger, to a person who bankrolls the mining of artifacts from cemeteries. We think it is helpful to view how people behave toward archaeological resources in terms of both their *activities* and the *values* they hold (but not just their spoken or written values). People who behave lawfully toward archaeological resources, follow practices which archaeologists endorse, and give primacy to *information* about the past fit in the category of amateur or "avocational archaeologist." (Unfortunately, more

than a few looters have appropriated the terms "amateur archaeologist," "avocational," and even "para-archaeologist" for what they do and believe.) We use the term "artifact collector" to include people who give primacy to *objects* over information. Collectors obtain artifacts from sites directly or indirectly through purchase or trade. Looters, in our view, are that subset of artifact collectors who are the unscientific "diggers" of artifacts, or their sponsors, and have primary responsibility for the destruction of archaeological contexts.

Many artifact collectors insist that they abhor looting and confine their direct acquisition of artifacts to disturbed settings (e.g., the surface of plowed sites). Other collectors would not think of digging for artifacts but buy artifacts such as complete pottery vessels and shell-bead necklaces, which obviously were excavated rather than collected from the site surface; thus artifact collectors can unwittingly become sponsors of looters. Other artifact collectors actually hire diggers and thereby become looters with "clean hands." In our view, it does not matter whether the intent of looting is to sell artifacts, to display them, or to augment a personal collection kept safely "away from the Indians" in a vault; it is the unscientific and often destructive removal of artifacts that earns the label. Furthermore, whether or not looting is illegal is not pertinent in our definitions because it is the behavior toward the past not the existence of law that is key. However, a complication in our classification, and perhaps in any other, is the matter of "situational behavior." For example, an individual may behave like an archaeologist in some circumstances but as an artifact collector in others. See Early (1989) and Hutt et al. (1992: 16–18) for somewhat different typologies.

<sup>3</sup> Prior to the discovery and looting of the GE Mound, archaeological surveys were made adjacent to and at the mound site, in order to provide compliance with federal requirements (National Historic Preservation Act, Sec. 106). In August 1986 a consulting archaeologist surveyed an east–west corridor for the new County Road 850S, the construction of which would be supported by the Federal Highway Administration. At the time of this survey the corridor for the new roadway was about 24 m wide (DeRegnacourt 1986). This surveyed tract was located roughly 100 m north of the mound, which was then covered in brush and trees; however, the right-of-way for the constructed road appears to extend into the mound or at least the immediately adjacent area (Tomak 1990: Figures 4 and 5). In April 1988, an archaeological survey of the borrow pit on the GE Mound per se was carried out by a graduate student working under the direction of C. Russell Stafford. Stafford's (1988) report notes earthmoving prior to the survey but no evidence of an archaeological site on the ridge. Both DeRegnacourt and Stafford included recommendations in their reports about whom should be contacted if artifacts were discovered during soil borrow.

The GE Mound not only went unrecognized during these surveys but was not recorded during the mound

surveys of the last century nor by any of the numerous professional and avocational archaeologists who have carried out surveys in Posey County over the last 50 years. The county has more than 1,000 recorded sites and the highest-known site density in Indiana. Most local residents know about the prominent Mann site with its multiple mounds and earthworks, but they report many other "camps" and "mounds." Most reported mounds, however, are actually natural ridge features or deposits of habitation debris on upland or lowland ridges, rather than prehistoric earthworks. Other reported mounds are flat-top historic earthen historical-period constructions made in the late 1800s and early 1900s to raise farm buildings above flood levels.

<sup>4</sup> Based on our firsthand knowledge of the region, we believe the GE mound was not discovered because it was (a) located in undulating terrain and (b) so large that it appeared to be more like one of the nearby natural knolls than a mound. Even after some years of plowing and farming, this steep-sided mound would have measured approximately 120 m long, 50 m wide, and 6 m high prior to soil removal (Seeman 1994). Also, some time prior to the archaeological survey at the borrow pit, General Electric had removed trees and brush and also taken soil from the location, which probably altered the contours of the mound to some degree. Had the mound been an obvious man-made feature, as some now make it out to have been, the odds are very great that it would have been dug into many years before, leaving little or nothing to be exposed by the bulldozer and removed by the looters. As for compliance with historic preservation laws, the Indiana SHPO's office has no record of receiving the survey report from any contractor nor do their files have copies of a letter granting comment or "archaeological clearance" under 36 CFR Part 800 for borrow-pit use. James R. Jones III, state archaeologist in the Indiana SHPO's office, reports no letters or documents of subsequent agreements with General Electric, highway contractors, or agencies concerning treatment of the site and materials from the site. However, since the damage became known at the GE Mound, reports of archaeological surveys of highway borrow pits are routinely sent to the SHPO's office for review.

<sup>5</sup> The annual Owensboro Artifact Show Gerber previously sponsored goes on. Perhaps in an effort to be politically correct the show has recently been entitled "Antique and Contemporary Native American Artifacts," which is promoted by "Owensboro-Kentucky Indian Art Shows, Inc." The fifteenth annual show was held August 6-7, 1994, and had a display area of 21,000 square feet (1,950 square meters); artifacts were exhibited, sold, traded, and auctioned, including an Anasazi bowl. According to a recent advertisement that lists Gerber's business phone number, the 1995 show is scheduled for August 5-6.

<sup>6</sup> Gerber was represented in his appeal by the well-known Chicago firm of Catten Muchin & Zavis. At the end of their decision, the judges remarked: "We commend

counsel, Harvey Silets for the defendant and Larry Mackey for the government, for the exceptional quality of their briefs and argument. . . . [C]ounsel whose performance exceeds those [professional] standards by a generous margin deserve our public recognition" (USCA 92-2741: Decision:9).

<sup>7</sup> While the "last act" of the GE Mound ARPA case has concluded with regard to the legal proceedings and the disposition of the artifacts, it is too soon to assess the effects of the case on archaeological knowledge and resource protection. Presentation of the results of analyses of the recovered artifacts and human remains is pending. In addition to what General Electric will make available on CD-ROM, the journal *Archaeology of Eastern North America* indicates it will publish an article about the site by Tomak. In addition, at the time the present paper went to press, Tomak and five other researchers planned to give presentations at the November 1994 meeting of the combined Southeast Archaeological Conference and the Midwest Archaeological Conference. Nonetheless, controversies about aspects of the artifact study continue. In an article published after our manuscript was revised, it is reported that Tomak wrote to Gifford to correct errors in Gifford's preceding article and to explain that he (Tomak) ". . . was not hired or even asked by GE to participate in their study of the artifacts returned to them. I was not and am not a member of the group who is doing that study, and I have not studied any of the artifacts for GE. However, if a member of the study group asks me [Tomak] for information or assistance, that would be normal archaeological procedure, but an entirely different matter." (Gifford 1994e)

<sup>8</sup> James A. Glass, Indiana deputy SHPO and director of the Division of Historic Preservation and Archaeology, also recognized similar effects. After the artifacts were reburied, he wrote to the chairman of the board of General Electric to explain that "valuable historic and scientific information . . . will be lost without long-term study . . . by identified experts in archaeology, established and well-known Hopewellian scholars, and members of other related disciplines. . . . Reburial of these [recovered] artifacts and human remains will ultimately lead to substantial deterioration of such resources, and their value for history and science diminished or lost. . . . Finally, the reburial of the GE materials also may send a message to potential looters of sites that the information represented by such materials is not important to conserve" (letter to John F. Welch, chairman of the board, General Electric, June 1, 1994; Division of Historic Preservation and Archaeology, Indianapolis).

In the same letter, Glass pointed out that "the State Historic Preservation Officer, as the lead official responsible in Indiana for historic preservation and archaeology matters, was not consulted for a professional opinion on the disposition of the human remains and artifacts from the site, and was not kept informed during the decision-making process. . . . Given the destruction and unsystematic removal of artifacts from the site, we believe

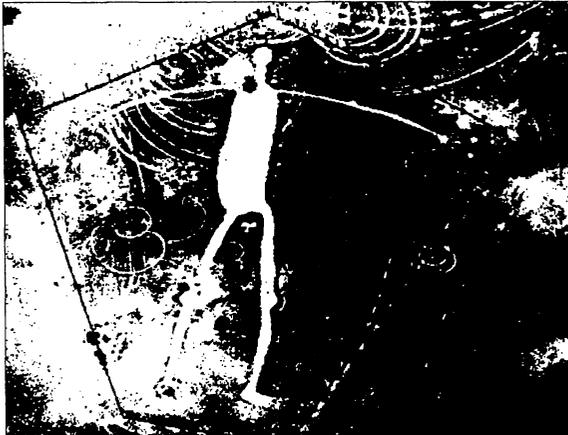
that it cannot be demonstrated that most of the artifacts were directly related to burials at the site. Further, we have not seen any demonstrable evidence of direct biological, genealogical, or cultural continuity of the human remains to living Native American groups."

With the 1989 changes made in Indiana's laws concerning treatment of burial and archaeological sites, persons are required to make reports to state officials in the event that human remains or prehistoric artifacts are accidentally disturbed and to obtain a state permit if

they wish to excavate burials or archaeological sites, regardless of whether the remains or sites are located on privately owned land. The law also includes provisions governing the appropriate treatment of disturbed human remains and grave-associated artifacts that require persons and companies to coordinate with state officials. General Electric testified in favor of the 1989 legislation.

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