

# RESPONSIBLE COLLECTING AND THE LAW

By Richard D. Austin, G.I.R.S. Treasurer  
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Last fall there was considerable interest in the collector community over a bill introduced by Senators McCain (R-AZ) and Hemrich (D-NM) known as the Safeguard Tribal Objects of Patrimony or “STOP” Act. The bill would have prohibited the export of Native American cultural objects and created a two-year period under which anyone holding Native American cultural objects could “repatriate (i.e. return without compensation) them to the appropriate Indian Tribe”. Presumably anyone not returning these items in their possession by the end of the two-year period would have been subject to criminal penalties of up to 10 years in prison. Accompanying the bill was the “Anti-Terrorism Antiquities Revenue Act”. This bill’s stated purpose was to prevent the trafficking of looted cultural items from Syria and Iraq. However, as drafted, it might have **also** applied to such artifacts as Native American items from Canada.

Collectors will be relieved to know that neither bill was passed. Instead Congress passed a non-binding resolution urging the Federal agencies in charge of administering the Archaeological Resources Protection Act (ARPA) and the Native American Graves Protection and Repatriation Act (NAGPRA) to more vigorously enforce those Acts.

Because these bills did not move through the legislative process, there remained ambiguities in the bills regarding what constituted “cultural objects” and the “appropriate Indian Tribe”. However, it is possible that these terms would have remained murky. (I recall the conversation that I had with the administrator of a major educational institute’s museum after the passage of NAGPRA. At that time, the museum had decided to transfer its extensive collection of midwestern artifacts gathered by Professor Moorehead in the early 1900s to a Connecticut tribe because it was impossible to sort out the legal requirements and they didn’t want to jeopardize their Federal funding.) Differing people reading the proposed bill were uncertain whether it applied only to objects found on Federal and Tribal lands as defined in ARPA or to private lands as well. However, it was clear that it applied to items in private collections.

It should be stressed that the bill was bipartisan. One sponsor was a Republican and one was a Democrat. If they had anything in common, it was that they had significant Native American populations in their states. Moreover, the non-binding resolution proceeded without opposition. Some observers stated that this was because the resolution was a “feel good” measure adopted in an election year which enabled Congress to say that it had done something to support Native American causes. However, I have to wonder if some of the high profile legal cases involving Native American artifacts have also put this subject more in the public eye and encouraged the

introduction of the legislation. This underscores how, as collectors, we all need to keep the legal requirements of our hobby in mind for the good of ourselves and our hobby.

In addition to the Federal laws that I have referenced, many states and even some counties and cities have laws and regulations that impact us. It is impossible to summarize them all. However, the following five points cover the highlights:

FIRST, the safe thing to do is to assume that any object on public land **is subject to laws prohibiting its removal**. ARPA and NAGPRA apply to all Federal and Tribal laws. This is obviously of most significance in the Western U.S. simply because the Federal government continues to hold large portions of the land in many of those states. However, even in the area where I live, many people fail to appreciate that many of their lakes and rivers are owned by Federal agencies like T.V.A. and the U.S. Army Corps of Engineers and are subject to all Federal laws. You may be authorized to hunt or fish there, but that does not extend to other items located on Federal land. And this is true even if the Park Ranger

or Game Warden tells you that you can “take the item”. In legal terms they are not “authorized agents” of the Federal government. So, unless you are fishing with the President, what you may be told about the arrowhead on the bank doesn’t count. And while ARPA has an exception for “arrowheads located on the surface”, many Federal agencies have

adopted regulations for lands that they manage which do not include this exception.

Every state has different laws pertaining to state and local government property. Some are quite complex. For example, as I understand Florida law, it is perfectly legal to remove a *T. rex* skeleton worth \$1 million from a state waterway, but not a \$1 arrowhead. So unless you have specifically researched your state’s laws (and remember that they change every two years), and are certain that what you propose is legal and are certain that you are on state property (the line between what is State and Federal property can be confusing) the safe thing to do is to avoid public property. This includes both law owned by public entities and land controlled by public agencies.

SECOND, unless something like the STOP Act becomes law, it remains legal to surface collect on private property as long as you have specific consent from the landowner. It needs to be the landowner—which gets complicated if the land is owned by a corporation, or if a tenant farmer is present. Consent can not be obtained from the 12-year-old child of the landowner and can not be inferred from the fact that others may already be on the site. If you go on private property without consent, you could be guilty of trespass and theft (if you remove something). Some collectors that I know get written consent. I will leave that up to you, but it

*“... specific consent from the landowner. It needs to be the landowner ...”*



certainly removes any ambiguity. And be aware that at least two states have prohibited excavation (digging) on known archaeological sites even if they are on private property. So again, check your state's laws if you plan to do more than pick an item up from the surface.

THIRD, and if you don't take anything else away from this article, please take this—**avoid human remains**. They have absolutely no place in today's responsible collecting community. Perhaps, at one point, it was acceptable to have human remains in a collection. As a boy I remember visiting Dickson Mounds and seeing human remains *in situ*. However, that portion of the museum has long since closed. I am not aware of any law that categorically and absolutely prohibits you from possessing ancient human remains which were found on your property under any and all circumstances. However—and the list of howevers is lengthy—it is clearly illegal to sell human remains under NAGPRA and the laws of many states. "Selling" includes the trading or other transferring of the item to anyone else, possibly including a transfer as part of an estate and can also extend to public display, whether for profit or not. You may also be prohibited from moving these remains from the state in which they were found. It is generally illegal to intentionally seek out and excavate human remains, whether on public or private land. If you accidentally discover them you are most likely obligated to immediately report the discovery to local law enforcement—which obviously has interest in determining the age of the remains, and whether or not a crime has been committed. Moreover, there are significant practical reasons not to have such items. For example, the 2014 raid on the home of a 91-year-old Indiana resident received considerable press attention. Afterwards, one law enforcement official was quoted as saying that one of the primary reasons for that raid was that they knew the individual had 19th Century human remains in his home. Or to put the risk another way, if local law enforcement hears that you have human remains, are they first going to think that you are "a collector" or think of the 20 missing persons reports on their desks? As I said, **human remains have no place in today's responsible collecting fraternity**.

FOURTH, if you are considering including items imported into the U.S. in your collection, you need to be aware that the U.S. Government will enforce the customs laws of the country of origin. Some countries allow exporting without restriction, some require permits for certain items, and some ban all exports of cultural items. You are responsible for knowing these laws. Moreover, U.S. Customs requires you to accurately report what you are importing (which, if you are bringing the goods in with you, includes everything which in the aggregate exceeds \$800 in value). Someone who fails to do this may be guilty of smuggling.

FIFTH, if you are considering collecting any "ivory" artifacts, there are very specific laws governing these items. The Marine Mammal Protection Act covers

products from animals such as whales, dolphins, porpoises, manatees, and polar bears. These materials are found in many Aleutian and Alaskan artifacts. A number of international treaties that the U.S. has adopted cover products from elephants, rhinos, and other animals. Materials taken from these and other endangered species, such as eagles and other large birds of prey, are subject to regulation under the Endangered Species Act.

For both items four and five, it should be stressed that provenance is extremely important. Where the item came from and when it was made can make the difference between legal and illegal. It may be "obvious" from the design and style that an item was made in the 19th Century, but unless you can prove it, this may not be sufficient. Trust me, the regulations under these laws are complex and very legalistic. If you are considering any of these items, you need to know the law.

Finally, consider one practical observation. As a lawyer, I continue to be amazed by people putting information on the Internet and assuming that these communications are private. You need to assume that anything you put on the Internet will be read by your neighbor who doesn't like you, your minister, and the whole world. It will be there forever and affect both you and everyone else in the hobby. Moreover, anything written could be considered as a legal admission of responsibility. This applies even if you were trading "fish stories" with your buddies or trying to do a little "creative selling". People have been sent to prison for very long periods of time based on Facebook posts. Through Internet browser searches I have been directed to chatroom conversations that I am certain were never intended to be made public. Be warned and be prudent. That "fisherman's story" that you create could turn around and **"hook you"**.

For both your sake and the sake of the hobby, the only type of collector to be is a **responsible** collector.

#### AUTHOR'S NOTE:

*As of the date of this printing, the STOP Act has not been reintroduced in this session of Congress. However, I am informed that Congressional staff are in discussions with Tribal and ATADA representatives to determine if compromise legislation, acceptable to both sides, can be drafted. As such, this is the time for interested G.I.R.S. members to make their views known to their Congressional representatives. For information on how to contact your representatives, go to:*

<https://www.senate.gov>  
<http://www.house.gov/representatives/>

**Those that can, please make a contribution to the ATADA to help fund the lobbyist. Checks should be made payable to ATADA and note "legal/lobbyist fund" in the memo.**

**Send to:**  
**Larry Cornelius**  
**Asst. Treasurer for ATADA**  
**P.O. Box 45628**  
**Rio Rancho, NM 87174**