

United States v. Jones, [607 F.2d 269 \(9th Cir. 1979\)](#), *rev'g* [449 F. Supp. 42 \(D. Ariz. 1978\)](#), *cert. denied*, 444 U.S. 1085 (1980).

Location: Arizona—public lands owned or controlled by the government

Applicable Laws: [Antiquities Act \(16 U.S.C. §§ 431 et seq.\)](#)
General theft statutes ([18 U.S.C. § 641-42](#) and [18 U.S.C. § 1361-62](#))

Where Laws Apply: *Antiquities Act:* Applies on land owned or controlled by the United States government, including the outer continental shelf

Holding: Prosecutors may choose to prosecute the theft of government-owned “objects of antiquity”, such as Indian relics, under the Antiquities Act or under 18 U.S.C. § 641-42 or 18 U.S.C. § 1361-62, because there is nothing in the legislative history of these statutes to suggest that Congress intended for the Antiquities Act to be the exclusive means of prosecuting the theft of antiquities.

Overview:

In 1979, the U.S. Circuit Court of Appeals for the Ninth Circuit reversed the district court’s dismissal of the federal government’s charges against Kyle Jones, Thayde Jones, and Robert Gevara for the theft of government property in violation of 18 U.S.C. § 641, and for the depredation of government property in violation of 18 U.S.C. § 1361. Two years earlier, several forest service officers and archaeologists observed the defendants digging in Native American ruins located in the Brooklyn Basin of the Cave Creek Range district of the Tonto National Forest. The forest service officers arrested the defendants. At the time of their arrest, the defendants had several clay pots, bone awls, stone matates (used for grinding grains and seeds), and other Native American relics in their possession. The district court granted defendants’ motion to dismiss the charges of theft and depredation of government property on the grounds that Congress intended the Antiquities Act to be the exclusive means of prosecuting the defendant’s alleged conduct.

On appeal, the Ninth Circuit reversed the district court’s dismissal, holding that there was nothing in the legislative history of the Antiquities Act or the theft and depredation of government property statutes to suggest that Congress intended the Antiquities Act to be the exclusive means of prosecuting the theft of Indian relics owned by the government. Therefore, the government may elect to prosecute under either the Antiquities Act, which is not possible in the Ninth Circuit, or under the theft and depredation statutes. To further bolster its decision, the court pointed to the fact that the statutes providing for a harsher penalty (the theft and depredation statutes) require the government to prove specific intent whereas the Antiquities Act has no intent requirement. Thus, the existence of these overlapping statutes has a rational statutory framework of harsher penalties for specific intent and the court’s interpretation is compatible with a rational congressional policy.