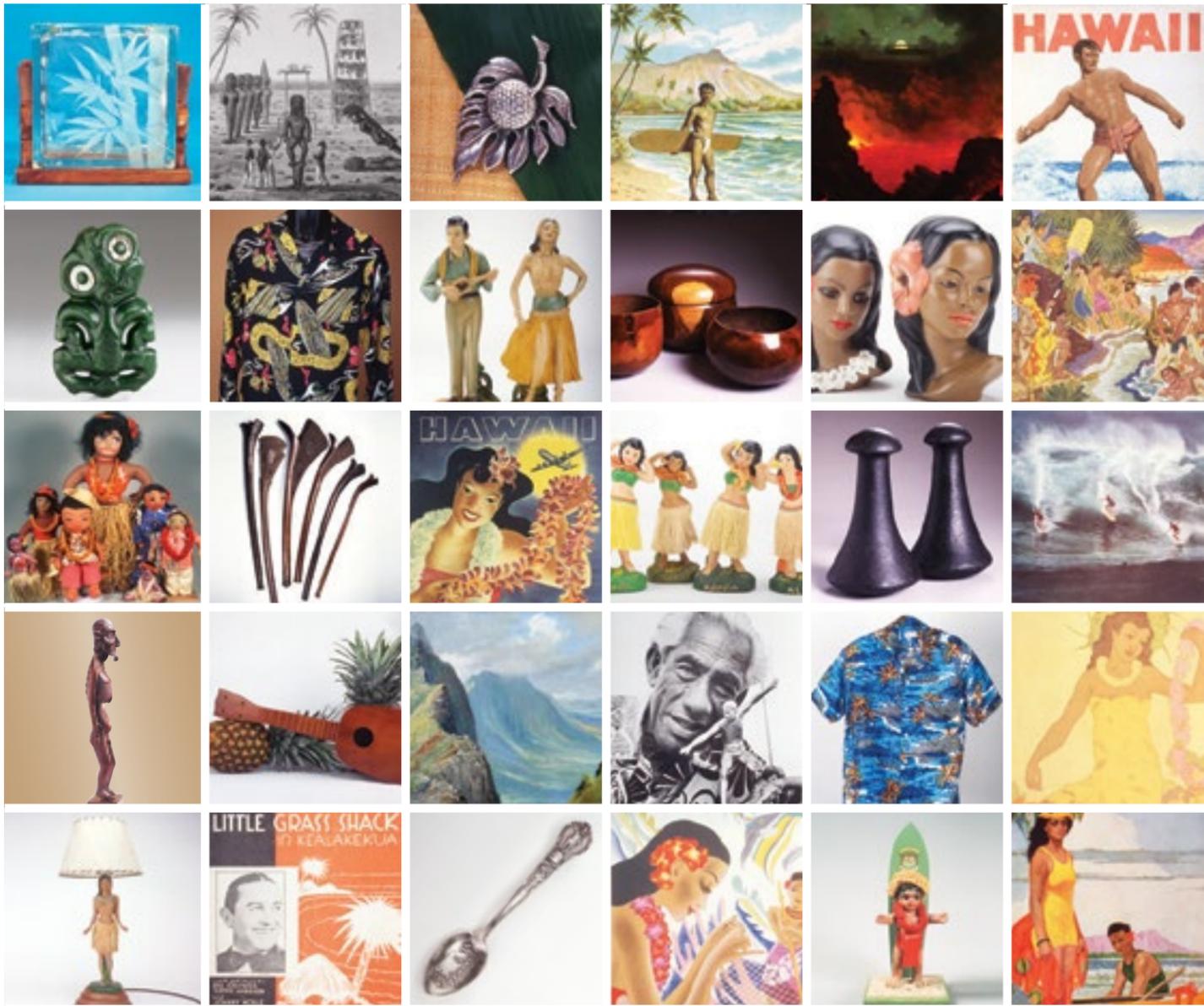


ATADA NEWS

Fall-Winter 2016 / Vol. 26-4



Honoring The Artistic Legacy Of Indigenous People



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In The News...

Fall 2016 | Vol 26-4

ATADA NEWS

Honoring The Artistic Legacy Of Indigenous People

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Policy Statement:

ATADA was established in 1988 to represent professional dealers of antique tribal art, to set ethical and professional standards for the trade, and to provide education of the public in the valuable role of tribal art in the wealth of human experience. ATADA members are pledged to act as honest brokers, to guarantee the authenticity of their material, and to provide the buying public with the available information on the age, source, integrity, and collection history of the objects that they sell.

Additionally, ATADA sponsors a series of publications and seminars, offers educational grants (through our Foundation), and provides legal advice and insurance to members. ATADA also monitors and publicizes legislative efforts and government regulations concerning trade in tribal art. To attain its objectives, ATADA will actively seek suggestions from other organizations and individuals with similar interests.

The ATADA Foundation is a separate, non-profit 501(c)(3) entity. The ATADA Foundation is dedicated to expanding education on tribal art, both antique and contemporary, from around the world.

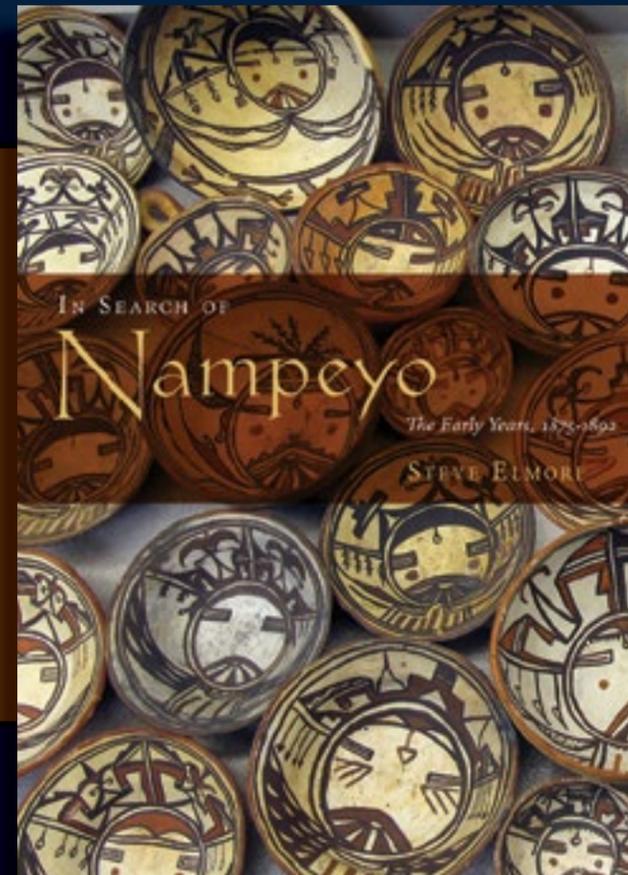


ON THE COVER

Lidded Pot by Russell Sanchez, 2015.
Courtesy of Native American Collections
www.nativepots.com
Photo by: Tom Tallant

Available Again, the Award-Winning Book

In Search of Nampeyo: The Early Years 1875 - 1892 by Steve Elmore



"Elmore reintroduces us to a distinctive artist whose work deserves rediscovery and celebration."

-High Country News

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LETTER FROM THE PRESIDENT

Dear Fellow Members and Associates,

Much of our energy the last few months has been focused on two currently proposed bipartisan Senate bills before Congressional committees—the Safeguard Tribal Objects of Patrimony (STOP) Act, and the Anti-Terrorism Antiquities Revenue (TAR) Act. Although lawmakers and supporters are well-intentioned with aspects of these drafted laws, as written right now these measures are misguided, short-sighted, and are based on false assumptions--especially in regards to the art market at large and to private collections. Passage of these laws would have a direct impact on our industry.

However, ATADA's hope is that the reasonable lawmakers and sponsors of these bills will consider the ill-effects of hastily-written and unclear legislative motives, and, ultimately, we hope that they will equally take into consideration our testimonies, which include corrective-propositions to the current drafts. ATADA has retained counsel to direct our efforts both locally in the Southwest and in Washington DC. We have also established a separate legal fund to sponsor proactive drives by ATADA in reaching out to our own collector communities, and to establish a sustained, communicative relationship with Native tribes and government officials alike. Those of us involved in collecting indigenous tribal arts from all over the world need to come together, now more than ever, and be heard. I encourage all of you to personally donate and solicit donations to our legal fund; I also encourage

all of you to contact your regional Congressional representative and share your thoughts about this with them.

These urgent legislative matters have, unfortunately, overshadowed ATADA's newly re-designed and freshly-launched website. If you have not already done so, please check it out today at www.atada.org and take it for a spin! There you'll find an updated, modern look and many user-friendly aspects including an exciting new online marketplace for Full Members. More importantly, and in coming back around to these all-consuming legislative issues, the new ATADA website will be a continued and invaluable resource for our members in staying abreast of current developments. There will always be links, downloads, sample letters, and the latest reports from our Legal Committee regarding the STOP Act, and much more, to be found there.

As a final thought, I leave you with this: ATADA is committed to moving forward in a positive manner that supports our collectors' rights in these important legal and cultural matters. We intend to do this while also sincerely maintaining, and encouraging, a clear respect and support for the inalienable rights of self-determination for contemporary Native peoples.

Yours truly,
John Molloy
ATADA President

FROM THE EDITOR'S DESK

You will notice this issue of ATADA News dedicates a great deal of space to discussion of pending legislation that could impact members. We focus on ATADA's efforts to advocate on behalf of the dealers, collectors and art trade in addressing concerns related to exportation/importation, private property rights, and repatriation. As you will go on to read here, we have a capable legal committee who are working diligently to see that our voices are heard in these important policy developments, while approaching these issues with the utmost respect for Native peoples. We

strongly encourage you to visit the new ATADA.org and pay special attention to the "Legal Issues" page where reports will be available for your study and understanding, including briefings from the Legal Committee, actual proposed legislation copy, sample letters, and additional testimonies.

This News issue also continues a celebration of the modern with a compelling introduction to Russell Sanchez, a contemporary Native artist whose innovative contributions to Pueblo pottery are

highlighted by Charles King. King's understanding of historic forms and designs, and their influence on Sanchez, demonstrates one more reason that pottery making and its many forms will continue to inspire future generations.

Some of our readers may be asking, "Where's Ernie?" as his writing did not appear in our last issue. We can share that Ernie is still as focused as ever and continues his tireless research into Zuni artists and their work. We invite his fans to follow him on his newly launched blog at www.buffalomedicine.com. He's already posted two articles since he last published here, and he has promised more to come. We will repost his blogs on the new website as they become available. Most important of all, we extend a big, heartfelt thanks to Ernie from all of the ATADA editors and staff for his years of contributions to our community.

And finally, we want to thank David Ezziddine for his work on the new ATADA website. We look forward to the growth and development of ATADA.org through your engagement and participation. We also encourage you to submit your own original articles, testimony, or comments. The ATADA News is here to be a voice for the business and our strength depends on our members' active involvement.

- Paul Elmore and Elizabeth Evans

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DIRECTOR'S NOTE

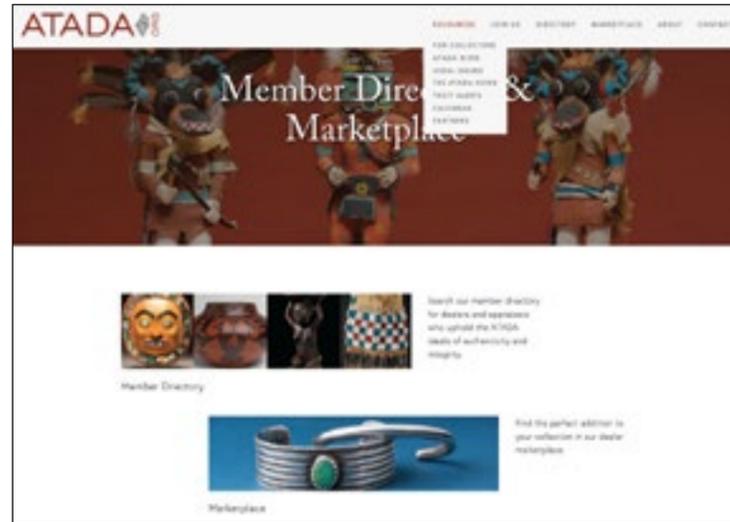
THE NEW ATADA.ORG

As you may have heard, the completely redesigned ATADA website is now live. Among the new features are a more robust directory with enhanced member profiles and a marketplace of curated items from participating dealers.

Other features include a sortable Theft Alert list and the new ATADA Blog, where we will be posting news, articles and links of interest. There is also a new Legal Issues page where we will continue to provide relevant information and news about the pending legislation I'm sure you've been hearing about.

All members now have the ability to log in and manage your ATADA membership. Full Members can customize their directory profile and list an item in the Marketplace. Associate Members can login to update their contact information and access members only content as it is added.

Furthermore, you now have the option to renew your membership and pay dues online with a credit card. Of course, you can continue to mail checks if you prefer. You will be asked to choose which option you prefer when you log in for the first time.



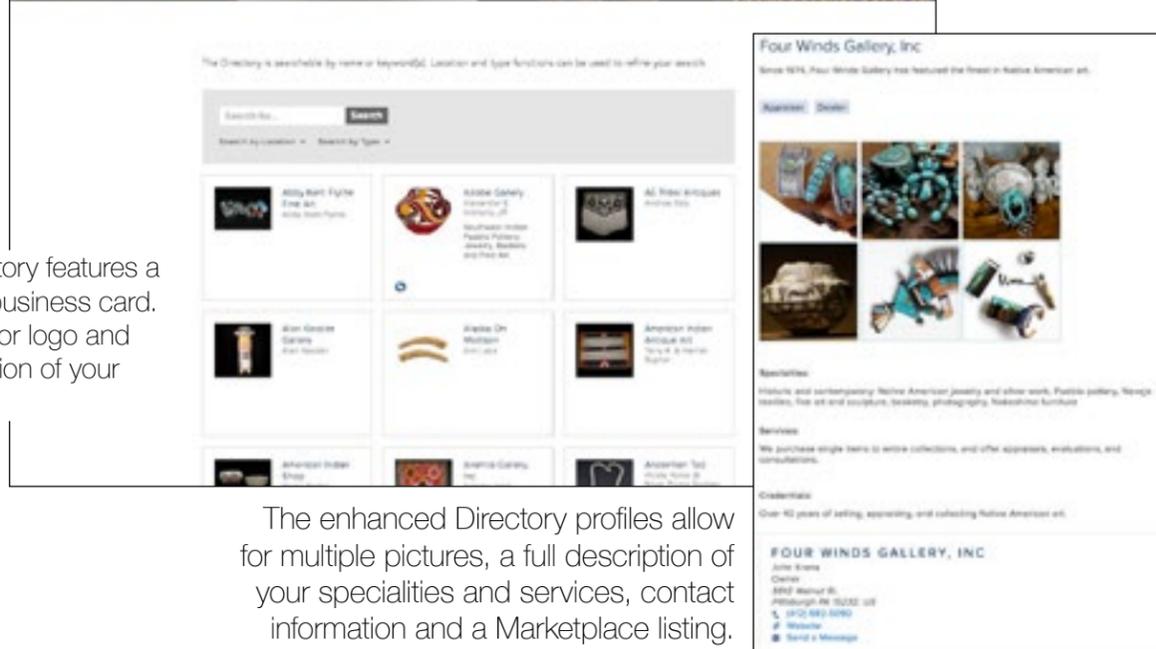
Many of the new features are found under the Resources tab.

I encourage everyone to explore the new site and ask that all members please log in and update their information. On the Member Sign-In page, you will find a link to request a new password for your account, if you do not have one.

If you are not a member, I invite you to join ATADA today. You can find information about the various membership levels and sign up with our quick and easy online registration.



The new Directory features a customizable business card. Add an image or logo and a brief description of your business.



The enhanced Directory profiles allow for multiple pictures, a full description of your specialties and services, contact information and a Marketplace listing.

USING THE MARKETPLACE

One of the great new features of the website is the Marketplace page where full members can list a featured item for sale. Clicking on a listing, directs a viewer to your Directory profile where they can learn more about the item and find your contact information. Any sales will be between you and the buyer. There are no commission fees for ATADA on any sales.

- To add your listing:
1. Login on the Member Sign-In page on the ATADA website
 2. Select Edit Profile on the landing page.
 3. Click on the Marketplace tab of your profile.
 4. Add an image of your item and a description.
 - While it is not required, we do encourage you to list the price of the item. You have the option to enter a secondary picture of the item, though only the first picture will show on the listing.
 5. Click save and log out of your profile.

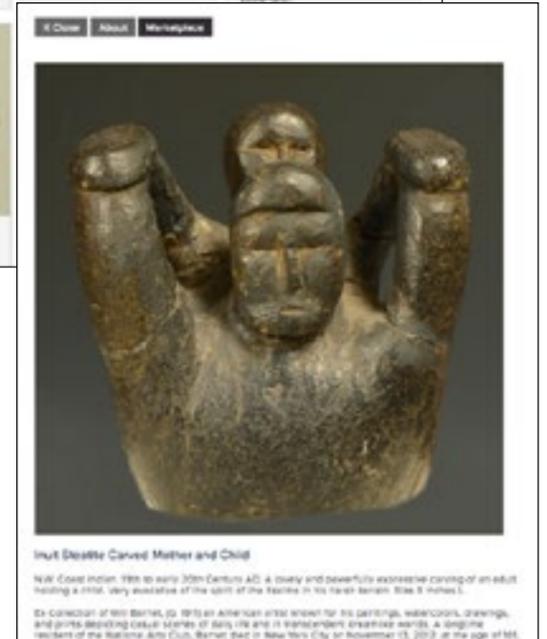
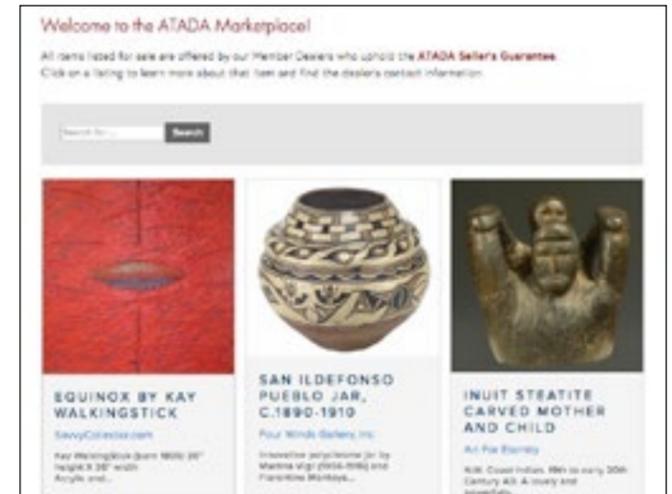
The system will automatically add your listing to the Marketplace. The listings are loaded in random order each time the page is loaded so that no listings are always at the bottom. Once an item sells, you can update the listing with a new item. While you can only list one item at a time, you can change the item as often as you like, and we encourage you to do so.

We are working to promote the Marketplace and with your help in keeping the listings fresh, we believe this can be a beneficial tool to increase your presence on the web and drive sales.

The following video tutorial on our website will guide you through the process of logging into the system and adding your Marketplace listing. www.atada.org/tutorials



Click above for video tutorial



Clicking on a Marketplace listing calls up your directory profile, providing potential buyers access to all of your contact info.

Please contact me if you have any further questions or need any assistance.

David Ezziddine
Executive Director for ATADA.org
director@atada.org



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ART FOR ETERNITY is a leading Manhattan art gallery specializing in Classical Antiquities and Ethnographic art.

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- Art historical research

ATADA FOUNDATION UPDATE

The Himalayan Stove Project

Following the devastating earthquake that struck Nepal, members of ATADA were anxious to lend aid to the fractured lives, homes and culture of the people living there.



▲ Home in Megere, cooking inside over an open campfire.

Whereas the mission statement of our Foundation for Charitable Giving includes a provision for funding humanitarian efforts, ATADA sought out a way to bring the most aid to those in need. Former board member, Wilbur Norman, alerted us to The Himalayan Stove project, a New Mexico based organization supplying clean burning stoves that provide both heat and cooking for affected families in Nepal.



▲ Inside the same home, 10 minutes after installing a clean CookStove.

Through a donation from our Foundation, we were pleased to become a part of the efforts of this fine organization.



You can learn more about the project at:

www.himalayanstoveproject.org



In Memoriam: Harold (Jay) Evetts

I don't recall when I first met Jay Evetts. He was a fixture in the dealer scene when I first became involved in the 1980s, and over the years, there were many exchanges, mostly down the alley in the 'office' where he and Bob Vandenberg did business. There was always more jewelry there than anywhere else, and I always marveled (still do!) how they could keep track of it.

I was always struck by Jay's kindness. Not always apparent because he was so quiet, but it shone through as you got to know him more. And his shy smile. What follows is a short remembrance from one of his friends as well as an interview Susan Swift conducted with Jay in 2004. Susan took the photo at the time of the interview.

Happy trails, my friend, until we meet again.

-John Molloy

Harold (Jay) Evetts passed away November 24, 2016 in Santa Fe, New Mexico at age 70. Jay had been living at the Casa Real nursing facility for the past two years.



He was born June 6, 1946 (he liked to say two years to the date of D-Day, 1944) in Boise City, Oklahoma, but early in his life the family moved to Eastern Colorado to become farmers/ranchers. Jay's parents were educators and encouraged him to graduate from Colorado State University, which he did in 1968. In his youth, Jay would discover arrowheads every year when the fields were plowed, and from that point on, he became fascinated with Native American culture.

In the mid-1980s Jay started his trading career, buying and selling Navajo rugs. Soon he started packing those rugs into his Olds 88 to head to Santa Fe and the surrounding areas to sell and trade. His quiet demeanor won over all whom he met. Jay formed a friendship with Bob Vandenberg that developed into a 40-year successful business partnership. Prior to his stroke, Jay designed and built a home in Gallup, New Mexico. He spent many hours collecting the rocks for the exterior and objects for the interior. Jay loved history and was an avid reader.

Jay will always be remembered as a man of few words, but from collectors to dealers, he will be missed by all.

Share your memories

We have added a memorial page for Jay on the ATADA website. All those who knew Jay are welcome to share their memories in the comments section.

[Visit Memorial Page](#) ►

An Interview with Jay Evetts

—| Susan Swift |—

SS This is Susan Swift interviewing Jay Evetts, in October of 2004, and we're mainly going to talk about how he became an Indian trader.

JE Well when I was 18 years old I decided to collect rugs and went down to Crown Point, rug auction, had 500 dollars to spend, bought two or three rugs, I think, 350 dollars or so, but I realized I didn't have enough money to collect very good things, or very much, so decided to sell some and maybe keep one or two or three. So that's kinda how I got started but I didn't do much until after I went to college in the 70's.

SS What did you study in college?

JE Agriculture and economics and basic anthropology courses.

SS So did you put those into use in some way?

JE Oh, a bit for my personal use, hunting arrowheads, and background for buying and selling stuff.

SS What were you doing for a living in 1964 when you decided you might like to buy some Navajo rugs?

JE I was just out of high school. I was farming and ranching, I had cows, dry land farming. Farmed for my Dad. Getting ready to go to college.

SS So you made your first "buy" before you even entered University?

JE Yeah.

SS Were you trading throughout your university days, or just studying?

JE No, just...I might have bought a few little odds and ends, probably some jewelry, a few rugs. But I didn't do anything much until I went to Ashton's show in Denver, in '71. Really saw lots of quality and quantity of things.

SS You went there as a spectator?

JE Yes.

SS Did you know anybody in the business then?

JE No, I didn't know a soul.

SS But you got inspired.

JE Yeah, I got inspired. You know, spent alot of money, for me, at that show. Couple thousand or three thousand or something.

SS What did you buy?

JE Ah, mostly rugs. Bought four or five rugs, I think.

SS Must've been good ones.

JE Well, yeah, they were OK. They weren't great. Through the years I did well with those.

SS So then did you proceed to start buying more in earnest in order to sell?

JE Yeah, then I started buying at antique auctions, and I'd go to a few shows. Ron Milam at that time was having lots of auctions in Colorado, He always had pretty good stuff. I started buying jewelry more, too.

SS So you were probably in your early 20's then?

JE Yeah, early 20's. Well, mid 20's.

SS Still living in Colorado?

JE Yes, still living in Colorado, farming and ranching.

SS So how did one sort of take precedence over the other?

JE Well the Indian trading just kind of every year got more involving, you know involved more money and more items. More travel. I think that I had lots of rugs, twenty or thirty, and I think I did a show in Albuquerque in '75 or '76. Wasn't very successful. But anyway, it kept growing more and more. Finally, ranching got worse and worse, so I could see the day when I was going to do this full time.

SS At what point in time did you move to New Mexico?

JE I moved there in '86 after I quit farming and ranching.

SS To Gallup?

JE To Gallup. Me and Bob Vandenberg and Rick Rosenthal bought a place in Gallup, and I moved down there. Well, that was full time then. Started buying and selling. Old stuff and also new stuff.

SS Were you and Bob Vandenberg partners from that time on?

JE Yeah, me and Bob were partners from about '83, probably, when we bought a house, an old house in Colorado Springs that was an antique shop. Started running that.

SS As an antiques store?

JE Yes.

SS How many years did that go on?

JE Well, we sold it about '97 or '98 probably.

SS What was it called?

JE Antique Brokers. It was on East Colorado Avenue, Colorado Springs.

SS So Jay, would you tell us a little bit about your early life? who your parents were and what it was like?

JE Well, my parents were from Oklahoma. I was born in Elk City, Oklahoma in '46. In '46 they moved to Monument, Colorado, near Colorado Springs and Denver, and taught school. Then in '48, my parents had two twin sisters, or twin babies, my sisters. And my folks moved to Ramah, Colorado. Dad taught there like ten years. And he farmed and ranched and I started school in Ramah. That was '53 I guess.

Then he moved south to Miami, Yoder, a small country school, taught there like twelve years, farmed and ranched at the same time. That's where I started high school, and farming and ranching. And then did that until '86 when I moved to Gallup.

SS Were you the only male child in your family?

JE Yeah, I have the twin sisters, and I had an older sister who passed away when she was four.

SS I understand that you read a lot of books.

JE Well I have lots of books, and I read some of them.

SS Did you start reading really early?

JE Yeah, I started buying Indian books, probably when I was sixteen. Every year I'd buy all the current books. Still do.

SS You've probably even read them.

JE Oh, I've read alot of 'em. I haven't read them all, but they come in handy when you need to look something up.

SS I understand you've made a little silver jewelry yourself.

JE Yeah, in the 70's, probably '74, I wanted to know more about Indian jewelry, so I decided to learn how to make jewelry. I took a night class from the high school teacher in Colorado Springs. Just learning, you know, basic silversmithing. And I made a few things, for a few years, but nothing really... and not much quantity. But I learned how things were made, what to look for.

SS Was that the main impetus behind your wanting to make silver jewelry?

JE Yeah, learning how it was made was the main reason to do it. I didn't want to become a craftsman or anything. But I made a few pieces I really liked and quite a few pieces I didn't like.

SS There's a few still floating around...

JE I still have a few pieces that I actually wear that I made.

SS We're looking at your ring collection here and there are 52 rings, and I was wondering, over what period of time were they collected?

JE Oh, probably from the late 70's up until the last few years. About a twenty year time span, twenty-five maybe.

SS And what was the criterion for a keeper?

JE Age was one of the main criteria. Aesthetics, if they looked good. I tend to like

turquoise maybe better than plain silver. I always tried to keep interesting stone rings. This is the last of my collection. Fifteen years ago, I sorted out probably twenty or thirty rings and about five years ago I sold another thirty or forty. I consider these the best ones.

SS The ones you've held onto the longest.

JE Yes.

SS If you had to pick out a couple of favorites here, what would they be?

JE Well, I kinda like big rings and I like these early three stone type rings that probably date from 1910. Here's a real big ring, square stone ring from the 20's or 30's. That's probably the one I'd wear if I wore any of these.

SS What's the story on the ones with the garnet? I see three here that have garnet or garnet-like material.

JE Well they were just... Way back in the 1890's and 1900, turquoise was very scarce. They would use glass, or native garnets once in a while. So that's where that comes from. A lot of turquoise was pretty low grade at that time. Persian turquoise was available too. I think glass was available and relatively cheap compared to turquoise.

SS But we'd have to say that their love of blue, or the turquoise color, took over.

JE Yeah, I think they liked the blue the best, so if they could come up with blue turquoise, they used it. Most of the glass is either red, or blue.

SS When did turquoise begin being mined, or prolifically?

JE Oh, I'd say after the turn of the century. A lot of it was associated with copper, and Persian turquoise was shipped in here pretty early, 1880's and 90's probably. I think it was pre-cut, over in Persia.

SS Who was requesting it?

JE Well it was like a Victorian gemstone, and then, Indians always liked turquoise. They had prehistoric turquoise available to them, and most of the known deposits were mined in prehistoric times. But I don't think the Navajos actually

mined any turquoise. They just got it through trade or found it in ruins.

SS Do you think the mined turquoise was kind of a bonus that was found when they were mining copper?

JE Yeah, most of the miners were looking for copper. Looking for gold and silver and then copper was secondary. So, there were probably a few individuals who went for turquoise, like the Cerrillos mine was mined just for turquoise. Apparently Tiffany, or I'm not sure if the Tiffany Company owned it or some New York people owned it. They called one of the mines Tiffany and they mined it mainly for Victorian use, I think.

SS About what period of time did that start, the mining for turquoise in earnest?

JE Probably 1890's, and I don't know what happened after, like World War I, there probably wasn't much going on with mining, except copper. Same way with World War II; the emphasis was on copper and not turquoise.

SS So is it fair to say that some of the fancier turquoise that we see now, and that we enjoy now, was discovered after World War II?

JE Yeah, I'd say that Blue Gem, No. 8, Lone Mountain, all that is kind of 40's and 50's stuff. Bisbee I think is even later, as a rule. I think Wallace had alot to do with mining turquoise because back in the 30's and definitely the 40's he was encouraging alot of jewelry manufacture, and jewelry making. And I think he even developed his own mines.

SS This is Mr. Wallace who had the trading post at Zuni?

JE Yeah.

SS Well is there anything else you'd like to tell us?

JE Ah, maybe when I think about it a little bit.

NOV - DEC



- Through Nov 27, Cartersville, GA
Booth Western Art Museum - By Her Hand: Native American Women, Their Art, and The Photographs of Edward S. Curtis
boothmuseum.org
- Dec 1, Boston, MA**
Skinner Auctioneers - American Indian & Ethnographic Art Auction
www.skinnerinc.com
- Dec 2, 5-8pm, Albuquerque, NM**
Indian Pueblo Cultural Center - Pueblo Shop & Stroll: A Fireside Tradition
www.indianpueblo.org
- Opening Dec 2, Durango, CO and Santa Fe, NM**
Sorrel Sky Gallery - "Little Windows with a Big View" - Small Works Show
sorrelsky.com
- Dec 3, 1pm-5pm, Scottsdale, AZ**
King Galleries - Celebrating 20 Years of King Galleries
kinggalleries.com
- Dec 3, 10am-5pm, Indianapolis, IN**
Eiteljorg Museum - Winter Market
www.eiteljorg.org
- Dec 3-4, Evanston, IL**
Mitchell Museum - Native Fine Arts Holiday Market
www.mitchellmuseum.org
- Dec 3-4, New York, NY and Washington, DC**
National Museum of the American Indian - Native Art Market
nmai.si.edu/artmarket
- Through Dec 4, Los Angeles, CA**
Fowler Museum at UCLA - The Spun Universe: Wixárika (Huichol) Yarn Paintings
www.fowler.ucla.edu
- Through Dec 4, New York, NY**
National Museum of the American Indian - Unbound: Narrative Art of the Plains
www.nmai.si.edu
- Dec 5, San Francisco, CA**
Bonhams - Native American Art Auction
www.bonhams.com
- Dec 6, Los Angeles, CA**
Bonhams - African, Oceanic and Pre-Columbian Art
www.bonhams.com
- Dec 10, 12-2pm, Albuquerque, NM**
Indian Pueblo Cultural Center - Poetry in Metal with Liz Wallace
www.indianpueblo.org
- Through Dec 11, Denver, CO**
Denver Art Museum - Grand Gestures: Dance, Drama, Masquerade
denverartmuseum.org



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John Owen Behnken's (Georgia, 1950-2015) Collection Exhibited at the Booth Western Art Museum, Georgia

Consignment Deadline
January 6, 2017



Contact: Danica M. Farnand
indianart@cowans.com
513.871.1670 x215
6270 Este Ave., Cincinnati, OH 45232

cowans.com

DEC

JAN 2017

Opening Dec 11, Los Angeles, CA
 Fowler Museum at UCLA - Joli! A Fancy Masquerade from Sierra Leone
www.fowler.ucla.edu

Dec 12 10am-12pm, Palm Springs, CA
 Palm Springs Art Museum - Native Art HISTORY: From Baskets to Film
www.psmuseum.org

Dec 15-16, Paris, France
 Christie's - Auction: Ratton Collection of Tribal Art
www.christies.com

Dec 16-17, Santa Fe, NM
 La Fonda on the Plaza - SWAIA Winter Indian Market
swaia.org

Dec 18, 1-3pm, Albuquerque, NM
 Indian Pueblo Cultural Center - A View into the Collection
www.indianpueblo.org

Through Dec 23, Chicago, IL
 Douglas Dawson Ethnographic Art - The Maya: A Universe in Clay
www.douglasdawson.com

Dec 23, 5-7pm, Santa Fe, NM
 Shiprock Santa Fe - Annual Holiday Opening
www.shiprocksantafe.com

Through Dec 30, Santa Fe, NM
 Museum of Indian Arts & Culture - The Life and Art of Innovative Native American Artist and Designer Lloyd Kiva New
www.indianartsandculture.org

Through Dec 31, Tulsa, OK
 Philbrook Museum Downtown - First Person: Remembering Little Bighorn
www.philbrook.org

Through Dec 31, Montclair, NJ
 Montclair Art Museum - Undaunted Spirit: Native American Art
www.monclairartmuseum.org

Through Dec 16, Aurora, IL
 Schingoethe Center -
 • Woven: The Art of Contemporary Native Weaving
 • A Place for Everything and Everything in Its Place: Containers of Native America
www.aurora.edu

Through Dec 17, Lincoln, NE
 Great Plains Art Museum - Contemporary Indigeneity: Spiritual Borderlands
www.unl.edu

Through Dec 23, Big Horn, WY
 The Brinton Museum - To Honor The Plains Nations
thebrintonmusuem.org

Through Dec 31, Santa Fe, NM
 Museum of Contemporary Native Arts - Akunnittinni: A Kinngait Family Portrait - Pitseolak Ashoona/Napachie Pootoogook/Annie Pootoogook
www.iaia.edu

Through Dec 31, Santa Fe, NM
 Museum of Contemporary Native Arts - Lloyd Kiva New: Art
www.iaia.edu

Through Dec 31, Santa Fe, NM
 Rick Bartow: Things You Know But Cannot Explain - A Retrospective Exhibition
www.iaia.edu




Through Jan 2, Washington, DC
 National Museum of the American Indian - E Mau Ke Ea: The Sovereign Hawaiian Nation
www.nmai.si.edu

Through Jan 7, Stillwater, OK
 OSU Museum of Art - Our People, Our Land, Our Images
museum.okstate.edu

Through Jan 7, Santa Fe, NM
 Adobe Gallery - Native Nacimiento Sets of Nativity Scenes
www.adobegallery.com

Through Jan 8, Phoenix, AZ
 Heard Museum - Kay WalkingStick: An American Artist
heard.org

Through Jan 8, Tulsa, OK
 Philbrook Museum of Art - Native Fashion Now
philbrook.org

Through Jan 15, Santa Fe, NM
 Wheelwright Museum - Eveli: Energy and Significance
www.wheelwright.org

Through Jan 15, New York, NY
 The Metropolitan Museum of Art - The Arts of Nepal and Tibet: Recent Gifts
www.metmuseum.org

Through Jan 15, Denver, CO
 Denver Art Museum - Depth & Detail: Carved Bamboo from China, Japan & Korea
denverartmuseum.org

Jan 21-22, Mesa, AZ
 Mesa Convention Center & Phoenix Marriott Mesa - Brian Lebel's High Noon Show & Auction
www.oldwestevents.com

Through Jan 28, Stillwater, OK
 OSU Museum of Art - From the Belly of Our Being: art by and about Native creation
museum.okstate.edu

Through Jan 29, London, United Kingdom
 British Museum - Shadow Puppet Theatre from Indonesia, Malaysia, and Thailand
www.britishmuseum.org

Through Jan 30, Washington, DC
 The Textile Museum - Bingata! Only in Okinawa
musuem.gwu.edu

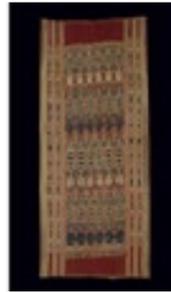
Through Jan 31, Vancouver, B.C., Canada
 Museum of Anthropology at the University of British Columbia - In the Footprint of the Crocodile Man: Contemporary Art of the Sepik River, Papua New Guinea
moa.ubc.ca





FEB

- Opening Feb 2, Phoenix, AZ**
 Heard Museum - Black White Blue Yellow ("BWBY")
heard.org
- Through Feb 5, Indianapolis, IN**
 Eiteljorg Museum - Titan of the West: The Adams Collection of Western and Native American Art
www.eiteljorg.org
- Through Feb 12, San Francisco, CA**
 de Young Museum - The Sumatran Ship Cloth
deyoung.famsf.org
- On the Grid: Textiles and Minimalism**
deyoung.famsf.org
- Feb 13 2-3:30pm, Santa Fe, NM**
 Wheelwright Museum - Friends of the Wheelwright Museum Program: Keri Ataumbi - Wearable Art
wheelwright.org
- Feb 17-19, San Rafael, CA**
 Marin Civic Center - The American Indian Art Show - Marin
marinshow.com
- Through Feb 20, Palm Springs, CA**
 Palm Springs Art Museum - Go West! Art of the American Frontier from the Buffalo Bill Center of the West
www.psmuseum.org
- Through Feb 26, Sacramento, CA**
 Crocker Art Museum - A Show of Force: Sculpture by Allan Houser
www.crockerartmuseum.org
- Through Feb 26, London, United Kingdom**
 British Museum - South Africa: the art of a nation
www.britishmuseum.org
- Opening Feb 3, Tucson, AZ**
 Medicine Man Gallery - 25th Anniversary of Medicine Man Gallery
www.medicinemangallery.com
- Feb 9-12, San Francisco, CA**
 Fort Mason Center, Festival Pavillion - San Francisco Tribal & Textile Art Show
sanfranciscotribalandtextileartshow.com
- Through Feb 19, Novato, CA**
 Museum of the American Indian - Braving Two Worlds
marinindian.com
- Through Feb 25, Lincoln, NE**
 Great Plains Art Museum - Glimpses of the Southwest: Native American Art from the Permanent Collection and the University of Nebraska State Museum
www.unl.edu
- Through Feb 26, Portland, OR**
 Portland Art Museum - CCNA: Restoring the Breath - Sacred Relationship: Coast Salish Fiber Weaving
portlandartmuseum.org



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MAR - APR



Mar 4-5, Phoenix, AZ
 Heard Museum - Heard Museum Guild Indian Fair & Market
heard.org

Through Mar 15, Verona, Italy
 Palazzo della Gran Guardia - Maya. The Language of Beauty
www.mayaverona.it

Through Mar 19, Santa Fe, NM
 Museum of International Folk Art - Sacred Realm: Blessings and Good Fortune Across Asia
www.internationalfolkart.org

Through March 31, Santa Fe, NM
 Ralph T. Coe Foundation - A View from Here: Northwest Coast Native American Arts
ralphtcoefoundation.org

Through Apr 2, Paris, France
 Musée du quai Branly - Eclectic: a 21st century collection
www.quaibrantly.fr

Through Apr 8, Great Falls, MT
 Paris Gibson Square Museum of Art - Emergence: A Collective of Plains Indian Warrior Artists
www.the-square.org



Through Apr 16, Santa Fe, NM
 Wheelwright Museum - Jicarilla: Home Near the Heart of the World
www.wheelwright.org

Through Apr 30, San Diego, CA
 Mingei International Museum - The Beauty of Objects from the World's Kitchens and Workshops
www.mingei.org

Through Mar 5, Seattle, WA
 Seattle Art Museum - Wendy Red Star: 2016 Betty Bowen Award Winner
www.seattleartmuseum.org

Through Mar 19, Toronto, Ontario, Canada
 Textile Museum of Canada - Brendan Fernandes: Lost Bodies
www.textilemuseum.ca

Through Mar 19, New York, NY
 The Metropolitan Museum of Art - Native American Masterpieces from the Charles and Valerie Diker Collection
metmuseum.org

Through March 31, Toronto, Canada
 Royal Ontario Museum - Art, Honour, and Ridicule: Asafo Flags from Southern Ghana
www.rom.on.ca

Through Apr 3, Santa Fe, NM
 Museum of Spanish Colonial Art - Chimayó: A Pilgrimage through Two Centuries
www.spanishcolonial.org

Through Apr 9, Vancouver, B.C., Canada
 Museum of Anthropology at the University of British Columbia - Layers of Influence: Unfolding Cloth Across Cultures
moa.ubc.ca

Apr 21-23, Los Angeles, CA
 The Reef - Objects of Art Los Angeles
objectsofartla.com

Through Apr 30, Lyon, France
 Musée des Confluences - Female Potters of Africa
www.museedesconfluences.fr

MAY - OCT



Through May 7, Seattle, WA
 Burke Museum - Kanu Kaho'olawe: Replanting, Rebirth
www.burkemuseum.org

Through June 4, Los Angeles, CA
 Los Angeles County Museum of Art - Chinese Snuff Bottles from Southern California Collectors
www.lacma.org

Through June 30, Albuquerque, NM
 Albuquerque Museum - Pueblo Revolt by Virgil Ortiz: 2016 Artist-in-Residence
www.albuquerquemuseum.org

Through Aug 27, Denver, CO
 Denver Art Museum - Printed and Painted: The Art of Bark Cloth
denverartmuseum.org

Through Oct 22, Santa Fe, NM
 Museum of Indian Arts & Culture - Into the Future: Culture Power in Native American Art
www.indianartsandculture.org

Through June 4, Washington, DC
 National Museum of the American Indian - For a Love of His People: The Photography of Horace Poolaw
www.nmai.si.edu

Through June 17, Paris, France
 Musée Dapper - Masterpieces from Africa
www.dapper.fr

Through July 9, Los Angeles, CA
 The Autry Museum in Griffith Park - New Acquisitions Featuring the Kaufman Collection
theautry.org



Through Sept 4, Palm Springs, CA
 Palm Springs Art Museum - Grass Roots: Native American Basketry of the West
www.psmuseum.org

Palm Springs Art Museum - Western Stories
www.psmuseum.org



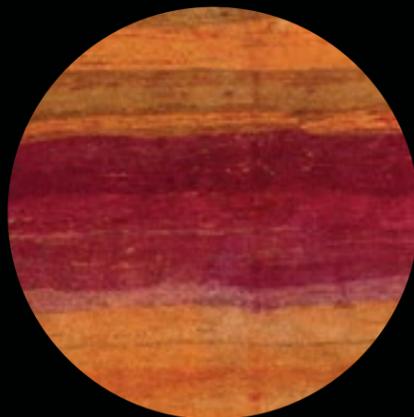
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On Trend

From Sydney to Paris: A Review of the Summer 2016 Tribal and Native American Art Fairs

— Mark Blackburn —

This summer, I was fortunate enough to attend all the fairs mentioned below. These are my first-hand observations from the events:

OAS Tribal Art Fair
St Matthias Church Hall
Paddington, Australia, July 23

I was honored to be asked by the Oceanic Art Society to return to Australia for a second year and give a talk at the Australian Museum – titled “Understanding Polynesian Art” – on the Wednesday preceding the show. Although the fair is small in size, what I like about this event, and the OAS in general, is the passion exhibited by the majority of its members. The fair itself is a mixed-quality event, with items priced between \$50-\$10,000, and always presents a chance for a real “discovery,” which is unusual in some of the larger fairs today. A reassuring thing was the number of young people attending this event. This, in my eyes, represents the biggest challenge to the marketplace today. In the U.S., the lack of new young collectors is frightening, but this does not seem to be the case in Australia, where the younger audience exhibits a genuine passion for all things tribal. If you happen to be in this part of the world, this fair is one not to miss, and combined with a visit to Australia, is an experience that never disappoints. For Native American collectors and dealers, there is renewed interest in this material down under, especially turquoise jewelry and pueblo pottery. I did find an amazing Polynesian object

at the fair, and even bought an item in the OAS silent auction. With time and proper curation, this fair has the potential to be a major international event.

Great Southwestern Charity Antique Show
New Mexico Fairgrounds
Albuquerque, NM, August 5 - 7

Now in its 18th year, with the highest attendance ever, this event opened with a special sneak preview benefit for the New Mexico PBS Endowment. I must say that this is my favorite show held in the U.S., and is always an exciting event. The Schurmeiers, who organize the show, always go out of their way to make this an event for collectors of all levels, with items of every price and quality. What makes this show, with over 200 participating dealers, extremely interesting and fun is that it represents the real kick-off of the summer season in New Mexico. Because it is relatively inexpensive to exhibit, the show attracts a wide range of dealers from all over the U.S. and has become a place where many astute dealers source material for some of the larger events held in Santa Fe later in August. In the many years I have been attending, I always find some real treasures here. Another nice thing about this show is the range of material, which is predominantly Native American with a smattering of Tribal, Spanish Colonial, pre-Columbian and even some mid-century items. I personally never miss this show, and even flew back from a short stay in Hong Kong

to attend directly after stepping off the plane.

Whitehawk American Indian and Ethnographic Art Show
Sweeney Center
Santa Fe, NM, August 11 - 14

With a history of nearly four decades and with nearly 100 dealers this show currently produced by Marcia Berridge is indeed a visual delight. The opening blessing this year by Tibetan monks was a nice touch to the iconic event. There are always amazing objects on view, but in my opinion, the display could be improved, as many of the exhibitors are using a “shotgun” approach and cram way too much material into their booths. I find the show exciting, but feel that it should be vetted. One of the areas I would eliminate from the show is the contemporary African art, which, although it is primarily bead-based, in my opinion still diminishes the overall quality of the offerings.

Objects of Art
El Museo
Santa Fe, NM, August 12 -14

A show curated by Kim Martindale and longtime production veteran John Morris, this is definitely one not to be missed. Opening with a fabulous gala on August 11, this year’s show was extremely well attended, with a 15 percent rise in attendance over last year. Highlights this year included

items from the estate of the late Garry Shandling and artist Jose Bedia, as well as a special feature on weavings from the Toadlena/Two Grey Hills region. The Shandling material garnered national press coverage, resulting in many items of note being sold during the first hour of the show, and the majority of it sold by the time the show closed. Due to the fact that many dealers use a more minimalistic approach to their exhibits, this is a very visually appealing show. Although only in its seventh year, the quality of the objects is one of the strongest of the season, with something for everyone. However, a complaint I have about all the shows is the overkill by some dealers who exhibit at every show in Santa Fe, which inevitably results in the “tired effect” of seeing the same objects over and over again. These dealers say they show different material at each venue, but in practice, this is not always true.

Antique American Indian Art Show
El Museo
Santa Fe NM, August 16 - 18

Kim Martindale and John Morris’ flagship show is an eagerly anticipated event that attracts a very sophisticated audience, and is known as the premier event for collectors of Native American art. What I especially like about this show is the tight curating of the stunning items on exhibit by Martindale and Morris, which results in the most pleasing visual show of the season. One of the more memorable exhibits was Mack Grimmer’s stunning collection of moccasins, a feast for the eyes that resulted in many early sales. Like the other shows, however, what this one lacks are young collectors. The majority of the important items sold to the “usual suspects”. In the earlier Objects of Art show, I witnessed

a younger collecting crowd, maybe due to the Shandling items, but this is a worrisome thing and represents a challenge to both show promoters and dealers alike.

Tribal Art London
Mall Galleries
London, UK, Aug 31 - Sept 4

A gem of a show that, like Albuquerque and Sydney, is one of my favorites. A real sense of discovery is in the air at this exhibition that specializes in a wide range of world tribal art on display. Like Sydney, younger buyers and exhibitors are present in force, something that is lacking in the other shows I have reviewed here. A wide range of objects, very moderately priced in my opinion, attract dealers from across the UK and the continent. During the early preview, dealers and collectors from the U.S. were seen actively buying. This is a show that is very well attended for its size. If you are in London during this season, or on your way to the *Parcours des Mondes* in Paris, the stop is worth it!

Parcours des Mondes
Saint-Germain-des-Près
Paris France, September 6 - 11

The largest and most spectacular fair in the world is organized by Pierre Moos. *Parcours des Mondes* is a splendid exhibit of everything from the beautiful to the arcane. Now in its 15th year, the show featured over 40 international dealers and 32 French dealers, and was attended by over 10,000 people. The number of Americans in attendance this year was noticeably lower, which must be related to the current terror attacks and warnings plaguing France and the rest of the world. If you have

not attended this fair, consisting of an open house of galleries on the left bank, it is a must-see event.

Although primarily an African-centric show, you will also find exhibitors showcasing Native American items and a fair bit of Oceanic. As someone who has attended this event from day one, it is still the number one fair in the world, with something for everyone, although the prices are significantly higher than other shows in the world. This year, Americans had the advantage with the favorable exchange rates. Many dealers save their best pieces for this premier event, so there is no shortage of masterpieces on view. Also many of the dealers have “themed” shows – which can be either good or bad, if your particular interest is not in the area of the exhibit. This is a truly “social” event with every major collector in the world in attendance. For those considering attending, I would suggest going as early as possible, as many of the best pieces are sold several days prior to the official opening. This year, many more Asian dealers were exhibiting, along with some dealers like Finch and Company exhibiting a cornucopia of “World Art” from the ancient to tribal. The Flak gallery, with the venerable Don Ellis, always has some amazing Native American art, the Flaks having a long developed and renowned market in Kachina dolls and other Native American items.

It will take you a full two days to peruse all the galleries at this feast for the eyes. Like Santa Fe, there is a lot of dealer and runner action, with many transactions taking place at the surrounding cafes and car parks. In closing, one word of caution is to avoid the highly organized African runners, who plague the fair with their highly sophisticated fakes and tall tales. □

About the author: Mark Blackburn is a noted author, ATADA board member, appraiser, art consultant and former two-term President of the Society of Asian Art of Hawaii, with over 35 years of experience in the field. Specializing in complete estates, probate work and building collections of note for both private and corporate clients. Mark can be reached at Mark@blackburnartconsultants.com or on his mobile at 808.228.3019



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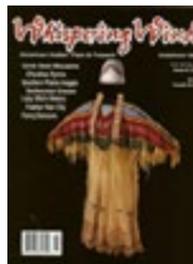
For nearly 50 years and over 300 issues, *Whispering Wind* has presented and continues to present a wide variety of material culture articles. Submitted articles as diverse as studies of Northern Plains gun cases, Iroquois purses, Plateau beadwork, Plains parfleche containers, Apache puberty skirt, have found a receptive audience in *Whispering Wind* readers.

Most recently, Michael Kostelnik wrote a three-part article on the construction and beadwork differences between Southern Cheyenne, Kiowa and Comanche moccasins. In addition to Kostelnik, frequent contributors and collectors include Allen Chronister, Michael Johnson, Richard Green and Scott Evans.



Many of the well recognized collectors and authors began their careers in the hobbyist and pow wow communities. Notables such as Norm Feder, Robert Pohrt, Sr., Milford Chandler, Joe Rivera and others trace their beginnings as collectors and authors to the hobbyist world. *Whispering Wind* has proudly continued this study of Native American culture material into the 21st century.

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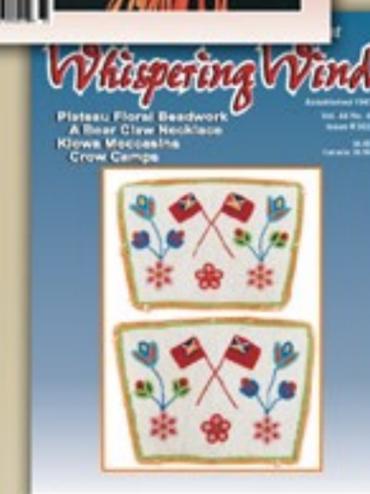
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Legal Briefs

IRS Feedback, STOP Update & NAGPRA Repatriation Notices

— Ron McCoy —

I am collecting information for a column about federal income tax deductions for donated art. In that vein, I have requested clarification from the Internal Revenue Service about the status of donations of objects it and/or its Art Advisory Panel recognized as legitimate which were subsequently determined to be covered by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). I would appreciate any feedback readers who have dealt with the issue, and may care to provide. I can be contacted via the email provided here.

In the previous edition of this column I reported on the Safeguard Tribal Objects of Patrimony Act (STOP). It has been referred to the U.S. Senate's Committee on Indian Affairs. Congress is in recess, and no new developments are expected along this front until the new legislative session convenes in January 2017. ATADA has expressed serious concerns about the bill as currently written and this column will provide updates as events warrant.¹

"Legal Briefs" regularly presents summaries of the NAGPRA intent to repatriate notices that appear in the Federal Register. This may seem like dry fodder, but the purpose is to keep readers abreast with the types of objects are drawing NAGPRA's attention.

NAGPRA recognizes five categories of "cultural items": Native American and Hawaiian human remains, associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony.² Notices related to the latter three categories customarily received attention in "Legal Briefs." From here on, we will no longer get bogged down with unassociated funerary objects notices, many of which involve bulk quantities of material of little concern to readers. (However, as two notices summarized here attest, that policy will be set aside if information provided seems of wider interest to readers.) We have some catching up to do on NAGPRA notices and eliminating unassociated funerary objects will move things along.³

Repatriation notices reflect an agreement reached between the institutional possessor of an object – what NAGPRA broadly defines as a museum⁴ – and the person or organization requesting repatriation. The dates provided here are those on which these notices appeared in the

Federal Register, and quotations are drawn from them. The summaries are arranged in the order of most to least recent, with those in this issue bringing us up to the beginning of 2015. A notice's statement about final disposition of an article is contingent upon no additional claimant coming forward after publication. Once an object is repatriated there is no requirement for the federal government, museum, or party receiving the object to provide a follow-up report about its final disposition. Many of us have heard stories about repatriated materials working their way back into the marketplace. If you care to share reliable information about such an occurrence I would certainly welcome you doing so. Your insight will be treated in confidence, published only on your say-so, with or without identifying attribution, whatever your desire.

In the following summaries, I use "cultural patrimony" and "sacred object" as defined under NAGPRA purely for the sake of convenience. This usage is not necessarily an endorsement of those descriptors.

Honolulu Museum of Art, Honolulu, HI (Dec. 22, 2014). During a spring 1931 yachting trip film star John Barrymore removed a nearly thirty-foot-tall kooteeya, a red cedar totem pole created three decades earlier, from the abandoned Tlingit village of Tuxican on Alaska's Prince of Wales Island.⁵ At some point, actor Vincent Price and his wife Mary⁶ purchased the pole from fabled Los Angeles curator-collector-dealer Ralph Altman and, in 1981, donated it to the museum, which decided this object of cultural patrimony should be given to the Klawock Cooperative Association of Alaska.

University of Colorado Museum of Natural History, Boulder, CO (Dec. 22, 2014). In 1959 the museum acquired two rawhide male and female Katsina masks from the Denver Art Museum, which purchased them eleven years earlier. The museum agreed to place these sacred objects and objects of cultural patrimony with the Pueblo of Jemez in New Mexico.

U.S. Department of Agriculture (USDA), Forest Service, Cibola National Forest, Albuquerque, NM (Dec. 22, 2014). In 1968, someone acting without authorization removed a bundle of prayer sticks tied together with woven basketry

from a site in northeastern New Mexico and donated it to the University of New Mexico's Maxwell Museum of Anthropology. The bundle was transferred to USDA, which announced its desire to turn this piece of cultural patrimony over to the Pueblo of San Felipe and the Pueblo Santa Ana in New Mexico.

School of Advanced Research (SAR), Indian Arts Research Center, Santa Fe, NM (Oct. 16, 2014). In 1964 SAR purchased eight objects – including a large stone figure with black feather attachments, and five "stone figures with leather carrying pouches" – from an individual who got them from a resident of the Pueblo of Nambe. In 1993, SAR, complying with NAGPRA, delivered a summary of its collections to the pueblo. Nineteen years later, a representative of the pueblo asked for an additional report and the following year Nambe sought repatriation of the eight sacred objects, a request with which SAR complied.

U.S. Department of Defense, Army, Fort Sill National Historic Landmark and Museum, Fort Sill, OK (Sep. 10, 2014). This is one of the occasions when, because of general historical interest, note is taken of a pair of unassociated funerary objects notices. In 1966 the remains of Spotted Wolf (Southern Arapaho) and Stumbling Bear (Kiowa), signers of the historic 1867 Medicine Lodge Treaty, were exhumed from their original Oklahoma burial sites and reinterred on Chiefs Knoll at the Fort Sill Post Cemetery.⁷ For unknown reasons, some of their grave goods were not reburied, including pieces of red ocher, wire bracelets, metal bells, horse trappings, and a ceramic dog figurine. The museum agreed to transfer them to the Cheyenne and Arapaho Tribes of Oklahoma and the Kiowa Tribe of Oklahoma.

U.S. Department of the Interior, Bureau of Land Management (BLM), New Mexico State Office, Santa Fe, NM (July 28, 2014). In 2013 BLM acquired four ceremonial objects from "an individual investigated as part of a law enforcement action"⁸: "a Tsákwayna Friend (mask), Raven Bride Katsina Friend (mask), Nataska Ogre Friend (mask), and a One-Horn ritual headdress." The Department of Justice did not prosecute, but the person possessing the pieces agreed to relinquish these objects of cultural patrimony and sacred objects, which BLM intended transferring to the Hopi Tribe of Arizona.

Anthropological Studies Center, Sonoma State University, Rohmert Park, CA (June 24, 2014). During an authorized archaeological dig at a site in northern California's Marin County dating to between 1500-500 BC, 125 sacred objects and 168 objects of cultural patrimony were recovered,

including shell beads and tools fashioned from antler and stone. The university agreed to turn them over to the Federated Indians of Graton Rancheria in California.

County of Titus, Mount Pleasant, TX (June 24, 2014). Two effigy bowl sherds excavated with proper authorization at a northeastern Texas Caddo farm site dating to AD 1200-1600 were deemed objects of cultural patrimony belonging to the Caddo Nation of Oklahoma.

Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA (June 24, 2014). In 1902 famed anthropologist Alfred Kroeber⁹ purchased a complete wolf skin from a trader in northern California's Klamath River country. Stuffed with straw and decorated with a pair of woodpecker scalps over the eyes, it was associated with the Karuk World Renewal Ceremony (Pikiauish). The museum recognized the wolf skin as a "cultural item," meaning it fits into one of more of NAGPRA's categories, that should be placed with California's Karuk Tribe.

U.S. Department of Defense (DOD), Department of the Navy, Washington, D.C. (Mar. 31, 2014). During authorized archaeological digs in 1951-1953 at sites near Point Barrow, Alaska, two objects of cultural patrimony dating to AD 500-700 were removed: a wooden mask probably associated with whale hunting and an ivory effigy drum handle, which DOD decided to transfer to the Native Village of Barrow Innupiat Traditional Government of Alaska.

Oakland Museum of California, Oakland, CA (Mar. 31, 2014). In 1959 the museum received a clan crest headgear decorated with woven spruce root rings and abalone shell known as the Frog Hat, obtained by a shop owner in Wrangell, Alaska, sometime between 1897 and 1928. The Shetax' Heen Kwaan Clan regards it as atóow, group-owned. The Frog Hat, an object of cultural patrimony and sacred object, was scheduled to be turned over to the Central Council of the Tlingit and Haida Indian Tribes of Alaska.

U.S. Department of Agriculture (USDA), Forest Service, Coconino National Forest, Flagstaff, AZ (Mar. 24, 2014). In 1948 the Museum of Northern Arizona received fragments of blue-and-green painted wood removed without permission from an archaeological site in Coconino National Forest. USDA identified these pahos (prayer sticks) as objects of cultural patrimony, property of the Hopi Tribe of Arizona. *Virginia Museum of Fine Arts, Richmond, VA (Feb. 2, 2014).* In 1948 the Portland (Oregon) Art Museum purchased the collection of a school superintendent from Skagway, Alaska.¹⁰ Six years later, the Virginia Museum of Fine Arts

acquired part of that collection, including the Kéet Gooshi (Killerwhale Dorsel Fin), or “Bear Song Leader’s Staff,” which represents the distinctive crest of the Teikweidi (Brown Bear) Clan of Angoon, Alaska; and the red flannel Mudshark Shirt of the Naanya.aayí, decorated with pearl buttons arranged to represent a stylized shark. The museum agreed these sacred objects and objects of cultural patrimony ought to be handed over to the Central Council of the Tlingit and Haida Indian Tribes of Alaska.

The Field Museum of Natural History, Chicago, IL (Jan. 16, 2014). In 1902 the museum acquired some Tlingit items known as the Spuhn Collection from ethnographic photographer George Thornton Emmons,¹¹ including the Wolf Drum, a box drum painted with a wolf design; and the Shark Dagger, a double-bladed knife adorned with an image of a shark. Sacred objects and objects of cultural patrimony obtained prior to 1900 from the Taku and Auk tribes, they were earmarked for the Central Council of the Tlingit and Haida Indian Tribes of Alaska.

Denver Art Museum, Denver, CO (Dec. 3, 2013). In 1903, the Brooklyn Museum’s Stuart Culin¹² obtained two “Katsina Friends from the Pueblo of Laguna” which, forty-five years later, arrived at the Denver Art Museum in an exchange. The museum agreed to return these objects of cultural patrimony and sacred objects to the Pueblo of Laguna.

U.S. Department of the Interior, Bureau of Indian Affairs, Washington, D.C., and Arizona State Museum, University of Arizona, Tucson, AZ (Sep. 30, 2013). Sometime between 1972- 1973 a “frequent visitor to the Hopi reservation” took a black-on-white bowl made around A.D. 1200 from a site near the village of Shungopavi and “gave it away as a wedding present.” In 2008 the recipient donated it to the museum. As “a sacred object...used by the Hopi as a cleansing medicine bowl for the practice of the Hopi ceremonies, including the Katsina home dances,” the bowl was earmarked for the Hopi Tribe of Arizona.

U.S. Department of the Interior, National Park Service, Grand Teton National Park, Moose, WY (Aug. 16, 2013). In 1976 Laurence S. Rockefeller gave Grand Teton National Park the David T. Vernon Collection of 1,400 objects collected between the 1920s and 1950s from more than a hundred Indian tribes. Three Seneca cornhusk masks and a triangular elm bark rattle were identified as sacred objects, “needed by the still functioning Husk Face Society common to the Newtown Longhouse of the Cattaraugus community and the Cold Spring Longhouse of the Allegany community.” The institution agreed to remedy the situation by sending the mask and rattle to the Seneca Nation of New York.

University of Colorado Museum of Natural History, Boulder, CO (Aug. 16, 2013). Between 1970-1984 five Navajo objects were bought by or donated to the museum: two pair of Kee’aan Yalti’i (Twin Fetish Gods) and three jish (medicine bundles) linked to Monsterway, Evilway, and Windway rituals. Navajo representatives “described and demonstrated the purpose and use of many of the items... [and] related how wide the use of the items is today and how Navajo people today are being trained in their use. They also explained that the items are alive and must be cared for in specific ways and treated with respect.” The museum agreed to convey these sacred objects and objects of cultural patrimony to the Navajo Nation of Arizona, New Mexico, and Utah.

Rochester Museum & Science Center, Rochester, NY (Aug. 16, 2013). The museum decided a Chilkat blanket purchased in 1927 with almost no provenance was a sacred object and object of cultural patrimony that ought to be turned over to the Council of the Tlingit & Haida India Tribes of Alaska.

University of Colorado Museum of Natural History, Boulder, CO, (Aug. 16, 2013). In 1922, Congregational minister Harold Case began thirty-years’ missionary work among the Mandans, Hidatsas, and Arikaras – the Three Affiliated Tribes – on North Dakota’s Fort Berthold Reservation. In 1983, more than 300 objects from the collection of material he acquired on the reservation were donated to the museum, including five pipes with catlinite bowls. The museum declared these pipes sacred objects under NAGPRA and agreed to transfer them to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. □

Please note: This column does not offer legal or financial advice. Anyone who needs such advice should consult a professional. The author welcomes readers’ comments and suggestions, which may be sent to him at legalbriefs@atada.org

¹ For details about ATADA’s concerns about STOP as currently written, see “Unintended Consequences: S. 3127, The Safeguard Tribal Objects of Patrimony Act of 2016,” <https://www.atada.org/legal-issues-blog/2016/9/25/legislative-alert-atadas-position-regarding-the-stop-act>

² Under NAGPRA associated funerary objects are “objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.” Unassociated funerary objects “are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe.” Sacred objects are “specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents...” “Cultural patrimony means “an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.” “NAGPRA Glossary,” National NAGPRA, National Park Service, U.S. Department of the Interior (n.d.), <https://www.nps.gov/nagpra/TRAINING/GLOSSARY.HTM>

³ The number of unassociated funerary objects notices far outstrips those for sacred objects and objects of cultural patrimony, typically by a factor of more than two to one.

⁴ “Any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.” Ibid.

⁵ The NAGPRA notice pegs Barrymore’s acquisition of the totem pole to the early 1920s, but a persuasive case has been

made for 1931. Paige Williams, “The Tallest Trophy,” *The New Yorker*, (April 20, 2015) <http://www.newyorker.com/magazine/2015/04/20/the-tallest-trophy>.

⁶ Vincent Price, a Yale University art history graduate, discussed his passion for collecting in *I Like What I Know: A Visual Autobiography* (Garden City, NY: Doubleday, 1959).

⁷ Sometimes referred to as “the Indian Arlington,” Chiefs Knoll is the site of the burials of numerous figures who loom large in the history of the Southern Plains, including: Setangya (Kiowa), the first person buried there in 1871; Setainte (Kiowa); Quanah Parker (Comanche) and his mother Cynthia Ann; Little Raven (Arapaho); Kicking Bird (Kiowa); and Ten Bears (Comanche).

⁸ Specifically, Operation Cerberus action. See Joe Mozingo, “A Sting in the Desert,” *Los Angeles Times* Sep. 21, 2014), <http://graphics.latimes.com/utah-sting/>; Carolyn Shelbourn, “Operation ‘Cerberus Action’ and the ‘Four Corners’ Prosecution,” *European Journal on Criminal Policy and Research*, Vol. 20, No. 4 (2014): 475-486.

⁹ Cultural anthropologist Alfred Kroeber (1876-1960) is perhaps best remembered for his work with Ishi, last of California’s Yahi people. See Theodora Kroeber, *Alfred Kroeber: A Personal Configuration* (Berkeley: University of California Press, 1970).

¹⁰ Namely, Axel Rasmussen (1886-1945). For his collection see Robert Tyler Davis, *Native Arts of the Pacific Northwest: From the Rasmussen Collection of the Portland Art Museum* (Stanford, CA: Stanford University Press, 1949). See, too, “Online Collections: The Axel Rasmussen Collection,” Portland Art Museum (n.d.), <http://portlandartmuseum.us/mwebcgi/mweb.exe?request=record;id=261435;type=801>

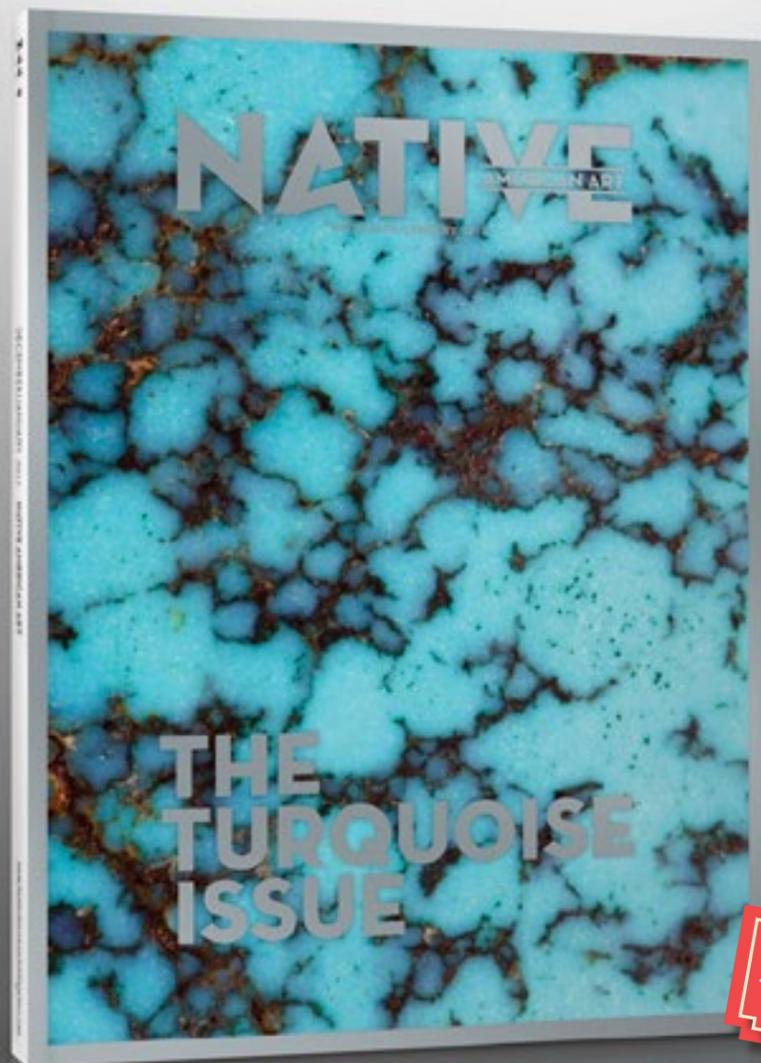
¹¹ The collection was named after Northwest Trading Company manager Carl Spuhn, although who did the actual collecting is unclear. For Emmons, see George Thornton Emmons, *The Tlingit Indians*, Frederica de Laguna ed., with Jean Low (Seattle: University of Washington Press, 1991).

¹² Stuart Culin (1858-1929), longtime Curator of Ethnology at the Brooklyn Museum who specialized in worldwide gaming practices, wrote “Games of the North American Indians,” *Twenty-Fourth Annual Report of the Bureau of American Ethnology* (Washington, D.C., 1907). □

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“Shifting the Burden”

A Report From The ATADA Legal Committee

Legal Committee Members:

Kate Fitz Gibbon, Robert Gallegos, Vanessa Elmore, Kim Martindale, Mark Blackburn

The Second Annual Indigenous International Repatriation Conference was held September 26-27, 2016 at the Isleta Pueblo in New Mexico. The featured theme was “Shifting the Burden,” meaning, shifting the burden of making claims for repatriation of ancestral remains and artifacts from the tribes to the federal government and the private sector. The proposed legislation now before Congress, the STOP Act, S. 3127 & H. 5854, was an integral part of the strategy of the tribes to repatriate important cultural objects.

ATADA was present, not only to listen and learn, but also to participate in the discussions. ATADA sent representative members, Kim Martindale, Vanessa Elmore, Bob Gallegos, and Kate Fitz Gibbon to the conference; Bob and Kate also directly partook on a session panel entitled “Thinking Through the PROTECT Patrimony Legislation: A Discussion Among Tribes and Collectors.” The following is a quick summary of our collective experience, what was talked about, and the important connections we made while there. Both the ATADA Board of Directors and the ATADA Legal Committee want to strongly emphasize to our entire membership that ATADA will continue to be part of these discussions and planning sessions on important and relevant issues for our industry—working directly on a local level with tribes and on a national level with the federal government, through senators, congressmen, and officials from the Department of the Interior and the Department of Justice.

The overall experience for all of us was compelling. The Native American tribal organizations at the conference were extremely capable, focused, and well informed. We were impressed by the tribes’ determination to be recognized as sovereign nations and to sit with other world nations on an equal footing. The tribes have developed and expanded their relationships with many government agencies in various states; the Pueblo tribes (particularly Hopi and Acoma Pueblos), and other tribes from the Southwest are well represented by lawyers locally, as well as in Washington D.C. Many bright young people from tribal nations have become lawyers specializing in tribal law, federal law, international policy, and indigenous peoples’ human rights. The tribes are determined to speak for themselves, and to be the only source for defining the future for their cultural material.

The tribes understand very well that part of the exercise of sovereignty is defining for themselves what is sacred and what cultural property should be legally inalienable.

A primary goal of “shifting the burden,” as the tribes see it, is to place increased pressure on federal officials to do more on their behalf—both domestically and overseas. Although federally recognized tribes are sovereign nations, they cannot act independently of the US government in foreign affairs.

At the various sessions, tribal representatives demanded swifter action from the Department of the Interior and museums on NAGPRA claims and procedures, especially on the repatriation of human remains from overseas (from the return of scalps exhibited at the Karl May museum in Germany, to pressing the federal government to repatriate remains of war veterans buried overseas).

Each conference session covered the problems that tribes face in repatriating objects under specific circumstances; many sessions covered how tribes can use local, state and federal laws to remove administrative or bureaucratic barriers to repatriation.

The issue foremost on many speakers’ minds was the repatriation of human remains, which they emphasize are not considered as “objects” but are respectfully referred to as ancestors or relatives. The repatriation of ancestors has been a serious and contentious issue for many tribes working with museums in the past under NAGPRA, and tribes continue to view relationships with many museums as hostile and unsupportive (another subtheme of the conference). Although collectors and art dealers tend to view museums as classifying objects excessively broadly as proper for repatriation under NAGPRA, we heard testimony at the conference about numerous specific instances where museums were incredibly slow in making returns and failed to cooperate with tribes. A statistic oft quoted (and provided by a top-level NAGPRA administrator), is that only 30% of claims made for ancestors have actually been processed and returned over the last 26 years since NAGPRA’s inception. That said, some tribal speakers acknowledged that conflicting claims by multiple tribes and a lack of internal logistical resources have held up many claims.

The second pressing issue raised at the conference was the return of particularly sacred and ceremonial items—objects that are necessary to tribes for present religious and ceremonial practices, and whose possession is regarded as necessary to the health and well-being of the tribes. Discussions with panelists and with other individuals from tribes between sessions often elicited responses that the number of objects regarded as sacred or ceremonial was relatively small. Several individual tribal members stressed how few items the tribes have actually sought back in the past and no one stated that the objects sought for return were anywhere near as extensive as the broad definitions of cultural objects under ARPA and NAGPRA that are encompassed in the STOP Act.

The most far reaching demands for laws compelling the return of tribal cultural objects were made by tribal attorneys such as Shannon Keeler O’Loughlin, a Choctaw tribal member who has just been appointed by President Barack Obama to the Cultural Property Advisory Committee at the State Department in Washington (she is currently head of the Indian Gaming Commission). Ms. O’Loughlin sat on the PROTECT panel with Kate and Bob, and directly engaged with them (and vice-versa). Ms. O’Loughlin stated that she had gone to the ATADA website prior to the conference and had wondered why we were even present at the conference, as she saw mostly jewelry, rugs, and “crafts” being advertised, instead of the ceremonial objects that the tribes were most concerned with. Her cautious questioning reflected similar feelings across the room--some tribal attendees were perplexed by our attendance, while others were outright suspicious. Kate and Bob stressed that part of ATADA’s concerns with the STOP Act were based its effect on the American Indian market as a whole. They responded to pointed questions about art dealers’ willingness to engage in a straightforward and respectful manner with the tribes, and in turn, made equally pointed questions at various other panelists before their own session. At every chance, Kate and Bob raised critical issues concerning the STOP Act, and emphasized that the federal government’s history of repressing Indian religion and the legal removal of hundreds of thousands of Indian artifacts in past decades is largely responsible for the entry of artifacts into the market, not any current looting or illegal removal of artifacts from tribal possession. They also corrected erroneous perceptions about the art market. (A representative of the Government Accounting Office (GAO) was present, and we hope to be able to contribute accurate market information in order to correct the very exaggerated perceptions of the GAO and others regarding what they refer to as “the illicit market” or “the black market.”)

Much of the discussion at the conference was devoted to tribes’ rights to self-determination, and the pressures in opposition to self-rule and self-determination from outside forces, whether these are the federal government or the non-tribal world in general. The conference speakers often referred to the concept of a worldwide movement asserting indigenous rights – an issue of greater general importance greater than any concerns about the art industry. It was clear to ATADA’s representatives at the conference that if our industry is to survive and to work together with tribal entities in a productive way that benefits both, ATADA cannot discount or fail to respect native peoples’ concerns for indigenous rights. At the same time, no one should be held accountable for their ancestors’ transgressions, except to acknowledge how US political history created the circumstances in which tribal materials entered the market, whether through economic pressure, military seizures, government pressure include demands to assimilate, or otherwise. (Anyone who knows the market knows that few, if any, items were actually “stolen” from tribal possession by outsiders although this was a common perception of tribal attendees.)

Although the theme of “Shifting the Burden” was not really directed at art dealers or collectors per se, ATADA’s presence, especially through Kate and Bob’s participation, was appreciated and recognized—tribal members at the conferences saw that ATADA truly was willing to be part of the healing process. Conference attendees became friendlier and more willing to discuss the issues over the course of the conference. A number of tribal cultural preservation officers we spoke with were open to continuing the dialogue in the future. By the end of the conference, we received repeated reassurances that tribes are not seeking “everything” back. There was an increased understanding that in order to work with tribes, non-tribal people will need their help to clarify what is truly important to them.

Many attendees seemed open to the idea of rethinking the STOP Act, and recognized that there are significant practical and administrative problems associated with the law as it stands, notably its wide scope and the public confusion that could result about which items are sought by the tribes. However, despite criticism of federal agencies in general, there was overall support and appreciation for what the Interior and State departments have done in France specifically in regard to the Acoma shield case (although tribal members expressed frustration at the government for doing far too little, too late, and for failing to regain possession of the shield).

Greg Smith, an attorney for tribal interests in Washington, D.C. referred to the STOP Act as a “placeholder” and indicated that they had not seriously considered it as a complete bill. This is an indication that even with general tribal support, the bill is receiving a certain amount of negative feedback. It should be noted that although Mr. Smith was not alone at the conference in acknowledging that the bill had problems, this more critical perspective does not appear to hold in Washington or among federal agencies, especially the State Department, which Mr. Smith said had been insistent that the bill contain an “export law” position. A Department of State representative from its Bureau of Education and Cultural Affairs was a panelist at the conference and discussed the DOS’ enthusiastic support for repatriation. (The insistence on the bill containing an export law provision may have ramifications in other spheres of US law, particularly concerning importation of art from foreign nations. Several bills are presently before the House and Senate that would so severely restrict importation based upon foreign export laws as to end the trade in most foreign art and collectibles in the US, the most damaging being S. 3449.)

Unsurprisingly, the potential economic consequences of a negative public perception of Native American art is clearly an issue that resonates with tribal members. It is hoped that through ATADA’s outreach, tribal representative will understand more clearly the risks the STOP Act poses to contemporary Native artisans if the public becomes leery of purchasing Native artworks altogether, regardless of age.

Also, conference attendees from the tribes seemed to understand that the inability of tribes to share specific information on objects considered ceremonial or sacred creates legal and practical barriers to implementation. Most tribal representatives that we spoke to at the conference understood that this created a serious problem in giving adequate public notice about what was a violation of the law. They understood that non-tribal owners might have ceremonial items in private collections (including in private museum collections) without being aware that certain items were considered inalienable tribal possessions by the tribes.

Panelists from various tribes made it clear that except for items considered inalienable from tribal communities, they recognized that items in private hands/lands are not covered by NAGPRA if collected prior to 1990. There have been longstanding concerns among collectors and the trade about how tribal organizations saw the grandfathering-in of collections made prior to 1979 with respect to ARPA, and

collections made prior to 1990 in the case of NAGPRA.

However, several speakers discussed the need to amend NAGPRA definitions in order to include all cultural materials, whether they reside in public or private collections, no matter where they are found, and no matter who “owns” them. A key part of the tribes’ position is that only the tribes have the ability to identify what is sacred or ceremonial to them, and only they can state what is their inalienable community property. It is clear that opposing the concept that tribal communities have an innate right to determine what is sacred for themselves would raise fierce opposition from tribes and their supporters, deny the validity of the tribes’ worldviews and cement the view of art dealers and collectors as “colonizers”.

Without overemphasizing the effect of ATADA’s presence at this conference, we feel that our efforts, combined with the overall lack of enthusiasm for past federal government actions in general, somewhat altered the tenor of the panel discussions. Most importantly, we think it was clear to all that additional consultation with other stakeholders, including the art trade, and collectors, as well as with tribes which were not previously part of the process, should take place.

Conclusion

The ATADA Board of Directors and the Legal Committee, want to make clear that our primary message at this conference and for any future meetings with tribes, is that we want to work with them directly. We want the tribes to understand the legal and administrative pitfalls of trying to implement the STOP Act, and to make clear to them that its passage into law will not result in what they most want -- the return of ancestor remains and essential cultural items. Most dealers, especially those who are members of ATADA, are no longer working with sacred materials, at least as the art community currently understands them. We will continue to promote voluntary returns on behalf of dealers and collectors alike. These good faith gestures are meant to establish trust and connection with tribes, and inevitably, they will contrast with the ineffective steps taken by federal agencies.

ATADA needs to educate the public regarding the impropriety of attempting to force repatriation of legally acquired objects from the private sector, especially for the items that left the tribal communities long ago as a result of US government actions, forced relocations and forced acculturation. If tribes can pass internal laws declaring community ownership of ceremonial objects, identify ceremonial objects, or create

lists of objects deemed inalienable by them, then tribes will be better able to claim return of objects from overseas, whether they are in museums or private hands. Collectors and art dealers are likely to be surprised by some tribal claims, and reject others. That being said, ATADA can and should work with tribal communities to make sure that historical events do not repeat themselves. We need to assure tribal communities that ATADA, and the art industry, will do its part to help prevent those injustices from ever happening again and be supportive of voluntary actions that truly benefit the tribes. In part, this may mean supporting new legislation that allows tribes more rights of self-determination, while also curbing attempts at overreach into the personal property realm.

ATADA is committed to continuing to meet with both tribal members and government representatives in finding the right solutions for all interested parties. ATADA needs to be seen as a supportive partner through this entire process, willing and able to discuss these matters with the tribes in a respectful manner. In moving forward, those of us present at the International Repatriation Conference want to share the experience we gained there. We strongly encourage ATADA to sponsor forums in which our Board of Directors and our membership at large, including dealers, collectors, and museums, can learn directly from tribal representatives about why cultural items are so important to the tribes — and to share our perspectives, which we recognize are not uniform, with them. □



Learn More...

Please visit the “Legal Issues Blog” on ATADA.org to learn more about the proposed STOP Act, including a ATADA’s Summary of Issues with the proposed law, pertinent Legislator contact information and other testimonies regarding the act.

The Legal Issues Blog can be found at: www.atada.org/legal-issues-blog/

On October 24, ATADA submitted written testimony on the Safeguard Tribal Objects of Patrimony Act of 2016 (STOP Act), S.3127/H. 5854. This testimony is printed on the following pages. A PDF version of the text is available for download.

[ATADA Testimony by John Molloy, ATADA President](#)

On October 18, 2016, the U.S. Senate Committee on Indian Affairs held an Oversight Field Hearing on “The Theft, Illegal Possession, Sale, Transfer and Export of Tribal Cultural Items”

The following testimonies from that hearing are also available for download:

[Honor Keeler](#)
[Director, International Repatriation Project Association on American Indian Affairs](#)

[Governor Kurt Riley](#)
[Pueblo of Acoma](#)

[Governor Myron Armijo](#)
[Pueblo of Santa Ana](#)

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Antique Tribal Art Dealers Association,¹ John Molloy, President Written Testimony submitted to U.S. Senate Committee on Indian Affairs, on the Safeguard Tribal Objects of Patrimony Act of 2016 (STOP Act), S. 3127/H. 5854.

October 24, 2016

The Safeguard Tribal Objects of Patrimony Act of 2016 is unlikely to achieve its primary goal, the return of important cultural objects to Native American tribes and Native Hawaiian organizations. If enacted, the STOP Act would instead create dangerous legal uncertainties for private owners of a wide range of American Indian art and artifacts, violate the 5th Amendment due process clause of the U.S. Constitution, generate consumer confusion that would damage legitimate art dealers and tribal artisans, and create a bureaucratic nightmare for the tribes.

Summary

It is the position of the tribes that they, and no one else, should determine which cultural objects are inalienable from their communities. This is a legitimate position, and intrinsic to tribal sovereignty. At the same time, many tribes believe strongly that photographs, identifying characteristics, and descriptions of ceremonial objects cannot be disclosed to persons who do not have the right and authority to know about such sacred matters, not even to all tribal members. Therefore, tribes refuse to make information public that would enable an outsider or unauthorized person to know whether he or she possesses a ceremonial object considered inalienable to the tribe.

It is also the tribes' position that although non-tribal members may have some knowledge of Indian culture, that knowledge is not complete. So, while certain examples of cultural objects such as masks may be

generally acknowledged as ceremonial items, others are not. Some objects deemed ceremonial to a tribe are very similar to non-ceremonial objects, and may include commonly traded objects such as ceramics. Knowledge regarding these items is also considered inappropriate to make public.

Tribal secrecy may be well-justified as necessary for the health and well-being of the tribe. However, the lack of specific, public information about what makes a cultural object inalienable – when it may have entered the stream of commerce decades or even a hundred years before – is a legal barrier to the exercise of due process and to the return of many sacred objects.

This information gap would certainly be an issue in the enforcement of the STOP Act, if it is enacted. The U.S. legal system is premised on the idea that a citizen must have fair notice of our laws. As our Supreme Court has stated, “[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.”²

The items that tribes most urgently seek to repatriate from non-tribal possessors are ceremonial objects and objects of cultural patrimony that tribes claim as inalienable tribal property³. These objects are claimed regardless of the geographic and time limitations and grandfathering-in of older, non-tribal private collections under the 1979 Archeological Resources Protection

Act (ARPA),⁴ and the 1990 Native American Graves Protection and Repatriation Act (NAGPRA)⁵. Sacred items are also precisely the objects that many tribes say it is impossible to identify or discuss according to established tribal customary law. Therefore, notice of what items are claimed by the tribes cannot be given to non-tribal owners. The lack of fair warning means that a criminal prosecution or forfeiture of property would be based upon information that cannot be disclosed, which would be a clear violation of due process of law. The STOP Act therefore cannot legally achieve its primary goal of returning to the tribes the items they most seek.

While a failure to provide for due process, which is discussed in greater detail below, is a fatal flaw, the STOP Act has other serious weaknesses. The STOP Act is unnecessary because export for sale of unlawfully acquired artifacts is already illegal; ARPA specifically penalizes trafficking in unlawfully acquired objects in interstate and foreign commerce⁶ and NAGPRA has criminal penalties for unlawful transportation and sale⁷ and enables civil claims for sacred and communally owned artifacts.

The STOP Act creates no framework for administration or enforcement of tribal claims. It does not provide for management of cultural objects, or have a permitting

system for objects deemed lawful to export, or provide funding. It does not provide a standard for identification of items of cultural patrimony – for example, a list or database of ceremonial items. It does not set forth standards of evidence for tribal claimants or means of appeal for the owners of disputed objects.

The STOP Act is grossly overbroad as a result of adopting multiple definitions of a “cultural object” from other laws that serve completely different purposes. As discussed below in greater detail, the STOP Act defines a “cultural object” by combining definitions from three existing U.S. statutes: ARPA, NAGPRA, and 18 USC § 1866(b). The definition of a “cultural object” under these statutes include a wide variety of non-ceremonial objects that tribes have not expressed any interest in repatriating.

For example, under NAGPRA, human remains and sacred items are cultural items that the tribes feel are essential for repatriation. However, some museums routinely deem very common objects that are widely traded without objection from tribes to be “unassociated funerary objects” under NAGPRA.⁸ Under ARPA, virtually everything made by humans over 100 years old is covered by the term “archaeological resource”⁹, but only the age and original location of an object makes it lawful or unlawful to own. Sacred associations are

⁴ Archaeological Resources Protection Act of 1979, 16 U.S.C. §§ 470aa-mm; Congressional findings and declaration of purpose, §470aa(b), “(b) The purpose of this chapter is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979;” and 16 U.S.C. § 470ee, Prohibited acts and criminal penalties. Prospective application. “(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.”

⁵ Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001-3013 and 18 U.S.C. § 1170, Nov. 16, 1990.

⁶ 16 U.S.C. § 470ee, Prohibited acts and criminal penalties. Trafficking in interstate or foreign commerce in archaeological resources the excavation, removal, sale, purchase, exchange, transportation or receipt of which was wrongful under State or local law, “(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource 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.”

⁷ 18 U.S.C. § 1170.

⁸ See, for example, the 2007 NAGPRA repatriation of 10,857 cultural items in the control of the Burke Museum: Federal Register: May 24, 2007, Volume 72, Number 100, Notices, Page 29174-29177, From the Federal Register Online via GPO Access, wais.access.gpo.gov, DOCID:fr24my07-88.

⁹ 16 U.S.C. 470bb(1).

¹ The Antique Tribal Art Dealers Association, ATADA, is a professional organization established in 1988 in order to set ethical and professional standards for the art trade and to provide education for the public. ATADA membership has grown to include hundreds of antique and contemporary Native American and ethnographic art dealers and collectors, art appraisers, and a strong representation of museums and public charities across the U.S., dedicated to the promotion, study and exhibition of Native American history and culture. www.atada.org. email director@atada.org, PO Box 45628, Rio Rancho, NM 87174.

² *Connally v. General Constr. Co.*, 269 U. S. 385, 391, 46 S. Ct. 126, 70 L. Ed. 322 (1926).

³ Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001-3013, Nov. 16, 1990, §3001(3)(c-d).

irrelevant. Claims under ARPA would be especially difficult to succeed in, since the original location of the majority of cultural objects in circulation is unknown. These multiple definitions expand the STOP Act’s reach far beyond the ceremonial objects whose return is important to the tribes.

A grant of short term immunity to anyone who “repatriates” an unlawfully obtained cultural object to the “appropriate” Indian tribe or Native Hawaiian organization, is one of the most insidious elements of the STOP Act. Since the original provenance of most cultural items is unknown, the non-tribal owner is stuck between a rock and a hard place. He can “repatriate” what might be a lawful object, losing his investment and taking the chance that he has given it to the right tribe, or he can hold on to it, possibly risking a later arrest or claim from a tribe. The unavoidable uncertainty about the status of artifacts, not knowledge of unlawful origins, is what most worries collectors and the art trade.

The STOP Act not only threatens art dealers and collectors with prosecution without having had notice of wrongdoing – the legal uncertainty surrounding Native American cultural objects is likely to cause serious economic damage. It will taint both the antique and contemporary Indian art markets, which are major contributors to local economies and irreplaceable sources of income to tribal artisans, particularly in the American West. The total Indian art trade is estimated to be valued between \$400-800 million a year. The annual Santa Fe Indian Art Market brings over 170,000 tourists to New Mexico a year. The city of Santa Fe estimates that the market brings in 120 million each year in hotel and restaurant revenue alone. Native artisans, many of whom rely on the Indian Art Market for as much as half their yearly income, are also concerned that such a vague law will “taint” the entire American Indian art market in the eyes of the public.

¹⁰ Edwin Wade et al., *America’s Great Lost Expedition: The Thomas Keam Collection of Hopi Pottery from the Second Hemenway Expedition, 1890-1894*, p 9, Harvard, Cambridge (1980) (See also pages 18, 25, 26, 39) and Edwin Wade et al., *Historic Hopi Ceramics*, 84 Harvard, Cambridge (1981).

¹¹ Edwin Wade et al., *America’s Great Lost Expedition: The Thomas Keam Collection of Hopi Pottery from the Second Hemenway Expedition, 1890-1894*, p 2, Harvard, Cambridge (1980).

¹² *Id.* at 15.

Background on the distribution and circulation of Native American artifacts.

There are millions of Native American “cultural objects” in private ownership today; many have no ownership history, or “provenance.” Many objects have circulated for decades in the marketplace, or even for the last 140 years. For most of the 140 years in which there has been an active trade in Indian artifacts, provenance and ownership history had no legal or practical effect on the market. In the last 25 years, awareness of tribal concerns and the harmful destruction of archaeological sites has changed everything. Today, a “good” provenance can make the difference between a valuable object and one of little worth, or that cannot be sold at all.

The best records of early collections of Native American cultural objects are from museum sources. Harvard’s Peabody Museum expeditions included the Hemenway Southwestern Archaeological Expedition (1886-1894), which brought thousands of Zuni and Hopi artifacts from Arizona and New Mexico. In 1892, the leader of the Hemenway Expedition paid the trader Thomas Keam \$10,000 for a huge collection that included over 3000 ceramics.¹⁰ The materials in the collection were either bought by Keam and his assistant Alexander Stephen from Hopi or found in explorations of abandoned Hopi towns. Smaller, but still very substantial collections were also made by Keam for the Berlin Ethnological Museum, The Field Museum in Chicago, and the National Museum of Finland. Keam also sold widely from his trading post to collectors and tourists from across the United States.¹¹ The materials collected by Keam and sold to the Peabody Museum were sourced from “throughout Arizona, the San Juan region of the southern confines of Colorado and Utah. They were exhumed from burial places, sacrificial caverns, ruins and from sand dunes in the localities of ancient gardens.”¹² During the same years and throughout the early 20th century, private collectors purchased from the same sources that supplied museum collectors.

Thus, tens of thousands of cultural objects entered the stream of commerce decades before the first U.S. cultural property legislation was enacted, the American Antiquities Act of 1906 (Antiquities Act).¹³ Experts such as the Reverend Dr. Henry Baum testified regarding the enormous numbers of artifacts that had entered the market at Congressional hearings on the Antiquities Act.¹⁴ Department Archeologist and Superintendent of Mesa Verde National Park Jesse L. Nusbaum, writing in 1929, called the 1880s and 1890s “the heyday of the commercial pothunter.”¹⁵

Artifacts without provenience were dug up and sold to good faith purchasers long after enactment of the Antiquities Act in 1906. Superintendent Nusbaum reported when seeking funding for putting signs prohibiting looting on ancient ruins, a task barely begun in 1929:

*“I may add, the majority of tourists are potential pothunters... The few scattered settlers of that period are replaced by the thousands of motorists and visitors today, many of whom are potential pothunters... Several years ago... warning signs were posted on and in the vicinity of some of the more important ruins... To the average visitor, only ruins so posted are the property of the United States and protected by the act of June 8, 1906...”*¹⁶

Regrettably, the U.S. government is directly responsible for the loss of numerous sacred and ceremonial objects to the tribes. In 1883, Secretary of the Interior Henry Teller issued rules establishing Courts of Indian Offenses that prohibited Native American ceremonial activity under pain of imprisonment. Teller ordered Indian agents to compel medicine men to discontinue

¹³ American Antiquities Act of 1906, 16 U.S.C. §§431-433, 34 Stat. L. 225. The Antiquities Act of 1906 was held to be unconstitutionally vague and legally unenforceable in the Ninth Circuit, which includes Arizona, where Navajo, Hopi and Zuni lands are located. *U.S. v. Diaz*, 499 F.2d 113, 114 (9th Cir. 1974). The Diaz decision, coupled with a rise in illicit excavations on public and Indian lands in the 1970s, prompted new legislation to protect archaeological resources, ARPA. H.R. REP. 96-311, *8, 1979 U.S.C.C.A.N. 1709, **1710.

¹⁴ Hearing of the Subcommittee of the Committee on Public Lands of the United States Senate, 58th Cong., 2d Sess., 14 (1904), testimony of Reverend Dr. Henry Baum.

¹⁵ Annual Report of Jesse L. Nusbaum, Department Archeologist and Superintendent of Mesa Verde National Park, to the Secretary of the Interior for Fiscal Year Ended June 30, 1929 6-7.

¹⁶ *Id.* at V, 6-7.

their practices and prohibited anyone less than 50 years old from being present at feasts and dances. Missionaries also encouraged the destruction of paraphernalia used in tribal religious celebrations. At various times in the early 20th C, Native Christian groups encouraged people to destroy relics. It was only in 1978 that the American Indian Religious Freedom Act gave native religions the same rights given to others in the U.S.

Today, the sources of cultural objects in the market and in private collections vary greatly. While many objects were taken from tribes by the U.S. government, or sold after individuals adopted Christianity, others were sold in the 1960s-1980s, when Indian ceremonial objects were avidly collected by non-Indians who admired Native American social and environmental perspectives, or who responded to the aesthetic and creative qualities of Indian objects. Indian artifacts were sold (with or without permission of the community) because of the increasing economic values of tribal artifacts and the comparative poverty of many tribal communities.

In the last twenty or thirty years, attitudes have changed very much among art collectors, museums, and the general public. There is increased respect for both the sovereign rights of tribal communities and the importance of retaining sacred objects for the health of these communities. Most recently, there is a commitment on the part of art dealers and organizations such as ATADA, the Antique Tribal Art Dealers Association, to work directly with tribal representatives to find solutions that truly serve Native American interests.

Congress Intended Private Collections to Remain a Resource for Preservation and Study of Native American Culture

Art traders and the collecting community have been accused in the media of exploiting Indian culture, especially in light of recent Paris auction sales that were deeply offensive to tribal communities. But it should be remembered that the vast majority of the trade in Indian artifacts is completely legal, and that Congress deliberately excluded pre-existing privately held collections of artifacts from ARPA's prohibition on trafficking, in part because they formed a valuable resource for academic study. ARPA's Findings and Purpose states:

*"The purpose of this chapter is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979."*¹⁷

ARPA's legislative history reinforces this policy:

"The Committee is concerned that greater efforts must be undertaken by the Secretary and professional archaeologists to involve to the fullest extent possible

¹⁷ 16 U.S.C. § 470aa(b).

¹⁸ H.R. REP. 96-311, *12,1979 US.CC.A.N. 1709, **1714

¹⁹ 16 U.S.C. § 470ee(f).

²⁰ "cultural items" means human remains and— (A) "associated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects. (B) "unassociated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe, (C) "sacred objects" which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and (D) "cultural patrimony" which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group. 25 USC 3001(3)(3).

*non-professional individuals with existing collections or with an interest in archaeology. The potential benefit of this increased cooperation is enormous; there is a wealth of archaeological information in the hands of private individuals that could greatly expand the archaeological data base on this country."*¹⁸

Only objects excavated subsequent to 1979 or unlawfully possessed prior to 1979 are impacted by ARPA. Congress expressly intended private collections to serve as open resources:

*"Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to October 31, 1979."*¹⁹

Definitions of Cultural Objects Under the STOP Act Are Too Broad and Do Not Prioritize the Cultural Objects Most Desired by the Tribes

The STOP Act penalizes export of any Native American cultural object obtained in violation of NAGPRA, 18 USC 1170, ARPA, or 18 USC 1866(b).

The STOP Act defines a cultural object as fitting one of three categories:

- (1) "cultural items as described in NAGPRA, 25 USC 3001"²⁰

- (2) An "archeological resource as defined under section 3 of ARPA, 470bb(1)"²¹
- (3) And an "object of antiquity protected under section 1866(b)."²²

The combined definitions under these statutes encompass virtually every object made by human hands. Since the vast majority of Native American cultural objects have little or no ownership history, there is enormous potential for confusion about what is lawful and what is unlawful to own, trade, or export.

Some supporters of the STOP Act have said that only "serious" violations of the law would actually be prosecuted and this broader category of objects would not be affected. However, as Scalia and Garner have explained, "Ordinarily, judges apply text-specific definitions with rigor."²³ It is not a valid defense of flawed legislation to say, as some supporters Act have, that a law will only be selectively enforced.

There is no denying the fact that the STOP Act requires repatriation to federally recognized tribes of a vast number of cultural objects that the tribes don't appear to want back in the first place. Tribal members have stated in public fora that their tribes want a much smaller and more limited number of items back.²⁴ A number of tribal representatives have also stated that only the tribes can determine whether an object is ceremonial.²⁵ If more limited repatriation of essential objects, based upon tribal criteria alone, is what the tribes want, then

²¹ "(1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this chapter. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age." 16 U.S.C. §§ 470aa-mm, section 470bb(1).

²² "(b) ...any historic or prehistoric ruin or monument or any other object of antiquity that is situated on land owned or controlled by the Federal Government without the permission of the head of the Federal agency having jurisdiction over the land on which the object is situated..." 18 U.S.C. 1866(b).

²³ Scalia and Garner, Reading Law: The Interpretation of Legal Texts § 36 at 225-233, (Thompson/West 2012).

²⁴ This point was made by Acoma Pueblo's Jonathan Sims and Navajo Cultural Specialist Timothy Begay, speaking at the panel, Private Auction Houses & Repatriation, at the Indigenous International Repatriation Conference: Shifting the Burden held at Isleta Pueblo, September 26-27, 2016, under the auspices of the Association on American Indian Affairs (AAIA).

²⁵ Id.

the only proper legislation is legislation that supports those goals – not the STOP Act.

NAGPRA Does Not Provide Adequate Guidance to Determine Status of an Artifact

The tribes' experience with NAGPRA illustrates the poor results that follow on inconsistent definitions and standards. Twenty-six years after its enactment, there are still no standard criteria under NAGPRA among museums that could provide guidance to the public about what should be repatriated. Even more importantly, museums and tribes often do not agree on which items in museum collections are subject to repatriation to tribes under NAGPRA. After 26 years, there is no publicly accessible list of items in the category of ceremonial objects under NAGPRA for each of the 567 federally recognized tribes to provide private citizens with guidance regarding which cultural objects are subject to claims for repatriation.

Only about one-third of human remains in U.S. museums, which are unquestionably subject to repatriation, have been repatriated to tribes. An even higher percentage of objects of material culture, whether for ceremonial or for ordinary usage, remains in museum collections and has not yet been cataloged for purposes of NAGPRA. Although many museums have worked diligently to set standards for repatriation – and although museums have significant institutional, academic and scientific resources, there is still not agreement even among museums regarding the types of

objects subject to repatriation claims under NAGPRA.

Federal agencies have not begun to investigate the number of human remains or cultural objects that were exported from the U.S. with permits issued under the American Antiquities Act, but whose permits enabled the U.S. to request their return.²⁶ Yet if the STOP act is enacted, the federal government will expect U.S. citizens, who rarely have any records pertaining to cultural objects in their private collections (and which almost never contain human remains, as do museum collections), to independently determine what should be returned to tribal communities. If federal agencies have not started a process for repatriation based upon existing, written agreements with foreign institutions, why should private citizens be obligated to an even higher standard regarding cultural objects without known provenance?

Tribes May be the Best Judges, But in Many Cases, Tribes Are Not Willing to Make Public Their Criteria for Identifying Sacred or Ceremonial Objects

One response to questions about the process for the public to determine what objects would be subject to repatriation has been that it would be best to “ask the tribes,” and the “tribes intend to set up a hotline.”²⁷ On its surface, this seems a direct and reasonable proposal. However, when one remembers that there are hundreds of thousands of Native American objects in private circulation at any one time, and there are 567 federally recognized tribes, then such a solution has obvious flaws. Who is the average American going to call?

Although a few (mostly northeastern U.S.) tribes have created lists of items that they wish repatriated, most feel it is not appropriate to do so. Many southwestern U.S. tribes, including the Acoma, Laguna, Hopi, and Navajo, have stated that they will not reveal such information: the only persons who are permitted to have such knowledge are those within the tribal community with specific religious authority to possess it. It is their right and their choice to withhold information that is not proper to share with outsiders. It is improper, however, for Congress to give the tribes (or anyone

²⁶ Melanie O’Brien, Program Manager, National NAGPRA Program, U.S. National Park Service, personal communication and at the panel, Federal Tools in International Repatriation, at the Indigenous International Repatriation Conference, Isleta Pueblo, September 27, 2016.

²⁷ Ann Rogers, Esq., made this suggestion when speaking at CLE International Visual Arts & the Law Conference, Santa Fe, NM, July 28-29, 2016.

else) a pass on the fair notice that due process requires. The drafters of the STOP Act should have realized that delegating authority to the tribes would require not just due process, but also transparency or “sunshine” requirements under federal law.

Further, the STOP Act covers far more than ceremonial objects. Tribal decision-makers are no better able than a private citizen is to determine whether or not an item without provenance came from federal or Indian lands, or when, over the last 140 years, it was removed. The STOP Act does not address how tribes and federal agencies would split the authority to deal with objects deemed unlawful to export under ARPA’s time-and-place based criteria.

A 2-Year Grant of Immunity from Prosecution Will Frighten Collectors, Harm Museums and Substantially Burden the Tribes, Without Bringing Important Objects Home

“The STOP Act’s 2-year “amnesty” window for the return of “unlawful” tribal cultural objects by private collectors implies that possession of all cultural objects is unlawful. Its effect is coercive and threatening. The STOP Act’s immunity from prosecution provision could easily result in consumer confusion and cause unwarranted returns of thousands of lawfully owned objects to tribes which do not want them. Collectors may be pressured to give up objects simply out of an abundance of caution. Alternatively, the STOP Act’s lack of clear criteria or of any process for repatriation could result in virtually no returns at all.

Regardless of the practical effect, by directing current owners to repatriate “all of the Native American cultural objects (as defined in section 1171(a)) in the possession of the person” to “the appropriate Indian tribe or Native Hawaiian organization,” the STOP Act clearly makes Native tribes and organizations the arbiters of what is lawful or unlawful and which tribe is an “appropriate tribe” to return objects to. This would impermissibly subject non-tribal U.S. citizens to tribal jurisdiction and grant extra-territorial authority over U.S. citizens to the tribes.

By broadly including the definitions of cultural objects

under ARPA and NAGPRA within the STOP Act, by imposing implicit obligations on the public as well as museums to return cultural objects, and by failing to establish basic evidentiary standards for claimant tribes, the STOP Act sweeps away constitutional and legislative protections for grandfathered objects under ARPA and NAGPRA, and departs from Congress’ intent to preserve scientific and academic access for the public benefit through private collections of Native American cultural objects.

The STOP appears to require a de facto reversal of the burden of proof from the government to a private owner to show that an object is lawfully held, exported or otherwise transferred. A private owner generally does not know when and where an object was originally acquired, does not have tribally-held secret knowledge regarding the ceremonial character of an object, and cannot reasonably be expected in many cases, even to know which tribe is the “proper” tribe to return it to.

An allegation by the government that an owner failed to timely repatriate a cultural object to the proper tribe would impermissibly shift the burden of proof to a defendant’s detriment and sanction a per se violation of his or her due process rights.

The Stop Act Would Violate the Fifth Amendment Due Process Clause of the U.S. Constitution

Under the circumstances described above, one can only conclude that S. 3127/H. 5854 could not be implemented

without raising legal challenges for denial of due process to U.S. citizens in possession of cultural objects potentially subject to forfeiture. Due process requires fair notice of conduct that is forbidden or required. If a non-tribal U.S. citizen owner of a cultural objects has no notice that a particular object is claimed, then due process is not met. If a cultural object is claimed as an inalienable object by a tribe that deliberately withholds information on how sacred objects can be identified, then due process is not met.²⁸

The U.S. Supreme Court held in *Federal Communications Comm’n v. Fox Television Stations, Inc.*,²⁹ that due process requires “fair notice” of applicable regulations. In so doing, the Court observed, “A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.” The Supreme Court held in *Papachristou v. Jacksonville*, “Living under a rule of law entails various suppositions, one of which is that [‘all persons] are entitled to be informed as to what the State commands or forbids.”³⁰

This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment.³¹ It requires the invalidation of laws that are impermissibly vague. A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes

²⁸ In *U.S. v. Tidwell*, 191 F.3d 976 (9th Cir. 1999), the Ninth Circuit Court of Appeals held that NAGPRA was not unconstitutionally vague in defining “cultural patrimony” which may not be stolen and traded, and that a knowledgeable dealer in the specific circumstances of that case had adequate notice of its prohibitions. However, the range of objects claimed as ceremonial now claimed by certain tribes is unprecedented, and a dealer could not be expected to have knowledge as to which objects acquired prior to passage of NAGPRA could be deemed inalienable, much less a private owner. “The court [in *U.S. v. Corrow*, 119 F.3d 796, (10th Cir. 1997)] acknowledged conflicting opinions, between orthodox and moderate Navajo religious views, regarding the alienability of these particular adornments.” “Validity, Construction, and Applicability of Native American Graves Protection and Repatriation Act (25 U.S.C.A. §§ 3001–3013 and 18 U.S.C.A. § 1170)” Deborah F. Buckman, J.D., 173 A.L.R. Fed. 765 (originally published 2001).

²⁹ *Federal Communications Comm’n v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2012 U.S. LEXIS 4661 (June 21, 2012). In that case, the Supreme Court held that because the FCC failed to give Fox Television Stations or ABC, Inc. fair notice that fleeting expletives and momentary nudity could be found to be actionably indecent, the FCC’s standards as applied to these broadcasts were vague.

³⁰ *Papachristou v. Jacksonville*, 405 U. S. 156, 162, 92 S. Ct. 839, 31 L. Ed. 2d 110 (1972) (quoting *Lanzetta v. New Jersey*, 306 U.S. 451, 453, 453 S. Ct. 618, 83 L. Ed. 888 (1939)).

³¹ See *United States v. Williams*, 553 U. S. 285, 304, 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008).

or encourages seriously discriminatory enforcement.”³² As the Supreme Court has explained, a regulation is not vague because it may at times be difficult to prove an incriminating fact but rather because it is unclear as to what fact must be proved.³³

The void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.³⁴

This requirement for fair notice is deeply embedded in the history of the common law, a fine and early example being Blackstone’s criticism of Caligula “who (according to Dio Cassius) wrote his laws in a very small character, and hung them up on high pillars, the more effectively to ensnare the people.”³⁵ The STOP Act unquestionably falls short of the mandate for fair notice and clarity in the law.

Before cultural objects may be forfeited, whether under the STOP Act or other U.S. domestic cultural property legislation, the government must show that fair notice was given and the requirements of due process were met. This simply may not be possible, given the lack of criteria for determining the ceremonial nature of an object belonging to any one of 567 federally recognized tribes and absence of provenance for almost all Native American cultural objects in circulation. It has been suggested that a 30-day Customs hold be placed on Native American Ancestors and cultural

items prior to export.³⁶ Such a proposal raises, with respect to “cultural objects” the same issues of fair notice and due process.

Before objects may be forfeited, the government must establish that they are:

- (1) types of objects designated as inalienable ceremonial cultural objects subject to export restrictions, or
- (2) unlawfully removed federal or Indian lands after NAGPRA or ARPA went into force.

Again, the public’s inability to access information on what exactly constitutes a cultural object would cause the STOP Act to fail. Due process would be offended because an exporter could not be given fair notice of the conduct that is forbidden or required before his property could be seized and be subject to forfeiture.

Evidentiary Issues

Evidentiary issues inevitably arise when key information about what makes a ceremonial object inalienable is deliberately withheld. In order to prevail in a prosecution, the government must establish some nexus between the property to be forfeited and the forbidden activity defined by the statute.³⁷ For example, it would be expected that the government would use expert testimony to identify the original site of an unprovenanced object on federal or Indian land, or the approximate date in which it was removed.³⁸

Similarly, in a prosecution for failure to timely repatriate a sacred or ceremonial object, the government would be required to provide expert testimony to establish that an object was sacred or ceremonial in nature –

³² Ibid.
³³ See *id.*, at 306, 128 S. Ct. 1830, 170 L. Ed. 2d 650.

³⁴ See *Grayned v. City of Rockford*, 408 U. S. 104, 108-109, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972).

³⁵ Quoted in *United States v. Burgess*, 1987 U.S. Dist. LEXIS 11227 (N.D. Ill. Dec. 1, 1987)

³⁶ Written Testimony submitted on October 18, 2016 to the U.S. Senate Committee on Indian Affairs by Ms. Honor Keeler, Director of the International Repatriation Project of the Association on American Indian Affairs.

³⁷ *United States v. \$506,231 in United States Currency*, 125 F.3d 442, 451-52 (7th Cir. 1997).

³⁸ See *United States v. 328 “Quintales” of Green Coffee Beans*, 21 F. Supp. 3d 122, 129 (D. P.R. 2013) (government’s and claimant’s experts contest origin of coffee beans); *United States v. One Tyrannosaurs Bataar Skeleton*, 2012 U.S. Dist. LEXIS 165153*4 (S.D.N.Y. November 14, 2012) (government uses expert testimony to establish that Bataar skeleton almost certainly came from the Nemeegt Formation in Mongolia and was most likely excavated between 1995 and 2005); *Three Burmese Statues*, 2008 U.S. Dist. LEXIS 48474*7 (government’s experts identify statues as Burmese); *United States v. Eighteenth Century Peruvian Oil on Canvass*, 597 F. Supp. 2d 618, 623 (E.D. Va. 2009) (CPIA case; government experts state painting originated in Peru).

but many tribes insist that this knowledge remain secret. In any trial resulting from the STOP Act, the fact that certain tribes decline to share information on ceremonial and inalienable objects would result in the government’s inability to provide fact witnesses who could clearly explain the rationale for the detention and seizure of private property, which would be fatal to the government’s case.

Tribes have stated that only they have the true knowledge regarding ceremonial objects. Nonetheless, the Federal Rule of Evidence 702 governs the issue of the standards for admission of expert testimony for every federal trial.³⁹ The proponent must establish the admissibility of testimony by a preponderance of the evidence standard. The Judge, acting as gatekeeper, must keep in mind two overarching but competing goals.⁴⁰ “First, Rule 702 was intended to liberalize the introduction of relevant expert testimony and thus encourages courts to rely on vigorous cross-examination and contrary evidence to counterbalance expert opinions of uncertain veracity... Simultaneously, however, a trial court must mind the high potential for expert opinions to mislead, rather than enlighten, the jury.” “Qualified” experts “must have ‘knowledge, skill experience, training or education’ in the subject area...”⁴¹ Even where an expert is qualified, however, his underlying methodology must also satisfy Rule 702, i.e. that methodology must satisfy a two prong test for (1) reliability and (2) relevance.⁴² Certainly, tribes could provide knowledgeable experts, but expert testimony would be subject to challenge and cross-examination that might reveal information tribes are unwilling to make public.

French law

Finally, there is a serious weakness in the STOP Act supporters’ arguments that a U.S. law prohibiting export would not only be recognized in France, but would require French authorities to halt auctions and return

³⁹ *Foster v. Legal Sea Foods, Inc.*, 2008 U.S. Dist. LEXIS 57117*25-28, at 25(D. Md. 2008) (Blake, J.).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ France ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property on January 7, 1997.

⁴⁴ <http://www.parcours-des-mondes.com/index.php?lang=en>

items to the U.S. and to the tribes. France is a signatory of the 1970 UNESCO Convention,⁴³ but France’s ratification of UNESCO 1970 has not prevented it from being a major market center in Europe for ancient, antique, ethnographic and tribal art.

To provide a single example, the most important ethnographic and tribal art fair in the world, the *Parcours des Mondes*,⁴⁴ is held every year in September, in St. Germain des Pres, Paris. This year, eighty art dealers came to the fair from around the world, and artworks from Africa, Oceania, Asia, and South and “Indigenous America” were displayed. The catalog of exhibitors showed, among many other objects from countries with laws prohibiting export, pre-Columbian works from Mexico, an Amazonian shrunken head, and a wide variety of African and Southeast Asian sculptures. No art dealers were stopped at the border, and no one’s art was detained or forfeited.

The existence or lack of an “export law” is not the issue; it is a filing of an actual claim of theft. The key event which resulted in the withdrawal of the disputed Acoma shield from auction in Paris took place in New Mexico. An affidavit was filed in federal district court by a family member who identified the shield as having been stolen from the family home many years before. This specific claim of ownership made all the difference in France, and is likely to result in the object’s return.

It is hoped that tribes will take steps to strengthen their hand in future claims. Tribes are presently considering enacting internal tribal legislation that establishes title to cultural objects under codified tribal law, and delegating authority to tribal authorities to make claims as they feel it is appropriate. Some form of internal documentation that tribes consider suitable for themselves would likely be more effective than any “export law,” since France and several other European countries have not yet implemented international

treaties such as UNESCO into practice, even after several decades.

Recommendations for future action

1. The U.S. government should clean its own house prior to placing unreasonable burdens on private citizens. The U.S. government should locate and seek repatriation of cultural objects under permitting agreements with foreign museums executed after the 1906 Antiquities Act.⁴⁵
2. A thorough and accurate study of the Indian art market should be undertaken in order to define the scope and scale of problems any proposed law is to address. Despite public statements by some supporters of the STOP Act that important tribal cultural objects are currently at risk of looting and that significant traffic in stolen objects continues, this is emphatically not the experience of contemporary traders in Native American art. On the contrary, most art dealers and collectors are better educated about and far more sensitive to tribal concerns than ever before.
3. Due process should be assured -not obscured -by clearly setting forth the regulatory process and administrative structure for implementation of any proposed law. Any law must have provisions for fair notice that adequately inform the American public of what constitutes a violation of law, and what steps must be taken to stay within the law.
4. The costs to the American taxpayer, to local governments, and to tribes should be clearly identified, with respect to loss of tax and tourism revenue and the costs of regulatory systems and activities before considering passage of the STOP Act.
5. There must be good faith, effective consultation with all federally recognized tribes, since all are covered by the proposed legislation, to ensure that legislation accurately reflects the goals of the tribes and honors tribal sovereignty.
6. There must be adequate funding to establish and sustain the administrative structure envisioned by any proposed legislation.

⁴⁵ Some permitting agreements under the 1906 Antiquities Act with foreign museums and institutions vested permanent ownership in cultural objects in the U.S., and returns of cultural objects could be demanded, but has not yet been sought, according to a presentation by Melanie O'Brien, Program Manager, National NAGPRA Program, U.S. National Park Service, at the panel, Federal Tools in International Repatriation, Indigenous International Repatriation Conference, Isleta Pueblo, September 26-27, 2016.

ATADA believes it is crucial to honor Native American traditions, to ensure the health and vitality of tribal communities, and to respect the tribes' sovereign rights. We also believe it is important to preserve the due process rights of U.S. citizens and to promote the trade in Native American arts that sustains many tribal and non-tribal communities in the American West. The STOP Act is an ill-conceived law that will achieve neither goal.

ATADA is working diligently to meet with tribal officials and to work directly together to craft more realistic and effective solutions that bring us together in mutual respect and understanding. We are committed to learning from the tribes and pursuing a path that meets their primary goal of repatriation of key ceremonial objects as well as maintaining a legitimate trade, academic access, and preservation of the tangible history of the First Americans.

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CONTEMPORIZING THE PUEBLO POTTERY PAST

BY
CHARLES KING

How does Pueblo pottery best embrace its traditions and historic past as it enters the new era of modern ceramic influences? This question, certainly more relevant today than the old trope of “what is traditional pottery,” underscores the future directions and impact of this important Native art form. This article uses the recent work of one potter, Russell Sanchez, as an example of how an artist can reclaim cultural and historic foundations to create an interesting and expansive focus for their art in the world of contemporary clay.

HISTORIC FOUNDATIONS CONTEMPORARY CLAY

Russell Sanchez (b. 1966) grew up surrounded by some of the greatest modern pottery making influences and legacies in his native San Ildefonso Pueblo. To contextualize his background, Russell is a great-great-grandnephew of Ramona Sanchez Gonzales (1885-1934) and a great-grandnephew of Rose Gonzales (1900-1989). He learned to make pottery from Rose, who taught him the basics of traditionally coiling forms, polishing and firing. Anita Da (1920-2005), the wife of Popovi Da (1922-1971), was also influential in guiding his early artistic career. After Popovi Da’s passing in 1971, Anita continued to operate their studio and gallery, which was located on the pueblo. It was considered one of the best sources for collectors to find not only work by Maria Martinez (1887-1980) but also younger Native potters. Anita provided Russell with insights on creating innovative and quality work. Her son, Tony Da (1940-2008), taught Russell how to inlay heishi beads, two-tone his pottery, inset stones and sgraffito (or etch) designs into the surface of the clay before it is fired. Russell had unique access to the available techniques, both innovative and traditional, at the start of his career.

Surrounded by this talent and guided by their experience, Russell began to create technically high quality pottery using traditional clay and firing techniques. It is now obvious that the artists around him saw an innate talent, which manifested itself in extraordinary pottery throughout the 1980s and 1990s. However, it is his work after 2000, that becomes among the most interesting of his career to date. Sanchez became interested in historic San Ildefonso pottery from the 1880s to the early 1900s. Kenneth Chapman’s *The Pottery of San Ildefonso Pueblo* offered initial insight into the variety of early designs. Russell was most fascinated by those elements that had disappeared from the painted lexicon of contemporary San Ildefonso pottery. Additional museum research provided a hands-on opportunity to better understand how these historic pieces were formed or painted. Russell also sought out family and friends from the Pueblo who still remembered the older potters from the 1920s to 1940s period. This was an era of extraordinary innovation and creativity at the Pueblo. Over the course of nearly a decade Russell was able to compile an exceptional and unique art-identity with San Ildefonso as the rich source for his contemporary pottery.

(opposite)

Russell Sanchez contemporized gunmetal fired bowl with gourd indentions and bear lid (2016)

FAMILY: ROSE AND RAMONA

Rose Gonzales is considered the first potter at San Ildefonso to begin carving into the surface of the pottery in the early 1930s. Her signature form was a water jar with an elongated neck and low shoulder. Her style of deep carving, almost a cameo style relief, also utilized the matte negative space surrounding her designs. Russell often uses her signature shape. He elongates the neck and modifies the shoulder. The basics of the form remain intact while the proportionality varies with each piece. His imagery is secondary to the shape, which is the immediate visual identifier of Rose's legacy.



Long Neck Jar by Rose Gonzalez, circa 1960s



Long Neck Jar by Russell Sanchez, 2014

Ramona Sanchez Gonzales was one of the early San Ildefonso innovators whose work has yet to be fully appreciated. Few pieces have survived in either public or private collections. However, she was distinctive in her painting style, rendering intricately detailed patterns. These designs can be perceived as a precursor to the fine sgraffito on the surface of Russell's pottery. Birds, animals and geometrics were all part of her imagery repertoire. Beyond her designs, Russell has taken her shapes as a starting point, expanding and refining their proportionality.



Tall cylinder with bear lid by Russell Sanchez, 2015 (left) and canister with bird lid by Ramona Sanchez Gonzales, circa 1925-30 (right)

BOXES

Boxes at San Ildefonso were originally inspired by the traditional square or rectangular corn meal bowls. The evolution into "cigarette" boxes with a square, rectangular or circular shape and a handled lid came during the mid-1920s. The boxes varied in painted designs and size but were part of the innovations surfacing with the newly created black-on-black and red-on-red style of pottery. Russell has challenged himself to recreate this difficult form with square sides and a flat lid. The square form creates additional stress on the vessel during both drying and firing which can result in cracking. Today, Russell's boxes are a refinement of form. The intricacy of their sgraffito designs are reflective of the tightly painted designs and subtle use of color in earlier pieces.



(above right)
Susana Aguilar (1876-1947) red-on-red box with additional white slip designs, circa 1920s.

(right)
Lidded box with sgraffito designs and inlaid heishi beads and inset turquoise by Russell Sanchez, 2015. Courtesy of Native American Collections www.nativepots.com
Photo by: Tom Tallant





◀ Gunmetal jar by Maria Martinez and Popovi Da, circa 1960s

▼ Gunmetal plate by Russell Sanchez, circa 2014



GUNMETAL FIRING

One of the distinctive visual cues to the collaborative pottery of Maria Martinez and her son, Popovi Da, was the gunmetal finish. This metallic appearance was achieved during the firing process. Popovi was uniquely able to consistently achieve this coloration. It was the result of how he combined ash, manure and regulated the temperature in the firing. Today, Russell is one of the few potters who is able to achieve similar consistency of success with his gunmetal firings. He is able to manipulate the outdoor firing and a combination of ash, manure and heat to achieve an exceptional metallic appearance on the surface of his pottery. The risk of breakage in firing remains high, but the stunning and highly desirable visual results are an important cultural legacy for him to maintain.



Traditional firing by Russell Sanchez to achieve the gunmetal metallic appearance of his pottery by combining manure and ash (2014)

A FOOT AND FORM

There was a brief period around 1900 when pottery at Santa Clara, Ohkay Oh'wingeh (San Juan) and San Ildefonso Pueblos sometimes used "footers" on their pottery. This single ring of clay was added to the pieces to give them stability. The refinement of the 'puki' as a base for starting pottery is possibly a reason for their disappearance. Russell has incorporated a similar "footer" into some of his pottery for nearly a decade. The additional extension of the base accentuates his forms, creating both graceful and at times highly exaggerated shapes. While the base is narrow, the vessel remains amazingly stable.

(below left)
Jar with handles, indentions and foot at the base, circa early 1900s. Courtesy The Couse Foundation, 2012 001-016

(below right)
Water Jar by Russell Sanchez with footer base, 2015



CONTEMPORIZING THE PAST

There were numerous variations in pottery forms in the early 1900s that were based on Pueblo stories and culture. However, the arrival of a market for selling pottery gave potters incentive to stylize and personalize their pottery to make it more distinctive. Aesthetics became as important as the cultural foundations of form and design. These individualized elements also became the visual identifiers of specific potters and painters. Most recently, Russell has found inspiration in the stories of the indented or “gourd” jars of San Ildefonso Pueblo. While they may be more famous by association with Santa Clara Pueblo potters Sara Fina Tafoya (1863-1949) and Margaret Tafoya (1904-2001), they were also part of the styles found among the early San Ildefonso potters. Maria, Desideria Sanchez (1889-1982), Tonita Roybal (1892-1945) and others all created indented surfaces on their pottery. The indentations ran both vertical and horizontal and were primarily on the shoulder. The fluted or “rain drop” rim is another distinctive addition. Russell has taken these variations and contemporized them on his vessels. He has used both vertical and horizontal indentations and modified them for depth, angle and quantity.

The lesson from Russell’s recent works in clay is that Pueblo pottery from the last 100 years is not, as is often perceived, a limiting or restrictive factor for artistic creativity. The innovative pottery of the early 1900s is more a source of creative exuberance as potters such as Sanchez are able to seek out historic trends and modernize them. Russell remembers pottery-making advice from his great-aunt Rose who told him, “to take what came before and make it your own.” Just replicating the old forms or designs is not enough and therein lies a trap of losing the individual’s artistry to the demands of history.

The past and present should be able to work together. The inquisitive mind of the potter and his or her cultural connection to the clay should aid researchers to better illuminate the historic importance of pottery in Pueblo life. One would think that there would be an abundance of research and information on this early period, especially around the 1920s. However, the dominance of anthropology at the time limited the interest in recognizing individual potters as artists creating their craft. Today, historian, researcher, curator, artist and gallerist should all work in tandem to better understand these artistic legacies. This synergism is critical to providing a balanced and nuanced understanding of the past. Much as the early San Ildefonso potters were innovators and not simply revivalists, today’s Pueblo potters can take a lesson from their creativity. As they develop their own ideas, they do not have to simply replicate the past in order to be successful. In doing so, they will allow ceramics to persevere as a dynamic and vibrant art form.



(above)
Maria Martinez making a “gourd” jar at the Palace of the Governors, 1912. Courtesy Palace of the Governors Photo Archives, New Mexico History Museum, Santa Fe. Negative Number 061764

THE PAST AND PRESENT SHOULD BE ABLE TO WORK TOGETHER



“Gourd” jar by Desideria Sanchez, 1930s, and indented jar with fluted rim by Russell Sanchez, 2016

No Free Appraisals

— Vanessa Elmore —

I'm hopeful that I've garnered a bit of your attention from the inaugural column, and more so, I'm hopeful that questions will be sent my way as we continue to tackle both easy and difficult issues surrounding appraisals in our art industry. Introductions aside, let's dive right in again.

The Uniform Standards of Appraisal Practice (USPAP) provides key concepts including Definitions, Standards and Standard Rules to be employed when creating a qualified appraisal. Now that we know what USPAP generally does (and why it is relevant to ATADA), let us pick apart further what constitutes a qualified appraisal. Often, dialectical opposition helps, especially when a strict code of ethics is at hand:

- A qualified appraisal DOES provide a determined and specific value of an item with research, analyses, and documentation of that value, and the process used to arrive at that value, all of which is clearly defined and communicated by the appraiser to the receiving party, both in written and verbal formats.
- A qualified appraisal DOES NOT provide just an undefined value, willy-nilly, without proper research, analyses, and documentary evidence, both in written and verbal formats.
- A qualified appraisal DOES provide a basis for an unbiased, reasoned and supportable opinion of value, provided by a person who is knowledgeable about the property being appraised and who is, furthermore, trained in the research and analyses of that type of property.
- A qualified appraisal DOES NOT provide a biased, self-serving, or unsupported opinion of value, regardless of the knowledge, education, and/or experience of the person.

I think we can all easily agree that most ATADA Dealer Members are some of the most competent and knowledgeable experts in our industry. They know how to “look” at an artwork, identify what it is, and how to research that artwork when necessary (otherwise, they know who else to contact for help). I think we can also safely agree that most ATADA Dealer Members can assign monetary values to items and succinctly understand that there can be more than one value

to any object. For example, in the most basic of ways, they know what they want to pay for something and they know what they want to sell something for—that is everyday business. For many, the knowledge associated with all of the above comes from experience and is innately held at this point. Fine and dandy, no arguments there.

However, now I ask the direct question: how many ATADA Dealer Members are actually willing to produce a “qualified appraisal,” as we've delineated through USPAP? That means actually using valuation theory (approaches to value or determination of costs) and providing data documentation of such, of which amounts to a demonstrable, tangible, historical and/or contemporary value conclusion. Let's be real, everyone--the work of creating a qualified appraisal can be tedious, tiresome, and frankly way more work than the average ATADA Dealer wants to do—especially when it takes time away from the daily buying and selling of art. Some insurance companies are fine basing their policies for collectors on purchase receipts and single-page evaluations provided by dealers/galleries but, their story changes once a claim of loss is pursued—they go back to needing a qualified appraisal to prove the value of that “lost property.” Taking the next step, let's be honest here and say that many dealers/galleries do not necessarily want to be held accountable for such opinions of value, let alone putting that value down on paper with a signature attached to it. We can't blame them there either: litigation can be a scary and costly process, which again can negatively affect reputations and a business' bottom-line.

As the title of this column suggests, there really should be “No Free Appraisals.” That being said, if a qualified appraiser wants to produce qualified appraisals, without charging a fee--then more power to them; I'm glad they are so generous with their time and wish them good luck. Providing appraisal services as a hobby, or because the client is a “friend,” only undermines the hard work of a real appraiser and it devalues the time and money spent by that appraiser on education, training, and professional memberships, not to mention, it literally pulls the rug out from under their business. Not to be whisked down a tangent at this moment, the title of the column is not about the charging of a fee...rather, the title is meant to suggest that the oft used (and abused) marketing call of “complimentary appraisals” is a glaring misuse of the term “appraisal” and often falsely advertises a result that comes nowhere near what a qualified appraisal should be. In

fact, ATADA should be clear on this for collectors, making them aware that advertising ploys using the term “appraisal” can often be misleading and produce biased results. Truth in advertising be told, those businesses are really offering a free opinion of value—not an appraisal. And, to further hammer this point in, an opinion of value is only as good as the evidence that supports it. Therefore, when evidence is missing or omitted altogether, how are we to consider that opinion of value? The answer of “because I just know” isn't good enough and shouldn't be good enough—if it is not good enough for the IRS or a Court of Law, then why should it be good enough for our collectors, especially when they are making financial decisions and estate plans based on those opinions.

A “Valuation Service,” as defined by USPAP, is any service pertaining to aspects of property valuation, and the service can be performed both by qualified appraisers and by others. It may seem confusing at the outset but, it is really quite simple. When providing a valuation service, an individual is obligated to not misrepresent his or her role—they are either a dealer, auctioneer, or appraiser, but not more than one of those roles at the same time. When a valuation service is exclusively provided by an appraiser, then it is Appraisal Practice and all services performed must comply with USPAP. Again, let's use the opposite approach—here are some legitimate valuation services that are NOT appraisals: providing pre-sale estimates for artwork in potential auction placement, providing an offer to buy an artwork, or providing prices for a potential consignment of an artwork. Providing potential auction estimates, just like making an offer to buy a property or providing future retail pricing, is a valuation service that does not need to show supporting evidence, plainly said. By definition, all appraisals, performed by qualified appraisers, must show supporting value evidence, along with a host of other documentation.

Back to USPAP for a moment: USPAP provides definitions that are straight-forward and clear, and because the term “value” is nuanced, USPAP otherwise forces the definition of value into a black-and-white arena. The term value really only expresses an economic concept, which is not fact—it is a reasoned opinion of monetary worth at a particular point in time. There are many types of value that can be expressed and defined—here are some: market value, fair market value, net value, liquidation value, replacement cost (new or used), actual cash value, and investment value. USPAP clearly regulates this term, such that, all qualified appraisals make very clear from the outset what type of value is being reported, along with its definition, and why that value was chosen and how it was arrived at. There are three approaches to determining value or estimating cost—the income approach, the sales comparison approach,

and the cost approach. One or more of these approaches are used in every qualified appraisal; even when one of the approaches is not used, it still has to be reported and reasoned away. What all three approaches share is a direct reliance on research, market data, and market events at specific times in history—like consummated sales, asking prices, and even potential sales. These are all, for the most part, verifiable and documented resources and the idea here is that a qualified appraisal is a document that can stand alone, without necessary outside explanation—it is a document that should be self-evident and transparent.

By definition, all appraisals, performed by qualified appraisers, must show supporting value evidence, along with a host of other documentation

Returning to the examples of valuation services provided by experts who are not acting as appraisers, we can now see a glaring difference: there is rarely supporting evidence for values provided and, in fact, the average person wouldn't know to even expect such explanations. Unlike the average valuation service, a qualified appraisal document will tell you exactly what type of value is being given and just how that number was arrived at—in traceable steps linked by logic, economic methodology, and documented data resources. It is no cliché to say that the proof is in the pudding.

In litigation cases, testimony is often required by qualified appraisers as to the value of the property in dispute. I highly doubt that a court of law, a judge, or even a peer jury, will accept testimony from someone who says “the value of that property is X because I just know.” In fact, failure to create a qualified appraisal, under the guidance of USPAP, may lead to a claim for malpractice and such a claim will be proven or disproven by testimony of other appraisers. Everyone will take a heavy, scrutinizing look at your own professional code of ethics, your history within the industry, and your record of providing qualified appraisals (or not). In fact, any deviations from USPAP in that appraisal will be highlighted and questioned. In other words, if you created an appraisal, regardless of calling yourself an appraiser or not, that report will be picked apart, likely as you will be.

I really cannot emphasize enough the importance of this issue of a qualified appraisal with proper documentary evidence, unbiased reasoning, and clarity of purpose. The future of our industry, in great part, will depend very much on how we propagate valuation services and we should be pushing for qualified appraisals and qualified appraisers at

all levels. Clearly, our industry faces big challenges in the realms of importation and exportation of artworks, along with definitions of cultural property that will eventually determine the kinds of artwork we can legally, and morally, be handling. These challenges, and their eventual solutions, may in fact rely heavily on market documentation and qualified appraisals. Charges and penalties imposed for alleged violations of importation/exportation laws (also trafficking illegal property) are usually based upon the value

of the property in question. It will be the role of the appraiser in future legal instances to lend expertise and opinions of value with respect to potential property in dispute. Most importantly, it will be imperative for those in that position to understand their duty and responsibilities as an expert determining value—ignorance, let alone the cry of “because I just know,” will be no defense when faced with the law and potential significant monetary loss. □

Vocab Recap

Ethics Rule: An appraiser must promote and preserve the public trust inherent in the appraisal practice by observing the highest standards of professional ethics. This is a personal obligation and professional responsibility of the individual appraiser.

Bias: A preference, particular tendency, opinion, or inclination that is preconceived or unreasoned, and that precludes an appraiser’s impartiality, independence, or objectivity in an assignment.

Credible: Worthy of belief and supported by relevant evidence and logic.

Value: The monetary relationship between properties and those who buy, sell, or use those properties. This is not a fact, rather it is an opinion of the worth at a particular time and place, that is then qualified by definition and reasoning.

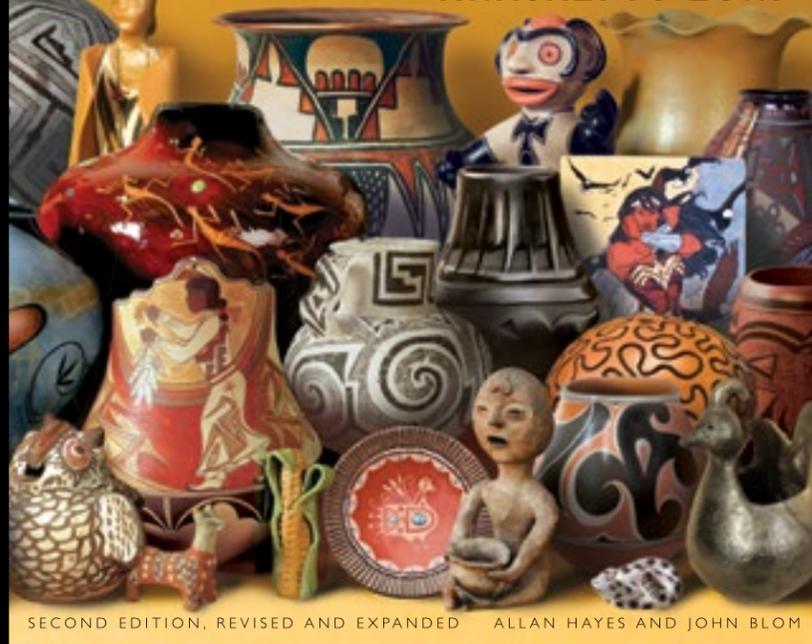
Market Value: A type of value, stated as an opinion, that presumes the

transfer of a property as of a certain date and under specified conditions set forth in the definition of the term.

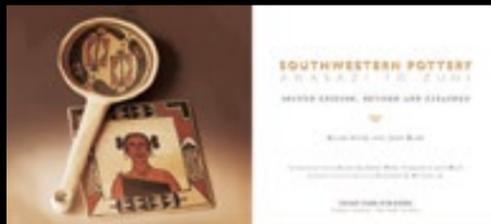
Price: The amount asked, offered, or paid for a property. Once stated, price is a fact—regardless of it being made public or kept privately. The price paid for a property may or may not have any relation to the value that might be ascribed to that property by others.

Disclaimer: This column is not intended to provide any type of formal education or legal advice: please consult with an established professional appraiser, appraiser’s association, or the appropriate lawyer, for professional advice and guidance regarding your particular situation.

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“OSU Museum of Art explores the relationship between traditions and modernity in Native culture”

Published 9-19-16 by OSU Museum of Art on *NewsOK.com*

www.newsok.com

“Native art target of city proposal”

Published 10-17-16 by Daniel J. Chacón in the *Santa Fe New Mexican*

www.santafenewmexican.com

“These Native American Artists Want You to Know They Are ‘Still Here’ ”

Published 10-19-16 by Sarah Linn on *kcet.org*

www.kcet.org

“GCC art exhibit honors Native American Heritage Month”

Published 11-10-16 by Matt Krueger on the *Livingston County News* website

www.thelcn.com

“Stolen Identities: The Repatriation of Indigenous Artifacts”

Published 8-22-16 by Jillian Sequeria on the *Law Street* website

www.lawstreetmedia.com

“Commentary: A Rich Culture of Native American Art Flourishes in the Midwest”

Published 9-2-16 by Nancy Kranzberg on the *St. Louis Public Radio* website

news.stlpublicradio.org

Directory Updates & New Members

New Full Members

Maureen Zarembor

Tambaran Gallery

www.tambaran.com

References:

Mark Blackburn

John Molloy

Thomas W. Gingerich

Hubbard, Oregon

crowplateau@yahoo.com

References:

Mac Grimmer

John Molloy

New Associate Members

Paula & Abraham Rosman

New Museum Members

Los Angeles County Museum of Art (LACMA)

www.lacma.org

Nancy Thomas - Contact Person

What Do You Mean, I'm Not Covered?!?!



*Appeal to the Great Spirit,
Bronze. ©1916-1920
Cyrus Edwin Dallin*

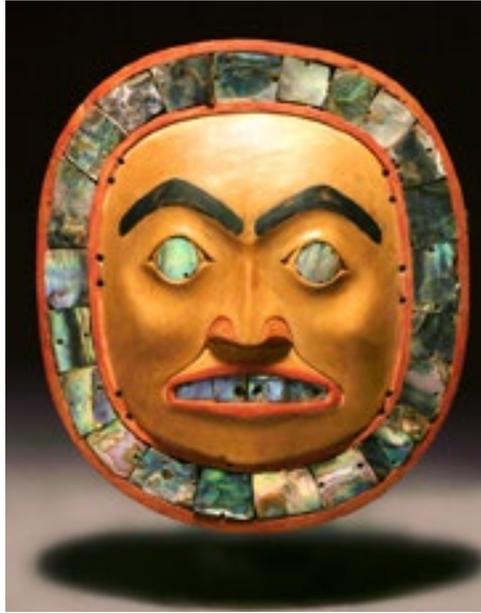
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