

# ATADA NEWS



A PUBLICATION OF THE ANTIQUE TRIBAL ART DEALERS ASSOCIATION

SPRING 10 Vol. 20 No. 2



Position Papers:  
The Federal Raids

Native Americans and NAGPRA

Member Close-Up:  
Mark Winter



Dedicated to the Highest Standards of Dealing and Collecting Antique Tribal Art

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Policy Statement... ATADA was formed to represent professional dealers of antique tribal art. Our objectives are to promote professional conduct among dealers and to educate others in the valuable role of tribal art in the wealth of human experience. We will develop informed opinions and practices by publications, educational grants and legal activism. Those actions will be supported by newsletters, seminars and the formation of action committees. It is our intent to monitor and publicize legislative efforts and government regulations concerning trade in tribal art and to assess public reaction. To attain our objectives, we will actively seek suggestions from other organizations and individuals with similar interests.

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# ATADA NEW

A PUBLICATION OF THE ANTIQUE TRIBAL ART DEALERS ASSOCIATION

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Cover Photo: Toadlena/Two Grey Hills tapestry  
woven by Master Weaver Bessie Manygoats ca.  
1935 - 1940. 58" x 74", 14 warps by 80 wefts.

Courtesy - Mark Winter

# Letter From The President



Considering that several cases resulting from the Four Corners raids are about to go to trial, it seems appropriate to reflect on the ongoing changes in the social and cultural climate of the country, and what might be their impact on the livelihood of legitimate dealers and collectors. After the Kansas City meeting in November, we asked ATADA's Legislative Education Subcommittee to come up with position papers. These, in their unedited form along with an abstract of each, are included in this issue. Additional background information includes a portion of Kate Fitz Gibbon's Art and the Law article from the ATADA web page, and a report from the Repatriation at 20 Conference on NAGPRA and Native American sovereignty and human rights, held at the Sandra Day O'Connor College of Law in Tempe, Arizona, last January.

ATADA must choose a policy somewhere in the following range of possibilities:

- 1) should we stay quiet and not get involved (as would be typical of an upmarket art association)?
- 2) should we openly air our opinions?
- 3) should we become political activists working to change the system?

Everybody's opinion counts. Please email Alice Kaufman at [acek33@aol.com](mailto:acek33@aol.com) or send mail to her at 82 Madrone Avenue, Larkspur, CA 94939. Your responses will be incorporated into the Summer issue of The ATADA News and will be discussed at the ATADA Members' General Meeting in Santa Fe this August.

Arch Thiessen

A handwritten signature in black ink that reads "Arch". The signature is fluid and cursive, written on a light-colored background.

# Editor's Notebook

This issue is packed with both fact and opinion. You can find opinion in the form of the five position papers written by ATADA members in reaction to the federal raids. These papers, which begin on page 10, are a direct outcome of the board's Kansas City retreat, and the board thanks Bob Gallegos, Steve Elmore, Wilbur Norman, Arch Thiessen, and Jim Owens for their thoughtful work.

For facts – and for clarity -- look at Kate Fitz Gibbon's Art and the Law article on page 38. We only had room to publish the Table of Contents and the portion on ARPA, but the article in its entirety can be accessed at [www.atada.org](http://www.atada.org).

Speaking of Kansas City, one of the KC weekend highlights was the board's guided tour (guided by curator Gaylord Torrence) of the American Indian art exhibit at the Nelson-Atkins Museum of Art. Don't miss reading the excerpts from The Wall Street Journal's rave review of Torrence's breathtaking exhibit in the Media File on page 53.

See you in Santa Fe, where ATADA will have a table at both the Whitehawk Ethnographic and Indian shows (thanks, Marcia and Ted). Our annual August General Membership meeting is scheduled for 8:15 AM Tuesday, August 17,, and ATADA is sponsoring an Art and the Law update on Monday, August 16, at 8:15 AM. In addition, SWAIA's executive director Bruce Bernstein will moderate Scarcity and Rarity, a roundtable discussion, on Sunday August 15 at 2 PM. The participants are Marti Struever, Ted Trotta, Gaylord Torrence (curator, Nelson- Atkins Museum), and Jonathan King (Head Keeper, British Museum). All three events will take place at the Santa Fe Community Convention Center at the corner of Grant and Marcy.

See you in Santa Fe in August

ATADA will have a membership/information table at both the Whitehawk Ethnographic and Indian shows.

ATADA is sponsoring an Art and the Law update, similar to last year's discussion, on Monday, August 16, at 8:15 AM at the Santa Fe Community Convention Center at the corner of Grant and Marcy.

Our annual August General Membership meeting is scheduled for 8:15 AM Tuesday, August 17, also at the Santa Fe Community Convention Center.

Coffee and donuts will be available at 8 AM at both events.

You'll be getting more information via email about both meetings.



# Member Close-Up



## Mark Winter

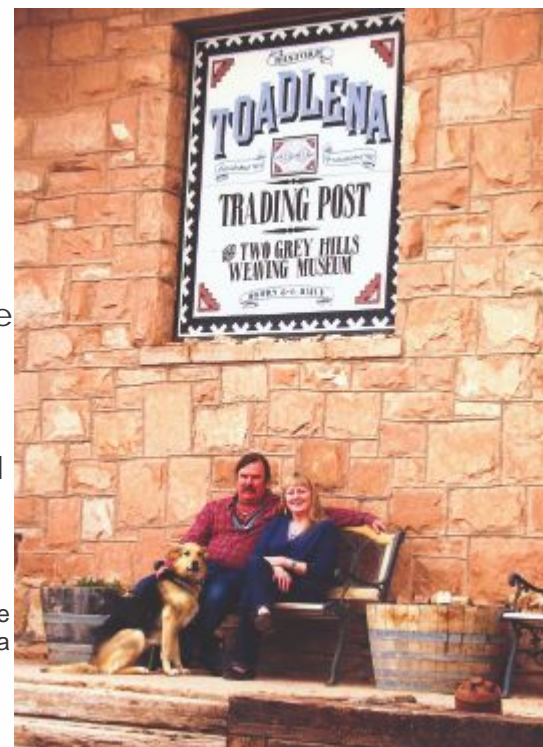
Before his incarnation as an all-around Navajo textile superstar (he buys, sells and collects), Mark Winter described himself as a "hippie craftsman." After high school in southern California, he set up shop - the Kobble Shop - in Idyllwild, California, above Palm Springs. He did leatherwork and woodwork, and his biggest sellers were clothing, sandals and shoes. Among his customers: Elvis Presley, Sonny and Cher, Neil Diamond. Because of a USC-related music and arts school located in Idyllwild, there was a large local community of craftsmen and supporters of the arts. Winter decided to set up a crafts cooperative, complete with a gallery, next to his shop, an experience that taught him, "If I did all the work and paid all the bills, everyone would cooperate."

While he was living in Idyllwild in the late 1960s, he bought some Old Pawn jewelry and seven old Navajo rugs from a trader who was based near Zuni. "The rugs looked cool on the floor, but they ruined my life," he says now. "I set out to find out about what I bought." He learned by reading books and visiting museums. In 1973, he sold the store and co-op to become an Indian trader himself.

"I was less aware of contemporary weaving then; it was the old blankets that interested me most," he says.

In 1975, he moved to Pagosa Springs, Colorado "because I thought I'd find old textiles there." He found a lot more when he met Jackson Clark, Senior, at Toh-atin Gallery in Durango in 1976. "He had a few old rugs, I had a few old

Mark Winter and Linda Larouche with Haven at Toadlena



Virginia Deal, Master Weaver and dear friend, with Mark Winter

rugs, we made contact."

Clark ended up bankrolling Winter to go trolling for rugs. Clark gave Winter his cold-case file of answers to ads he had placed in newspapers in rural Colorado. "Go buy some rugs, but only buy what you can sell," were Winter's marching orders. Two weeks later, Winter returned with 32 rugs. "I thought he'd have a heart attack. He didn't expect me to buy that many."

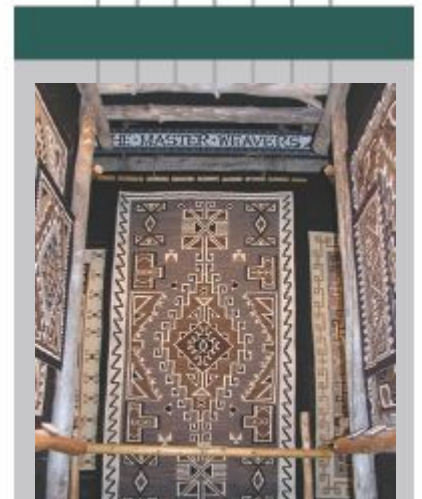
Job Two: sell the rugs. Winter drove them to California, where he showed them to some of his old well-to-do Kobble Shop customers. "Two weeks later, I came back with a huge stack of \$100 bills, which represented the cost and a tidy profit. Jackson asked, 'Can you do it again?' We formed a partnership. In 1977, I went to Pittsburgh to buy our first classic bayeta chiefs blanket, and ended up buying a bayeta child's blanket en route. I talked Jackson into keeping those blankets - and those that followed -- for what became The Durango Collection. The blankets were so beautiful, and he liked to have them there because it promoted the work of Navajo weavers."

In 1979, a Durango banker who had been financing many of Winter's blanket purchases, asked Clark and Winter to exhibit their blankets at the bank. "He said we could call them the Bank of Durango Collection." Close. The Durango Collection was next exhibited in 1980 at the Utah Museum of Natural History, and was exhibited at many museums during the next decade. Winter calls the collection "formidable: it tells the whole story and includes archeological, Navajo, Pueblo, Rio Grande, and Saltillo textiles spanning over seven centuries. It is a woven history book."

In 1989, Jackson sold his interest in the Durango Collection to Richard and Mary Lyn Ballantine. The collection continues to be exhibited across the country. In 1999/2000, Winter and the Ballantines gave the 250-plus-piece collection to the Center of Southwest Studies at Ft. Lewis College in Durango. "Native American students make up over 15 percent of the student body. A large number of them are Navajo, and they pay little or no tuition," Winter says. To acquire the Durango Collection, the college raised \$8 million dollars to build a facility to house the Center's collection as well as the Durango Collection, which is now "very accessible." Winter says that a percentage of the collection must be displayed at all times.



**Mark Winter with Master Weaver Emma Benally and one of her fine Toadlena/Two Grey Hills tapestries.**



**Interior view of the weaving museum at Toadlena**

Winter continued to deal in antique Southwest textiles, but in the late 1980s, his focus shifted from antique blankets to include older Two Grey Hills rugs. "I knew with the old blankets that we'd never know who wove them, but it seemed a shame that Two Grey Hills weavers from not-all-that-long-ago had to remain anonymous.

And every time I'd sell an old Two Grey Hills, I'd feel like I should

have kept it, and that I was selling them too easily. By 1990, I stopped selling and started collecting rugs from the region.



100 year Anniversary of Toadlena Trading Post, 2009

"I wanted to bring the rugs out to the reservation to show them to weavers and find out who made them. I started interviewing Navajo grandmothers, and fell in love with them. In 1995, I started negotiating for the lease of the Toadlena trading post, which was almost out of business."

In March 1997, Winter received permission from the local chapter of the Navajo Nation to reopen Toadlena. The post opened in July 1997 and the museum, which had always been a big part of Winter's plan, opened two months later. Its purpose: "To honor, preserve, inspire and support the local weaving tradition, and to give the weavers credit for what they did."

Before his early days at Toadlena, Winter only bought old Two Grey Hills rugs. But one day, weaver/grandmother Virginia Deal "talked me into buying one of her rugs. The next day, another weaver came by to sell me one of her rugs. 'I don't buy new rugs,' I told her. 'You bought one from my Aunt Virginia,' she said. In the last 13 years, I've bought more than 4700 contemporary rugs, all from weavers in the local area.

He calls Toadlena rugs "the best produced on the reservation today, known for their fine weave and use of handspun wool. So now I wear two hats," Winter explains. "I take the money I make selling old blankets and use it to help the contemporary culture by buying rugs." He has added several million dollars to the local economy in his time at Toadlena. "The post supports 150-175 weavers and buys one or two rugs per day." Buying all these rugs, he says, "would not be considered by some to be a financially stable business; Toadlena



Photo courtesy, Mark Winter





has a negative cash flow, but there are a lot of positive results. I've bought 150 first rugs, from weavers from 4 to 65 years old."

Winter describes himself as a "collect-a-holic. Anything worth having is worth having 25-35 of. I have ten large Daisys [Daisy Tauglelchee is a legendary Toadlena/Two Grey Hills weaver], new and old Two Grey Hills, Saltillos, Rio Grandes, Mayos, and fancy Sunday saddle blankets. I'm my own best customer."

Winter lives "on the Rez at Toadlena full-time for over three years now," visiting Santa Fe maybe once a month. He lives with Linda Larouche, the woman he calls his sweetheart; she came to work for him over five years ago and stayed. Winter's son, Justin, who is also in residence at the post, and Larouche and are helping complete what has become a 500-page book on the Toadlena/Two Grey Hills weaving tradition. "Navajos are so happy to share their information and historic photographs," Winter says, "that it has been hard to know when to stop writing."

Many of Winter's customers read about Toadlena in magazines and guidebooks. More will find out when a Toadlena/Two Grey Hills exhibit opens at the Wheelwright Museum of the American Indian in Santa Fe on May 15, 2010, will run until April, 2011.



Photo courtesy,  
Mark Winter

# ATADA

## Position Papers

Five ATADA members comment on the Summer 2009 Blanding and Santa Fe federal raids and on the actual ARPA and NAGPRA laws. They also present conclusions and suggestions for action. All statements in these position papers are the opinions of the authors, and not of ATADA as an organization. ATADA members are invited to submit their own Position Papers for publication in the ATADA News and on [www.atada.org](http://www.atada.org).

### From an Indian Perspective: Bob Gallegos

*In this position paper, Bob Gallegos considers the current climate of what he describes as "the government's zeal to eliminate this art market" that has resulted in "adversely affecting Native Americans' livelihood." Gallegos goes on to explain and discuss ARPA and NAGPRA from a Native American point of view.*

Although I am only part Native American and do not have a tribal census number, I have interacted socially and in business with the various Rio Grande and western pueblos since 1965, and have many close friends among tribal members. I do not pretend to know all the nuances of their religious beliefs nor to be intimately familiar with traditional Pueblo society except as a guest. Nonetheless, I would like to comment on what I have learned from friends and associates with whom I have discussed various aspects of NAGPRA, ARPA and how these laws affect them personally.

1. A number of Indian artisans that I have worked with are concerned that the pressure to end the market in antique Indian materials is affecting their own livelihood. How has this happened? The definition of an "archaeological resource" under ARPA is "any material remains of past human life or activities which are of archaeological interest...being at least 100 years old" and "having come from public and Indian lands." Any federal prosecutor would acknowledge that ARPA says, "Nothing in this act shall be construed to affect any land other than public or Indian lands or to affect the lawful recovery, collection or sale of archaeological resources from land other than public or Indians." However, as a practical matter, the complex language of ARPA and NAGPRA creates confusion in the market place. Artifacts and other crafts that are not covered by the laws have been confiscated in past raids and seizures. Agents cannot tell which objects are legal or illegal in a raid situation so they tend to take them all to sort out later. Unfortunately, under these circumstances, the burden of proof now shifts to the owner to demonstrate that the objects were legally acquired in order to get them back from the government. Even if an owner has all the necessary paperwork to identify materials as lawfully acquired, the expense involved in claiming them is enormous. The result is that the buying public only hears of the raids and all the negative publicity associated with them, but never really hears when the government makes a mistake or loses. Many in the public are afraid to purchase as they do not know if they can own anything over 100 years old or anything once used in a ceremonial context. The market is adversely affected; these persons believe it is the only way to stop looting. Some in government and others outside of it are delighted.

Indian artisans now see their arts and crafts sales decline as a result of the market constricting. This is an unintended result of changing perspectives on the market, but it is very real. As an experienced lawyer friend of mine stated, "It seems sufficiently clear to me that the Act and the regulations contemplate only material that is found on federal or Indian lands after being lost there or left there, and is at least 100 years old when found, and that it could never apply to artifacts that were voluntarily sold by their Indian makers sometime after they were originally manufactured. My principal basis for this feeling is that the Act only arises from Congress' power to protect federal property, and thus it must refer only to artifacts

that are federal property by virtue of their being situated on federal or Indian lands. HOWEVER, he goes on to say, "an aggressive federal prosecutor might try to advance this interpretation." Such an argument by the government would certainly confuse a jury if nothing else.

In the government's zeal to eliminate this art market, they have already adversely affected Native Americans' livelihood. Congress stated that one of the purposes of ARPA was to foster increased cooperation and exchange of information between government authorities, professional archaeologists, and private individuals having collections legally acquired prior to the enactment of ARPA on 10/31/1979. Where is that effort?

A complaint I have heard from my Native American friends is while government authorities claim to be protecting Native cultural sites and Native interest, what is being done protected instead are lobbyist interests that benefit legislators, commercial interests that benefit government, and archaeologists' interests. A glaring example is what has happened to the Navajo cultural sites at Black Mesa in the name of promoting coal extraction.

2. NAGPRA is a source of great confusion to my Native American friends. According to a high ranking National Park Service official, "NAGPRA does not apply to privately held collections of individuals, or totally private museums that receive no federal funds by any means." They wonder why they cannot sell items once used in a ceremonial context but that are no longer used ceremonially. It is their property.

Many non-Native collectors have bought such items from Native American sellers and now worry that such items will be confiscated and considered illegal to sell based on an assertion of communal ownership by an unrelated elder or tribal official. When the government is trying to determine whether an object may be inalienable from a tribe, it asks for review by elders or tribal officials. The question of whether something is sacred or ceremonial can come down to an argument as empirically un-provable as "Yes, IF it was blessed."

The question of the object's context or how it was acquired and whether such object could ever be proved to be secular is not addressed. In my opinion, the government is trying to make the collector and dealer community paranoid by insisting that such things are illegal to own. The state of the law is made even more confusing because these matters have not been litigated in the courts. Very few NAGPRA convictions have been determined on the principles of the statute; rather, they are based on plea agreements.

The U.S. government spent over a century trying to turn the Indian into a mainstream American by stripping him of his ethnicity and through forced settlement, forced education, and religious pressure to convert, making him into something resembling a white American. It is any wonder that so many traditional ceremonial and sacred objects have left the reservations in past decades.



Sioux Ceremonial Child's Moccasins with Custom Stand  
Circa 1880-1900  
Photo courtesy, Mark Sublette, Medicine Man Gallery

Today, there is a movement to address past wrongs to Native Americans. I agree that redress is necessary and deserved. When the primary wrongs are economic or based upon decades of unwise social policy, however, it is naive and silly to focus on repatriation of minor ceremonial objects that long since have been abandoned by their owners and were acquired through legal sales. The government created this problem, not art dealers. Laws should be passed that prevent such abuse from ever happening again to any and all peoples.

What are these Native religious converts to do with objects (often inherited from their more traditional parents or grandparents) deemed sacrilegious by their new faith? Would it be better to destroy them or to PASS them to individuals who would at least preserve them? This seems like a matter that must be dealt within each native community, not through government intervention.

At one time, the American Indian Ritual Object Repatriation Foundation (AIRORF), a New York non-profit, encouraged the repatriation of all musical instruments back to Native communities on the basis that musical instruments are an essential part of all ceremonies. How misdirected! Native Americans also make such items to sell as part of their livelihood.

Doug George-Kanentiio, an Akesasne Mohawk who served on the board of trustees of the National Museum of the American Indian as well as on the museum's Collections and Repatriation Committee, has expressed alarm at the conduct of federal raids on the homes of "legitimate and honorable collectors." In a letter to the editor of the Albuquerque Journal, published October 18, 2009 [see the excerpts reprinted in the ATADA Newsletter], he questions the BLM's right to define "cultural patrimony" and is calling for an end to heavy-handed tactics to recover objects because they are not in harmony with the Native American way. I urge all readers to consider his thoughtful words.

It is clear to me that the governments' goals and actions not only hurt the collector and dealer communities but also adversely affect Native communities. Because of "loopholes" in ARPA, the governments' job is very difficult. We are sympathetic and are willing to help. Where is the extended hand of the government as promised under ARPA?

Robert V. Gallegos  
2/25/10

### An Indian Trader's View of ARPA and NAGPRA: Steve Elmore

*Steve Elmore writes that "the antique Indian art business in New Mexico is threatened by the federal government's deliberate creation of an atmosphere of confusion and fear regarding the buying, selling, and collecting of American Indian art." He attributes this to new interpretations of NAGPRA that "overstep the boundaries of the law." This policy comes at a "high social, educational, and economic cost to our state and our country." How can "patrolling legitimate art galleries and threatening dealers possibly advance tribal interests," Elmore asks. "The tribes should be setting the priorities, not the federal government."*

The buying and selling of Native American art in New Mexico is a huge part of the state's economy. The publication Indian Trader recently quoted the director of the Albuquerque-based Indian Arts and Crafts Association as stating that the contemporary market may approach a billion dollars. We know that there are hundreds of art galleries and thousands of Native Americans, many still living a traditional life, who buy and sell Native American art in New Mexico for their livelihood. This business is important to the state's economy and is unique to New Mexico. Many tourists come here to buy Indian art, and the money spent here turns over many times in the community.

The American Indian art business has a long and established tradition and history in the state; old squash

blossom necklaces, kachina dolls, pueblo pottery, Navajo rugs and blankets, baskets, and other great products are sold. The business has been led by important early Indian traders such as C. N. Cotton of Gallup or J. S. Candelario of Santa Fe. The trader has traditionally served as a mediator between the Native American and the non-Indian society. The trader has assisted Native American tribes to market traditional crafts and encouraged original artisans who transformed craft into great art, enabling many to continue to live a traditional life. For the most part, the relationship between Native American artists and traders has been mutually beneficial, as it has for the thousands of collectors who cherish American Indian art. Historically, traders have been active conduits between Native artists, private owners, collectors, museums, and other public institutions. Although the market for older prehistoric and historic material is only a fraction of the size of the contemporary Native American market, these traders have also been dependent upon Native American sources; their activities intertwined with and nurtured each other.

There is no reason to destroy this business.

YET, the antique Indian art business in New Mexico is threatened by the federal government's deliberate creation of an atmosphere of confusion and fear regarding the buying, selling, and collecting of American Indian art. The high-profile raids against known dealers in historic American Indian art have unnecessarily and apparently intentionally injured this sector of the state's economy. My own lawful business has been reduced by well over half in volume, affected not only by the recession but also by the anxiety among established collectors created by the sight of federal agents raiding private homes and using tactics of intimidation. I believe that the federal government is engaged in a poorly informed witch-hunt that may eradicate many businesses long engaged in lawful activity.

This federal agenda to stop all trade in prehistoric and historic Indian art hurts the contemporary market as well. Casual collectors and tourists do not distinguish between old and new or sacred and profane, and indeed these lines are often unclear to the expert. The legal status of many Indian art items that have circulated in the market for well over 100 years is now being challenged. Merely questioning the legality of any type of Native American item destroys the market for it. If the public thinks they might be arrested for owning a kachina doll, a fetish, a dance rattle, a basket, or a pot, they will not buy it. By destabilizing the American Indian art market, the government itself is once again harming Native art traditions and culture as well as eliminating the livelihood of Native American artists.

NAGPRA was written to address problems associated with the museum and institutional collection of human remains and sacred material. Now the federal government appears to be intent upon applying NAGPRA's vague language against individual collectors and dealers. This is overstepping the boundaries of the law.

Under new interpretations of NAGPRA, many items historically sold and traded in the American Indian art business are now being treated as suspicious, tainted, or even illegal.

The categories of culturally essential materials subject to repatriation or considered communally owned have been expanded significantly to include Zuni fetishes, baskets, kachina dolls, rattles, mantas, leggings, bandoliers, and even, according to some tribal officials, ANYTHING ever danced in or worn at a ceremony. Under these terms, the legal status of many items sold today at Santa Fe's Indian Market could be challenged, including even the depiction of certain subjects in Pueblo paintings. This lack of a definitional standard regarding what is sacred and what is not has caused great confusion and combined with arbitrary enforcement has created much ambiguity in the market. That market is being severely damaged in consequence.

The federal government may succeed in achieving some short-term political goals by embracing an agenda that discourages the collecting of antique Indian art. The primary concern over NAGPRA for

many tribes, however, is the slow, frustrating, and underfunded work to repatriate human remains. This is an area where the federal government is not doing enough to meet Native concerns. How can patrolling legitimate art galleries and threatening dealers possibly advance tribal interests? The tribes should be setting the priorities, not the federal government.

As for prehistoric material, there are thousands of prehistoric pieces in private collections that are legal; that is, they were collected before laws about collecting on federal land were written or they came from private land. Many more are simply of unknown provenience, but they have a history of circulating in the market from a date prior to enactment of ARPA. Few of these pieces have written documentation since it was not required at the time that they entered the marketplace. Demands for such documentation, decades after these pieces entered the market, has created an impossible situation. The burden of proof should not be shifted to the purchaser or collector. The language of ARPA itself clearly acknowledges the importance of pre-existing collections of prehistoric material and instructs all parties, including archeologists, collectors, and tribes to engage cooperatively, an activity precluded by the insertion of SWAT teams into the mix.

The federal government should pursue illegal looters and creators of fake Indian art pieces. It should not harass dealers and collectors of legitimate material. The condemnation of dealers and private collectors by a group of extremist archaeologists for "stealing culture" cannot justify either illegal action by the government or overturn a U.S. social policy that has encouraged private collection and donation to public museums for more than two centuries. We all owe a great deal to the science of archaeology for increasing our understanding of the distant past. Yet the privileging of archaeology over museum studies, connoisseurship, and public education must not come at such a high social, educational, and economic cost to our state and our country.

Santa Fe  
February 28, 2010

### Collectors and Society: Wilbur Norman

*Wilbur Norman points out the importance of collectors in "the world of culture." Tribal people, he adds, "do have a right to dispose of personal property just like any person who swoons with surprise and delight on TV's Antiques Roadshow. In our economic system it is market forces that determine where once-personal property ends up."*

Collectors are the backbone of much activity involving the purchase and sale of Tribal Art, just as we are of all other art forms. And at all levels of society we have been an important part of the world of culture. From many of our Founding Fathers to the business entrepreneur and the youngster of modest means, we are the engine that drives the acquisition of the interesting, the beautiful, and the historic. Whether it be coins, stamps, paintings, pottery, arrowheads, toy soldiers, or Native clothing, collectors share certain fundamental traits: a keen interest in the people who made such things, the care and preservation of these treasures, a fundamental willingness to share our discoveries with others, and an interest in what happens to our possessions after we pass on. We are the custodians of our collections and know that our possessions enrich the lives of all who come into contact with them.

Collectors have always felt that we are in the mainstream of our nation's cultural life. We endow museums and schools, loan our cherished works out so that they may be seen by the masses, and either give our treasures to public collections or let them re-enter the marketplace when the time comes. And while museums have to wrangle with questions such as "should we be serving art or education," we collectors hold a central place in the intellectual public square without the necessity of answering such questions. We collect what inspires us - leaving it to others to assess whether we are prescient or crazy! Many an

object or artifact would be lost to posterity without the collector who sees its beauty and/or importance long before society sees its worth.

Most of us were fortunate enough to visit a museum or two when we were children. Where do you suppose the museum acquired all those items? From the largest museum to the smallest, the bulk of their holdings came by way of generous patrons - collectors! Practically every museum in America began as the vision of a passionate collector. Without those individuals, from Thomas Jefferson to Bill Gates, our national collections would be artistically impoverished. And I stress the word individual. Even corporate collections are largely the result of a discriminating individual; great collections are not built by committees.

It is with special alarm, then, that we honest collectors now feel that we are within the sweep of some great federal net - a net meant to catch the bad guys. (It seems similar to the tuna industry when they used nets that did not distinguish between tuna, dolphins and turtles - so many non-tuna animals died because their association with the subject of the chase did not permit them an out, an escape. It was 'explained away' as "collateral damage.")

To be sure there are those individuals who would like to shut down ANY collecting activity at all. Is this proper in our society built on private property and free enterprise? I do not believe it is.

The sellers of tribal art directly benefit from the sale of artifacts that are either no longer in use or are made specifically to be sold to an "outsider." Those of us in urban environments tend to think of these 'source' cultures as static and fixed in place (that is, when we do not think of them as declining). In fact, tribal peoples desire the same comforts and improvements as the rest of us. They, too, want funds to purchase medicine, food, clothing, home repairs, farm improvements, or to finance educational and other opportunities. Our legitimate purchases not only fund the acquisition of these things; they keep age-old skills and traditions alive that teeter on the brink in an industrializing world. It is a sad fact that local digging by the rural poor is driven by economic necessity, by loss of the old ways and urbanization, not by the art market and collectors.

Tribal art is a deep expression from the mind and hand of its maker. This can be said about much other art as well. But what makes tribal art different is an intensity derived from its association with the ancient and supernatural, with mastery and productiveness. And yet, it is bounded by human experience in its attempts to cure the sick, propagate the harvest, explain our place in the natural world and help its citizens negotiate the pathways of their daily lives. Those are activities and feelings to which all of us can relate and which we see as worth preserving. It is we, the collectors, who assist in the great effort of preservation of this material world.

Cultural heirlooms and pre-ban archaeological materials must not be confused with archaeological items removed from public or tribal land, which action is clearly illegal. However, tribal people do have a right to dispose of personal property just like any person who swoons with surprise and delight on TV's Antiques Roadshow. In our economic system it is market forces that determine where once-personal property ends up.

According to an old Roman proverb, "art has no enemy except ignorance." Federal zeal to deal justly with those who break the law with regard to our country's common cultural patrimony should not be confused with Federal zeal run amok by the thrust of civil servants pushing an agenda not in the purview of the laws as currently written. People committing suicide before their cases even go to trial, as in the Four Corners cases, is a terrible outcome for the families involved. It also puts a chill on legitimate collectors' activities that will take years to undo. I do not think it impertinent to suggest that what's bad for the honest collecting fraternity is bad for the country's cultural scene as well.

As collectors we have seen our emphasis begin to shift from authenticity, price, and condition to provenance and clear title. Well and good. But to move the burden of proof on these issues from government to the individual, while at the same time moving historical goal posts, is bad practice and bad law. Many Native tribal items do have a provenance - it is just not recorded because, in the past, there was no such requirement. To institute a provenance requirement, now, on good faith purchases, from the whole of our national past, is not something that could ever be done with more than hit or miss accuracy. It also would be, in our legal system where the presumption of innocence is a signal American right, an historic shift of "burden of proof" by requiring collectors to prove their materials are legal rather than requiring the government to prove them illegal. This may seem to the non-legal mind a small turn of phrase but it is a huge issue in law and a grounding principle of our system of justice. Such a turnabout can only lead to the confiscation and "nationalization" of previously known, legitimately privately-owned artifacts, or State theft, as the government institutions add this material to their collections.

In December 2009, the U.S. Department of the Interior Inspector General's Report heavily criticized federal warehouses and many of our national museums as bulging with cultural objects which have no recorded provenance and which are extremely poorly conserved due, in part, to lack of funds and poor management practices. Surely many of these pieces could be released to the market, since, obviously, they are believed by the experts in charge to have little or no archaeological value. The monies obtained could be used to do a better job conserving and inventorying our cultural past. It is obvious from this Report that the government should begin attending to what it already has on its plate.

Finally, all we hear about these days is the benefits of globalization. Where is that displayed in the world of collecting? Our world seems to be heading the other way, towards insularization. If globalizing the work force, markets and economies, etc., is a good idea, why not material culture?

9 March, 2010

### NAGPRA and ARPA: Are They Working in the Public Interest?: Jim Owens

*Jim Owens notes that the federal government is not honoring and embracing the stated purpose of either ARPA or NAGPRA. Rather, through their law enforcement arms, agencies are creating anxiety over and concern for what Owens calls our national heritage.*

Any discussion of ARPA and NAGPRA should start with the intent of the Acts. That task is made easy by ARPA because the intent is set forth in Section 2 of the Act (16 U.S.C. 470aa).

"Archaeological resources on public land and Indian lands are an accessible and irreplaceable part of the Nations heritage... The purpose of this Act 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 collection of archaeological resources and data which were obtained before Oct. 31, 1979."

The federal government through its various agencies is not honoring and embracing this stated purpose. Rather, through their law enforcement arms, agencies are creating anxiety and concern among legitimate collectors and art dealers and promoting the perception that all archaeological resources in private hands are illegal or at best tainted. Federal SWAT teams with drawn and pointed weapons entered the downtown shops of Indian art dealers in Santa Fe at 11 AM. Well-known dealers' and collectors' homes were raided last spring; personal and business papers and computers were hauled away and the individuals' privacy invaded. Yet no charges have been filed.



Inflammatory accusations by federal agencies filled the newspapers after 100 or so federal agents descended on Blanding, Utah, getting woman and children out of bed at gun point in the early morning hours of June, 10, 2009. One of those arrested, the town's primary doctor, James Redd, committed suicide after he was told that he would lose his medical license. Another occasional artifact dealer who was arrested after turning himself in also committed suicide. The trail of death did not end with those accused. In March, 2010, Ted Gardiner, the FBI/BLM informant who set up purchases and trades with alleged diggers and dealers, committed suicide. He was said to have been despondent - some have suggested he felt anxiety over his actions being challenged in court; he took his own life just weeks before the first case in which he was scheduled to testify. Three deaths seems a high price to pay for Blandings residents who appear to be primarily hobbyist, old-time collectors, digging primarily on what the records describe as essentially middens, or ancient garbage heaps.

No one condones robbing graves or digging on public land. After these raids, however, the federal public relations mill pumped fear into the legitimate market for legally acquired archaeological items. Dr. Sherry Hutt, manager of the National Native American Graves Protection and Repatriation Program of the National Park Service, is one of several federal officials who have indicated that even items coming from private land may be targeted.

In testimony before Congress in 1999, Judge Hutt affirmed that "NAGPRA is wholly consistent with American ideas of property rights," and that, "the law expressly avoids creating a 'taking' of private property to effectuate a public purpose in violation of the Fifth Amendment." Yet she fails to find any contradiction between ownership claims based on some form of empirical evidence and vague claims based entirely on oral traditions. As a tribal leader stated during the Kennewick Man controversy, "From our oral traditions, we know our people have been part of this land since the dawn of time."

ARPA contains a provision 'grandfathering in' artifacts lawfully obtained prior to Oct. 31, 1979, the date of passage of the Act. (16 U.S.C. 470ee(f)) Yet at least one raid appears to concern materials collected long before passage, without any proof that they came from federal or Indian lands. Section 16 U.S.C. 470kk(c) of ARPA states: "Nothing in this act shall be construed to affect any land other than public or Indian land or to affect the lawful recovery, collection or sale of archaeological resources from land other than public land or Indian lands." Federal agencies should recognize the limits set by Congress and stay within the law.

The application of ARPA to surface collection of arrowheads is a prime example of federal agencies reinterpreting and even circumventing the law. Surface collection of arrowheads, even if found on public land, is legal under ARPA. The language put into ARPA as to arrowheads (16 U.S.C.470ee(g)) was included because President Carter, like tens of thousands of other Americans, loved to hunt arrowheads, a hobby he began as a child in Georgia. President Carter agreed to sign ARPA only if the section cited above was added. Yet some Parks and BLM officers are now citing arrowhead collectors for "theft of government property" under 18 U.S.C. 641. A cornerstone of statutory construction that is a statute specific as to the (item) involved controls and applies rather than a general language statute. This statute carries a potential 10 years of imprisonment for hobbyist collecting protected under the law.

I suggest that there be two amendments to ARPA. As 470kk(e) is specific, sec. 6 (c) (470ee(c)) should either be entirely struck or it should be made clear that sec.6(c) only applies to state lands and not private property. State laws are more than adequate to protect property within each individual state. I propose a second amendment dealing with the penalty provisions of ARPA. The penalties under ARPA are based on the cost of repairing or excavating damaged archaeological sites and/or the dollar value of the objects involved. Robbing graves and digging upon public and Indian land is a clear violation of law and should be harshly dealt with; the penalty here already stands at a year's imprisonment and up to a \$10,000 fine for a first offense. If the act is classified as a Class A felony, penalties could take this fine

to \$100,000. However, violations involving selling or bartering illicitly excavated materials (denoted as trafficking) often involve wholly innocent behavior without real knowledge where an object came from. A misdemeanor conviction with a much-reduced fine should be a more than sufficient deterrent and ensure that buyers and sellers are diligent in researching the source of dubious artifacts. Let us make the penalty fit the crime. It is better to punish looting at the source than to try and end it indirectly by putting pressure on the legitimate market and catching up innocent people in the same net with criminals.

NAGPRA (1990) was intended as remedial legislation to make up for past abuse and as a tool to implement repatriation by museums and institutions receiving federal funds. ARPA already punished grave-robbing and looting. (16 U.S.C.(470bb).

NAGPRA should be applied as written and intended. The sole purpose for NAGPRA's implementation was for the return of a limited number of items which museums had inappropriately acquired. These acquisitions occurred, as to historic items, when the federal government implemented policies attempting to mainstream Native Americans and turn them into English speaking and acting individuals. The ceremonial and cultural items of the past lost significance to many of those individuals and were sold to museums, to traders and private parties. Many museum and institutional acquisitions of prehistoric objects, occurred when the Department of Interior granted permits to museums and archaeologists which allowed them to dig sites and graves throughout the Southwest on both federal and Indian land. The books that were published as a result of these archaeological digs documented these activities both in word and by in situ pictures.

The repatriation of human remains and important religious and ritual items with meaning to tribes practicing their traditional religion is an important and valuable task undertaken by NAGPRA. However, NAGPRA has encouraged systematic repatriation of cultural items from our museums without thought of their intrinsic value to society as a whole. Such items are also part of our American heritage and should be conserved, studied, and accessible to all the people. Wholesale repatriation does damage to important American interests in education and preservation and should not be allowed. The abuses occurring under NAGPRA regarding what 'proves' lineal descent graphically shows this is true: federally recognized tribes are given preference over non-recognized tribes; the first tribe to claim an object often receives it without consideration of other claims.

When prehistoric artifacts are involved, establishing lineal descent often involves unscientific and unprovable claims based on oral traditions. America's cultural resources should not be placed at risk of reburial or destruction on such scanty evidence. It makes no sense to focus on artifacts when repatriation of human remains - a crucial issue for Native Americans - is seriously underfunded and has lagged far behind the timeframe originally envisioned by the authors of the Act.

Human remains should certainly be repatriated to be reburied, simply for humanitarian reasons. Let us require that of all our museums, whether federally funded or not. Once human remains are dealt with in a responsible manner, except under extraordinary circumstances involving ritual objects that are part of a living culture, that should be the end of a museum's responsibility. There would be no further need to discuss identity of items or cultural patrimo-



Acoma Polychrome olla circa 1920  
Photo courtesy, an ATADA Member

ny or what is sacred based solely according to one cultures interpretation. What is contained in our museums is our national heritage. Let us keep museum collections in these museums to be seen and appreciated by all.

Private property rights, protected under NAGPRA, should also be retained. The federal government should not use improper interpretations of NAGPRA or ARPA to limit American citizens rights to legally purchased private property. Using these Acts as a club to unofficially 'repatriate' items from individuals is unconstitutional and just plain wrong. It is the government's burden of proof to show an item is illegal. Asserting that an object might be illegal is not enough. The 4th Amendment protects all Americans from illegal searches and the 5th Amendment protects us from illegal "takings" of our property. Raids with Gestapo tactics are being used to repatriate objects rather than the civil court system. NAGPRA specifically provides in section 2(13) a right of possession...(the taking would) result in a Fifth Amendment taking by the United States as determined by the US Claims Court pursuant to 28 U.S.C.1491 in which event the 'right of possession' shall be as provided under otherwise applicable property law.



Navajo bracelet with three large Blue Gem Mine turquoise cabochons ca. 1940 from the Challis L. Thiessen Collection. Photo courtesy, Arch Thiessen

Following this section of NAGPRA would result in and require a Replevin Action [return of the disputed item or items] in civil court where all parties would be allowed to prove their case under the Rules of Civil Procedure, not under the threat of potential criminal action. Civil courts should determine what was properly sold and whether title vested in the purchaser, as it would under standard U.S. law. Strong arm tactics or threats to purchasers are just plain wrong - and contrary to U.S. legal tradition. Those claiming title to artifacts should be willing to make such claims in civil court just like other Americans would have to do in similar situations.

The same language as contained in Sec16 U.S.C. 470kk(c) of ARPA should be added to NAGPRA: "Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public or Indian land." Private collectors who obtain items that are not from federal or Indian lands through purchase for value in the open market - particularly items that have circulated openly for decades - should have the same protections afforded purchasers under U.S. common law and the Uniform Commercial Code. Let us start by protecting American citizens from illegal government action as we have done throughout the history of our great country.

## One Member's Perspective on the Four Corners Raids: Arch Thiessen

*ATADA president Arch Thiessen discusses the Utah raids and their consequences, and the current laws pertaining to buying, selling, and collecting Native American art, and suggests what ATADA's role might be in clarifying and improving the current situation. Arch adds, "This position paper could not have been written without the able assistance of Karen Riley and Kate Fitz Gibbon."*

As this issue of the ATADA News goes to press, the first round of trials for the 24 individuals indicted in the Four Corners raids gets underway. In addition to ARPA and NAGPRA violations in what was the largest investigation of archaeological and cultural artifacts thefts in US history, the 23 arrest warrants charge 26 alleged cases of theft of government property, depredation of government property, and theft of Indian tribal property.

The Four Corners region is known for thousands of significant archaeological sites, and Blanding, Utah, where most of the arrests took place, was the site of smaller raids in the 1980s and 1990s. The town is a center of both legitimate and illegal artifacts markets. Those indicted in this latest raid are accused of digging and selling centuries-old pots, sandals, bowls, baskets, pipes, mugs, religious items and other artifacts left by ancient Native Americans on what is now federal and tribal land.

Given this open violation of the law and that many of the offenses are felonies, the federal government concluded that something big was needed. After a two-year grand jury investigation, 23 arrest warrants were issued. The FBI responded with multiple simultaneous enforcement raids carried out by heavily armed SWAT teams. Men, women and children were routed from bed and forced to lie on the ground with agents guarding them at gunpoint. More than 100 FBI agents were involved in the raids. A smaller set of raids in Santa Fe a few weeks later were handled in the same way.


With the Four Corners raids, the federal government sent an unambiguous message that decades of inadequate enforcement of the 1906 Antiquities Act and the Archaeological Resource Protection Act of 1979 were at an end. Ken Salazar, Secretary of the Interior, stated that his department is "recommitting resources and focus to criminal justice in Indian country," and that the raids should "serve notice to anyone considering to break the law" and trample on the national cultural heritage. The severity of the raids certainly demonstrated the fed's zero tolerance of these crimes and signaled a clear reversal of inconsistent enforcement over previous decades to pursue those involved.

The FBI's first priority in any raid is the safety of its agents. However, criticism remains as to the tactics with which the raids were carried out. The raids have been described in terms of man-handling and overkill. Can the tragic end result of three people taking their own lives ever be justified? Utah Senator Orrin Hatch told a Senate Judiciary Committee hearing that the raids were a "dog and pony show," and that questions should be asked as to the appropriateness of such an extreme show of force given the nonviolent nature of the alleged offenses. The enormous expenditure of federal resources should be questioned. In the end, the possibility of a good judicial result may be compromised by the suicide of the lead informant.

Frustration over the raids has focused attention away from the nature and fate of the seized artifacts.

It is incumbent upon the federal government to prove that the artifacts came from illegal lands. Any attempt to shift the burden of proof of lawful possession onto the owner potentially criminalizes innocent behavior on the part of thousands of collectors who have acquired materials that have circulated in the largely undocumented market for hundreds of years. It also renders these objects veritable orphans, unable to be collected, cataloged, or preserved.

A grave consequence of blanket confiscation of suspected artifacts in some past raids was that many



were damaged through improper storage and inconsistent handling. In some of these latest cases, the Attorney General has ordered that the artifacts remain in the possession of the indicted. This bodes well for the preservation of the seized objects in the future. One problem remains - the people who can contribute most to our knowledge -- archaeologists and other specialists within federal agencies -- are often shunted aside when it comes to access to artifacts involved in such prosecutions.

Buying and selling artifacts has never been and is not now, per se, illegal. The FBI and BLM should clarify what they believe is not a legal sale. They should make that argument fairly before the courts. As ARPA is now thirty years old, more and more 20th century materials might be defined as having archaeological interest. For the past thirty years, it has generally been assumed that an artifact that could be shown to be from a pre-1979 collection and was not known to originate on federal or Indian lands was lawful to trade. That definition now appears to be questioned.

Orphaned objects and the threat of collectors anonymously dropping off parts of their legal collections on the doorsteps of museums in order to avoid perceived threats of prosecution is not the proper outcome of any prosecution. It is the most undesirable conceivable result of collectors feeling threatened. An increase in prosecutions should be matched by supporting the stated goals and purpose of ARPA to facilitate communication among tribes, federal archaeologists, and the private sector holding previously established collections. This is how artifacts now circulating in the market can best be protected.

Increased education on ARPA, adequate signage in places of possible archeological significance, and an emphasis on obeying the law will also result in increased safeguarding of the nation's archeological heritage. A sensible policy of management for future generations will only be possible when archaeologists, collectors, and curators come together in an active dialog. These discussions should have high priority. The federal government should set up a series of conferences or other public forums ASAP. ATADA stands ready to facilitate such public discussion at any time and place, and in any format chosen by the sponsoring agency.

ATADA is committed to the maintenance of high ethical standards, support of public discussions, and continuing education on these issues. Toward these ends, we serve as an online resource for educational materials such as Art and the Law. ATADA supports museum activities through direct donation of funds to preserving institutions. We are proud that many of our individual members reinforce ATADA's goals of access and preservation through donation of artifacts from their collections to various museums.

Repatriation at 20: A Gathering on Native Self-Determination and Human Rights/3rd Annual Canby Lecture, was held at the Sandra Day O'Connor College of Law, Arizona State University, Tempe, Arizona, on January 28 and 29, 2010.

*ATADA thanks Mary Lou Walbergh for suggesting that we attend and report on this meeting, and Karen Riley, who did both.*

Karen Riley's report follows:

The main concern expressed at this two-day conference on NAGPRA twenty years after its enactment was the moral necessity for full repatriation of all Native American human remains. Meaningful dialogue on other NAGPRA issues will not move forward until a determined gesture is made by all museums to properly and respectfully repatriate the human remains and sacred cultural objects in their possession.

January 28, 2010

Arizona State Law School Dean Paul Schiff Berman prefaced the conference by stating the core mission of the law school's Indian program is to focus on Native American economic development and on a sustainable future for Native Americans. The Indian legal program envisions itself as a go-to place in the future for business people seeking out investment in Indian projects.

Kevin Gover, Director of the National Museum of the American Indian at the Smithsonian Institute, gave the opening keynote lecture entitled *Will the White Man's Indian Ever Die?* The intent of his presentation was to highlight how enduring mainstream cultural stereotypes of Native Americans negatively impact law and policy, and what the NMAI is doing to counter this impact.

Mainstream cultural stereotypes produce images that are memorable, powerful, and hard to shake -- be they hackneyed icons from old Disney cartoons like *What Makes the Red Man Red*, to contemporary mascots and logos for food products and school sports teams. The mystical Indian is a marketable commodity in the growing New Age industry. While there has been cultural redress of demeaning images of African Americans, Indian imagery has not undergone the same re-make. The recent blockbuster science fiction film *Avatar* plays on the theme of the magic Indian, while Indian films of past decades have included a notable cast of non-Indians starring as Indian leads including Burt Lancaster, Ricardo Montalban, and Dustin Hoffman. The epic 1990 hit *Dances with Wolves* evoked the notion of the Indian as a member of a dying race, and from *Pocahontas* to James Fenimore Cooper's *Last of the Mohicans*, a literature of disappearance has contributed to notions of the Native American as a noble savage willing to give himself up to the larger collective civilization of the white man. This theme was a philosophical underpinning of important legal decisions such as the Supreme Court decision in *Worcester vs. Georgia* (1831).

The NMAI actively offers a competing counter-narrative to the popular culture myth-making machine of the White Man's Indian. This is important because mainstream stereotypes also influence how Native Americans see themselves. While public education teaches that Columbus came to an empty country in 1492, the NMAI teaches that the land was fully occupied, and that native wealth was fueling trade. The universal crops of corn, potatoes, and cotton were developed by Native Americans; Native Americans worked with the concept of zero, understood astronomy, math, and the movement of the sun, and established successful, successive civilizations.

The results of one-dimensional Native American imagery have evident consequence in law and policy, and in particular, have had direct impact on the non-cooperative stance many museums have toward repatriation. A one-dimensional culture is regarded as subordinate. Museums resist repatriation based on

the claim that the written record does not support Native American claims to repatriation. Instead, museum preference is with the written record of non-Indian ethnographers. The Bonnicksen case determined that oral history is not reliable, and it took the entire narrative of an oral-based Native American culture off of the table. [Dr. Robson Bonnicksen was the lead scientist in the lawsuit to keep the Army Corps of Engineers from giving the Kennewick Man skeleton to the Indians for reburial. Bonnicksen et al. v. United States et.al., 367 F.3d 864 (9th Cir. 2004).]

January 29, 2010

Rebecca Tsosie, Executive Director of the ASU Legal Program, opened the conference and a traditional blessing was offered.

Diane Enos, president of the Salt River Pima Maricopa Indian Community, introduced the significance of NAGPRA for Pima Maricopa Indians of ASU and the River Valley region. Archaeological evidence has revealed a formerly rich irrigation canal and trading route system throughout the area, and NAGPRA has brought a way for the various groups to reaffirm their connection to one another. She also talked briefly about her work as a re-burial volunteer and the inter-generational importance of repatriation; it is a way that past ancestors can speak through the objects they made, and how continuity of cultural identity will be passed on to children of future generations.

Opening keynote speaker advocate, activist and poet Suzan Shown Harjo detailed her lifelong fight for repatriation of human remains and sacred objects. Challenging revisionist history, humanizing the lexicon of repatriation, and confronting non-repatriating museums with their legal and moral obligation to honor the NAGPRA provision for collective ownership have been the main areas of her consciousness-raising and activism. She stressed that oral history and indigenous definition of collective cultural patrimony preclude individual ownership of an object, and not written records of ethnographers, collectors, and museum personnel; the former is the sole moral basis upon which decisions of repatriation must be made.

The History Behind the NMAI and NAGPRA, 1967-1990

Next was a panel presentation by: Cecil Antone, Former Lt. Governor, Gila River Indian Community; W. Roger Buffalohead, Ponca Nation; Robert Cruz, Tohono-O'odham Nation; and Alan Parker, Director of the North West Indian Applied Research Institute.

Cecil Antone emphasized the injustice Native Americans have suffered at the hands of the scientific community, and he specifically implored archaeologists in the audience to practice more understanding of indigenous people of the world which, now that NAGPRA is in place, should be more intuitive than in times past. He highlighted the Department of Transportation excavation of La Cuidad in Arizona in the early 1980s, and how his feelings over the exhumation there of his ancestors led to his crusade to visit other archaeological organizations in order to offer non-Indians an indigenous perspective on excavation of ancient, culturally significant sites. He later attended an archaeological congress in London and worked with the Heye Foundation [now NMAI] to repatriate two 200-year-old Pima blankets.

By way of example, Roger Buffalohead explained the Ponca origin of his name as literally 'People of the Buffalo Head Ceremony', as opposed to the more mainstream culturally expedient Buffalohead. This type of common, dual identification Native Americans experience as a minority race is, in large part, responsible for many dominant culture stereotypes of Native Americans.

He reiterated that US history has been defined by the victors, and therefore, the written word has always been valued over the oral traditions of indigenous peoples. The land and resources that the Native Americans once possessed were what white conquerors wanted and took, and by only recognizing the validity of the written word, as opposed to oral agreement, could they legitimize what they did.

Robert Cruz commented on how desecration of sacred burial and cultural sites has occurred worldwide throughout human history. Archaeologists and the scientific community have alienated the Native American community by use of duplicitous and disrespectful language and behavior, and by belittling Native beliefs. He cited his experience at the excavations at the Dixon Mounds in Kentucky where he watched as excavators drank beer and laughed on ancient burial sites. That the Peabody Museum still has huge numbers of boxed Indian remains, or that the Hemingway Excavation removed human remains and pottery in twenty-eight boxcars, also speaks to disrespect of Native peoples.

Alan Parker pointed out how despite enactment in 1978 of the American Indian Religious Freedom Act, the right to protect sacred sites has not been upheld. Indian affairs are always subordinate to other issues and the powers that be, such as energy and timber companies, have kept free access to public lands and any Native American sacred sites located there. Money interests have not wanted tribal people to have the right to go to court. Wherever one goes in this country, there are multi-layered stories of the survival of Native Americans. It is important for Native Americans to de-mythologize the American Indian myth because it is all based on lies.

Erin Genia, a MPA Tribal student at the Evergreen State College in Washington, gave a brief Power Point presentation, Landscape and Language of Indigenous Human Rights. She identified current challenges as the lack of protection of cultural, sacred objects and intellectual property, and the rights of the individual being at odds with collective ownership.

#### The Implementation of Museum and Repatriation Policies, 1990-2009

This second panel was made up of: Dr. Richard Allen, Cherokee Nation; Jimmy Arterberry, NAGPRA Director for the Comanche Nation; Dr. Manley Begay, Jr., Native Nations Institute; Mario Gonzales, Gonzales Law Office, Oglala Lakota Nation; and Pemina Yellow Bird, Mandan, Hidatsa and Arikara Nation.

Manley Begay opened this panel discussion by criticizing museums for foot dragging and not responding to the spirit of repatriation. He recounted his experience of sitting on a repatriation committee at Harvard University/Peabody Museum. The museum basement still houses rows and rows of vaults filled with Native American human remains and cultural items. Another room off of the basement, referred to as the 'sacred room,' houses medicine bundles, feathers, and whole canoes. The Peabody curator commented that "they have too much stuff" and that it needs to go back to where it came from. Canon del Muerto, a label on some remains at the museum, was what impelled him to get involved in repatriation work - Canon del Muerto is a special place in his Navajo heritage where livestock used to be taken to graze. He raised the issue of how do tribes re-enter, as there is no tradition or ceremony to offer guidance.



Photo courtesy, Mark Winter



NAGPRA should be an avenue for morality to take hold; it should have ushered in an era of collaboration with Indians teaching scientists, and not just the other way around. The Field in Chicago, the Natural History Museum in New York, and the Smithsonian are some museums that are still dragging their feet.

What is important to underscore is that many of the items these museums possess were taken under duress. Perhaps Repatriation at 40 will be more of a cause of celebration if, by that time, all museums are acting in the spirit of NAGPRA.

Mario Gonzalez's work has been in protecting sacred sites, in particular Wounded Knee, Black Hills, and Bear Butte. He commented that despite the tragedy of Wounded Knee, a formal apology has yet to be given. His persistence in pressuring government officials for an apology has resulted in the erecting of a monument, but while legislators will publicly say they regret the massacre, they will not use the word apologize.

Jimmy Arterberry discussed the Doctrine of Discovery as still exerting influence over Native American affairs. A Papal Bull of 1493, the Doctrine of Discovery stated that if there are no Christians in discovered nations, then the lands were to be considered empty. This philosophy was the underpinning of past important Supreme Court decisions and of recent decisions as well, such as the Oneida vs. New York Supreme Court case in 2005. Mr. Arterberry also argued that the Doctrine of Discovery has colored the United Nations and Indian rights: the UN General Assembly in 2001 stated they were non entities. While NAGPRA is a step in the right direction, and Native American values will prevail, it is these same values that will have to be adopted if humankind is to overcome the coming challenges of global warming and a more equitable spread of social justice.

Pemina Yellow Bird reiterated that many attitudinal obstacles remain in terms of NAGPRA compliance. While she was a student at the University of Nebraska in Lincoln, the professor of a forensic anthropology class kept bones from a 4900-year-old Native American child in the drawer of his podium. He used the skull as a puppet to amuse his students, and four rib bones were stored in Taco Bell wrappers. She and other outraged students filed a grievance, but the university did not reprimand or dismiss the professor because he was a faculty member who could "pull down" big scientific grants. The use of untrained US veterans as cheap labor to work on archaeological sites/digs is also another example of egregious disrespect toward Native Americans.

A keynote luncheon lecture, Repatriation and the National Museum of the American Indian: Reflections on a Journey of Cultural Redemption, was given by W. Richard West, Jr., the Founding Director and Director Emeritus of the National Museum of the American Indian.

Mr. West, who has also had a long legal career, commented that the passage of NAGPRA was not only a seminal act of Congress, but it speaks far more broadly than law: it is a powerful dimension of right versus wrong.

The museum community's fears about losing their collections must be countered with grace, as candor and confrontation will not result in more repatriation. While the NMAI's repatriation work has concentrated on human remains, omitted from the conversation is what the museum gains in terms of knowledge passed back by the tribes who have received repatriated objects. The fundamental shift at NMAI has been encouragement of a multi-cultural dialogue and parity in that dialogue.

Implementation of Repatriation Law and Policies: Institutional Compliance Issues was the next panel presentation given by Walter R. Echo-Hawk; G. Peter Jemison; Steve Titla; and Allison Binney.

Walter Echo-Hawk began by citing two pressing NAGPRA implementation issues: ancient remains

(Kennewick Man), and the 120,000 Native remains that are still being held by museums. Some museums are fighting NAGPRA and playing an insider's game; their reasoning is faulty and frail. Walter Echo-Hawk highlighted the top ten arguments museums are making against full and proper repatriation, followed by his rebuttal to each:

1. Indian remains are a national resource with value to science and the nation. *Yes, but where are the studies from this national resource, and why are Indian bones only able to impart this knowledge?*
2. The ancient past belongs to the whole of humanity. *Despite the importance of Kennewick man, surprisingly little information has been derived from these remains. The idea that the ancient past belongs to us all is a legally infirm argument, at odds with human rights.*
3. Indian remains need to be kept permanently for future studies. *Same answer as to #2*
4. Anthropologists and archaeologists have an ethical obligation to the past. *This would mean that science can run roughshod over human rights.*
5. The tribes represented by these remains are unrelated. *But as a basic tenet of human rights, friends can come forward to bury friends.*
6. Scientists have spent thousands of dollars and years on their careers. *We cant contribute to their careers.*
7. Museums claim it doesn't matter how the dead were obtained because their studies are so important, *This is a means-to-an-ends argument where science is Dr. Frankenstein.*
8. Indians are religious fundamentalists and anti-science. *This position smacks of scientific racism.*
9. We know what is best for you--paternalistic arguments. *This is an anti-intellectual, paternalistic argument.*
10. Funerary objects should not be returned. *This ignores mortuary traditions; grave objects are not abandoned property.*

Mervin Wright, chairman of the Pyramid Lake Paiute tribe, briefly highlighted his experience in working with the NAGPRA Review Committee. His area of concern is repatriation of culturally unidentifiable remains. He characterized working with scientists and attorneys while on the committee as NAGPRA "basic training," where conflict of interest is prevalent. Regarding scientists and lawyers, Native American suspicions about their lack of intent to repatriate are correct. He was insulted by attorneys touting the law, as in fact what repatriation comes down to is possession, and possession is used to determine cultural affiliation. What counts is what is in writing (which has been written by scientists).

G. Peter Jemison, of the Seneca Nation, opened his presentation by quoting author and activist Howard Zinn, (who passed away the night before): "You can't be neutral on a moving train." He discussed the Rochester Science Center's collection of Seneca Nation remains and sacred artifacts-- carvings, sacred objects and paintings-- that were made during the Depression as a result of the New Deal. The implication here was that these objects must be repatriated because they were made under duress.

He then talked about his activism against the auction house, Sotheby's. Sotheby's has offered at auction two wampum belts that are cultural patrimony of the Seneca Nation, yet NAGPRA has not given the

tribe a way to intervene or approach the private collector who is offering these artifacts for sale. Mr. Jemison's activism has disrupted past auctions. Wampum belts aren't money. Their intricate bead patterns tell a story; they are a recording of the Seneca Nation's history. By offering them for sale, Sotheby's is attempting to take away the Seneca people's understanding of themselves and their past.

Steve Titla, an Apache, discussed how the Apache tribe is concerned with museum inventories and disputes over unidentified Apache objects. He recounted how his uncle's father was named "G-8" by the cavalry; the cavalry used a phone book to randomly assign anglicized names to Native Americans. In his uncle's father's time, Charles Owens, curator of the Field Museum (1901-1903), bought the ethnographic items that now make up the museum's Apache Collection. Yet the Apache believe that all ethnographic objects belong to the tribal community at large, and no one individual of the tribe has the right to possess an object. Mr. Titla described how when Owens came to the tribe, his uncle's father was so poor that he resorted to selling a ceremonial hat, and how his wife cried because of the indignity. The museum now argues that an agreement was in fact made between Owens and the Apaches for the sacred hoops, crosses, wands and masks in their Apache collection. And while NAGPRA defines sacred objects and cultural patrimony and stipulates the necessity of voluntary consent, these objects have yet to be repatriated. The concept of an individual owning an object is absurd to some Apaches and therefore

the concept of the right of alienation is equally absurd.

The decisions of *US v. Corrow* in 1997 and *US v. Tidwell*, in which art dealers were convicted of trafficking in cultural patrimony, reaffirm what the Apaches have been arguing all along. The NAGPRA Review Committee can only make recommendations, and some museums have failed to act.

Allison Binney, Chief Counsel for the Senate Committee on Indian Affairs, talked about how the NAGPRA review process works, and how tribes can work to keep an issue on the radar screen. What can be done to elevate an issue in Congress? Binney stressed the importance of tribal officials working collectively, and not just as individuals, in appealing to Congress in order to make an impact. She also commented that under the Obama administration, there

are more Native Americans in senior, politically appointed positions than ever before. She also stressed the importance of utilizing the inspector general in each department in order to get the administration engaged.

The Future of Native Repatriation Policy: ASU American Indian Studies was the last presentation of the afternoon. Dr. James Riding In, ASU Professor of American Indian Studies, prefaced his comments by noting the abundance of icons of colonialism, and the irony that the conference was being held in the Sandra Day O'Connor College of Law, given the disastrous decision Judge O'Connor made concerning protection of sacred Native American sites. The relation of Native Americans with the federal government is a contemporary manifestation of indigenous peoples past relation with colonialism.

Repatriation represents a spiritual healing. But the obstacles faced in extending the movement are deep-pockets, entrenched attitudes, a sacrilegious status quo, and the dominant culture's fallacy of self-importance. The 1980 ACPAC incident employed Nazi-like tactics, and anybody assisting with repatriation was blackballed. (Note: We received a message from James Riding In, the professor who talked about "Nazi



Copper bracelet, machine made, stamped "solid copper", Fred Harvey era, circa 1940, from the Challis L. Thiessen collection.

Photo courtesy, Arch Thiessen

tactics." Professor Riding In said "Anyways, I made a comment, if I recall correctly, about Nazi-tactics of a professional organization called ACPAC, American Committee for the Preservation of Archaeological Collections, that functioned during the late 1980s and 1990s to deny American Indians our fundamental human rights in matters of graves protection and repatriation." The only reference we could find on the Web for this group was mention of a collection of their newsletters, now archived at the Smithsonian archives, not any couldn't find any cited "event.")

The cult of anthropological science is based on the 1906 Antiquities Act and this placed Native Americans into a position of submission. It established Native graves as property of the federal government. Race and class are importance factors in understanding the problem. A BLM state archaeologist openly questioned what could be done to undermine NAGPRA. The BLM worked with the Nevada Museum to discuss compliance. If the remains are classified as non-affiliated with any particular tribe, they don't have to be repatriated.

Because museums have the right to determine cultural affiliation, the sovereign power of Native American tribes is diminished; this is one of many problems with NAGPRA. Native American tribes should have this power, but instead, they only have the right of consultation. Museums privilege their own, and the oral histories of Indians are viewed as fairy tales. The Nevada Museum has some 8,030 remains in their collection which were acquired during dam building. The families of the white remains uncovered were contacted, while those of the Indians weren't, they didn't have a say. Those Native American remains went to six museums.

Even twenty years on, this troubling mind set is still with us.



The Inspector General's final audit report, "Department of the Interior Accountability and Preservation of Museum Collections" (No. C-IN-MOA-0010-2008) was made public in December, 2009. A very brief DOI summary of this 50-page report follows; the entire report can be found at [www.atada.org](http://www.atada.org). A newspaper account of the report is on page 50 in the Media File.



This memorandum transmits the consolidated results of our assessment of the Department of the Interior's (DOI) stewardship over museum collections. Our assessment included an audit of DOI's accountability over museum collections and an evaluation of DOI's preservation of those collections.

Our audit found that DOI is failing to fulfill its stewardship responsibilities over museum collections. Specifically, we found a widespread failure to properly accession, catalog, or inventory museum collections. At DOI facilities, elements of the Nation's heritage are being neglected and forgotten in thousands of boxes that contain millions of objects neither identified nor accounted for. Additionally, DOI has little idea of what museum collections non-DOI facilities hold.

Our report includes 10 recommendations related to accountability over museum collections.

The Department of the Interior (DOI or Department) is failing to fulfill its stewardship responsibilities over museum collections second in size only to the Smithsonian Institution. The Department manages collections that are estimated to include over 146 million items of artwork, artifacts, and other museum objects at 625 Department facilities and at least 1,020 non-DOI facilities.

We found widespread failure to properly execute the three key processes required to maintain accountability over museum collections - accessioning, cataloging, and inventorying. At DOI facilities, elements of the Nation's heritage are being neglected and forgotten in thousands of boxes containing millions of objects neither identified nor accounted for. As a result, these collections are unavailable for research, education, or display and are subject to theft, deterioration, and damage. The Department has little idea what museum collections non-DOI facilities hold. We found that the Department did not have inventory listings of the collections held by outside facilities and did not conduct the required annual physical inventories. Four bureaus admitted they do not even know all facilities that hold their museum collections.

These widespread accountability issues are largely due to poor program management, ineffective oversight, poor reporting, and an insufficient allocation of resources. Many of these problems have been documented as far back as 1990 when we issued our audit report "Accountability and Control over Artwork and Artifacts" (Report No. 90-83). In 1993, DOI identified lack of accountability and control of museum property as one of its four most critical material weaknesses. To address this weakness, DOI developed Department-wide standards for managing museum collections; unfortunately, bureaus are simply not following that guidance. Establishing accountability over these museum collections has not been a priority for the Department.

In its response to our draft report, the Department agreed that it needs to improve the management of its museum collections and that there are opportunities to enhance the processes for identifying and tracking museum collections. The Department took exception, however, to how we characterized the overall state of its museum programs, stating that it had made significant progress in museum stewardship since 1990. The Department attributed the issues we identified primarily to the lack of funding and staff. While we acknowledge that progress has been made, we remain concerned about the lack of account-

ability for the Department's museum collections. The Department estimates that full cataloging of its collections will not be completed for at least another 20 years - well after 2030. To effectively address these issues, the Department's bureaus will need to identify and allocate the appropriate resources.

At the conclusion of our audit, we conducted a brief evaluation of the Department's preservation practices over its museum collections. We found that the Department needs to take additional steps to improve preservation practices over its museum collections. Because the preservation of the collections at many DOI sites has been neglected, countless artwork, artifacts, and other museum objects are in jeopardy.

## Kansas City Board Retreat Follow-Up: Progress Report from Bob Gallegos

In Kansas City, the Board decided to create an Education committee to inform the Public (through seminars and classes, museums) to develop a common ground where we can improve relations. We also created a Legislative committee to develop a format allowing ATADA to be heard by our political representatives. I have been appointed the temporary head of the Legislative committee until a clear direction can be established.

Aside from myself, the members of the Legislative committee thus far are Steve Elmore, Wilbur Norman and Jim Owens. [Editor's note: Position papers from the four Legislative committee members as well as Arch Thiessen appear in this issue.]

On December 4, 2009, the Legislative committee had its first meeting. Attending were Elmore, Gallegos, Norman and Owens. Everyone basically agreed that we need to educate our political leaders as to the importance of collectors to museums and the archaeological record. Developing a communication effort to contact our representatives nation wide through our membership is a must. Starting in New Mexico seemed the most convenient. Developing a "plan and statement" is the next order of business (to be approved by the Board).

At some point in time, changes to the statutes that affect art collecting may be proposed. Tracking why and when changes are made to the statutes is very important. Perhaps, we can ask some of our museum allies or the Society of Archaeologists to help with this. Remember, we have more in common with museums and archaeologists than we have differences. We intend to build on what we have in common in order to strengthen relationships and to preserve the original intent of the laws. We are developing a list of contacts from all fields that can be sympathetic and helpful to this end. Help from our membership will be needed once this goes nationwide.

The enthusiasm and ideas of this committee are good. There is a lot of work to get to the starting gate. Once we get it done, we will present our proposals to the Board for approval. [Editor: The committee met on January 5, 2010.]

# Collectors, Dealers, Museums & the Law

On February 11, in San Rafael, CA, ATADA presented a panel discussion featuring Santa Fe attorney and ATADA board member Kate Fitz Gibbon; San Francisco attorney and former federal prosecutor Steven F. Gruel; Los Angeles Tribal Art dealer Mark Johnson; and Ann-Marie Holmes, Supervisory Wildlife Inspector, US Fish and Wildlife Service, Ports of San Francisco, Oakland, and San Jose. Wilbur Norman coordinated the event.

The panel discussion attracted a roomful of collectors, dealers and the general public. The event was sponsored by ATADA and was part of the San Francisco Bay Area Arte du Monde /Tribal Arts Weekend.

Fitz Gibbon's, Gruel's and Johnson's own summaries of their remarks appear below:

## 1 *Kate Fitz Gibbon, a Santa Fe attorney specializing in cultural patrimony issues.*

The laws that govern the trade and ownership of art are for the most part, the same laws that affect all other forms of commerce and property... they involve contracts, guarantees of authenticity and good title, and collecting taxes on transactions. Art dealers are not just businessmen, however. They are a necessary part of our unique, privately funded system of public art. Our museums are independently supported educational charities. The people involved with museums, especially art dealers and collectors, contribute tremendously to the creativity and independence of the American art scene. Art dealers are not just suppliers, either. They are often the group that seeks out and explores new fields of art. Laws governing nonprofits and donation recognize a public interest in that participation.

Other important interests expressed in the laws concern tribal and foreign government rights to control cultural property. Some laws conflict with traditional U.S. notions of title and ownership, because they recognize that, for instance, a foreign government may simply declare a valid national ownership in all cultural objects, whether or not they are publicly or privately held, still in the ground, and whether or not that government even knows they exist. In the case of Native American materials, laws recognize that certain artifacts are inalienable from Native American tribes. Because they are communally owned, they may not be sold by tribal members who may have legal possession of them, but not title.

Dealers want to stay on the right side of the law, but are no longer sure what that entails. Some material still reaches the market in illicit ways. Everyone has heard about the arrests in Blandings, Utah of 20 people - alleged old time illegal commercial diggers and hobbyist collectors, some in their seventies and eighties. I don't think anyone in this audience condones grave-robbing. But the aggressive tactics of law enforcement and the way Indian art dealers in general were lumped in with tomb robbers and accused of stealing people's culture in the press - that was alarming.

In the raids last spring at five Santa Fe homes of art collectors and dealers there were no arrests, but the agents seized literally truckloads of computers and private records; one search warrant sought all records going back 30 years, another, all records going back to 1940, sixty years.

One warrant was based on a alleged sale to an undercover informant of a historic period ceramic pot that came from a very well known collection made in the early seventies, well before passage of ARPA. When a raid of this magnitude is based on the sale of a pot that has circulated in the market for more than 30 years, and for which no one involved knows where or when it was originally found - that's alarming.

Why? Because literally tons of this material was shipped out East by Indian traders starting in the 1880s, and more tons were dug up and sold on reservations and trading posts to tourists for decades. That's a lot of art to place in legal limbo.

At other times, cases have involved feathers and the Migratory Bird Act, under which an object that is perfectly legal to buy or sell or transport if it has no feathers - becomes illegal if it does have a feather. I am not talking about eagle feathers, I mean a feather from any one of about 80% of all US bird species listed under one of the five conventions signed over time to protect hunting of migratory birds.

There are hundreds of objects of unknown origin being sold in galleries and websites and at auction. There are hundreds of baskets and other objects in the market that were originally made to sell at venues like state fairs that are decorated with feathers. At the same time, there are threatened prosecutions of a few dealers under circumstances that may or may not be found to warrant a conviction. No wonder people are anxious.

These tactics are causing reactions that do real harm to the public's interest and run counter to what Congress sought when it wrote that ARPA should foster cooperation between government authorities, archaeologists, and private individuals having collections made before 1979.

I have been told that people have dumped off collections at museums and federal offices and run. I've been told that arrowhead collectors, whose surface collecting is specifically allowed under ARPA, are destroying meticulous records kept over the years because of concerns that they will somehow be used against them.

What will happen to the thousands of objects that may or may not be legal to buy or sell, that may or may not be legal to donate to a museum - because that is where most serious collectors want their materials to go? These objects may become orphans.

The international ethnographic art business is also affected. The 1983 Cultural Property Implementation Act, (CPIA) the primary law setting US policy on global protection of antiquities and ethnographic art, gave safe harbor to objects that have been in this country for decades and have been publicly exhibited or published, and for which no country has made a claim.

However, the CPIA has largely been superseded by the National Stolen Property Act, a statute originally passed to stem the flow of stolen cars and securities over state borders. The National Stolen Property Act can apply if an art-source country has a law claiming blanket government ownership of its cultural property. If the object leaves the source country without permission, it is considered stolen. This circumvents the requirements for the source country to protect its own cultural property under the Cultural Property Implementation Act and it allows criminal prosecution of U.S. art dealers for violating foreign laws at U.S. government expense.

The NSPA can only apply to goods with a threshold value of \$5000 or more. What happens when the art and artifacts in question aren't worth that much? In early 2008 there were raids on five California museums after an investigation involving three federal agencies for a scheme involving a dealer who was alleged to have enticed the museums into accepting overvalued donations, mostly of Ban Chiang materials from Thailand.

The law employed in this case was the Archeological Resources Protection Act - all about Native American artifacts and federal lands, right? Wrong. ARPA has a rarely used provision making a violation under any federal, state, or local law a violation of ARPA and it has one place where the limit to federal and Indian lands isn't mentioned. I think no museum staffer will ever be seriously prosecuted because in



my opinion this is bad law. But the California investigation has created a significant chill for acceptance of ethnographic artifacts by US museums.

Dealing in art and artifacts is for the most part, perfectly legal. So is collecting art. So is passing it on to your children or giving it to a museum. So we have always thought. But there are two threads that hold the Santa Fe raids and the California museum seizures together that threaten this concept.

The first is that good laws designed to protect cultural artifacts and endangered species seem to be being redirected in ways that do not mesh with the laws' basic goals, alarming and discouraging collectors and art dealers who worry that they may be liable to selective prosecutions and loss of property that they may have owned for decades.

The second is that public policy concerning the arts has hardened to a narrow focus that privileges archaeology over museum studies and public access, and places responsibility for enforcement of foreign laws on an already overburdened US law enforcement and customs.

1 Steven F. Gruel In 2005, Gruel started his own law firm concentrating on criminal defense and business litigation.

#### Cultural Property Laws -- Possible Investigations & Prosecutions

Interpol estimates that value of trafficked art and antiquities is surpassed only by that of drugs and weapons.

#### How a Criminal / Forfeiture Case Gets Started

- 1 The Players / Local US Attorney's Office
- 1 Main Justice Department - Washington D.C.
- 1 State and Local Prosecutors

#### Possible Crimes & Investigative Agencies:

- 1 National Stolen Property Act (NSPA) 1934 (originally for stolen cars across states)
- 1 Must Know stolen / \$5,000 value / transported, possessed
- 1 Found-in- the- Ground Laws of Source Country
- 1 Cases

1974 US v. Hollinshead (first to apply NSPA to cultural property)

1979 US v. McClain (national ownership laws)

2002 US v. Frederick Schultz (33 month sentence, Egyptian antiquities)

- 1 Archaeological Resources Protection Act (ARPA)
- 1 Lacey Act / Endangered Species Act
- 1 Others Crimes: Fraud, Smuggling, Theft, Perjury
- 1 US Fish & Wildlife / I.C.E.
- 1 FBI - Art Theft Unit
- 1 All others: US Postal, BLM, State and Local

Investigative Tools & Techniques: Must Prove Knowledge / FACT QUESTIONS

- 1 Reactive / Proactive
- 1 Undercover Agents
- 1 Cooperator
- 1 Subpoena - records or testimony
- 1 Grand Jury Testimony - what if you get a subpoena?
- 1 Search warrants / need US Magistrate Judge / probable cause
- 1 What is said on forms

Parallel Proceedings: Administrative, Civil and Criminal

- 1 What you say in one matter, can negatively impact the other
- 1 Possible Perjury

Penalties

- 1 Prison / Fine / Forfeiture
- 1 US Sentencing Guidelines

Recent Cases & Press Releases

- 1 January 24, 2008 -- 4 California Museums Searched  
5 Year Investigation / Undercover National Park Service  
Ongoing Investigation????

- 1 Utah Case - June 2009 -- 2 year investigation / undercover  
24 arrests / 12 Indictments  
FBI & BML  
Undercover agent purchased \$335,685 worth of items


- 1 *Mark Johnson is a Los Angeles Tribal Art dealer.*

*Mark prefaced his summary by saying "this is just rough draft/outline for an eventual official position paper on this issue, with additional contributions by others. Many of the issues in my draft relate to marketing imported tribal artifacts from Africa, Asia, or Oceania, but I did try to include issues that should be important to all of us."*

Strategy for Responses and Proactive Offense on Issues of Cultural Patrimony:

We are losing the PR war on issues relating to Cultural Patrimony. We have neither a cohesive response nor strategy that properly and proactively states our side of the story. The government, media, archeological groups, and others believe -- or may eventually believe -- that all dealers, collectors, and institutions that buy, sell, and own tribal art or other cultural objects are basically criminals, "trafficking" (a term that already denotes illegal activity) in illegally obtained artifacts.

Those opposed to our activities are trying to characterize individuals that market artifacts legally obtained from private lands, acquired directly from the lawful owners (including families or villages), or acquired prior to current laws restricting this trade, in the same category with individuals that market arti-



facts and human remains dug up illegally on Federal land and other protected sites worldwide, as well as items clearly stolen from others. This also applies to those items traditionally adorned with animal parts in antiquity by the original native peoples with items using newly acquired animal parts.

Most often, when I read articles on this subject, I rarely hear a direct response that clearly separates one group from the other or makes any point about the costs to the public of investigating and persecuting individuals engaged in legal activity.

We need to take a page from the conservative political playbook and go on the offensive. When they have an issue they want to bring to the public, they create and disperse a few very simple buzzwords or phrases that are repeated (in lock-step) over and over again, until the message sticks.

I believe that we need to use the same methods to get our message across to the general public, as well as to ill-informed legislators, who at this point have no reason to disagree with the government and media versions of our business activity. Generally the public and most legislative bodies really do not understand the full extent of the issue. They automatically assume that the negative version of events is likely true and therefore would side with law enforcement when they open investigations, harass individuals, search museums, galleries and residences, confiscate goods, and make arrests.

What I propose is a clear set of prepared responses and eventually a more direct offensive on the forces that oppose our activities. We have to keep statements simple, to the point and include a mention of costs, so the general public and undecided legislators realize they do have a potentially negative financial stake in this debate.

Prepared responses should include statements, such as these listed below:

As individuals interested in cultural material, we strongly oppose those who violate laws relating to illegal removal of artifacts from government or tribal lands.

We do not purchase stolen artifacts and agree with the rights of individuals and native cultures to use and protect their own property.

When buying cultural property directly from indigenous sources, we only buy material legally obtained from individuals, families, and villages that willingly agree to sell these artifacts.

That these sources are often people who no longer use these artifacts, because of changes to their traditional lifestyle (perhaps due to conversion to a "modern" religion, entering the cash economy from a barter system, radical environmental changes to traditional lands, restrictions or interference from local governments, or other influences from outside the local culture).

That these sellers directly benefit from the sale of artifacts that are generally no longer in use, because they use the funds to purchase medicine, food, clothing, home repairs, farm improvements, or pay for educational and other work opportunities.

Those artifacts purchased from non-indigenous sources, such as other dealers, collectors, or institutions, were also legally obtained with full title or acquired prior to any recent changes in the law.

That the buying and selling of cultural objects benefits the public through the payment of sales and income taxes, as well as providing materials for the education and understanding of these formally traditional societies and cultures.

That the prosecutions of the dealers, collectors, and institutions, the vast majority who buy, sell, and own legal artifacts costs the public millions in wasted tax dollars.

Other important points:

1) It is patronizing to indigenous peoples when claiming they need western governments to protect them from willingly selling their own cultural property. I hear this argument all too often, along the lines of "unscrupulous western dealers take advantage of simple village folk when negotiating prices for artifacts." It is unfair to state that tribal peoples, who have been trading, bartering, and selling for generations, are not capable of making a fair deal that satisfies their needs. I have always found that the people I am doing business with overseas are perfectly capable of taking care of themselves and making clear decisions.

On another angle, does an artist in New York have more rights to sell his art to a foreign buyer, than does a villager in Africa? Further, do this artist's heirs have more rights to sell their art to a foreign buyer than the villager's heirs?

The second part of the argument is the gap in prices paid in third world countries to the prices realized in first world countries. The counter argument to this is the cost of living is equal to or more than that price gap. For example, in an extreme hypothetical situation where a western dealer might pay \$100 for an object that is resold in the West for \$5000, one must keep in mind that the indigenous person probably has an average monthly cost of living of \$100 while a westerner has a monthly cost of living of \$5000 or more.

A side note on this subject: the average sale of a cultural object often comes from descendants of the original owner. The seller in fact exerted no labor or expense in the creation of the object, normally something that was handed down through the generations. In a sense, any money realized is a gift, exactly like wealth handed down from to heirs in our own country.

2) This argument has been used before, but is worth stating again: not all source countries are in control politically to protect their own cultural property. The example of the Taliban's destruction of Buddhist statues is a point to be emphasized. The fact that many artifacts were sold into the world marketplace protected many objects that otherwise would have been destroyed.

It makes more sense, in any event, to have wider distribution of cultural property around the globe, thus preventing total destruction due to political upheavals, environment damage, and natural disasters.

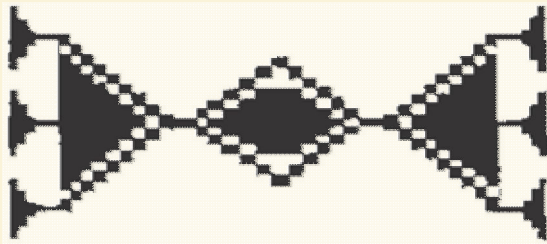
It is important to note, that many artifacts would have been discarded and eventually lost to the elements, if no art market existed. The fact that buyers are willing to pay money for artifacts is what has kept many of these pieces intact and appreciated. It also puts money directly into the hands of others, especially the villagers, who otherwise would not have benefited financially for these discarded or abandoned objects.

3) Who really owns world culture? For example, do the Italians own everything found within their current political boundaries? What about Greek artifacts found in Italy? Are they Greek or Italian? Are the descendants of former cultures, now dominated by new cultures, the true owners, or are the descendants of the current culture. Another example: who owns Moche artifacts in Peru, their descendants or the Spanish descendants that conquered them? The changing of boundaries over time and the coming and goings of cultures blur this line.

Or objects found in international waters (ex: Italy asking to claim a Getty bronze statue, found outside of Italy. This bronze statue was originally stolen from the Greeks by Roman soldiers and was not from Italy.)

Which leads to the question of how far does repatriating cultural property go? Should ALL American art, including Native American artifacts, 19th century folk art, 20th century modernist paintings, and so on, be brought back to the USA, never to be seen or appreciated outside our borders? Should ALL French impressionist paintings be returned to France?

I say we draw the line at keeping all indigenous earth art on our planet and leave it at that.



# Art and The Law

A Summary of Tribal Art Law by Kate Fitz Gibbon, Esq. with ATADA Legislative Alerts. The table of contents is reproduced below, followed by the information on ARPA. For the full text, please access [http://www.atada.org/Art\\_and\\_the\\_Law](http://www.atada.org/Art_and_the_Law).

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## Introduction

This page is intended to further ATADA's longstanding commitment to public education and to ensure the highest standards of professional conduct among our members.

ATADA supports federal efforts to halt illegal digging and trafficking in stolen art. ATADA members have worked closely with legislators to pass NAGPRA and other laws that protect Native American interests and to preserve cultural heritage.

ATADA's publicly available "Theft Alert" page and email notification system is currently the most effective

U.S. resource for recovery of stolen ethnographic art and has been remarkably successful in recovering artworks.

The information below is designed to assist ATADA members and the general public to understand current laws affecting art and artifacts. This page does not provide legal advice.

This is a time of change. Nothing can be considered static - and numerous modifications to the laws or their applications are being considered. We hope to provide here frequently updated information about proposed changes that may affect collectible art and art objects. ATADA may soon take a more proactive role in promoting changes in the laws. There may be an action proposed that requires the immediate attention of the membership. This page also provides a place where we post alerts of pending activities and an archive of recent legislative alert e-mails on this subject.

We believe strongly that all citizens should participate in setting U.S. policies on cultural property and we urge you to make your voices heard.

## 2.2: The Archaeological Resources Protection Act of 1979 (ARPA)

Congress passed ARPA in 1979 after invalidation of the Antiquities Act in the 9th Circuit. ARPA established criminal felony sanctions to deter "unauthorized excavation, removal, damage, alteration, or defacement, or trafficking in of archaeological resources." In addition to providing far higher penalties for violation, ARPA clarified uncertainties in the earlier Antiquities Act by providing specific definitions of terms and establishing a one hundred-year age threshold for objects covered by the new act.

Under ARPA, an "item of archaeological interest" need not ever be buried, nor, at this point, be older than from 1908. The law defines an "archeological resource" as an object . . . "capable of providing scientific or humanistic understandings of past human behavior." An enormous body of Native American arts made for the commercial market, from Hopi Revival pottery to turn of the century Indian baskets made for sale at county fairs, now meets the technical standards of ARPA. ARPA is now thirty years old, and as time passes, more and more 20th century materials will be subject to the law.

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 an archaeological context. (16 U.S.C. 470bb(1))

In both the Act's statement of purpose and a "grandfather" clause, ARPA declared a public interest in "fostering cooperation between governmental authorities, the archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979," the date of passage of the Act.

In consequence of this provision, it has generally been assumed for the last thirty years that an artifact that could be shown to be from a pre-1979 collection and that was not known to originate on federal or Indian lands was lawful to trade. In light of apparent assumptions made in at least one recent raid, there are indications that the government may attempt to place a burden of proof of lawful possession on an owner, rather than the government having the burden of proof to show that an artifact was unlawfully acquired. ATADA believes that the courts are unlikely to agree with this argument.

If successful, such attempts would defeat Congress' express purpose of enlarging the availability of Native American and Hawaiian resources for study and create tens of thousands of "orphan" objects, unable to be bought, sold, donated or inherited simply because they lack an identifiable provenience. Since "trafficking" in artifacts has never been per se illegal, a policy about-face would place museum and scholarly access to an important category of American heritage at risk. Worse, this approach would potentially criminalize innocent behavior on the part of the thousands of collectors who have acquired materials that have circulated in a largely undocumented market for more than a hundred years.

The prohibition against trafficking in archeological resources in ARPA specifically excludes acts related to removal of arrowheads located on the surface of the ground. ARPA regulations define arrowhead as "any projectile point which appears to have been designed for use with an arrow." Word has reached ATADA that some federal personnel are now citing collectors who gather surface finds of larger projectile points and other tools and weapons, although such surface finds were not cause for issuance of citations in the past.

Congress has upped the penalties for ARPA over time. Penalties for a criminal conviction under ARPA vary according to the commercial or archeological value of the archeological resources involved and the cost of restoration and repair of such resources that have been damaged. If that cost is less than \$500, penalties include a fine of "not more than \$100,000 or imprisonment for not more than one year, or both." However, if these costs are greater than \$500, the penalty shall be not more than \$250,000 in fines or imprisonment not exceeding two years, or both. Conviction of subsequent violations could result in higher fines or imprisonment not exceeding five years.

The maximum penalty for a civil violation of ARPA is determined by calculating the archeological damage to the area or the commercial value of the materials and adding either, but not both, to the cost of restoration and repair of the materials or the area that was damaged.

Where the person assessed a civil penalty has committed any previous violation of any prohibition or of any term or condition included in a permit, the maximum amount of the penalty may be double the cost of restoration and repair plus double the archaeological or commercial value of archaeological resources destroyed or not recovered.

(In 1988, Congress had amended ARPA to "simplify prosecution of cases under the law" by reducing the monetary threshold of archaeological value of disturbed sites required to make violations of the Act a felony from \$5,000 to \$500. The government was having difficulty in getting convictions because some juries refused to believe that grave robbers and casual excavators were doing \$5,000 worth of damage.) Readers should note that in contrast to the standard of proof beyond a reasonable doubt required in a criminal case, civil cases are heard before an administrative judge and require proof based on preponderance of the evidence. Violations limited to the removal of arrowheads located on the surface of the ground are not subject to the penalties prescribed under ARPA regulations.

ARPA also covers artifacts obtained in violation of any other federal, state or local law, which brings in the Antiquities Act, state laws against trespassing or theft in general, as well as unlawful acts involving cultural property on state lands.

The complete text of this law, as amended, can be found at <http://www.atada.org/archeores.html>.



From ATADA's email:

From Kate Fitz Gibbon on the suicide of Ted Gardiner, "the source" for the government's information leading to the Utah and Santa Fe raids. For excerpts from the newspaper coverage of Gardiner's suicide, please see pages 57 and 59 in the Media File.

I think that all of us are shocked, not just by Mr. Gardiner's suicide, but by the loss and suffering that this investigation has caused for so many people. The families of all three persons who have died have lost someone irreplaceable. The Gardiner family, the Redds, and Steven Shrader's family are all victims of this ill-conceived effort to build a public case against artifact traders. Their communities have also lost - in the case of Dr. Redd, Blanding no longer has a long-time community member who was its only physician.

Far less important than the loss of life, but still very relevant to the question of how best to protect ancient heritage, the expenditure of time and money on the part of federal agencies in this investigation has to be addressed. This investigation has clearly cost well over a million dollars, perhaps two million in federal man hours, acquisitions of artifacts, and payments to Mr. Gardiner. Was this the best way to spend our limited resources? Does the public now better understand the reasons for preserving sites? Have the most crucial Native American concerns over human remains been advanced? I doubt it.

We have to ask, is it worth it?

From ATADA's email:

News From Splendid Heritage. Collectors John and Marva Warnock and Splendid Heritage curator Clinton Nagy are all ATADA members.

We have just completed a significant update to the splendidheritage.com website. Besides adding many new items, we have added 15 new reports or Notes about specific items from contributors Emma Hansen, Curator, Plains Indian Museum, Buffalo Bill Historical Center; Bernadette Brown, former Curator of African, Oceanic and New World Art, Utah Museum of Fine Arts; Dr. Ron McCoy, Professor of History, Oklahoma State University; and Mary Dodds Schlick, author and student of the Native people of the Columbia Plateau.

Besides these additions, we have made corrections to other Notes and data pages based upon your comments and observations.

Our traveling exhibition, Splendid Heritage: Perspectives on American Indian Art, has just completed its first venue at the Utah Museum of Fine Arts, Salt Lake City, Utah, and will be opening May 1, 2010, at the Buffalo Bill Historical Center, Cody, Wyoming. The exhibition, and its accompanying catalogue, highlight 144 objects from the John and Marva Warnock collection. A third venue in the midwest is planned for 2011.

From ATADA's email:

From Thomas Murray,  
The "Looting Question" Bibliography:

The bibliography is much too long to include in this issue, but is available at <http://wings.buffalo.edu/anthropology/Documents/lootbib.shtml>. Here is the bibliography's introduction and two sample periodical entries.

Web and Literary Resources on the Archaeological Politics of Private Collecting, Commercial Treasure

Hunting, Looting, and "Professional" Archaeology

Compiled by Hugh Jarvis (PhD, MLS)

<hjarvis AT buffalo.edu>

University at Buffalo

Last updated: 01/05/10

This resource is intended to provide a comprehensive overview of what is often a controversial topic, for scholarly and classroom use. Coverage is intended to include extreme perspectives as well as more neutral or consensus-seeking views. The list is extensive, with the hope that users will be able to find a range of these items close to hand. While the main focus is on North America, materials from around the world are noted whenever possible (and certainly encouraged). Items are added as they come to my attention or are contributed by others. Annotations are mine except as noted, and are NOT intended to be incendiary. Comments and additions are most welcome!

Archaeological Institute of America

1974 (1973 resolution) Bulletin of Archaeological Institute of America 65:30.

- The AIA Council resolved to exclude presentations based on artifacts acquired in contravention of UNESCO 1970 convention.

Arnold, J. Barto III

1978 Underwater cultural resources and the antiquities market. Journal of Field Archaeology 5(2):232-3.

- This "Antiquities Market" section addresses US battle over control of historic shipwrecks in public waters as well as suggests artifacts should remain in the public domain and not in private hands.

From ATADA's email:

American Indian Art Dealers Directory

This site is designed for novice and experienced Native American Indian arts and crafts collectors.

Mitakuye Oyasin and Danielle Battaglia have attempted to include profiles of only those dealers who can be trusted to trade ethically and offer authentic American Indian art. Their hope is that you will find dealers profiled here with whom collectors will develop long term relationships based upon trust and a shared love of the artists their art and their traditions. Several ATADA members are listed on the site.

[www.american-indian-art-dealers-directory.com](http://www.american-indian-art-dealers-directory.com)

## Recent Theft Alert Postings

A large merchandise trailer containing jewelry and statues was stolen from a Phoenix AA hotel parking on March 4, 2010: <http://www.ATADA.org/theft.html#fragua2010> .

An Eskimo Ivory Carving stolen February 11, 2010:

[www.atada.org/theft.html#giltsoff2010](http://www.atada.org/theft.html#giltsoff2010)

A Moche pottery dog found missing October 2008:

[www.atada.org/theft.html#scudder2008](http://www.atada.org/theft.html#scudder2008)

400 Artifacts found missing from the Wisconsin Historical Society, Fall, 2000:

[www.atada.org/theft.html#wisconsin2000](http://www.atada.org/theft.html#wisconsin2000)



February 3, 2010

Alice Kaufman, Executive Director  
Antique Tribal Art Dealers Association  
215 Sierra SE  
Albuquerque, New Mexico 87108

Dear Ms. Kaufman,

On behalf of the Fort Nisqually Foundation I would like to thank you and the Antique Tribal Art Dealers Association for the generous donation of \$1,000 toward our efforts to catalog and photograph Fort Nisqually Living History Museum's artifact collection.

By photographing and inputting background information about Fort Nisqually's artifacts, specifically those reflecting Native American culture, and making that information accessible to the public via the fort's website, we think that this project helps support ATADA's stated goal "to encourage the public to educate themselves in the cultures these objects represent and the roles they played within the cultures".

I would also like to thank you for adding Fort Nisqually to your roster of museum members. We are proud to join the ranks of the British Museum and the Wheelwright as organizations who support the efforts of ATADA.

Again, thank you for your support.

Sincerely,

Melissa McGinnis  
Fort Nisqually Foundation  
253-305-1003  
melissam@tacomaparks.com

*Supporting the restoration, preservation and education of the Fort Nisqually Living History Museum, a restored Hudson's Bay Company Trading Post.*  
5400 North Pearl Street, #11, Tacoma, Washington 98407-3224 • Tel 253/591-5339 Fax 253/759-6184 • [www.fortnisqually.org](http://www.fortnisqually.org)

# Calendar

May - June 2010

*As a service to our members, we post a calendar of events of interest to collectors of Antique American Indian Arts and Tribal Arts on this page. Please send any suggestions for additions or corrections to Alice Kaufman at ACEK33@aol.com. The Antique Tribal Arts Dealers Association, Inc. can take no responsibility for errors or omissions in this calendar.*

May 7 - 9, 2010, Albuquerque, New Mexico

The Great Southwestern Spring Antique Show - The Great Southwestern Antique Show announces its 2nd annual Spring Show, May 8th & 9th with an early entry Sneak Preview on Friday, May 7th, at Expo New Mexico's Lujan B & C. Please contact Terry or her staff at Cowboys & Indians Antiques (505)255-4054 or visit [www.cowboysandindiansnm.com](http://www.cowboysandindiansnm.com) for more information.

*Many ATADA members/dealers historically participate in this show - come and meet them in person!*

May 8, 2010, Hubbell Post, Ganado, Arizona

Friends of Hubbell Native American Arts Auction, Spring 2010 Preview 9-11:00 am. Bidding begins 12 noon. Auction helps indigenous artists to sell their hand made ceramics, katsinas, Navajo rugs, and other items. Your purchase benefits not only the artisan, but the park as well. Native American vendors also offer food, handmade jewelry, musical instruments, recordings, folk art, and much more. For more information please call (928) 755-3475.

May 11 - 16, 2010, Brimfield, Massachusetts

May's Antique Market hosts over 5000 Antiques and Collectibles dealers from all over the country in the center of Brimfield, Massachusetts. Known as the largest outdoor antiques and collectibles gathering in the world, Brimfield attracts tens of thousands of dealers and buyers every May, July and September. [www.maysbrimfield.com](http://www.maysbrimfield.com)

May 13 - 17, 2010, New York City

The New York International Tribal and Textile Arts Show - The Market Suites at 7W New York, 7 West 34th Street at 5th Ave., opposite of Empire State Building. Fine Arts, Artifacts, Antiques, Carpets & Textiles of Native Cultures from American Indian culture, The Americas, Oceania, Asia & Africa. Opening preview Thursday, May 13, 6pm - 9pm to benefit The Textile Museum, Washington, DC. For more information, please call (310) 455-2886

*Many ATADA members/dealers historically participate in this show - come and meet them in person!*

May 21 - 23, 2010, Santa Fe, New Mexico

The Native Treasures Indian Arts Festival is held at Santa Fe Convention Center May 22-23, 2010, downtown Santa Fe. Native Treasures: Indian Arts Festival benefits the Museum of Indian Arts and Culture; On Friday, May 21, a special pre-sale and benefit will be held at the Santa Fe Convention Center from 5:30 p.m. - 7:30 p.m. Ticket price is \$75, which includes an Early Bird ticket for the show on Saturday. For reservations, please call (505) 982-6366 ext 112.

May 28 - 30, 2010, Flagstaff, Arizona

The Twentieth Annual Zuni Festival of Arts and Culture will be hosted by The Museum of Northern Arizona. This festival is held in partnership with the Ashiwi Awan Museum and Heritage Center in celebration of the Zuni way of life. For more information phone: (928) 774-5213.

May 30 - 31, 2010, Jemez Pueblo, New Mexico

The Annual Jemez Red Rocks Arts and Crafts Show will be held at Jemez Pueblo, phone (575) 834-7235 or (575) 834-0103 for details. Annual, Memorial Day weekends. .

June 7, 2010, San Francisco, California

Bonhams' Native American and Pre-Columbian Art Auction, Location: San Francisco. Bonhams and Butterfields, 220 San Bruno Avenue, San Francisco, CA 94103, (415) 861-7500, or (415) 503-3294, or visit [www.bonhams.com](http://www.bonhams.com), click on Departments tab, select Native American and pre-Columbian Art

June 12, 2010 Flagstaff, Arizona

The Museum of Northern Arizona's fourth Semi-Annual Navajo Rug Auction. Saturday, June 12, 2 - 5 PM. Preview, 9 AM - 1 PM. (928) 779-2300 or [culturalpartners.org](http://culturalpartners.org).

June 18 - 20, 2010, Oklahoma City, Oklahoma

Red Earth, America's Greatest Native American Cultural Festival, When the 24th annual Red Earth Native American Cultural Festival is held at the Cox Convention Center Friday June 18, 2010 in downtown Oklahoma City, more than 1200 American Indian artists and dancers from throughout North America will gather to celebrate the richness and diversity of their heritage with the world. For three exciting days Oklahoma City will be at the center of Native American art and culture in America. For more information, please call (405) 427-5228.

*Many ATADA members/dealers historically participate in this festival - come and meet them in person!*

June 24, 2010, Taos, New Mexico

Taos Pueblo San Juan Feast Day. Sunrise mass at San Geronimo church, traditional Corn Dances. No cameras. Located at Taos Pueblo plaza, Taos, New Mexico.

June 25 - 27, 2010, Denver, Colorado

The Cody Old West Show and Auction now in its 21st year will be held in the Denver Merchandise Mart in 2010. The Cody Show and Auction will continue to showcase such items as: rare photographs, vintage posters, advertising, & scarce historical western artifacts; the finest in Cowboy & Indian antiques & artifacts, bits and spurs, chaps, firearms, beaded items; fine western art and decorative items. For more details, contact Brian Lebel. Phone: (307) 587-9014 [www.codyoldwest.com](http://www.codyoldwest.com), [brian@codyoldwest.com](mailto:brian@codyoldwest.com).

July 2 - 4, 2010, Flagstaff, Arizona

The 77th Annual Hopi Festival of Arts and Culture will be hosted by The Museum of Northern Arizona. The MNA Hopi festival was started by museum founders Harold and Mary-Russell Ferrell Colton in an effort to encourage the survival of Hopi arts and crafts. July 2nd is member preview, Public Festival July 3-4, 2010. Contact the museum for further information at (928) 774-5213.

July 9 - 11, 2010, Taos, New Mexico

Taos Pueblo Pow Wow Second weekend in July, gathering of Indian Nations at Taos Pueblo. Competition dancing, drumming, Native American food and arts and craft booths. Location: Taos Pueblo Pow Wow Ground, Taos, New Mexico. For more information, please call (575) 758-1028.

July 13 - 18, 2010, Brimfield, Massachusetts

Brimfield Antique Market hosts Antiques and Collectibles dealers in the center of Brimfield, Massachusetts. Known as the largest outdoor antiques and collectibles gathering in the world, Brimfield attracts tens of thousands of dealers and buyers every May, July and September.

July 17 - 18, 2010, San Juan, New Mexico - Cancelled for 2010

The Eight Northern Pueblos Indian Arts and Crafts Show is held annually on third weekend in July at their permanent home in San Juan (north of Santa Fe), New Mexico. This show has been a tradition for 38 years.

**CANCELLED FOR 2010.**

July 24 - 25, 2010, Eagle Nest, New Mexico

The High Country Arts and Crafts Festival - Last weekend in July. Enjoy Americana and Native American Arts and Crafts in the mountains of New Mexico. Blue skies, food booths and events for children.

Phone:(575) 377-2420

July 25 - 26, 2010, Taos, New Mexico - event and dates to be confirmed

Taos Pueblo Feast Days of Santiago and Santa Ana. Saints' days celebrated with traditional Corn Dances on the plaza. No cameras. Location: Taos Pueblo, Taos, New Mexico.

August 6 - 8, 2010, Flagstaff, Arizona

The 61st Annual Navajo Festival of Arts and Culture will be hosted by The Museum of Northern Arizona Heritage Program. An authentic presentation of the Navajo "Beauty Way" philosophy of living in harmony is offered by more than 55 Navajo artists, storytellers and cultural interpreters from many clans. Contact the museum for further information.

August 6 - 8, 2010, Albuquerque, New Mexico

The Great Southwestern Antiques, Indian and Old West Show, at the LUJAN BUILDING AT EXPO NEW MEXICO (STATE FAIRGROUNDS). Early entry is Friday, August 6th from 2pm to 7pm, General admission 9 am - 5 pm, Saturday, August 7th; The show hours are 10a.m. to 4p.m. Sunday, August 8th. Two-day passes available. Please contact Terry Schurmeier at (505) 255-4054, e-mail: cowgirls@rt66.com, web site www.cowboysandindiansnm.com for information and special hotel rates. The Lujan building has been updated with a new cooler system and the leaks have been fixed.

*Many ATADA members/dealers historically participate in this show - come and meet them in person!*

August 12 - 14, 2010, Santa Fe, New Mexico

The 27th Annual Antique Ethnographic Art Show. Ethnographic and tribal art from around the world. Held in Santa Fe Community Convention Center, Santa Fe, NM, corner of Marcy and Grant St. Preview Opening: Thursday, August 12, 6:00 - 9:00pm. General Admission Friday, August 13, 10:00am - 6:00 pm; Saturday, August 14, 10:00am - 5:00pm. For information e-mail mberidge@whitehawkshows.com, phone (505) 992-8929 or visit the website at www.whitehawkshows.com for updates.

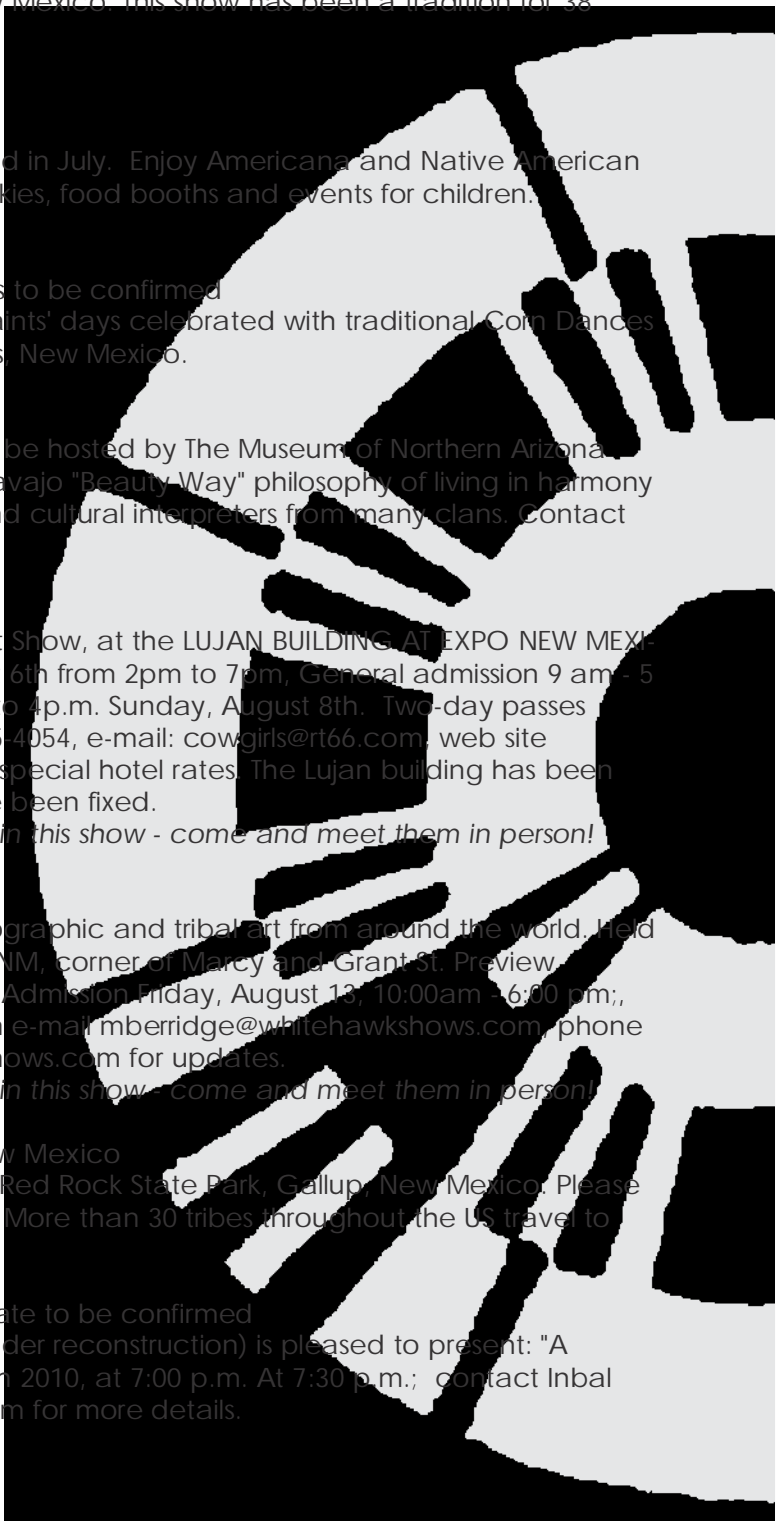
*Many ATADA members/dealers historically participate in this show - come and meet them in person!*

August 12 - 16, 2010, Red Rocks State Park, Gallup, New Mexico

The 88th Annual Inter-Tribal Ceremonial will be held at Red Rock State Park, Gallup, New Mexico. Please call (505) 863-3896 for details after about June 1, 2010. More than 30 tribes throughout the US travel to Gallup for this annual event.

August 14, 2010, Santa Fe, New Mexico - event and date to be confirmed

Splendors of the World Gallery (the site is currently is under reconstruction) is pleased to present: "A Festive opening for the Summer Season" on August 14th 2010, at 7:00 p.m. At 7:30 p.m.; contact Inbal Bailey, tel: 505-995-1100, inbal@splendorsoftheworld.com for more details.



August 14 - 15, 2010, Santa Fe, New Mexico

Doug Allard's Best of Santa Fe 2010 Auction will be held at Scottish Rite Hall, 463 Paseo de Peralta, in Santa Fe, NM: The 17th Annual premiere auction event in Santa Fe! Day 1: Preview: 8 am. Auction Start: Noon; Day 2: Preview: 8 am. Auction Start: 10 am. For more information, please call (888) 314-0343

August 15, 2010 Santa Fe, New Mexico

Scarcity and Rarity. To kick off Santa Fe Indian Market Week, SWAIA's executive director Bruce Bernstein moderates a panel discussion from 2 - 4 PM at the Santa Fe Community Convention Center. Panelists include dealers, collectors, academicians.

*ATADA members/dealers will participate in this event - come and meet them in person!*

August 15 - 17, 2010, Santa Fe, New Mexico

The 32nd Annual Invitational Antique Indian Art Show. Oldest and largest antique event in the world.

Location - Santa Fe Community Convention Center, Santa Fe, NM, corner of Marcy and Grant St.

Preview/Opening: Sunday, August 15, 6:00-9:00pm. General Admission: Monday, August 16, 10:00am -

5:00pm.; Tuesday, August 17, 10:00am - 5:00pm. For information e-mail [mberridge@whitehawkshows.com](mailto:mberridge@whitehawkshows.com), phone (505) 992-8929 or visit the website at [www.whitehawkshows.com](http://www.whitehawkshows.com) for updates.

*Many ATADA members/dealers historically participate in this show - come and meet them in person!*

August 16, 2010, Santa Fe, New Mexico

Art and the Law Update. We will meet from 8:15 AM to 9:45 AM at the Santa Fe Community Convention Center. Coffee and donuts will be provided at 8:00 AM. Those who attend this meeting should park in the Convention Center Underground Parking. It will be quite convenient for those who wish to get to the Convention Center in time for the show opening at 10 AM.

If you plan to attend, please email Alice Kaufman ([Alice@ATADA.org](mailto:Alice@ATADA.org)) with your name and the number of persons planning to attend so that we can reserve the proper size room.

August 16 - 20, 2010, Santa Fe, New Mexico

Numerous gallery openings and shows related to Santa Fe Indian market will be held this week. Check web sites and gallery news for details. [www.santafeindianmarket.com](http://www.santafeindianmarket.com)

August 17, 2010, Santa Fe, New Mexico

Santa Fe ATADA General Meeting: Please join us at 8:15 AM on Tuesday, August 17, 2010 for a brief meeting. All members are urged to attend, and guests are welcome. We will meet until 9:45 AM at the Santa Fe Community Convention Center. Coffee and donuts will be provided at 8:00 AM. Those who attend this meeting should park in the Convention Center Underground Parking. It will be quite convenient for those who wish to get to the Convention Center in time for the show opening at 10 AM.

If you plan to attend, please email Alice Kaufman ([Alice@ATADA.org](mailto:Alice@ATADA.org)) with your name and the number of persons planning to attend so that we can reserve the proper size room.

August 19 - 20, 2010, Santa Fe, New Mexico

The 34th Wheelwright Museum Annual Silent Auction and Live Auction Preview Party will be held Thursday, August 19th 4:00-6:00pm, and the Collector's Table and Live Auction of American Indian Arts and Crafts will be held on Friday, August 20th

August 21 - 22, 2010, Santa Fe, New Mexico

The Santa Fe Indian Market, The Santa Fe Indian Market is the city's biggest and most prestigious event. Held on the third weekend in August every year, Indian Market draws more than 100,000 collectors, gallery owners and fans of Indian art from around the world. The crowds buy art directly from more than 1,200 artists representing over 100 tribes. Indian market is held on the Plaza in Santa Fe, New Mexico.

[www.santafeindianmarket.com](http://www.santafeindianmarket.com)

# Directory Update

Alan and Bronnie Blaugrund  
13609 Ricegrass Place NE  
Albuquerque, NM 87111

Ray and Judy Dewey  
Dewey Galleries, Ltd.  
223 N. Guadalupe #557  
Santa Fe, NM 87501 USA  
dewdropssf@aol.com

Michael R. Evans  
Michael Evans Fine Art  
16 b rue de la Prefecture  
21000 Dijon, France

Kate Fitz Gibbon  
FitzGibbon Law  
215 W. San Francisco Street Suite 202C  
Santa Fe, NM 87501

Frank Hill  
Frank Hill Tribal Arts  
1105 Don Juan Ave  
Santa Fe, NM 87501

Ned Jalbert: American Indian Masterworks  
PO Box 275  
18 Lyman Street, #290  
Westboro, MA 01581  
(508) 836-9999

Jerry Steinberger  
Whitebear Rug Co.  
1123 Thorn Tree Lane  
Highland Park, IL 60035

Carl and Leah Stewart  
Nativescapes  
291 W. Renner Pkwy., Suite. C  
Richardson, TX 75080

Ted Trotta and Anna Bono  
www.trottabono.com



## Upgrade to Full member

Marcia and Ted Berridge  
Whitehawk Associates  
PO Box 1272  
Santa Fe NM 87504  
(505) 8929  
[Whitehawk2@hotmail.com](mailto:Whitehawk2@hotmail.com)

## Full Member

John A. Buxton, ISA CAPP  
6717 Spring Valley Road  
Dallas, Texas 75254  
(972) 239-4620  
Cell (214) 789-4695  
Fax (972) 239-9766  
Skype (214) 556-5650  
[jbuxton@arttrak.com](mailto:jbuxton@arttrak.com)  
[www.arttrak.com](http://www.arttrak.com) - The Tribal Art Connection  
[www.pbs.org/wgbh/pages/roadshow/](http://www.pbs.org/wgbh/pages/roadshow/) -  
Antiques Roadshow

Ron Munn  
R.G. Munn Auction LLC  
P.O. 705  
Cloudcroft, NM 88317  
(575) 687-3676  
Cell (575) 430-6816  
Cell (575) 430-6866  
[rgmunnauc@pvtnetworks.net](mailto:rgmunnauc@pvtnetworks.net)

Ginnie S. Porter Baskets  
Old and New Manager:  
Ginnie S. Porter  
8918 Delores CT NE  
Olympia, WA 98516  
(253) 370-4978  
[ottercove@hotmail.com](mailto:ottercove@hotmail.com)  
[basketsoldandnew.com](http://basketsoldandnew.com)  
*Specialty: restoration and conservation of  
antique American Indian baskets and Tlingit  
dancing blankets*



# Welcome New Members

ATADA would like to welcome...



John C. (Casey) Waller  
Caravanserai, Ltd.  
PO Box 420183  
2050 N. Stemmons Freeway, Suite 10057  
Dallas, TX 75342  
(214) 741-2131  
Cell (214) 906-5610  
[caravanserai@att.net](mailto:caravanserai@att.net)  
*Specialties: Central Asian carpets, kilims and textiles*

## Associates

Danielle Battaglia  
8 Bedford Court  
Wilmington, DE 19805

Henry G. Ellett  
344 Silvermine Road  
New Canaan, CT 06840  
(203) 856-8293

James and Marie Hershberger  
PO Box 40070  
Bellevue, WA 98015-4070

Richard Hopp  
4936 Worter Avenue  
Sherman Oaks, CA 91423

Mark Mackie  
506 Horizon Way  
Santa Rosa, CA 95407

Ferdinand Peterlin  
P.O. 387  
Calumet, MI 49913

Robin Pious  
Rose Villa, Kulathur Post, Vssc Road  
Trivandrum, Kerala 695583 India

Ruth Ellen L. Saarinen  
173 Oak Springs Dr  
San Anselmo, CA 94960

Katie Siefert  
16407 Knightrider Rd  
Spring, TX 77379

## Museum Members

Pamela H. Mathewson  
Library Assistant, Senior  
University Libraries  
Gifts & Exchanges/Department 3334  
1000 East University Avenue  
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