

ATADA NEWS

Fall 2017 / Vol. 27-3



On Exhibit:

Hopi Masterworks at Scottsdale's
Museum of the West

Awa Tsireh at the Heard Museum

Honoring The Artistic Legacy Of Indigenous People



MARK A. JOHNSON TRIBAL ART

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FROM TRIBAL ASIA
AND THE WESTERN
PACIFIC ISLANDS

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cotton
Early 20th century
Iban Dyek culture
Sarawak State, Malaysia,
Borneo Island

578 Washington Bl. #555
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majtribal@gmail.com
markajohnson.com



Margo Hoff, *Cracked Pepper*, 1985, Acrylic, canvas collage on masonite, 36 x 36 inches
Mayan Culture, *Three Cylinders*, 600-1200 CE, earthenware with colored slips

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In The News...

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ATADA NEWS

Honoring The Artistic Legacy Of Indigenous People

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Policy Statement:

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

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

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



ON THE COVER
 Fannie Polacca Nampeyo (Hopi, 1900-1987),
 Migration Pattern Jar, 1967; Gift of The Allan and
 Judith Cooke Collection.
 Photo by Gary Rohman.

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



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

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Dear Fellow ATADA members,

The Senate Committee on Indian Affairs met November 9 to discuss STOP. The scheduling of this meeting was not posted publicly (why not?) but our sources in D.C. alerted us to it. Both Kate Fitz Gibbon, our attorney, and myself hoped to testify but the committee said ‘no’. Only Governor Riley of Acoma Pueblo, a virulent supporter of the bill, was permitted to testify. When the Chairman of the Committee asked him how collectors could know what was legal to collect and what was not, given that his pueblo and others have said that this is protected information and not to be shared, he responded, in effect, that they, collectors, could ask the tribes which is not exactly an answer.

Most committee members left the meeting when this proposed law came up for discussion which from our view is a good thing since it shows a lack of interest on their part. But, in their discussion, one of the bill’s sponsors indicated that they must address the concerns of ATADA, a clear indication that our efforts are getting through.

We have more work to do. Information has come to us that Senator Heinrich (NM) considers this bill his ‘baby’ and will be leaning on colleagues to pass it. He doesn’t recognize the disastrous effect this bill would have on New Mexico’s economy. No votes were taken and further discussion was put off to another day. The House Committee on Indian Affairs has not yet met, and we believe we will have members willing to hear our voice.

So far, so good. Yet the road ahead remains fraught with danger. We are very fortunate to have Ms. Fitz Gibbon in our corner. We were able to post testimony on the bill which is now part of the record. The Committee for Cultural Policy and the Global Heritage Alliance also posted testimony that reflected concerns

with the proposed bill. All three testimonies are in this newsletter and I encourage you to study them to see what efforts have been made to preserve our business as we know it. Personally, I am grateful that CCP and GHA have taken this on as they add to the power of our voice substantially. Please continue to support our efforts by both donating to the legal fund and in educating yourselves on the current issues at hand.

In this issue, we also mourn the passing of four of the early leaders in our field - Rex Arrowsmith, Daniel Brown, Eleanor Hancock and Marti Struever. Each was responsible, in their own way, for increasing awareness of the beauty of antique Native American art and furthering appreciation of this field. All four elevated our business. I would especially like to acknowledge the pioneering role that Marti and Eleanor took in our field as independent, successful female entrepreneurs.

As our market remains under threat of legislative impairment and as we mourn our colleagues, I still find it a time for optimism. The gift of Charles and Valerie Diker of their Native American art collection to the Metropolitan Museum in New York, where it will be installed in the wing of American Art, heralds a time when this art is to be viewed as a part of our national artistic legacy, not to be limited by one’s politics or ethnicity but to be appreciated by all. As debates continue over who owns the rights to indigenous antique art and who is allowed to voice an opinion on it, this gift, to what some consider America’s premier art museum, must necessarily be celebrated and shared by all. Thank you, Charles and Valerie, for this gift to the American people.

Sincerely,

John Molloy
ATADA President

With the preponderance of blogs, online news, and social media constantly bombarding us with information it is always wise to be critical of the sources and research that is presented. I recently came across an article on *Artnet News* with a headline that was as sensational as any I have encountered regarding antiquities. Now, it must be said that this particular online source is well known for sensational headlines; and like any editor, I read past the headline and try to get to the information that is being presented. This article, under the section heading of “Art and Law,” announced, “The Vast Majority of Antiquities Sold Online Are Probably Looted or Fake, New Report Says,” along with the additional revelation, “Illicit antiquities are now available on Snapchat.” We all know that there is a myriad of legitimate issues facing the antiquities market, but to say that nearly everything online is stolen or fake is a truly high bar for this researcher to “probably” prove. You don’t even have to read beyond the second paragraph to realize that the entire argument is fallacious.

“The *Wall Street Journal* has conducted a thorough investigation into the surge in illicit antiquities bought and sold online. Neil Brodie, a senior research fellow in Endangered Archaeology at the University of Oxford, estimates that 80 percent of the 100,000 antiquities available online at any given moment have no recorded provenance—which means they are probably looted or fake. These objects have a combined total asking price of more than \$10 million, he says.”

If you buy it online, whether it be at auction, eBay, Facebook, or apparently even Snapchat, it is worthless or even worse, criminal. Even crazier than thinking about buying art on Snapchat is that if you read this when it was first published, you read it in the *Wall Street Journal*, giving authority and power to “probably.” The misdirection here is that you can

determine something is stolen or fake purely on the lack of provenance. Apparently, no consideration of the object itself, no scientific measurement, nor scholarly study can match the proof of a handwritten letter from a past owner. I bring this to your attention for a very important reason, not to discredit this researcher’s work or even really address this “probably” less-than-true claim, but rather to make it clear that no matter how honest and upstanding we carry ourselves we are losing the battle of public relations. Can anyone recall the last time the *Wall Street Journal* praised the Ethnographic or Antique Indian art business for its contribution to the understanding and appreciation of world cultures or for our countless contributions to museums through our devoted collectors? Collectors do often receive accolades for their generous gifts to museums, whether by donating a collection or funding a new wing, but it is almost unheard of to praise the dealers that sourced, researched, and helped put those collections together. We must all find a way to provide and promote a new stream of information online, in print, and in scholarly research to fight this negative PR campaign. As an organization, ATADA is making a concerted effort. The voluntary returns program is the best example, but we need more. The editorial staff here absolutely want to hear from you directly or if you know of a member that has been involved with Native and Tribal communities for impacting positive change. Let the next sensational headline be one that gets us attention for the right reasons.

All of this with my sincerest respect for the leaders and trailblazers who have come before me. Marti, Eleanor, Rex and Daniel, we will do our best to preserve and foster this business for the future to come.

Paul Elmore

In Memoriam

Martha Struever



Memories of Marti by Robert Bauver

A shining star in the firmament of our industry has dimmed. Martha Struever passed away this September, leaving an empty place in the lives of all who knew her.

Born in 1931, Martha Lee Hopkins spent her early years in Versailles, Indiana before attending Purdue University, where in 1953 she earned a Bachelors of Science Degree. This was followed by fashion marketing studies at the New York-based Tobe-Coburn School for Fashion Careers.

That same year, Marti returned to Indiana and married Richard (Dick) Burnham Lanman and joined his family's hardware store business. Dick's battle

with leukemia ended in 1966, leaving Marti with two sons, Richard Burnham Lanman, M.D. and Todd Hopkins Lanman, M.D., and a hardware store to run. In an example of Marti's dedication to whatever she put her mind to, she once said, "After Dick passed, when it snowed, I'd hitch the plow to the Jeep and plow the parking lot so we could do business.

Marti was remarried in 1971 to Edgar Allen "Bud" Cusik with whom she lived in Evanston, Illinois until they divorced in 1987

1971 was also the year that on her initial trip to the Southwest, Marti acquired her first pieces of Native American art. In her own words, Marti described it as a life-altering experience. From that point on, Marti devoted her life to American Indian art, and in so doing touched the hearts and lives of any and all who had the good fortune of knowing her.

In 1976, Marti opened a Chicago-based gallery called The Indian Tree. Years later, the story behind the gallery's name was revealed when Marti related that on an early buying trip to Santo Domingo, one of the artists had used a tree branch to display his earrings: "You see that?" he said. "That's

an Indian tree, and that's what you should call your gallery.' And so I did."

And the tree flourished. Along with some of the finest antique Native American art, the gallery also exhibited contemporary work of such notables as Charles Loloma and Dextra Quotskuyva with whom she developed lasting friendships. Marti also recognized the talented work of many young artists, providing exhibits in the gallery to today's outstanding Native artists; Gail Bird and Yazzie Johnson, Richard Chavez, Les Namingha, and Steve Lucas all had their first show outside the Southwest at The Indian Tree. After leaving the Chicago gallery, Marti continued to seek out and show the work of numerous young, promising artists.

It was during her time in Chicago that Marti first met Nancy Florsheim, who over the next several decades would become one of her closest friends. Marti and Nancy became fixtures in the business; no major auction or Indian art show was complete without their presence.

In 1988 Marti married the highly respected archaeologist, Stuart Struever. After living for a time in Denver, Marti and Stuart moved to Santa Fe,

Continuing to handle the highest quality of both antique and contemporary Native art, Marti sponsored Native art seminars. In conjunction with Stuart, many seminars centered around Crow Canyon, an archaeological site and educational center that Stuart had started in southern Colorado. Offered on a yearly basis, seminars drew participants from all parts of the country. Visiting museums, distant trading posts and Native artists on and off the reservation, the seminars became an annual event and a reunion for veteran travelers to experience the grandeur of the American Southwest.

Having co-curated American Indian Art shows in Chicago,

San Francisco, Santa Fe, and Phoenix and authored books on the work of Dextra Quotskuyva and Charles Loloma to add to her list of accomplishments, Marti's efforts were recognized by her peers when in 2006 she was awarded a Lifetime Achievement Award by the Antique Tribal Art Dealers Association.

In honor of her tireless work in so many aspects of Native American art, the Wheelwright Museum's newly added Center for the Study of Southwestern Jewelry has designated the The Martha Struever Gallery as the home for the exhibit of their permanent jewelry collection.

"The places I have been, the

things that I have seen and the people I have met" fill the lines, pages and chapters of the great American novel that was Marti's life.

So now it is time for Martha Lee to take her place alongside Millicent Rogers, Maria Martinez, Georgia O'Keefe, Mabel Dodge Lujan and Nampeyo as another great Lady of the Southwest.

Marti's passing leaves her husband Stuart, her sons Richard and Todd, their wives, seven grandchildren, a great grandchild, and a thousand friends saddened, yet immensely better for having known her.

Daniel Brown



A Remembrance by John Molloy

Daniel Brown suddenly passed away at home on July 20,

2017. Many people feel that the antique American Indian art business took root in California in the 1970's. Daniel was there at the beginning. Mark Winter recalls Daniel at a show in 1972. Very quickly Daniel and his life partner, Irene Kaufman, became known for their connoisseurship and resourcefulness in coming up with fresh material. That would continue for the next forty plus years.

As the industry matured, Daniel retreated from the public sphere and although he remained very active, it was from the behind

the scenes. I spoke with Daniel a few times a week during much of that time; he was always very generous with his knowledge and gentle in his manner. I learned many things about both Indian art and about people from Daniel over the years. I am grateful for our long-term friendship and miss him dearly.

There will never be a kinder soul, a more compassionate person or a better friend. There will never be another Daniel.

Eleanor Tulman Hancock



Eleanor Tulman Hancock, respected dealer in North American Indian Art, died after a brief illness on June 15, 2017. Eleanor is survived by her beloved son Mason and granddaughter Leah, and her husband of 46 years, James. Eleanor was predeceased by her dear brother Eli and former husbands, the composer Lan Adomian and physicist Marcel Weinrich.

After college, Eleanor began a career as an actress in New York

City. She pursued a Master's Degree in English from Union College, Schenectady, NY, and worked in Public Relations before discovering her passion for American Indian jewelry, which led to an intensive study of American Indian Art.

A highly-respected dealer for over 50 years, she specialized in notable examples of American Indian jewelry, pottery, basketry, textiles (including several Navaho First Phase Chief blankets), Kachinas, beadwork, and art of the Northwest Coast and Inuit. Eleanor became a trusted adviser to major collectors and museums in the United States and in Europe. Objects, formerly in her collection, are exhibited in many museums including the Ralph T. Coe and the Charles and Valerie Diker collections at the Metropolitan Museum of Art, New York; the Thaw Collection at the Fenimore Art Museum, Cooperstown; the Nelson-Atkins Museum of Art, Kansas City; and in the Ralph T. Coe Foundation

collection of American Indian Art, Santa Fe. Works from her personal collection were included in exhibitions at the American Museum of Natural History, The Brooklyn Museum, and the National Museum of the American Indian, of which she was an early supporter.

Eleanor was a long-time member of the Antique Tribal Art Dealers Association and the Appraiser's Association of America. A devotee of all the arts, Eleanor shared her love of theater, museums, ballet and concerts with her many devoted friends. She will be remembered for her indomitable spirit, generosity, and unfailing concern for friends and family, as well as her fashion flair, which always included spectacular antique silver and turquoise jewelry. Eleanor was a longtime supporter of NOW. Memorials were held in late September and early October in Gloucester, MA and New York.

Rex Arrowsmith

Rex Arrowsmith, longtime Santa Fe resident and iconic Indian trader, has died at 92.

Born in Belleville, Kansas, Rex developed an early interest in American Indian culture and began collecting artifacts as a youth. The knowledge attained from this passion would prove to be very useful later in his life.

At 19, he served in World War II as an officer aboard a tanker that carried aviation fuel to combat zones. Following his service, Arrowsmith graduated from the University of Kansas with a degree in mining and metallurgical engineering. While at KU, he met Bonnie Cunningham who became his wife in 1949.

He left a lucrative, executive

position in Houston, Texas in 1959 to pursue his passion and opened up a store, Arrowsmith's Relics of the Old West, in Santa Fe across from the Oldest Church on College Street. The unique store and trading post attracted clientele from around the world. Rex was equally at ease wheeling and dealing with Elvis or John Wayne, negotiating with

champions of industry, speaking at a board of directors meeting, hunting or fishing with Indian friends or living in the jungles of Costa Rica.

Rex was also one of the last, true Indian traders. He would take his sons with him on trading trips to the reservations where he would acquire stock for the store directly from his many Pueblo, Navajo and Hopi Indian friends and from other trading posts and had Indians from the local pueblos coming in on a daily basis to do business. Rex developed many close relationships with these people which resulted in wonderful memories for the entire family. Many a time the Arrowsmiths were invited to spend the night during ceremonies and dances and feasts. Very few would ever experience these events in such intimate surroundings.

The business was expanded in 1972 when the Arrowsmith-Fenn Gallery was established on Paseo de Peralta. The new gallery met with success as well, but Rex and Bonnie had a yearning for travel and sold out their interests to achieve this dream. For over thirty years they circled the globe and saw many beautiful places and made incredible memories.

Rex Arrowsmith's achievements in life were many. He was president or chairman of the board of many organizations including SWAIA, The Old Santa Fe Association, and El Rancho de Las Golondrinas. He was very active in the Indian Market for over 50 years and with the Gallup Inter-Tribal Indian Ceremonials.

Rex worked tirelessly to retain the character of Santa Fe during the urban renewal push in the 1960's by seeing that historic buildings were saved from demolition by getting into place strict zoning laws within the historic districts.

Few know that Rex was a member of the Screen Actors Guild and appeared regularly in the TV series "Empire" with a young Ryan O'Neal and Charles Bronson and had parts in movies filmed in the Santa Fe area. He was also a candidate as U.S. Ambassador to Costa Rica.

However, it is his attributes as a human being for which he will be most remembered. He rarely spoke about his deep Christian faith but lived it every day. Rex was honest to a fault. Most of his deals were made on a handshake and his trustworthiness benefited him both in business and in

personal life. He never had a bad word to say about anyone and was very generous.

Rex had a great sense of humor and was always the jokester. It was not often that you saw him without a smile on his face. He was kind to others and to his family. The experiences he amassed during his lifetime were wonderful and provided topics for his legendary storytelling ability. He will be greatly missed by friends and family alike!

Rex Arrowsmith is survived by his wife of 68 years, Bonnie, two sons, Murray and Mark, and their respective wives, Marilyn and Sue, twelve grandchildren and four great-grandchildren.

A memorial fund has been set up with SWAIA in his name to benefit the Santa Fe Indian Market. Donations may be sent to: John Jones, SWAIA, P.O. Box 969, Santa Fe, NM 87504-0969.

SHIPROCK
SANTA FE



The ATADA Calendar

Events and Exhibitions of Note

FEATURED EXHIBITIONS

Awa Tsireh: Pueblo Painter and Metalsmith
 Heard Museum - Phoenix, AZ
 Through July 1, 2018
heard.org



Canvas of Clay: Hopi Pottery Masterworks from The Allan and Judith Cooke Collection
 Western Spirit: Scottsdale's Museum of the West - Scottsdale, AZ
 Through Dec 2019
scottsdalemuseumwest.org



NOV 14

Rivet's Generation: Pioneers of Anthropology
 Musée du quai Branly - Jacques Chirac Paris, France
quaibrantly.fr

Before the Incas: Gods and Kings in Ancient Peru
 Musée du quai Branly - Jacques Chirac Paris, France
quaibrantly.fr

NOV 16

Zoë Urness: Keeping the Traditions Alive
 Booth Western Art Museum - Cartersville, GA
boothmuseum.org

NOV 18

One Trader's Legacy: Steve Getzwiller Collects the West
 Desert Caballeros Western Museum - Wickenburg, AZ
westernmuseum.org

NOV 19

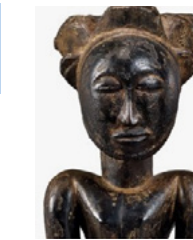
Tattoo
 Natural History Museum Los Angeles County - Los Angeles, CA
nhm.org



NOV 19

The Fabric of Our Land: Salish Weaving
 Museum of Anthropology at the University of British Columbia
 Vancouver, B.C., Canada
moa.ubc.ca

NOV 22



Art d'Afrique et d'Océanie
 Christie's - Paris, France
christies.com

Ends NOV 30

Fritz Scholder's "Indians Forever" Suite and Other Works
 Adobe Gallery - Santa Fe, NM
adobegallery.com



NOV 30

"Let the Indian Paint His Own Picture": Alice Fletcher and Cultural Representation Paradoxes
 Free Public Lecture
 Peabody Museum of Archaeology and Ethnology at Harvard University - Cambridge, MA
peabody.harvard.edu

NOV 30

American Indian and Southwestern Jewelry: Timed, Online Auction
 Cowan's Auctions - Online Only
 Bidding begins Nov 30 at 12pm ET
 Closes Dec 11 at 12pm ET
cowanauctions.com



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CATCH



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Ends
NOV
30

Excellence in Iroquois Arts Award & Exhibition: Babe Hemlock and Carla Hemlock

Iroquois Indian Museum - Howes Cave, NY
iroquoismuseum.org

DEC
1

"Noel Night" with Maria Samora and Louis L'Amour's "Lost Treasures"

Sorrel Sky Gallery - Durango, CO
 5-9pm
sorrelsky.com



DEC
2

American Indian & Ethnographic Art

Skinner Auctioneers - Boston, MA
 Auction 3043B - 10am
skinnerinc.com

DEC
2 - 3

Native Art Market

National Museum of the American Indian - New York and Washington, DC locations
nmai.si.edu

DEC
3

Crafting Memory: The Art of Community in Peru

Museum of International Folk Art - Santa Fe, NM
 Opening: 1-4pm
internationalfolkart.org



DEC
4

Native American Art

Bonhams - San Francisco, CA
bonhams.com

DEC
5

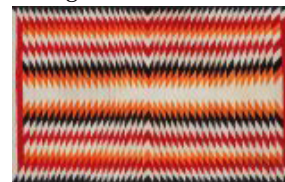
African and Oceanic Art

Bonhams - Los Angeles, CA
bonhams.com

DEC
9

Weaving a Path: Navajo Women and the Feminine Ethos

Mingei International Museum - San Diego, CA
 Through May 13, 2018
mingei.org



DEC
10

Lifeways of the Southern Athabaskans

Museum of Indian Arts & Culture - Santa Fe, NM
indianartsandculture.org

DEC
12

Arts d'Afrique et d'Océanie

Sotheby's - Paris, France
 Sale# PF1718 - 6pm CET
sothebys.com

DEC
16-17

SWAIA Winter Indian Market

La Fonda on the Plaza - Santa Fe, NM
swaia.org



DEC
17

Dining with Kings: Hospitality and Ceremony in the Cameroon Grassfields

Fowler Museum at UCLA - Los Angeles, CA
 Through April 15, 2018
fowler.ucla.edu

2018

JAN
18

Americans

National Museum of the American Indian - Washington, DC
 Through 2027
nmai.si.edu

JAN
20-21

Brian Lebel's Old West Show & Auction

Mesa Convention Center - Mesa, AZ
 Show: Jan 20-21, Opens 9am
 Auction: Jan 20, 5pm
oldwestevents.com



FEB
2

Symmetry in Stone: The Jewelry of

Richard I. Chavez
 Heard Museum - Phoenix, AZ
 Through Sept 30
heard.org

FEB 3
Rooted, Revived, Reinvented: Basketry in America
 Whatcom Museum - Bellingham, WA
 Through May 6
whatcommuseum.org

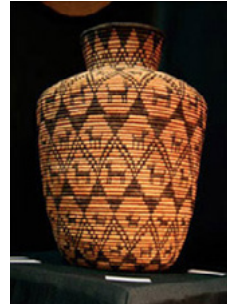
FEB 8-11

San Francisco Tribal & Textile Art Show
 Fort Mason Center - San Francisco, CA
 Gala Opening: Feb 8
 Show: Feb 9-11, 11am
sanfranciscotribalandtextileartshow.com

FEB 10
Masters of the American West 2018
 The Autry Museum - Los Angeles, CA
 Through March 25
theautry.org

FEB 10
Waddell Gallery Jewelry Trunk Show and Sale at the Autry
 The Autry Museum - Los Angeles, CA
waddellgallery.com

FEB 17-18
The 34th Annual American Indian Art Show - Marin
 Marin Civic Center - San Rafael, CA
 Opening Benefit Preview: Feb 17, 9am - 11am
 Show Dates: Feb 17-18, 11am
marinshow.com



FEB 27
Golden Kingdoms: Luxury & Legacy in the Ancient Americas
 Metropolitan Museum of Art - New York, NY
 Through May 28
metmuseum.org

MAR 1
2018 Special Gallery Opening
 Waddell Gallery - Scottsdale, AZ
 6-9pm
waddellgallery.com

MAR 2
Best of Show Reception
60th Annual Heard Guild Indian Fair & Market
 Heard Museum - Phoenix, AZ
 5:30 - 8:30pm
heard.org

MAR 3-4
60th Annual Heard Guild Indian Fair & Market
 Heard Museum - Phoenix, AZ
 Opens at 9:30am both days
heard.org




MAR 3
T.C. Cannon: At the Edge of America
 Peabody Essex Museum - Salem, MA
 Through June 10
pem.org

Ends MAR 4
The Art of Storytelling
 Colorado Springs Fine Arts Center - Colorado Springs, CO
csfineartscenter.org



Ends MAR 31
Catch 22: Paradox on Paper
 From the Edward J. Guarino Collection
 Ralph T. Coe Foundation - Santa Fe, NM
ralphtcoefoundation.org

APR 7
First Americans: Tribal Art from North America
 Bowers Museum - Santa Ana, CA
 Through Aug 19
bowers.org

ATADA  **ORG**

Further listings can be found on our online calendar at: atada.org/calendar

To submit your listing, please use our online submission form on the [calendar page](#) of our website.

**Please note that all listings are posted solely at the discretion of ATADA. We regret any errors or omissions in this calendar; we cannot be held responsible for incorrect or changed information.*

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*necklace by David Tsikewa

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Ongoing Exhibitions - Ending Soon

Ends DEC 8
Sacred Art in the Age of Contact: Chumash and Latin American Traditions in Santa Barbara
 Art, Design, & Architecture Museum UC Santa Barbara - Santa Barbara, CA
museum.ucsb.edu

Ends DEC 8
Return from Exile: Contemporary Southeastern Indian Art
 John W. Bardo Fine and Performing Arts Center - Cullowhee, NC
wcu.edu

Ends DEC 10
Raise a Flag: Works from the Indigenous Art Collection (2000-2015)
 OCAD University Onsite Gallery - Toronto, Ontario, Canada
ocadu.ca

Ends DEC 17
Dignity: Tribes in Transition
 University of Oregon Museum of Natural and Cultural History - Eugene, OR
natural-history.uoregon.edu

Ends DEC 17
On Country: Australian Aboriginal Art from the Kaplan-Levi Gift
 Metropolitan Museum of Art - New York, NY
metmuseum.org

Ends DEC 17
Threads of Time: Tradition & Change in Indigenous American Textiles
 Michael C. Carlos Museum of Emory University - Atlanta, GA
carlos.emory.edu

Ends DEC 17
Salish Modern: Innovative Art with Ancient Roots
 White River Valley Museum - Kent, WA
wrvmuseum.org

Ends DEC 31
Edward S. Curtis Among the Kwakiutl
 Fenimore Art Museum - Cooperstown, NY
fenimoreartmuseum.org

Ends DEC 31
Dwell with Beauty: Native Americans at Home
 Fenimore Art Museum - Cooperstown, NY
fenimoreartmuseum.org

Ends DEC 31
Jody Naranjo: Revealing Joy
 Museum of Indian Arts & Culture - Santa Fe, NM
miaclub.org

Ends DEC 31
Creating the Modern Southwest
 Gilcrease Museum - Tulsa, OK
gilcrease.org

Ends DEC 31
Over the Edge: Fred Harvey at the Grand Canyon and in the Great Southwest
 Heard Museum - Phoenix, AZ
heard.org

Ends DEC 31
Connecting Cultures: 40 Years at the Mitchell Museum
 Mitchell Museum of the American Indian - Evanston, IL
mitchellmuseum.org

Ends DEC 31
Follow the North Star: Inuit Art from the Collection of Estrellita and Yousuf Karsh
 Museum of Fine Arts Boston - Boston, MA
mfa.org

Ends DEC 31
Power Contained: The Art of Authority in Central and West Africa
 University of Michigan Museum of Art - Ann Arbor, MI
umma.umich.edu

Ends DEC 31
Tapun Sa Win
 South Dakota Art Museum - Brookings, SD
sdstate.edu

Ends DEC 31
Le Havre-Dakar: Sharing the Memory
 Muséum d'Histoire Naturelle du Havre - Le Havre, France
museum-lehavre.fr

Ends DEC 31
I-Witness Culture: Frank Buffalo Hyde
 Museum of Indian Arts & Culture - Santa Fe, NM
indianartsandculture.org

Ends DEC 31
The Boomerang Effect
 Musée d'Ethnographie de Genève - Geneva, Switzerland
ville-ge.ch/meg

Ends JAN 7
Postcommodity: A Very Long Line
 Colorado Springs Fine Arts Center - Colorado Springs, CO
csfineartscenter.org

Ends JAN 7
Kay WalkingStick: An American Artist
 Gilcrease Museum - Tulsa, OK
gilcrease.org

Ends JAN 7
The Geometry of Expression
 Eiteljorg Museum - Indianapolis, IN
eiteljorg.org

Ends JAN 7
How to Make the Universe Right: The Art of Priests and Shamans from Vietnam and Southern China
 Fowler Museum at UCLA - Los Angeles, CA
fowler.ucla.edu

Ends JAN 7
Powermask: The Power of Masks
 Wereldmuseum - Rotterdam, Netherlands
wereldmuseum.nl

Ends JAN 8
Neo Native: Toward New Mythologies
 Jacobs Education Center - Rancho Cucamonga, CA
malooffoundation.org

Ends JAN 8
Akunnittinni: A Kinngait Family Portrait
 National Museum of the American Indian - New York, NY
nmai.si.edu

Ends JAN 14
Sacred Art in the Age of Contact: Chumash and Latin American Traditions in Santa Barbara
 Santa Barbara Historical Museum - Santa Barbara, CA
sbhistorical.org

Ends JAN 14
Ancestors & Rituals: Europalia Indonesia
 BOZAR Center for Fine Arts - Brussels, Belgium
bozar.be

Ends JAN 21
Connective Tissue: New Approaches to Fiber in Contemporary Native Art
 IAIA Museum of Contemporary Native Arts - Santa Fe, NM
iaia.edu

Ends JAN 21
Out of the Vault: Treasures Old & New
 Museum of Northern Arizona - Flagstaff, AZ
musnaz.org

Ends JAN 21
After Removal: Rebuilding the Cherokee Nation
 Gilcrease Museum - Tulsa, OK
gilcrease.org

Ends JAN 21
Quilts of Southwest China
 Museum of International Folk Art - Santa Fe, NM
internationalfolkart.org

Ends JAN 21
Kingdoms of the Sea: Archipelago
 La Boverie - Liège, Belgium
europalia.eu

Ends JAN 21
In Their Native Forests: Arts of Atlantic Equatorial Africa
 Musée du Quai Branly - Jacques Chirac - Paris, France
quaibrany.fr

Ends JAN 21
Unsettled
 Nevada Museum of Art - Reno, NV
nevadaart.org

Ends JAN 28
Golden Kingdoms: Luxury and Legacy in the Ancient Americas
 The Getty Center - Los Angeles, CA
getty.edu

Ends JAN 28
Amazonia: The Rights of Nature
 Museum of Anthropology at the University of British Columbia - Vancouver, B.C., Canada
moa.ubc.ca

Ends FEB 4
Ancient Bodies: Archaeological Perspective on Mesoamerican Figurines
 LACMA - Los Angeles, CA
lacma.org

Ends FEB 4
The Art of Papua New Guinea from the Valerie Franklin Collection
 San Diego Museum of Art - San Diego, CA
sdmart.org

Ends FEB 11
Teotihuacan: City of Water, City of Fire
 de Young Museum - San Francisco, CA
deyoung.famsf.org

Ends FEB 18
Standing Rock: Art and Solidarity
 The Autry Museum - Los Angeles, CA
theautry.org

Ends FEB 18
Art of the Americas: Pre-Columbian Art from Mingei's Collection
 Mingei International Museum - San Diego, CA
mingei.org

Ends FEB 18
Pueblo Ceramics
 Birmingham Museum of Art - Birmingham, AL
artsbma.org

Ends FEB 24
Our Side: Elisa Harkins, Tanya Lukin Linklater, Marianne Nicolson, and Tanis S'eiltin
 Missoula Art Museum - Missoula, MT
missoulaartmuseum.org

On Trend by Patrick Mestdagh

The recent announcement of the creation of a Tribal Art Section in the prestigious TEFAF – Maastricht Art Fair was well received by the small, booming world of tribal arts participants. The serious *Antiques Trade Gazette* of London did not hesitate to place it on the front page of one of its latest issues, and it will certainly bring other reactions elsewhere.

This might be seen as a major surprise to some, but in fact, it seems to be the result of a natural movement initiated by various major factors in the last decades, with an acceleration in the last 10 years and the opening of the Musée du Quai Branly – Jacques Chirac, a major and popular Parisian institution dedicated to non-European civilizations that the French President created with the help of his friend and art dealer Jacques Kerchache.

With its permanent collections and a rich program of exhibitions year after year, Quai Branly has brought new public attention to the world of Tribal Arts. Although the success of international events, like *Parcours des Mondes* in Paris or *Bruneaf* in Brussels, and American shows in San Francisco and Santa Fe was already established, the field was still “reserved” to a limited amount of collectors and enthusiasts focusing on the so-called “primitive arts”.

Tefaf’s opening to Tribal Arts, following a similar move originally initiated by Brussels based antique show *Brafa*, proves, if necessary, the importance tribal arts have secured in the arts world today. Confined to a position of “supporting actor” until recently, tribal arts are more and more often making the headlines with frequent major results in auctions worldwide in the last couple of years.

Indeed, auctions houses were not inactive during those years and promptly reacted to this new trend by both publishing richly illustrated catalogues and presenting the contents of important private Tribal Arts collections. Then, quite intelligently, they brought Modern Art and Contemporary Art collectors to Tribal Arts, showing them the influences indigenous arts had on major artists such as Picasso, Giacometti and Basquiat.

Most of the specialized dealers also took action, organizing thematic exhibitions and publishing catalogues to illustrate their work. It would be unfair to name here a few, with the certainty to forget many others. It will be relatively easy for aficionados to find them, and more importantly, make contact with those sharing the same points of interest.

With those elements at work and the emergence of the internet giving access to a gigantic amount of information to more people, it is easily understandable that the Tribal Arts market encountered some major changes. The first one is, without doubt, the general rise of value. A “million-dollar-object” at auction was something rare until not so long ago; however, today these objects are surfacing several times a year. And because dealers tend to keep their sales numbers secret we don’t know what the highest prices paid are in the private sphere, but auctions have attained numbers as high as 12 million dollars for a single object.

When more people become interested in a subject like Tribal Art, demand inevitably grows, and as the amount of available objects remains the same, the consequence is the rarefaction of quality objects on the market. One legend, but somebody might be able to correct me on this, says a thousand pieces are discovered within Egyptian sites every day!!! Even if true, we have to be realistic and agree to the fact that very few of them will be of great quality, especially on the level deemed masterpieces.

Even if subjective and difficult to measure, the quality of every single object, in every field of art history, remains a crucial question. Authenticity is evidently another one. The main goal of every person collecting Tribal Arts will be the quality of the desired pieces. We have to remind ourselves one important point: the amount of authentic pieces on the market is limited! Indeed, creation has stopped in most of the countries of origin, and as with Picasso’s paintings, it is becoming harder to find “new treasures”.

Therefore, the process of “building” a collection may appear harder, almost impossible to start, and may discourage a few. Aware of such difficulties, I am

amongst those convinced it is still possible to achieve! Difficulties can make things more interesting, especially in a process where passion and enjoyment should prevail. One potential alternative might be simply in the selected subject of the collection. By choosing a lesser-known field or an area of origin with remaining potential discoveries, a young collector might fulfill his desires of collecting. I remember the fabulous exhibition of tribal shields organized by Geneva’s Barbier-Mueller Museum: until then, shields were quite easy to find and affordable. Today, they still are if you are patient.

Some will then pose the question of prices and value. Again, I think the “Grail” needs some reflection, development of strategy and a bit of luck. But let’s keep in mind many great collections were built with “little money”. Initial choices will be essential. The subject(s) of the collection will need to be clearly defined, and the interest should be augmented by the knowledge of the material. So, regular visits to museums should be accompanied with reading books. Then presumably, more importantly, the ability to find elements to feed these collections will need to be seriously considered

and every possibility tested.

Ultimately, there is no better way to learn about objects than to touch, hold and feel them. Every auction’s exhibition is an occasion to do so, and visits to specialized galleries should be treated as an opportunity to examine objects, see the differences between them and allow everybody to appreciate their beauty.

Picasso, again, used to say: “When I have no more red, I put some blue...” Every collector, even more so the youngest ones, should keep this quote in mind! To me, it resonates as a message to everyone. I understand if you are looking for a Fang reliquary you can not find, or can not afford (I am one of them), don’t buy an average, or worse, a mediocre one! Be patient and go for something else that is a “9 out of 10.”

Patrick Mestdagh is the owner of Patrick & Ondine Mestdagh Fine Antiques in Brussels, Belgium and is an ATADA Board Member.



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Canvas of Clay: Hopi Pottery Masterworks from the Allan and Judith Cooke Collection

“National Treasure” of Hopi Pottery Masterworks Donated to Scottsdale’s Museum of the West Now on Display

More than 65 of the finest examples of Hopi pottery are on display for the first time in the exhibition “Canvas of Clay: Hopi Pottery Masterworks from The Allan and Judith Cooke Collection” at Western Spirit: Scottsdale’s Museum of the West.

Spanning six centuries, the exhibition explores the history and stylistic traditions of the Hopi, who have excelled in the creation of ceramics for generations. Among the historic and contemporary masterworks are 18 vessels by Nampeyo of Hano (c.1860-1942), the most famous Hopi potter and the matriarch of an extensive family of renowned artists. Works by twenty-two additional master potters, including her daughters and other descendants, are also represented in the exhibition.

Clockwise from top left:
Nampeyo of Hano (Hopi/Tewa, c. 1860-1942),
A Four-Color Polychrome Bowl, c. 1900; Gift
of The Allan and Judith Cooke Collection.

Fannie Polacca Nampeyo (Hopi, 1900-1987),
Migration Pattern Jar, 1967; Gift of The Allan
and Judith Cooke Collection.

Karen Abeita (Hopi/Isleta Pueblo, b. 1960),
Birds of Summer Jar, 2003; Gift of The Allan
and Judith Cooke Collection.

Nampeyo of Hano (Hopi/Tewa, c. 1860-1942),
Polacca Style Bowl, c. 1890; Gift of The Allan
and Judith Cooke Collection.

Photos by: Gary Rohman

The current display features approximately half of The Allan and Judith Cooke Collection, one of the finest private collections of Hopi pottery, which has been gifted to the museum. Ceramics from the collection will be in ongoing rotation in a new permanent gallery, The Allan and Judith Cooke Gallery. Sponsored by the City of Scottsdale, the gallery honors the donor and his late wife as well as the Hopi people whose tribal land lies in northern Arizona.

“The City of Scottsdale is privileged to provide its residents and the millions of annual visitors to our community with the opportunity to see this national treasure first-hand,” commented Scottsdale Mayor W.J. “Jim” Lane. “It serves as a point of pride not only for the city but for the state of Arizona.”

Allan Cooke, M.D., and his wife Judith (1945-2001) began collecting

indigenous Southwestern pottery more than 25 years ago after a driving vacation to Santa Fe, New Mexico from the couple’s home in Kansas City, Kansas. On that trip, they visited several Pueblo ancestral centers where they first learned about Native American ceramics and the potters who created them. They purchased six jars, one of which was made by a Hopi potter, before returning home.

Their passion for Hopi ceramics grew over the years, as did their collection. The Cookes admired not only the Hopi potters’ artistry of form and design but also their skilled manual craftsmanship. Traditional Hopi potters hand coil and scrape natural clay, sculpting pots with extraordinary sensitivity without using a mechanized wheel to throw

the vessels. The resulting pots, balanced shapes with uniformly thin walls, are hand painted with intricate motifs using natural pigments.

In time, the Cookes’ pottery collection grew to reflect the evolution of Hopi ceramics over seven centuries, spanning all of the major Hopi stylistic traditions. The more than 120 pieces in The Allan and Judith Cooke Collection include early black on white ware, 14th

through 16th century Sikyatki polychrome masterworks characterized by exuberantly painted and sculpted forms, and more fluid, artistic interpretations by Hopi potters of the 20th and 21st centuries.

The story of Hopi pottery, illustrated by individual ceramics from the Cooke collection, is told in the book *Canvas of Clay: Seven Centuries of Hopi Ceramic Art* by Edwin L. Wade and Allan Cooke. In addition to being a scholar and interpreter of Southwestern ceramics, co-author Wade has a background in museum management and private and institutional curation. He has remarked, “Each piece in The Allan and Judith Cooke Collection is the finest example of Hopi ceramics. The collection is unparalleled.”

While a professor of medicine at the University of Kansas, Kansas City, Cooke became aware of Western Spirit: Scottsdale’s Museum of the West. Since its inception in 2015, the Smithsonian



Left to Right:

Nampeyo of Hano (Hopi/Tewa, c.1860-1942),
Unchained Melody Jar, c. 1905-1907.

Nampeyo of Hano (Hopi/Tewa, c. 1860-1942), Polychrome Storage Jar
with Appliqué, c. 1905.

Les Namingha (Hopi/Zuni, b. 1967), Jar, c. 1997.

Gifts of The Allan and Judith Cooke Collection.

Photo by: Bill Dambrova



affiliated institution has quickly grown into a prestigious center for studies of the American West and has been named “Best Western Museum” in the nation for two consecutive years by *True West* magazine. “After touring the museum, hearing what the museum’s director had to say about the aims for the future of the enterprise and the sincerity of the vision, I must say I was most impressed,” Cooke commented. “I believe the leadership will make this a great museum. For these reasons and others, I am gifting my collection of Hopi pottery to the Museum of the West.”

This significant acquisition affirms the museum’s rapid ascendancy to premier cultural destination. “We are honored to be entrusted with this exquisite collection,” said Mike Fox, museum director and CEO. “This exhibition is an ongoing tribute to the people of Hopi and as such, serves as an important resource for research, education and inspiration for the tribe, our local community, students, artisans and visitors worldwide. We are deeply appreciative of Dr. Cooke’s generosity and this opportunity to celebrate these gifted artists.”

“It’s amazing to see how far back Hopi pottery goes and the awesome condition the ceramics are in,” commented Rose Hawee, Hopi cultural advisor to the museum. “This permanent exhibit provides the tribe, and all people, with the opportunity to enjoy the Hopi’s legacy and realize how important it is. Hopefully, it will also encourage the younger generation to continue making pottery.” In an effort to facilitate this outreach, Native American guests will receive free museum admission through December 30, 2018.

Exhibition Photos on this page:
 “Canvas of Clay: Hopi Pottery Masterworks from The Allan and Judith Cooke Collection” exhibition. The Allan and Judith Cooke Gallery is sponsored by the City of Scottsdale.
 Photos by: Loren Anderson Photography

Pottery Jar Photos, Top:
 Dextra Quotskuyva Nampeyo (Hopi, b. 1928), Pomo Basket-Shaped Jar, 1966; Gift of The Allan and Judith Cooke Collection.
 Photo by: Gary Rohman

Bottom:
 Camille “Hisi” Quotskuyva Nampeyo (Hopi, b. 1964), Seven-Star Pattern Jar, 1992; Gift of The Allan and Judith Cooke Collection.
 Photo by: Gary Rohman



Postcard (L-R): Fannie Nampeyo (Hopi, 1900-1987) and Nampeyo of Hano (Hopi/Tewa, c. 1860-1942).

According to the museum's chief curator, Tricia Loscher, Native American artists played a vital role in transforming Scottsdale from a small farming and ranching community into a nationally acclaimed creative and artistic regional hub. Among the best known are Cherokee fashion and textile designer Lloyd Kiva New and Hopi jeweler, potter and painter Charles Loloma, who have inspired generations of Native American artists with their innovative designs.

In assessing the significance of the Cooke contribution, Loscher commented, "This collection tells seven centuries of stories about Hopi life and culture, and speaks to how the cultural legacy of the Hopi pottery tradition is carried on today by the descendants who create their own masterful ceramics. Having these pots return to Arizona and be placed on permanent exhibit in Scottsdale is especially relevant given the integral role Native American artists and their artworks play in elevating the city's cultural standing."

"Canvas of Clay: Hopi Pottery Masterworks from the Allan and Judith Cooke Collection" is on view through December 2019

The richly illustrated catalogue of the collection, *Canvas of Clay: Seven Centuries of Hopi Ceramic Art* by Edwin L. Wade and Allan Cooke, published in 2012 by El Otro Lado Press, Sedona, Arizona, is available from the museum store (hardcover signed by the authors, \$75; unsigned paperback editions, \$34.95).



James Garcia Nampeyo (Hopi, b. 1958), Jar, 1991; Gift of The Allan and Judith Cooke Collection.

Photo by: Gary Rohman



Clockwise from Left:

Rainy Naha (Hopi/Tewa, b. 1949), Jar, 2008.

Nampeyo of Hano (Hopi/Tewa, c. 1860-1942), Polychrome Storage Jar with Appliqué, c. 1905.

Nampeyo of Hano (Hopi/Tewa, c. 1860-1942) and Annie Healing Nampeyo (1884-1968), Bi-lobal Jar, 1900-1905.

Nathan Begaye (Hopi/Navajo, 1958-2010), Polychrome Water Canteen, 2000.

Gifts of The Allan and Judith Cooke Collection.

Photo by: Bill Dambrova

The screenshot shows the website's navigation menu with categories like Native American Art, Fine Art, Modern Art, and Books & Posters. A 'WHAT'S NEW' section features five items: a horse painting, a turquoise ring, a silver bracelet, primitive pottery, and beaded moccasins. A large banner for 'RAY ROBERTS NEW WORKS' displays 18 new paintings. Below are sections for 'NEW JEWELRY COLLECTION', 'CLAY LOCKETT COLLECTION', and 'TWO ESTATE COLLECTIONS'. A featured video for 'NAMPEYO FAMILY POTTERY' is highlighted, with a call to action to subscribe to the YouTube channel.

Old and unusual pottery fills the pages of one of the most complete sites on the Internet. Now that the Second Edition of their *Southwestern Pottery, Anasazi to Zuni* is out, Carol and Allan Hayes are offering some of the choicest pieces from their collection of over 2,000 examples of Pueblo and Desert pottery. See more than 300 treasures at summerhouseindianart.com



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VISIT OUR NEW WEBSITE

Awa Tsireh:

Pueblo Painter and Metalsmith



A New Exhibition and Book by
Diana Pardue and
Norman L. Sandfield
Heard Museum, Phoenix, AZ

by Robert Bauver & Editorial Staff

A collectors' passion has combined with outstanding scholarly research at the Heard Museum for an unprecedented exhibition of the work of San Ildefonso Pueblo artist Awa Tsireh. For the first time, the artist's metalwork is examined alongside his famed paintings. *Awa Tsireh: Pueblo Painter and Metalsmith* marks another successful collaboration by museum patron Norman Sandfield and Curator of Collections Diana Pardue, who previously worked together to produce an exhibition and publication on Native American bolo ties.

Pardue credits contemporary jewelers Yazzie Johnson and Gail Bird with the original suggestion for the exhibit. They felt Awa Tsireh's long understudied, yet highly accomplished metalwork would be of interest to current jewelers. In 2007, Pardue purchased a small, whimsical brooch in the shape of a cow for the Heard Museum Collection. Soon thereafter, Sandfield stumbled into his first contribution: "In April 2008, I was shopping in Scottsdale and saw a nice silver skunk pin hallmarked 'Awa Tsireh.' I decided to buy it as a gift to the Heard Museum. I never thought it would go anywhere beyond that nice gesture. Diana had often said in casual conversations that people had been asking

Awa Tsireh at his
workbench at the Garden
of the Gods Trading Post,
1930s-1940s.
Billie Jane Baguley Library
and Archives,
Gift of Joe and Laurel
Traugott

(opposite)
Awa Tsireh (Alfonso Roybal)
San Ildefonso Pueblo, 1898-1955
Untitled, c. 1930 Watercolor
Heard Museum Collection,
Gift of Rennard Strickland, IAC1957



her to do a book on Awa Tsireh for a long time, but she never got around to it. I knew absolutely nothing about the artist or his work, and I cannot figure out how or when we moved from the simple gift to 'Let's do a book and exhibit,' but here we are! The skunk pin ended up on the cover of the book!"

At the time, neither Pardue nor Sandfield realized the complexity of the original research project they would end up undertaking. Awa Tsireh (also known as Alfonso Roybal and Cattail Bird) was widely renowned as a painter, but little was known about his artistic achievements as a metalsmith.

Credited during his lifetime as the first modern American Indian painter, Awa Tsireh was among the first Pueblo artists to receive national recognition. In the early twentieth century, as part of the artistic awakening at San Ildefonso, men of the pueblo were becoming well known painters of their wives' pottery. Born in 1898 to Juan Esteban Roybal and Alfonsita Martinez, Awa Tsireh helped to paint traditional imagery on his mother's pots as a boy. He learned to paint on paper under the tutelage of Esther Hoyt at the pueblo's day school. Drawing inspiration from daily life, he illustrated ceremonial rituals and symbols and depicted animals in a distinctively charming style. In 1917 his watercolors were recognized by *Poetry* magazine editor Alice Corbin Henderson and her architect husband, William, who brought the young artist to the attention of Santa Fe notables Edgar Hewitt and John Sloan. A 1925 *New York Times*

article by Alice Henderson introduced Awa Tsireh to Eastern society. He would eventually travel to cities throughout the country for exhibits until his death in 1955.

Many of Awa Tsireh's paintings display a whimsical sense of humor. Not much is known of his private life, but anecdotes reveal his wry, playful nature. On a trip to New York, a reporter asked what he thought of the Empire State Building; his response was that he thought it was high.

Awa Tsireh's paintings have been featured in many prominent American museums, including a recent major survey at the Smithsonian American Art Museum. The exhibition of fifty-one of his modernist-inspired works on paper helped to bring about a new appreciation of American Indian art as fine art.

Although he received accolades for his paintings, most people remained unaware of Awa Tsireh's works in silver and copper. Sandfield explains, "There are no catalogs, no business records, and no advertising of the period. We have found little factual information that was not available to those willing to



(above)
Awa Tsireh (Alfonso Roybal)
San Ildefonso Pueblo, 1898-1955
Feather brooches, 1930s-1940s, silver
Collection of Norman L. Sandfield,
AW3, AW8, AW10

(right)
Awa Tsireh (Alfonso Roybal)
San Ildefonso Pueblo, 1898-1955
Tray, 1930s-1940s
Copper
Norman L. Sandfield Collection



do exhaustive research. It is all in the scholarly way Diana is able to weave [the insights] together that makes this a whole story.”

Notes Pardue: “Based on Jeanne Snodgrass King’s book *American Indian Painters: A Biographical Directory* and Patrick D. Lester’s later book, we knew at the onset that there were a lot of paintings in museum collections, but we had no idea that Norman would find so many examples of his jewelry, trays and other metalwork items. The diversity and complexity of the works in metal amaze us.”

Putting aside his paints and brushes for hammers, files and stamps, Awa Tsireh made a seamless transition to the metal arts. Many of his silver brooches look as if they had stepped out of one of his paintings. As early as 1930, he was spending summers at the Garden of the Gods Trading Post in Colorado Springs where he created jewelry, flatware and hollowware decorated with intricate stamp work, depicting many of the same designs that appeared in his paintings.

Sandfield recalls that at the time they began their research, “there were less than five silver and copper pieces by him in American museums. As I started collecting, I found these metal pieces to be rare, and I never would have believed that we could eventually buy 224 metal (silver, copper, and aluminum) pieces made by Awa



(top)
Three Ponies, 1920s
Watercolor
Norman L. Sandfield Collection, AE194

(middle)
Awa Tsireh (Alfonso Roybal)
San Ildefonso Pueblo, 1898-1955
Untitled, 1940-1950
Watercolor
Norman L. Sandfield Collection, AE43

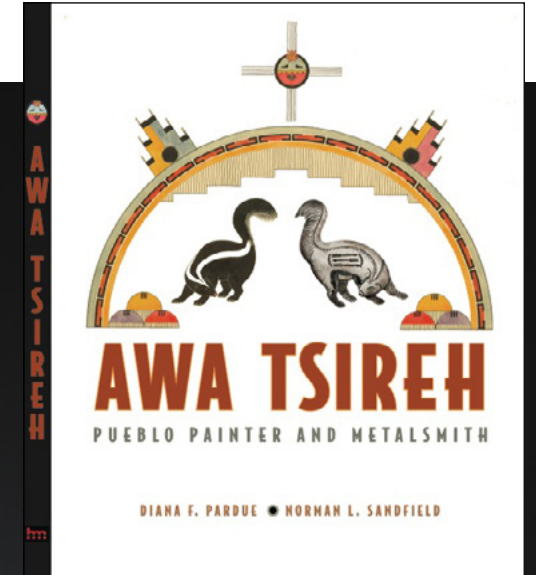
(bottom)
Untitled, c. 1925
Watercolor
Norman L. Sandfield Collection, AE165

Tsireh and other metalsmiths working with him at the Garden of the Gods Trading Post.” In addition to those acquisitions, Sandfield and Pardue have documented more than 300 other pieces, a startling total of about 582 metal works. The exhibit draws from art museums and private individuals across the U.S. in addition to the singular collection amassed by Sandfield, which he has generously promised to the Heard Museum. The search for and study of these works has led to an understanding of the signature hallmarks and trademark iconography Awa Tsireh developed throughout his career.

The evidence reveals his artistic integrity regardless of medium. “We were able to compare subjects on both metal and paper,” says Sandfield. “We were able to attribute some metal pieces without his name on them to him by an intensive study of the design stamps used.” Ultimately, this will be the lasting legacy of the exhibit and accompanying, beautifully illustrated 160-page book. The Heard Museum should be commended for fostering the enthusiasm of these spirited scholars, allowing for this landmark study.

Awa Tsireh: Pueblo Painter and Metalsmith is on view through July 1, 2018

The accompanying catalogue written by Diana F. Pardue and Norman L. Sandfield is available from the Heard Museum Shops (paperback, \$24.95).



Awa Tsireh (Alfonso Roybal)
San Ildefonso Pueblo, 1898-1955
Brooch, 1930s-1940s
Silver
Norman L. Sandfield Collection

ATADA Legal Committee Report

Fall 2017

Editor's Note:

On November 8th, the Senate Committee on Indian Affairs held a hearing on the STOP Act of 2017. While we were not permitted to testify, ATADA, along with the Committee for Cultural Policy and the Global Heritage Alliance, submitted the following written testimonies. Individual copies of these documents, the House and Senate Bill text and more are available at: atada.org/legal-issues-blog

ATADA,¹ John Molloy, President

Written Testimony submitted to U.S. Senate Committee on Indian Affairs, on the Safeguard Tribal Objects of Patrimony Act of 2017 (STOP Act), S. 1400, November 8, 2017

Mr. Chairman, my name is John Molloy and I am President of ATADA. Our organization, formerly known as the Antique Tribal Art Dealers Association, represents antique and contemporary art dealers, art collectors, and private museums. I am taking this opportunity to share the concerns of all ATADA members, especially the 52 who are constituents of the Committee's members, with S. 1400, The STOP Act.

The revised Safeguard Tribal Objects of Patrimony Act of 2017 (S.1400, H.R.3211) ("STOP Act") will not achieve its primary goal—the return of important cultural objects to Native American tribes and Native Hawaiian organizations - because the proposed legislation is fatally flawed. The problem of loss of tribal cultural heritage will not be solved by passing constitutionally suspect legislation or creating a new, unwieldy, and expensive federal bureaucracy. It will be solved on the community level, through education and the promotion of cultural understanding.

ATADA, the primary organization for art dealers and collectors of Native American art in the United States, has taken important steps to formalize changes to accepted business practices (which most Native American art dealers had already independently adopted), and began intensive community educational work to build understanding and respect for Native American concerns over the loss of cultural heritage. In 2016-2017, ATADA adopted bylaws forbidding trade in items in current ceremonial use,² established due diligence guidelines to protect buyers and sellers,³ and initiated public education programs⁴ as well as establishing a truly voluntary return program for lawfully owned ceremonial objects that has already brought dozens of important ceremonial items from collectors back to tribes in the last year.^{5 6}

This entirely voluntary program was initiated by ATADA before any federal proposal was suggested, and is the model from which the flawed federal program in the

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

² ATADA Bylaws, Article X, Trade Practices, Ethics, And Guarantees. <https://www.atada.org/bylaws-policies/>

³ ATADA Bylaws, Article XI, Due Diligence Guidelines. <https://www.atada.org/bylaws-policies/>

⁴ ATADA Symposium, Understanding Cultural Property: A Path to Healing Through Communication. May 22, 2017, Santa Fe, NM.

⁵ ATADA Bylaws, Article X, ATADA Guidelines Regarding the Trade in Sacred Communal Items of Cultural Patrimony. <https://www.atada.org/bylaws-policies/>

⁶ A Journey with Ceremonial Objects, <https://committeeforculturalpolicy.org/a-journey-with-ceremonial-objects/>

2017 STOP Act was conceived. Even vocal proponents of the STOP Act have publicly acknowledged that ATADA's Voluntary Returns Program will probably do more to bring sacred objects back to tribes than any federal interdiction program.⁷

II. The STOP Act: A Summary of Issues

The STOP Act does not identify what items would be blocked from export. Tribes hold that identification of sacred items is proprietary knowledge and may not be shared. Governor Riley of the Acoma Pueblo made this fact crystal clear in his testimony to this Committee last year when he stated: The cultural objects Acoma is attempting to protect are difficult to fully describe and publicly identify because of their sacred and confidential ceremonial use. The result is that the STOP Act makes it illegal to export certain items without identifying them, so a citizen has to guess whether his actions were legal or illegal, which would violate the Fifth Amendment's due process clause of the U.S. Constitution and create dangerous legal uncertainties for private owners of a wide range of American Indian art and artifacts.

The STOP Act states that it is official U.S. government policy to return ALL "items affiliated with a Native American Culture" to the tribes, which would include commercial jewelry, ceramics and other legal possessions.

The STOP Act will discourage the sale of all Indian art and artifacts, generate consumer confusion that will damage legitimate art dealers and tribal artisans, and create a bureaucratic nightmare for the tribes and their collaborators. It will harm regional economies, especially in Southwest. In New Mexico, for example, cultural tourism accounts for approximately 10% of jobs and about the same revenue as mining, a major state industry. Acoma Governor Kurt Riley acknowledged in testimony submitted in regard to the earlier STOP Act, that "the vast majority of inventories held by dealers or collectors are of no interest to the Pueblo," yet he proposes a pre-purchase certification system for

⁷ For example, the comments of Gregory Smith, speaking on a panel, "At the Forefront of Repatriation: New Policy and Impact Beyond the United States," School for Advanced Research (SAR), April 19, 2017, https://sarweb.org/?2017iarcss_repatriation-past_events, Santa Fe, New Mexico, and again at the ATADA Symposium, Understanding Cultural Property: A Path to Healing Through Communication. May 22, 2017, Santa Fe, NM.

⁸ Written Testimony of Governor Kurt Riley, Pueblo of Acoma, Before the Senate Committee on Indian Affairs Field Hearing on the Theft, Illegal Possession, Sale, Transfer and Exportation of Tribal Cultural Objects, Albuquerque, NM, October 18, 2016, p.8.

persons who wish to collect Indian art, "establishing a method for collectors...to receive a referral to a cultural representative of a tribe likely to be knowledgeable or aware of an object the collector is considering purchasing."⁸

The STOP Act is unnecessary and redundant. "Trafficking" in violation of NAGPRA or ARPA is already unlawful, and 18 U.S.C. § 554 already prohibits export from the United States of any object contrary to any law or regulation of the United States, while maintaining the Due Process protections that are likely voided by enforcement of the STOP Act.

ATADA's Voluntary Returns Program is a better, more effective model, which has returned dozens of important ceremonial items to tribes in its first year.

III. Background

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

Tribes also acknowledge that non-tribal members only possess a fragmented understanding of sacred objects of Indian cultural heritage. So, while some objects, such as certain ceramics and masks may be deemed sacred to a tribe and therefore inalienable cultural property, a nearly-identical ceramic or mask may not be considered sacred, and therefore

may be freely traded by tribal members and non-tribal members alike. But still, the knowledge necessary to delineate between these sacred and non-sacred objects can remain a closely guarded secret and inappropriate to publicize.

Tribal secrecy may be well justified as necessary for the health and well-being of the tribe. But when enacting legislation that hinges upon the definition of “What is inalienable because it is sacred?” and imposing severe penalties, the lack of specific, public information about what makes an object inalienable is a prohibitive legal barrier to both the exercise of due process and the STOP Act’s goal to return sacred objects.⁹

There is no question that certain items are regarded as inalienable precisely because they are sacred to the tribal community. This circumstance raises potential Establishment Clause issues with the STOP Act. Should the federal government be involved in determining what is ‘sacred’ to any religion? It is accepted as a fundamental principle of government in the U.S. that the federal government is a secular government and does not affiliate with or advance a specific religion.

The information gaps about objects’ cultural relevance and when these objects entered the stream of commerce pose impossible constitutional and practical challenges to the enforcement of the STOP Act. The United States legal system is premised on the idea that a citizen must have fair notice of our laws and an opportunity to be heard. As the Supreme Court has stated, “[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violate the first essential of due process law.”¹⁰

The items that tribes most urgently seek to repatriate from non-tribal possessors are ceremonial objects

and objects of cultural patrimony that tribes claim as inalienable tribal property.¹¹ These sacred items are also precisely the objects that many tribes say it is impossible to identify or discuss publically according to tribal customary laws. As such, notice of what items are claimed by the tribes cannot be divulged to non-tribal owners. The lack of fair warning means that a seizure or forfeiture of property would be based upon information that cannot be disclosed, which would be a blatant violation of due process of laws.

While a failure to provide for due process is a fatal flaw, the STOP Act has other serious weaknesses. The STOP Act creates no framework for administration or enforcement of tribal claims. It does not provide for management of cultural objects, nor does it include a permitting system for objects deemed lawful to export, nor does it provide any funding. It provides no standard for identification of items of cultural patrimony, such as a list or database of ceremonial items. Nor does it set for any standards of evidence for tribal claimants or means of appeal for the owners of disputed objects.

The STOP Act’s suggested voluntary returns program also adopts a grossly overbroad definition of “cultural heritage.” It establishes a federal policy of encouraging the return of countless legally and rightfully owned objects purely because they have some association with Native American culture. Not only does this infringe upon traditional notions of private property rights, it is also expected to overwhelm governmental and tribal resources, as many objects may be returned that Native American tribes did not wish to repatriate in the first place.

For example, under NAGPRA, human remains and sacred items are cultural items that the tribes feel are essential for repatriation. However, some museums routinely deem very common objects that are widely publicly traded without tribal

objections as “unassociated funerary objects” under NAGPRA,¹² as there are no clear legal definitions. Some museums return multitudes of very common objects. Other museums continue to display items that the museums themselves catalog as ‘ceremonial’ and resist returning them as not justified under NAGPRA. There simply is no standard under NAGPRA.

Exacerbating the existing lack of definition, the voluntary returns program outlined in the STOP Act encourages the return of any and all objects to tribes, regardless of whether they are covered by NAGPRA or ARPA, calling upon tribes to consult and accept anything that is returned. The STOP Act’s call for return of “items affiliated with a Native American Culture” would include everything sold by Native American artisans in the past – and today.

Under ARPA, virtually everything made more than 100 years ago is covered by the term “archaeological resource,”¹³ but only the age and original location of an object makes it lawful or unlawful to own. Moreover, ARPA’s rolling date continually expands the number of items covered under it. Sacred associations are irrelevant under ARPA.

The STOP Act’s voluntary returns program taints both the antique and contemporary Indian markets, which are major contributors to local economies and irreplaceable sources of income to tribal artisans, particularly in the American West. The total Indian art trade is estimated to be valued between \$400-800 million a year. The annual Santa Fe Indian Art Market brings over 170,000 tourists to New Mexico a year. The city of Santa Fe estimates that the market brings in \$120 million each year in hotel and restaurant revenue alone. Native artisans, many of whom rely on the Indian Art Market for as much as half of their yearly income, are also concerned that such a vague law will “taint” the entire American Indian art market in the eyes of the public. The recent experience of Alaska Natives, in which sales of Native-carved walrus ivory dropped

by as much as 40% following the elephant ivory ban, offer ample evidence of the significance of the threat the STOP Act poses to Native American artisans and many tribal economies.¹⁴

But the damage to native artisans and the legitimate markets inflicted by the U.S. policy outlined in the voluntary returns program extends beyond mere reputational harm—it could also open the federal government to due process claims of taking private property without just compensation. Instituting a policy that encourages the return of all Native American objects could severely diminish the fair market value of any Native American object, and make such objects unsellable, as buyers and sellers of Native American objects may become fearful of the repercussions should they not abide by the United States policy. Today, a “good” provenance can make the difference between a valuable object and one of little worth, or that cannot be sold at all. By instituting a policy that calls for the return of all objects with a Native American provenance, the United States government could make all objects of Native American origin unsellable and therefore commercially worthless.

IV. The Distribution and Circulation of Native American artifacts

There are millions of Native American “cultural objects” in private ownership today; but many have no ownership history, or “provenance.” Many objects have circulated for decades in the marketplace, or even for the last 140 years. For most of the 140 years in which there has been an active trade in Indian artifacts, provenance and ownership history had no legal or practical effect on the market.

The best records of early collections of Native American cultural objects are from museum sources. Harvard’s Peabody Museum expeditions included the Hemenway Southwestern Archaeological Expedition (1886-1894), which brought thousands

⁹ There is no question that certain items are regarded by tribes as inalienable precisely because they are ‘sacred’ objects. This circumstance raises potential Establishment Clause issues with the STOP Act. Should the federal government be involved in determining what is ‘sacred’ to any religion? The First Amendment’s *Establishment Clause* prohibits the government from making any law “respecting an establishment of religion,” not only forbidding the government from establishing an official religion, but also prohibiting government actions that unduly favor one religion over another.

¹⁰ *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926).

¹¹ Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001–3013, § 3001(3)(c)–(d) (1990).

¹² See, for example, the 2007 NAGPRA repatriation of 10,857 cultural items in the control of the Burke Museum, including groundstone tools, stone beads, stone carvings, knives, mortars, pestles, pipes, stone chisels, sculptures, and pendants and one bag containing over 200 seeds. Notice of Intent to Repatriate Cultural Items: Thomas Burke Memorial State Museum, University of Washington, Seattle WA 72 Fed. Reg. 29,174 (May 24, 2007).

¹³ 16 U.S.C. § 470bb(1).

¹⁴ Zachariah Hughes, “Ivory Ban Hurts Alaska Natives Who Legally Carve Walrus Tusks,” <http://www.npr.org/2016/11/24/503036303/ivory-ban-hurts-native-alaskans-who-legally-carve-walrus-tusks>.

of Zuni and Hopi artifacts from Arizona and New Mexico. In 1892, the leader of the Hemenway Expedition paid the trader Thomas Keam \$10,000 for a huge collection that included over 3000 ceramics.¹⁵ The materials in the collection were either bought by Keam and his assistant Alexander Stephen from Hopi or found in explorations of abandoned Hopi towns. Smaller, but still very substantial collections were also made by Keam for the Berlin Ethnological Museum, The Field Museum in Chicago, and the National Museum of Finland. Keam also sold widely from his trading post to collectors and tourists from across the United States.¹⁶ The materials collected by Keam and sold to the Peabody Museum were sourced from “throughout Arizona, the San Juan region of the southern confines of Colorado and Utah. They were exhumed from burial places, sacrificial caverns, ruins and from sand dunes in the localities of ancient gardens.”¹⁷ During the same years and throughout the early 20th century, private collectors purchased from the same sources that supplied museum collectors, with the 1880s and 1890s being referred to as “the heyday of the commercial pothunter.”¹⁸

Tens of thousands of cultural objects have entered the stream of commerce decades before the first U.S. cultural property legislation was enacted, the American Antiquities Act of 1906 (Antiquities Act).¹⁹ Artifacts without provenience were dug up and sold to good faith purchasers long after enactment of the Antiquities Act in 1906.

Today, the sources of cultural objects in the market and in private collections vary greatly. While many objects were taken from tribes by the U.S. government, or sold after individuals adopted Christianity, others were sold in the 1960s-1980s, when Indian ceremonial objects were avidly

collected by non-Indians who admired Native American social and environmental perspectives, or who responded to the aesthetic and creative qualities of Indian objects. Indian artifacts were sold (with or without permission of the community) because of the increasing economic values of tribal artifacts and the comparative poverty of many tribal communities.

In the last twenty-five years, awareness of tribal concerns and the harmful destruction of archaeological sites has changed everything, as attitudes have changed very much among art collectors, museums, and the general public. There is increased respect for both the sovereign rights of tribal communities and the importance of retaining sacred objects for the health of these communities. Most recently, there is a commitment on the part of art dealers and professional organizations such as ATADA, to work directly with tribal representatives to find solutions that truly serve Native American interests.

STOP Act II is redundant legislation, already covered under U.S. law

In fact, the increase in NAGPRA penalties for illegal export in the STOP Act is not a new idea. Proponents of the STOP Act ignore laws already on the books that completely meet their needs. Existing law, 18 U.S.C. § 554(a), already provides that:

Whoever fraudulently or knowingly exports or sends from the United States, or attempts to export or send from the United States, any merchandise, article, or object contrary to any law or regulation of the United States or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of

such merchandise, article or object, prior to exportation, knowing the same to be intended for exportation contrary to any law or regulation of the United States, shall be fined under this title, imprisoned not more than 10 years, or both.²⁰

This existing law applies the same scienter as the STOP Act (“knowingly”), covers objects protected by NAGPRA and ARPA (“object contrary to any law or regulation of the United States”)²¹ and already employs the same heightened penalty that STOP seeks to impose (fine or imprisonment not to exceed 10 years). This is precisely the goal that STOP was meant to achieve.²²

The penalty for violating any federal law has a long legal history of requiring due process. STOP will shift the enforcement and penalty to the unique nature of cultural property enforcement where burden of proof is shifted from the government to the importer or exporter.

In contrast to 18 U.S.C. § 554(a), the existing law, the STOP Act represents a step further in advocating enforcement that rejects the fundamental principles of Due Process.

The STOP Act’s Export Prohibition Violates Due Process Because Its Drafting Does Not Provide Adequate Notice or Procedures for an Individual to Be Heard When Their Property is Being Deprived.

Before an individual is deprived of their property right, Due Process requires that the Government grant an individual both (1) Notice and (2) Opportunity to be heard.²³ But the STOP Act provides no such notice of prohibited conduct or procedures controlling the export controls of Native American-affiliated objects. As a result, we must

assume that the default statutory standards apply.²⁴ The STOP Act’s definitions fail to provide any sort of notice of what conduct is prohibited because it fails to provide any clarity as to what is considered “sacred.”

The STOP Act’s export prohibition fails to adequately clarify for both private individuals and CBP agents of what objects are “sacred” and therefore prohibited from export and fails to provide any guidance as to how the definitions and export controls can be enforced without becoming arbitrary and discriminatory.

If a statute is overbroad, then it is unconstitutionally void for vagueness and therefore a denial of due process because it fails to provide sufficient notice of the prohibited conduct: “[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.”²⁵

The STOP Act and its underlying legislation fail to provide any clarification to differentiate between ceremonial and non-ceremonial objects, and would presumably leave the definition of “Native American cultural items” up to the U.S. Customs and Border Protection (“CBP”) and most likely tribal consultants for each and every Native American-affiliated object sought to be exported.

There is a long history of finding broad definitions of “cultural heritage” and “antiquity” unconstitutionally vague. The Ninth Circuit found the Antiquities Act of 1906’s definition of “antiquity” to be unconstitutionally vague because “the word “antiquity” can have reference not only to

15 Edwin Wade et al., *America’s Great Lost Expedition: The Thomas Keam Collection of Hopi Pottery from the Second Hemenway Expedition, 1890-1894*, 9, (1980) (See also pages 18, 25, 26, 39) and Edwin Wade et al., *Historic Hopi Ceramics* 84 (1981).
 16 EDWIN WADE ET AL., *AMERICA’S GREAT LOST EXPEDITION: THE THOMAS KEAM COLLECTION OF HOPI POTTERY FROM THE SECOND HEMENWAY EXPEDITION, 1890-1894*.
 17 Id. at 15
 18 Annual Report of Jesse L. Nusbaum, Department Archeologist and Superintendent of Mesa Verde National Park to the Secretary of the Interior, Dep’t of Interior, 6–7 (1929).
 19 American Antiquities Act of 1906, 16 U.S.C. §§ 431–433. The Antiquities Act of 1906’s undefined use of the term “object of antiquity” was held to be unconstitutionally vague and legally unenforceable in the Ninth Circuit, which includes Arizona, where the Navajo, Hopi, and Zuni lands are located. *U.S. v. Diaz*, 499 F.2d 113, 114 (9th Cir. 1974) (discussed *infra*).

20 18 U.S.C. § 554(a) (emphasis added).
 21 As previously discussed, nothing in the language of ARPA or NAGPRA suggests that “trafficking” or “transport” of covered items does not include export.
 22 The STOP Act’s desire to impose a 10-year jail sentence for violations of less than \$1 value, is grossly disproportionate to the offense. While proportionality is often rejected as the basis for a claim of excessive fines or cruel and unusual punishments, it seems impossible to conceive that the Federal Government would wish to impose such harsh penalties. Not to mention that the Federal Government is inviting a bureaucratic nightmare by failing to provide a minimum value threshold for such violations or any other such procedures to protect against selective enforcement of its own overly broad legislation.
 23 *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314 (1950).
 24 19 U.S.C. § 1600.
 25 *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903 (1983).

the age of an object but also to the use for which the object was made and to which it was put, subjects not likely to be of common knowledge.”²⁶ The complexity of determining protected “ceremonial objects” under NAGPRA goes beyond a mere minimum age threshold like ARPA and many of international legislation.²⁷ Instead, in some tribes, objects of antiquity include objects that are no more than three or four years old.²⁸

NAGPRA’s definition of “cultural item” has been met by many criticisms as unconstitutionally vague in its twenty-seven-year history.²⁹ To determine what is considered a “ceremonial object” under NAGPRA, there is still no standard criteria among the tribes and/or museums that could provide the public or the CBP with any guidance about what should be repatriated.

Outlining a list of protected objects may provide a more fair and reasonable notice to individuals, but would be nearly impossible to employ under the STOP Act. For example, the Convention on Cultural Property Implementation Act (“CPIA”) requires the Secretary of the Department of the Treasury, upon entering into an agreement with a State Party or emergency action, to publish a descriptive list designating categories of archaeological or ethnological material subject to import restrictions under a specific agreement, so long as each listing is “sufficiently specific and precise to ensure that:

(1) the import restrictions under section

26 United States v. Diaz, 499 F.2d 113, 115 (9th Cir. 1974).

27 For example, ARPA, Egypt and Afghanistan protect objects greater than 100 years old. 16 U.S.C. § 470bb; Egyptian Law on the Protection of Antiquities, art. 1 (1983); Law of May 20, 2004 (Law on the Preservation of the Historical and Cultural Heritage) art. 2(a) (Afghanistan).

28 United States v. Diaz, 499 F.2d 113, 114 (9th Cir. 1974) (there finding the

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

30 19 U.S.C. § 2604 (emphasis added).

31 Governor for the Pueblo of Acoma Kurt Riley notes that “Our traditions and cultural laws often restrict us from publicly discussing some of these items that are sacred and used in ceremony, known and understood for the most part by my Acoma people.” The Theft, Illegal Possession, Sale, Transfer and Export of Tribal Cultural Items: Field Hearing Before the S. Comm. on Indian Affairs, 114th Cong. 27, 29 (Oct. 18, 2016) (Statement of Hon. Kurt Riley, governor, Pueblo of Acoma).

32 As suggested by Ann Rogers, Esq., when speaking at CLE International Visual Arts & the Law Conference, Santa Fe, NM July 28–29, 2016.

2606 of this title are applied only to the archaeological and ethnological material covered by the agreement or emergency action; and

(2) fair notice is given to importers and other persons as to what material may be subject to such restrictions.³⁰

But the closely guarded nature of many Native American sacred traditions prevents the creation of a similar list. Although a few (mostly northeastern U.S.) tribes have created list of items that they wish to have repatriated, most feel it is not appropriate to do so. Many southwestern U.S. tribes, including the Acoma, Laguna, Hopi, and Navajo, have stated that they cannot and will not reveal such information, as the only persons with a specific religious authority with the tribal community are permitted to possess such knowledge. As such, this information is not appropriate to share with anyone outside the tribes, including academic committees, the public, and law enforcement.³¹ It is their right and choice to withhold information that is not proper to share with outsiders, but this right does not diminish the United States Constitution’s requirement that individuals receive sufficient fair notice and due process when they may be deprived of their private property.

Similarly, the solution to “ask the tribes” or provide a tribal hotline,³² though a facially reasonable proposal, would be equally unfeasible in follow through. A hotline would impose an impossible burden on tribal organizations to (expeditiously) consult on potentially

hundreds of thousands of Native American objects in private circulation. And if the exporter or CBP wishes to consult on a particular object, which of the 567 federally registered tribes should they call? Should they instead call the NAGPRA committee designated under NAGPRA,³³ even though the committee does not have authority under NAGPRA and nothing is provided for such consultation in the statute? Or should they consult the “Tribal Working Group” established in STOP Act’s other provisions?³⁴ Ultimately, it is unclear whether anyone would even be able to obtain the information necessary to understand whether the object is sacred or not, even after determining who the proper contact should be.

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

STOP Act II unconstitutionally violates Due Process because it provides no procedures for an individual’s opportunity to be heard.

Due process requires precision and guidance so that those enforcing the law do not act in an arbitrary and discriminatory way.³⁵ The STOP Act presumably only permits an opportunity to be heard after seizure. There is nothing in the STOP Act permitting a preemptive certification process that would alleviate the administrative burden on the CBP and prevent uninformed seizures of individuals’ private property.

Furthermore, the STOP Act fails to provide any guidelines or forethought as to either the time or manner of hearing for exporters to dispute seizure of their Native American-affiliated property. STOP sets

33 25 U.S.C. § 3006(b).

34 Safeguard Tribal Objects of Patrimony Act of 2017, H.R.3211, 115th Cong. § 5, (2017).

35 See United States v. Williams, 553 U.S. 285, 306 (2008).

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

forth no potential procedures to control administration of STOP’s export prohibitions such as (1) a maximum holding period for the seized object, which was suggested in the previous incarnation of the Act;³⁶ (2) a licensing or certification system like the CPIA; (3) any standards of evidence (4) a list of actual items that are likely subject to export restrictions. All of these fails to give any advance notice of an opportunity to be heard so they may proactively avoid seizure or argue against seizure of their property.

The STOP Act will not pass constitutional muster, nor can it reasonably be administered. ATADA is committed to working with tribes for better solutions.

ATADA believes it is crucial to honor Native American traditions, to ensure the health and vitality of tribal communities, and to respect the tribes’ sovereign rights. We also believe it is important to preserve the due process rights of U.S. citizens and to promote the trade in Native American arts that sustains many tribal and non-tribal communities in the American West and across the country. The STOP Act is ill-conceived legislation that will achieve neither goal and it should not be passed into law.

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

I would like to thank the Committee on behalf of the over fifty ATADA members in the states that Committee members represent for the opportunity to present testimony. ATADA requests the Committee to focus on and to carefully consider all the concerns raised regarding the impact of this legislation before proceeding further.

Committee for Cultural Policy¹

Written Testimony submitted to U.S. Senate Committee on Indian Affairs, on the Safeguard Tribal Objects of Patrimony Act of 2017 (STOP Act) S. 1400

November 8, 2017

Mr. Chairman, my name is Kate Fitz Gibbon and I am the Executive Director of the Committee for Cultural Policy, a non-profit organization dedicated to educating the American public and urging an open discourse as the foundation of a balanced cultural policy in the US. The Committee for Cultural Policy supports museums and the museum mission to preserve, research, and display art and artifacts for the public benefit. We support the lawful circulation of art and artifacts, as Congress did in enacting the 1983 Convention of Cultural Property Act and the 1979 Archaeological Resources Protection Act (ARPA).

The Committee for Cultural Policy (CCP) has identified a number of key concerns with the STOP Act:

- The STOP Act will discourage collecting and trade of lawfully owned Native American objects, undermine cultural tourism, which is an economic mainstay of several Western states, and create legal uncertainties for the hundreds of thousands of Americans who have collected Native American art and artifacts for generations.
- The STOP Act fails to define the difference between ceremonial and non-ceremonial objects, and it leaves the definition of “Native American cultural objects” subject to export prohibitions open to new tribal interpretation for each Native American object seeking export. The knowledge of what is communally owned and inalienable is privileged information, and may be known only to initiates within each tribe.
- The Stop Act would violate the individual right to due process under the Fifth Amendment by making it illegal to export certain items without giving the individual proper notice of what items are illegal to export.

- The STOP Act is unnecessary because “trafficking” in violation of NAGPRA or ARPA is already unlawful, and 18 U.S.C. § 554 already prohibits export from the United States of any object contrary to any law or regulation of the United States, and imposes ten years’ jail time for a first offense.
- The STOP Act establishes as official U.S. government policy the return of *all* “items affiliated with a Native American Culture” to the tribes, which would include millions of objects currently in lawful circulation in the US, and millions more in American museums.

We have highlighted the following issues in the STOP Act that are of particular interest to American museums and the collectors that support them.

1. **The STOP Act makes it federal policy to encourage the return of *all* Native American-affiliated objects to tribes. This could damage cultural tourism, particularly in the West, eliminate a major form of art collecting and art appreciation, and destroy hobbyist activities that are legal, educational and give pleasure to hundreds of thousands of Americans.**

The STOP Act’s federal returns program is based on a new and dangerous federal policy to encourage the voluntary return of all Native American-affiliated items to tribes, even when ownership and trade in such objects is perfectly legal. STOP Act fails to address what the repercussions will be for “collectors, dealers, and other individuals and non-Federal organizations that hold such heritage” who do *not* to engage in the returns program and attempt to sell or donate these legally-owned objects to a museum or other organization.

The “tangible cultural heritage” protected by the STOP Act’s returns policy extends beyond any individual’s

reasonable expectations because this policy seeks to curb the trade of *any* “culturally, historically, or archaeologically significant objects, resources, patrimony, or other items that are affiliated with a Native American culture,”² regardless of an object’s legal title, cultural significance, economic value, or even the tribes’ desire to have the object returned. Is the STOP Act truly seeking to have every miniscule potsherd and arrowhead returned to Native American tribes? Every Native American ceramic pot, rug or bracelet?

To give just one example of the type of legal material affected by this provision of the STOP Act, the prohibition against trafficking in archeological resources in ARPA specifically excludes arrowheads found on the surface of the ground. President Jimmy Carter was just one of thousands of American hobbyists who have collected arrowheads legally since they were children. There are now hundreds of hobbyist groups of arrowhead collectors, with hundreds of thousands of members, who like President Carter, are enthusiastic collectors of arrowheads. These clubs may be found in every state in the U.S.

The adverse effects of the STOP Act’s “voluntary” returns program and Tribal Working Group will affect not only private dealers and collectors, and private individuals, but also the Native American artisans who rely on the sale of their artworks to support their livelihood. Is that truly the outcome that the STOP Act seeks to achieve?

2. **The creation of a federal policy that encourages the return of *all* Native American-affiliated objects to tribes could deprive legally owned objects of their fair market value, amounting to a regulatory taking.**

The STOP Act’s adoption of a federalized return policy applying to all Native American affiliated objects policy will likely result in an insidious regulatory taking by destroying the value of American private property and threatening the collections of America’s

citizens, museums and cultural institutions, as well as the viability of many businesses and Native American artisans.

Supreme Court precedent recognizes two forms of takings for Fifth Amendment purposes: First, where the government requires permanent physical invasion of individual’s private property, however minor, there must be just compensation.³ Second, and more relevant to the STOP Act’s dangerous effects, is where regulations completely deprive an owner of “*all* economically beneficial us[e]” of his or her property.⁴

In the seminal case on government takings, *Penn Central Transp. Co. v. New York City*, the Supreme Court outlined three main factors to determine whether there has been a taking within the scope of the Fifth Amendment: (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation interferes with investment-backed expectations and (3) the character of the government action.⁵

Later, in *Lingle v. Chevron*, the Court applied the *Penn Central* and other ‘takings’ jurisprudence to conclude that any taking inquiry “turns in large part. . . upon the magnitude of the regulation’s economic impact and the degree to which it interferes with legitimate property interests.”⁶

There is no disputing that individuals, ranging from private collectors to tribal artisans have legitimate private property interests in these objects. No regulations at the time of acquisition of this property would put the individual on actual or constructive notice that these objects would be subject to such broad oversight.⁷ Thus, their investment-backed expectations would reasonably include the rights to buy, sell, and possess the item so long as the object was not illegally acquired in contravention of state or federal law, such as ARPA and NAGPRA. These are some of the most fundamental “sticks” that form legitimate property interests under United States law.

¹ The Committee for Cultural Policy, POB 4881, Santa Fe, NM 87502. www.committeeforculturalpolicy.org, info@committeeforculturalpolicy.org.

² H.R.3211, 115th Cong. § 3(5) (2017).

³ *Lingle v. Chevron USA Inc.*, 544 U.S. 528, 538 (2005).

⁴ *Lingle v. Chevron USA Inc.*, 544 U.S. 528, 538 (2005) (citing *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992)).

⁵ *Penn Central Transp. Co. v. New York City*, 438, U.S. 104, 124 (1978);

⁶ *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 539–40 (2005) (citing *Penn Central Transp. Co. v. New York City*, 438, U.S. 104 (1978); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992)).

⁷ See e.g., *Good v. United States*, 189 F.3d 1355 (Fed. Cir. 1999), cert. denied, 529 U.S. 1053 (2000).

The impact on the economic value of these objects is both predictable and deleterious. The proposed federal voluntary returns policy fails to address what the repercussions will be for the individuals who do not to engage in the voluntary returns program and attempt to sell their property or even donate it to a museum or other organization. Instead, this policy creates a stigma on objects and individuals who do not comply with this “voluntary” returns program — a stigma that can completely diminish the market value of that object, denying the property owner of the right to earn a “reasonable return” on his or her property.⁸

The STOP Act’s institution of a Tribal Working Group to provide recommendations regarding “the return on tangible cultural heritage by collectors, dealers, and other individuals and non-Federal organizations”⁹ is further problematic. The Act creates an oversight group that is not limited to recommending the return of illegally removed or trafficked objects in violation of federal law. Rather, the Act delegates to this Tribal Working Group the right and responsibility to recommend the return of any and all *legally* owned objects, regardless of whether those objects were part of the voluntary returns program. Collectors, museums, dealers, hobbyist groups, etc. have no voice.

How else will this Tribal Working Group find out about objects owned by collectors, dealers, and other private individuals, except by closely supervising the trade of Native American-affiliated items? Not only is this an exceptionally overbroad delegation of power, it will also contribute to a stagnation in the trade of Native American objects, as individuals will no longer be able to trade in these objects without constant fear that the Tribal Working Group may intercede and recommend the object be returned.

With such power granted to this Tribal Working Group, Native American-affiliated objects will likely become unsellable, as individuals and institutions will likely refuse to purchase or accept these objects because of the stigma now attached to these otherwise lawfully-owned

objects. Such an adverse economic impact would eventually amount to a regulatory taking because the policy will deprive numerous collectors, dealers, and individuals of the fair market value of their property without any just compensation.

3. The STOP Act’s Returns Program’s Policy Also Contradicts ARPA’s Intention That Private Collections Remain a Resource for Preservation and Study of Native American Culture

While the intentions of the STOP Act’s voluntary returns program are understandable—even admirable—the policy directly contravenes the very policies of ARPA and NAGPRA, which undergird the STOP Act itself. This policy acknowledges that American tribes do not have a superior right to all Native American-affiliated objects, simply because these are Native American in origin. Our country has had a long history of protecting private property rights. Native American art and artifacts collected by American citizens have long been interpreted as private property, and our constitution requires that certain due process requirements be met before they are taken away.

Art traders and the collecting community have been accused in the media of exploiting Indian culture, especially in light of the 2015 auction sales in Paris of sacred masks and statues belonging to the Native American Hopi tribe. The major Native American art trade organization ATADA has adopted bylaws forbidding trade in items in current ceremonial use,¹⁰ established due diligence guidelines to protect buyers and sellers,¹¹ and initiated public education programs¹² as well as a truly voluntary returns program that has brought dozens of important ceremonial items back to tribes in the last year.¹³

But it should be remembered that the vast majority of the trade in Indian artifacts - virtually *all* the trade in current market - is completely legal, and that Congress deliberately excluded pre-existing privately held collections of artifacts from ARPA’s prohibitions

on trafficking, in part because they formed a valuable resource for academic study. ARPA’s Findings and Purpose states:

“The purpose of this chapter is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979.”¹⁴

ARPA’s legislative history reinforces this policy:

“The Committee is concerned that greater efforts must be undertaken by the Secretary and professional archaeologists to involve to the fullest extent possible non-professional individuals with existing collections or with an interest in archaeology. The potential benefit of this increased cooperation is enormous; there is a wealth of archaeological information in the hands of private individuals that could greatly expand the archaeological data base on this country.”¹⁵

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

“Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to October 31, 1979.”¹⁶

As applied in Section 4(a) of the STOP Act, the implementation of a voluntary returns program of *all* Native American-affiliated objects supports a blanket federal policy to completely end the trade, collection, preservation in institutions, museum holdings and any other form of possession of Native American art of all kinds by US citizens.

4. STOP Is Unprecedented and Untested

- 14 16 U.S.C. § 470aa(b).
- 15 H.R. REP. 96-311, *12, 1979 US.CC.A.N. 1709, **1714
- 16 16 U.S.C. § 470ee(f).

Legislation as an “Export Law.” It is Radically Different from All Other Export Laws and Cultural Property Laws Around the World.

Typically, export laws in developing nations prohibit export of *all* cultural property, which includes everything from paintings to postage stamps over 50-100 years old. This is often the case where a nation has a history of colonial exploitation and also, very importantly, where the local economy is too weak to retain important art or manage resources. The US is by far the largest market in the world for Native American art.

Laws in some totalitarian nations prohibit *all* export as a means of centralizing and controlling movement of property and sometimes as a means of limiting free expression of ideas. So, for example, books and historical documents are considered cultural property under these laws.

Laws in some developed nations (such as Great Britain or Canada) require a permit for export of items over a certain age and value. Permits are almost always granted, and when they are not granted, the law provides for systems (government grants, special purchases) to acquire the art for the nation at Fair Market Value. To be subject to export review, objects considered ‘ethnographic material’ must have a fair market value of \$3,000 if made by an “Aboriginal person.”

In the UK, an exporter is required to obtain a permit in order to export artworks and historic objects meeting criteria based on Fair Market Value, archaeological status or origin. The Arts Council’s Committee on the Export of Works of Art and Objects of Cultural Interest (RCEWA) advises the government on whether to retain an artwork or grant an export license. Permission to send the item out of the UK may be refused in order to allow time for repurchase of the artwork by a UK museum or charitable fund. Repurchases are usually supplemented by public donations.

Laws in other developed nations regulate export of all art in a national inventory, based on a specific list of identified objects that are restricted from permanent or temporary export. Each object subject to export restriction is individually cataloged. This is the case in Japan, where cultural property of different degrees of

8 [Penn Central Transp. Co. v. New York City](#), 438, U.S. 104, 129 (1978).
 9 H.R.3211, 115th Cong. § 5, (2017).
 10 ATADA Bylaws, Article X, Trade Practices, Ethics, And Guarantees. <https://www.atada.org/bylaws-policies/>
 11 ATADA Bylaws, Article XI, Due Diligence Guidelines. <https://www.atada.org/bylaws-policies/>
 12 ATADA Symposium, Understanding Cultural Property: A Path to Healing Through Communication. May 22, 2017, Santa Fe, NM.
 13 ATADA Bylaws, Article X, ATADA Guidelines Regarding the Trade in Sacred Communal Items of Cultural Patrimony. <https://www.atada.org/bylaws-policies/>

importance is documented and classified into categories from freely exportable to lawful for temporary export for exhibition purposes (just over 10,000 items in the entire history of Japanese art), to unlawful to export under any circumstances (about 1400 individual items, many in the Imperial collections).

Industrial nations also prohibit trade in very specific non-art commodities, either to protect industry or limit access to technology, for example nuclear or weapons technology.

STOP does not fit into any of these categories of existing laws. It's not based on value, not on a list of objects, or defined types of items that cannot be exported. That means that there are no similar models, in the US or internationally, that we can look to and compare how other laws have worked in the past. That no such system has ever been tried in any other country should discourage the broad imposition of highly restrictive policies affecting virtually all Native American art.

5. Conclusion

The Committee for Cultural Policy urges that the Senate Indian Affairs Committee seriously consider alternatives to the STOP Act to find a cure for the serious concerns of the tribes. The answer cannot be found in

the flawed legislation of the STOP Act. Instead, this Committee should consider as alternatives:

- legislation to more efficiently bring objects and ancestral remains already under federal government control back to the tribes, to ensure adequate funding for National NAGPRA, to fund tribal cultural offices, and to develop tribal legislation to ensure that important cultural resources remain permanently in tribal hands;
- educating the public on tribal values;
- facilitating truly voluntary returns of important cultural objects;
- building tribal government capacities and cultural heritage institutions, and creating tribal organization(s) to accept voluntary donations.

I would like to thank the Senate Indian Affairs Committee for the opportunity to present testimony. The Committee for Cultural Policy respectfully requests the Senate Indian Affairs Committee to carefully consider all the concerns raised regarding this legislation and to reject the STOP Act as written.



Hearing Testimony of Peter K. Tompa, Executive Director, Global Heritage Alliance, Regarding the Revised Safeguard Tribal Objects of Patrimony Act of 2017 (S.1400, H.R.3211) ("STOP Act"), November 8, 2017

Mr. Chairman, my name is Peter Tompa. I am testifying on behalf of the Global Heritage Alliance ("GHA").¹ The GHA's mission is to foster appreciation of ancient and indigenous cultures and the preservation of archaeological and ethnographic artifacts for the education of the American public.

The GHA wishes to express a number of concerns with this well-meaning legislation, whose goals and objectives we share. As currently written, STOP will fail to achieve these goals. At the same time, it will have significant negative consequences for the legitimate trade in Native American artifacts, undercutting both its avowed purpose and threatening an individual's right to

due process. Nevertheless, the GHA stands willing to work with the bill's sponsors to ensure the bill accounts for our concerns.

If History is any Guide, the STOP Act Will Encourage Customs to Shift the Burden of Proof Administratively on to the Exporter to Demonstrate that the Property was Lawfully Removed from Federal or Indian Lands.

STOP builds on the Archaeological Resources Protection Act ("ARPA"), 16 U.S.C. 470aa-470mm; Public Law 96-95 and The Native American Graves Protection and Repatriation Act ("NAGPRA"), Pub. L.

¹ For more about GHA, see its website, <http://global-heritage.org/>

101-601, 25 U.S.C. 3001 *et seq.* ARPA and NAGPRA place the burden of proof on the federal government to prove that an individual was aware of the illegal nature of the underlying crime. ARPA and NAGPRA also require the government to prove the defendant was aware of the facts and circumstances that constitute the crime. In some circuits, it means that the government must prove the defendant knew the item was an archeological resource that was illegally excavated. This presents a significant challenge to the government, since it must prove that the current possessor knew of the illegal conduct.²

The same considerations apply to civil forfeitures made pursuant to these statutes. Requiring the government to prove the elements of its case under the preponderance of the evidence standard applicable to civil forfeitures provides property owners with protection from government seizure of property whose origin is unknown.³ Given the hundreds of thousands of items that are not in violation of ARPA or NAGPRA but lack documentation, this is a significant protection to collectors and small businesses that deal in Native American artifacts.

However, current enforcement of another "cultural property" statute, the Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601 *et seq.* ("CPIA"), should raise red flags about how the STOP Act may be enforced in practice. The CPIA authorizes the imposition of import restrictions on "designated" archaeological and ethnographic objects illegally removed from their country of "first discovery" after the effective date of the restrictions. 19 U.S.C. § 2606. The CPIA explicitly places the burden of proof on the government to make out each of these elements. 19 U.S.C. § 2610. Unfortunately, despite the CPIA's plain meaning, implementing regulations place the burden of proof on the importer, not the government, to prove the negative, i.e., that the object was exported from its country of first discovery before the date import

restrictions were imposed. Given the modest value of most imported cultural goods and the high cost of legal services, in practice this usually means that the importer defaults and the government is able to forfeit the property without a fight. The implementing regulations thus make it easy for the government to prevail over collectors and small businesses, wrongfully denying them the protections Congress intended.

If STOP becomes law, regulatory authorities will have a similar incentive to ensure whatever the legislative intent, the burden of proof is placed on the individual, not the government. The problem is that prosecutors will have a difficult time proving that items are stolen, "and from where they might have been taken."⁴ With trade of Native American objects active since the nineteenth Century, the absence of provenance information for the vast majority of objects, and the STOP Bill's all-inclusive definition of "cultural objects," it would be almost impossible for U.S. Customs and Border Protection ("CBP") to expeditiously decide whether an object can be exported or not. As a result, CBP may require exporters to make certain evidentiary showings to demonstrate that their object is not stolen. In other words, with no procedures in place, there is nothing stopping the CBP from employing a similar burden-shifting mechanism to enforcement of the STOP Act. And like the challenges facing importers under the CPIA, it is almost impossible to prove (or disprove) that a Native American-affiliated object was found on private lands, federal lands or tribal lands.

Even worse than the CPIA, which incorporates only time and location considerations, the STOP Act adds the challenge of evaluating whether the object is "sacred," a fatal flaw to providing fair notice to the individual that their property may be subject to export restrictions. As part of an individual's opportunity to be heard, this could place an even greater burden on the individual to demonstrate to CBP that an object does not fit within STOP Act's definitions of "Native American cultural

² The Theft, Illegal Possession, Sale, Transfer and Export of Tribal Cultural Items: Field Hearing Before the S. Comm. on Indian Affairs, 114th Cong. 12 (Oct. 18, 2016) (Statement of Tracy Toulou, Director of Tribal Justice, U.S. Department of Justice).

³ Civil forfeitures under ARPA and NAGPRA should be governed by the provisions of the Civil Asset Forfeiture Reform Act of 2000, which also places the burden of proof on the government. 18 U.S.C. §983(c).

⁴ The Theft, Illegal Possession, Sale, Transfer and Export of Tribal Cultural Items: Field Hearing Before the S. Comm. on Indian Affairs, 114th Cong. 24 (Oct. 18, 2016) (Statement of Cheryl Andrews-Maltais, Senior Advisor to the Assistant Secretary—Indian Affairs, U.S. Department of the Interior).

heritage,” an even more burdensome requirement than that placed on importers under the CPIA.

The STOP Act’s Vague Definitions and Procedures will Lead to Selective Enforcement of the Export Prohibitions.

As a result of the lack of fair notice to both the CBP and individuals, the CBP will likely be tasked with enforcing legislation where they have no means of carrying out informed and uniform enforcement. Where inherently vague statutory language permits selective law enforcement, there is denial of due process.⁵ In striking down a flag desecration statute in *Smith v. Goguen*, the Supreme Court noted that flag desecration statutes are often void for lack of notice because these statutes fail to acknowledge that “what is contemptuous to one man may be a work of art to another.”⁶ Similarly, the STOP Act fails to distinguish that “what is ceremonial to one tribe may be a work of art to another.”

Even if Native American tribes do become involved in defining what is “sacred” and therefore unexportable, interpretations will likely be incongruent and lead to disparate results depending on which tribe is contacted or the level of the tribal liaison’s expertise.

For example, the Antique Tribal Art Dealers Association (“ATADA”) has a policy that attempts to return certain objects to Native American tribes. In implementing that policy, ATADA has conferred with designated tribal cultural heritage experts. In this process, it has happened that only an expert within a tribe could identify one of several similar objects as being important to the tribe, while the non-tribal layperson, although very experienced, could not have made the determination.

The bottom line is that the legislation as currently drafted, although seeking worthy objectives, erodes

individual due process rights by encouraging Customs to reverse the burden of proof, something that will inevitably result in an uncompensated taking. Such abuses may well be unavoidable under the STOP Act given the unique challenges that the STOP Act will place upon law enforcement. Governor Kurt Riley of the Acoma Pueblo aptly summed up the problem before this Committee last year when he stated: *The cultural objects the Acoma is attempting to protect are difficult to fully describe and publicly identify because of the sacred and confidential ceremonial use.*

Given the task of protecting a few secret and undefined items in the midst of a vastly greater number of legal items with no provenance, there can be little doubt that the enforcement result will mirror CPIA import restrictions that reverse the burden of proof. Such a state of affairs will violate Due Process and threaten the legality and value of significant numbers of legal items without providing significant, effective protection to sacred items.

Conclusion

In summary, the GHA asks the Committee to address these real and valid concerns as part of the legislative process. As proposed, the legislation threatens uncompensated takings without offering a clear path to achieve the legislation’s stated objectives. Allowing law enforcement to shift the burden of proof is unfair to owners of legal objects. Moreover, there is a real danger that the law will become unenforceable. By treating so many objects as potentially tainted, federal authorities will be unable to provide comprehensive or consistent enforcement and are likely to miss the most important illegal objects. In addition, a presumption of guilt combined with the difficulty of proving an object is legal will drive legitimate participants out of the market, reduce transparency, and harm all legitimate trade, and the cultural understanding it brings.

⁵ *Smith v. Goguen*, 415 U.S. 566, 576 (1974) (finding that a Massachusetts flag desecration statute prohibiting “contemptuous” treatment of the U.S. flag was unconstitutionally vague and overly broad because it failed to draw reasonably clear lines between the kinds of nonceremonial treatment of the flag that are criminal and those that are not.)

⁶ *Goguen*, 415 U.S. at 574.

Learn More:

Individual copies of these testimonies, the House and Senate Bill text and more are available at: atada.org/legal-issues-blog

We need your help to continue our efforts against this and other legislative issues. Please make your contribution to the ATADA Legal Fund today! Learn more at: atada.org/legal fund

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If you want to protect your collection and your ability to transact business in ethnographic antique art, please contribute to the Legal Fund.

So far less than 20% of our membership has contributed. These few cannot do the work for all. ATADA’s legal fund has supported a productive, professional dialog with tribes and their attorneys, legislative staff, and members of Congress. We have been able to make positive changes and helped legislators to understand and appreciate the harm that ill-considered laws will have on our dealer, collector, and museum community as well as on the Southwest’s regional economy and cultural tourism.

The good results of our positive actions will extend far into the future. The negative impact of bad laws will be nationwide, and potentially disastrous for collecting and the trade.

It is essential that this work continue. If you have not already done so, please join us in saving our rights to collect and to conduct our business.

Please make your contribution today.
Any amount is appreciated and necessary.

- John Molloy
President, ATADA

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Legal Briefs

“Potato, Potahto...Tomato, Tomahto” Connoisseurship, Provenance, and Authenticity in Tribal Art

by Ron McCoy

The days when tribal art objects from the Americas, Africa, and Oceania could be lumped together as “primitive art” are over.

In 1957, the politically and culturally savvy Nelson Rockefeller called the Manhattan brownstone housing his collection of world art the Museum of Primitive Art. Few of that era’s cognoscenti probably even blinked.¹ Yet even then, numerous examples of tribal art enjoyed status as highly-valued objects of considerable appeal, a development attributable in large part to their association with such Modernists as Paul Gauguin, Paul Klee, Pablo Picasso, and Max Ernst.²

Tribal art’s growing acceptance presents challenges and opportunities, as we deal with expanding definitions and rising expectations. For instance, as tribal art settles into its rightful place at the table should it be studied in a similar fashion, using similar language, and through similar evaluative lenses as those used for studying other works of art? If so, it’s important to bear in mind that the customary viewing platform is founded on ideas about connoisseurship, provenance, and authentication. (Each of these concepts comes with its own attributes and potential legal consequences, which we will examine in more detail in future columns. This column is intended to provide an overview.)

As cinema’s magical hoofers Fred Astaire and Ginger Rogers prep for the celebrated roller skating sequence in RKO’s Depression era lifter-upper *Shall We Dance*, they sing “Let’s Call the Whole Thing Off.” The catchy ditty is lyricist Ira Gershwin and his composer brother George’s playful take on the tendency for people from diverse backgrounds to pronounce the same word differently. “You like potato and I like potahto,” Astaire notes ruefully to Rogers. “You like tomato and I like tomahto.” Confronted by other examples of their differences – such as *either* and *eyether*, *neither* and *nyther* – the lovebirds consider splitting up. (They don’t, of course, because their differences are superficial and “we know we need each other.”)

A similar dynamic involving different takes on fundamental terms exists in the art world when it comes to the discrete yet related topics of connoisseurship, provenance, and authentication (however those words may be pronounced).

This art world trio has long been applied to subjects ranging from Egyptian sculptor Thutmose’s iconic bust of Nefertiti, to ancient Roman copyists’ replicas of now vanished Greek statuary, to Renaissance frescoes, and the works of artists running the gamut from the anonymous Upper Paleolithic creators of painted bestiaries adorning the walls of caves to the anything-but-anonymous Andy Warhol. Connoisseurship, provenance, and authentication are also subjects of interest for those who sell, collect, and curate tribal art.

The roots of “connoisseurship” lead to the Latin term for “knower,” and, almost invariably, the word connotes an image of a robe-clad don huddled behind cloistered halls of ivy. Ensnared in a dimly-lit, overstuffed burrow catacombed deep inside poorly-aired chambers filled with dusty tomes, immersed in an atmosphere redolent of aromatic Turkish tobacco and a particularly musty form of academia, the connoisseur wields a magnifying glass while intently studying some *object d’art* with Holmesian thoroughness.³

The connoisseur’s examination of a piece is intended to lead to the formation of an opinion based on an encyclopedic knowledge of other objects similar in appearance, purpose, and purported origin as the one under scrutiny. From the resulting report (and others’ statements derived from it) one may expect a torrent of what I call “the bejeweled adjectives,” those semantic clues to the connoisseur’s thinking – “significant,” “seminal,” “magnificent,” “incomparable,” and so forth – which may serve as Pavlovian triggers for the rest of the art world.

Because the connoisseur’s judgment is often tied to a nebulous “sixth sense,” as legendary Old Masters art

historian Bernard Berenson once put it, the overall take-away may be one of being on the receiving end of emanations from a very mysterious place, indeed.⁴

Perhaps the most important question to ask about connoisseurship is, what are the examiner’s credentials and qualifications for expounding on the piece? (As Norman Feder, long an influential figure in the world of Native American art, noted, “Nobody can be an expert on everything, but it is certainly possible to become an expert if you specialize.”)⁵ What the connoisseur should offer is an unusually well-informed opinion based upon knowledge that runs both broad and deep, reflecting years of exposure to and study of the type of cultural artifact under review.

Another point of inquiry: Does the examiner have a vested interest in the object, a personal financial stake? (It has been observed, not kindly, that Berenson’s own career as a connoisseur was “thoroughly monetized.”)⁶ The connoisseur’s opinion is supposed to be rendered without any promise or hope of financial gain, beyond whatever fee is agreed upon prior to the rendering of the aesthetic verdict.

An object’s provenance consists of its history, its location over time. Provenance is akin to the law’s chain-of-custody concept. Because a chain of custody is susceptible to manipulation, whether by design or wishful thinking (or a combination of both), it “must be handled in a scrupulously careful manner to avoid later allegations of tampering or misconduct.”⁷

Does the piece arrive before us, like Athena springing from the brow of Zeus, seemingly bereft of background? Where has the object been and what evidence is at hand to account for its whereabouts? All works of art have some sort of history, of course. The question is to what degree details of that background are known, demonstrable, and capable of independent evaluation. Basically, we’re talking about a pedigree.

When Adrienne L. Kaeppler, currently the Smithsonian’s Curator of Oceanic Ethnology, set about identifying objects Captain James Cook (1728-1779) of Britain’s Royal Navy collected from indigenous peoples he encountered on his three voyages of Pacific exploration (1768-1771, 1772-1775, and 1776-1779), she had a pretty good idea what she let herself in for.⁸

Before denizens of Hawaii’s Kona coast killed him when he tried abducting King Kalani’ōpu’u at Kealakekua Bay, Cook covered an enormous amount of territory in his flagships *Endeavour* and *Resolution*, accompanied on his second and third journeys by, respectively, *Adventure* and *Discovery*. (They really could name ships in those days!) His stop-off points included, in no particular order, Vancouver Island, Alaska, Australia, Indonesia, Christmas Island, Tonga, the Marquesas Islands, New Zealand, the Cook Islands, the Australs, Fiji, and Tahiti. Along the way, he collected a lot of stuff, ranging from tools and weapons to frequently enigmatic carvings.

For Adrienne Kaeppler, pulling together the provenance of pieces attributed (or misattributed) to Cook’s collecting activities involved setting aside unwarranted assumptions, which meant she poured over “ethnohistoric sources including late eighteenth- and early nineteenth-century documents, such as museum catalogues, illustrations of Cook voyage specimens made during the voyage and in early English museums, and contemporary correspondence.”⁹ There’s a helluva lot of digging and sifting involved in that kind of detective work.

Speaking of Captain Cook, the University of Cambridge’s Museum of Archaeology and Anthropology possesses more than a few objects he acquired on his first Pacific expedition which boast incredibly solid provenance, having been held under a kind of metaphoric lock-and-key for the better party of nearly two-and-a-half centuries.¹⁰ (This is about as good a provenance as can be expected to exist, although investigators’ obligation to re-search the research and revise previous conclusions always remains in effect.)

Authenticators focus on the question of whether an object is genuine, typically by analyzing the materials, methods, and technologies used in creating a work, a job fully as demanding as bringing knowledge to bear in creating the connoisseur’s report and diligently tracing an object’s trajectory over time. (Authentication is *not* the same as an appraisal, which deals with fair market value, a subject Vanessa Elmore regularly addresses in this magazine’s “No Free Appraisals” column.)

The authenticator, whose heart warms naturally to matters scientific, approaches the process with an

understandable sense that “artefacts in ethnographic collections...[are] too often provenanced and dated impressionistically.”¹¹ That was the feeling of five investigators from Cambridge University, the University of Auckland, and the Metropolitan Museum of Art¹² who attempted nailing down the pedigree of “one of the most celebrated objects” in Cambridge’s Cook collection and one of the peripatetic captain’s more enigmatic acquisitions.¹³

The wooden sculpture, nearly 21-inches long, is “of unique form, comprising two double [anthropomorphic] figures and a quadruped [most likely a pig, less likely a dog], referred to as a ‘ornamental carving’ in the early inventories.”¹⁴ Examining the patination of repairs to the piece, the researchers concluded “it had led, perhaps, one life as part of a gateway over an entry to a ceremonial precinct, or the compound of a person of high status” before taking up “a further life as a relic or trophy of some sort, kept as a detached work, probably within a *marae* [communal sacred space] or temple precinct.”¹⁵

The investigators then wondered whether, as had previously been suggested, the sculpture “could already have been an antiquity,” perhaps “from somewhere in the Society Islands or Australs,” when it came into Cook’s hands.¹⁶ (Other suggested points of origin included the Cook Islands and New Zealand, although Rurutu in the Austral Islands has long enjoyed special favor.)¹⁷ Of course, there is no guarantee the sculpture originated in the place from which Cook acquired it. Those who study world art “point increasingly to the fluidity of artistic identities and to the propensity of objects to circulate through exchange or otherwise well beyond their milieu of origin.”¹⁸

Having followed the connoisseur’s and provenance searcher’s investigatory lines of inquiry about as far as they could, the researchers turned to science by subjecting wooden shavings from the piece to a pair of university labs. I can’t even pretend to understand the process involved in batch-processing small samples of wood and analyzing them for oxygen isotope ratio, or the ramifications of isotopic patterns in modern global precipitation. The lab work showed the wood from which the piece was carved came from a tree that was cut down between 1690 and 1728, which indicated the carving was about eighty years old when it came into

Cook’s possession. Oh, and that wood? It came from Tahiti.¹⁹

The three elements under review – connoisseurship, provenance, and authentication – frequently overlap and buttress one another. Each is a contribution in its own right; together they create a massively impressive resume. *E pluribus unum*.

In the best of all worlds, a work of art appears on the scene accompanied by the blessings afforded of a positive report based on knowledgeable connoisseurship, persuasive evidence of its provenance, and reliable testing of its authenticity. (For which a premium should be expected to accrue to, among other things, its monetary value). The fact that in real life such a perfect alignment of attributes is seldom seen does not relieve us from an obligation to ensure that objects bring with them as much information as possible.

Once works attain some difficult to pinpoint, albeit keenly felt, price threshold buyers understandably seek assurances and reassurances piled upon those assurances that pieces under consideration – or already adorning their home and boardroom tables and walls – are what they purport to be: genuine.²⁰ Anything falling outside that category is susceptible to being regarded as somehow – at best vaguely, at worst screamingly – suspicious, an object whose very presence mocks buyers’ understanding of and confidence in their own knowledge, taste, and judgment.

Ideally, then, for purposes of establishing a work of art’s credibility and its significance the piece ought to be wedded to the affirmative power of the art world’s Holy Trinity of impeccable connoisseurship, provenance, and authentication. Their presence is not an absolute prerequisite for appreciating an object of art, but their inclusion in the mix could assist mightily in providing it with a mantle of respectability, acceptance, and significance.

Which leaves us pondering yet another question: Should art produced by cultures within which ideas about connoisseurship, provenance, and authenticity did not appear to count for much – if at all – or were regarded in quite different ways from their customary roles in the West, be subject to evaluation based on those alien concepts?

Although each of those three elements carries inherent limitations, each also serves a worthy purpose. Absent suitable replacements – and as far as I’m aware there are none, either at present or on the observable horizon – paying attention to connoisseurship, provenance, and authenticity assists in providing us with something more powerful than a seat-of-the-pants verdict.

It’s my sense that whether or not those concepts *should* play a role in the world of tribal art is almost beyond the point, because it seems inevitable the market will increasingly *expect* it to be the case. So it seems both reasonable and responsible to encourage collectors, dealers, and curators of tribal art to engage in considering *the degree to which* the objects they buy, sell, and exhibit conform to well-established, long-accepted ideas about connoisseurship, provenance, and authenticity.

Such aspirations may or may not be fully attained, but attempting to reach them moves us from the murky vagaries of fakes, artifakes,²¹ and airport art in their myriad of forms to an appropriate recognition of those masterpieces we all cherish.

Whether the tribal art world moves en masse in this direction remains to be seen. That those who are on the purchasing end of the sell-buy continuum will expect just that, however, seems inevitable. After all, as Fred Astaire and Ginger Rogers realized while putting on their skates in *Shall We Dance*, “we need each other.”

1 Interestingly, the institution’s 1954 charter identified it as the Museum of Indigenous Art, changed two years later to Museum of Primitive Art because of concerns about whether the general public would have difficulty understanding the term “indigenous.” The Museum of Primitive Art opened to the public in 1957, closed at the end of 1974, and was dissolved in 1978. At that point, some 3,500 objects from its collections were transferred to the Metropolitan Museum of Art. “Museum of Primitive Art (New York, N.Y.),” Social Networks and Archival Context” (n.d.), <http://snaccooperative.org/ark:/99166/w60055pr>; “Museum to Show Early Native Art,” *The New York Times* (Dec. 18, 1954); “The Nelson A. Rockefeller Vision: In the Pursuit of the Best in the Arts of Africa, Oceania, and the Americas” (New York: The

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

Metropolitan Museum of Art, 2013), <https://www.metmuseum.org/exhibitions/listings/2013/nelson-rockefeller>. The Met’s Michael C. Rockefeller wing, which opened for business in 1982 with 42,000-square feet of exhibition space, is dedicated to the art of the indigenous peoples of Africa, Oceania, and the Americas. It is named for Nelson Rockefeller’s son, who, in 1961, at the age of twenty-three, disappeared while collecting artifacts among the Asmat of New Guinea. The Met, for its part, acquired some vintage works of Mexican and Peruvian origin in the late 19th century, but around 1914 transferred it to the nearby American Museum of Natural History. Grace Glueck, “A Spectacular New Wing,” *The New York Times Magazine* (Jan. 24, 1982); Carl Hoffman, *Savage Harvest: A Tale of Cannibals, Colonialism, and Michael Rockefeller’s Tragic Quest* (New York: HarperCollins, 2014). Co-Director, Center for Visual Anthropology, Department of Anthropology, University of Southern California, Nancy Lutkehaus, researching for a book tentatively titled *The Met Goes Primitive: Postwar America, Cultural Politics, and the Creation of the Rockefeller Wing of the Metropolitan Museum of Art*, describes The Met’s decision to embrace indigenous works as both a political and radical move for that era. Alana Martinez, “How Art Collected by a Long-Lost Rockefeller Changed the Met Museum Forever,” *Observer* (Aug. 26, 2015), <http://observer.com/2015/08/how-art-collected-by-a-long-lost-rockefeller-changed-the-met-museum-forever/>. As Lutkehaus points out, “When an encyclopedic museum like the Met finally decides to incorporate non-Western art, it is making a statement saying this art is as important as Greek statues and the Impressionists. It’s broadening its canon in terms of what is considered to be art, and that has a cultural impact in terms of a statement about a broader recognition, a more multicultural, more racially and ethnically diverse national identity.” Susan Bell “How, When and Why ‘Primitive Art’ Was Added to the Metropolitan Museum of Art,” *USC News* (Aug. 24,

2015), <https://news.usc.edu/85369/how-when-and-why-primitive-art-was-added-to-the-metropolitan-museum-of-arts-fine-art-collection/>.

2 William S. Rubin, “Primitivism” in 20th Century Art: *Affinity of the Trial and the Modern*, 2 vols. (New York: The Museum of Modern Art, 2002).

3 Think Kenneth Clark of television’s groundbreaking *Civilization* series, combined with the Metropolitan Museum of Art’s flamboyant director Thomas Hoving, mixed with a few dashes of Mr. Chips.

4 “It takes a very long training before you can get this sort of sixth sense, and then it is very difficult to find the vocabulary to express one’s self.” Berenson’s statement was made in connection with the contretemps attending the question of the authenticity of *La Belle Ferronnière*, a painting offered as the work of Leonardo da Vinci. Later, at the resulting trial, he noted: “It is extremely difficult, to say [how a connoisseur’s judgment is formed], exceedingly difficult, to say, because you see it is very largely a question of accumulated experience upon which your spirit acts almost unconsciously.” “Duveen Experts Give Art Lecture to Jury,” *The New York Times* (Feb. 20, 1929). See, too, John Brewer, *The American Leonardo: A Tale of Obsession, Art and Money* (Oxford: Oxford University Press, 2009) for a thorough account of the tortuous affair.

5 Norman Feder, “How to Avoid Buying Artifacts,” in George P. Horse Capture and Suzanne P. Tyler, eds., *Artifacts/Artifakes: The Proceedings of the 1984 Plains Indian Seminar* (Cody, WY: the Buffalo Bill Historical Center, 1992). 11.

6 Sam Leith, “How Honest Was Bernard Berenson?” *The Spectator* (Dec. 14, 2013), <https://www.spectator.co.uk/2013/12/bernard-berenson-by-rachel-cohen-review/>

7 “Chain of Custody: Definition(s),” EDRM Duke Law Center for Judicial Studies (2017), <http://www.edrm.net/glossary/chain-of-custody/>

8 Adrienne Kaeppler’s numerous works include “Artificial Curiosities”: *Being an Exposition of Native Manufactures Collected on the Three Pacific Voyages of Captain James Cook, R.N., at the Bernice Pauahi Bishop Museum, January 18, 1978-August 31, 1978,*

on the Occasion of the European Discovery of the Hawaiian Islands by Captain Cook, January 18, 1778 (Honolulu: Bishop Museum Press, 1978) and *The Pacific Arts of Polynesia and Micronesia* (Oxford: Oxford University Press, 2008).

9 Adrienne L. Kaeppler, “Cook Voyage Provenance of the ‘Artificial Curiosities’ in Bullock’s Museum,” *Man*, New Series, Vol. 9, No. 1 (Mar. 1974), 68-92 (68).

10 These artifacts were “brought together by Cook personally, given by him to his Admiralty patron, Lord Sandwich [John Montagu [1781-1792], 4th Earl of Sandwich and First Lord of the Admiralty], and presented by Sandwich to [Cambridge’s] Trinity College in October, 1771, only three months after *Endeavour’s* return to England. A delivery note in the form of a list, and an early inventory, are extant in the College’s archives and constitute the core of the documentary evidence for the collection’s provenance... The collection was placed on deposit at the Museum of Archaeology and Anthropology in two stages, in 1914 and 1924, and has been held there since.” Nicholas Thomas, Trisha Biers, Lauren Cadwallader, and Maia Nuku, “The Provenance, Date and Significance of a Cook-Voyage Polynesian Sculpture,” *Antiquity*, Vol. 91, No. 355 (Feb. 2017), 224.

11 Thomas, Biers, et. al., 223.

12 Nicholas Thomas of Cambridge’s Museum of Archaeology and Anthropology, Trisha Biers of Cambridge’s Department of Archaeology and Anthropology, Lauren Cadwallader of the Cambridge University Library, Metropolitan Museum of Art associate curator for Oceanic Art Maia Nuku, and Amiria Salmond of the University of Auckland’s Department of Anthropology.

13 Catalogue number D1914:34

14 *Ibid.*, 224.

15 *Ibid.*, 230-231.

16 Steven Hooper, *Pacific Encounters: Art and Divinity in Polynesia, 1860-1860* (Honolulu: University of Hawaii Press, 2006), 198. Hooper directs the University of East Anglia’s Sainsbury Research Unit for the Arts of Africa, Oceania and the Americas.

17 *Ibid.*

18 Thomas, Biers, et. al. 225. In this regard, consider, for example, the what is almost certainly a Crow shirt worn by Oglala Lakota headman Slow Bull in a photograph taken of him at Wyoming’s Fort Laramie in 1868 by Alexander Gardner. Colin F. Taylor, “The Crow Ceremonial Shirt: History of Development of Styles, 1800-1900,” in Christian F. Feed, ed., *Studies in American Indian Art: A Memorial Tribute to Norman Feder* (Seattle: University of Washington Press, 2002), 48. This may be the same garment Slow Bull wore when Gardner photographed him during the Lakota’s visit to Washington, D.C., four years later. See the Smithsonian’s National Anthropological Archives negatives 03216A, 32222E, 55963, and 06531200.

Or all those Lakota pipe bags anthropologist Robert Lowie concluded were Crow because, well, they were collected from the Crows.)

19 Thomas, Biers, et. al., 229.

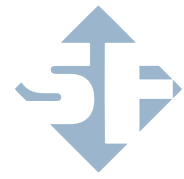
20 It is impossible to identify the precise price point at which that threshold comes into play, bringing to mind U.S. Supreme Court Justice Potter Stewart’s observation made about the *Jacobellis v. Ohio* (378 U.S. 184) (1964) case, in which the issue was whether a love scene in Louis Malle’s film *Les Amants* (The Lovers) constituted “hard-core pornography.” Stewart, who didn’t think it did: “I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. *But I know it when I see it*, and the motion picture involved in this case is not that” (emphasis added). “United States Supreme Court, *Jacobellis v. Ohio* (1964),” *FindLaw for Legal Professionals* (2017), <http://caselaw.findlaw.com/us-supreme-court/378/184.html>. Like Justice Stewart, we may not be able to arrive at an agreed upon dollars-and-cents valuation that triggers concerns, but you’ll definitely know it when you see – or experience – it.

21 See *Horse Capture* and Tyler.

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No Free Appraisals

Scott W. Hale, MA, ABD, ISA AM

Editor's Note:

We are pleased to welcome back Scott Hale, of Native American Art Appraisals Inc., with his second contributing installment to the *No Free Appraisals* column.

Come January 2018, The Appraisal Foundation (TAF), will put into effect a new set of minimum qualifications for personal property appraisers. TAF is the congressionally authorized body responsible for overseeing the Standards, Practices, and Qualifications for all professional appraisal services in the United States. The new qualifications going into effect will increase the education and experience requirements both for product knowledge and appraisal-specific education, which reflects an overall continuing effort to enhance public trust in the appraisal profession. In this installment of *No Free Appraisals*, you'll learn about these new criteria and find out some of the ways you can comply with the new requirements, so you can ensure that your clients are receiving the best appraisals possible!

Back in 1995, the Appraisal Qualifications Board (AQB), a component of TAF, began the process of developing educational and experiential requisites for personal property appraisers. Though similar standards previously existed for real estate (real property) appraisers including state licensing exams, at that time there were no such measures for personal property appraisers. So in 1998, the AQB adopted new requirements that consisted of the following four components that needed to be demonstrated by personal property appraisers:

- A Comprehensive Examination,
- Qualifying Education,
- Qualifying Experience, and
- Continuing Education.

Fast-forward 20 years and we'll find that the newest 2018 qualifications aim to streamline the Comprehensive Exam component into Qualifying Education and will change the title of Qualifying

Experience to 'Experience Requirements.' Besides title changes, more important changes will occur in two of the three categories.

First, under Qualifying Education, the previous model solely necessitated 120 hours of qualifying education. The new model, in addition to the 120 hours of appraisal education, now also requires at least 30 additional hours from an accredited community college, or an associates, bachelors, or advanced degree. Most appraisers with credentials through personal property appraisal organizations (like AAA, ASA, and ISA) will have fulfilled the educational hours through both coursework and testing. However, the inclusion of additional education actually requires that an appraiser have two different, specific types of schooling: both academic and appraisal education. What this new requirement aims to demonstrate is that appraisers are both proficient at understanding *what* they are appraising, as well as, *how* to appraise it.

Second, under Experience Requirements, there is a similar rise in demonstrable hours of necessary professional experience for the appraiser. Under the old rubric, the required experience was either, 1) 1,800 hours of appraisal experience, of which 900 hours had to be specialized, or 2) 4,500 hours of market experience; or some combination of the two. Next year, appraisers will need to have 1) 700 hours of general experience, in addition to the previous 2) 1,800 hours of specialized appraisal experience hours or 3) 4,500 market experience hours. A reflection of the new educational requirements above, the new experience requirements now show that considerable appraisal-specific experience is required, as well as more generalized market experience. Having bought and sold the specialized property is not enough; you must also demonstrate experience in appraising it.

Third, the Continuing Education requirement for appraisers remains without modification because it is at the very heart of appraisal services. An appraiser must obtain at least 70 hours of Continuing Education (CE) credits every 5 years. Of these CE credits, at

least 20 hours of coursework must be directly related to valuation theory. To illustrate, qualified appraisers all take coursework and testing associated with the Uniform Standards of Appraisal Practice (USPAP)—a 15 hour course with exam that has to be taken and passed every 5 years. But because USPAP changes every two years, qualified appraisers may maintain their compliance with a 7 hour update course (for which there is no exam) every other year. Though an appraiser could postpone their USPAP mandate and take the 15 hour course and exam every five years, they would be far behind (at least two versions of USPAP) in terms of their appraisal education, and thus be providing completely outdated and un-qualified appraisal reports. Think about it: just as you may question a doctor or lawyer who is not current in their knowledge of medicine or the law, so too should you question whether an appraiser is relying upon an "old copy" or far past USPAP class, as opposed to the most current possible version of the standards. The Continuing Education component ensures that all appraisers adhere to current appraisal standards in their practice.

So, just how does an appraiser or someone providing appraisal services actually meet The Appraisal Foundation's new personal property minimum qualifications? There are a number of ways to comply:

Join a sponsoring appraisal organization of TAF (like AAA, ASA, or ISA) and complete that organization's appraisal theory and methodology courses and testing. Any one of the sponsoring organizations will have an education curriculum that meets with, or exceeds, the minimum qualifications put forth under USPAP and TAF.

Take accredited college courses online. Many community colleges and universities now offer online courses in specialized subjects like art history, anthropology, marketing and other courses that may apply to your appraisal practice.

Just continue to learn! Even if you are a specialist, knowledge is not static -- it is dynamic and evolves. And, for as much as you know, there is always someone out there who knows more or has different insights to share...

The new minimum qualifications do not mean the sky is falling. They simply mean that our business is

changing and that to offer the best appraisals possible, we need to change with it. But, for those resistant to change (and who do not wish to comply with the new standards), there is one last out -- the new standards apply only for new appraisers as of January 1, 2018. They are not retroactive for any currently accredited member of a TAF sponsoring appraisal organization. To be held to the old requirements, join now and complete your appraisal education today:

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www.appraisers.org

Appraisers Association of America:
www.appraisersassociation.org

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www.is-aappraisers.org

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www.rics.org

VOCAB RECAP

Appraisal Education – The study of valuation theory and methodology, which includes but is not limited to the study of markets and prices, economics and market trends, report writing, research and development of comparable sale data, explaining the rationale behind values derived, and so forth.

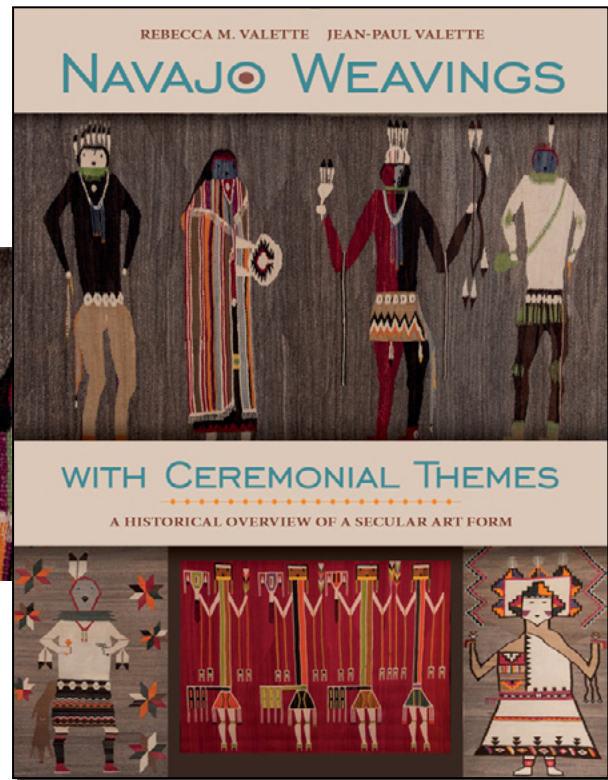
Classroom Hour – At least 50 minutes of a 60-minute class of instruction are attended by the student. The classroom hours include time for the examinations.

Distance Education – Any educational process based on the geographical separation of student and instructor.

Specialized Appraisal Education – The study of specialized subject matter which is the area of expertise of the appraiser, such as: machinery and equipment, fine art, jewelry, antique furniture, decorative arts, airplanes, boats, classic cars, livestock, and so forth.

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

Disclaimer:



Navajo Weavings with Ceremonial Themes: A Historical Overview of a Secular Art Form

by Rebecca M. Valette and Jean-Paul Valette

Reviewed by Alice Kaufman

This book is an instant classic, a worthy addition to the canon of Navajo weaving-related literature, an example of first-rate scholarship, and a personal triumph. Drawing from the classics — James, Amsden, Matthews, etc. — and from their own research, the Valettes have created a marvelous book on the history and artistry of these weavings. By necessity, the book is also a history of the Navajo people and the Southwest.

Research is the key here — more than 30 years of visiting museums, meeting with curators, consulting archives, researching collections, traveling on the Reservation and the Checkerboard area, interviewing traders (many now deceased), as well as descendants of early weavers. The authors gave the publisher a page-by-page layout showing the placement of the text and images, and that layout works splendidly.

About those images — there are gorgeous photographs of weavings from 120 different sources, including museums, private collections, traders, and weavers.

Looking at the textiles is the book's #1 attraction, but the list of who loaned what is great fun too, full of familiar names, from the Valettes' own stunning collection to Tony Berlant to Mark and Linda Winter to Steve Getzwiller to Mark Sublette to Bonhams, along with a hat-tip to Bob Ashton "who encouraged us to publish our first research findings in the American Indian Art Magazine."

And what a story those images tell, starting in 1865-75, with an illustrated timeline of the earliest documented appearances of ceremonial-themed weavings. Each weaving in the timeline is cross-referenced with chapter and figure numbers, making it easy to learn more about each. Cameo appearances by the Hyde Exploring Expedition, the Wetherill brothers, George Pepper, Herman Schweizer, J.B. Moore, Franc Newcomb, Dick Simpson, Hosteen Klah, Mary Cabot Wheelwright, William Randolph Hearst, and Edwin Kennedy enliven the text. Fun fact: in 1915, only five Navajos owned



Yeibichai dancers with otters, c. 1930.
Handspun, 47" x 82".
Courtesy Jeffrey Weinman

automobiles; two of the five were trader/artist Clitso Dedman and interpreter/sheep rancher/tribal leader Chee Dodge. Vintage photographs of early Indian fairs indicate their importance to the growth and popularity of the art, including a new taste for "Indian rooms."

The textiles are presented in chapters on sandpainting weavings, Yei weavings, Yeibichai weavings, and weavings by area. There is a list of and guide to ceremonies, including the "most common" the Nightway, Shootingway, and Mountainway, as well as photographs of sandpaintings being made. The Valettes supply ample illustrations of pictorial elements from those ceremonies, making clear how and why each was used. They trace the history of Navajo reluctance to include ceremonial figures in their weaving, and how and why that reluctance was

overcome (Hosteen Klah played a big role here). That reluctance was shared by Anglo experts: although G. W. James liked them, in the 1930s, Charles Amsden called weavings with ceremonial themes "in bad taste," and Gladys Reichard called them "hideous... ugly." But the weavings were immediately embraced by collectors including Will Rogers, Hearst (whose acquisitions of 20th century textiles were limited to ceremonial-themed weavings), Marjorie Merriweather Post (the photos of Topridge, her Adirondack home, are envy-producing), and Edwin Kennedy, whose gift of ceremonial-themed weavings to the Maxwell Museum in Albuquerque probably influenced Maxwell curator Marian Rodee to praise the genre in her 1977 influential book, *Southwestern Weaving*.

Individual designs and different styles are listed

*Navajo Weavings with Ceremonial Themes:
A Historical Overview of a Secular Art Form*
by Rebecca M. Valette and Jean-Paul Valette
448 pp. Schiffer Publishing. \$75.

by dates, area, and by the weavers themselves. The weavings are overwhelmingly populated with gods, god impersonators, kachinas, all manner of birds and animals, and details of the ceremonial weaving designs were frequently provided by weavers' husbands, who knew the ceremonies first-hand, or by illustrations from Matthews, Curtis, James, etc.

Anyone curious about Navajo weaving with ceremonial themes, or almost any other aspect of Navajo textiles, will find the answers here.



Otter Guardian manta
attributed to Estson Nalthi Chu
c. 1900 Commercial yarn, 94" x 67.5"
Valette Collection



opposite:
Eight Gallegos-style dancers, c. 1940s
Handspun, 31" x 52"
Valette Collection

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Benin Hip Mask
Brass, 19th century
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