

# ATADA NEWS

A PUBLICATION OF THE ANTIQUE TRIBAL ART DEALERS ASSOCIATION

SPRING 11

Vol. 21 No. 2  
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**Member Close-Up: Jackson Clark II**

**Another Battle at Little Big Horn**

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

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# ATADA NEWS

A PUBLICATION OF THE ANTIQUE TRIBAL ART DEALERS ASSOCIATION

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Cover Photo: Mapuche poncho  
From the Collection of David Irving

# President's Note



At several recent meetings, the BOD has been grappling with the issue of provenance of old pieces of American Indian art. The question is not just the creator and birthplace (provenience), but some details of how and when the object arrived in the hands of the current owner. A piece with detailed provenance has added value in today's market. If provenance is not available, the simple statement that the seller knows of no reason to believe that there is anything about the history of the piece that would make it illegal to sell in today's marketplace can protect the buyer. The BOD is in the process of sending a letter to all ATADA members and to the auction houses encouraging them to routinely provide this information with sales receipts. If all ATADA members pay attention to this simple detail, we can go a long way toward countering the fear and misinformation about unprovenanced objects that pervades the marketplace today.

We are publishing the entire transcript of FBI Special Agent David Kice's talk to the New Mexico Lawyers for the Arts in this issue. Although Agent Kice's presentations were summarized in previous issues and in the media, by reading the transcript, the reader can see exactly what was said and what was not said.

In a continuation of our program of educating the collecting public, ATADA will be presenting three early-morning lectures on topics related to Art and the Law during the Whitehawk Shows at the Santa Fe Convention Center, August 12-16, with details elsewhere in this issue. We are also in the process of setting up a talk by Bonnie Magness-Gardner, the Art Crime Program Manager at FBI Headquarters in Washington, D.C. This talk will likely take place on Monday evening, August 15, 2011. Look in the Summer 2011 issue of The ATADA News and watch your email for further information about this important event.

A word to the wise should be sufficient – there will be special attention paid to forbidden materials at the August shows this year. As always, ATADA members should be especially careful that their inventory and booths are free of illegal feathers, tortoise, ivory, etc. Knowing the law and abiding by it helps our trade to flourish and protects archaeological resources and endangered species.

With this issue of The ATADA News, we are going public with a number of changes in format. The most noticeable change is the inclusion of advertisements. Thus far, we are only accepting full-color, full page ads using our editorial discretion to assure that our membership will find the ads to be tasteful. We have changed the cover, the fonts and the layout to improve clarity and readability. To control costs, the body of the printed issue will continue to be printed in black-and-white but the web version will be in full color. Behind the scenes, recent improvements in the internal workings of .pdf files simplify the process of preparing both a web edition and a printed edition. The Spring 2011 issue should be considered as a "beta test." We would love to hear the comments of the membership and will gladly print these as letters to the editor in the next issue.

I look forward to seeing all of you at the Santa Fe shows in August.

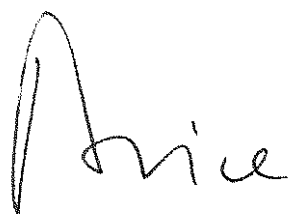
# Editor's Desk

## Among the highlights of the February ATADA board meeting in San Rafael:

Len Weakley suggested that when dealers make a sale, they ask the buyer how they plan to insure their purchase, mentioning that by joining ATADA as an Associate, discounted property insurance is available to collectors. The money they could save on insurance could more than pay for ATADA membership.

The board decided to give the ATADA News a new look, with a new format, typeface and more color illustrations. To pay for the increased expense, we have started accepting advertisements on a trial basis. We'll know after publication if the new look ATADA News costs more or less to publish.

The board also created a series of events to coincide with the Whitehawk shows. Thanks to Marcia and Ted Berridge, all our events and meetings will take place at the Santa Fe Convention Center. Find the schedule in this issue and – once again thanks to Marcia and Ted – in the Whitehawk program.



# In Memoriam

We were saddened to hear of the death of former board member Roland Flak. To quote Thomas Murray, “Roland almost by himself (with the help of Edith and Julien) championed the art of the American Indian in the international market of Paris. One of my favorite memories is of us together at the art fairs of San Francisco, New York, Santa Fe, and at the Parours, as colleagues and as friends. I always appreciated his service as a board member of ATADA during the time of my Presidency. He brought a certain savoir faire to our meetings. He was a very positive man, always at the ready with a smile and good cheer. We have lost a Giant among us.”

Tom also attended the burial ceremony “at a calm, tree-lined old cemetery on the outskirts of Paris. It was a Jewish ritual which was rich with feeling. I found it quite sensitive and felt privileged to be present.

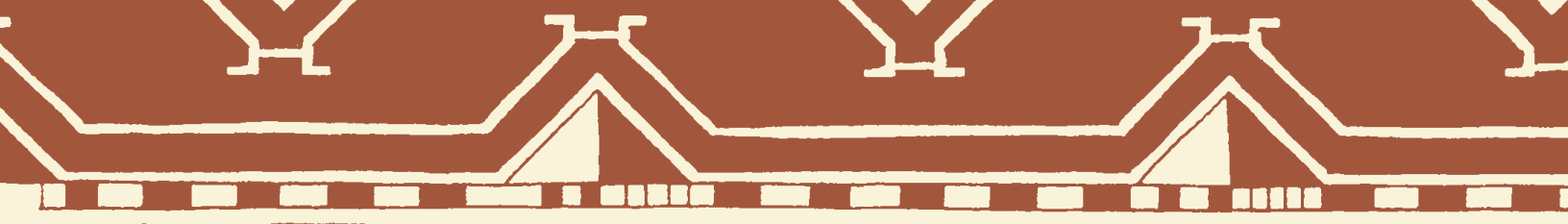
“There was a Rabbi singing in Hebrew and then speaking in French. Roland and Edith Flak’s two sons spoke, as well a couple of family friends. Although I could not understand the language, I could read the faces and felt the emotion of the moment as we all said goodbye to our friend in our hearts.

“I was told at the reception later at the family home above the gallery in the famed rue des Beaux Arts, that the speakers talked of Roland’s great fascination with life in all of its forms, his continuous curiosity about tribal cultures from all ends of the earth, especially Alaska and the Southwest. They told of his ever-generous willingness to answer questions and explain fine details of connoisseurship. This he did to further inspire interest in the art he loved in young people especially, with many of his ‘students’ becoming life long friends.

“Pierre Moos, the publisher of Tribal Arts magazine who was with me, told how Roland tried his best to get the French art dealers to become part of ATADA, tirelessly lobbying on behalf of our organization. For this and many other reasons we are grateful to him, and I can say the world is a much lesser place without him.

“Roland’s widow Edith thanked me for attending on behalf of ATADA and extended her appreciation to all of you for your sympathies.”

ATADA send its deepest condolences to Roland’s wife, Edith, and his sons. We will all miss his Gallic charm.



Collecting isn't always easy, even on the institutional level. Custer Museum director Chris Kortlander, Founding Director of the Custer Battlefield Museum, reports on his ongoing legal battle with federal agencies after the museum was raided twice by federal agents. Kortlander is a long-standing member of ATADA.

## Another Battle at the Little Big Horn: Custer Museum Director in the Crosshairs of the BLM

Museums serve a vital function in the preservation of antiquities and the history of various societies. It is museums, public and especially private, that house and care for a collection of artifacts and other objects of scientific, artistic, or historical importance, making them available for public viewing through exhibits. The exhibits may be permanent or temporary, and the collections may be shared between museums.

What seems to be lost on the federal government is that from the earliest times, museums began as the personal collections of wealthy individuals, families or institutions. It is collectors that supply museums, and thus, we owe thanks to these collectors that so much of our history is preserved, allowing average citizens to explore collections for inspiration, education, and enjoyment. Modern museums acquire, safeguard and make accessible the artifacts and specimens of our past, and in doing so, they hold these historical pieces in trust for all of mankind.

Garryowen and the Custer Battlefield Museum  
In 1994, I founded the Custer Battlefield Museum, located in the historic town of Garryowen, Montana. The Museum is situated at the site of Sitting Bull's camp, where the infamous Battle of the Little Big Horn began in 1876.

The battlefield is a large area, covering more than 15 square miles. In 1876, the Sioux and other tribes fought and destroyed the 7th Cavalry under the command of George Armstrong Custer. However, history was not well preserved at this famous battlefield, and in 1994, the land was part of the Crow Indian Reservation, a non-warring tribe that was not even part of the battle. The battlefield is divided between a few acres of land administered by the National Park Service, and land allotted to various Crow Indians, and fee land held in private ownership by non-Indians.

Starting from scratch to preserve the history and legacy of the most famous battle of the Indian wars, I began to legally acquire contemporary artifacts, recovered from fee property, for future display in the Custer Battlefield Museum. Like other museums, objects were acquired through a variety of means. Typically, museums purchase or trade for artifacts, or receive them as donations or bequests. Individuals

will also loan objects to museums for public display or for safe storage.

### The First Raid at Garryowen

In 2005, the law enforcement arm of the Bureau of Land Management, providing false information to a federal judge, obtained and executed a search warrant on the Custer Battlefield Museum. The search warrant was issued to look for evidence of mail fraud, but the stated public purpose was to search for evidence of illegal commerce in Indian artifacts. Some two dozen heavily armed federal agents descended on Garryowen, literally probing every nook and cranny, and seizing hundreds of artifacts from the Museum. As the search and investigation progressed, I was threatened with nine felonies and was repeatedly told that I was going to be indicted and would spend a very long time in federal prison, possibly the rest of my life.

### The Second Raid at Garryowen

Three years later, federal agents returned with another search warrant and seized more items from the Museum, alleging that they were contraband and evidence of yet more felonies. The effect of the two raids was to destroy the heretofore successful efforts of the Museum directors and staff to accumulate a collection of historically significant artifacts pertaining to the Last Stand at the Little Big Horn. But after more than five years of investigations, presumably millions of federal dollars expended, and the financial ruination of me, the Custer Battlefield Museum and the various businesses located at Garryowen, no charges were ever filed. Not even one.

### Legal Actions

So it is now, that I, the Museum, and the other business I operate at Garryowen, are striking back in federal court, moving in several directions. A multi-million dollar administrative claim, filed under the provisions of the Federal Tort Claim Act, was served upon the Billings, MT, office of the



BLM, asking for damages caused by the actions of that agency.

In addition, in December 2010, I filed a federal lawsuit in Billings Federal District Court directed against all of the federal agents involved in the raids for violating the Constitutional rights of others and me. This so-called Bivens action is a judicially created remedy for those whose Constitutional rights have been violated by federal agents while acting under the cloak of federal authority, but nonetheless outside the authority granted the federal government by the U.S. Constitution.

I am also seeking to open the federal books on the investigation(s) they conducted. Several Freedom of Information Act requests have been filed with the federal agencies involved in the investigation and raids. In November 2010, I filed a FOIA federal lawsuit in Billings Montana, in an effort to compel the BLM to provide all of the records and files associated with my case. More than a year later, BLM officials finally provided me with 2434 pages of documentation concerning their actions directed toward me, the Museum, and/or the businesses located in the town of Garryowen. Nearly 25% of the information contained in these files has been redacted, and much of the specific information I requested was not included. Because of this, I am going back to court to compel the BLM to provide the specific documentation that was requested. This will serve as a roadmap to our discovery process in the Bivens action.

Soon to be addressed is the matter of petitioning the Solicitor's Office of the Department of the Interior to return items that were seized from the Museum and me. It is this seizure of private property – without any demonstrated claim that the seizure is lawful, or that the items seized were even contraband and thus illegal for the Museum or me to possess – this is perhaps the most alarming and threatening new reality to museums and collectors around the country.

With the complicated federal laws at issue, nothing concerning this case is simple, and it has all been very expensive. However, failure to challenge the bureaucratic largesse of the federal government, its agents, and the politically motivated policies of those bringing these and similar actions against our fellow citizens, will only result in our prolonged slide down a very slippery slope. The federal threat is real and can be very personal. And it is fundamentally wrong.

I have launched litigation that is likely to take years. If it is successful, it will set precedent, and will put on notice all federal agents who operate outside the

parameters of the U.S. Constitution. I have sued 24 federal agents in their individual capacity, seeking a legal remedy created by common law – a Bivens action – created by the U.S. Supreme court to legally right their wrongs. My Bivens lawsuit contains strongly worded charges that the federal agents were operating outside the parameters of their federal law enforcement training and outside the scope of the U.S. Constitution.

I feel compelled to write this article to educate the public and ATADA members about the federal raids that transpired in Garryowen, Montana in 2005 and 2008, and the legal remedies that are afforded to U.S. citizens when federal agents overstep their bounds. Let this be notice and a friendly reminder that this type of abuse of federal power could also happen to them at any time.

### **Search Warrant Application Gag Order**

In 2010 I had limited success in prying open the veil of secrecy. I had asked to see the documents used to obtain the search warrants used to destroy my life and livelihood. Overcoming strenuous objections by the United States government, a federal Judge in Billings ordered that I be allowed to see the search warrant applications in my case. This is automatic when someone is indicted, but I was never charged. However, bowing to a request of the United States Attorney, the Judge ordered that I be blocked from using the Internet to expose the procedures used by federal agents to invade and ruin my life.

I have asked the 9th U.S. Circuit Court of Appeals to review the 'gag' order placed upon me. I am encouraged by a recent 8 to 1 Supreme Court decision supporting the Freedom of Speech we have in the Bill of Rights, and expect a decision in my case in the next several weeks.

### **Final Thoughts**

It is very clear from the news and from my personal experience of being the subject of persecution at the hands of unrestrained federal agents that our freedoms are under attack. More than ever before we need to be vigilant and united in protecting our freedom and our specific rights set forth in the Constitution; we should be protecting those rights from those who would take them away for any reason, and mostly for no good reason, whatsoever.

The events and issues I have identified here are of great concern to all ATADA members, and I encourage each of you to become involved in putting an end to these types of

questionable federal activities. The most constructive and effective way to bring about the changes we so desperately need in the application of federal law to the collectibles field is to combine our voices and put pressure on our representatives in Congress as a group. Although it is often a daunting and frustrating effort, I have personally seen the positive changes that can be made when individuals come together and fight for a common cause. Our Congressional representatives and their senior staff members do listen, and will listen, if enough voices make themselves heard. I urge each of you to add your voice to the chorus in Washington, D.C.

Tax-deductible donations to support this effort to demand accountability can be made to the Custer Battlefield Museum Legal Fund.

Christopher Kortlander  
Founding Director,  
Custer Battlefield Museum  
chris@custermuseum.org

.....

## Giving

At the February meeting in San Rafael, the board voted to give \$1000 to Tony Erachio to continue his work detecting fake Zuni jewelry; \$1000 to The Nokota Horse Conservancy ([www.nokotahorse.org](http://www.nokotahorse.org)), whose goal is saving the Native horse of the Northern Plains through education, preservation and promotion; and \$500 for emergency care at Santo Domingo Pueblo.



# COLLECTOR'S CORNER

## A passion for weaving that tells a story about a culture

David Irving has several business cards. One refers to his real estate business in Denver, but another speaks to the heart of the matter (and the man): David Irving, Curator & Collector. The card is illustrated with a blue and white design from a Mapuche textile, and on the reverse side, decorated with a Mapuche jewelry design element, the information is repeated in Spanish.



And in both languages, the cards tell what David Irving is after: “Tribal arts, textiles, silver, and objects; Mapuche, Araucanian, Navajo, Pueblo.” That list of tribes – in almost reverse order – describes the arc of David’s collecting.

He started with Navajo textiles: “I was interested in ethnographic weaving from all over the world, but focused on Navajo, and later on Pueblo textiles. Textiles and weaving have a very significant place in Pueblo social and ceremonial life, which gives the textiles another dimension. Navajo textiles may be more of an individual artistic expression, and Navajo weavers have been

more affected by economics since the 1870s-80s. Pueblo textiles, which were made primarily for their own use, became more appealing to me.”

David was in an ideal place to learn about and indulge his passion for textiles. After receiving his M.F.A. in sculpture from the Instituto Allende in San Miguel de Allende, Mexico, and his M.A. in Anthropology from the University of Denver, he worked at several Denver museums. He feels very fortunate to have studied with both Kate Peck Kent, at D.U. and with Joe Ben Wheat, at the University of Colorado. After some ten years in various museum positions, David says, “I wasn’t a good enough politician to be in the museum business!”

Instead, he has been able to stay involved in the art world as a collector. After building a collection of Navajo and Pueblo weaving, “about eight or ten years ago, it seemed more difficult to find anything new and different in the field of Southwest textiles. And, pieces I was interested in became more and more expensive. I have always been attracted to the great weaving traditions of South

David Irving

America, and was particularly drawn to the weaving of the Mapuche (formerly known as Araucanian) people. They are indigenous to south-central Chile and the adjacent areas of Argentina. “Like the Navajo,” David continues, “the Mapuche are renowned as both weavers and silversmiths. We cannot identify any direct influence between the two peoples, but this is a nice serendipitous coincidence. There are relatively few collectors of Mapuche art, especially in North America, so I felt this was an area that offered good opportunities.”



Museo de las Americas exhibition, Denver, 2006

And build he did; he describes his collection now as “substantial,” and adds that it includes not just “art” pieces, but more

# COLLECTOR'S CORNER .....

ethnographic objects as well which help to show a more complete picture of the Mapuche people and their culture.

In the U.S., David points out, "Mapuche weaving and silver work are relatively unknown, even to museums and art dealers. I want to bring the story of the Mapuche to a wider audience." To that end, he curated an exhibition of his Mapuche artifacts at Denver's Museo de las Americas in 2005. Other exhibits featuring the Mapuche have been organized in recent years at the Americas Society in New York and the San Diego Museum of Man. Also to that end, he created [www.artemapuche.com](http://www.artemapuche.com), devoted to the art and culture of the Mapuche/Araucanian peoples of Chile and Argentina.

David is especially partial to Mapuche men's ponchos. With their bold "super-strong graphic" ikat designs, David calls them "the most masculine ethnographic textiles to come out of South America." Called "ponchos de cacique" or "chieftain's ponchos" they were historically, and remain today, important symbols of ethnic identity and prestige. Mapuche silver work is reminiscent of both Navajo and Plains Indian silver. The tribe acquired "great quantities" of Spanish silver coins by "raiding and trading," but they had no use for the coins as they were "not part of the cash-based economy of the Spanish in Chile and Argentina. However, these coins made a wonderful source for a high-quality raw material!" As the Mapuche refined their knowledge of silversmithing, they developed a "unique style of women's jewelry with large breastplates and trapezoidal earrings, some as much as four-to-five inches long." Mapuche men "wore some jewelry, a single earring and maybe a headband, but the men's main use of silver was in their horse trappings." They adopted equestrian technology and trappings from the Spanish – bits, stirrups and spurs – but executed them in uniquely Indian designs. "The aesthetic of Mapuche silver reminds me more of North American Plains Indian silver than of the famous Gaucho silver, which has a rococo, Spanish Colonial character."

David is currently working on plans for another "larger and better" Mapuche exhibition and accompanying catalogue. If all goes as planned, the exhibit will be available for travel beginning in 2013.

David Irving saw his first Navajo weavings "as a result of

trolling through antique stores in Denver. I was intrigued, and started reading Amsden, James – the classics – and Kate Peck Kent and Joe Ben Wheat. I began my serious study by spending one day a week with Joe – he turned me loose in the storeroom, which held the collection he was building for the University of Colorado Museum.

"'Work your way through, piece by piece,' he told me. I used his method to analyze the design, materials, weave, etc. Then I'd sit down with Joe and chew the fat – talk textiles and more. The same happened with Kate, but in addition to Southwest weaving, we studied a broad spectrum of textiles including African."

David says he is still buying textiles "when I can, but it is hard to find pieces at all, and when I see one I like, it is often

too expensive. I buy what I can when I can. Over the years, I have developed real friendships with many dealers and other collectors, one of the real pleasures of this endeavor." David also buys on occasion from auctions and on the internet. "I have been able to make several trips to Chile and Argentina, and have met a number of very knowledgeable dealers, collectors, and scholars. The serious collectors in South America tend to be both savvy and 'economically capable' so the competition there is quite intense. By the time I see a piece in Buenos Aires or Santiago, it has traveled up the food chain and tends to be very expensive."



Navajo woman's blanket

He visits the area less than he'd like to, three trips to Chile and Argentina in the last five years.

But as he already has a Mapuche collection that includes more than 100 textiles and 200 pieces of jewelry, "much of what I see would duplicate what I already have. But I am always glad to upgrade an example that I have or fill an obvious hole in the collection." In addition to good-quality, older weavings and silver, he is always on the lookout for unusual ethnographic pieces: pottery, utensils and tools, pieces that are part of the story of the culture.

Though David's wife, Ann, shares his interest in tribal arts and textiles, she is not actively involved in collecting. She is, however, supportive of his hours on the computer and his "consumption of everything ever written, in any language, on the Mapuche." Their son, Gideon, is taking his

first anthropology courses at the University of Colorado in Boulder. "I hope he will develop an interest in all this weird stuff, and avoid my having to hold a gigantic garage sale one of these years. We don't have a lot of wall space in our current house and don't want to overwhelm the space with Mapuche pieces, so most of my collection is in storage. We have architectural plans for a new house, designed to allow us to live with more art work. There will be plenty of large walls, and the windows are designed to limit direct sunlight which can be very destructive to textiles and other works of art."

David says he spends "a lot of time in conversation with my wife and other collector friends engaging in self-analysis: Why do some people collect and others have no interest? Is this a worthy pursuit or a sickness? We've never reached a conclusion, but it is fun to talk and think about."

Also fun: "Going to the August shows in Santa Fe, where we see so many knowledgeable people who share this passion, and where 'hope springs eternal' for a great find around the next corner. My collecting adventures have been very enjoyable."

With his continuing and consuming interest in tribal and Indian art, does he miss working in the museum field? "Years ago, most museum curators were driven by their passion to learn and build collections. In today's world, financial and other barriers have made it more difficult for institutions to collect. Curators do still engage in research and use the collections to educate the public, but much of their energy seems to be consumed by the demands of being part of a large, bureaucratic institution."

"The mission of using museums' collections of real objects in a dynamic and engaging way to educate people is what makes museums special and different from other institutions of learning. This mission becomes more important as our own culture becomes more electronic and farther removed from the 'hands-on' lives of the past, and as indigenous cultures around the world become more homogenized by the relentless march of 'progress.'"

Two of David's most influential mentors were from museums. "Eric Douglas was the founding curator of the Native Arts Department at the Denver Art Museum. I never met him, but his devotion to research and collecting from the 1930's until he died in 1956 laid the groundwork for this important collection. Working with Rene d'Harnoncourt at the Museum of Modern Art, Douglas was instrumental in getting tribal arts widely recognized as 'fine art.'"

"The second is Dr. Wheat, who had a passion for collecting and imaginative research. He dug out facts where others hadn't thought to search, and interpreted that information in a way that made it engaging. He amassed a great collection

of early Navajo silver as well as textiles. His collections form the basis of the University of Colorado Museum, and his great generosity of spirit had a great impact on all his students."

David worries about the future of collecting. In fact, he says this is "a common topic of conversation with dealers and collectors. Surprisingly few young people seem to have an interest in collecting in these fields." Why? "Collecting has become more complicated and expensive, and great objects gradually disappear through natural attrition or go into



Mapuche stirrups

institutional collections from which they will never emerge."

"I have been lucky," he continues, "to be in what could be the last generation that has been able to travel to different corners of the world and see indigenous people who have preserved their traditional material culture and lifeways. It is now hard to find indigenous people still weaving, except occasionally for ceremonial use, and more often for tourist consumption. People all around the world are now wearing flip-flops, Hard Rock Café t-shirts, and blue jeans. An important goal of collecting is to preserve real, original objects that tell the story of these cultures that are fast disappearing. That goes hand-in-hand with the role that museums can play today."

Perhaps in the future -- a future without new generations of collectors? -- only museums and Old School collectors like David Irving will be concerned -- consumed? -- with preserving the past.

# ATADA FOUNDATION

12/31/10

## Donations Received:

ATADA Association .....	8,000.00
Collectors Guide .....	<u>40.00</u>
	8,040.00

## Donations Made:

CIAC .....	<500.00>
TEWA .....	<1,000.00>

<1,500.00>

Cash Flow ..... +7,000.00

## Less: Expenses

Accounting	< 234.97>
Collectors Guide	<4171.53>
State Public Reg (Filing Fee)	< 10.00>

<4,416.50>

## Plus: Interest Income

+3.45

Net Cash Flow ..... +2,586.95

Statement Balance 12/31/10 ..... \$9,087.14

Checkbook Bank Balance 12/31/10 ..... 9,087.14

Robert V. Gallegos, Treasurer



March 30, 2011

Alice Kaufman  
ATADA Foundation, Inc.  
215 Sierra SE  
Albuquerque, NM 87108

Dear Ms. Kaufman and Antique Tribal Art Dealers Association:

I am writing on behalf of the Nokota Horse Conservancy to thank you for your organization's overwhelmingly generous donation of \$1,000.00.

During challenging economic times like these, every dollar is absolutely vital to our efforts. And you have shown considerable compassion for the Nokota Horses and our preservation efforts with your exceeding benevolence. We are more grateful than mere words can express!! Your kind gift will go a VERY long way in getting us through these upcoming lean months and so much more.

Please know your compassionate gift will greatly assist the Nokota Horse Conservancy in our labors to preserve the Nokota horses – a piece of living history. The Nokota horse is an intrinsic part of our nation's Native American history and something that should not – **cannot** – be lost.

We have officially received confirmation from the Internal Revenue Service that based on our application for non-profit recognition; they have determined we are exempt from federal income tax as an organization as described in section 501(c)(3) of Internal Revenue Code. Thus, your donation of \$1,000.00 is fully tax-deductible under Federal and State law.

The Nokota Horse Conservancy has not provided goods or services for this gift.

We truly cannot thank you enough for your very generous donation and for your support.

Sincerely,

*Shelly Hauge*  
Shelly Hauge  
Secretary

*Thank you so much for your kind gift to the Nokota and our preservation efforts on their behalf. We are truly grateful for every dollar that comes in, allowing us to continue our work on the prairie... are hoping for Spring and green grass soon.*

Nokota Horse Conservancy, Inc.  
208 NW 1st Street  
Linton, ND 58552  
Ph. (701) 254-4302 or (701) 782-4239  
Email: fkshbek@bektel.com Website: www.nokotahorse.org

*Nokotally yours-  
Shelly Hauge*

# ATADA Board Meeting

February 23, 2011  
San Rafael, California



**Present:**  
**Bob Gallegos**  
**Kate Fitz Gibbon**  
**Roger Fry**  
**Alice Kaufman**  
**John Molloy**  
**Clinton Nagy**  
**Arch Thiessen**  
**Len Weakley**

**By speakerphone:**  
**Peter Carl**  
**Jan Duggan**  
**Mike McKissick**

**Guest:**  
**Steve Elmore**

Bob Gallegos opened the meeting with his Treasurer's report: The Association is still owed \$11,004 in past dues. Bob expects ATADA to lose about 20 percent of that amount. The Foundation account has \$9,000, and there is a \$12,287 CD. Our accountant put us in compliance with the IRS for a \$500 fee. Last year Bob transferred 20 percent of ATADA's funds to the ATADA Foundation.

Kate Fitz Gibbon asked for a breakdown of costs for the ATADA News. Bob estimated that the cost of each was \$4000, including printing and shipping. [Arch later corrected that number to \$3,000 per issue.]

Bob then talked about the Legislative Education Committee, of which he is chair. "We made a big effort last year," he said, and the fruits of those efforts included position papers and the creation of position papers and bullet points to address to legislators.

Bob said the LegEd Committee's 2011 agenda includes a Stop Looting program: Jim Owens suggested it, inspired by "Stop Poaching" bumper stickers he has seen. He proposed a reward system, with an 800 number on bumper stickers,

pamphlets, etc., so people could work with federal agents. If we decide to do this, ATADA has the money to fund this program, but Bob also said it could be funded outside the normal cash flow of ATADA and the ATADA Foundation; we could go to the membership for contributions.

Peter Carl (who was on the telephone) asked how much such a program might cost.

Bob's second proposed LegEd action would be to distribute prepared statements from the ATADA board to auction houses, asking them to provide provenance for their lots. In some cases, buyers must have this information for the federal government. Without provenance, "orphan items" can result, items that the government should have the legal responsibility to prove illegal, but they use other laws – the National Stolen Property Act, ARPA, for instance – to circumvent the burden of proof issue. "We must start now," Bob emphasized, "to create provenance for all pieces."

Roger Fry asked what if the provenance doesn't exist?

Tens of thousands of pieces like that exist, Bob replied. If you don't have a collection history, Kate said, start one now.

Kate said that auction houses provide anonymity to their buyers and sellers, which is a lure for some people, and something the auction houses will not want to give up.

John Molloy told the board that the government of Peru went to at least two auction houses, resulting in withdrawn Pre-Columbian lots. Regardless of what the law says, Bob added, the auction houses will take the path of least resistance, and withdraw challenged lots. We must come up with a way to support and work with auction houses. Perhaps we can then find a way to keep federal agents from declaring orphan items illegal.

What categories are we talking about, Roger asked. Do they include historic pottery?

Bob said he thought the federal government would take the figure of 100 years old very literally.

The third 2011 goal of the LegEd committee, Bob said, was to mount a series of seminars in the Midwest, coordinating with "arrowhead people. We should align with the 7,000/10,000 members of arrowhead groups." Bob hoped ATADA could find new ways to be a more national group. "We need ways we can cooperate with the government" in areas such as looting. There is a program in England that rewards people



for turning in old, found objects to the government.

Peter said that in England, the government put “a fair price” on the found object, which the government has the option of buying. If they do not, the finder can sell on their own. Different states have different laws, Kate pointed out.

Steve Elmore then joined the meeting for about 20 minutes, “We are in a better situation than one year ago,” he said. “This is a battle we can win.”

After a discussion, the board decided to ask Steve to choose a group of Santa Fe dealers to accompany him to present a letter and talk to the mayor of Santa Fe.

Bob asked if the board wanted to outline a course of action that shows a willingness to cooperate with the government, Stop Looting, for instance. If we try and fail, we can go back to being on the offensive. Facts will expose the government, they won’t like it, but it has to be done.

Kate said there is a conflict of laws between artifact and arrowhead collecting. “We care because there are a lot more arrowhead collectors and unprovenanced arrowheads.” Speaking of the Stop Looting campaign, Kate said she doesn’t like the idea of giving a reward for turning someone in to the government. “It doesn’t sit well with me, looting is not as clear-cut an issue as poaching.”

Bob said we could have the program without rewards.

John said that confrontation can be counter-productive, that he preferred Bob’s approach of cooperation.

Clinton suggested we align ATADA with larger groups.

Bob said that he and Kate would prepare a program and develop a seminar for arrowhead societies. They would not be inflammatory, just a discussion of the facts.

Mike McKissick (on the speakerphone) said he would contact an arrowhead group in Texas and line up a seminar.

The board approved the idea of arrowhead society seminars but thought the Stop Looting program would cost too much money. Clinton said ATADA might fund a federal hotline to report looting.

Bob proposed that Jim Owens and Steve Elmore look into creating a Stop Looting program and determine the costs, with no reward money. We should sit down with the federal

agents, with the Santa Fe Historic Society, he said. The board voted to allow \$6000-8000 to create and execute such a program. Roger said it seemed well worth trying, and that we have the money. Bob said he could send out a mailing asking for extra funds to members, which should bring in about \$2000-4000. We have willingness to help and the money to back up that willingness, he said.

Should the board prepare a statement for auction houses? Kate said it is against Federal law to sell something as Native American when it is not. Bob asked Clinton Nagy to write a letter to one of the major auction houses: “We need to work together.” Let’s draft a letter and the board can vote on it, Roger suggested. Clinton said he would create an idea for a letter that would include questions about provenance and fakes, but anyone can submit part or all of such a letter.

Arch then moved the discussion to ATADA publications. There have been problems in the past putting the ATADA News on the website, but he thinks he may have solved that problem. We plan to redesign and reformat the ATADA News to make it more efficient. [Ed: this is the new design.] There was a discussion of whether to publish the ATADA News in print, online only, or both. The board decided to stay with both, at least for the near future. Bob asked if we could distribute extra copies of the ATADA News to other organizations with the money we save.

Podcasts of seminars were also discussed, and perhaps ATADA should be making use of social media. Clinton suggested we create podcasts for the website on legal issues. “We could do it with an iPhone and a laptop.” Arch said he could put podcasts, etc., on the website. It was decided to only print the Directory online, as it is now. An informal, very low-key Directory may be published in addition.

When Clinton asked how we could attract new members, Bob suggested outreach to arrowhead collectors. “Where is the new generation of buyers and sellers,” Clinton asked rhetorically.

Then the question of selling advertising in the ATADA News was raised. After much debate, the board decided that we could sell ads in order to pay for a mostly-color publication.

Speaking of the Indian art market as a whole, and comparing it to what she has seen of folk art, Kate mentioned that the folk art market “offers the moral high ground and has been very successful. Collectors feel they are doing good by spending money on folk art.”

Bob said that he had contacted Dan Brooks, a Fish and Game agent, who agreed to speak before the Whitehawk show as part of an ATADA event. He will be at the shows, Bob said, and will speak about what not to buy or sell. John Molly called the event "part of our educational mission." Kate asked if Brooks had a Power Point set-up that he could share with our members in advance.

It was decided that ATADA would sponsor four events in August: the Dan Brooks talk; a talk by Roger and Len updating laws affecting dealers and collectors; a round table discussion led by Jim Owens on archeological resource laws and the Federal raids and their outcome; and the annual ATADA meeting. All events will take place at the Santa Fe Convention center from 8 AM – 10 AM, and will be advertised in the Whitehawk program.

Len suggested that when dealers make a sale, they give the buyer an ATADA brochure, and ask them about insurance, mentioning that by joining ATADA as an Associate, discounted property insurance is available to collectors as well as dealers.

The discussion about Lifetime Awards was postponed until the August board meeting.

Grants were then agreed on: \$500 to Tony Erachio to continue his work detecting fake Zuni jewelry; \$1000 to The Nokota Horse Conservancy ([www.nokotahorse.org](http://www.nokotahorse.org)), whose goal is saving the Native horse of the Northern Plains through education, preservation and promotion; and \$500 for emergency care at Santo Domingo Pueblo.

The meeting was adjourned.

## From ATADA's Email:

CARAA  
CARRA (Center Analysis and Research in Art and Archaeology) is a French firm specializing in conservation and restoration of art objects.  
To quote their website, [www.caraa.fr](http://www.caraa.fr), they are "a research unit that provides analytical service of cultural and art market physicochemical techniques best suited to answer questions related to the conservation, restoration, dating, characterization or authentication of an art object.

The main lines of research developed to CARAA are "characterization and study of materials of weathering phenomena; the authentication of works (including

comparing their composition with the means, materials and chemicals available at the time of their creation;" and "Direct dating by different techniques depending on the media to analyze (thermoluminescence, 14C, ESR, U / Th, dendrochronology)."

CARAA services include: optical microscopy, scanning electron microscopy coupled with energy dispersive spectrometer, micro-elemental analysis by energy dispersive X-ray fluorescence, electron microprobe, X-ray diffraction, the ICP spectrometry coupled to a mass spectrometer, the Raman spectrometry and Fourier transform infrared (FTIR), liquid chromatography or gas.

All studies are subject to a detailed report and reviewed, including the operating conditions, the results and their interpretation.

For inquiries contact: [mbouchard@caraa.fr](mailto:mbouchard@caraa.fr)

## From ATADA's Email:

I don't know if ATADA and or its members are aware of a law that will take effect at the end of this year that will require all business to file 1099s for every vendor with whom you have spent more that \$600 per year. It includes your landlord, the electrical company, Wal-Mart, and every consigner and window washer you may do business with.

Could ATADA let all the members know that there is a small business site that is trying to get the law repealed. The US Senate has passed one version of the repeal and now the house must act. Below is a link to the information about who to contact and a petition to sign. Can you please let the members know this could put us all in a bind and or out of business.

<http://www.sbecouncil.org/stop1099/>

Thanks for your help

Chris Bobrick  
Lewis Bobrick Antiques

# MEMBER CLOSE-UP

## Toh-Atin Gallery, a Clark family business, sells both vintage and contemporary Native American art

## Jackson Clark II

Jackson Clark II is a fourth generation Durangan. Both his grandfather, Fred, (“who loved deserts and trading posts”) and his father, Jackson, grew up there. “My great-grandfather,” Jackson told the ATADA News, “followed the railroad as a blacksmith. He settled in Durango and started Jackson Hardware.



His daughter, Marguerite and son-in-law, Fred, bought the store from him. Every weekend, Fred would load his kids and wife in his Buick and head for the reservation, where the family would hang out with the Gouldings and other traders.”

Fred died right after Jackson Sr. returned from WW II. He and his mother ran the hardware business until 1957 when they decided to sell. “He decided that is was not going to be a growing business, as mining in the area was dropping off and the smelter was closing.” In addition, Montgomery Ward -- which would

be selling some of the same consumer goods as the hardware store -- was about to open down the street.

Once the store was sold, Jackson Sr. got a job with the Pepsi distributor in Durango, who knew about his knowledge of the territory on and around the Navajo reservation. His first day on the job, Jackson Sr. was asked to clear up past-due accounts and his first stop was the Two Grey Hills Trading Post. “It was not the experience he expected. The trader was drunk, business looked very bad, and when he tried to collect the money, the guy didn’t have it.”

Instead, the trader invited Jackson to join him in the back room, where there were piles of Two Grey Hills rugs “stacked around the room.” The trader was nearly broke because all his money was tied up in rugs. Few customers for rugs ever came to the trading post. “My dad was great at spotting a deal” according to his son. He ended up trading what was owed to Pepsi in rugs, and taking more rugs as credit for future Pepsi purchases. He was thrilled, but his boss went ballistic, demanding he go back and get money, not rugs. But that night,

Clark’s wife had scheduled a dinner party to celebrate his new job and his friends bought all the rugs.

“When he gave the money to his boss the next day, he was asked if he could do it again. At which point, Dad went to all the Navajo trading posts, trading rugs for Pepsi credit.” When he ran out of friends



Toh-Atin Gallery, Durango

to buy the rugs, he exhibited and sold at the Los Angeles Gift Show and found other customers at museum shops and gift shops throughout the West.

Jackson II’s mother had native American influence on her side too. His maternal grandfather, Ed Black, was born in Chicago



Jackson Clark Sr. with Ella Rose Perry

to Czechoslovakian parents. He had tuberculosis in his teens and was sent West on the train with \$20 in his pocket “to die.” Instead he thrived and ended up in Blanco, NM (near Gobernador Canyon), where he became owner in the Blanco Mercantile, the local trading post.

Jackson II grew up with Native American art and culture in Colorado. “My dad had a big showroom at the Pepsi bottling company,” Jackson remembers, “with all his rugs there. When I was 16, I took my first selling trip with him, and I loved it. We’d load up the van with rugs and sold to museum shops and gift shops on the way to Los Angeles, where we’d sell at the Los Angeles Gift Show. Soon these trips became summer jobs for me and my sister, Antonia. Visiting all of the galleries in Jackson and Scottsdale made us think about starting one in Durango. At the time there were only tourist-type stores in town.”

Jackson II continued to work for his father selling Navajo rugs while he attended the University of Colorado in Boulder. He sold rugs to his professors as well as wholesaling to stores in the area. It was during Jackson’s college years that Jackson Sr. met Joe Ben Wheat, the Navajo weaving expert who shared his knowledge with so many people.

When Jackson graduated from college in Boulder, he became a ski instructor, working for his father in the summer, traveling and selling rugs wholesale. After Jackson II broke his neck skiing, he started working in the business year-round. While recuperating, he met a lot of Navajo weavers and began learning about buying rugs. When he used to drive around the West selling rugs as a teen-ager, Jackson remembered liking both the rugs and the people he sold to. Working in the showroom, it didn’t take long before he started liking the weavers as much as the rugs. “The rugs and the people made a complete circle.”

“Then Dad met Mark Winter.” Although Jackson Sr. sold contemporary rugs and Mark sold old rugs and blankets, after spending “a lot” of time with Dr. Wheat, Jackson Sr. knew a lot about the old rugs and blankets. “In fact,” Jackson II says now, “what Mark and my Dad liked about each other rubbed off on the other.” His father started dealing in older textiles, and Mark now specializes in contemporary Two Grey Hills rugs at the Toadlena Trading Post. The two of them put together the Durango Collection of Navajo weaving which is now at the Center for Southwest Studies at Fort Lewis College in Durango.

In 1981, a “beautiful” old bank building became available for rent in Durango. Around that time, Senior acquired a collection of Old Pawn jewelry from the Mexican Water Trading Post. The family – Jackson, his sister, mother and father -- decided to buy the jewelry and rent the bank building to open a gallery. They named their new business Toh-Atin Trading Co. after a mesa in Northern Arizona.

They sold rugs for the Jackson David company – the legal name for the Pepsi bottling business – but now carried paintings, pottery, Kachinas, baskets and other Southwestern arts. Jackson Senior had purchased the Pepsi franchise from his partners, and in 1983, he sold it. The new owners had no interest in trading soft drinks for Navajo rugs. Toh-Atin bought the weavings from the company and combined that business with the gallery. That same year, Senior and his wife, Mary Jane, purchased an abandoned warehouse and remodeled it into the present gallery building.

According to Jackson II, “The IACA (Indian Arts and Crafts Association) had a huge impact” on Toh-Atin’s early years. “The organization represented the values we wanted to share about authentic Indian art, and many of the artists we met, like Virginia Stroud and Andy Lee Kirk, helped us to create a real gallery. Up to that time, we were thought of as a rug and jewelry company.”

The Clarks knew many people in the Indian art business. “Because of the Pepsi business, Dad knew most of the really good traders. Bob Matthews who owned the rights to the Bisbee turquoise mine, was a family friend. One of our favorite people was Santiago Moquino from Santo Domingo. Dad would trade him rugs for jewelry. Santiago would take one rug at a time up to Main Avenue in Durango and sell it, then come back and get another one.”

Toh-Atin is a family business now, with Jackson, his sister Antonia and his mother, Mary Jane. “She keeps us on track! The business now is so different from what my father did, which was mostly wholesaling rugs. Today we work with collectors, dealers and artists from all over the country.

“It is important,” he believes, “to have young people come into

the collecting market. We try to carry inventory that young people can afford. That's what will keep this business going."

That and the next generation of Clarks. Jackson's two sons, Ed, 30, who lives near Colorado Springs, "does most of the wholesaling and shows," and Nick, 28, who lives in Sacramento, oversees Toh-Atin's social media.

With the next generation waiting in the wings, does Jackson think about retirement? "I can't envision retiring - I'm having too much fun!"

And so do the people who visit Toh-Atin. "We are known for weaving, which draws people to the gallery, great quality jewelry and items in all price ranges that people can pass down to their kids as heirlooms. People who have money still want to buy wonderful things. We try to make it a fun



Jackson with his mother, Mary Jane, and his sister, Antonia

experience when people come to the gallery. We play rock and roll music (no rap!), we encourage people to bring their kids and even their dogs into the place. Buying art ought to be a fun experience. We are not a stuffy, high brow kind of gallery!"

Talking about marketing Toh-Atin, Jackson says he is not located in "an art center, like Santa Fe or Scottsdale. Durango is a tourist community, and many tourists think of Toh-Atin "as a museum, not a store." In fact, locals bring their out-of-town visitors as part of the regular welcome-to-Durango tour. "We encourage that," Jackson says, "because I feel we have to promote Native American art to a new audience. My staff and I will spend two to three hours with people who we know won't be buying. But in a year or so, if they buy from someone, we'll have done our job."

Jackson reaches out to collectors at the Marin show, at the Heard Museum, at the Whitehawk Indian show, and at rug auctions at the Autry National Center and the University of Colorado. Then there is the website - toh-atin.com - and Facebook, and blogs. "We're not just a Durango business

anymore. We have customers all over the world. To thrive, we can't be just local."

Jackson's vision of the future of contemporary Navajo weaving is not as rosy as his vision for Toh-Atin. "I don't see how Navajo weaving can survive in its present form. I believe that the weavers who will survive and excel in the future will be the ones who view it more as an art form than as an income source. It is a slow, time consuming art that can't compete with a real job for security."

Dealers of antique Navajo rugs don't share the problem facing contemporary dealers, Jackson believes. "There's no lid on prices there. People have a built-in curiosity about America's history."

Toh-Atin is benefitting from a revival of interest in 1960s-70s pieces because of people who were "in the collector mode" in those years. "They are leaving their collections to their kids, who bring them to the gallery to resell. We have a really good collection of 60s and 70s pieces."

When asked about his heroes, Jackson mentions his father first, "and of course my mom and sister!" Then he names Al Anthony, "a model of someone who has taken the time to study and learn and share. Bob Gallegos, who really knows the things he works with and sees with a vision. Mark Winter is a good friend and has taught me a lot. Bing Crosby is a real inspiration. Nobody ever worked harder than that guy. And I have to mention Byron Hunter, who was an Arizona trader and ended up being the manager of the Heard Museum Shop,



Jackson with some of the Burnham-area family, Helen, Alice, Teresa, Sandy and Marie, at a galley show featuring their weaving in 1990

who treated all of the artists and everybody else with such respect. Also, John Rich of Jacob Lake Lodge in Arizona. No one has ever loved Navajo weaving or weavers more than this man.

"This is a business where people are willing to share their knowledge. I'm thankful to all my teachers."

Although Jackson has "a few things I'd never sell," he (mostly) shares a philosophy with Hugh Angleton, who sold French

china, Italian tapestries, Pueblo pottery and Indian jewelry at his shop in Boise. "When I asked him," Jackson said, "to show me his private collection, he said he didn't have one. 'My real joy,' he told me, 'is to buy something really special and be able to pass it on to someone else.' Like Hugh, I love it while I have it."

Looking back on his career, Jackson says, "In this journey with Indian art, I think serendipity played a big role. I was blessed with parents who had great respect for Native cultures. When my sister and I got into the business, my father really made it fun. Not to say there hasn't been a lot of hard work or challenges along the way -- there still are -- but it is still exciting to me to have a weaver walk in with a rug rolled in a sheet or, sometimes still, a Bluebird flour sack. The excitement of seeing something new is always there.

"The best part has been the friendship of all of the wonderful artists we have worked with. Many are gone, like Isabel John, Mae Jim, Harry Morgan, and so many more. But there will always be new artists, and my favorites are the ones who connect their art with their culture. It has been my biggest reward to work with the five sisters who created the Burnham Weaving style. Anna Mae, Marie, Helen, Alice, and Sandy, and their children, broke a lot of barriers in Navajo weaving. Some people give me credit for having encouraged them in their efforts, but in reality, all I did was give them an avenue to express their creativity. What they did is all theirs and while we can all appreciate it, the art always belongs to the one who created it."



Mary Jane Clark with Mae Morgan

## ATADA at Whitehawk

**Friday, August 12 8 AM-10 AM**

Santa Fe Convention Center

U.S. Fish and Game agent Dan Brooks will speak to our members about what he and other federal agents are looking out for at Tribal and American Indian art shows. Brooks will be attending both Whitehawk shows, and requested specifically that he speak to ATADA members before the shows open, as the information in his talk may inform show exhibitors what not to exhibit and sell.

**Saturday, August 13 8 AM-10 AM**

Santa Fe Convention Center

Attorneys/collectors/ATADA members Roger Fry and Len Weakley present a 2011 Update of Laws Affecting the Sales and Collecting of American Indian and Tribal Art

**Monday, August 15 8 AM - 10 AM**

Santa Fe Convention Center

A round table discussion led by attorney/ATADA Associate Jim Owens on archaeological resources laws and their use by the Federal government in the 2009 raids; the ensuing court cases; and the aftermath: the results of the cases.

**Tuesday, August 16 8 AM -10 AM**

Santa Fe Convention Center

Annual ATADA General Meeting

Members and friends welcome

## News from the ATADA Foundation

On the back cover of the Summer 2009 issue of the Museum of Northern Arizona's "Museum Notes" newsletter, the Antique Tribal Art Dealers Association is listed as a Major Donor to the construction of the building for the museum's Easton Collection Center Project.

# FBI Agent David Kice Transcript

**As part of “Legal and Business Perspectives in the World of Contemporary Art,” a symposium held on October 21 and 22, 2010 at the Zane Bennett Gallery in Santa Fe, New Mexico, David Kice, Special Agent, FBI Santa Fe, presented “Theft, Fraud, Forgery: Cultural Property Crime in the U.S. and the FBI Art Theft Program.” The two-day symposium, organized by the New Mexico Lawyers for the Arts, was intended for artists, dealers, nonprofits, collectors, and visual arts organizations.**

*This talk was recorded by a video recorder at the back of the hall. We obtained a copy of the DVD from the New Mexico Lawyers for the Arts and, with their permission, had a transcript of the talk made. This transcript is presented here in its entirety.*

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OPENING REMARKS: ... and we're still a young organization but we intend in the next year to see the referral numbers for [inaudible] and have events like this in the future. So if you have a comments on lectures that you would like to see we have a conference table downstairs just write it down and let me know and thank you so much for coming. [The gallery owner welcomes the audience.]

AGENT DAVID KICE: We have a pretty small group here so I encourage questions. It will be more interesting if there is an engagement between all of us rather than me just standing up and going on. So I think that we're a small enough group so if you have questions feel free to raise your hand and ask as I'm going along or write it down and save it for the [inaudible] an open question and answer period at the end. Anything you want to ask about the FBI, about art crimes, whatever I'm happy to answer whatever I can.

As Polly said, I'm an FBI agent. I've been at the FBI for 15 years. I was in Los Angeles for about a year and I've been in Santa Fe for over four now. I requested to come to Santa Fe. I wanted to live here. I am one of ten agents assigned to the Santa Fe resident agency of the FBI. Resident agency means a small [inaudible] we're a sub office of the Albuquerque field office which covers the whole state of New Mexico. The FBI has offices in Albuquerque, Santa Fe, Farmington, Gallup, Las Cruces and Roswell to cover the whole state. There's about 135 agents in the whole state. The ten agents here in Santa Fe, our number is kind of disproportionate for a city the size of Santa Fe; a city of 65,000, 70,000 people. That's because we cover both Los

Alamos National Lab in terms of national security concerns and the Eight Northern Pueblos in terms of crime on Indian country. That's why are numbers are larger than they would otherwise be for a town of this size.

I have been on the FBI Art Crime Team since spring of 2009, so I'm fairly new to this field of endeavor. Art crime investigation is what we call collateral duty in the FBI. It's one of the hats I wear, one of the things I do in addition to my full-time investigative job which is investigating about crime in northern New Mexico.

I have come to the FBI Art Crime Team because I have a background in anthropology and archaeology. As you heard, I have a BA from Colorado College in anthropology. A Master's degree from the University of Chicago in physical anthropology and archaeology and I almost finished my PhD before I knew I didn't want to be a college professor that I wanted to do something else with my life. My field studies, my archaeological studies focused on the American Southwest, although I focused more on human skeletal biology the excavation and analysis of human skeletal remains more than architectural remains, more than antiquities per se. But I did study those and learn about those. So that was sort of my entree into the FBI [inaudible] because we have a variety of responsibilities in cultural properties law and a big one is the investigation of antiquities.

Today I'm going to focus more on the FBI Art Crime Team and on fine art crime, a little bit of the Thomas Crown Affair, the sort of stuff that makes the big news. Although, that's just a portion of my work in the FBI Art Crime Team. Because of where I am, here in Santa Fe, I focus both on the fine art crime and antiquity crime. And if you've got questions at the end focus more on antiquities because I know there's a number of [inaudible] members here in the audience I would be happy to answer questions about that at the end and I'll touch on that later in the talk.

Let's see if I can make the technology work. The FBI Art Crime program consists of the Art Crime Team which is 13 special agents nationwide and the national stolen art file. That's a database that the FBI maintains of works of art stolen in the United States. We are basically the sole national depository of law enforcement branch regarding stolen works of art. The Art Crime Team was created in 2004. It came about as a result of the lootings of the Iraqi National Museum in Baghdad after basically Baghdad entered into chaos as the US forces were entering the city in the current Iraq War the museum was essentially looted. The worldwide archaeological community, the US State Department realized what a problem that was – how many priceless artifacts had disappeared, although early estimates were way higher than it turned out to be the case. But a team of FBI agents who had some expertise in art crime were sent to Iraq to investigate this single crime. Out of that grew to 13 special agents nationwide, set up to investigate art crimes in their region and be a resource of expertise for other agents handling those types of cases and be available to be salvaged out to a crisis scene [inaudible] as a team to being investigated.

The 13 special agents were responsible for coordination of art crimes in various regions of the US. There are three special trial attorneys, nominally, assigned by the Department of Justice to assist. Right now I don't think there are actually any attorneys at DOJ headquarters -- they've all moved out of DOJ headquarters and to the fields/office around the country. But we do have attorneys at the DOJ who are experts in the field available to us for consultation.

The regional thing - I am the regional representative for the Southwest which means I have responsibility for Texas, New Mexico, Colorado, Arizona, Utah, Wyoming,

**Art crime investigation is what we call collateral duty in the FBI. It's one of the hats I wear, one of the things I do in addition to my full-time investigative job which is investigating about crime in northern New Mexico.**

Montana and Idaho. So, basically, all the Rocky Mountain states plus Texas, so it's a pretty large area. I'm not jumping on a plane and flying to Dallas every week or flying to Missoula to investigate cases. Agents in those offices are assigned as the case agent when there's a case and they've all [inaudible] expertise assistance [inaudible] so I'm sort

in the country after New York and Los Angeles for a town of about 65,000 people. So there's a fair amount of work here for me at home.

The Art Crime Team works domestically in cooperation with local law enforcement agencies and other federal agencies and internationally we work in cooperation with FBI legal attaches. We have I believe the number is 28 legal attaché offices around the world and those offices have responsibility for the worldwide region. So essentially there is an FBI agent responsible for every square inch of the globe. So if I have something going on and it relates to art crimes in any part of

the world I can do what we call "set a led" send a communication or an email to the agent who has responsibility for that region and they'll work with the authorities there, local and national to get the job done.

Top Ten Art Crimes, this is an old screen shot from the FBI internet web page. They actually updated it last week and completely changed and updated the FBI web page so

it looks different than this now but there is a section on there about art crimes. It's got some fairly interesting stuff and you're welcome to go through it. Anybody can go to this FBI public website. If you do a google search for FBI art crime though it'll link you directly to this page and if you right into the FBI web page you have to go through what we investigate

and then crime to art crime. But it has a lot of interesting stuff in there about art crime among it is a listing of the top ten art crimes that the FBI is currently investigating. Some of them are within the US and some of them are international.

Q: Can I ask; is that database when something is stolen is there public access to that link at all times.

AGENT KICE: No, it's not.

It has to go through law enforcement. But now that you brought it up, there is another database that is run by a private entity, gallery owners, private owners, insurance companies, anyone who is a victim of art crime has access to it although there is a set fee to enter it. It's called the "Art Loss Register." And it is a very comprehensive database also about missing/stolen works of art. And we actually, anything that we enter into the national [inaudible] we also enter into the Art Loss Register where we search through them and they don't charge us luckily to do searches. Sometimes things will appear in that that have not necessarily been reported to law enforcement or it has

been reported to local law enforcement and not reported to the FBI - not the government art database.

Q: The problem with the Art Loss Register is that it's a couple of hundred dollars to do a search and it's not



"Mapuche women's costume, ca. 1880-1920." From exhibition "Nehuen: Mapuche Power" at the Museo de las Americas, Denver, CO, 2005.

of a regional resource. Although I do have my fair share of art crimes to handle here in Santa Fe alone. I'm probably preaching to the choir but Santa Fe is, the number we always quote, is Santa Fe has the third largest number of art galleries



an open database. You submit a painting and you ask if they might have it in the record. So it's a difficult mechanism for people who simply want to do due diligence for articles that are often worth very little.

AGENT KICE: -- use it for a million dollar piece that's going to auction but for a stolen piece that is worth \$1,000 it might not be worth the investment. If you are purchasing a piece and you think it might be stolen, call me and I'll check on it. Well, if it's a hundred piece, don't call me, but if it's several thousands of dollars and you really believe it might be stolen or something ask me to check on it.

Q: It seems to me they'd set up a scam by reporting stolen objects that haven't actually been stolen.

AGENT KICE: I'll get to that later.

Among the top ten art crimes is – and I think one of the most interesting ones, is the robbery of the Isabella Stewart Gardner Museum in Boston in 1990. That remains the largest unsolved art crime in the world and the largest unsolved property crime in human history. Estimates range from a loss of \$300 million to \$500 million. Isabella Stewart Gardner Museum is a privately endowed museum in Boston. Isabella Stewart Gardner was a wealthy woman who died in the early 20th century. Her family had acquired money in the 19th Century and she collected a large collection of art: mostly Mediterranean renaissance pieces along with a lot of other stuff. And she had a renaissance villa built in Boston to house her collection. She took care of the collection herself [inaudible] and in her will gave it as public museum with the caveat that nothing would ever be added to the collection, nothing would ever be removed from the collection and nothing could ever be changed in the collection. Everything had to be left exactly the way she designed it.

In 1990 there were a couple of rather amateurish college students type guards on duty, two people dressed as Boston police officers, knock on the door so they had gotten a call of a crime and were mistakenly admitted to the museum, tied up the two guards in the basement and proceeded to go through the museum and steal a lot of their stuff.

Nobody could really figure out why they stole what they did. Although what they stole was very valuable, they left some more valuable things on the wall, stole some weird items. Among the things they stole were a Rembrandt, The Storm on the Sea of Galilee so if anyone ever comes across that would be – they also stole one of the 34 Vermeers that were still in existence and a lot of Degas drawings and – anyway, that crime remains completely unsolved. None of those works have been recovered. Nobody has any idea of who did it now 20 years later.

Q: Do you think it was handpicked by someone?

A: That was a theory and that might explain some of the inconsistent of what they picked out of what rooms. They might also just have been stupid and they might have been in a hurry. They went into one room and they heard the noise and just grabbed a couple and – there was discussion at one point that it was a faction of the IRA,

buddies with Whitey Bulger and they stole the stuff to sell on the clandestine world market to the IRA – that theory is bolstered by the fact that there was a robbery in Ireland that the IRA did do that was very similar but today it is unsolved. When we find Whitey Bulger maybe we'll be able to get some answers to questions. But until then it's a big deal in archives. That is the Thomas Crown Affair the sexy kind of stuff that you get on the news.

All the other top ten art crimes as far as the FBI is concerned are listed on our website.

Art crime team recoveries: between conception and 2008 which is the last data I have, we have recovered \$140 million worth of art, 2,600 items of cultural properties were recovered and FBI has confiscated. What is a cultural property? It is art work, antiques, antiquities, rare books and manuscripts, also to be added to this weapons are on there, antique scientific instruments like telescopes and thermometers and that sorts of thing, anything old or valuable in addition to what we typically think of as works of art.

Art crime worldwide is a multimillion-dollar industry. Interpol in the FBI have proverbially quoted a figure of \$6 billion annually. That's an estimate based on a lot of different factors considered by law enforcement to be the third largest category in terms of dollars of transnational crime after drug smuggling and illegal weapon smuggling. Whether it's really third or not it's a big issue. It's done by [inaudible] specialized in art crime or cultural property theft. These are international gangs of criminals that are committing kidnapping, murder, extortion, drugs, murder all of that sort of stuff and art crime is one of the things they dabble in.

Q: So would the theft of fine art or whatever be collateral to the main crime – is it specialized in buying, stealing and reselling?

AGENT KICE: Not so much. They tend to be crimes of opportunity whether it [inaudible] a drug organization will turn up someone who happens to work in a museum and he's an insider and they'll do a theft or they become aware of [inaudible] and they have a guy or ... whatever. But these tend to be crimes of opportunity. And that can be organizations doing these the final crime they don't operate in the United States, it's more of a European problem. The other thing is that in terms of dollar amounts and in terms of being a worldwide problem we include both organized and small scale looting of archaeological sites worldwide and part of that is part of that problem. We have an enormous problem in Native America and in the Middle East particularly that part of the Middle East that is developing more fast in recent years.

MR. ELMORE: Can I ask you a question? This is in the book called Priceless written by Robert Wittman, an FBI agent and he founded the Art Crime Team.

AGENT KICE: No, that's not –

MR. ELMORE: -- well, he was one of the first Art Crime Team members. But he says on his chapter Befriend and Betray, he says "The sale of counterfeit Indian art is a \$1 billion a

year problem but it's dwarfed by the illegal trade of Native American religious objects particularly those featuring eagle feathers."

AGENT KICE: Yes. So your question is?

MR. ELMORE: That the FBI thinks that there is a billion dollar counterfeit Indian art market going on in our country.

AGENT KICE: Yeah, probably.

MR. ELMORE: Where is there any evidence that it is \$1 billion -

AGENT KICE: Well I don't know that -

MR. ELMORE: -- excuse me, in size and that it is dwarfed by the illegal trade of eagle feathers or religious objects of over \$1 billion a year are being sold.

AGENT KICE: First of all Mr. Wittman is retired FBI. He is currently pursuing [inaudible] with both the FBI and the Department of Justice. So I don't know where he was getting his figures.

MR. ELMORE: That's all I'm asking for; where did those figures come from and why is this a billion dollar Indian art market -- where is this evidence of a billion dollars?

AGENT KICE: I didn't write the book and I don't know.

MR. ELMORE: Excuse me; multi-billion dollar industry up there is a power point presentation, sir.

AGENT KICE: Yes, art crime nationwide - worldwide, excuse me. Not counterfeit Indian ramifications; Indian art in the United States but art crime worldwide is a multi-billion dollar industry. I don't know where he got the figures for counterfeit Indian art. It is a problem. It's addressed by federal criminal legislation. There is a whole organization of the Department of the Interior, the Indian Arts & Crafts Board; they are the experts in counterfeit Indian art. They're the ones to ask about the dollar amounts they keep track of how much counterfeiting in art is being sold in the United States. I don't know about the billion-dollar number and I don't know about the number of artifacts, excuse, objects with eagle feathers being sold and traded in the United States. I don't know the dollar amount of numbers. I know it happens a lot but I don't know the numbers.

MR. ELMORE: Okay, thank you.

AGENT KICE: Yes.

MALE: It seems to me that if you make off with a nice Vermeer painting that some institution would pay \$50 million or \$100 million for it, that's really cool but where do you sell it? Is there some kind of a black market for this stuff?

AGENT KICE: Yes, that is to my knowledge is one of the more unknown aspects of this industry. We believe that there are wealthy private collectors who buy and sell this - excuse me, buy the stuff and it is a completely underground market because the stuff like the Vermeer will disappear and never show up again in the legitimate market. So we assume that there's an underground market. We haven't penetrated that yet.

It also might be that people steal the stuff to try and find buyers for it. They realize it's too high profile and they can't sell it. It's in storage someplace, it's been destroyed, it's buried; who knows. Stuff from the Gardner Museum could be private collection. It could still be in the storage locker that somebody put it in 1990 when things got too hot and they've never gone back. We just don't know.

So it's an unknown. But [inaudible]. The people committing art crime do tend to travel internationally particularly in Europe.

International art thief, United States is a consumer country for cultural properties stolen worldwide. People with money buy art. People with money buy illegally acquired art. People in the United States have most of the world's money so we are a consumer nation. You don't see a lot of thefts of art in the United States that we know or aware of getting sold overseas but we do get items illegally acquired overseas coming to the United States.

Jurisdiction, what's the FBI's jurisdiction in art crimes. Our first jurisdiction is interstate transportation of stolen properties. That National Stolen Property Act, for those of you who don't know this is legal shorthand for Title 18, United States Code, Section 23-14 and 23-15. They'll be a few more slides with that shorthand. So 18 USC is most of the criminal laws that United States passed by the United States Congress. So this basically makes it illegal to transport items work \$5,000 or more across state lines if they have been acquired illegally. That's everything from stolen art to somebody who hijacked a tractor-trailer full of cigarettes or whatever, shoes.

Thief of major art work: There's a special statute that gives federal jurisdiction and particularly FBI jurisdiction in thefts from museums if it - it also prohibits the sale, possession and transfer of such objects. It does not put [inaudible] movement of a stolen property across state lines to make it a federal offense unlike most federal criminal statutes. And there 's a 20 year statute of limitation whereas there is a five year statute of limitations ITSP, interstate transportation.

The museum in that statute is defined by an institution which admits members of the public which has a substantially educational mission. So I don't know, somebody who has got a few items and wanted to open a curio shop outside of a national park and called it a museum, that 's not going to qualify under the statute and they charge people \$2 to go in and look at reflection, that's not going to qualify as a museum. But institutions that essentially have a mission of educating the public they qualify as museums. Items stolen from there if they are worth \$2,000 or more or worth \$200 or more and more than 100 years old can be FBI jurisdiction.

Mail frauds and swindles: any kind of swindle or fraud scheme if it involves the use of interstate mail or interstate wire communications, i.e. phone calls and nowadays emails, becomes federal jurisdiction. So any body that engages in a scheme to defraud somebody, cheat them out of money and uses interstate communication can become

an FBI matter.

What's the role of the cultural property community; you all. First of all, it's information. You're the ones that tell us about crimes that have been committed. You're the ones that tell us about people that you think are committing crimes and that's where the information comes to us from. Unlike many people believe and sometimes it would make my job easier, the FBI is not Big Brother. We are not listening to everyone's telephone conversation and we are not spying on everyone by satellite 24/7. The way we find out about crimes being committed is by people reporting them to us and then we begin to investigate.

We also go the cultural property community for expertise in the authenticity of items, in the value both cultural and monetary objects and to testify as expert witnesses in court. For the most part, people who have to testify as experts are experts in art.

Some other big, besides the Gardner Museum case there are some other big cases in recent history. The theft from the Swedish National Museum, that was very much like the movies. Armed robbers broke into the Swedish National Museum and stole a few Renoirs and Rembrandts most of, they held the guards at bay with an automatic weapon and as they were getting ready to escape the museum they set off bombs on two opposite ends of the city so all the city police officers rushed to where those explosions occurred. They put devices on the street around the museum to flatten the tires of any car coming toward the museum and created gridlock in the streets and then they hopped on a speed boat because the museum is on the waterfront and took off in a speed boat. The stuff that movies are made about. I think that eight subjects were arrested within a number of months by the Swedish authorities but none of the pieces stolen were recovered. The main people for whom they were working got away at the time and still have the pieces outstanding.

The Renoir was recovered I think by European law enforcement officers. They did an undercover buy from the bad guys, arrested the bad guys and recovered it. The Rembrandt was recovered through an undercover operation run largely by the FBI in Denmark and was recovered actually by one of my squad mates in Los Angeles. There's a picture taken when they were doing the exchange, money for the painting, they took a photo then and they arrested the guy handing off the painting. That shows the back of it to authenticate that it was in fact the one taken from the Swedish museum.

Another example of a big case we've been involved in,

in 2006 Art Crime team members recovered a large cache of illegal antiquities smuggled out of Ecuador. We got a tip from the Ecuadorian authorities, worked in cooperation with them and developed suspects in Miami and did a search and seizure and seized 169 artifacts valued at \$2 million and then 600



Mapuche silver stirrups

more artifacts were recovered by the Ecuadorian police at the same time from related subjects who had not yet sold them or transported them out of the country. Another example of another type of our case.

Art theft in the United States: most thefts are residential burglaries. In those burglaries there are volumes of lesser value are stolen. They sell through [inaudible] people don't regularly break into places with automatic weapons, hold people at gun point, tie them up and steal stuff. Like I talked about in the Gardner Museum and the Swedish National Museum. It's not really organized theft. It's a theft

**AGENT KICE: Yes. So your question is?**  
**MR. ELMORE: That the FBI thinks that there is a billion dollar counterfeit Indian art market going on in our country.**  
**AGENT KICE: Yeah, probably.**

of opportunity. Burglars who live in the United States, not universally, but tend to be people who need money for drugs. They do a residential burglary and they target a house that looks like it belongs to somebody of means, somebody with money, they come across works of art that they probably don't

know what they are and what they're worth and they steal them along with the TV and stereo and the camera and the computer and the jewelry and then try to find a place to sell them.

As an example, we had a case here in Santa Fe last year where burglars broke into a private residence stole a number of works of art and tapes that the owner had. Including paintings that the owner himself had painted worth tens of thousands of dollars, he was an artist of success himself, but among the items they stole was a drawing by Vincent Van Gogh which was hung in the man's walk-in closet, it wasn't even out in public display in his home. That was later recovered by the Santa Fe police department with some assistance from me at a resale shop in Raton, New Mexico on sale for \$250. If you think you can't get a bargain at resale shops –

The piece has not been authenticated and has not been appraised yet to my knowledge but its estimated value is between \$250 thousand and \$1 million. There is some debate whether it really is a Van Gogh because it does not appear in the catalogue raisonne of Van Gogh's works. The man that owned it, his understanding – I don't want to say claims because I don't necessarily want to refute him, this is kind of up in the air right now – but his belief is it was acquired by his grandfather who was the ambassador from the Netherlands to France in the late 19th Century when the painting – the painting was painted in 1888, the painting for which the drawing was a study. It's called Night Café, it's one of Van Gogh's more famous paintings but no drawn study of it was known although there is a letter from Van Gogh to his brother Theo mentioning he had done a charcoal study of this. Anyway, it is believed that this item was acquired by this man's family in the late 19th Century and it has never been for sale publicly and it's has never been exhibited publicly that's why it doesn't appear in the catalogue raisonne. So when the time comes to try this guy and actually develop a suspect Santa Fe police and New Mexico state police developed a suspect, they located him in Vermont recently so we'll see. I don't think he has been extradited back here yet, but when the time comes for trial there's going to have to be some authentication if they're going to charge with the theft of a \$1 million painting. So we'll see what the experts say when the time comes.

FEMALE: And if he had it in his closet, isn't that a little bit suspicious? I mean I understand that you protect a work of art but I mean where did he get it? That's the point.

AGENT KICE: There doesn't appear to be any debate that he got his father who got it from his grandfather. But –

FEMALE: In the case of the work that was stolen that was done by the owner, the artist/ owner, is that valued at the cost of materials like \$400 for the cost of the canvas?

AGENT KICE: The value we put on it at the time that we opened the case was based on his claim of its

value. When it comes time for trial to charge somebody with the crime of stealing those paintings, we'll basically look at what that guy's work has sold for in the past, similar works of similar size and then we'll come up with an algorithm to determine the average cost of a painting of his of X size.

The way we found where the Van Gogh was that some of his paintings were also at this resale shop in Raton. Some lady got in from Texas and stopped and said these look nice, I'll buy these for \$150/\$200 took them home and looked at his signature block, went to a website, found out who he was, called him and said how much are these paintings worth; and where did you buy them, oh someplace down in Raton. He called me and I called [inaudible] and he rushed up there and got not all of his stuff that was stolen but a lot of his stuff that was stolen back. Also, we found stuff that had been stolen from the home of a fairly famous country singer in Taos, also sold by the same guy to the same resale shop.

FEMALE: For an update on these sort of open cases can we find even small ones like Raton on that website?

AGENT KICE: No, they only cover the real big ones. For updates on the smaller cases stay tuned to the New Mexican, it's been covering this case. But there probably won't be anything much that shows up in the paper until this guy gets extradited back from Vermont and faces charges.

Expensive works of art, viable works of art in the United States tend to leave the hands of their rightful owner and end up in the stolen art market because they're burglarized from peoples' homes and they are not necessarily the \$ million Van Gogh being sold to a retail shop for some number less than \$250 because that was what it was ultimately on sale for. That guy or guys obviously didn't know it was a Van Gogh; right. It probably saw a pretty gilt frame and thought the frame was worth more than – anyway, so in the United States these works tend not to be stolen by people who know what they're going after.

In the United States, unlike the Swedish National Museum and the Gardner Museum is an example to the contrary, about 80 percent of US museum theft cases that go into the National Stolen Art File are committed by staff members are those in a position of trust. Stuff from museums, things get stolen by people who work there. People don't break in and steal stuff from museums typically. They do in Europe but less often in the United States. And the thefts are most often from collection storage areas not exhibition space. People don't steal stuff from off the walls they go into the storage, the back storage and steal stuff out of their collections in large part because as museum staff members they know where that stuff is and they know it's not checked on regularly and it can disappear for awhile before somebody knows it is gone.

The next few slides are aimed largely at museum security community, that's who this power point presentation was made for. Are you all interested in how to protect works of art at museums and galleries or shall I speed through this? Yes you are interested – all right, yes.

Basically, know what's there and have good records of it. Have it insured. If you individually own valuable items of art and we're talking a few thousand dollars, don't assume your homeowner's policy will cover it because they won't. You need to have a rider specifically for the value of specific items. You need to have good images of those items recorded. That's photographs, digital photographs, videotape of the items of all sides. If it's a three-dimensional work of art, images from all sides help recover it. The stolen Van Gogh we didn't have a photograph of it to put in the National Stolen Archive luckily we recovered it pretty quickly but there was not photograph.

MALE: do you have to have good appraisals also for insurance purposes?

AGENT KICE: If you're going to get a rider for an item your insurance company is going to say okay we've got to figure out how much this thing is worth. Yeah, if they're going to insure it for X amount they're going to want to know it's worth that much, so they'll require you to do so, yes.

And control access to spaces. A catalogue of valued items should include all this stuff. That stuff we need to put into databases to get the help of people recovering it. And that's all on the handout to you guys so I don't have to belabor it. And, again, all this stuff is in your handout.

MALE: And while you're doing that, just a question for you. The previous speaker mentioned that this stuff of like 400 to 500 items from the Wisconsin Historical Society which was done by a staff number and they didn't know about it for a long time and only 35 or so of those items have been found partly because the museum didn't have photographs. Is that often true for museum? I assume that individuals don't have. But frankly I'm surprised that museums don't have it. Is that often for museums to be lax in that area?

AGENT KICE: Smaller scale museums if they are underfunded, have a small staff, maybe a largely volunteer staff like Wisconsin Historical Society, yeah, that's probably the case. And obviously theft occurs and I can't emphasize this enough, don't disturb the scene. Don't touch anything. Don't go in there. Don't even walk near it, stay out.

If the objects fulfill the criteria for the Theft of Major Art Statute public museum over 100 years old and 5000 or 10,000 – wait I had the numbers too low, over 100 years and \$5,000 or over \$10,000 or \$100,000 [sic] call the FBI. Be happy to talk.

Determine the last time the object was seen for objects back in storage, behind the scenes in museum and galleries, that can become difficult to figure out the last time you've seen. Call the insurance company with an incident report. Even if there is no FBI jurisdiction, so if it hasn't crossed state lines and it's not from a museum and so forth, I can assist in getting items entered into the national and international databases whereas the Santa Fe police

department and Santa Fe County sheriff's department doesn't have access with us. So if you have the [inaudible] call the police and mention to them they can contact me. Although the main investigation for the Santa Fe police department, Detective Pecorelli has a lot of experience in art crime and he knows and he can call me and get it in the database. That's a role we can play even if there is no other federal jurisdiction. That's how I got involved in the Van Gogh thing at all, I was just helping the police out.

**Stuff from museums, things get stolen by people who work there. People don't break in and steal stuff from museums typically.**

Art Fraud: So switching gears here from theft to fraud which is way more common in the United States. Art fraud can range from the simple to the complex. The most common scheme is a simple insurance fraud and it happens all the time as you mentioned, people claim stuff lost, stolen, damaged, when it's not been to the insurance claim. I get reports from complaints from insurance companies all the time of stuff that happens here in Santa Fe about what they believe to be fraud in an insurance claim. I can't handle all of them but if they are a large enough dollar amount and there's actually good evidence that the fraud has been committed we can open a federal – and if there's some evidence that interstate communication has taken place with say an insurance adjuster or the insurance company or someone else we can open a federal fraud case and I've got a bunch of them open right now. So it happens all the time. Whether people claim items are stolen when they've actually been sold or they claim items are damaged when they have been damaged intentionally and they make a claim. So it goes from simple stuff like that all the way up to very complex investment fraud schemes involving art as investment or collateral. Last year at the annual Art Crime Team training we heard about this elaborate scheme in Texas where these wealthy – wealthy oil millionaires were investing in gold and then that person got them involved and there was going to be some big investment scheme and they invested in a company and buy share in a company or loan and the collateral was going to be this catalogue of invaluable works of art that were purchased in Europe and they showed them the pictures of the art and showed them the bank records for the purchases and stuff. Essentially, they had bought a bunch of original works of art in Europe and a bunch of fakes and a bunch of copies and then set their value at \$50,000 when their value was more \$5,000 and put those up as collateral for loans, they defaulted on the loans and people went to repossess the collateral and it had much lesser value than claimed.

That's an example of the kind of investment schemes that can revolve around art. Also, people that can afford to buy expensive art are wealthy people. Maybe they're looking

to diversify their investment portfolio and they think art might be kind of interesting and they like art and [inaudible] people who are buying it and they're open to being taken by shysters, by people trying to hook them out of their money. I guess the bottom line is if it sounds too good to be true, it is. I have to tell people that on the phone everyday who call in who have been swindled in an internet fraud scheme. If it sounds too good to be true, it probably is.

Then we have straight forgery. People just simply faking works of art and selling them and the FBI has jurisdiction on all of this stuff as I said if there is interstate communication by wire or mail.

FEMALE: Does that last point include internet websites as well?

**AGENT KICE: And it seems like about 30 percent of all fine art sold in the world was not created by the person the seller said**

**MR. ELMORE: Who are the experts that came up with that 30 percent figure?**

**AGENT KICE: That's not to say that every gallery you walk into that three out of ten pieces on the wall are fake, no. That's the total commerce in fine art in the world or attempted commerce.**

AGENT KICE: Yes, any wire communication. We get questions if somebody in New Mexico sends an email to somebody else in New Mexico to engage in a scheme to defraud but almost always the email servers are outside of the state of New Mexico so the emails have gone outside the state of New Mexico and come back in and that's interstate – so if it involves the internet it's probably interstate.

And if people are talking on cell phones, all the cell phone carriers operate across state lines so we can actually sometimes use that, as we say, a hook to hang our hat on, to have an interstate nexus as we say is the case. Interstate communication is not necessarily picking up your telephone and talking to somebody who is in another state on a hard line.

Forgery, the intentional or unintentional sale of fraudulent fine art is extremely common. The annual FBI art crime training took place in New York last year and it was basically on forgery and authentication. We had many panel discussions of very prominent gallery owners, appraisers, authenticators in the fine art world from New York City to come talk to us and we basically asked them all what their feeling was about the percentage of pieces coming through that they see they're fake. And it seems like about 30 percent of all fine art sold in the world was not created by the person the seller said -- again, let the buyer beware. You're buying an expensive work of art there is a 30 percent chance it's not done by who the seller says it is done by. And that then involves a lot of different – you can arrive at the fakeness of that work by, one is straight delivery of fake. Somebody who hires an artist, contemporary artist to do a copy of a famous

work of art or even not a very famous but a work that has some value and sell it as the original. It happens a lot.

MR. ELMORE: Who are the experts that came up with that 30 percent figure? Because frankly you're saying that, you're implying that 30 percent of the art that is being sold here in Santa Fe is forged. I think that is an outrageous claim, sir. Who are these experts?

AGENT KICE: They're the people who work in the galleries in New York and see the art coming through their galleries and authenticate and trace the provenance.

MR. ELMORE: -- they're telling you that 30 percent of the art that they're selling is fake.

AGENT KICE: Thirty percent of the art that they're asked to sell or handle, yes, is not what it purports to be.

Now if you're going to a gallery that represents a specific Santa Fe artists and that gallery knows where their stuff comes from the chances of it being fake are not very high.

MR. ELMORE: It's just the wording really that I'm objecting to because it makes it seem that 30 percent of all of the fine art – if somebody buys something, a fake, at a flea market and brings it into my shop and says, hey, Steve, is this a great

whatever it is? I say no.

AGENT KICE: That's what we're talking about.

MR. ELMORE: Okay, but that's not 30 percent of all the real fine art being sold.

AGENT KICE: That's not to say that every gallery you walk into that three out of ten pieces on the wall are fake, no. That's the total commerce in fine art in the world or attempted commerce.

[inaudible] female comments]

AGENT KICE: But they believe that 30 percent of the pieces bought and sold on the world market are not what they purport to be.

MR. ELMORE: I think these experts should state who they are and where they're getting this information because I don't –

AGENT KICE: This is an opinion that I believe in talking to four panelists –

MR. ELMORE: Do you think that's true in Santa Fe?

AGENT KICE: I don't know. Again, if they are works being sold by galleries that represent a living Santa Fe artists, you know who is representing their art in this gallery, no, the chances of it being fake are pretty slim unless that gallery owner is –

MR. ELMORE: But we're talking about –

AGENT KICE: If you look at a piece in a gallery that was sold to that person by someone who had it sold to them, who had it sold to them from an artist that created it 50 years ago and if you don't have a really solid

paper trail from start A to point X all the way back to the artist, there's 30 percent change it's not what it purports to be.

MR. ELMORE: I see it as you're casting grave aspersions upon the art market by saying this.

AGENT KICE: Well, I'll get to the point here, but a lot of it is based on mistaken identify. It doesn't necessarily mean that people are doing it deliberately.

MR. ELMORE: I think you should go after those people and get them.

FEMALE: I was going to say that that statistic is more believable when you consider historic, not the market for contemporary artwork, when you consider the market for historic pieces by 19th Century to Old Master --

AGENT KICE: Or even early 20th Century pieces.

FEMALE: Who is -- and it is not necessarily deliberate forgery but misattribution. There aren't *raisonnes* in the world enough to identify every single art work by every artist. And the documentation isn't available and people/experts make mistakes all the time.

MALE: And it's probably through the internet. If you look at the internet at this stuff -- it's amazing stuff.

AGENT KICE: For instance, even works created in the 20th Century then, at the time of creation were created by probably amateur that have since become -- there's become a market for them, an interest in them. Works for early 20th Century African American artists who were unrecognized at the time has become a big market in New York in recent years. So those items when they are made and when they're given away the first time and given away the second time and acquired the third time aren't -- there's not necessarily good provenance, good records tracing them back to their origin. And somebody may look at a piece and say this looks just like it was made by this artist who I know their pieces are selling for \$5,000 now and sell it as such. Whether it be wishful thinking or whatever. The moral of this story is provenance, provenance, provenance, provenance. Trace the piece back to the artist if you can't, you're taking a risk in purchasing it.

FEMALE: A lot of that stuff too is just unsigned and people tend to --

AGENT KICE: Absolutely, absolutely. And [inaudible] I'll show you a few pieces of those later, mistaken identify, misattribution, reproduction of something original. If you got a lot of gullible buyers come across something an Andy Warhol, it happens all the time, it's a silk screen, it's got a frame, it's cloth, it must be an original -- "I found a lost Warhol." But it's a print and it's an intentional copy but they think they've got an original and try to sell it for such.

Misattributions, there's a lot of artists who again maybe didn't sign their work in the early part of their careers and their work has become valuable and sought after later. But they were working as part of a school or a movement in a particular place in a particular time, many members of

whom were doing similar media, similar appearance, similar themes and somebody comes across an item, a piece made by another artist working in that school of someone who has become famous and they think oh, this was done in this time period and this city and it looks kind of like so-and-so and they attribute it to the famous artist not their colleague who may be deceased or a sales clerk at Kmart. But it's attributed to that artist because it looks similar and sold as such. That's what we're talking about in terms of the total number of -- and as I said, 30 percent were not created by the artist who it was attributed to. [inaudible]

You mentioned that internet, but there was one of those home shopping networks on a TV channel that had a show that was selling fine art and they were selling prints of Picasso, Degas, Renoir and Van Gogh and famous artists, they were selling prints as originals. And they did a big volume business. An agent in Los Angeles, a friend of mine, got a report of this and was investigating it and decided just to stop by, stop by and was sitting there at the front desk of this store front operation and somebody comes in from the back carrying I don't know I'm going to say a Picasso print, I don't know what it was but walks up and the woman -- so he's waiting to talk to the receptionist that is on the phone and while she is still on the phone waiting for him she puts the phone to her ear, takes and signs Pablo Picasso and hands it to that person and ships it out to the person on Home Shopping. So the big art market goes all the way to that stuff. It's simple they take advantage of customers who are that gullible. And by the way she signed Pablo Picasso and I think he signed Picasso.

So authentication, you're asking how we authenticate and determine whether it's fake or not and this is done in a lot of ways. It is done by art historians. And it's based on qualitative analysis, people who have spent years studying the artistic qualities of the use of light, the use of color, the use of form/shape and other given artists who become expert on that artist and will look at that's work and determine whether or not it is consistent with the work of the artist.

Dealers and curators, and we're talking about more modern stuff that is not so well known by museum curators, it's art dealer stuff, 20th Century stuff. But there are art dealers who become experts in a particular genre/particular school of art and again, understand the qualitative nature of works by particular artist and can give some sense of whether they're legitimate or not.

There's scientific analysis. There are firms, one in particular, that are material analysis experts. They'll look at a work of art and they can take samplings of the paint and do x-ray or fraction analysis to determine the exact chemical composition of the paint and figure out when it was made. They can examine the canvas. They can examine smoke and dust and dirt and smog on the surface of the painting. They can examine the wood, the frame, the stitches -- all of the things that go into that work of art and determine whether or not they're consistent usually with the time period that the work is supposed to have been created but also the place.

Whether that type of paint was available in the place where the artist was actually working and where this work was purported to have been done.

Finally, provenance which is the main thing that the buyer and the dealer can rely on. Make sure that there are good records going back to where the thing was supposedly originally came from.

MR. ELMORE: Let's talk about that a minute. I mean, there is stuff all over the world and nobody keeps a record.

AGENT KICE: And you want to make absolutely sure that the thing you're selling is what it purports to be, provenance is a way to do that. If you're dealing in a type of art that doesn't have those kinds of records, then you don't have that to rely on. Then you have to fall back on qualitative sort of analysis or material [inaudible]. You have to fall back on some other method to figure out whether it really is what it is suppose to be. But if it is the type of work where you expect there to be written records and there aren't, that should be a dead giveaway right off the bat. Particularly, bill of sale from the person who's selling it to you and trace that back.

But if you're talking about Native American art made in the early 20th Century or something, yeah, there's probably

**MR. ELMORE: I would like you to comment on that 'I'd like the trade to dry up.' And first of all, do you know which federal agent said that?**

**AGENT KICE: Yeah, me.**

not going to be written records and you're going to have to rely on your knowledge of what those pieces look like or get some materials analysis done by an expert to determine whether the stuff that goes into that work either comes from the time period you think it came from or the place or whatever.

Deliberate fakes. This is an image and I think it is probably a screen shoot from the internet but the real image from the catalogue raisonne of Picasso of Woman in a Blue Hat, a drawing - 1901. This is one sold in 2006 by a woman who owned a West Hollywood antique store in Los Angeles, outside Los Angeles, sold for \$2 million. It's a pretty good copy. This art dealer/antique dealer went to a local artist and said can you draw me this Picasso in the same colors, materials and same size and the artist did a pretty good job. Just from looking at these images and actually they're bigger now than when I was looking at them on my computer screen. The only thing I can see is that the way his bun doesn't look quite right to me but everything else looks pretty good because they are hiring good modern artists to fake this stuff. When she did the sale she said this has come on the market because of a dispute in the family or a divorce - nasty and ugly and hush-hush, so we don't want to talk

about this too much and I can let it go to you for the low, low price of \$2 million. So she didn't have provenance, she didn't have explanation, good explanation of how this came on the market, where she got and so on and so on. The person bought it. Spent \$2 million for something she probably paid, what do you pay a starving artists to draw this, \$5,000?

FEMALE: So how did she discover it?

AGENT KICE: You know I don't know the history of this case. I resume the buyer then went to a museum and then saw the real one on the wall. Actually, the real one was sold by Sotheby's in 1990 to a private collector so I don't know if they went back into Sotheby's website or that they tried to sell it to Sotheby and said we sold that just a few years ago and it wasn't to you. So I don't know.

Okay, Andy Warhol, this case came out of Zagreb, Yugoslavia - here's the real Any Warhol, Great Marilyn, also sometimes called Lavender Marilyn it's one of his series of Marilyn Monroe, done in 1962, done as much as any work was by Andy Warhol himself because I think he actually had people physically doing the hands on work. This is a fake sold to somebody for a lot of money, seized in Zagreb. They were able to determine it was a fake - well, first of all I don't know - that little doohickey there which doesn't appear in the original and I'm not sure if the centering of the piece

was exactly the way the original was or if there's too much space over here but they examined the marks, the silk screen marks, the screen marks on this one and they didn't match up with the paint. So in other words, they had taken a print of the Great Marilyn that had been printed not be silk screen I don't know how the computer [inaudible] so that it showed the actual silk screen marks

in the paint and then they put a screen over it to put screen marks on it that didn't match up to the original screen marks so it was kind of obvious when someone looked at it with a magnifying -

FEMALE: What if somebody actually gets their hands on the actual print - some of the screen from the original, the real deal and starts running off more.

AGENT KICE: That would be easier to do. But the paint probably wouldn't be the same; the ink probably won't be the same as it was originally. The paper probably wouldn't be the same et cetera, et cetera. There would be ways to tell the difference if you took the time to delve that deep into the question.

Antiquities crimes: in the southwest antiquities crime is as a significant problem or a more significant problem for the FBI. The FBI and the Fine Art Thefts [inaudible] particularly here in Santa Fe because this town has a big market for antique Native American art and antique world art/tribal art. So the Federal jurisdiction and antiquities matters included the Archaeological Resources Protection Act and as the predecessor the Antiquities Act of 1906, the Native American Grave Protection Repatriation Act, theft of government property and theft of tribal property, interstate



transportation of stolen property and potentially other federal statutes. This has got a lot of press since June of 2009, there was a big case out at the Four Corners region out of Blanding in Utah and out of our Salt Lake City office. There were four search warrants that were served here in Santa Fe and it's an ongoing case. There are 25 people indicted, two of them committed suicide. The source that was really the impetus for the case, he also committed suicide. The cases are ongoing. I think it's up to 17 plea bargains out of Utah now I believe and there are still four ongoing cases here in New Mexico. In the cases of those who pled guilty in Utah, they've all gotten probation. None of them got any jail time but all of the people who plead so far have agreed to turn over their collections. So there's been about \$7 million of I think collections turned over up to this point.

And that's just an example of the kind of cases that are ongoing by a number of federal law enforcement agencies all over the southwest. This case was larger than most because they developed a source who cooperated with law enforcement who had access to a lot of players in this world, this industry if you will, and that's why this case grew to the proportions that it did. There are always smaller scale cases of this nature going on in the Four Corner states by the FBI, the BLM, Forest Service, Park Service, BIA, the agencies who have responsibility for the public lands from which these items are often looted. So, at any rate, there has been much talk in the media of there being a sea change in federal response to antiquities crime. I'd like to think that was the case. I'd like to think antiquities crimes were getting more attention from US Department of Justice and the FBI. I don't think that's necessarily the case. I think we had a good source and put together a good case and it got a big media splash and there will be spin offs from those 25 indictees. We'll find information from additional players that deal in the antiquities market and there will be additional search warrants and arrests eventually. We would like to keep it going and put a crimp in the illegal antiquities market. Yes, you had a question.

MR. ELMORE: In the August 20th issue of the Pasatiempo they interview a US Federal agent and he says very clearly that he would like the trade in antiquities to dry up.

AGENT KICE: Um-hum.

MR. ELMORE: And I'd like you to comment on that because we have a healthy antique Indian art market here in Santa Fe. It is legal to sell and buy southwestern antiques. It's in the Archaeological Resources Protection Act, the pieces before 1979 are grandfathered in and they are acknowledged as existing and the government passes a law that says the government and the collectors and the archaeologists should cooperate and work together on this. So what I would like to know, I would like you to comment on that "I'd like the trade to dry up." And first of all, do you know which federal agent said that?

AGENT KICE: Yeah, me.

MR. ELMORE: Okay. Why would you like the

trade to dry up, sir?

AGENT KICE: Because – and you're absolutely right there is a legal trade in antiquities. The problem is that that legal trade creates an enormous loophole that allows people —that facilitates the illegal trade. So because there continues to be a legal trade in items legally acquired from private lands it creates a trade which gives people the incentive to continue to loot sites on public land. And sites continue to get looted on public land and invaluable, priceless archaeological resources are destroyed illegally because there is a legal market. So that's why I would like the legal market to go away. It would end that facilitation of the illegal market.

MR. ELMORE: But there's no authority in the Archaeological Resource Protection Act for you to destroy a perfectly legal American business which has been going on before this country was ever even a country and you're now saying that rather than you're going to arrest the looters the quickest way is to destroy the market.

AGENT KICE: No, that's not what I said.

MR. ELMORE: "I'd like the trade to dry up," what does that mean?

AGENT KICE: I personally, David Kice, not speaking for the US Department of Justice, the US Congress, the FBI, I would like to see the trade dry up in order to protect archaeological resources on public lands –

MR. ELMORE: Why don't you go out there and protect the sites rather than attack the people who have legal antiquities?

AGENT KICE: Wait – we're not attacking people who have legal antiquities.

MR. ELMORE: Yes, you are. You're saying you want the trade to dry up. You're going to –

AGENT KICE: Did I say anything about attacking?

MR. ELMORE: Well, I think swat teams on four Santa Fe dealers is attacking the trade, sir.

AGENT KICE: There were no swat teams.

MR. ELMORE: Okay. There were no swat teams in the four searches, correct.

MAN: What could we prevent to [inaudible] his from start this from being actually rewarding because the punishment for them seems to be so light.

AGENT KICE: It is and that's another problem. You can see that as a failure on the part of the crafting of the legislation or you can see it as reflecting the intent of Congress for them to be illegal but not really illegal.

MR. ELMORE: So you're going to interpret the law and congress in the way that you wish to and attempt to dry up catch the looters.

AGENT KICE: I'm going to enforce the law as it is written, that's my job.

MR. ELMORE: Well, where does the law say that it is your duty to dry up the trade? The law says for you to –

AGENT KICE: I didn't say that that was my

duty. I said that was my personal opinion that I would like to see the trade dry up.

MALE: But, sir, to me it seems like when you say that all of us agree that child molestation is terrible; right?

AGENT KICE: Yes.

MALE: Well, you're saying there's a way to prevent child molestation: we'll kill all the kids. It's the same

**MR. ELMORE: Why don't you go out there and protect the sites rather than attack the people who have legal antiquities?**

**AGENT KICE: Wait - we're not attacking people who have legal antiquities.**

thing.

AGENT KICE: No. To extend the child analogy. Let's say it was legal to sell pictures of your own children naked but you couldn't sell pictures of other kids naked. That's the analogy that we're talking about here. Private versus public; right? So in order to stop the trade in selling pictures of your own kids naked we would stop the trade in all selling of naked pictures of kids and it would accomplish that; correct?

THREE VOICES: No.

MR. ELMORE: What does it mean, you saying you would like the trade to dry up because there's no provenance so therefore every piece that does not have provenance should now be a illegal - but you're saying you want the trade to dry up, sir? What authority do you have --

AGENT KICE: I would like you personally to stop selling antiquities because it would stop people from looting sites. If you're not willing to do that, then fine.

MR. ELMORE: I'm not buying from looters. I've never bought a piece from a looter in my life.

AGENT KICE: Right but because you and those like you continue to sell stuff legally acquired -

MR. ELMORE: It's legal by the law, sir. The federal government -

AGENT KICE: You sell stuff legally acquired. There is a market for stuff illegally acquired.

MR. ELMORE: Yes, it comes off of private land, it came off before 1979 - you're attacking that trade and I want to know, really, what has got you into this bad thinking position where you kill off an American business because there are looters. Your job by both laws is to catch the looters

AGENT KICE: Which is what I do.

MR. ELMORE: There are 13 of those 26 cases were looters. The other 13 were not looters.

AGENT KICE: Who, contrary to the law, bought sold or traded illegally acquired items. Which is what the law prohibits.

MALE: Can I ask a question?

AGENT KICE: Yeah.

MALE: Even assuming I agree with you, why do you think that because there is no commerce that would start looting. I grew up in Ohio near Pt. Ridge and there are people on weekends -

AGENT KICE: Step outside of their property

MALE: It won't stop the looting, you know.

AGENT KICE: It will diminish it to a large degree. It will diminish the systematic large scale looting if there's no market for it.

MR. ELMORE: Where is the systematic large scale looting?

AGENT KICE: Let other people have a turn, sir. There are enormous loopholes in NAGRA and ARPA. The loop

hole in ARPA is that only items on public lands as you say are covered but if people buy, trade and sell items without revealing where they came from or lying about -

MR. ELMORE: Or not knowing.

AGENT KICE: -- or not knowing then that allows for those items to be bought, sold and traded that come illegally from public lands. Right?

MR. ELMORE: It's possible, yes.

AGENT KICE: I don't know, what percentage do you think, not you, of all the people buying, selling and trading antique Native American art in the United States, of all those items that are currently out there for sale today, what percentage do you think came from public lands versus private lands honestly?

MR. ELMORE: Before 1979.

AGENT KICE: The Antiquities Act was -

MR. ELMORE: -- I know that from Dr.

Stephen LaBlanc's book from Harvard when he investigated Hopi pottery 83 percent of the Hopi pots that were prehistoric are already in public museums and institutions. And 17 percent of the Hopi prehistoric pottery that he researched for 20 years was in private hands. So this tells me that 83 percent of material that is out of the ground is already in public institutions and that 17 percent is in private collections. These private collections are perfectly legal under ARPA.

AGENT KICE: Yeah, but you didn't answer my question.

MR. ELMORE: You're saying that you want to dry up the trade.

AGENT KICE: You didn't answer my question.

MR. ELMORE: What is the question?

AGENT KICE: Of all the stuff all that prehistoric Native American antiquities or historic Native American antiquities that are out there - what percentage, and not your shop, not your collection - but out there as a whole, what percentage do you think came off public lands versus private land?

MR. ELMORE: Again, I don't have an actual

figure for you but I know that it is part of the history of this part of the West that thousands and thousands of early settlers went onto the land and every Sunday afternoon had a picnic where they collected Indian antiquities. Those pieces were legal. They have been passed down through the family. They are heirlooms. They are pieces of value. They are cherished by them, people are bonded to them and they have a right to own it. There's nothing illegal about them having them, sir. And, yet, you're saying you want to kill the business.

FEMALE: I think maybe a more useful question is what percentage of all materials circulating are of an unknown provenance. I think to the utility of the stated purpose in ARPA the desirability of exchange of information, of preservation and faith was – it is my intuitive response that a proposal that items should be considered as illegal would have several results. One would be that we would essentially stop the ability for researchers to do their job. You would frighten people into destroying information and the federal judge in Albuquerque clearly pointed out that you would essentially be criminalizing the innocent actions of the thousands and thousands of Americans who have purchased such items in the past. I think of my mother who did so before 1979 bought stuff in the galleries and if you have no means in determining the origin of a piece given the resources that we have in terms of increased ability to document thanks to new technology and the increased ability to share information through the internet then the resources that are being devoted to what I have to think of as really publicly showcasing of actions that those resources would be better devoted and more effectively devoted in terms of curtailing archaeological degradation by educational work and by sharing the information and by establishing the value of preserving and documenting these materials.

To my mind it's really the matter what's the most efficient way to achieve a goal you have in mind and looking at the question of how many pieces are there that you know anything about is a more relevant question in terms of developing social policy.

AGENT KICE: Those are all avenues of curtailing the looting of archaeological sites but they're not the ones I'm charged with engaging.

FEMALE: May I ask question which is what did this investigation cost in terms of manpower or dollars because you say the art crime section only came to be in 2004; what is its budget?

AGENT KICE: I have no idea. Less than a million, I know.

FEMALE: Really.

MR. ELMORE: Really.

AGENT KICE: But the cases out of Utah those weren't funded by the Art Crime Team. Those were funded by the Salt Lake City Field Office of the BIA, Utah BLM, Salt Lake

– Phoenix Field of the FBI, Arizona BLM, New Mexico BLM, New Mexico FBI. So investigations of art crimes or whatever they're called are funded out of the field office where that investigation takes place.

MR. ELMORE: You are putting yourself above the law.

AUDIENCE: Come on.

**MALE: Even assuming I agree with you, why do you think that because there is no commerce that would start looting. I grew up in Ohio near Pt. Ridge and there are people on weekends –**  
**AGENT KICE: Step outside of their property –**  
**MALE: It won't stop the looting, you know.**  
**AGENT KICE: It will diminish it to a large degree. It will diminish the systematic large scale looting if there's no market for it.**

AGENT KICE: Just a minute. You don't like me –

MR. ELMORE: No, it's not personal David. I assure you --

AGENT KICE: You don't like me because of what I do impacts potentially your living; correct?

MR. ELMORE: And my collection and my hobby and my passion in life, yes.

AGENT KICE: Your passion.

MR. ELMORE: That's right.

AGENT KICE: And I don't like that passion in life because it makes it harder for me to do my job and protect things.

MR. ELMORE: I'm sorry if you have a hard job, sir. I will assist you in that job but not if you're trying to destroy my business.

MALE: Let's let the other people in the audience participate. Is that reasonable?

MR. ELMORE: Sure.

MALE: This isn't about you.

MR. ELMORE: No, it isn't.

MALE : Okay, we can agree on that.

ATTORNEY: First of all I think your position is contrary to ARPA and the reason I say that is that if you look at the purpose of ARPA it is to foster cooperation between the federal agencies and collectors.

AGENT KICE: One of the purpose, yeah.

ATTORNEY: That's the main – the purpose section, that's the main one.

AGENT KICE: You're right. It's not the purpose of the criminal provisions of ARPA.

ATTORNEY: No, I didn't say criminal. I said the purpose of ARPA which includes the criminal. And ARPA also says that anything that was in the marketplace prior to 1979 is grandfathered in to help foster this cooperation between federal agencies and also says archaeologists and collectors. Now if that's the stated purpose of the act then it

seems to be that your position is actually contrary to that and I think that's why Steve's getting a little upset.

But to me as an attorney, you're doing something that is against the statute that you want to enforce to bring actions against people.

AGENT KICE: I'm charged in enforcing the criminal provisions.

ATTORNEY: Sure, and that's part of ARPA.

AGENT KICE: Investigating, prosecuting people for the trade of items illegally acquired in contradiction to ARPA. As I said, me, the fact that I would like to see the trade dried up does not attack on you personally. I don't dislike you. But the fact, and as I said before, it's my personal opinion that the existence of the legal trade creates a market for the illegal items. So my job would be easy, there would be no market, no commercial market for illegal looted antiquities if there did not exist a legal one. So my job would be easier if that legal market dried up. Also, never mind, anyway that's the reason I would like to see that dry up.

MR. ELMORE: Does the tip of the tail wag the whole dog?

AGENT KICE: Nobody knows what percentage of the market is illegal versus legal.

MR. ELMORE: It's nothing like a billion dollars a year, sir. The entire art market for Santa Fe, for the entire art market is \$1 billion. New York is \$14 billion and now you're telling me there's over a billion in eagle feathers; where is this stuff?

AGENT KICE: No, I'm telling you that.

MR. ELMORE: Well, Mr. Wittman does. He was the guy who's work you've been showing up here.

AGENT KICE: No.

MR. ELMORE: Oh really, he wasn't involved in the Swedish Museum case?

AGENT KICE: No.

MR. ELMORE: No wonder this person was no gratis.

FEMALE: In your defense, I think if what Mr. Kice is saying is if it dry up – and you can say that about the entire art world, you know, if nobody created art then we wouldn't have a problem with art crimes. But the whole point is that these antiquities cannot be replaced. This is a cultural property that is irreplaceable and if there isn't a ban trading them the focus would be on preservation and study. And, so I understand why you said it. It's not going to happen, but I understand the point And it's the same in Egypt.

AGENT KICE: Many, many other countries regard all items of antiquity that come out of the ground that have come out of the ground to be a national resource and to belong to the nation as a whole and cannot be bought sold or trade.

MR. ELMORE: There is a fourth amendment that addresses personal property rights, sir, in this country.

FEMALE: But in contrast –

AGENT KICE: Which is why ARPA makes the distinction between public and private land. But again, we've gone around and around and –

MR. ELMORE: I want you to think this through a little better [inaudible] I would just ask that of you sir as I have asked that of myself.

AGENT KICE: Any other questions on any other topic other than antiquities.

FEMALE: One of the difficulties and issues for our [inaudible] for accessing information about items that was reported as stolen and as both international and domestic cultural property matters this open access is a real issue. I mention this that it's just expensive and a little bit [inaudible] Art on Register – I know that Interpol has recently opened his database for people who want to formally sign up and get a log in and information and access. Is there any thoughts –

AGENT KICE: Well, now that you mention it. The public FBI internet site, if you go to the art crime section and I didn't mean that that was it – I was pulling out fake Picasso for this presentation and didn't look further. But I think there is actually a search block right there on the FBI site.

MALE: It is on there. I tried it once and –

FEMALE: Because I'm signed up for the Interpol guide and it's 90 percent [inaudible] and there were

AGENT KICE: Probably lots of seals from the



Mapuche silver knife

FEMALE: And there were 16 were Native American art eight of which were obvious fakes, even on a thumbnail that big and all of which when I looked at other sites came from [inaudible] conference LAPD website [tremendous background noise] and I just wanted to say how helpful it would be and –

AGENT KICE: And for the national stolen ARPA items can only be submitted by law enforcement agencies through the FBI. So the private individual can't enter them and so that closed the screen for authenticity and so forth before they go in our database and there's a form that I give the police to fill out and then I send it our program manager in [inaudible] and I don't enter the database, she is more of an expert in art crime than I am. We like to have images too.  
[inaudible]

WOMAN: Thank you very much.

AGENT KICE: Oh, one last think, Indian Arts and Crafts another aspect of art crime it makes it illegal to sell as made by a Native American which is not made by a Native American. Congress just passed a [inaudible] law and makes it – allows any federal law enforcement agency to investigate this, Indian Arts and Crafts Board in Washington DC, Department of Interior would like to see a lot more [inaudible] for this. It's got more teeth than ARPA and NAGPRA with a five-year felony fine and you all have a hand out on this. Thank you all.

\*\*\*\*\*

After this talk, we set up a meeting between ATADA members Jim Owens, Kate Fitz Gibbon and Robert Gallegos and FBI Special Agent David Kice on Tuesday, November 9, 2010 at the FBI Building on Rodeo Park East, Santa Fe, NM. Although the circumstances were difficult, Special Agent Kice listened patiently to all that was presented and all participants were pleased to have dispelled a few misconceptions on each side. The discussion ended with a suggestion of possible joint participation in a plan for protection of Southwest Archaeological resources brought up by Jim Owens. (We are still interested in this protection plan but need to work within an existing federal crime-reporting structure. As enforcement is primarily locally-based we are unsure how best to coordinate and as yet this plan is not developed.) The ATADA participants all thanked Agent Kice for participating in the discussion and all felt that an important communication channel had been opened.

Special agent Kice gave a second talk on the same subject at St. John's Methodist Church, Santa Fe, New Mexico, November 11, 2010. At this talk, he did not engage in a discussion of the black market in American Indian Art and other points that created controversy at the October lecture.

# Media File

ATADA apologizes to THE Magazine and author Joshua Baer. ATADA, in a previous issue, printed Baer's article *Is Your American Indian Art Illegal?* in its entirety rather than excerpting from it.

*Excerpts from recent newspaper, magazine and Internet articles of interest to the Membership. All opinions are those of the writers of the articles and of the people quoted, not of ATADA. Members are encouraged to submit press clippings or email links for publication in the next Newsletter. Please be advised that some links may have been removed or relocated.*

"A Mask That Inspired Masters" was Judith H. Dobrynski's *Wall Street Journal* January 8, 2011, story about the sale of a mask that could set a new record for American Indian works of art. Look for John Molloy's quote. Along with a picture of the mask, there were pictures of a detail of the Chief Legaic war dagger, 'Eagle at the Head of the Skeena River,' that sold at Bonhams in June, 2009, for \$482,000, and of the Northwest Cost Bowl that sold for \$230,000 at Bonhams in December, 2009. See the full story and pictures at <http://online.wsj.com/article/SB10001424052748704111504576060061853435924.html>

"Poll: Nearly Two-Thirds of Utahans Back Crackdown on Artifact Looting" was the headline for Brandon Loomis's January 26 story in the *Salt Lake Tribune*. The full story is at <http://www.sltrib.com/sltrib/home/51146063-76/percent-poll-offenders-probation.html.csp>

The headline for Mike Boehm's January 29 story in the *Los Angeles Times*: "Folk, Native American Arts could Gain Millions from M.A.C. Foundation: The Margaret A. Cargill Foundation, with Potentially \$4 Billion in Assets, is Gearing up a Hefty Grant to Help Raise the Profile of Folk and Native American Art Forms." Read the complete story at <http://www.latimes.com/entertainment/news/la-et-0129-folk-art-20110129,0,5946430.story>

Writing in *The New York Times* on February 3, Judith Dobrynski's story, "Honoring Art, Honoring Artists" focused on the Denver Art Museum's Native Arts curator Nancy Blomberg. The full story is at [http://www.nytimes.com/2011/02/06/arts/design/06names.html?\\_r=1&hpw](http://www.nytimes.com/2011/02/06/arts/design/06names.html?_r=1&hpw)

"Academy of Sciences to display Elkus Collection" was the headline for David Perlman's February 5 *San Francisco Chronicle* story. The full story is at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/02/05/MN8K1HHG97.DTL>

In her February 11 *New York Times Arts Beat* story, Kate Taylor wrote about the "accord" signed by Yale and Peru over the Machu Picchu artifacts. The full story is at <http://artsbeat.blogs.nytimes.com/2011/02/11/yale-and-peru-sign-accord-on-machu-picchu-artifacts/>

On February 9, NPR's *All Things Considered* considered Walrus ivory, which they called "a major component of Eskimo art. Carved walrus is allowed under the Marine Mammal Protection Act, but would not be allowed under the Endangered Species Act..." Read/hear the original story at <http://www.npr.org/2011/02/09/133629794/Walruses-Facing-Habitat-Loss-Are-In-Limbo?ft=1&f=1001>

"Sausalito Couple Have Gone from Avid Collectors of Native American Pottery to Experts," a story by Paul Liberatore, appeared in the *Marin Independent Journal* on February 15, just before the Marin show. The story with illustrations is at [http://www.marinij.com/diningandfood/ci\\_17362704?IADID=Search-www.marinij.com-www.marinij.com](http://www.marinij.com/diningandfood/ci_17362704?IADID=Search-www.marinij.com-www.marinij.com)

"Proenza Schouler: Into the West" was the headline for Cathy Horyn's February 16 *New York Times* fashion story. Read it all and see the pictures at <http://runway.blogs.nytimes.com/2011/02/16/proenza-schouler-into-the-west/?scp=3&sq=proenza%20schouler&st=cse>

The *San Francisco Chronicle*'s February 19 review of an Olmec exhibition had the headline, "De Young Lays Out Awesome Path to Past in 'Olmec.'" See the story at <http://www.sfgate.com/entertainment/article/De-Young-lays-out-awesome-path-to-past-in-Olmec-2474543.php>

**“Loyola Professor: I Stole New Mexico Artifacts”** was the dramatic headline for Erin Meyer’s March 1 story in the Chicago Tribune. The full story is at [http://articles.chicagotribune.com/2011-03-01/news/ct-met-loyola-guilty-0302-20110301\\_1\\_artifacts-arrowheads-loyola-professor](http://articles.chicagotribune.com/2011-03-01/news/ct-met-loyola-guilty-0302-20110301_1_artifacts-arrowheads-loyola-professor)

**“Arrowheads Found in Texas Dial Back Arrival of Humans in America”** by John Noble Wilford was published in The New York Times on March 24. The full story is at [http://www.nytimes.com/2011/03/25/science/25archeo.html?\\_r=1](http://www.nytimes.com/2011/03/25/science/25archeo.html?_r=1)

\*

**“Egypt Is Looted, and Curators Balk: Thefts of Artifacts from Cairo’s Egyptian Museum Revive the Debate over the Repatriation of Ancient Art”** was the headline for Vernon Silver’s March 10 story in Business Week. See more at [http://www.businessweek.com/magazine/content/11\\_12/b4220015661759.htm](http://www.businessweek.com/magazine/content/11_12/b4220015661759.htm)

Here are three links to comments and more links from the Cultural Property Observer blog:

<http://culturalpropertyobserver.blogspot.com/2010/12/priceless-has-price-after-all.html>

The headline from an Associated Press story by Jennifer Dobner from the March 9 Durango Herald: **“Artifacts ‘Price Setter’ Pleads Guilty: Durango Couple to be Sentenced in August on Reduced Charges.”** Read the complete story at <http://durangoherald.com/article/20110310/NEWS02/703099883/0/s/Artifacts->

<http://culturalpropertyobserver.blogspot.com/2010/12/more-on-pompeii-neglect.html>

<http://culturalpropertyobserver.blogspot.com/2010/12/morgantina-treasure-goes-on-display-in.html>

A Richmond Times-Dispatch story published March 10 by Holly Prestidge had the headline **“VMFA Returns Native American Headdress.”** For the full story, go to <http://www2.timesdispatch.com/news/2011/mar/10/TDMET02-vmfa-returns-native-american-headdress-ar-895231/>

**“Show That Defies Stereotypes”** was the title of Culture Critic Lee Rosenbaum’s March 15 Wall Street Journal story. The full story with illustrations is at <http://online.wsj.com/article/SB10001424052748703559604576176511431781844.html?KEYWORDS=lee+rosenbaum>

In an online guest commentary from The Denver Post on March 18 titled **“The Antiquities Act,”** former New Mexico governor Bill Richardson posts. The full post is at [http://www.denverpost.com/opinion/ci\\_17638168](http://www.denverpost.com/opinion/ci_17638168)

From the February/March online ArtTrak Newsletter: **The headline” St. Louis Art Museum Fights for a Mask and May Lose.”** Read the full story at <http://arttrak.blogspot.com/2011/03/st-louis-art-museum-slam-fights-for.html>.

## Last Word: Kate Fitz Gibbon *On Collecting*

I often write about the social and political benefits of collecting or about the importance of collectors to museums and public education and access to art. But collecting is first and foremost a very personal act, a passion. What sparks this drive to collect? What inspires us?

One day many years ago, I went to my younger daughter's room and found a baby rabbit crouched in the middle of the floor. It jumped when it saw me and disappeared into the jungle of curtains, boxes, stuffed toys, and pillows that surrounded the bare patch of tile at the room's center. That afternoon, my daughter and I spent several hours cleaning her room and sorting through her collection of artifacts, partly to find the rabbit before the cat did, and partly in the interest of hygiene. In the end, we had three big garbage bags full of less valued souvenirs, an enormous pile of objects too precious to be disposed of, and no sign of a rabbit. (It reappeared again in the middle of the floor after we went away for an hour and this time, minus the jungle, I was able to track and catch it.) Later, my daughter set to work recreating her room, while I came away with many questions about how and why she had peopled her own, unique world with her collections.

When my daughter wrapped a doll into a mummy and entombed it in a chest above a cache of rose petals

and Fairyland tickets, was she giving expression to the reverence for the dead that is common to all humanity? Why had she preserved several dozen iterations of magic objects: bits of rag tied around pillow fluff; twigs jabbed through dead leaves and curved into wreaths; muddy potions of perfume, decayed flowers and sand; old bones with pebbles or shell imbedded in the hollows? How to account for the toy pistol wrapped in fake fur, the hunting horn descending from the window, her Alcove of Model Cars? Was this mere mimicry of the larger world or the personal appropriation of mythical archetypes? Were these the ghosts of bedtime stories, illustrations of a divinely given spark of human creativity, or the detritus of a genetic disinclination to throw anything away?

The earliest collections of modern times were collections of curiosities, much like my daughter's shells, sticks and bones. These early collections contained coins, medals and antiquities as well as natural oddities. They were characteristic of the humanist interests of the Enlightenment: varied, miscellaneous, and often enigmatic. Our modern, better-organized versions of the early curiosity Cabinets, our museums, replicate the hierarchies and categorization of our own individual collections. At least in part, collecting is about creating order.

As children, as makers, we also learn to be sensitive to the art of making in others. As adults, we delight in visual beauty created by others. We find an eternal and universal resonance in the arts, whether in Pueblo pots or South Seas woodcarvings or African masks or even classical antiquities. The stranger and more unfamiliar the work, the more we value the sense of connection and identity that we feel when we take a work of art in our hands. The mystery of art touches something hidden in our souls. It makes us aware of a level of communication beyond language with others of our kind, enables a dialog with the utterly foreign or the unknown past, and establishes a human community characterized by



striving, by engagement, and by the desire to create. This, for me, is the reason for collecting.



Navajo child's blanket

# Directory Update

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