S. HRG. 106–568

INDIAN ARTS AND CRAFTS

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

PUBLIC LAW 101–644

TO EXPAND THE POWERS OF THE INDIAN ARTS AND CRAFTS BOARD

MAY 17, 2000
WASHINGTON, DC

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INDIAN ARTS AND CRAFTS ACT

WEDNESDAY, MAY 17, 2000

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:57 p.m. in room 562, Dirksen Senate Office Building, Hon. Ben Nighthorse Campbell (Chairman of the committee) presiding.

Present: Senator Campbell.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good afternoon. We are starting almost 1 hour late, and I apologize for that. The committee will be in order.

You know, you have heard the old saying, if you watch Congress at work, it is like watching pork sausage being made. We are making a lot of pork sausage over there. We have got endless amendments to amendments, and every kind of a delay that you can imagine. I do apologize for that.

I am going to start it out. We have got three votes, and I think one was just called. I just heard my beeper go off. I may have to run back over there. So we are just kind of playing it by rotating Chairs here. If Senator Inouye gets here on time, he will continue. If not, staff will ask some of the questions until I can run back over here.

But I do appreciate you having patience with this. I travel a great deal with the Helsinki Commission. I often say, even though we have got a lot of problems with our form of Government, keeping it going smoothly, it is sure better than whatever the alternatives are. This is one of the downsides of democracy of course, when we try to make sure that everybody has a voice.

Today, the committee will receive testimony regarding the implementation of the Indian Arts and Crafts Act of 1990, which was enacted with two goals in mind. First, was to promote Indian and Alaskan Native economic development, through the expansion of the arts and crafts sector; and second, to strengthen enforcement provisions for the violations of the act to ensure that counterfeit goods do not distort the market and untimely reduce the value of authentic Indian goods.

Today's market for Indian made goods is roughly $1 billion a year. But by some estimates, one-half of that demand, nearly $500

million, is satisfied by counterfeit goods, much of which is produced offshore and imported into the United States.

The Indian Arts and Crafts Board is charged not only with promoting Indian arts and crafts, but it is supposed to work with the Justice Department in bringing complaints alleging violations of the act. It troubles me a great deal that since the original act was passed in 1935, there has not been a single civil or criminal prosecution under that act.

In 1990, when we revisited that act, Senator Kyl, who will be here during today's hearing, was the prime sponsor of that bill, and I cosponsored that bill. That bill was passed, and it was a very difficult one to get through, because we had continual problems defining basically who was Indian, from the standpoint of an artist, because many Indian artists are not enrolled.

So we finally got through that, after working almost 2 years on it. It was passed, and we asked the Indian Arts and Crafts Board to proceed with more enforcement. But as I understand, there has not been any enforcement since 1990, either.

We were told at the time that they needed more money. They could not deal with the enforcement until they got more money. We put more money in the budget, but still nothing has happened.

I firmly believe that at a minimum, the United States can and should assure itself that whatever goods are sold on Federal lands are sold in compliance with the Indian Arts and Crafts Act.

I mentioned that I travel a great deal. And believe me, I have been to Taiwan. I have been to Japan. I have been to many other countries and seen "Indian art" being made there that I assume, sooner or later, works it way into the United States.

As far as tribal enforcement, at least one Indian tribe, the Ho-Chunk Nation, is actively bringing suit, seeking the enforcement of the act, and we will hear from them today.

In the weeks ahead, we will be reviewing the act and looking for ways to ensure that Indian artisans and craftsmen get the benefit of their labors, and the consumers receive the benefits of the bargain when they attempt to buy Indian arts and crafts.

Several members of the U.S. Senate who are very interested in that will be in from time to time today, too. Senator Bingaman, who comes from New Mexico, who is very interested, will be over, too, and make a statement. He will probably be asking some questions, too.

[Text of Public Law 101–644 follows:]

EXPANDING THE POWERS OF THE INDIAN ARTS AND CRAFTS BOARD

Public Law 101-644
101st Congress

An Act

Nov. 29, 1990
[H.R. 2006]

To expand the powers of the Indian Arts and Crafts Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Indian Arts and Crafts Act of 1990.

TITLE I—INDIAN ARTS AND CRAFTS

SEC. 101. SHORT TITLE.

25 USC 305 note.

This title may be cited as the "Indian Arts and Crafts Act of 1990".

SEC. 102. POWERS OF INDIAN ARTS AND CRAFTS BOARD.

Section 2 of the Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305a) is amended—

(1) in the first sentence—

(A) by striking "the Board" and inserting "the Secretary of the Interior through the Board"; and

(B) by striking "the Indian wards of the Government" and inserting "Indian individuals";

(2) by amending clause (g) to read as follows: "(g)(1) to create for the Board, or for an individual Indian or Indian tribe or Indian arts and crafts organization, trademarks of genuineness and quality for Indian products and the products of an individual Indian or particular Indian tribe or Indian arts and crafts organization; (2) to establish standards and regulations for the use of Government-owned trademarks by corporations, associations, or individuals, and to charge for such use under such licenses; (3) to register any such trademark owned by the Government in the United States Patent and Trademark Office without charge and assign it and the goodwill associated with it to an individual Indian or Indian tribe without charge; and (4) to pursue or defend in the courts any appeal or proceeding with respect to any final determination of that office;"; and

(3) by adding at the end the following new sentence: "For the purposes of this section, the term 'Indian arts and crafts organization' means any legally established arts and crafts marketing organization composed of members of Indian tribes.".

SEC. 103. REFERRAL FOR CRIMINAL AND CIVIL VIOLATIONS.

The Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305 et seq.) is amended by adding at the end of the following:

25 USC 305d.

"SEC. 5. (a) The Board may receive complaints of violations of section 1159 of title 18, United States Code, and refer complaints of such violations to the Federal Bureau of Investigation for appropriate investigation. After reviewing the investigation report, the

Board may recommend to the Attorney General of the United States that criminal proceedings be instituted under that section.

"(b) The Board may recommend that the Secretary of the Interior refer the matter to the Attorney General for civil action under section 6.".

SEC. 104. CRIMINAL PENALTY FOR MISREPRESENTATION OF INDIAN PRODUCED GOODS AND PRODUCTS.

(a) IN GENERAL.—Section 1159 of title 18, United States Code, is amended to read as follows:

"§ 1159. Misrepresentation of Indian produced goods and products

"(a) It is unlawful to offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States.

"(b) Whoever knowingly violates subsection (a) shall—

"(1) in the case of a first violation, if an individual, be fined not more than $250,000 or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than $1,000,000; and

"(2) in the case of subsequent violations, if an individual, be fined not more than $1,000,000 or imprisoned not more than fifteen years, or both, and, if a person other than an individual, be fined not more than $5,000,000.

"(c) As used in this section—

"(1) the term 'Indian' means any individual who is a member of an Indian tribe, or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

"(2) the terms 'Indian product' and 'product of a particular Indian tribe or Indian arts and crafts organization' has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

"(3) the term 'Indian tribe' means—

"(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

"(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and

"(4) the term 'Indian arts and crafts organization' means any legally established arts and crafts marketing organization composed of members of Indian tribes.

"(d) In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.".

(b) CONFORMING AMENDMENT.—The item relating to section 1159 in the table of sections for chapter 53 of title 18, United States Code, is amended to read as follows:

"1159. Misrepresentation of Indian produced goods and products.".

SEC. 105. CAUSE OF ACTION FOR MISREPRESENTATION OF INDIAN PRODUCED GOODS AND PRODUCTS.

The Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305 et seq.) (as amended by section 3) is further amended by adding at the end of the following:

25 USC 305e.

"SEC. 6. (a) A person specified in subsection (c) may, in a civil action in a court of competent jurisdiction, bring an action against a person who offers or displays for sale or sells a good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States, to—

"(1) obtain injunctive or other equitable relief; and

"(2) recover the greater of—

"(A) treble damages; or

"(B) in the case of each aggrieved individual Indian, Indian tribe, or Indian arts and crafts organization, not less than $1,000 for each day on which the offer or display for sale or sale continues.

"(b) In addition to the relief specified in subsection (a), the court may award punitive damages and the costs of suit and a reasonable attorney's fee.

"(c)(1) A civil action under subsection (a) may be commenced—

"(A) by the Attorney General of the United States upon request of the Secretary of the Interior on behalf of an Indian who is a member of an Indian tribe or on behalf of an Indian tribe or Indian arts and crafts organization; or

"(B) by an Indian tribe on behalf of itself, an Indian who is a member of the tribe, or on behalf of an Indian arts and crafts organization.

"(2) Any amount recovered pursuant to this section shall be paid to the individual Indian, Indian tribe, or Indian arts and crafts organization, except that—

"(A) in the case of paragraph (1)(A), the Attorney General may deduct from the amount recovered the amount for the costs of suit and reasonable attorney's fees awarded pursuant to subsection (b) and deposit the amount of such costs and fees as a reimbursement credited to appropriations currently available to the Attorney General at the time of receipt of the amount recovered; and

"(B) in the case of paragraph (1)(B), the amount recovered for the costs of suit and reasonable attorney's fees pursuant to subsection (b) may be deducted from the total amount awarded under subsection (a)(2).

"(d) As used in this section—

"(1) the term 'Indian' means any individual who is a member of an Indian tribe; or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

"(2) the terms 'Indian product' and 'product of a particular Indian tribe or Indian arts and crafts organization' has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

"(3) the term 'Indian tribe' means—

"(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is

recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

"(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and

"(4) the term 'Indian arts and crafts organization' means any legally established arts and crafts marketing organization composed of members of Indian tribes.

"(e) In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.".

SEC. 106. PENALTY FOR COUNTERFEITING INDIAN ARTS AND CRAFTS BOARD TRADEMARK.

Section 1158 of title 18, United States Code, is amended by striking "be fined not more than $500 or imprisoned not more than six months, or both; and" and inserting "(1) in the case of a first violation, if an individual, be fined not more than $250,000 or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than $1,000,000; and (2) in the case of subsequent violations, if an individual, be fined not more than $1,000,000 or imprisoned not more than fifteen years, or both, and, if a person other than an individual, be fined not more than $5,000,000; and (3)".

SEC. 107. CERTIFICATION OF INDIAN ARTISANS.

25 USC 305e note.

For the purposes of section 1159 of title 18, United States Code, and section 6 of the Act entitled "An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes" (25 U.S.C. 305 et seq.) an Indian tribe may not impose a fee in certifying an individual as an Indian artisan. For the purposes of this section, the term "Indian tribe" has the same meaning given such term in section 1159(c)(3) of title 18, United States Code.

TITLE II—TECHNICAL AND CLARIFYING AMENDMENTS

Indian Self-Determination and Education Assistance Act Amendments of 1990.

SEC. 201. SHORT TITLE.

25 USC 450 note.

This title may be cited as the "Indian Self-Determination and Education Assistance Act Amendments of 1990".

SEC. 202. AMENDMENTS TO INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.

The Indian Self-Determination and Education Assistance Act is amended as follows:

(1) In section 4(h) of such Act (25 U.S.C. 450b(h)), delete "in existence on the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988".

(2) In section 4(j) of such Act (25 U.S.C. 450b(j)), delete "contract entered" each place it appears and insert in lieu thereof "contract (or grant or cooperative agreement utilized under section 9 of this Act) entered".

(3) In section 5(d) of such Act (25 U.S.C. 450c(d)), delete the word "Any" and insert in lieu thereof "Except as provided in

section 8 or 106(a)(3) of this Act," and before the period insert the words "through the respective Secretary".

SEC. 203. AMENDMENTS TO THE INDIAN SELF-DETERMINATION ACT.

(a) Section 106 of the Indian Self-Determination Act (25 U.S.C. 450j-1(e)) is amended by deleting "1988" and inserting in lieu thereof "1992".

(b) In section 102(d) of such Act (25 U.S.C. 450f(d)), immediately after "investigations,", insert "or for purposes of section 2679, title 28, United States Code, with respect to claims by any such person, on or after the date of the enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1990, for personal injury, including death, resulting from the operation of an emergency motor vehicle,".

(c) Section 105(c)(1)(B) of such Act (25 U.S.C. 450j(c)(1)(B)) is amended to read as follows:

"(B) for a definite or an indefinite term, as requested by the tribe (or, to the extent not limited by tribal resolution, by the tribal organization), in the case of a mature contract.".

(d) Section 105(d) of such Act (25 U.S.C. 450j(d)) is amended to read as follows:

"(d)(1) Beginning in fiscal year 1990, upon the election of a tribal organization, the Secretary shall use the calendar year as the basis for any contracts or agreements under this Act, unless the Secretary and the Indian tribe or tribal organization agree on a different period.

Reports.

"(2) The Secretary shall, on or before April 1 of each year beginning in 1992, submit a report to the Congress on the amounts of any additional obligation authority needed to implement this subsection in the next following fiscal year.".

(e) In paragraphs (2) and (3) of section 105(f) of such Act (25 U.S.C. 450j(f) (2) and (3)), insert "or real" immediately after "personal" each place it appears in such paragraphs.

(f) In section 107(c) of such Act (25 U.S.C. 450k(c)), immediately after "authorized", insert the following: ", with the participation of Indian tribes and tribal organizations,".

(g)(1) In section 301(a)(3) of the Indian Self-Determination Act (25 U.S.C. 450h(a)(3)), delete "reservation boundaries" and insert in lieu thereof "Indian country (as defined in chapter 53 of title 18, United States Code)".

25 USC 450h note.

(2) The amendment made by paragraph (1) shall not alter or otherwise modify or affect existing prohibitions or limitations on the Secretary's authority to acquire lands in trust.

TITLE III—AMENDMENTS TO OTHER ACTS

SEC. 301. AMENDMENTS TO OTHER ACTS.

(a) AMENDMENT TO INDIAN LAND CONSOLIDATION ACT.—Section 207(a) of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by deleting "No undivided interest in any tract of trust or restricted land within a tribe's reservation or otherwise subject to a tribe's jurisdiction shall descend by intestacy or devise but shall escheat to that tribe" and inserting in lieu thereof the following: "No undivided interest held by a member or nonmember Indian in any tract of trust land or restricted land within a tribe's reservation or outside of a reservation and subject to such tribe's jurisdiction

shall descend by intestacy or devise but shall escheat to the reservation's recognized tribal government, or if outside of a reservation, to the recognized tribal government possessing jurisdiction over the land".

(b) AMENDMENT TO ACT OF NOVEMBER 8, 1988.—In section 1 of the Act entitled "An Act to declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes", approved November 8, 1988 (102 Stat. 3327), insert "and attached narrative metes and bounds description" immediately after "map" each time it appears.

(c) AMENDMENT TO THE ACT OF MARCH 29, 1956.—The second sentence of subsection (a) of the Act entitled "An Act to authorize the execution of mortgages and deeds of trust on individual Indian trust or restricted land", approved March 29, 1956 (25 U.S.C. 483a), is amended by inserting immediately before "State" the following: "tribe which has jurisdiction over such land or, in the case where no tribal foreclosure law exists, in accordance with the laws of the".

SEC. 302. AMENDMENT TO THE ACT OF JUNE 24, 1938.

Section 1 of the Act of June 24, 1938 (25 U.S.C. 162a) is amended by designating the existing text thereof as subsection (a), and by adding at the end thereof the following new subsection:

"(b)(1) Notwithstanding subsection (a), the Secretary of the Interior, at the request of any Indian tribe, in the case of trust funds of such tribe, or any individual Indian, in the case of trust funds of such individual, is authorized to invest such funds, or any part thereof, in guaranteed or public debt obligations of the United States or in a mutual fund, otherwise known as an open-ended diversified investment management company if—

"(A) the portfolio of such mutual fund consists entirely of public-debt obligations of the United States, or bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, or a combination thereof;

"(B) the trust funds to be invested exceed $50,000;

"(C) the mutual fund is registered by the Securities and Exchange Commission; and

"(D) the Secretary is satisfied with respect to the security and protection provided by the mutual fund against loss of the principal of such trust funds.

Government contracts.

"(2) The Secretary, as a condition to complying with a request pursuant to paragraph (1) of this subsection, is authorized to require such tribe or individual Indian, as the case may be, to enter into an agreement with the Secretary for the purpose of relieving the United States of any liability in connection with the interest, or amount thereof, payable in connection with such trust funds so invested during the period of that investment.

"(3) Investments pursuant to paragraph (1) of this subsection shall be deemed to be the same as cash or a bank deposit for purposes of section 5 of the Act of September 21, 1959 (25 U.S.C. 955).".

SEC. 303. AMENDMENT TO INDIAN FINANCING ACT OF 1974.

(a) Section 101 of the Indian Financing Act of 1974 (25 U.S.C. 1461) is amended—

(1) by deleting "money markets," and inserting in lieu thereof the following: "money markets, or to supplement funds from

private lenders, including loans guaranteed by the Secretary pursuant to section 201 of this Act,"; and

(2) by inserting immediately before the period at the end of the third sentence a comma and the following: "or, in the discretion of the Secretary of the Interior, as a contribution to the Indian Loan Guaranty and Insurance Fund authorized by section 217 of this Act, or for the payment of interest subsidies authorized by section 301 of this Act".

(b) Section 204 of the Indian Financing Act of 1974 (25 U.S.C. 1484) is amended—

(1) by deleting in the first sentence the word "prior"; and

(2) by deleting in the second sentence "shall review" and inserting in lieu thereof "may review".

Hawaiian Natives.

TITLE IV—PUBLIC HEALTH SERVICE ACT

SEC. 401. AMENDMENT TO PUBLIC HEALTH SERVICE ACT.

Section 338J(a) of subpart III of part D of title III of the Public Health Service Act (42 U.S.C. 254s) is amended to read as follows:

"(a) Subject to the availability of funds appropriated under the authority of subsection (d), the Secretary shall provide funds to Kamehameha Schools/Bishop Estate for the purpose of providing scholarship assistance to students who—

"(1) meet the requirements of section 338A(b), and

"(2) are Native Hawaiians.".

Hawaiian Natives.

TITLE V—BOARD OF INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

SEC. 501. GENERAL POWERS OF BOARD OF INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT.

(a) INTEREST AND INVESTMENT INCOME.—Section 1507 of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4414) is amended by adding at the end the following new subsection:

"(c) INTEREST AND INVESTMENTS.—Interest and earnings on amounts received by the Institute pursuant to section 1531 invested under subsection (a)(12) shall be the property of the Institute and may be expended to carry out this title. The Board shall be held to a reasonable and prudent standard of care, given such information and circumstances as existed when the decision is made, in decisions involving investment of funds under subsection (a)(12).".

(b) INSURANCE.—Section 1507(a)(11) of such Act (20 U.S.C. 4414(a)(11)) is amended to read as follows:

"(11) to the extent not already provided by law, to obtain insurance to cover all activities of the Institute, including coverage relating to property and liability, or make other provisions against losses.".

SEC. 502. ESTABLISHMENTS WITHIN THE INSTITUTE.

Section 1510(b) of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4417(b)) is amended—

(1) in paragraph (2), by striking subparagraph (A) and redesignating subparagraphs (B) through (I) as subparagraphs (A) through (H), respectively;

(2) by striking "and" at the end of paragraph (1);

(3) by striking the period at the end of paragraph (2) and inserting "; and"; and

(4) by inserting after paragraph (2) the following:

"(3) a Museum of American Indian and Alaska Native Arts, which shall be under the direction of the President of the Institute.".

SEC. 503. TRANSFER OF FUNCTIONS.

Section 1514 of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4421) is amended—

(1) by striking subsections (d), (e), and (f); and

(2) by adding at the end the following new subsection (d):

"(d) FORGIVENESS OF AMOUNTS OWED; HOLD HARMLESS.—(1) Subject to paragraph (2)—

"(A) the Institute shall be responsible for all obligations of the Institute incurred after June 2, 1988, and

"(B) the Secretary shall be responsible for all obligations of the Institute incurred on or before June 2, 1988, including those which accrued by reason of any statutory, contractual, or other reason prior to June 2, 1988, which became payable within two years of June 2, 1988.

"(2) With respect to all programs of the Federal Government, in whatever form or from whatever source derived, the Institute shall only be held responsible for actions and requirements, either administrative, regulatory, or statutory in nature, for events which occurred after July 1, 1988, including the submission of reports, audits, and other required information. The United States may not seek any monetary damage or repayment for the commission of events, or omission to comply with either administrative or regulatory requirements, for any action which occurred prior to June 2, 1988.". Reports.

SEC. 504. COMPLIANCE WITH OTHER ACTS.

Section 1517 of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4424) is amended by adding at the end the following:

"(c) OTHER FEDERAL ASSISTANCE.—Funds received by the institute pursuant to this Act shall not be regarded as Federal money for purposes of meeting any matching requirements for any Federal grant, contract or cooperative agreement.".

SEC. 505. ENDOWMENT PROGRAMS.

Section 1518 of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4425) is amended to read as follows:

"SEC. 1518. ENDOWMENT PROGRAMS.

"(a) PROGRAM ENHANCEMENT ENDOWMENT.—

"(1)(A) From the total amount appropriated for this subsection pursuant to section 1531(a), funds may be deposited into a trust fund maintained by the Institute at a federally insured banking or savings institution.

"(B) The President of the Institute shall provide—

"(i) for the deposit into the trust fund referred to in subparagraph (A)—

"(I) of a capital contribution by the Institute in an amount equal to the amount of each Federal contribution; and

"(II) any earnings on the funds deposited under this paragraph; or

"(ii) for the reservation for the sole use of the Institute of any noncash, in-kind contributions of real or personal property, which property may at any time be converted to cash, which shall be deposited as a capital contribution into the trust fund referred to in subparagraph (A).

"(C) If at any time the Institute withdraws any capital contribution (as described in subparagraph (B)(i)) made by the Institute to the trust fund referred to in subparagraph (A) or puts any property (as described in subparagraph (B)(ii)) to a use which is not for the sole benefit of the Institute, an amount equal to the value of the Federal contribution shall be withdrawn from such trust fund and returned to the Treasury as miscellaneous receipts.

"(2) Interest deposited into the trust fund pursuant to paragraph (1)(B)(ii) may be periodically withdrawn and used, at the direction of the Board or its designee, to defray any expense associated with the operation of the Institute, including the expense of operations and maintenance, administration, academic and support personnel, community and student services programs, and technical assistance.

"(3) For the purpose of complying with the contribution requirement of paragraph (1)(B), the Institute may use funds or in-kind contributions of real or personal property fairly valued which are made available from any private or tribal source, including interest earned by the funds invested under this subsection. In-kind contributions shall be other than fully depreciable property or property which is designated for addition to the permanent collection of the Museum and shall be valued according to the procedures established for such purpose by the Secretary of the Treasury. For purposes of this paragraph, all contributions, including in-kind and real estate, which are on-hand as of the date of enactment of this Act and which have been received after June 2, 1988, but which have not been included in computations under this provision shall be eligible for matching with Federal funds appropriated in any fiscal year.

"(4) Amounts appropriated under section 1531(a) for use under this subsection shall be paid by the Secretary of the Treasury to the Institute as a Federal capital contribution equal to the amount of funds or the value of the in-kind contributions which the Institute demonstrates have been placed within the control of, or irrevocably committed to the use of, the Institute as a capital contribution of the Institute in accordance with this subsection.

"(b) CAPITAL IMPROVEMENT ENDOWMENT.—

"(1) In addition to the trust fund established under subsection (a), funds may be deposited into a trust fund maintained by the Institute at a federally insured banking or savings institution from the amount reserved for this subsection pursuant to sec-

tion 1531(a) for the purpose of establishing a separate special endowment for capital improvement (hereafter in this subsection referred to as the 'capital endowment fund') to pay expenses associated with site selection and preparation, site planning and architectural design and planning, new construction, materials and equipment procurement, renovation, alteration, repair, and other building and expansion costs of the Institute.

"(2) The President of the Institute shall provide for the deposit into the capital endowment fund of a capital contribution by the Institute in an amount equal to the amount of each Federal contribution and any earnings on amounts in the capital endowment fund.

"(3) Funds deposited by the Institute as a match for Federal contributions under paragraph (5) shall remain in the capital endowment fund for a period of not less than two years. If at any time the Institute withdraws any capital contribution to the capital endowment fund before the funds have been deposited for this two-year period, an equal amount of the Federal contribution shall be withdrawn from the capital endowment fund and returned to the Treasury as miscellaneous receipts. At the end of the two-year period, the entire principal and interest of the funds deposited for this period, including the Federal matching portion, shall accrue, without reservation, to the Institute and may be withdrawn, in whole or in part, to defray expenses associated with capital acquisition and improvement of the Institute referred to in paragraph (1).

"(4) For the purpose of complying with the contribution requirement of paragraph (2), the Institute may use funds which are available from any private or tribal source.

"(5) Subject to paragraph (3), amounts appropriated under section 1531(a) for use under this subsection shall be paid by the Secretary of the Treasury to the Institute as a Federal capital contribution equal to the amount which the Institute demonstrates has been placed within the control of, or irrevocably committed to the use of, the Institute and is available for deposit as a capital contribution of the Institute in accordance with this subsection.

"(c) GENERAL ADMINISTRATIVE PROVISIONS.—(1) Funds in the trust funds described in subsections (a) and (b) shall be invested at a rate not less than that generally available for similar funds deposited at the same banking institution for the same period or periods of time. Investments.

"(2) No part of the net earnings of the trust funds established under this section shall inure to the benefit of any private person.

"(3) The President of the Institute shall provide for such other provisions governing the trust funds established under this section as may be necessary to protect the financial interest of the United States and to promote the purpose of this title as agreed to by the Secretary of the Treasury and the Board or its designee, including recordkeeping procedures for the investment of funds received under the trust fund established under subsection (b) and such other recordkeeping procedures for the expenditure of accumulated interest for the trust fund under subsection (a) as will allow the Secretary of the Treasury to audit and monitor activities under this section.". Records.

SEC. 506. AUTHORIZATION OF APPROPRIATIONS.

Section 1531(a) of the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act (20 U.S.C. 4451(a)) is amended by adding at the end the following new paragraphs:

"(4) Funds appropriated under this subsection for the fiscal year 1992 and for each succeeding fiscal year shall be transferred by the Secretary of the Treasury through the most expeditious method available with the Institute being designated as its own certifying agency.

"(5) Funds are authorized to be appropriated for programs for more than one fiscal year. For the purpose of affording adequate notice of funding available under this Act, amounts appropriated in an appropriations Act for any fiscal year to carry out this Act may, subject to the appropriation, become available for obligations on July 1 of that fiscal year.".

TITLE VI—MISCELLANEOUS PROVISIONS

Mexico.

SEC. 601. COCHITI DAM LICENSE.

Notwithstanding the provisions of any other Federal law, no license shall be issued by the Federal Energy Regulatory Commission for the development of hydroelectric power at the Army Corps of Engineers' Cochiti Dam located on the Pueblo de Cochiti Indian Reservation in the State of New Mexico.

South Dakota.

SEC. 602. DAKOTA WESLEYAN UNIVERSITY.

Notwithstanding the provisions of section 487(c)(2)(B) of the Higher Education Act of 1965, the Secretary of Education shall reassess the amount owed by the Dakota Wesleyan University, located in Mitchell, South Dakota, in the amount of $159,260, plus any accrued interest thereon to $16,113.

Approved November 29, 1990.

LEGISLATIVE HISTORY—H.R 2006:

HOUSE REPORTS: No. 101-400, Pt. 1 (Comm. on Interior and Insular Affairs) and Pt. 2 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 136 (1990):

Sept. 27, considered and passed House.

Oct. 25, considered and passed Senate, amended.

Oct. 27, House concurred in Senate amendment with amendments. Senate concurred in House amendments.

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The CHAIRMAN. So until our colleagues from the Senate get here, let us go ahead and start with panel one, Faith Roessel, chairperson, Indian Arts and Crafts Board; and Mark Van Norman, director, Office of Tribal Justice, Department of Justice, Washington, DC.

If you would come to the table there, Faith. You may just go ahead in that order. I will just keep my little beeper here, and I may have to run at anytime.

STATEMENT OF FAITH ROESSEL, CHAIRPERSON, INDIAN ARTS AND CRAFTS BOARD, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC, ACCOMPANIED BY HEATHER SIBBISON, COMMISSIONER; MERIDITH STANTON, ACTING DIRECTOR; AND DEBORAH LOBO, LAWYER

Ms. ROESSEL. Good afternoon, Mr. Chairman. I am Faith Roessel, chairperson of the Indian Arts and Crafts Board. It is my pleasure to be here today to testify on the status of the Board's programs and activities.

With me today are my fellow commissioner, Heather Sibbison; Meridith Stanton, the acting director of the Indian Arts and Crafts Board; and Deborah Lobo, the Office of the Solicitor lawyer assigned to the Board.

The Indian Arts and Crafts Act has two overarching mandates. The first is to promote American Indian and Alaskan Native economic development through the development of Indian arts and crafts and the expansion of the Indian arts and crafts market.

The second goal is to seek enforcement of the Indian Arts and Crafts Act. I will focus my oral remarks on enforcement, but I do commend to the chairman the comments of the Department of Justice and their emphasis on Indian economic development and the promotion of Indian arts and crafts.

Our programs and activities come within the context of the act's three goals: Education, compliance, and prevention. Education is a key activity of the Board. We are engaging in an active, aggressive outreach program. Attached to my testimony is a list of our past and future outreach. It is at exhibit N.

We have undertaken a national media campaign targeting key consumer arts and crafts industry and tourist publications to promote an understanding of and compliance with the law. Over the last year, based on circulation figures, we estimate that 1 million persons will have viewed our print ads.

I would point out to the committee that at exhibit F, there is an example of what we are putting in various tourist publications. It says, "Buying or selling Indian art, know the law."

We have published a consumer protection brochure entitled, "Misrepresentation." This can be found at exhibit M, and I show an example here. This brochure is to educate the public and the Indian arts and crafts industry about the act; 22,000 copies have been distributed to date, and we expect to be distributing even more.

We are in the process right now of finalizing a brochure entitled, "The Indian Arts and Crafts Act" that will explain how to file complaints under the act and encourages the public to bring written complaints to our attention.

We are also utilizing our three museums out in Indian Country. They are located in Rapid City, SD, Browning, MT, and Anadarko, OK. In a sense, they are our eyes and ears, and they are the first on the ground to observe any types of non-compliance with the law.

We have continued to conduct in-depth on-site meetings and teleconferences with tribes, Indian arts and crafts organizations and law enforcement agencies, again, with a significant focus on the Southwest. And within the last year, we have created a web site that provides easy access to the public with information about the law.

The Board's second key goal is seeking compliance with the law. This is largely dependent on receiving valid, written complaints.

While the Board recognizes that much needs to be done to combat consumer fraud in the Indian arts and crafts market and educating the public is key, the Board continues to be concerned about the general reluctance of Indian tribes, arts and crafts organizations, artists, and consumers to come forward with valid complaints.

The Board believes that the quality and quantity of complaints will increase as the Board's public outreach efforts continue.

The CHAIRMAN. Faith, I hate to interrupt you. We have already got a call to go back over there and vote. Senator Bingaman, did you vote before you came over?

Senator BINGAMAN. Yes, Mr. Chairman.

The CHAIRMAN. Would you join us here on the dais. Let me tell you that I am going to have go vote. Senator Bingaman has a very strong interest in this issue, as you might know, coming from new Mexico.

Probably more than any other State, native people rely on Indian arts and crafts to not only preserve their heritage, but to bring in some income through pottery, weaving jewelry, and paintings.

It contributes millions of dollars to the economy of New Mexico from the standpoint of the people that come and stay at Gallup Intertribals and at the Indian market at Northern Pueblos, and so on. So it is a major, major thing, as well as an opportunity to give Indian artists some national stature, because most of those shows are very big jewelry shows, as you know.

I just wanted to commend Senator Bingaman for being interested in this and participating in it. Do you have time to stay a few minutes for this, while I run and vote?

Senator BINGAMAN. I will be glad to stay while you go vote, Mr. Chairman.

The CHAIRMAN. All right, I will go vote. I will try to be right back, thank you.

Senator BINGAMAN [assuming Chair]. I look forward to hearing Faith's testimony. Go right ahead.

Ms. ROESSEL. For full disclosure to the committee, he is my former boss.

Over the last 4 years, the Board has received a total of 45 written complaints alleging violations of the act. I should add that some cases have been resolved at the administrative level through Board-initiated phone calls, letters and settlements. Our testimony highlights a few examples that arose in Arizona, involving the Hopi Tribe and Kachina dolls.

When we receive a complaint, it is carefully reviewed by the Board's staff. Some cases do not, in fact, involve violations of the act. Others lack sufficient evidence for a civil action, or fail to meet the necessary element of intent for a criminal prosecution. We are continuing to review various other complaints pending with the Board.

Our challenge at present, besides receiving valid complaints, is setting in motion a process to investigate cases brought under the act. Let me emphasize to the committee that the Board has no investigative authority or staff. We rely exclusively on the willingness of other law enforcement agencies to help us.

A particular issue that we are trying to address is who investigates alleged civil violations of the law. The act provides for use of the FBI in potential criminal cases, but is silent regarding investigation of civil cases.

To deal with this gap, we have made a formal request to the Department of the Interior's Inspector General's Office to help provide us with these services. Overall, we are seeking a formal referral system, so our cases can be investigated.

The Board is very interested in the comments of the other witnesses today, and how they see the act helping or hindering successful prosecutions. We are as committed as you are about using the law to successfully prosecute cases.

The third goal of the act that I want to emphasize is prevention. How do we bring the market into compliance with the law and prevent the fraudulent sale of Indian arts and crafts? A new but major effort of the Board tied to prevention is our trademark program.

As our trademark registration program expands and is incorporated within the Board's existing certification program, we anticipate a significant increase in public recognition, value and reliance on products marketed with the Indian trademark, and Indian Arts and Crafts Board identification tags of authentic Indian craftsmanship and origin.

Our goal, with the legal assistance of a newly hired lawyer and a PTO detailee, also a lawyer, is to develop regulations to establish a trademark registration program. Our lawyers have identified two major problems with the language of the 1990 law.

Briefly, the first issue centers on an apparent conflict with the trademark provisions of the Indian Arts and Crafts Act of 1990 and the ownership requirements of the Lanham Act.

The Lanham Act only permits registration of a trademark by the owner of the mark. The owner is the person who uses the mark or controls the nature and quality of the goods identified by the mark. The 1990 act contradicts this basic tenant in that it authorizes the Board to register a trademark that it neither controls nor uses.

In effect, under the Lanham Act, the Board is not the owner of the mark, and any registration it obtains on behalf of an Indian or an Indian tribe will be void.

The second problem is that the trademark registration and assignment provisions of the Indian Arts and Crafts Act do not appear to include Indian arts and crafts organizations.

Yet, the act specifically authorizes the Board to create trademarks for Indian arts and crafts organizations and individual Indi-

ans and Indian tribes. The practical effect is to deny Indian arts and crafts organizations the benefit of the trademark provisions.

The Board is working with the United States Patent and Trademark Office to resolve both issues and intends to seek a formal opinion on the matter from their solicitor. It may require a legislative solution.

Finally, how do we broaden the Federal interest and, thereby, push for full compliance of the law? From the perspective of a $1-million Federal agency with only 15 employees, we have to reach out and seek partnerships with everyone that can help.

We are in the process of creating an inter-agency working group on the enforcement of the Indian Arts and Crafts Act. We have invited the Department of Justice and all its players, including the Office of Tribal Justice, the Executive Office of the U.S. Attorney, the Consumer Litigation Division, the Office of Legislative Affairs, and the Environment and Natural Resources Division.

We have invited the Patent and Trademark Office, the Federal Trade Commission, the U.S. Customs Service, the Department of Commerce, and the Federal Bureau of Investigations to participate, as well.

We have held an initial teleconference, and I am optimistic that we will reach a consensus to develop a Memorandum of Understanding between the various agencies.

This concludes my remarks. I will be happy to answer any questions of the committee.

Thank you.

[Prepared statement of Ms. Roessel appears in appendix.]

Senator BINGAMAN. Thank you very much.

Mr. Van Norman, did you want to go ahead?

STATEMENT OF MARK VAN NORMAN, DIRECTOR, OFFICE OF TRIBAL JUSTICE, DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. VAN NORMAN. Thank you, Senator. I am Mark Van Norman. I am the director of the Office of Tribal Justice in the Department of Justice. Our mission is to coordinate Indian issues within the department.

We recognize that economic development is essential in Indian Country, because unemployment and poverty are so pervasive. We also recognize that the lack of economic opportunities causes social problems; not the least of which are crime problems.

So in August 1998, we participated in the White House conference on building economic self-determination in Indian communities. In her address to the conference, the Attorney General noted the importance of promoting strong tribal law enforcement and tribal courts to foster a positive environment for business.

For fiscal year 2001, the department has requested $173 million for our Indian law enforcement improvement initiative, including a request for tribal courts for $15 million, and an $18 million request to deal with offenders who commit alcohol-related crimes. So we think that is very important to create the community stability that is necessary for economic development.

The United States has a long-standing policy of promoting the Indian arts and crafts industry. In 1935, the Indian Arts and

Crafts Act was first enacted to create the Board. It recognized the importance of promoting product genuineness.

Congress amended the act in 1990 to enhance the protections that it awards against false claims. It also created a civil cause of action, and authorized the Board to refer complaints that goods are falsely sold as Indian made to the FBI, and authorized the Board to make recommendations to the Secretary of the Interior that he ask the Attorney General to bring a civil action under the act.

With respect to the civil remedies, there does have to be a request from the Secretary of the Interior for Justice to act, but Indian tribes are also authorized to bring their own actions.

In recent years, the department has undertaken several enforcement activities through the act, through the U.S. Attorneys Offices. And in some areas, U.S. Attorneys have also worked to resolve lessor complaints informally by referring them over to Interior, and having Interior get in touch with the retailers to explain the ramifications of the act.

With respect to the Federal Government, the act envisions coordinated enforcement responsibilities between the Board, the Department of the Interior, and the Justice Department. As Faith testified, we are exploring the possibility of developing an inter-agency Memorandum of Understanding to formalize our procedures to ensure that the act and its policies receive the full attention they deserve. From our office, we plan to work in close partnership with the Board.

I should note that there are other relevant protections available against false claims to ensure that arts and crafts products are Indian produced. Section 5 of the Federal Trade Commission Act makes it unlawful to use unfair, deceptive trade practices, and FTC has brought an enforcement action against a particular wholesaler in the northwest area.

In addition, in the Omnibus Trade and Competitiveness Act of 1988, the Secretary of Treasury was directed to prescribe and implement regulations to require country of origin marking for Native American style jewelry, arts, and crafts. Those regulations require permanent marking on imported products that incorporate Native American Design, or could possibly be mistaken for goods made by Native Americans.

They require permanent or indelible marking, except when the country of origin is a NAFTA country, or where it is technically or commercially infeasible to do so; in which case, string tags or adhesive labels are used.

So the committee may want to take a look at this issue to ensure that importers do not use this exception to circumvent the purpose of the regulation.

In addition to these Federal protections, there are a number of states that have enacted consumer protection laws. They can provide protection against false claims that products are Indian made. Arizona and New Mexico have such statutes. If there are amendments to the act, it would be helpful to recognize these important State efforts.

I want to thank the committee for this opportunity to testify. We want to just again express our commitment to work with the Board

in partnership on these issues to make sure that the act receives the attention that it should.

[Prepared statement of Mr. Van Norman appears in appendix.]

Senator BINGAMAN. Thank you very much.

Let me just make a few comments here, and then maybe ask a question. I do believe the Indian arts and crafts work that goes on in our state, in New Mexico, is a very important economic activity. A lot of people depend upon this for a living.

We have not figured out how to very effectively protect their trademark in what they do, or their intellectual property, or whatever the right phrase is. Somehow or other, we seem to fall short.

We find a lot of products being sold in our state and elsewhere, which have the appearance of being Indian made, and in many cases, are actually labeled that way. Perhaps they are not just labeled Indian made, but are labeled as being made by a particular tribe, the Hopi or the Navajo or whatever. And we find that, in fact, they were not.

Now the general laws we have against false advertising and false representation of goods being offered for sale do not seem to have done the job. The law we have got on the books and that we are talking about today, the Indian Arts and Crafts Act, has had its problems.

I think you described some of those in your testimony, and some of the inconsistencies between the law that you folks are trying to administer out of the Board, and other laws on the books; the Lanham Act, for example.

It would be very helpful, frankly, for me and I believe for this committee and for the entire Congress, if the Board could come forward and give us a set of suggested changes in the law that you think might be helpful in getting this properly enforced.

I do not know how much of it is a need to change the law, and how much of it is just a need to provide adequate resources to enforce the law. But some combination of those two, I think, might be very welcome.

So I do not know if you have any comments on that, Faith. I guess that sort of addresses some of the things that you covered in the testimony that I heard.

Ms. ROESSEL. Senator Bingaman, we would be happy to provide suggestions that we see, amendments to the law. It has been only two months that we have had an attorney on staff. And this is something that we have been struggling actually for several years, trying to get an attorney on board. This lawyer is from the Patent and Trademark Office. So she has a wealth of experience. Then we have a PTO detailee, also a lawyer.

Within that two month period, we have already identified these legal issues. They have an excellent working relationship with PTO. And I really think we are going to get this trademark registration program off as soon as we can, just in terms of what is within our control.

But I certainly agree that the trademark provisions were something that purposely were left for a later date. It was on October 21st, I think it was, in 1996, when the regulations were promulgated for the 1990 act. It was specifically stated that the trade-

mark provisions would be dealt with later. It really was a resource issue.

How many years has it been now? We admit, it is not what we would like. But we are moving very fast and furious, trying to get this up and running, because we are starting to get real interest from various artisans who want to register a mark.

We see this as a real important component in enforcement. Because if someone has something of value, a trademark, and if the consumer understands and knows that when they see that mark, and especially associated with the Indian Arts and Crafts Board mark or certification, that means something. Someone can be assured, as a consumer, that they are buying an Indian made product.

So I think this is something that has been long overdue. We would be happy to work with the committee and with you on this.

Senator BINGAMAN. Mr. Chairman, let me just say, I commend you and the rest of the committee for giving attention to this issue. It is one that I have sort of struggled with, ever since I became Attorney General out in New Mexico.

As was pointed out here and Mr. Van Norman, I think, mentioned, and Faith did, too, perhaps, that several of our states, New Mexico included, do have a statute and do try to deal with this; unfortunately not in a very effective way.

But we worked at it there in the Attorney General's Office for the time I was there. Then since I have been here in the Senate, we have also tried to pursue initiatives that would get to more effective enforcement of the law here.

I think what I am hearing here today in this testimony is encouraging. It sounds as though the Board is finally getting staffed up to a point where it is going to be able to make some good recommendations, which maybe your committee will act upon, and I can support your efforts.

Chairman CAMPBELL [presiding]. Thank you.

Both New Mexico and Colorado, as well as perhaps a couple of states in the West do have statutes, as Senator Bingaman had mentioned, Faith. We do not have any information, and maybe I should have tried to get that before, if there had been any prosecutions under those state laws, since we have not done anything with the Federal law. Do you know if we have or not?

Ms. ROESSEL. If I may, in my visits out in the field last August, I did have an opportunity to meet with the Director of the Consumer Affairs Division within the Attorney General's Office in New Mexico. In that instance, he describes several, I guess, settlements. It seems like these prosecutions end up in settlements.

For instance, the Taos Drum Company which, when you hear that, and I have seen their advertisements, it appears as if it is made by the Pueblo of Taos, or the people of the Pueblo of Taos. So in that instance, they were able to extract a monetary fine and were able to settle that, I believe, out of court.

That particular state was very interested in trying to cooperate and work with the Indian Arts and Crafts Board. So I think that there are opportunities there.

When we had our initial inter-agency discussions just recently, the Federal Trade Commission participated, and certainly has as

their mandate consumer protection. I think there is a whole network out there that we hope they will be able to introduce us to, in terms of looking at that aspect and trying to get information out to the public.

They noted that they do have an FTC bulletin or advisory to consumers on the sale of Indian arts and crafts. But I think that this area is something where we are really scratching the surface.

The CHAIRMAN. Well, I know it is complicated, because when you talk about Indian made, and the word "made," there are a lot of subtleties in the semantics, using that word "made."

If an Indian pushes a button that stamps out rings, is that Indian made? Well, under the strict guidelines of the Indian Arts and Crafts Board, it is not. It has to be hand manipulated, as you know.

Also, what is the percent of the product, and I know for a fact that there are Indian people that sell things along the highways down by Gallup and some of the parks and in and around the Grand Canyon that get Taiwanese, Haitian beads, and they just put another string on it. Then they say, "I made this." So maybe we need to clarify what "made" means.

I would like to turn now to Senator Kyl, who was the original sponsor of the revision bill in 1990, and I was the cosponsor. It is also of great importance to him. Coming from Arizona, that is also a great part of the home economy for Indian people in his state.

Senator Kyl, would you like to make a statement?

Senator KYL. Thank you.

The CHAIRMAN. I think we have got what, about another seven or eight minutes? We will have to run and come back, Faith.

STATEMENT OF HON. JON KYL, U.S. SENATOR FROM ARIZONA

Senator KYL. Thank you very much.

Mr. Chairman, I do not know that I have ever told you this, but I really got interested in this, not only because some Hopi and Navajo friends of mine brought it to my attention in Arizona, but because my father, who served in the Congress during the 1960's and early 1970's on the Interior Committee in the House of Representatives, and later as Assistant Secretary of Interior, worked on this, way back then, in an effort to try to achieve this kind of result.

When I was elected to the Congress, he said, "You know, 20 years ago, I tried to get something done. One thing you might try to do is to get some help in this area."

I went to Senator Campbell then, and we tried to find a workable, enforceable way to protect the Indian artisans in their arts and crafts. I want to thank you very much for your leadership, Mr. Chairman, and for, of course, holding this hearing.

We co-wrote the act of 1990, which attempted to vest the Arts and Crafts Board at the Department of the Interior with new authority to combat counterfeits and misrepresentation.

The 1990 act was effectively a truth in advertising law that established criminal and civil penalties for misrepresentation, and supplemented the indelible marking/country of origin requirements for Indian style imports that were established in 1988 in the Omnibus Trade and Competitiveness Act.

When we consider what arts and crafts mean to Indian people, I think we need to understand that they are important for both economic and cultural reasons. Indian people depend upon arts and crafts for their livelihood.

To give you an example of how important the sale of arts and crafts is to the economies of Indian Country, let me cite a couple of examples.

Representatives of the Hopi Tribe tell me that an estimated 37 percent of the tribe's working population is employed in some way in arts or crafts making. This is a significant share. Mr. Chairman, I would like at this point unanimous consent to introduce into the record a statement by the chairman of the Hopi Tribe, Wayne Taylor.

The CHAIRMAN. Without objection, that will be included in the record.

Senator KYL. Thank you.

[Referenced document appears in appendix.]

Senator KYL. An estimated $11.2 million of income to the Hopi economy is due to arts and crafts. But consider this, forgeries are estimated to cost the Hopi Tribe another $4.6 in lost sales. The tribe estimates that fully 40 percent of forgeries sold in the marketplace are represented as Hopi.

All told, estimates are that 40 to 50 or maybe even up to 60 percent of the $1 billion Indian arts and crafts market is inappropriately represented as genuine.

With a market that large, some people will go to great lengths to claim a share of it for themselves. We have heard about the town in the Philippines that was renamed Zuni, so their products could be marketed as Zuni made.

This costs Indian tribes very serious money. But more is at stake than dollars and cents. It does misrepresent the native culture itself and, in that sense, poses a threat to its continuation.

The Associated Press profiled Zuni Indian silversmiths Jan and Wilda Boone in a report earlier this year. According to that report, the Boones make earrings and bracelets in a workshop in the Zuni Pueblo, south of Gallup. Jan's parents were silversmiths, as were his grandparents before him.

Wilda's parents made animal carvings. Her daughter applies that craft right now. Their craft has been passed on from generation to generation, but because of the counterfeiting and misrepresentations, the Boones are reportedly thinking about a different trade for their two youngest children.

Imitations have not only cost the Boones sales, but they have caused buyers to be wary of the genuineness of that family's own creations. Of course, if Indian artisans can not make enough money, due to competition from fakes, then they are going to abandon these arts, and the very rich Native American traditions they represent could die out.

If artisans have to increase productivity at the expense of time-honored manufacturing techniques, in order to compete with imitation products, another important part of the heritage will be compromised and lost. This is a loss for all of America.

So Mr. Chairman, the act was intended to help solve this problem. It was also intended to provide a mechanism for Indian arti-

sans to easily obtain trademarks to help distinguish their works as genuine.

As you have noted and I have noted, this has not worked. The implementation has been a big disappointment. The fault is not all the Indian Arts and Crafts Board. Let me make that point in the beginning.

Five years ago, because of budgetary constraints, the House and Senate Appropriations Committee proposed to abolish the Board. I offered an amendment on the Senate Floor to restore funding for it, but resources were very tight then, and they continue to be tight.

I have always been very disappointed that the Interior Department has not requested the kind of funding necessary to aggressively enforce the 1990 act.

Aside from resources though, I think the Arts and Crafts Board has really failed to step up to the plate. According to the latest information I have, not a single case of misrepresentation has been referred to the Justice Department.

I understand there is one case reportedly in the pipeline now. One representative of the Board was last year quoted as saying that the Board is still looking for a big test case. Mr. Chairman, with an estimated 50 to 60 percent of the marketplace plagued with forgeries, it does not seem to me that it should be too hard to find a good test case.

Trademark Regulations have not even been promulgated. This is now 10 years after passage. Museums that the Board runs around the country continue to lose money. They cost $465,000 annually, and yet, only raised $75,000 in net user fees.

As for the Customs Service's enforcement of the indelible marking provisions of the 1988 act, it, too, has been lacking. I have heard anecdotal evidence that after seizing counterfeits, Customs auctions off the goods. Some of them are put right into the marketplace where they may be sold as genuine.

Experts say there is enough law, and it is now a matter of enforcement. For that reason, I have been working with you, Mr. Chairman, and the Senate Appropriations Committee, to earmark a greater share of the budget for arts and crafts enforcement. This year, about 30 percent is set aside for enforcement. Next year, it will be 35 percent.

You also had what I thought was another excellent idea, the creation of a Joint Task Force to devise and implement a coordinated enforcement response to prevent the sale or distribution of any product or good sold in or shipped to the United States, that is not in compliance with the Indian Arts and Crafts Act.

That Task Force would be composed of representatives of the U.S. Trade Representative, Department of Commerce, Interior, Justice, Treasury, the International Trade Administration, and representatives of certain other agencies. I understand you are still pursuing this idea, and I enthusiastically support it.

I look forward to reading the Interior Department's testimony. I would ask unanimous consent to submit some questions to them for the record, especially to try to get some ideas about how we can ensure effective enforcement of existing law, and whether the de-

partment thinks any new laws or authorities might be required to tackle the problem.

The CHAIRMAN. Without objection.

Senator KYL. But I will say this, if the Board can not or will not aggressively implement and enforce the IACA, then I am ready to look to another agency that can, whether it is in the Department of the Interior or some other department.

I want to conclude again by thanking you, Mr. Chairman. I join you in regretting this scheduling difficulty we have been in all afternoon. We are going to have to return for another vote. That meant that the vote was two-thirds over. So we will probably have to go back and cast that vote. I apologize to the witnesses and the people in the audience for that inconvenience today.

Thank you.

The CHAIRMAN. We will run in a few more minutes for that next vote.

Before I left for the first vote, you did mention, as I understood it, that you were just finishing the promulgating of the rules now. Is that right?

Ms. ROESSEL. We are in the process right now of putting together the trademark registration regulations.

The CHAIRMAN. But when we first passed this in 1990, at what point in time were the final rules finished?

Ms. ROESSEL. They were finished in 1996.

The CHAIRMAN. It took six years to get the rules done. Is that right?

Ms. ROESSEL. Yes.

The CHAIRMAN. Why so long?

Ms. ROESSEL. Well, I was not there at the time. But looking at the history, I think there was a major hiatus with the Board in terms of the fact that their very being was being attacked. And I think under siege, those priorities took precedent.

I think, as you related, Mr. Chairman, the whole issue of trying to reach consensus on who is an Indian appeared to take a great amount of time.

The CHAIRMAN. Sure, well, let me ask you also, you know, when you talk about the violations of roughly $1 billion a year industry, and it is estimated that half of that is counterfeit, I do not think we are so concerned about some guy who is Anglo, and he has an Indian wife. She does rugs. Somewhere along the line, he helped with a rug or something.

You know we are not concerned about those things as much as we are this wholesale importation of phony stuff, or the wholesale manufacture, the assembly line manufacture; you know, the chicken feather war bonnets and the rubber tomahawks, and that kind of stuff, and maybe just one level above that; but a lot of that stuff that is being passed off as "Indian made."

I remember I used to work for a export/import company in Japan, years ago. Friends of mine came over here, and at some place, they had bought Indian bows and arrows. They got back to Japan, and we were looking at it. It had a little stamp on the bottom. Somebody had not peeled off the sticker. It said, "Made in Japan."

They got very upset about that. And I said, "Well, you guys made it. What are you getting upset about?" So, you know, there is plenty of blame to pass around. But it does not seem like we are making much progress.

I know it is very complicated. I had, a few years ago, and it may have changed now, but some Utes came to me from the Ute Mountain Tribe, which has a pottery factory. They do slip pottery. It is made in molds. They pour the pottery, and they do hand painting of the pottery. They market that way. They do not market it as anything except slip pottery that is hand painted.

Well, at that time, the Park Service would not accept that as Indian made. They would not let them sell it in Mesa Verde National Park.

So there are lots of very difficult hairs that we are splitting when we talk about "Indian made" or "not Indian made," if I can use that in quotations.

Your Board coordinates arts and crafts festivals, fairs, markets. You do that with the museum in Oklahoma and in Browning; do you not? You work with them?

Ms. ROESSEL. Yes.

The CHAIRMAN. Does it require participating entities and marketers to certify that the goods are authentic?

Ms. ROESSEL. Yes.

The CHAIRMAN. You do? Under that last act, that means the enrolled member might have a certificate from a tribe, saying that they are of that ancestry or something.

Ms. ROESSEL. Right, right, we require that.

The CHAIRMAN. Well, I am certainly encouraged by the hiring of additional attorneys and staff dedicated to enforcement. How many entities have taken advantage of the Board's trademark certification program; do you know? You put out a booklet with it, as I understand; do you not?

Ms. ROESSEL. Well, we have our own certification program. For example, the Navajo Nation, with their Navajo arts and crafts enterprise, has taken advantage of that.

The CHAIRMAN. Oh, yes, sure, I have seen that.

Ms. ROESSEL. And there are several other tribes that have in the past. But what we are looking at right now is developing the trademark regulations. On that, I do not know what the total would be. We would have to get back to the committee in terms of inquiries from Indian artisans for that.

The CHAIRMAN. I understand you received 45 complaints alleging violations. But testimony is that the Secretary has never requested the Attorney General to institute a civil action. There is a civil portion of the 1990 bill and a criminal portion.

Ms. ROESSEL. Right.

The CHAIRMAN. Why is it that they have not asked for any civil action? Do you know? Do you leave that to the tribes, pretty much?

Ms. ROESSEL. No; I mean, we would be very happy to have a case to refer on to the Department of Justice. I think we obviously are dependent on the written complaints that come in. And of the 45 various categories arise in terms of whether there is enough factual information or whether we are asking for more information.

So I think that no complaint comes in just fully developed exactly, so that we can then refer it on to the Department of Justice. It does require review internally by our lawyers.

Again, I would emphasize, because of a lack of resources, we have not had a lawyer on staff. So our lawyer, who has been here 2 months, is very busy evaluating our backlog. I would be the first to admit, it is a backlog. We have to get to that.

The CHAIRMAN. So you are going through all those 45 complaints, I assume.

Well, let me run out and do the next vote. So we do not hold everybody else up, I am going to ask our staff attorney to go ahead with some of my questions until I can get back. If you can do that, Paul, I would appreciate it. At least we can get those on the record. I will be right back.

Mr. MOOREHEAD [assuming Chair]. Faith, following up with what the Chairman mentioned, let me just ask a couple of the questions that he would have asked, had he not had to go to the vote.

Senator Campbell was involved in getting the 1990 amendments to focus on enforcement, penalties, and a number of other matters 10 years ago or so.

But your testimony today is that there is a scarcity of complaints, and that you have experienced some difficulty in getting the tribes and arts and crafts associations and others to engage not only in self-policing, but also in reporting potential violations to the Indian Arts and Crafts Board.

Given what we read are widespread violations of the act in the popular press, why do you think there are so few complaints made to the Board, and is there anything that the committee can do to enhance the frequency or the authenticity of those complaints?

Ms. ROESSEL. I would think that the whole issue of being able to investigate a complaint is a very real one for us. I think first before that, we need to have these complaints coming in.

In some of the outreach I have done personally, I think we have been trying to get into the field to let people know who we are. We feel that if we can get into the field, educate folks about the law, let them know what the requirements are, and if one breaks the law this is the remedy that we have that they can follow. That would enhance more complaints coming in that are better written and more on point.

I think some of these complaints are folks that are frustrated because maybe they got a bad deal when they were buying Indian art. I know when I was talking with the New Mexico Attorney General's Office in the Consumer Division, he said, if I recall correctly, at least one-half of his cases were bad deals. People felt like they were taken.

So I do not know how to explain it, other than we are an agency charged by Federal law to process these complaints. We do not have the investigators to go out and to be looking for cases. We can educate the public. We can let them know what the law is. We can work with the Indian Arts and Crafts Association. This is largely a self-policing industry.

But I can not honestly say what would be the magic bullet here, in terms of getting more cases, other than what we are trying to do right now on a renewed basis.

Mr. MOOREHEAD. Does the Interior Department require marketers of Indian arts and crafts that do business on Federal lands or in national parks to certify to the Board or to the Department that those goods also comport with the act?

Ms. ROESSEL. I may have to ask our acting director if she has any information on that, or we can get back to the committee, but I am not aware specifically.

Mr. MOOREHEAD. Last, the international market for Indian arts and crafts, as you know, is huge, especially in Japan and in Europe. Does the Board facilitate on the marketing side of the equation, overseas trade trips and marketing ventures that involve Indian arts and crafts and Indian arts associations?

Ms. ROESSEL. During my tenure on the Board, I have no personal knowledge of any such international trade trips or marketing or anything like that. We could get back to the committee if there has been anything in the past.

Mr. MOOREHEAD. Or if there are ways that the committee can facilitate that, in terms of resources or statutory changes, I think the Chairman would appreciate that.

Ms. ROESSEL. Okay.

Mr. MOOREHEAD. Mark, I have just a few questions that stem from your testimony. Your testimony is that because it is difficult to prove that a retailer or other seller knowingly sells counterfeit Indian goods, criminal cases are difficult to bring, but the burden of proof for civil cases is much lower.

Do you foresee the department, as a result of that, being involved with more civil prosecutions, or does the Department, like all agencies, have a competition for resources, and arts and crafts prosecutions devolve quickly to the bottom of the priorities list?

Mr. VAN NORMAN. Well, we have been aware of the committee's interests in arts and crafts, so we looked at some of these issues. We looked at the criminal statute and the requirement of knowingly selling the goods, knowing that they are not Indian made.

We talked to our Office of Legal Counsel. They informed us that that would be something that needs to be in the statute. So it is not possible to eliminate that kind of a knowing requirement on the criminal side of it.

We also talked informally about what kind of possibility there would be for having misdemeanor enforcement. We were informed, just on an informal basis, that probably keeping it at a felony level improves the chances for criminal prosecution.

We did kind of a survey, the Executive Office for U.S. Attorneys, and came up with a few instances where the U.S. Attorneys Offices have pursued some actions under the act.

In regard to the department's civil actions, we would have to rely on the Board to pursue the process through the Secretary, to make a recommendation. That was something that the department apparently had sought in a 1990 legislation. So I guess we would have to rely on that process.

You know, one of the things, though, that I was thinking about, in the past, when the committee has been interested in an area, we have done some outreach with tribes.

We would be willing to, if the committee thought that this was a worthwhile thing to do, work with the Board, and do some kind

an outreach conference in the Fall, and talk maybe about marketing an electronic commerce or maybe international trade, if we can get Commerce to come in. But it would also be about enforcement and more education about the act.

So if you want us to pursue something like that, we are happy to increase our outreach efforts on this.

Mr. MOOREHEAD. We will take that to the Chairman and see if he is interested in that.

We will hear, in a moment, from the Ho-Chunk Nation tribal leader that the tribe has had some success pursuing civil cases against counterfeiters and has reached a number of settlements.

Do you think that the department's resources, admittedly scarce, would be best or better spent on assisting tribes in filing these suits and, in effect, making tribes private Attorneys General, with regard to civil suits? I think you partially answered that with the last answer regarding the conference and the dissemination of information.

Mr. VAN NORMAN. You know, we are happy to talk to tribes about these issues and do more outreach efforts, even when we are not parties to the litigation. I mean, we are happy to pursue that.

Mr. MOOREHEAD. I think those are all the questions that the Chairman had for the first panel. On his behalf, let me thank you, Faith Roessel and Mark Van Norman. As is his want, we will usually follow up with written questions, and ask you to submit those in a number of weeks.

Mr. VAN NORMAN. Thanks very much.

Ms. ROESSEL. Thank you.

Mr. MOOREHEAD. Thank you.

If we could now proceed to the second panel. That would be the Jacob Lonetree, president of the Ho-Chunk Nation; Jason Takala, from Holbrook, AZ, an Indian artisan; Andy Abeita, from the Council for Indigenous Art and Culture; and Tony Eriacho, a Board Member of the Indian Arts and Crafts Association.

Until the Chairman gets back, I would simply ask you, Chairman Lonetree, to begin your statement. Then the Chairman can pick it up, when he comes back to the hearing.

STATEMENT OF JACOB LONETREE, PRESIDENT, HO-CHUNK NATION, BLACK RIVER FALLS, WI, ACCOMPANIED BY GARY BROWNELL, HO-CHUNK NATION ATTORNEY GENERAL; MICHAEL P. MULLEN, ATTORNEY; AND MATTHEW MULLEN, PRESIDENT, NATIONAL AMERICAN ARTS, INCORPORATED

Mr. LONETREE. Thank you, Mr. Moorehead. Good afternoon, everyone.

It is an honor to be asked to testify today before the Honorable Chairman Campbell's committee. In my observation back here in listening to the members of the first panel, and some of the interaction that has occurred, obviously, as we join together today, we do have some problems relative to this act.

Before I proceed with my statement, I would like to take this moment to introduce three of the individuals that I have brought with me, Mr. Moorehead.

Mr. MOOREHEAD. Please do.

Mr. LONETREE. First of all in the Attorney General for the Ho-Chunk Nation, Gary Brownell.

Also, as it was quoted earlier during the panel one discussion that the Ho-Chunk Nation, in collaboration with the Native American Arts, Incorporated, out of Chicago, which is owned by members of the Ho-Chunk Nation, I would like to introduce one of the owners, Matthew Mullen.

Mr. MOOREHEAD. Welcome.

Mr. LONETREE. And the attorney that represented Native American arts interests in that lawsuit that you just referenced, Mr. Moorehead, also in conjunction and assistance from the Ho-Chunk Nation, is Michael Mullen.

Mr. MICHAEL MULLEN. Good afternoon.

Mr. MOOREHEAD. Welcome.

Mr. LONETREE. Upon the conclusion of my statement, obviously, I will be present to answer any of your questions and inquiries regarding the act of 1990. I think that based on some of your questions, I would be very honored to answer any questions, relative to the cultural portions of the act.

However, from the technical standpoint, I will defer to Mr. Mullen, if you want to reference your questions in his direction, Mr. Moorehead.

It has been 10 years since the passage of this act, which is vitally important to the protection of Indian artisans and crafts people. The act requires that products that purport to be Indian made indeed be Indian made.

It provides a valuable tool to preserve the cultural integrity and commercial value of these products of Native American hands and spirits.

The term "arts and crafts" does not do justice to the cultural creations about which we speak. I attached as exhibit 1 to this testimony a statement of the Ho-Chunk Nation traditional court, composed of clan elders, describing the depth of cultural meaning and the importance of these items.

These works embody a culture and identity of a people, and reflect personal and family history. They are a fundamental means of expression as to who we are, as Native Americans, and as members of our respective tribal nations.

Native American arts and crafts also have an important economic place in Indian Country. Many individuals and families rely on the production and sale of these items for their livelihood.

The Ho-Chunk Nation is developing an enterprise to provide an outlet for these artists of the Ho-Chunk Nation and other tribes. We call this enterprise the Wonk Sheek Trading Company, our language's term for native peoples.

We are actively seeking to set up distribution channels for this enterprise as part of our economic development and diversification efforts. The Ho-Chunk Nation has been represented in trade missions to Germany, and we have discussed this and other developmental issues with commercial interests from Japan. We know that the market for authentic Indian arts and crafts is international.

The cultural integrity and economic viability of authentic Indian arts and crafts are threatened by the substantial market and coun-

terfeit Indian products. Many of these products are imported, and most are cheaply priced and are of inferior quality.

I attach a copy of the articles appearing in the April 9, 1998 issue of "USA Today" describing this problem as exhibit 2. Unfortunately, the problem is still as real today. If anything, its scope may have expanded.

Congress provided a powerful tool to deal with this problem through the Indian Arts and Craft Act of 1990. The reason that the problem has not been adequately dealt with is the lack of enforcement of that law.

Although there are powerful criminal and civil deterrents to counterfeiting Indian goods contained in the law, the public enforcement mechanism has not been used. The reasons for that lack of enforcement should be addressed by the Indian Arts Board and the Department of Justice.

However, a fact of non-enforcement is clear. It is only through the private right of action authorized by the act that this law has begun to have life. The Ho-Chunk Nation is proud of its collaboration with Native American Arts, Inc. to pursue the enforcement of that act.

In 1996, Native American Arts, Inc., an Indian arts and crafts organization, was organized by members of the Ho-Chunk Nation to market and distribute only authentic Native American made arts, crafts, and jewelry. It is headquartered in the Chicago, Illinois area. The authenticity of the Native American products was to be a main selling point, along with high quality.

After the operation was launched, it was determined that the marketplace was being flooded with imitation Indian products, being sold as authentic. Retailers and wholesale suppliers falsely suggested or falsely represented that their products were authentic Indian made products, when they were not. Subsequent investigation revealed that many of the imitation products were made in Mexico, China, and the Far East.

In addition, Native American Arts tried to get retail space in shopping malls around Chicago, and on some occasions were turned down, because other retailers in the same mall were selling competing Indian products. It was later determined that some of these retailers were selling imitation Indian products as being authentic.

Let me state here that prior to my coming down here to provide this testimony, in conference and consultation with the members of our traditional court, there was a great deal of composition that underlies a lot of the problems associated with this act.

One of the major underlining factors here of a subterranean category or understanding is that Native American arts represents the spirituality of our people; just who has the right to make what products of arts, such as jewelry, the making of Native American basketry items.

This is a reflection of a spiritual nature. It is in that vein that the clan leaders of our nation have supported by resolution that we continue on and support the chairman's interest in this particular area.

Again, I say thank you for giving me the opportunity to appear before this body today.

[Prepared statement of Mr. Lonetree appears in appendix.]

Mr. MOOREHEAD. Thank you, Mr. Chairman.
Mr. Takala.

STATEMENT OF JASON TAKALA, ARTISAN, HOLBROOK, AZ

Mr. TAKALA. Good afternoon. My name is Jason Takala, Sr. I am a member of the Hopi Tribe. I am a gold and silversmith, specializing in Hopi overlay jewelry. Thank you for a chance to tell my story.

I have attached the following items to help you understand my testimony. A memo of April 14, 1994, outlining attempts to contact the IACP. The memo reports copyright outlines and problems with copyright claims, and an article that traces proposed legislative history and current statutes of the act.

In 1993, my wife, Margie and I, went down to Sedona to deliver some jewelry to Garland's Indian Trading Post. We found a ring which looked just like my work in a showcase. I asked a salesperson to see if it was my work. She took it out and showed it to me. After observing it, I realized that it was a casting of my original ring.

The ring was cast in 14 carat casting, and I had only completed 6 rings in 14 carat. This can be observed on the attachment.

By casting rings, these rings, my trademark, which I have put on the inside of the ring, had been filled with solder, and I could tell, because of the slight imperfection of the insert of the ring, where my trademark should have been.

I made a claim under the American Indian Arts and Craft Protection Act of 1990. I believe my claim was the first of its kind.

I would like to compliment and thank the U.S. Attorney's Office in Phoenix, and especially Assistant U.S. Attorney Tom LeClaire, for taking such an interest in my case, and also Tony Brown, an investigator for the Department of the Interior. Unfortunately, their hard work and dedication to this claim did not result in an indictment.

The main problems that attorney Christopher Kramer and I encountered in trying to bring a claim for damages are as follows. The Hopi Tribe said they could not expend public funds to sue for the benefit of a private individual. They were also worried about potential liabilities, counter claims, and the U.S. Attorney had no resources to pursue it civilly.

There were possibly some problems in using public funds for private persons. As a practical matter, no one is able to recover under the act, as long as the artists must rely on the tribes or the U.S. Attorney to act on his or her behalf.

As an artist, I am very thankful for my given talent. My uncles used to tell me, "This is your given talent. No one will ever take this from you. This is yours to keep and work with. It will die slowly with you, as you grow older."

But this did not happen. Somebody did take my talent, and made a mold out of one of my pieces, the ring, and misled the people who observe and admire American Indian art.

That kind of impact is very obvious. The copies of my work made through castings are not nearly perfect, but sell at 20 percent of the cost of the original. I get no royalty or fees. The market is eluded.

One of the problems we had in our claim under copyright and trademark law was that we could not prove who actually made the copies. All we could do was show that they had possession of the copies.

If we had been able to bring the claim under the act, we would have been able to show that they were displaying the copies as if they were genuine, and they should have known better. I would have been able to collect for some damages. This is important because finding out about these violations was just luck.

I, as an artist, should be given the same consideration as the big corporations, like Sony, Walt Disney, Paramount, and RCA, to name a few. Just because I am an individual artist, I should be treated just like any other corporation.

This concludes my testimony. Thank you very much.

[Prepared statement of Mr. Takala appears in appendix.]

Chairman CAMPBELL [presiding]. Okay, we will go on with Mr. Abeita. Andy, are you a working artist, too?

Mr. ABEITA. Yes; I am, Mr. Chairman.

The CHAIRMAN. Are you, by any chance, related to Pablita Abeita?

Mr. ABEITA. Pablo?

The CHAIRMAN. Pablita, she worked on this committee for a number of years, before she went over to the Smithsonian.

Mr. ABEITA. I do not believe so, sir.

The CHAIRMAN. Well, I guess Abeita is like Smith or Jones in the Anglo world.

Mr. ABEITA. Yes, absolutely.

The CHAIRMAN. Okay, go ahead.

STATEMENT OF ANDY ABEITA, COUNCIL FOR INDIGENOUS ARTS AND CULTURE, NEW MEXICO

Mr. ABEITA. Thank you, Mr. Chairman.

My name is Andy Abeita. I am a Native American Indian artist, a sculptor artist, from Isleta Pueblo in New Mexico. I am currently a commercial trade consultant in the Crafts Sector, for the United Nations International Trade Center, and the first American Indian artist President of the Indian Arts and Crafts Association, of which you are a member.

The CHAIRMAN. Yes.

Mr. ABEITA. Also, I am currently the U.S. delegate on an international commission for cultural preservation for the United Nations Educational Cultural and Scientific Organization.

Because of my tradition and our Pueblo beliefs, I actively participate with a number of other Pueblos in their traditional activities, and speak four different languages. I have been a professional artist for the last 15 years. I have been quite involved in what has been happening in the industry, over the years, as I am sure Mr. Nighthorse is also aware.

In the last 10 years, I have been working with several Indian arts organizations and Indian tribes under the auspices of the Indian Arts and Crafts Association, in the area of Aboriginal arts and crafts preservation and legal protections.

As time has passed, myself and other devoted members of the IACA Board have found it necessary to create a separate, edu-

cational resource organization with a not-for-profit 501-C-3 status, in order to adequately address the governmental and public sector art and culturally-related legal and educational concerns.

In 1997, I founded the council for Indigenous Arts and Culture. The recently-created council for Indigenous Arts and Culture received its Federal tax designation 501-C-3 status in 1998.

Since its inception, CIAC has undertaken projects that primarily center around indigenous native communities, and the difficulties that these communities are facing in trying to protect and preserve their native arts and culture in an ever changing world around them.

Part of the reason why we created this not-for-profit C-3 is because the IACA is a trade organization, C-6. As a C-3, we were hoping to be able to get more funding for the types of projects that we have been working on in Indian communities. Having a majority Indian board on a not-for-profit in this particular area helped tremendously, as well.

For centuries, arts and hand crafts have played an important role in both the religious and social dichotomies of our Indian people. The images that you see in most all of the designs used in Native American arts and crafts are religious in nature. Even the hand fabrication process used in many of these creations is often a reflection of an individual artisan's relationships with the tools that begin with the beating heart, mind, and soul.

Our history ties us to this earth and our Creator is evident in most all you will see in the images of the cultural arts of the Native American artisan.

In 1980, the U.S. Census Study, including the 554 American Indian tribes, the Zuni, the Navajo, the Hopi, and the River Pueblo tribes of New Mexico were, of course, included in the survey. It is found that this handful of Indian tribes are noted as being the nation's leading producers of handmade Indian arts and crafts.

The Census survey indicated that in the above-mentioned communities, that there was an average of a 30 to 40 percent unemployment rate in 1980. Also noteworthy is that up to 85 percent of the families surveyed reported that arts and crafts were either a primary or secondary form of income in those communities.

Industry experts point out the Indian arts and crafts industry was at a historical all-time peak in overall business in that general timeframe. In 1985, a related survey done by the U.S. Department of Commence indicated that the Indian arts and craft industry was estimated to be generating between $700 million and $800 million annually in gross revenue.

In the U.S. Census poll taken again in 1990, these same tribes were found to report an unemployment rate of between 50 and 65 percent, on average.

In 1997, at an Indian Arts and Crafts Association sanctioned meeting held in Albuquerque, NM, the United States Indian Arts and Crafts Board indicated to a multi-tribal delegation that the industry was generating well above $1 billion annual and growing.

If you look at the statistics, based upon just that simple information of the unemployment rate of 30 to 40 percent in 1980, the industry grossing $700 million to $800 million a year, and compare that to the same Census polls in 1990, when there was a 50 to 65

percent unemployment and over $1 billion generated, you can see that there is a major problem in the ratio.

The industry statistics clearly indicate that the industry is growing, undoubtedly. The Indian Arts and Crafts Association reports that more businesses than ever are carrying American Indian style handicrafts and jewelry.

The Association has a mailing list of over 12,000. But the unemployment rate and the gross revenue reports expose an interesting concept in supply and demand growth. The supply is growing, but who is making the product?

The historical promotion and commercial successes derived from the sales of American Indian goods has contributed significantly to the onslaught of commercial invitations that have found their way into the market at the national level. We have also seen the growth of invitations beginning to take over a substantial portion of the international market.

Investigative reports from cities around the world, such as Santa Fe, NM; Los Angeles, CA; New York, NY; Paris, France; Milan, Italy; Tokyo, Japan; and Frankfurt, Germany indicate large quantities of fake Indian arts and crafts being represented as authentic and original American Indian artworks.

The U.S. Customs Office reported to the CIAC, the council for Indigenous Arts and Culture, which is the organization which I am representing today, that since 1990, counties such as the Philippines, Mexico, Thailand, Pakistan, and China have been importing an average of $30 million annually, from buying American Indian style arts and crafts.

Although the U.S. Customs Agency stated that the dollar amount was an estimate and not a fact, the numbers are quite significant, nonetheless. Some of these items include jewelry, artifact reproductions, pottery, ethnic crafts, and textiles.

New Mexico and Arizona provide the world market with roughly 80 percent of all commercial Indian handmade goods. The CIAC has been working with law enforcement agencies in both the United States and State government agencies in combating the fraudulent sales of Indian arts and crafts in these regions.

Recent investigations have uncovered that many businesses in these States also participate in the multi-million dollar sale of fake Indian arts and crafts.

It is an important element within the CIAC's mission to promote national consumer education, as well as law enforcement education for Indian arts and crafts. Statistical information gathered from industry sources over the last 5 years indicate that up to 50 percent of all Indian arts and crafts sold in the United States may not be handmade by definition.

The Federal regulation under Public Law 101–644 does not offer explanatory definitions for method of creation. But in several States, Indian arts and crafts statutes do.

There are three definitions under those regulations: Handmade, which is defined as taking manual labor and raw material, and producing a final product; handcrafted means to take pre-made parts and pieces and to manually assemble them to create a final product; and machine made, which means a product that is totally machine made.

The Federal Government and 11 States have Indian arts and crafts protections law. The biggest problem that we have seen is a lack of education on their behalf.

CIAS research had found that these government agencies and their agents have not had an opportunity to be trained on how to identify Indian and/or non-Indian products.

In 1995, under the leadership of then IACA president, Pam Phillips, the IACA began training these agents. Then in 1997, the CIAC continued the practice of providing both classroom and field training for law enforcement agents. Including in this training are members of the New Mexico and Arizona offices of the Attorney General, the FBI, U.S. Customs, Office of the Inspector General, and the World Customs Agents.

U.S. Customs law, the 1989 Omnibus Fair Trade Bill, Regulations 19 CFR Section 134 actually requires that any and all Indian style jewelry or crafts imported into the United States must wear a country of origin stamp indelibly marked into each individual piece of jewelry or craft entering U.S. boundaries.

The biggest downside to the law is that a loophole was created in the language; whereas, the term under Exceptions reads, "unless technically or commercially infeasible."

The intent of the law is to force importer manufacturers to mark their goods indelibly with a country of origin, as read in the law, by dye stamping or otherwise permanently marking the goods as to country of origin. As an example, many manufacturers have found that by attaching to jewelry a small soldered wire, so-called permanently attached, with a tag indicating the country of origin, U.S. Customs port inspectors allow the products to pass inspection.

There are over 330 ports of entry into the United States. After passing the Customs port, many unscrupulous importers and unethical arts and crafts dealers simply snip off the wire tags and begin to sell these goods as authentic Indian artworks.

Beyond that, when it comes to the provision that states' paper tags or other types of marking, the intent of that was referring to the use on small earrings and items that were too small to take an indelible stamp of sorts.

I believe that the importers are exaggerating on their ability to be able to mark these goods. In many cases, where the text says, "commercially infeasible," commercially is being drawn up as being not affordable, which I do not believe was the original intent of the law.

Let me give you an example. In 1997, the CIAC, in collaboration with the Indian Arts and Crafts Association, had lobbied for the New Mexico Attorney General to develop and enforce a mechanism within the Indian Arts and Crafts Sales Act in New Mexico. We were able to appropriate $150,000 for such an investigative effort.

We were able to investigate over 100 leads on fraud and misrepresentation. Of those 100 or so investigations that we had initiated, seven of them were taken to text for our attorneys to review within the New Mexico Attorney General's Office.

In many cases, because of the problems in language of the Federal act, which we were trying to pursue, working in collaboration with the New Mexico Attorney General's Office and the U.S. Attor-

ney General's Office, we were able to go into 100 businesses in New Mexico and another 50 in Arizona.

What we have found is that these retail stores are carrying product that is handcrafted in many cases, as defined in New Mexico and Arizona law, which states parts and pieces and manual labor equate hand crafted; but also a number of import products. So we involve not only the Attorney General's Office, but also the Office of the Inspector General and the U.S. Customs Office.

What we found in many instance's is that we need to have multiple contacts within the enforcement mechanism, so that we make sure that we follow jurisdiction and chain of command on particular issues developing cases.

In those cases, it was quite simple. Most of the problem that we were running into is the fact that we had to point out the point of origin of the product.

In fact, we had been working with some of the dealers in Albuquerque, who actually manufacture Vietnamese Indian look alike products, and importers from the Philippines, and Thailand, who had businesses established in Albuquerque.

We had been working with them to identify their product. So when we went out into the field to locate these goods, we knew exactly where the point of origin was.

The problem that we had run into in several cases is that a retailer buys from many different sources, many different dealer sources, manufacturer sources, individual artisans. Quite simply, these individuals would say, I do not have clue who I bought that from.

In Gallup, one the places who contribute a tremendous amount of product, they simply say, we do not keep receipts. We buy from the Indians. If we give them receipts, we have to charge more. You know, they do not want checks. They want cash. So we have no record of this. We actually have this on case statements that we would be investigating.

This opens up the door to a number of other problems. What I would like to focus on in this particular element of the act is the fact that it gets back to education. The U.S. Customs Officers who are in charge of the indelible marking requirement, in this particular instance, as we had found in New Mexico, are not enforcing the law at the ports.

As we had mentioned, there are over 330 ports in the U.S. The Council for Indigenous Arts and Culture has been able to train 12. Of those 12 ports, over the last 2 years, when we receive shipments of Indian styled products, we send them back as required by law, and tell them that when you bring these back into the country, they must be indelibly marked.

Quite often, these exporters and these American-owned companies simply go to another port who has not had formal training or has no interest in wanting to pursue the issue.

A point in fact, 1 year ago, January, we confiscated a $70,000 shipment of Indian arts and crafts style product in Los Angeles. We essentially found that when that particular shipment was found, we had to have them take that product back and mark it with the proper country of origin.

When the product came back into the country and it was not marked with country of origin, the goods were confiscated. Then U.S. Customs auctioned off the products that were not marked and then were sold back to the people that imported in the first place, at less than it cost them to originally produce the items. These are some of the problems that we are facing at that level.

There was a reference earlier to the Taos Drum Company lawsuit. Quite briefly, and I am almost done, and that was that there were 54 employees of the Taos Drum Company. Of the 54 employees, there were four Native Americans working at Taos Drum. I did this particular investigation myself. There were four Native Americans.

We went to the Taos Tribe. We indicated to them what the problem was. The Taos Tribe told us, essentially, this is out of our jurisdiction. You go ahead and file it through the State.

We took this case to both the U.S. Attorney's Office and the State of New Mexico Attorney General's Office. At that time, Tom Udall was looking for criminal prosecution, because they have been producing these drums for over 20 years with the same ratio, as testified by individuals who had been working there for over a 10-year period, who stated there has never been more than one-half dozen of them here at any time. It is mostly illegal immigrant labor.

But all of the brochures, the certificates that are issued are all indicating handmade Indian authentic genuine product. There are two women who, up until last year, were signing every single certificate of authenticity.

Yet, the Attorney General's Office, after Tom Udall had left office, decided that she was going to settle out of court for less than $10,000 in a civil suit, when we knew that there was criminal element involved here for the sales of these products for over 10 years. This is very typical of what we have found in the area.

Before I run out of time, I wanted to refer to two simple things. One of them is Zuni, Philippines. Yes, in fact, there was a place called Zuni, Philippines.

In my work over the last five years in working in these communities, the United Nations had appointed me to a Commission on the International Trade Center to investigate Aboriginal arts in copyright and trademark infringements.

One of the issues that we had dealt with was locating sources. We were able to find, in fact, that the source of Zuni, Philippines jewelry that was being imported into the United States was in a small township outside of Quezon City, in the Philippines.

We were able to identify this. We sent them, essentially, requests from the United Nations International Trade Center for clarification as to what form of ownership they have on this title, under international trade authority of copyright and trademark, and they had none.

This a business, an American owned business, that went into the Philippines and essentially established a working network of a village, trying to put together a manufacturing facility, essentially stamping everything made in Zuni, because the township had essentially changed its name.

After reference to our letter from the ITC, they changed their name back. They were afraid of the international publicity, because they are a strong handicraft community.

The CHAIRMAN. Was this an American company that did that?

Mr. ABEITA. It was an American company. I did want to point out that in all of the investigations that we have found involving American Indian style jewelry being imported into the United States, not one of them was a foreign owned company. They were all American owned companies.

My last point is the trademark. Trademarks protect consumers by helping them make decisions in the marketplace for goods or services. The law of trademarks rests not alone on the property rights of the trademark owner, but in the right of the consuming public to be told the truth.

Thus, in a trademark infringement lawsuit, the Plaintiff acts as a vicarious avenger of consumer interests. At present, consumers of Indian arts and crafts are confused; not specifically as to whether an individual Indian artisan created a work, but rather as to whether or not the work in question is of genuine Indian work, and not a cheap imitation.

Consumer confidence in Indian arts and crafts is perhaps at an all-time low. Instances abound of consumers being misled as to the authenticity as to a piece of art work.

In general, consumers are at a disadvantage; vis-a-versa sellers, because of their inability to judge the authenticity of a piece of Native American art work.

To date, the CIAC has facilitated a number of debates that have taken place within Indian Country as to what formal trademark would best serve consumers in regard to the sales of arts and crafts of all Indian nations. The merits of regular trademarks, collective trademarks, and certification trademarks have all been considered.

One thing has become clear in this debate. That is that the standard trademark provision of the 1935/1990 act does not address the blanket needs of today's Indian arts industry.

Our legal counsel on copyright trademark, which also happens to be the legal counsel for this particular instance of the Ho-Chunk Nation, Peacock, Myers and Adams, has suggested that the regular trademark does not adequately resolve such consumer confidence issues.

Instead, a regular trademark typically resolves confusion as to a source, such as an individual artist or company. To perform this function, a regular trademark must identify a single source, not multiple sources.

On this basis, a regular trademark is not the correct tool, because many artists can not fit squarely in a single source concept required by trademark law. A regular trademark works for franchises, because every franchise sells the same thing; whereas, an artist within an Indian nation does not.

Collective trademarks do not address the confidence problem, either. According to the U.S. Patent and Trademark Offices manual on trademark examining procedures, if a collective trademark takes into account characteristics of a good, then it is properly classified as a certification trademark. Thus, to boost consumer con-

fidence in the marketplace for Indian arts and crafts, a certification trademark is the correct tool.

The goal is to boost consumer confidence and let them know that when they buy an authentic Indian handmade good, it is, in fact, a Indian handmade good.

The CHAIRMAN. Andy, I apologize that we got this off to a bad start today, because we have had votes. But we do have people that have other commitments, who are going to have to leave, so I need you to move along, if you would.

Mr. ABEITA. Quickly?

The CHAIRMAN. Yes; much quicker.

Mr. ABEITA. All right, the point that I wanted to get in is coming up just right now.

The certification trademark, when adopted by Native American tribes, will assist the industry, as well as the tribes themselves, in the authentication of arts and crafts goods of their particular tribal members.

Currently, the CIAC is assisting the Navajo Nation, the Zuni Nation, and the Hopi Tribe in actively developing a trademark initiative of this sort.

Although the focus of our project has been primarily in these three communities, we know that other Native American communities around the country suffer from the same instances of misrepresentation.

The certification project considers that the Indian Nation will own the trademark, and an authority within the nation will administer the trademark. The authority, however, can not be involved in the sale or manufacture of goods to be certified, which adds an additional measure of confidence.

Consider Underwriter's Laboratories, for example. How would a consumer respond to UL certification if Underwriter's Laboratories manufactured and sold their own line of goods?

With consumer confidence in the Indian arts and crafts market so low, this protective measure is well worth the additional administrative burden.

Overall, plans for executing a certification mark project are at an advanced stage in Navajo and in the Pueblo of Zuni. Support from Federal and state governments would be greatly appreciated. However, it is imperative that the ownership and administration of a certification trademark be the responsibility and in the sole control of the Indian Nation, itself.

Federal and State governments can help by supporting the trademarks administrative authority financially, and to help develop education. Federal and State governments can also help by working with the Indian Nations Departments of Justice, especially instances of trademark infringement.

The certification trademark project is being implemented by Indian Nations for Indian Nations to address the root of economic harm in the market for authentic handmade Indian arts and crafts. Whatever way the Federal Government plans to help, it must support this mission and not delude it.

At this point, we feel the furtherance of a program supporting individual trademarks for individual artists may dilute this effort.

Therefore, we ask the U.S. Congress to choose to support a certification project for trademark only.

We further believe that an opportunity exists for incorporating a certification trademark provision in the Indian Arts and Crafts Act. Such a provision may help clarify the act and strengthen the act.

The CHAIRMAN. Andy, we are going to have to go on. I apologize. Turn the rest of your testimony in, and we will make sure we go over it.

Mr. ABEITA. Okay, that is fine. I was just about to summarize.

[Prepared statement of Mr. Abeita appears in appendix.]

The CHAIRMAN. When you say that Congress should support something, I tell you, it is like "herding cats" around here. To get everybody to support anything, it is literally impossible.

Some years ago, Bill Richardson, who is now the Secretary of Energy, and I tried to get an amendment on an import bill in the House, to make imported "American Indian jewelry" have it stamped in the middle, instead of using some indelible tag that could be peeled off.

We could not get that passed. There was so much opposition to it by importers, by the National Jewelers Association, and a whole bunch of groups that all have lobbies back here. We could not get that thing passed. That would have solved a lot of the problem with the jewelry now.

Mr. ABEITA. I believe that the National Jewelers Association did have a bill proposal to change that, did they not, recently?

The CHAIRMAN. They may have. I do not know. But at that time, they opposed it being stamped.

Let us go ahead with Tony Eriacho, please.

STATEMENT OF TONY ERIACHO, BOARD MEMBER, INDIAN ARTS AND CRAFTS ASSOCIATION, SANTA FE, NM

Mr. ERIACHO. Yes; my name is Tony Eriacho, Jr. I am an enrolled member of the Zuni Tribe in Western New Mexico. Our tribe is one of the major producers of Native American Indian arts and crafts.

Zuni art is known worldwide. It is collected and traded all over the world. I am one of the few Native American owned businesses that buys and sells authentic Indian art. The name of my business is Eriacho Arts and Crafts. I carry primarily Zuni made arts and crafts. My wife and I do Zuni inlay jewelry, and we sell our own work.

I am also a member of the Indian Arts and Crafts Association. I have duo memberships. One is as an artist and also as a wholesale retail member.

For the year 2000, I was elected artist/craftsperson representative for the Indian Arts and Crafts Association by the membership. I am currently vice president of the Council for Indigenous Arts and Culture, which Mr. Abeita was talking about.

At the local level, I am the president of the local artist organization called the Zuni Cultural Arts Council. Currently, the IACA is the only national trade association within the Indian Art industry whose primary purpose is to promote Native American arts and crafts through the trade.

Its IACA membership represents a broad membership of dealers, collectors, museums, and artisans. The IACA sponsors two annual wholesale trade shows of Indian art.

In November 1999, the Cultural Arts Council did a needs assessment study, with the help of the CIAC. What the study found was that in the community of Zuni, the majority of my people rely on the sale of their arts and crafts as a primary form of income.

The study indicated that up to 85 percent of the working population relies on arts and crafts as either a primary or secondary form of income. Most of the artists that produce the work do not know the full picture of how the Indian art industry is structured. All they know is that what they are currently making now is getting harder and harder to sell, and sometimes it is sold for less than they used to receive, just 10 years ago.

Several people in the community have evidenced that their work is being copied overseas without their permission. I have several examples here, if you wanted to have a look at them, as evidence to show you that this is happening now.

In a number of instances, we have been able to show them imported replicas of their work. This practice of overseas manufacturing is taking the livelihood away from these artisans.

When artists see actual samples of these copies, they understand why it is getting harder and harder for them to sell their work. This puts pressure on the local governments to try and find a solution to this problem.

I made personal inquires, before coming before you, to the Zuni Tribal Council asking about this issue, and their response is that the lack of enforcement is a concern to them.

Tribal administrations' opinion is that in light of the purpose of the act, the act would be better served where it has better enforcement capability, such as in the Office of Inspector General, the Department of Treasury, Customs, Department of Justice.

Historically, we know that since 1930, there has been the temptation by unscrupulous dealers to manufacture and produce bogus look-alikes.

Beginning in 1935, the Indian Arts and Crafts Board was developed, in part, to combat these practices. But recently in 1990, this issue of misrepresentation was to be addressed by the IACB. Since then, there has been difficulty to demonstrate a deterrent to those who misrepresent non-Indian art as Indian handmade.

Very little enforcement of the current 1990 Indian Arts and Crafts Act has taken place, and there needs to be more involvement from the IACB if, in fact, this is their objective to enforce the 1990 provisions of the act.

Examples of misrepresentations of Indian Art can be seen at many Native American events such as Pow Wows, some juried Indian arts stores, and stores, in general. There is no monitoring of these events to survey the amount of fraud taking place.

Promoters of these events do not have a resource to call upon to help them enforce their rules. Also, these event promoters do not know how to interpret the law. No one knows the difference between imported copies or real Indian art. So promoters are under the impression that their vendors or artists know about the law.

In 1998, under the administration of New Mexico Attorney General Tom Udall, the IACA and the CIAC were able to gain a special appropriation to address the issue of what Andy was talking about by the end of the year.

Unfortunately, in the summer that the appropriations were made available, elections were taking place. By the end of the year, of 70 potential cases that were investigated, only 13 were deemed serious enough to be prosecutable, according to the incoming Attorney General Patricia Madrid. So as a result of these 13 cases, 7 cases were settled.

Although the intent was to pursue these cases as criminal, these cases were reclassified as civil cases, and settled for fines of less than $10,000. This is not the best way to help enforce the act.

Artists that were involved in these cases who were supposed to go to court were willing to testify to make an impact for the act, but they were disappointed. For the longest time, Native American Indian artists feel that they have been given the short end of the stick. How can the act encourage involvement of artisans if this is the result?

The 1990 Indian Arts and Crafts Act is a piece of legislation that was supposed to strengthen the act passed in 1935. Formally, the IACA and CIAC are in support of this legislation, and believe that it can be utilized in a positive manner.

In Indian communities, enforcement of the act is a joke. It is like a paper tiger with no teeth. It looks good on paper, but there is no one to enforce the act.

An example of how the act can be effective is to provide educational displays at major Native American events, so it educates the buyers and collectors of Indian art, as well as the promoters of these events.

It makes promoters more aware of the resource and responsibilities available to them regarding complying with the act. This information may be provided to the IACB or through such organizations as the IACA or the CIAC. Additionally, it can empower an agency to do something instead of doing lip service.

Board membership of the IACB needs to include Native American artists and natives who are deeply involved in the art industry, to effectively enforce and monitor misrepresentations.

U.S. Customs needs to be educated so that they become more aware of their responsibilities to enforce the indelible marking rule. The peel off stickers need to be discontinued.

There are no experts, to speak of, in the IACA who know the difference between real or fake Indian art. There needs to be support from IACB and other government agencies in support of our tribal certification trademark project efforts.

Ownership and administration of tribal certification mark needs to be the responsibility of and sole control of the Indian nation involved. However, Federal and State governments can help can help through the support of tribal administrative authority, financially, and through education.

The incorporation of some type of certification mark provision to the 1990 act should also be considered as a part of a way to strengthen and clarify the act.

The IACA believes that an intelligent plan can be devised so that it can impact the market with minimal new grant resources. It is the desire of the IACA to contribute to an effective solution by working hand in hand with the Indian Arts and Crafts Board and the Federal Government.

IACA is currently attempting to raise funds to implement the following activities. No. 1, IACA has an internal enforcement, certification process and logo for its members that it intends to market and promote to the general public, so that the public can have assurance that IACA members are ethical.

No. 2, IACA is currently working with tribes and other organizations and CIAC to assist them in the development of tribal trademarks that can be licensed to tribal artists.

No. 3, IACA is seeking resources to educate Indian artists about how to protect themselves, build a case, and prosecute people who copy their work. Tribal trademarks will facilitate this process.

No. 4, IACA is exploring a working relationship with a group of lawyers with considerable expertise in this area, that have indicated their interest in forming an alliance with our organization to help provide legal counsel on a contingency basis for cases involving fraud, misrepresentations, or copyright violations of Indian art.

No. 5, IACA is exploring working with our own legal counsel, and would like to work with the IACB to develop cases and assist in prosecution.

At the same time, IACA believes that cases must be developed and selected with great care, so that it is not abuse, and the most flagrant violators are prosecuted.

IACA also believes that these cases should be handled with a minimum of publicity, and even though the law allows going after people who unknowingly misrepresent Indian arts, this would be a mistake. We do not want people who sell Indian art to be afraid, unless they knowingly misrepresent products in order to profit thereby.

There many more people in the Indian arts and crafts business who represent Indian art correctly, to the best of their knowledge, than those who do not. Substantial impact can be made by going after a relatively few number of people.

IACA intends to take advantage of this trip to Washington to discuss the initiation of a constructive working relationship with IACA, based upon the above plans.

[Prepared statement of Mr. Eriacho appears in appendix.]

The CHAIRMAN. Thank you.

I want to assure you, when we worked on this in 1990 and before, it was not intended to be a joke. I was the founding member of the Indian Arts and Crafts Association in, I think it was, 1974 or something. It was a quarter of a century ago.

I was one of the first craftsman that joined that, and helped get that off the ground. I think they have done a lot of good.

I am not active, anymore. I just can not. I am too busy back here. But I still get the mail and I still see with interest the brochures that they print on trying to educate people on what authentic pottery, authentic jewelry, authentic rugs, and so on, are. I think they have done a terrific job, considering the very limited resources they have to be able to educate.

Mr. ERIACHO. This is one of the educational tools that is done with a collaborative effort between IACA and CIAC.

The CHAIRMAN. This is a collaborative effort between the IACA and the Board?

Mr. ERIACHO. Yes; the CIAC.

Mr. ABEITA. The Council for Indigenous Arts and Culture, which is the organization that we created.

The CHAIRMAN. But that is not the Indian Arts and Crafts Board with the Interior.

Mr. ABEITA. Right.

The CHAIRMAN. So in other words, you do not get any Federal help at all in that educational process.

Mr. ABEITA. No.

The CHAIRMAN. That is done with either donations or dues from the dues paying members of the Indian arts and crafts association.

Mr. ABEITA. Yes; I think so.

The CHAIRMAN. Yes; and I have seen these brochures. They are very informative.

Mr. ERIACHO. Yes; and these are brochures that the Council had also developed, too. It basically is based on the same information that was provided by IACB.

The CHAIRMAN. One of the big problems we have always faced, of course, is that, you know, Indian arts and crafts are not defined in the Constitution. But the First Amendment right of freedom of expression is, and art is a form of expression. We have always had difficulty in defining what you can do without violating that First Amendment right by individuals, including individual artists.

I do not know of any Indian art form, frankly, that is plagiarized as much as Indian art is. I have never heard of African American art or Hispanic art or Chinese art or something being plagiarized like Indian art is.

It has got to be because there is money involved in it. It has got to be because of that. It is just like drugs. You can not cut it off, as long as there is a market for it.

But as I understand it, some of the 11 states you mentioned that have their own state statutes, some of them have a requirement that as long as you label it, if it is in a glass case, let us say, and you have a whole bunch of jewelry, as long as you label it "Indian made" or "not Indian made" or whatever, that satisfies the law, because that is basically truth in advertising.

Mr. ABEITA. Absolutely.

The CHAIRMAN. So that is okay?

Mr. ABEITA. Yes.

The CHAIRMAN. I think most people would agree, as long as the people know what they are getting, then it is okay. If they want to buy something stamped out of a machine in Japan or Taiwan and called Indian art, why then they know it is not the real thing.

If that is what they want to pay for, that is what they are going to get. It is going to be some inexpensive imitation, but that is their money and their choice in buying it.

But I know of many people that are not aware of it. They buy it, in some cases, because they believe it is better quality if Indian people made it. They know, for Indian people, it is their only source

of income, in many cases, too. So they want to do some good. They want to get a nice art piece and do some good, too.

When they find out later that it was not made by Indians, even if it is pretty good quality, they get pretty upset. They have a right to get upset, too.

Let me just say that Michael Mullen, is that you, the gentlemen, here?

Mr. MICHAEL MULLEN. Yes.

The CHAIRMAN. Yes; you know, he is the lawyer for the Ho-Chunk Nation. They seem to be capable of making this act work. It has not worked very well apparently through some of the state courts that you mentioned, Patricia Madrid.

And by the way, we invited Tom Udall to come over from the House side, and he got really tied up this afternoon and could not get here. But he is vitally interested. I had a meeting with him just the day before yesterday on it.

So it might not be working too good through your state court system. But somebody is making it work. The Ho-Chunk's are making it work. They have, what, 11 actions or 13 actions now, that they have brought already.

So maybe the way they are doing it, we need to make some amendments or do something to use that as a model to make sure that it can work, because they certainly have had some success with. And I would be interested in knowing how you got it to work, when nobody else seems to be able to do that.

Would you like to answer that, Mr. Takala, or perhaps Mr. Mullen would like to.

Mr. MICHAEL MULLEN. We do it with grit, determination, and a lot of hard work.

The CHAIRMAN. Grit, determination and hard work, okay. Could you go to the microphone, so that we can get this on tape, please.

Mr. MICHAEL MULLEN. What I wanted to say is that we have successfully resolved nine cases when we removed offending products. We have also got injunctions in place that prevent those people from again violating the act, and we are enforcing them.

Some of those injunctions are detailed, as we will be engaging in oversight on a national wholesaler, who is involved in distributing Indian style goods. So we do think that the act can work, if it is applied. But we think there are some defects in it.

We think that this a marketplace problem, and if Congress would give the key to the courthouse to the people that are reinjured by this, that they can help to correct the problem. They can not correct it by themselves, but they need to be armed. This statute goes a long way to doing that, but not completely.

The gentleman, who is sitting to my right here, had to go to the Hopi Tribe to institute an action to attempt to get relief. With all due respect, I am sure that all of the tribes have other priority resource-drawing requirements that they can not be in a situation doing that.

About going through the Indian Arts and Crafts Board, we considered that. It is just not effective. You have got to go to the Indian Arts Crafts Board. They have to review your complaint. Then they pass it on to the Secretary of the Interior.

The CHAIRMAN. It is too clumsy, and it takes too long?

Mr. MICHAEL MULLEN. By the time somebody files it in a courthouse, the statute of limitations would have been gone.

The CHAIRMAN. Or the guy left the country.

Mr. MICHAEL MULLEN. Right, so what we did, and this is really happenstance, I am a trial lawyer by profession. Matthew Mullen is my son, and his mother, Mary Mullen, are involved in Native American Arts.

We initially filed under the Indian Arts and Crafts Act in Chicago in the District Court, in the name of the Indian Arts and Crafts organization. Judge Castillo, in an opinion I do not question today, ruled that any actions had to be brought through the Government, which I think is ineffective, or to through a tribe. Well, tribes are busy with other resources and need occupations.

The CHAIRMAN. Let me ask you something about that. In that case, do you think maybe the tribes would support an amendment to the 1990 act to allow arts and crafts associations like the ICA to bring civil actions without the participation of a tribe, on behalf of their Indian artists?

Mr. MICHAEL MULLEN. Yes; that is exactly my recommendation. I submitted a letter of testimony to the committee. That is my primary recommendation.

To the great credit of the Ho-Chunk Nation, and Matt and Mary are Ho-Chunk, we are involved in Ho-Chunk activities. To their great credit, they have supported this effort. If it was not for the Ho-Chunk Nation, or another similarly motivated tribe, we would not be able to report the success that we did. I think that is significant.

There are a couple of other points. The primary one, though, and I think it takes an amendment, is where you actually give the key to the courthouse to the injured Indian artisan, or the Indian Arts and Crafts organization, to being the action directly. And I think that you would see enforcement.

The lack of enforcement is not because the cases are not out there. We brought all these cases. We could go out and bring 20 more. These are cases that require investigation. They require some intensive effort.

In our cases, what we do is, we go out and survey, and when we hear about a violation, we survey the store. We do an undercover buy. We videotape the operation. Then when we file that complaint, we have got a good solid case, and that is where it begins.

Then we take it from there. It is still difficult, but we believe that it can be effective. I think our track record today has shown that.

There are a couple of other points that I had in my testimony, and I will leave it to that, where we think the statute could be improved.

There is one thing that I would like to say. I am an Illinois resident, and not of Colorado, so I am not constituent of yours. But I would like the Chairman to know that your reputation and your effort in this area is greatly appreciated, way beyond Colorado. It is nationwide.

I am sure I speak for a number of people in the Ho-Chunk community, and other people who are interested, and we commend you

for your efforts. Because it is a very big problem. It is going to take a lot of work. We know that with motivation, it will get done.

The CHAIRMAN. Well, I appreciate that nice comment, because after we got this bill passed, I got my share of hate mail. You should have seen it, by people who said, you have just cut off my income, because I think my grandmother was a Cherokee princess, and I have been doing these paintings, and so on. And now you putting this law in place that is going to devastate my income.

We were not trying to hurt anybody. That is why we put a section in the bill that would allow a tribe to certify a American artist from that ancestry, even though he was not enrolled. That is why that clause was put in. But clearly, there are a lot of people that have been thinking it. It is as simple as that.

Mr. MICHAEL MULLEN. I have two quick points. One is, there was comment today about an intent of criminal enforcement. I think there are large problems. I was a former U.S. Attorney, and trying to show criminal intent is difficult.

The CHAIRMAN. Yes.

Mr. MICHAEL MULLEN. We have two key rulings now that the Ho-Chunk and Native Americans have gotten in the District Court in Chicago that hold that intent is irrelevant in the civil enforcement of the statute; that this is a strict liability statute.

If somebody falsely suggests that the product is Indian made when it is not, that is it. You do not have to show knowledge. You do not have to show intent.

The CHAIRMAN. Yes; well, certainly, I am not an attorney. You may have to show that in a criminal matter, but a civil matter is much simpler. I do not think you have to show the intent. If they did it, they did it.

Mr. MICHAEL MULLEN. Well, there were challenges by the defendants in the cases that they had to show intent. What I am saying is that we have gotten that resolved now in two different cases.

One other thing, we have had five or six constitutional challenges to the statute. Unfortunately, the Department of Justice never appeared to defend the constitutionality of the statute. It surprised me that they were not obligated to do that.

But we have defended the constitutionality. We won in each instance. Among the challenges that we defeated were the challenge that you had alluded to, Senator, where you were talking about a first amendment problem.

The answer to that is that this statute is a truth in advertising statute. It is a consumer protection statute. Nobody is attempting to prevent an Indian artisan or a certified Indian artisan from creating anything or expressing himself in any way in his art.

The only thing that is restricted is that you can not market that product as Indian made when, in fact, it is not, because that is a fraud. That is the purpose of the statute. As I said, we have had five challenges, all of which we have won.

The CHAIRMAN. Well, it is mighty complicated. I have a friend that is a famous Pueblo Indian by the name of Joe Toledo. He is a well known painter.

One time he was denied entry to Santa Fe Indian Market, because all he painted was barns and ducks and birds and things.

They said, well, that is not Indian. They were judging him on the content, rather than what he was.

We have seen other people that were denied a booth at Santa Fe Indian Market, not because their content was not Indian, but because they did not look Indian. So, really, there are a lot of nuances that make it really complicated. But I certainly commend the Ho-Chunk Nation for pursing something that we have not been able to get done very widely.

Let me ask Andy another couple of questions. Your testimony states that there are a number of full time artisans in the Isleta Pueblo that have decreased from 150 to 30. Was that the number you said?

Mr. ABEITA. Yes, sir; that is very accurate. As a matter of fact, the original information that came from that number, 150, was from my great grandfather, Pablo Abeita's testimony here in the creation of the Indian Arts and Crafts Board. At that time, he was President of the All Indian Pueblo Council, and provided that testimony to the Indian Affairs Committee here at the Senate.

The CHAIRMAN. So you think that this flood of fake stuff entering the marketplace has had a definite impact on the people in Isleta?

Mr. ABEITA. And many other Pueblos.

The CHAIRMAN. Some of them are very well known. They have established reputations over the years, so they are not going to get hurt. I know several jewelers down there. But certainly, new incoming ones that have not established their name yet, or are yet to be recognized in the art community, I can see where they would get hurt.

You advocate also, collective trademarks or certification marks for authenticity and craftsmanship, which I support. But I wanted to know, how do you see that working; each tribe doing that, or doing that through some central location or agency?

Mr. ABEITA. Let me explain to you what the philosophy is. Basically, it started by working with the tribes themselves on developing needs assessment studies, especially those tribes whose primary form of income were in the arts and crafts. That is why we concentrated on those three particular tribes.

What we had found in discussing this matter with counsel; that is Peacock, Myers, and Adams, out of Albuquerque, they essentially had established that basically what the biggest problem in the industry is; that there is not so much the problem of identifying a particular artist as it is to identifying the products origin.

So general, in wanting to blanket protection for these Indian communities, we wanted to be able to develop a certification, so that all of the members of a particular tribe would be protected under this particular trademark provision.

The CHAIRMAN. Oh, I see, it would not be an individual artist trademark; it would be a tribal trademark, as the Navajos do now.

Mr. ABEITA. It would be a tribal trademark, exactly.

The Navajo particular trademark that they have, the horn moon belongs to the Navajo Arts and Crafts Enterprise.

The CHAIRMAN. That is a registered or copyrighted trademark.

Mr. ABEITA. It is a registered trademark.

The particular certification mark we are looking to develop is not the horn moon. It is one that is of ownership by the Division of Economic Development in the Navajo Nation.

That particular trademark will be issued to all Native American Navajos registered with the tribe, so that they may use this mark to certify their goods so that wherever these goods end up in the world, there is a certification mark there to authenticate it as to its point of origin; as opposed to an individual who may acquire registration of his individual trademark.

This blankets all of the product that is being distributed throughout the world as being certified as genuine to that particular tribe.

The consensus was so great that all of these tribes that we have talked to about this issue are going to go forward with this program.

The CHAIRMAN. I see. Let me go to Mr. Takala.

Since the case, you talked about the ring that somebody had made a mold of, and then sold other rings to look like that.

What have you done, or what do you think you could do, to ensure that is not copied again, or not copied by others? It is pretty hard for an individual to fight that through courts and find out who did it, I guess?

Mr. TAKALA. Yes; it is. It is very difficult, because you do not know when the product was made. You know, they only had possession of it, so it is really hard to prove. I do not know how to protect myself against that kind of counterfeit.

The CHAIRMAN. You can not. You almost can not.

Mr. TAKALA. I can not.

The CHAIRMAN. I used to be very active. I made a necklace one time, and within 2 years, I saw it in a catalog from Taiwan. I sort of laughed, because by then, I was doing something else, and I did not care.

You know, you go on to new and different things sometime. But I thought, at the time, how do you do that? How do you track the people that did it?

It would cost you a ton of money, individually, if you had to hire an attorney and hire all the footwork to track it down and get it through the courts. Literally, an individual artist can not defend himself.

Mr. TAKALA. What I said to myself was, I am going to do this for the benefit of the people, for the benefit of the artists. If this law can work for me, then it can work for others.

So I told my attorney, I said, I do not want any money from it. I just want to see that this law is going to work for me. If it does, other artists will follow me.

That is the way I put it. It was for the benefit of the other artists that if this law works, you know, it works for the individual. That is the way I put it. That is the ground I used.

The CHAIRMAN. Thank you.

Tony, Faith Roessel, and she may have had to leave, but when she was here, she testified that she suggested, basically, that self-policing by tribes and arts associations holds some promise.

Self-policing is a big term. Let me ask if there is any association, including AIC or any of them, that have any protocols or require-

ments that help self-police? Let me ask Tony, first, and then Mr. Abeita.

Mr. ERIACHO. Yes; basically, the membership is policing itself. It is hard. You are actually relying on the credibility of the business to back the statement of their origin.

The CHAIRMAN. But in the case of that association, you have a warning system, I think, do you not? If they are reported to the association, that there has been some violation of that association's charter and their stated goals, then do you send them some kind of a warning or tell them that they need to straighten up, or what do you do?

Mr. ERIACHO. Actually, there are two instances. One of them, particularly, happens to be with the wholesale and the arts and crafts show that we host. If, in fact, there are infractions of violating the rules, which are handmade goods only, then, yes, in fact, they are warned that their membership is a threat.

The CHAIRMAN. Yes.

Mr. ERIACHO. In terms of membership, in general, itself, our membership is over 770, I believe, at this time. Basically, the procedure is that we police them by having the individuals who are applying for the organization membership researched by a member of the association, somebody in the area in the state, to go and look at the products that this particular individual sells.

They will essentially ask him questions about whether or not things are authentic, and so on, to test them, to kind of get of feel for whether or not they are ethical. Then their application is approved, based on that information. But there is always the liability issue.

The CHAIRMAN. I know a little bit about history. And to my knowledge, when you think of Indian arts and crafts, a lot of times, we think of the southwest now, because that is the biggest market place; although bead work and a lot of other things in the north are active, too.

But as I remember history, there were only two or three. If you talked about authentic, you have to put a timeframe on it. What was authentic in the last century was not authentic, 1,000 years ago. It was not even there.

Silversmithing was learned from the Pieterros that came north from Mexico. Bead work was introduced with the Czechoslovakian beads and other European beads, and Indian designs were used. Weaving was really promoted by some of the traders in the late 1700's and 1800's. So even the word "authentic" makes it complicated about just who is doing what, as you know.

Mr. ERIACHO. This is why I think that the U.S. Attorney in New Mexico had referred often to the fact that under New Mexico statutes, that the method of creation was an important factor in allowing us to pursue cases under the state. That made it much easier for prosecution, because method of production is self-explanatory, essentially.

The CHAIRMAN. Yes.

Mr. ERIACHO. And when we developed those particular definitions of hand made, hand crafted, and machine made, it makes the prosecutions much more credible.

The CHAIRMAN. Yes; well, I do not want to get off on a tangent about the difficulty in trying to find a common goal for protecting Indian artists. Because I remember years ago, I got disqualified once because I made a belt. The show was Odamtash. That is what it used to be called. It is down by Casa Grande.

I made a conch belt. I cast a conch. Before I did it, I chiseled out a stone to make it really rough, and I cast it in there. So it came out, and it was a hell of a mess.

Then I filed off the surface, so it gave some real odd, strange shapes that would sort of appear. But because the judges did not recognize that style of making it, they disqualified it.

Well, I do not want to get off on my own background in Indian arts and crafts. I want to just thank this panel for appearing here, and apologize once more for the mess that we had on the floor that tied things up so far.

But I am sure that other Senators who did not appear here today will have some questions. So what we are going to do is keep the record open for 2 weeks and ask you, if you get questions from other Senators, or from the committee, from me or staff, as follow-up questions, if you could get back answers in writing to us, we would certainly appreciate it.

Mr. ABEITA. We do have available, both the testimony of CIAC and IACA on a disk, if anybody is interested in wanting to have a copy of that.

The CHAIRMAN. Okay, that is good to know. If you have one, you might want leave one for the staff, too. We appreciate that.

With that, I thank you for appearing today. This hearing is adjourned.

[Whereupon, at 4:59 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Thank you Chairman Campbell for inviting me to testify today on the Indian Arts and Crafts Board [IACB]. The issue of protecting Indian Arts and Crafts is a very important issue to me, and the thousands of Native Americans that make up the 22 tribes in New Mexico.

Over 50 years ago, Congress established the IACB. In 1990, Congress granted tile Board broader authority to better enable it to promote the economic welfare of the tribes and individual Indians.

I believe goods labeled or sold as "Indian made" take oil special significance. The Indian Arts and Crafts Act recognizes the unique character of Indian hand-made goods and seeks to protect such arts and crafts and the economic benefits arising out of these unique goods.

Growing up in New Mexico, I was surrounded by Indian arts and crafts and I have great respect for the significant talent and creativity that goes into making each item of Zuni Jewelry, each Navajo rug and each Hopi kachina. I have even become familiar with the Unique designs that are traditional to particular tribes in New Mexico.

1In 1998, I was invited to a meeting in Gallup, NM—a community that, has celebrated and promoted Indian arts and crafts for over a century—to discuss the growing problem of goods being misrepresented as "Indian made". I met with several dealers from Gallup and several artists from the Navajo, Zuni, and Hopi Tribes. They were all very concerned about the growing number of manufacturers and dealers that are misrepresenting the origin of the goods being produced and or the quality of the goods being sold. This concern is well founded because in and around Gallup, many members of the Navajo, Hopi, and Zuni Tribes earn their living by selling their handmade arts and crafts. The reputable dealers also have a vested interest in eliminating the fraudulent activities because their reputation rests solely on the consumer's perception of their trustworthiness.

One of the recurring problems the local dealers and artists encounter is the sale non-Indian made jewelry side-by-side with Indian handmade goods. The non-Indian made items are often mass produced and made of inferior materials. This infusion of lower quality goods into the marketplace has negatively impacted both the Indian artists and the reputable dealers because consumers have become increasingly wary of the Indian arts and crafts being sold.

Another problem is the growing number of individuals that are mass producing arts and crafts that resemble those items historically produced by artisans of the Navajo, Hopi, and Zuni Tribes. This misappropriation of a traditional art or design usually attributable to a particular tribe, results in buyer confusion and damages the economic advantage once available to a Zuni jeweler or a Navajo rug weaver. While some of these fake items are produced locally, many are imported from the Phillipines, Mexico, and other countries. The IACB should work more closely with U.S. Customs to reduce the number of products entering the U.S. that are in violation of the IACA.

A more reprehensible problem is the mass reproduction of an item originally designed and made by a notable Indian artist. The original artist is often unaware that there are 100 copies of his original design circulating in the marketplace. While this seems to be a clear violation of the law, there seems to be no one working to investigate these incidents or prosecute these fraudulent producers and dealers. Now that the IACB has attorneys in place working on complaints of misrepresentation, Congress should evaluate whether IACB should be granted investigative authority to further its mission.

The artists and dealers interested in protecting both their livelihood and culture need assistance in investigating and eliminating dealers and artists who are misrepresenting the origin of their goods. The consumers need greater assurance that their investment in Indian arts and crafts is a worthy investment. I believe this protection and assurance should be provided by the IACB. The IACB should be provided, and should utilize, the resources necessary to take a more active role in investigating this fraudulent activity. Without an investigation, there is little chance of a prosecution taking place under the Indian Arts and Crafts Act.

In my meetings with dealers and artists in Gallup, it was also clear that the tribes and tribal members would clearly benefit from having a tribal trademark. Such a trademark would identify an artist as a member of a particular tribe and would assure the consumer of the origin of such work. The mark would be used by tribal members with the permission of the tribe.

The IACB has the power to create a government trademark of genuineness and quality for Indian products and the ability to register these government-owned trademarks with the Patent and Trademark Office. While I applaud the IACB's efforts in this regard, and I thank the PTO for providing an attorney to assist IACB in drafting trademark regulations, I encourage the IACB to reach out to more tribal governments and individual Indians and provide more education about the benefits of obtaining such a mark. Trademark law is intended to prevent consumer confusion and to assure purchasers of a certain level of quality. The IACB should increase their efforts regarding trademarks to better protect artists and consumers.

In order to regain consumer confidence and restore the credibility to certain markets, the IACB should make their presence known and utilize the powers granted to it by Congress. We also need reasonable regulations that support the individual Indian artists without strangling the Indian arts and crafts economy.

The Indian culture and Indian arts and crafts is one of the top reasons visitors come to New Mexico. The economic impact on New Mexico is significant. But we must not forget that every economy depends on the existence of laws that protect inventors and consumers. Mr. Chairman, the livelihood of many Indian artists and New Mexico dealers depends on the implementation and enforcement of the Indian Arts and Crafts Act. Because of the current powers granted to the IACB, it is the Federal agency best suited to carry out this mission, and it should proceed to do so.

I encourage this committee to support the IACB's budget request for FY200 1. In addition, I urge this committee to authorize an increase in IACB resources, specifically devoted to the implementation and enforcement of the Indian Arts and Crafts Act.

Mr. Chairman, thank you again and I look forward to working with you and your staff on this issue in the future.

PREPARED STATEMENT OF HON. JOHN KYL, U.S. SENATOR FROM ARIZONA

Mr. Chairman, thank you for convening this hearing to consider the problems of counterfeiting and misrepresentation that continue to plague the Indian arts and crafts market, and to review the Interior Department's implementation of the Indian Arts and Crafts Act of 1990.

I want to begin by thanking you, Chairman Campbell, for your leadership in this area. You and I have been working to try to find a way to solve this problem since the days we served together in the House of Representatives.

We co-wrote the Indian Arts and Crafts Act of 1990, which vested the Indian Arts and Crafts Board at the Department of the Interior with new authority to combat counterfeits and misrepresentation. The 1990 act—effectively a truth-in-advertising law that established criminal and civil penalties for misrepresentation—supplemented the indelible-marking, country-of-origin requirements for Indian-style imports that were established in 1988 in the Omnibus Trade and Competitiveness Act.

Mr. Chairman, when we consider what Indian arts and crafts mean to Indian people, we need to understand that they are important for both economic and cultural reasons. Indian people depend on arts and crafts for their livelihoods.

To give you an idea just how important the sale of arts and crafts is to the economies in Indian country, let me cite just a few statistics. Representatives of the Hopi Tribe tell me that an estimated 37 percent of the tribe's working population is employed in some way in arts- or crafts-making. That is a significant share. An estimated $11.2 million of income to Hopi economy is due to arts and crafts.

But consider this: Forgeries are estimated to cost the Hopi Tribe another $4.6 million in lost sales. The tribe estimates that fully 40 percent of forgeries sold in the marketplace are represented as Hopi. All told, estimates are that 40, 50, maybe even up to 60 percent of the $1 billion Indian arts and crafts market is inappropriately represented as genuine.

With a market that large, some people will go to great lengths to claim a share of it for themselves. You've heard about the town in the Philippines, for example, that was renamed "Zuni" so that products made their could be marketed as Zuni-made. This is serious business, and it is costing Indian tribes serious money.

As I said, though, more is at stake here than dollars and cents. Misrepresentation poses a threat to Native culture itself.

The Associated Press profiled Zuni Indian silversmiths Jan and Wilda Boone in a report earlier this year. According to the report, the Boones make earrings and bracelets in the workshop in their home in the Zuni Pueblo, south of Gallup. Jan's parents were silversmiths, as were his grandparents before them. Wilda's parents made animal carvings, and her daughter plies that craft now.

Their craft has been passed down from generation to generation, but because of counterfeiting and misrepresentation, the Boones are reportedly thinking about a different trade for their two youngest children. Imitations have not only cost the Boones sales, but have caused buyers to be wary of the genuineness of this family's own creations.

Of course, if Indian artisans can't make enough money due to competition from fakes, they will abandon the arts, and rich Native American traditions will die out. If they have to increase productivity at the expense of time-honored manufacturing techniques in order to compete with imitation products, an important part of their heritage will be compromised and lost. That would be a loss for all America.

Mr. Chairman, the Indian Arts and Crafts Act was intended to help solve this problem by establishing stiff criminal and civil penalties for misrepresentation. It was also intended to provide a mechanism for Indian artisans to easily obtain trademarks to help distinguish their works as genuine. But I have to tell you, implementation and enforcement of the act has been a big disappointment.

I will say up front that the fault is not all that of the Indian Arts and Crafts Board, which is the lead agency designated for enforcement. Five years ago, because of budget constraints, the House and Senate Appropriations Committees proposed to abolish the Board. I offered the amendment on the Senate floor that restored funding for it, but resources then were very tight, and they continue to be very tight. I have always been disappointed that the Interior Department has not requested the kind of funding necessary to aggressively enforce the 1990 act in order to attack the problem of counterfeiting and misrepresentation.

Aside from resources, though, I think the Indian Arts and Crafts Board has really failed to step up to the plate. According to the latest information I have, not a single case of misrepresentation has been referred to the Justice Department for prosecution. [One case is reportedly in the pipeline now.] A representative of the Indian Arts and Crafts Board was quoted last year as saying the Board was "still looking for a big test case." Mr. Chairman, with an estimated 50 to 60 percent of the marketplace plagued with forgeries, how hard can it be to find a test case? It almost seems as if the Board isn't looking for cases at all.

Regulations to implement the trademark provisions of the 1990 act have not even been promulgated—and this is 10 years after the act's passage; 10 years! The museums that the Board runs around the country continue to lose money. They cost $465,000 annually, yet raise only $75,000 in net user fees.

As for the Customs Service's enforcement of the indelible-marking provisions of the 1988 trade act, it, too, has been lacking. I've heard anecdotal evidence that, after seizing counterfeits, Customs auctions off the goods, and some are then put right back into the marketplace where they may be sold as genuine.

Mr. Chairman, experts say there is enough law—that it is now a matter of enforcement. For that reason, I have been working in the Senate Appropriations Committee to earmark a greater share of the Board's budget for Indian Arts and Crafts Act enforcement. This year, about 30 percent is set aside for enforcement. Next year, it will be about 35 percent.

Chairman Campbell, you had what I thought was also an excellent idea. You proposed the creation of a joint task force "to devise and implement a coordinated enforcement response to prevent the sale or distribution of any product or good sold

in or shipped to the United States that is not in compliance with the Indian Arts and Crafts Act." The task force would be composed of representatives of the U.S. Trade Representative, the Department of Commerce, the Department of the Interior, the Department of Justice, the Department of Treasury, the International Trade Administration, and representatives of certain other agencies and departments.

I understand that you are pursuing this idea again this year, and I enthusiastically support your effort.

I look forward to hearing the Interior Department's testimony, and maybe getting some ideas about how we can ensure effective enforcement of existing law, and whether the Department thinks new laws or authorities might be required to tackle the problem. But I will also say this, if the Indian Arts and Crafts Board can't or won't aggressively implement and enforce the IACA, I am ready to look for another agency that can, whether at Interior or some other department.

Let me conclude by thanking you again for convening this hearing. If I may, I will have some questions for the Interior Department witnesses at the appropriate time.

PREPARED STATEMENT OF WAYNE TAYLOR, JR., CHAIRMAN, HOPI TRIBE

Chairman Campbell, I appreciate the opportunity to comment for the committee record on the effectiveness of current statutes intended to protect the producer and consumer of authentic, handmade Native American arts and crafts. I thank the committee for holding this important hearing and for its work to date to protect the market for authentic Native American arts and crafts. Additionally, I would like to thank Senator Kyl for his work in this area.

As Chairman of the Hopi Tribe, a tribe whose artisans represent approximately 37 percent of our working population, I can say without hesitation that more must be done to protect our arts and crafts trade. The sale of handmade Hopi arts and crafts is the sole source of income for many who reside on the Hopi Reservation, an important supplemental source of income for others, and is a pillar of the Hopi economy. There are at least 1,000 full-time and 1,000 part-time Hopi artisans. The tribe estimates that revenue from the sale of the work of Hopi artisans represents $11.2 million annually. This money is critical to our tribe; it is important to maintaining our self-sufficiency and economic independence.

Our best estimates indicate that approximately $4.68 million in annual sales is lost to the counterfeit market. No corporation would stand for such loss. This problem must be attacked more aggressively. If the surge of sales in the market of cheap imitation Indian art continues unabated, our economic base will further erode. Every Hopi family whose livelihood depends of the skills of an artisan will directly feel the impact.

Hopis are known worldwide for their kachina dolls, overlay silver work, basketry, and pottery. Our spiritual and cultural values are represented in each handmade piece of work. Kachina dolls are hand-carved out of local cottonwood, hand-painted, and represent deities important to the Hopi culture. The dolls are very individualized and carry symbolic meanings as a part of our religious heritage. Countless hours of work have been put into the fine design and detail of each doll. Aside from the tremendous loss of income to our Tribal members, we find it abhorrent to see art intended to represent our religious heritage mass reproduced with no understanding or appreciation for its meaning. We will strongly support Congress in it efforts to further enforce existing statutes and encourage a full review of possible new tools to protect the trade of authentic Indian arts and crafts from foreign and domestic imitation.

The Hopi Tribe makes the following specific recommendations for improving protections for the sale of authentic Indian arts and crafts:

No. 1. The U.S. Customs Service should be directed to develop and implement procedures for the systematic enforcement of the country of origin marking requirements under the 1989 Omnibus Trade Act. These procedures should include requiring that all Indian-style products imported into the United States have an indelible, permanent marking of the country of origin. The Customs Service should be clearly and frequently reminded of the importance of their front-line role in protecting the American Indian arts and crafts market.

No. 2. The Indian Arts and Crafts Board should be tasked with developing trademarks of genuineness that cannot be reproduced, and the Board should be appropriately funded to carry out these mandated functions.

No. 3.The Concessions Policy Act of 1965, which requires concessionaires in Federal national parks to sell only authentic Indian Arts and Crafts, should be fully

enforced and Tribes should be afforded equal access to the concessions permit system.

No. 4. A program should be created that sets aside grant funding for tourism development for Tribes and Tribal consortiums for the purpose of educating tourists about how to identify fraudulent and imitation Indian arts and crafts. This funding could be used to develop commercials for radio, television and print media and to develop educational pamphlets and other material for distribution through local Chambers of Commerce, hotels, and tourism offices. The Indian Arts and Crafts Board or the Office of Tourism in the Department of Commerce could be authorized to review grant applications and administer the program.

These recommendations are a starting point for further discussion. The Hopi Tribe would like to be involved in the formation or development of new tools to protect the trade of authentic Native American arts and crafts. We believe it is critical to make further protective changes in our system now to safeguard the continuance of this trade for our economic viability and preservation of our heritage.

PREPARED STATEMENT OF THE NAVAJO NATION

The Navajo Nation welcomes this opportunity to present testimony regarding the Indian Arts and Crafts Board's [IACB] implementation of the Public Law 101–644. The Navajo Nation has an estimated 50,000 artisans who earn all or part of their income from their arts and crafts sales. The average income an artisan receives is $3,260. This is a significant amount as the annual per capita income for Navajo people is $5,579. This source of income is extremely important considering the Navajo Nation's unemployment rate is 45.8 percent, well above the national average. An estimated 56.1 percent of the Navajo Nation population live below the poverty line.

Many Navajo families supplement their wage income with arts and crafts. These artisans work in traditional crafts such as fine jewelry making, pottery, sand painting, and rug weaving. Many are applying their skills to other art forms such as graphic and ornamental arts, leather work, bead work, sewing, quilting, sculpture, and woodcarving.

The Navajo Nation takes great pride in that its artisans continue to utilize traditional skills for economic self-sufficiency. With a growing global economy and an expanding e-commerce market, it is imperative that the rights, products and interests of Navajo and Indian artisans be protected.

There are several retarding aspects to the enforcement of Public Law 101–644. The Navajo Nation is concerned that if these hindrances are not properly addressed, the purpose of the act is compromised.

First, it is our understanding that Federal agents who conduct certain investigations pursuant to the act are not knowledgeable of the types of products in question. Absent the knowledge to conduct thorough investigations, Federal agents diminish the value of an investigation. The Navajo Nation suggests that each investigator in such cases have the proper understanding and knowledgeable of the distinction among the different types of Native arts and crafts.

Second, it would be ideal to retain law enforcement experts to conduct investigations to enforce the act. Presently, there are no law enforcement experts retained for these services. Unfortunately, law enforcement assistance is generally available only until after certain incidences occur.

Last, the Navajo Nation would like to see greater criminal enforcement of the acts of misrepresentation of Native arts and crafts. Unfortunately, State and local law enforcement agencies and Federal agencies seem to think this approach is petty when investigating numerous small shop owners.

For example, in New Mexico, the Navajo Nation has learned of a drastic reduction in the number of potential decisions on cases involving the misrepresentation of Native arts and crafts. In 1998, 70 such potential decisions were pending before the Attorney General of New Mexico. One year later, the number of prosecutable cases was reduced to 13. Of the 13 cases, seven were determined to be acceptable for prosecution. As a result, the seven cases were reclassified as civil cases, each with resulting fines of less than $10,000. This type of injustice does little to promote the protection of Native artisans. Coupled with thorough initial investigations, the increased criminal enforcement of the act would yield greater protection for Native artisans and their work.

Trademarks protect consumers by helping them make decisions in the marketplace for goods or services. The law. of trademarks rests not alone on the property rights of the trademark owner, but in the right of the consuming public to be told the truth. Thus, in a trademark infringement lawsuit, a plaintiff acts as the vicarious avenger of consumer interests. At present, consumers of Indian Arts and Crafts

are confused, not specifically as to whether an individual Indian artist created a work but rather as to whether the work in question is a genuine Indian work and not a cheap imitation.

Consumer confidence in Indian Arts and Crafts is perhaps at an all time low. Instances abound of consumers being misled as to the authenticity of a piece of art work. In general consumers are at a disadvantage [vis-a-versa] sellers because of their inability to judge the authenticity of a piece of Native art work. To date, a number of debates have taken place within Indian country as to what form of trademark will best serve consumers in Navajo and in other Indian nations. The merits of regular trademarks, collective trademarks and certification trademarks have all been considered.

The issue of trademark registration as described by the text of the 1935 Act provision on trademarks has recently been reviewed by several experts in the field of copyright/trademark law. The consensus among experts points out that standard trademarking registration is adequate if one is seeking to protect the rights of an individual, but in today's climate of globalization and commercial competition, imported copies of original Navajo and other Indian designs can be made at a fraction of the cost overseas. These goods are being made at one-fourth or less the cost of genuine goods. And in such quantities that entire arts and crafts producing communities are suffering from this problem.

A regular trademark does not adequately resolve such consumer confidence issues; instead, a regular trademark typically resolves confusion as to a source, such as an individual artist or company. To perform this function, a regular trademark must identify a single source, not multiple sources. On this basis, a regular trademark is not the correct tool because many artists cannot fit squarely within the single source concept required by trademark law. A regular trademark works for franchises because every franchisee sells the same product, whereas, artists within an Indian nation do not.

Collective trademarks do not address the confidence problem either. According to the United States Patent and Trademark Office's Manual for Trademark Examining Procedure, if a collective trademark takes into account characteristics of a good, then it is properly classified as a certification trademark. Thus, to boost consumer confidence in the marketplace for Indian arts and crafts, a certification trademark is the correct tool.

Indian nations are slowly learning the benefits of a certification trademark for certifying that goods are (i) made by a member of the Indian nation and (ii) that the goods are handmade. Again, the goal is to boost consumer confidence and to let them know when they are buying an authentic Indian handmade good.

The certification trademark project considers that the Indian nation will own the trademark and an authority within the Nation will administer the trademark. [Application forms for an artisan's use of a certification trademark have been drafted and enforcement issues have been taken under consideration.] The authority, understandably, cannot be involved in the sale or manufacture of goods to be certified, which adds an additional measure of confidence. Consider Underwriters Laboratories for example. How would a consumer respond to UL certification if Underwriter's Laboratories manufactured and sold their own line of goods? With consumer confidence in the Indian arts and crafts market so low, this protective measure is well worth any additional administrative burden.

Overall, plans for executing a certification trademark project are at an advanced stage in Navajo. Support from Federal and State governments would be greatly appreciated. However, it is imperative that the ownership and administration of the certification trademark be the responsibility and within the sole control of the Indian nation. Federal and State governments can help by supporting the trademark's administrative authority financially and through education. Federal and State governments can also help by working with the Indian nation's Department of Justice, especially in instances of certification trademark infringement.

The Certification Trademark Project has been put together by Indian nations for Indian nations to address the root of economic harm in the market for authentic, handmade Indian arts and crafts. Whatever way the Federal Government plans to help, it must support this mission and not dilute it. Furtherance of a program supporting individual trademarks for individual artists may dilute this effort; therefore, we ask that the Congress choose to support the certification trademark project only.

We further believe an opportunity exists for incorporating a certification trademark provision into the Indian Arts and Crafts Act. Such a provision may help clarify and strengthen the act.

The Navajo Nation recommends that the IACB allocate additional resources to provide entrepreneurial services to Native artisans.

Furthermore, the creation of a Native artisan directory would provide a listing of certified Native artisans registered with the IACB. This will ensure the authenticity of the product as well as protect consumer and the artisan interests.

The Navajo Nation favors the expansion of the IACB mandates to include providing Native artisans with information regarding sound economic opportunities to enhance marketability, productivity, liquidation and quality. For example, the IACB could educate artisans of unscrupulous business practices that might impede profitability and professional reputation.

We recommend that the IACB provide training and technical assistance in general business practices, such as filing taxes, bookkeeping, pricing and management to encourage entrepreneurial responsibilities and financial independence.

The Navajo Nation recommends that the IACB create networking opportunities and service directories of Native artisans. Opportunities such as trade shows and conventions provide artisans avenues to interact with suppliers, dealers, galleries, museums, and other artisans. These types of opportunities offer market exposure that fosters productive business relationships.

The Navajo Nation recommends that the IACB consider creating a funded master teacher program to be administered through the tribal colleges. The program would offer artisans an opportunity to develop their skills with respected and highly skilled artisans. This program would ensure.that these traditional living arts survive and develop. Funding would cover operation, teaching and scholarship costs.

The Navajo Nation requests that a Navajo representative be appointed to the National Indian Arts and Crafts Board. The Navajo Nation has the largest number of artisans and Navajo artisans contend as the most prolific of all Indian tribes engaged in arts for sale. The Navajo Nation would like to further comment that the board of IACB collectively should be made up of Native American individuals who have a direct link to either the Indian communities who have a vested economic interest in arts and crafts sales and or individual Native artisans/Native Indian arts and crafts industry experts such as those that maybe found through the Council for Indigenous Arts and Culture or the Indian Arts and Crafts Association. Essentially people who have current knowledge of what is happening in the industry/Indian communities in regard to the Indian arts and culture.

Statement of Faith Roessel, Chairperson of the Indian Arts and Crafts Board, Department of the Interior, Before the Senate Committee on Indian Affairs, Oversight Hearing on Indian Arts and Crafts

May 17, 2000

Good morning, Mr. Chairman and members of the Committee. I am pleased to present the testimony of the Indian Arts and Crafts Board (the ?IACB?) on the status of the IACB?s programs and activities. With me today are my fellow commissioners, Heather Sibbison and Barry Brandon; Meridith Stanton, Acting Director of the Indian Arts and Crafts Board; and Deborah Lobo, Division of General Law, Office of the Solicitor, U.S. Department of the Interior.

Background

The IACB was established in 1935, with John Collier?s foresight and support, as a separate agency of the Department of the Interior, PL 74-355 (the ?Organic Act?), to promote the economic welfare of American Indians and Alaska Natives through the development of Indian-produced arts and crafts. The Organic Act also is intended to protect our Indian cultural heritage and to assist the efforts of Indian tribes and their members to achieve economic self-reliance. The IACB is composed of five commissioners, who are appointed by the Secretary of the Interior and serve without compensation for designated terms. As a result of recent appointments, the IACB now has a quorum of commissioners (*see* Exhibit ?A?).

The top priority of the IACB is the enforcement and implementation of the Indian Arts and Crafts Act of 1990, PL 101-644 (the ?Act?) (*see* Exhibit ?B?). Congress adopted the Act to expand the IACB?s powers in response to growing sales of arts and crafts products misrepresented as being made by Indians. The Act is a truth-in-advertising law that prohibits the marketing of products as Indian made when such products are not made by Indians, as defined by the Act. It is intended to protect Indian artists and craftspeople, Indian tribes, Indian-owned businesses, and consumers.

The Act establishes several important tools for carrying out these goals. It authorizes the IACB to receive and refer complaints alleging civil and/or criminal misrepresentation of products as Indian made. Under the Act, the IACB may refer complaints of criminal violations to the FBI for investigation and may recommend cases to the Attorney General of the United States for criminal prosecution. The IACB may recommend that the Secretary of the Interior refer complaints for civil action to the Attorney General. For example, the Secretary may make referrals to the Attorney General for civil action in response to complaints initiated by an Indian, Indian tribe, or Indian arts and crafts organization. For a first time violation of the Act, an individual can face civil penalties or criminal penalties up to a $250,000 fine or a 5-year prison term, or both. If a business violates the Act, it can face civil penalties or can be prosecuted and fined up to $1,000,000. Additionally, the Act empowers the IACB to register, without charge, government trademarks of genuineness and quality on behalf of individual Indians and Indian tribes. This important trademark provision is intended to build market visibility and promote genuine Indian arts and crafts.

Enforcement of the Indian Arts and Crafts Act

1) Outreach

After issuing the final regulations implementing the Act in FY 1997, the IACB undertook a wide-ranging public outreach program, including mass mailings of the regulations, to educate Indian tribes, the Indian arts and crafts industry, and consumers about the Act?s requirements and prohibitions in an effort to encourage the broadest possible compliance with the Act (*see* Exhibit ?C?).

In the following years, the IACB continued to focus on education, prevention, and compliance, key objectives of the Act, as well as enforcement where legitimate complaints have been raised. The IACB expanded its public outreach efforts through informational meetings on the Act and the regulations, with Indian arts and crafts organizations and through interviews by trade publications, regional newspapers, and special interest magazines to further educate the industry and public about the Act. The goal is to bring the market into compliance with the law.

The IACB has undertaken a national media campaign targeting key consumer, arts and crafts industry, and tourist publications in order to promote understanding of and compliance with the Act. In addition, the IACB is advertising its message in local and regional publications in Arizona, New Mexico, Alaska, and other major Indian arts and crafts marketing areas, including several tourism magazines with in-room distribution in major hotels. Based on circulation figures, between June 1999 and October 2000, over one million people will have viewed an Indian Arts and Crafts Act advertisement (*see* Exhibits ?D-M?). Moreover, the IACB has extended its outreach activities to the Internet, creating a web site that provides the public with information on the Act and promotes Indian arts and crafts businesses.

In April 1999, the IACB began distributing a full-color consumer protection brochure, *Misrepresentation*, to educate the public and the Indian arts and crafts industry about the Act (*see* Exhibit ?M?). The *Misrepresentation* brochure was so successful, with approximately 22,000 copies distributed to date, that the IACB began production of a new brochure, *The Indian Arts and Crafts Act*. The IACB will begin distribution of *The Indian Arts and Crafts Act* brochure in June of this year. The new brochure describes how to file misrepresentation complaints with the IACB, and encourages members of the public and the Indian arts and crafts industry to submit valid complaints to assist in active enforcement of the Act. In addition, to encourage the purchase of authentic Indian art, the IACB publishes and periodically updates its *Source Directory* of Indian-owned and operated arts and crafts businesses.

In FY 2000, despite a tight budget, the IACB expanded its efforts to implement the Act through a widespread public outreach program. This outreach program is critical to enforcement of the Act because it seeks to educate Indian tribes, the Indian arts and crafts industry, and consumers about

the Act?s requirements and prohibitions in an effort to encourage the broadest possible compliance with the Act. The outreach program, with a significant focus on the Southwest, includes in-depth, on-site meetings and teleconferences with Indian tribes, arts and crafts organizations, and related State and federal government entities. Some of this activity began in June 1999 and will continue throughout FY 2000 (*see* Exhibit ?N?). Exhibit ?N? provides more details about the IACB outreach activities.

As the result of these public outreach efforts, the IACB has observed significant positive changes in the marketing of art and craftwork. The IACB?s own review of promotional materials distributed by Indian arts and crafts markets, festivals, fairs, juried competitions, and pow wows indicates that a growing number of these marketing events require official tribal enrollment documentation or Indian artisan certification from participants that are selling their work as Indian or as the product of a particular Indian tribe. The number of events specifying Indian Arts and Crafts Act compliance in their entry requirements continues to grow. Thus, these IACB outreach efforts are helping the market to become self-policing.

While the IACB acknowledges that much remains to be done to combat consumer fraud in the Indian arts and crafts market, and violations of the Act remain widespread, the IACB believes that it is making progress through its efforts to raise the visibility and understanding of the Act. The IACB is concerned, however, about the reluctance of Indian tribes, arts and crafts organizations, artists, artisans, and consumers to come forward and submit valid complaints under the Act. The IACB believes that the quality and quantity of complaints of alleged Act violations will increase significantly with the IACB?s greater visibility in the field and expanded print media campaigns.

2) Complaints Regarding Potential Violations

As I indicated, the IACB?s goal is to bring the market into compliance with the law. We continue to monitor claims made in Indian arts and crafts catalogues, trade publications, and Internet sites. In fact, many compliance issues have been resolved at the administrative level through IACB-initiated phone calls and letters.

One example of a compliance issue that was resolved through IACB action is the Hopi Tribe?s 1996 complaint against Time-Life Books. The complaint alleged that Time-Life Books offered ?an authentic Kachina Doll, handmade by Hopi Indian artisans? to the first 50 people responding to a promotional advertisement for their book series, ?The American Indians.? On behalf of the Hopi Tribe, the IACB notified Time-Life Books of the complaint that the Kachinas, in fact, were not made by members of the Hopi Tribe. When Time-Life Books could not prove that the Kachinas were authentic Hopi Kachinas, at the IACB?s suggestion, the business agreed to purchase 50 authentic Hopi Kachinas to replace the misrepresented Kachinas. The IACB arranged for Time-Life Books to contact the appropriate Hopi tribal official who recommended Hopi Indian artisans who could sell authentic Hopi Kachinas that were in fact ?handmade by Hopi Indian artisans.?

The following year, the IACB received a separate complaint from the Hopi Tribe regarding

Navajo ?Kachina? Dolls used in another Time-Life Books promotion for ?The American Indians? book series. The Hopi Tribe was concerned about the misleading use of Hopi cultural information in describing products made by non-Hopi artisans. The IACB contacted Time-Life Books and the Navajo ?Kachina? Doll distributor on behalf of the Hopi Tribe. The IACB confirmed that the Kachinas were Navajo made. Time-Life Books? Senior Vice President of Law and Business Affairs informed us that Time-Life Books had decided to discontinue the use of the brochure referred to in the initial complaint, as well as the second brochure, which replaced ?Navajo? for ?Hopi? within the text referred to in the second complaint.

In late February of this year, the IACB was given the authority to fund an attorney through the Interior Department?s Office of the Solicitor. The IACB now has the benefits of the undivided services of an attorney, greatly strengthening our ability to encourage, receive, and process complaints under the Act. With the new attorney?s assistance, the IACB is improving its networking efforts with local and regional FBI offices, Indian tribes and tribal organizations, U.S. Attorneys, State Attorneys General, and State consumer protection agencies. Given that the new attorney has extensive trademark experience through her previous position with the United States Patent and Trademark Office (the ?USPTO?), she also will be able to assist the IACB in promoting its trademark registration program. The IACB anticipates scheduling on-site meetings between the IACB and tribal governments and their members, including the Navajo Nation and the Hopi Tribe.

As the trademark registration program expands and is incorporated within the IACB?s existing certification program, we anticipate a significant increase in public recognition, value, and reliance on products marketed with the Indian trademark/IACB certification identification tags of authentic Indian craftsmanship and origin. This IACB certification program, designed to promote fine Indian and Alaska Native handcrafts, offers eligible Indian and Alaska Native crafts marketing enterprises the privilege of attaching to its registered trademark a certificate declaring that the IACB recognizes their products as authentic Native American handcrafts. The certificate features the words ?Certified Indian Enterprise, Genuine Handicrafts, Indian Arts and Crafts Board, U.S. Department of the Interior.? To be eligible, an enterprise must have a registered trademark, offer for sale only genuine Indian handcraft products, be entirely Indian owned and controlled, and must agree to apply the mark to quality products.

To date, the IACB has received forty-five written complaints alleging Act violations (*see* Exhibits ?O-P?). While the IACB is working diligently to develop appropriate cases for referral, a number of the complaints do not involve actionable violations under the terms of the Act. Additionally, many of the complaints require further investigation before they can be properly evaluated for civil or criminal action. We emphasize that the IACB does not have investigatory authority. This aspect is critical because the IACB is largely reliant on the volition of the appropriate investigatory authorities to provide the necessary investigatory assistance that will allow progress to be made on the complaints.

The IACB is working to create a formal referral process both within the Department of the Interior and between the Department of the Interior and the Department of Justice. At the

Department of the Interior, the IACB is working with representatives from the Office of the Inspector General and senior attorneys from the Office of the Solicitor to develop an effective procedure for identifying, investigating, and ultimately constructing case referrals for alleged violations of the Act.

On an interagency level, the Department of the Interior is working with other agencies to create an interagency working group to help foster joint efforts to enforce the Act. The IACB and Office of the Solicitor have met with the Department of Justice?s Office of Tribal Justice, Environment and Natural Resources Division, Executive Office for U.S. Attorneys, and Consumer Litigation Section of the Civil Division to begin developing a memorandum of understanding on enforcement issues. Additionally, Secretary Babbitt is adding the enforcement issue to the agenda of the White House Domestic Policy Working Group on American Indians and Alaska Natives. Through these and related efforts, the IACB is working towards a more coordinated enforcement policy.

Trademark Regulations

The IACB?s major focus is enforcement of the Act. The IACB views the development of a trademark registration program for Indian arts and crafts as an important element of our enforcement efforts. As the Committee knows, under the Organic Act the IACB was authorized to create government trademarks of genuineness and quality for Indian arts and crafts products and to register these government-owned trademarks in the USPTO. This did not, however, permit the IACB to go to the USPTO and register trademarks owned by individual Indians and Indian tribes.

Congress amended the Act in 1990 partly to rectify this problem. The IACB issued final regulations in 1996 covering all aspects of the Act, with the exception of its trademark provisions. These were left to a later date, when the IACB would have the resources needed to start a trademark program.

The new attorney, assisted by an attorney on a ninety-day detail from the USPTO, began drafting the trademark regulations soon after arriving at the IACB. They soon concluded that two problems posed by the language of the Act would have to be addressed before the regulations could be completed.

The first problem we came across in drafting the trademark regulations concerns the scope of the IACB?s trademark responsibilities towards Indian arts and crafts organizations. Under the 1990 amendments to the Act, the IACB is given several separate and distinct trademark functions. It is authorized to *create* trademarks of genuineness and quality for the IACB *and* for individual Indians, Indian tribes and Indian arts and crafts organizations. But this is *all* that it is authorized to do for Indian arts and crafts organizations, for they are not mentioned again in the trademark provisions of the Act. The later sections of the Act, which specify which entities may have their trademark registered by the IACB, leave out any mention of Indian arts and crafts organizations. The practical effect of this will be to deny Indian art cooperatives and enterprises -- be they the Navajo Arts and Crafts Enterprise, Hopi Arts and Crafts-Silvercraft Cooperative Guild, Zuni

Cultural Arts Council, or any other deserving organization of Indian artists and craftspeople -- nearly all of the trademark benefits contemplated by the Act. Given that the stated purpose of the Act was to *expand* the IACB?s trademark powers rather than to *contract* them, we want to make absolutely certain that the trademark regulations fairly and correctly serve Indian arts and crafts organizations.

The second issue concerns an apparent conflict between the Act?s trademark *registration* requirements, and the trademark *ownership* requirements of the Trademark Act of 1946, 15 U.S.C. ?1051 *et seq*. (the ?Lanham Act?). As you know, the trademark section of the 1990 Act authorizes the IACB:

> (g)(1) to create for the Board, or for an individual Indian or Indian tribe or Indian arts and crafts organization, trademarks of genuineness and quality for Indian products and the products of an individual Indian or particular Indian tribe or Indian arts and crafts organization; (2) to establish standards and regulations for the use of Government-owned trademarks by corporations, associations, or individuals, and to charge for such use under such licenses; (3) to register any such trademark owned by the Government in the United States Patent and Trademark Office without charge and assign it and the goodwill associated with it to an individual Indian or Indian tribe without charge; and (4) to pursue or defend in the courts any appeal or proceeding with respect to any final determination of that office.

In particular, under the Act, Section (2)(g)(3) authorizes the IACB to file trademark applications to register trademarks *owned by the government* for arts and crafts marketing purposes without charge and then assign them to individual Indians or Indian tribes without charge. Virtually all of the applications the IACB anticipates filing under the new trademark program, however, will involve marks owned not by the government, but by individual Indians or Indian tribes. Under the Lanham Act, an applicant to register a trademark *must* be the owner of the mark or, if the application is filed on an intent-to-use basis, must be entitled to use the mark and have a bona fide intention to use the mark in commerce. It is a basic tenet of trademark law that the owner of the mark is the person who uses the mark or controls the nature and quality of the goods identified by the mark. If the named applicant is *not* the owner of the mark at the time of filing, the defect cannot be corrected with an amendment substituting the true owner; the application is simply void.

The IACB is currently exploring ways it can craft trademark regulations that will allow it to file applications for ?trademarks owned by the government? where the owners in fact are individual Indians or Indian tribes. Recently, IACB representatives met with representatives of the USPTO to obtain their position on the matter. The USPTO expressed concerns that permitting the IACB to obtain registrations on behalf of individual Indians or Indian tribes, when the IACB is not the owner of the mark sought to be registered, raises issues of conflict with the Lanham Act?s

ownership requirement. While these issues require further study, it currently appears that the Act does not allow the IACB to register marks owned by individual Indians or Indian tribes. The IACB is working with the USPTO to resolve these issues, and intends to seek a formal opinion on the matter from the Solicitor of the USPTO. The Committee may wish to consider whether an amendment to clarify section 2(g)(3) might be appropriate. We would be happy to provide proposed amendment language.

Museums

The IACB has three regional museums, the Sioux Indian Museum in Rapid City, South Dakota; the Museum of the Plains Indian in Browning, Montana; and the Southern Plains Indian Museum in Anadarko, Oklahoma (*see* Exhibits ?Q-V?). These museums play a vital role in promoting *authentic* Indian arts and crafts, serving as contact points for Indian arts and crafts communities, tourists, and consumers, and supporting Indian entrepreneurial efforts and economic opportunities.

The museums feature permanent exhibitions, changing promotional sales exhibitions, and public educational activities. They are key distribution points for information and publications about the Act. The small and dedicated staffs of these museums educate the public about the Act and encourage the submission of valid complaints of fraud and misrepresentation. The museums serve as major economic, cultural, and educational attractions in their respective regions. They enjoy strong support from the Indian tribes in their regions and are staging points for regional and national promotions for the economic benefit of emerging Indian artists and craftspeople, such as the IACB?s Southern Plains Indian Museum?s 1981 promotional exhibition, ?Jewelry by Ben Nighthorse,? for the then-emerging artist Ben Nighthorse Campbell.

The Museum of the Plains Indian on the Blackfeet Reservation in Browning, Montana, has a particularly strong record for enriching the curriculum of the reservation schools and adjacent regional school districts through educational tours and programming. The museum also provides an excellent overview of the unique Northern Plains Indian culture, including the Blackfeet, Crow, Northern Cheyenne, Sioux, Assiniboine, Arapaho, Shoshone, Nez Perce, Flathead, Chippewa, and Cree. In addition to the museum?s integral role in the Blackfeet Indian Days annual event, the museum serves as hosts to the wealth of foreign and domestic collectors and visitors traveling through on their way to Glacier National Park.

The Sioux Indian Museum in Rapid City, South Dakota, works closely with a Lakota Advisory Committee comprised of tribal members from the Rosebud, Pine Ridge, and Cheyenne River Reservations. Together, they develop and implement programs featuring dance, flute playing, storytelling, bow and arrow making, parfleche crafting, and beadwork. As part of its community outreach, with the assistance of the Lakota Advisory Committee and the Lakota College in Kyle, South Dakota, the Sioux Indian Museum trained college interns to inventory museum collections, install exhibits, and serve as museum tour guides. The Sioux Indian Museum also tailors many of their tours and presentations to visiting children?s groups. In particular, the museum works to build the Indian children?s appreciation of their rich cultural heritage and works with Indian and non-Indian groups to foster cross-cultural understanding. Through their tours, programming, and

exhibits, the museum works to dispel many of the stereotypes, prejudices, and misunderstandings of historic and contemporary Sioux culture. Furthermore, as an example of the IACB museums? efforts to promote regional Indian Arts and Crafts Act education efforts, this past winter the Sioux Indian Museum curator participated as a panelist in an important 30 minute public interest spot on South Dakota?s public television station addressing the importance of the Act.

The Southern Plains Indian Museum in Anadarko, Oklahoma, receives strong community support from local and regional tribes who view the museum as an important institution for preserving their cultural heritage. As part of the museum?s outreach activities, each year the museum invites approximately 500 public, private, and government schools to tour the museum. The museum?s support group, the Southern Plains Indian Museum Association, has a five-member board of directors. Board members include individuals representing the Kiowa, Delaware, Fort Sill Apache, Pawnee, and Comanche Tribes of Oklahoma. Some of the board members have received state and national recognition, including Bruce Caesar (Pawnee/Sac and Fox), recipient of the National Endowment for the Art?s National Heritage Fellowship Award for his outstanding metalwork and LaVerna Capes (Kiowa), was designated Master Artisan by the State Arts Council of Oklahoma. The museum association assists the museum hosting guest lectures, book signings, classes in arts and crafts, and in distributing donated books, such as Lois Dubin?s *North American Indian Jewelry and Adornment* to area schools. Additionally, the Oklahoma Indian Arts and Crafts Cooperative, an Indian owned and operated arts and crafts enterprise that operates the museum craft shop, has scheduled twenty Indian artist demonstrations at the museum this summer.

These museums have presented a total of 599 promotional sales exhibitions of contemporary Indian and Alaska Native artists and artisans since 1969. Additionally, the museums hold summer sales exhibitions, which annually feature the work of approximately 125 Indian artists and artisans. All sales exhibitions are held in cooperation with the separately owned and operated crafts shops housed in the museums and all profits go to the Indian artists, artisans, and respective businesses. Each of these shops also purchase merchandise for resale from 150 to 200 Indian artists and artisans. Over 1,732 individuals have benefited from these programs.

During the course of 47 IACB special promotional exhibitions over the last five years, significant sales have been generated for Indian artists and craftspeople. National and regional media carry announcements and special features on each IACB museum exhibition that lead to important exposure for Indian artists and artisans. For example, one Alutiiq mask maker from Alaska, Jerry Laktonen, credits his 1999 IACB museum exhibition brochure for helping to facilitate his work being featured in a television documentary. The IACB museum exhibition brochures are routinely mailed to more than 1,200 galleries, museums, and collectors nationwide.

In FY 2000, approximately $465,000 of the $1,001,000 appropriated annual funds will be spent on the operations, and educational and economic development programs, of the three IACB museums. The IACB predicts approximately $75,000 in FY 2000 user fees (net of cost of collection) to help contribute to the costs of maintaining these important facilities in Indian country.

Earmark

The IACB?s FY 2000 budget is $1,001,000. Of this amount, $290,000 was earmarked by Congress for enforcement of the Act. The President?s budget request for the IACB in FY 2001 requests $1,123,000, providing an increase of $100,000 for Act enforcement. The IACB understands that consideration is being given to a possible increase in the current earmark to $390,000, regardless of whether or not the IACB FY 2001 budget is increased. If this were to occur, it would have an adverse impact on the IACB?s three regional museums and national economic development programs. The IACB would have to reduce its economic development assistance to Indian tribes, artists, artisans, marketing organizations, and businesses. Also, there would be reductions in staffing, hours of operations of the IACB?s three regional museums, exhibitions, promotional publications, and related outreach activities and services.

In FY 2001, with the President?s Budget allocation of $1,123,000 for the IACB, IACB will continue to build on the Indian Arts and Crafts Act programs and accomplishments of the previous year, focusing on the Southwest. Through the coordination of Indian Arts and Crafts Act compliance and enforcement activities, the trademark registration program, and museum and marketing activities, the IACB will continue to support the economic development efforts of Indian tribes by working to ensure that only authentic Indian art and crafts are offered for sale in the marketplace.

Conclusion

In summary, let me assure the Committee that the IACB, through the coordination of compliance and enforcement activities, public outreach and education, the development of a trademark registration program, and vital museum and marketing activities, is committed to supporting the economic development and marketing efforts of Indian artists and artisans, Indian tribes, and businesses. Through these activities, the IACB will continue working to ensure that only authentic Indian arts and crafts are offered for sale in the marketplace. Additionally, through these activities, the IACB supports the federal government?s trust responsibility to help preserve Indian arts, crafts, and culture. The IACB looks to the human spirit of Indian art and works to strengthen the direct links between economic development and cultural preservation.

This concludes my statement. Thank you for this opportunity to help raise the visibility of the Indian Arts and Crafts Act. I would be happy to answer any questions you may have.

Exhibit A

Indian Arts and Crafts Board

Commissioner
Biographical Information

Faith Roessel, Chairperson

Chairperson Faith Roessel is a member of the Navajo Nation and a former Special Assistant to Interior Secretary Bruce Babbitt. She was the Secretary's staff coordinator for the White House Domestic Policy Council's Working Group on American Indians and Alaska Natives, which the Secretary chaired, and also served as Deputy Assistant Secretary for Indian Affairs. Before coming to work for the Department of the Interior, she served as director of the Navajo Nation Washington Office, senior staff attorney for the Native American Rights Fund, and as legislative assistant for U.S. Senator Jeff Bingaman (D-NM).

Ms. Roessel received her Bachelor's Degree from Fort Lewis College and her Juris Doctorate Degree from the University of New Mexico. She is licensed to practice law in the State of New Mexico and the District of Columbia, and is a member of the American Bar Association, the Federal Bar Association, and the Indian Bar Association. Ms. Roessel is also on the White House Initiative on Tribal Colleges and Universities Presidential Advisory Board, the Arizona State University Law School Indian Advisory Board, and the Boards of Americans for Indian Opportunity and the Child Welfare League of America.

Barry W. Brandon, Commissioner

Commissioner Barry Brandon is a member of both the Muscogee (Creek) Nation and the Seneca Nation of Indians. Mr. Brandon currently serves as the Chief of Staff of the National Indian Gaming Commission. Before joining the Commission, Mr. Brandon served as the Deputy Director of the Secretary's Indian Water Rights Office at the U.S. Department of the Interior.

Prior to his position at Interior, Mr. Brandon was a Senior Trial Attorney at the U.S. Department of Justice. He worked in the Indian Resources Section handling civil litigation claims to enforce federally protected interests and rights of Indians and Indian tribes. Before moving to Washington, DC, Mr. Brandon was an associate at the Seattle law firm of Thorsrud, Cane and Paulich, where he had a civil litigation practice with an emphasis on environmental matters. He also served in the Washington State Legislature as a Staff Attorney for the Washington State Senate, Environment and Natural Resources Committee.

Barry Brandon received a Bachelor's degree from Western Washington University and a Juris Doctorate degree from the University of Washington. Mr. Brandon is a past President and founding member of the Northwest Indian Bar Association (Seattle) and a founding member of the Native American Bar Association of Washington, DC.

V. Heather Sibbison, Commissioner

Commissioner Heather Sibbison is Counsel to the Assistant Attorney General for Environment and Natural Resources Division, United States Department of Justice. In that capacity she works with ENRD's Indian Resources Section on cases and initiatives involving treaty-based rights, Indian lands issues, environmental protection, and Indian education.

Prior to joining the Department of Justice, Ms. Sibbison served at the United States Department of the Interior in several capacities, including as Special Assistant to Secretary Bruce Babbitt, as Counselor to Deputy Secretary David Hayes, as Director of the Secretary's Indian Water Rights Office, and as the Secretary's Representative to the Executive Council for the 1836 Great Lakes Treaty Fishery.

Prior to government service, Ms. Sibbison practiced law at the Washington D.C. firm of Patton, Boggs, specializing in both environmental and intellectual property law.

Ms. Sibbison graduated magna cum laude from Tufts University with an undergraduate degree in American Studies and English; at Tufts she also completed masters level course work in American art and architecture. She received her J.D. from Columbia University, where she was an editor of the Columbia Journal of Law and the Arts.

Commissioner, Vacant

Commissioner, Vacant

U.S. Department of the Interior

Indian Arts and Crafts Board

Staff Chart

Headquarters Office
1849 C Street, NW, MS 4004-MIB
Washington, DC 20240
202-208-3773

Acting Director
Attorney
Paralegal (cert pending)
PTO Attorney (3-month detail)
Management Assistant
Marketing Assistant
Administrative Officer
Secretary

Southern Plains Indian Museum
715 East Central
Anadarko, OK 73005
405-247-6221

Chief Curator
Acting Museum Curator
Museum Aid

Museum of the Plains Indian
Intersection Hwys 2 & 89
Browning, MT 59417
406-338-2230

Museum Curator
Museum Technician
Museum Secretary

Sioux Indian Museum
The Journey Museum
222 New York Street
Rapid City, SD 57701
605-394-2381

Museum Curator
Museum Aid
Museum Secretary

5/00

Exhibit D

Total Indian Arts and Crafts Board Law Advertising Circulation/Readership for FY 1999/2000

Publication	Distribution Dates	Circulation/ Readership (Per issue)
Magazines		
Indian Market Magazine	August 1999	35,000
Indian Market Magazine/Southwest Art	August 2000	120,000
New Mexico Magazine	August - December 2000	118,190
Santa Fean Magazine	March - August 2000	50,000
Pow-wow Circuit Magazine	March 2000	125,000
American Indian Art Magazine	Autumn, Winter 1999; Spring, Summer, Fall 2000	30,000
Native Peoples Magazine	Summer, Fall 1999; Winter, Spring, Summer, Fall 2000	60,000
Tucson Guide Quarterly	Winter 1999, Spring 2000	60,000
Valley Guide Quarterly	Fall, Winter 1999; Spring, Summer, Fall 2000	60,000
Official Phoenix Visitors Guide	Summer/Fall - May 2000	200,000
Arizona Quickguide	November 1999; February, May 2000	125,000
Alaskan Services Guide	May 2000	70,000
Southwest Art	August 1999	120,000
Newspapers		
Indian Trader Newspaper	July - October 1999, January - August 2000	15,000
Indian Country Today Newspaper	June 1999 - June 2000	125,000
News From Indian Country Newspaper	Mid-December 1999 - Late-March 2000	6,000
	TOTAL	**1,319,190**

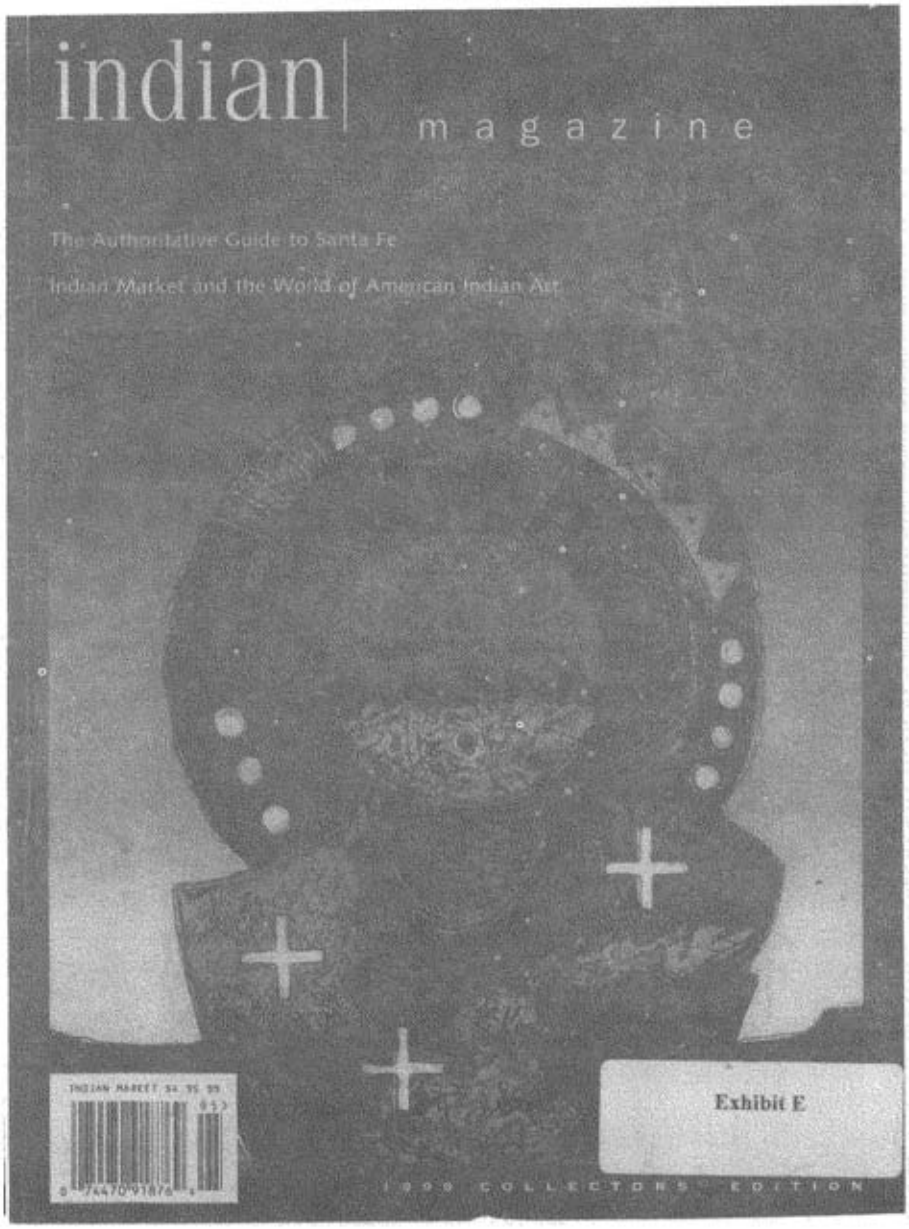

indian
magazine
The Authoritative Guide to Santa Fe
Indian Market and the World of American Indian Art
INDIAN MARKET $4.95 $5.95
1999 COLLECTORS' EDITION

Exhibit E

POTTERY continued from page 45

Maria Martinez and her husband, Julian, developed their first black-on-black pottery by 1919. Painted redware appeared during the 1920s in three main styles: black-on-red, buff-on-red, and polychrome redware. ■ *1998 winners included: Dolores Garcia, Erik Fender, Martha Fender, Carol Nampeyo, Dee Setalla, Harriet Tafoya, and Carmelita Dunlap.*

Division 5: Traditional pottery, *jars, painted designs on matte or semi-matte surface, jars (in the style of Hopi, Acoma, Laguna, etc.).*

Hopi style—Around 1890, the legendary Nampeyo created *Sikyátki Revival Ware*, a black-and-red-on-yellow pottery. *Sichomovi Redware* is a Hopi style of black-on-red pottery popular by 1920. About 1951, Paqua Naha, "Frog Woman," innovated polychrome whiteware. ■ *1998 winners included: Stan Lucas, Karen Ahlstrom, Rondina Huma, Rainy Naha, Barbara Cerno, and Mark Tahbo.*

Acoma style—white-slipped ware on white clay, decorated with fine line or polychrome designs. It usually is the thinnest of Pueblo pottery. Around 1950, Lucy Lewis and Marie Z. Chino revived designs from Mimbres and Tularosa. ■ *1998 winners included: Dolores Aragon, Rebecca Lucario, Lilly Salvador, Wanda Aragon, Sandra Victorino, and Debbie Brown.*

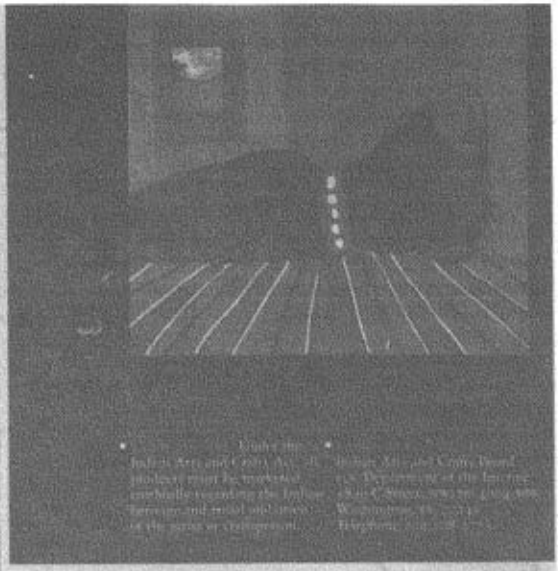
Laguna style—featuring polychrome designs on a white slip. The style is similar to Acoma, but local clays and designs are used. Laguna designs are often larger and bolder. ■ *1998 winner included: Max Early, Yvonne Lucas, and Gladys Paquin.*

Zia, Santa Ana, Santo Domingo, Cochiti style—These Keresan Pueblos south of Santa Fe generally produce cream or buff slipped, polychrome pottery; they are some of the largest pots made. Favorite designs include birds and flowers, as well as traditional geometric designs. ■ *1998 winners included: Arthur Coriz, Elizabeth Medina, Robert Tenorio, Marcellin & Elizabeth Medina.*

Zuni style—both white and red slipped pottery. The designs are often brick red and dark brown, featuring deer with red heart lines, rainbirds, flowers, rosettes, and scrollwork. Rims and bases are usually dark brown. Hopi and Acoma potters worked with Josephine Nahohai of Zuni to revive pottery making at Zuni in the 1970s. ■ *1998 winners included: Lee Manningha and Norma Simplicio.*

Navajo style—In the late 19th century, northwest of Santa Fe, Navajo potters made thin jars shaped like big teardrops with flaring rims. Their designs included large tree symbols. Today, Navajo styles take many refined forms. ■ *Last year's sole winner was Calinda McKelvey.*

Division 6: Traditional pottery, *painted designs on matte or semi-matte surface, all forms except jars.*



Indian Arts and Crafts Act, the federal product fraud law, protects the Indian heritage and relief and assists in the sale of craftproducts.

Indian Arts and Crafts Board U.S. Department of the Interior MS-2528-MIB 1849 C Street, N.W. Washington, D.C. 20240 Telephone: (202) 208-4564

Join us as we celebrate our thirty years of commitment to preserving the creations of Native American Arts & Crafts.

Old Town Scottsdale Shop is located in the heart of "Old Town" Scottsdale and has been owned by the Neal family since 1969.

We offer the finest Hopiware and Navajo products, fine old and new Pueblo pottery, silver jewelry, beadwork, Hopi Kachina dolls and Zuni fetishes. Let us help you find the unique piece that you are looking for.

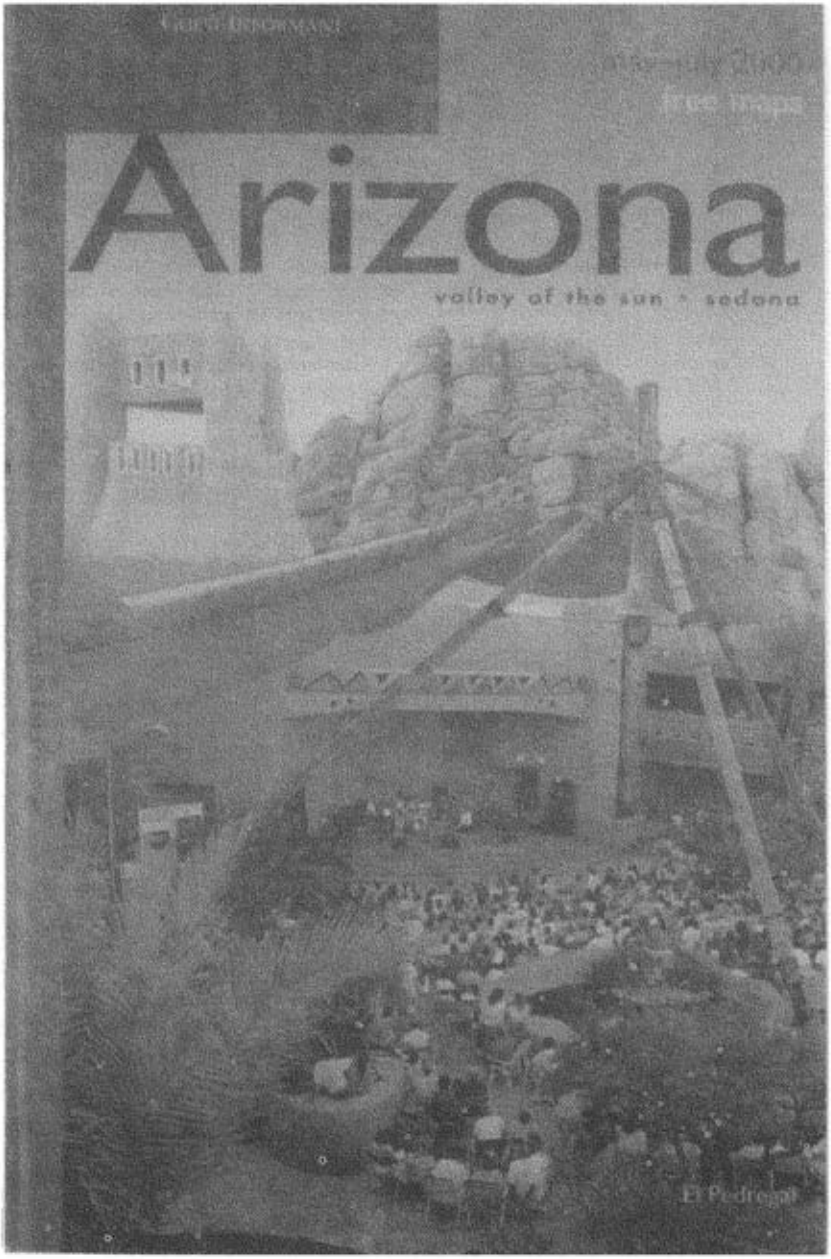


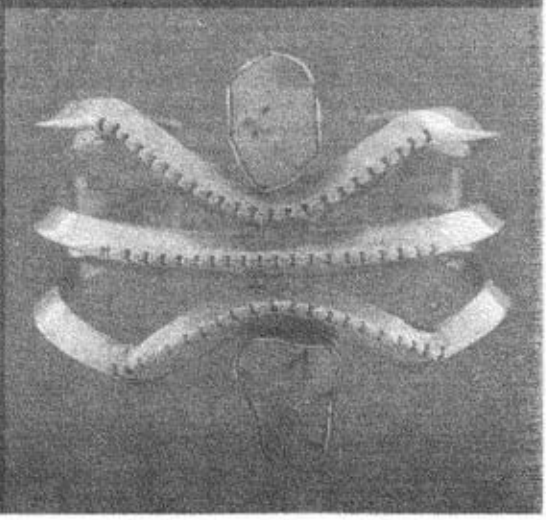
Exhibit F

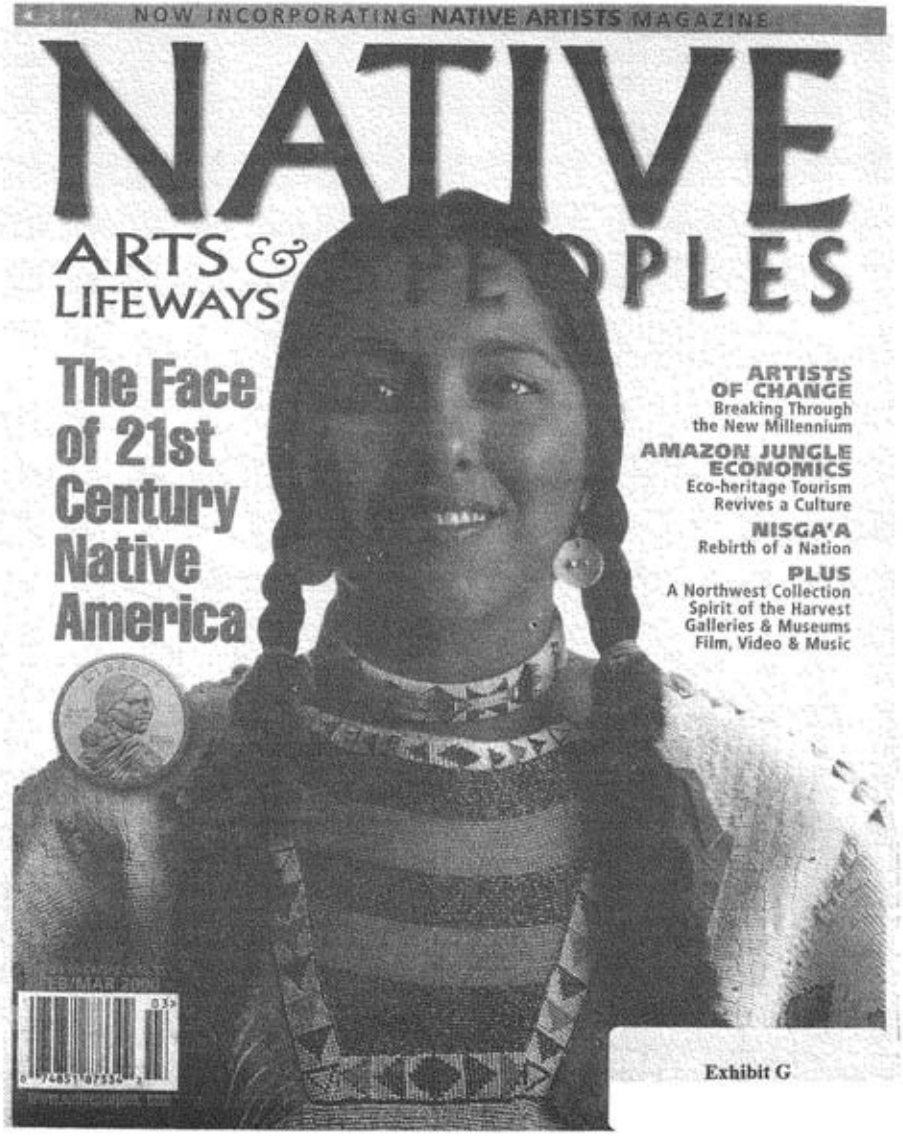
Buying or Selling Indian Art? Know the Law.

The Indian Arts and Crafts Act of 1990 (P.L. 101-644) is a truth-in-advertising law that prohibits misrepresentation in marketing of Indian arts and crafts products within the United States. Under the Indian Arts and Crafts Act, it is illegal to offer or display for sale, or sell any art or craft product in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian tribe. The Act covers all Indian and Indian-style traditional and contemporary arts and crafts produced after 1935.

Businesses and individuals can face civil and/or criminal penalties for violating the Indian Arts and Crafts Act. The Indian Arts and Crafts Board, a separate agency within the U.S. Department of Interior, screens complaints for further investigation and can request prosecution. Anyone can file a complaint with the Indian Arts and Crafts Board, but it must be in writing. For more information on the complaint process, or to request information on the Act, please contact the Indian Arts and Crafts Board (see ad below) or visit www.iacb.doi.gov.

Know the Law.
Under the Indian Arts and Crafts Act, all products must be marketed truthfully regarding the Indian heritage and tribal affiliation of the artist or craftsperson.
Information:
Indian Arts and Crafts Board
U.S. Department of the Interior
1849 C Street, NW
MS 4004-MIB
Washington, DC 20240
Telephone
202.208.3773

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ARTS & LIFEWAYS
PEOPLES
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Eco-heritage Tourism Revives a Culture
NISGA'A
Rebirth of a Nation
PLUS
A Northwest Collection
Spirit of the Harvest
Galleries & Museums
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Exhibit G

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Please send a **free brochure** on the Indian Arts & Crafts Act to:
Name
Street
City
State
Zip

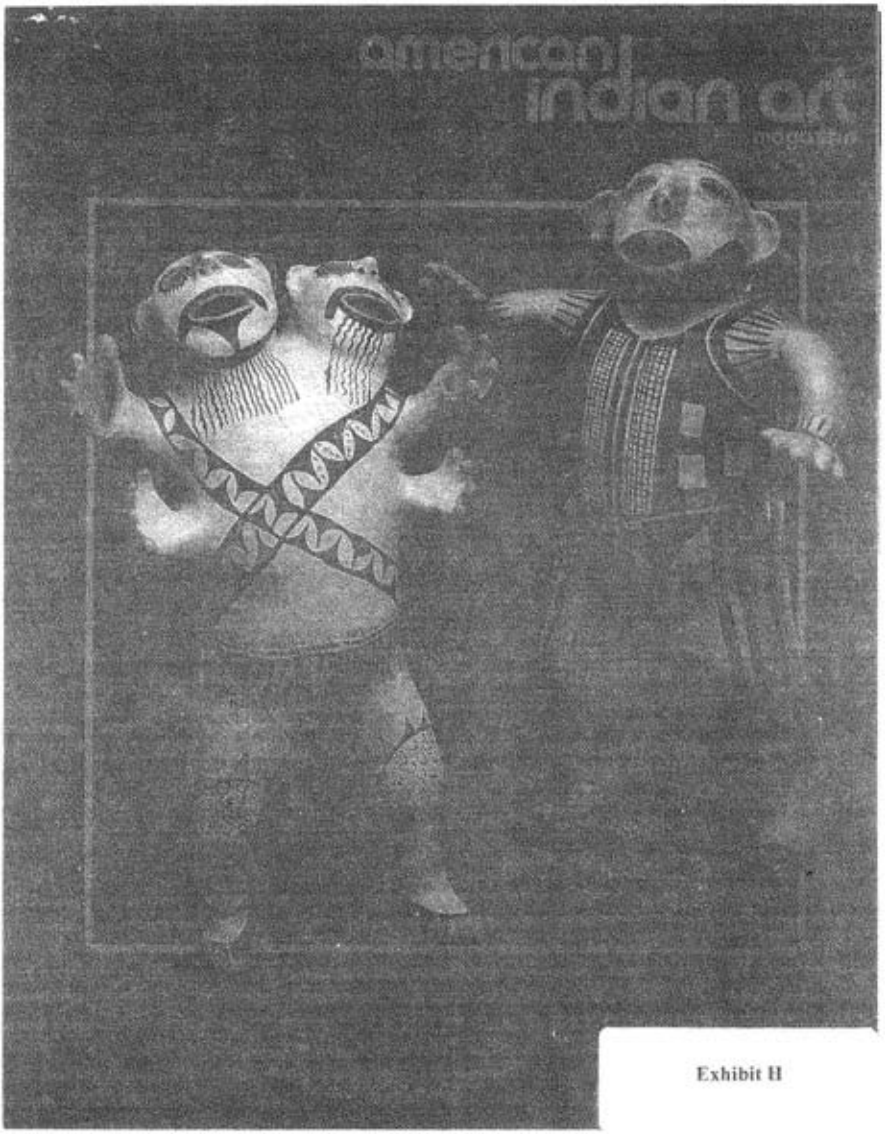
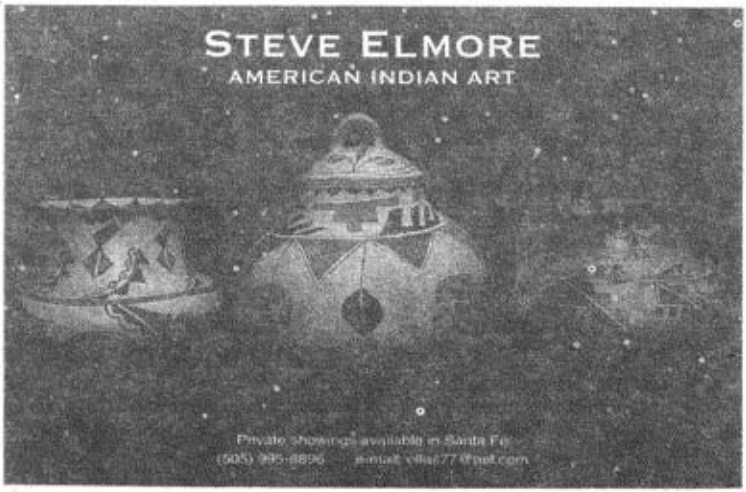


Exhibit H

Under the Indian Arts and Crafts Act, all products must be marketed truthfully regarding the Indian heritage and tribal affiliation of the artist or craftsperson.
Indian Arts and Crafts Board, U.S. Department of the Interior, 1849 C Street, NW, MS 4004-MIB
Washington, DC 20240 Telephone 202 208 3773

JOHN C. HILL
ANTIQUE INDIAN ART
6962 E. 1st Ave. Scottsdale, Arizona 85251
(480) 946-2910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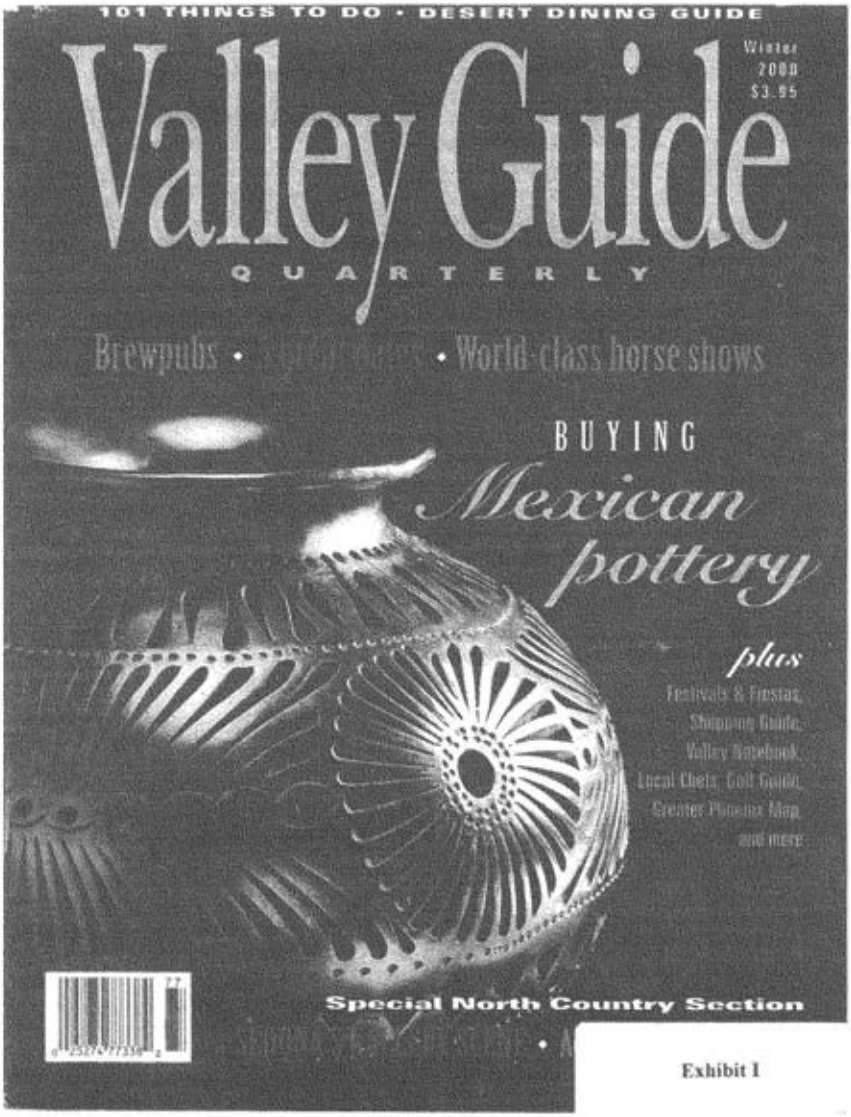
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Local Chefs, Golf Guide,
Greater Phoenix Map,
and more
Special North Country Section

Exhibit I

than 140 entries and 1,000 horses qualify this as one of Arizona's largest parades.

The rodeo pits cowboys from all over the US to compete in the Senior Professional Cowboys' Rodeo. Thrill to bull riding, bareback riding, team roping, calf roping, barrel racing, and other rodeo fun.

Around the community center all 3 days, you'll find more than 200 arts & crafts exhibits, a gem and mineral show, entertainment, and a carnival with rides and games. Contests of gold panning, mucking, and drilling show the skills and processes used as part of the gold rush that helped create the town years ago. One of these fortune hunters, Henry Wickenburg, came to the town in 1863, lured by the promise of riches. The Vulture Mine, where more than $30 million in gold has been dug from the ground, rewarded him and many others.

While you're in Wickenburg, check out the exhibits at the Desert Caballeros Western Museum. You can also peruse the museum's *Our Land, Our People* exhibit, which showcases 75 photo enlargements of the landscapes and people of Arizona from the pages of *Arizona Highways*. The exhibit runs January 29–April 16. Other museum highlights include Western art by artists such as Remington, Russell, and the Cowboy Artists of America. Phone 520-684-5479.

Musicfest 2000, Scottsdale

February 11–27 (see page 50)

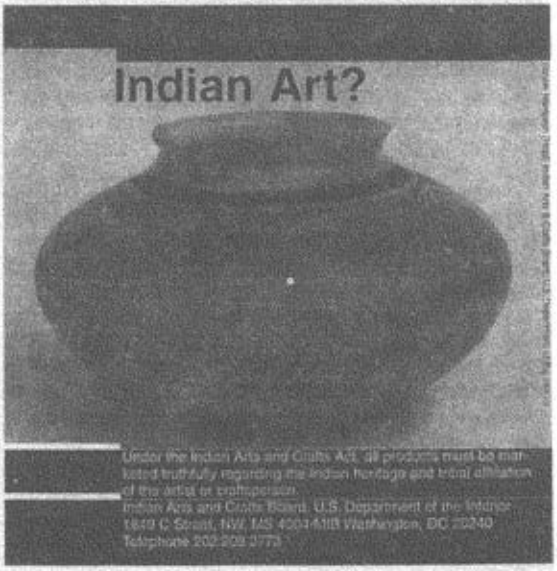
Scottish Gathering and Highland Games, Mesa

February 25–27 Sponsored by the Caledonian Society of Arizona, this weekend offers the opportunity to learn more about Celtic heritage. Visit more than 60 clan tents—each tent features information and history about a different Celtic surname.

The highlight of the weekend, the athletic competition, pits top athletes in caber tossing, running, and jousting events. Similar to the Olympics of ancient Greece, these competitions determined one's fitness to go into battle. The kids can try their hands at scaled-down events with smaller weights and cabers.

Entertainment includes traditional Scottish singers, balladeers, fiddlers, and pipers, along with pipe and drum bands and the Royal Scottish Country Dancers. Don't

HUMMER
NEW
U-DRIVE PILOTS


Indian Art?
Under the Indian Arts and Crafts Act, all products must be marketed truthfully regarding the Indian heritage and tribal affiliation of the artist or craftsperson.
Indian Arts and Crafts Board, U.S. Department of the Interior
1849 C Street, NW, MS 4004-MIB Washington, DC 20240
Telephone 202-208-2773

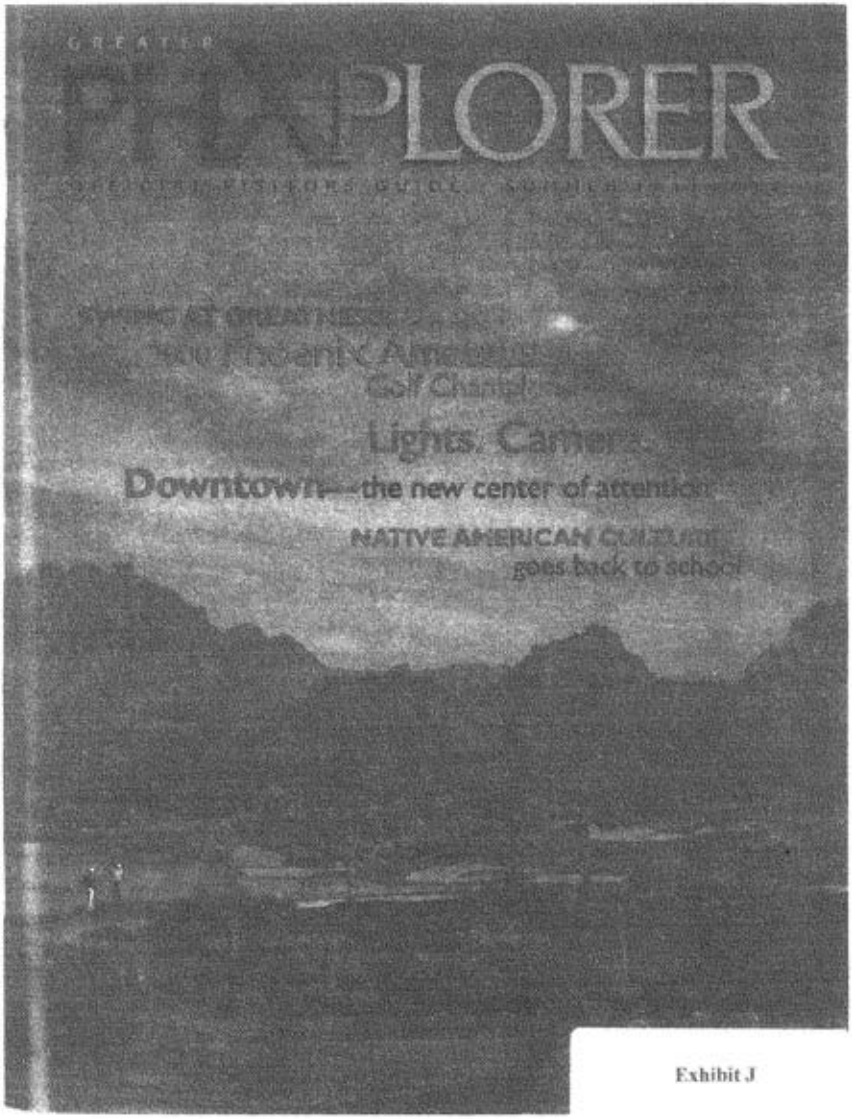

GREATER
PLORER
Lights, Came
Downtown—the new center of attention
NATIVE AMERICAN
goes back to school

Exhibit J

SMU/CCPCO Chinese Cultural Center (602) 279-7269, FAX: (602) 279-7139, 666 N. 44th St., Ste. 238, Phoenix 85008, e-mail: ccfmo@primenet.com Distinctive center highlighting Asian shops and cuisine. Features ponds and garden showcasing authentic replicas of pagodas and statuary from famous cities in China. **O-11**

Biltmore Fashion Park (602) 955-8401, 2502 E. Camelback Rd. #210, Phoenix 85016. World-class shopping in a beautiful outdoor park setting. Saks Fifth Avenue; Polo/Ralph Lauren, Gucci, Cartier, Christopher Groat/ Fermoir Brasserie. Hotel packages, incentives available. **L-16**

Downtown Scottsdale Partnership, Inc. (480) 947-6435, FAX: (480) 423-5883, 7157 E. Stetson Dr., Ste. 6, Scottsdale 85251, www.downtownscottsdale.com e-mail: dsp@downtownscottsdale.com Scottsdale Downtown is a distinctly unique shopping area that includes more than 500 one-of-a-kind shops, galleries, restaurants, nightlife and entertainment venues, f-zone, museums and more.

el Pedregal Festival Marketplace (480) 483-1072, FAX: (480) 438-5215, 34505 N. Scottsdale Rd., Box 43, Scottsdale 85262. A colorful desert shopping environment featuring apparel, galleries, restaurants, gifts and the Heard Museum North. Call for concert dates. **B-18**

Fiesta Mall (480) 833-4121, 2104 Fiesta Mall, Mesa 85202. Friendly service, convenience and 150 of your favorite stores at the Valley's most popular shopping center, including The Disney Store, Macy's, The Team Shop and Abercrombie & Fitch. **Q-21**

Historic Fifth Avenue Area Shops (480) 945-0942, c/o Sevilla Indian Arts, 7087 Fifth Ave., Scottsdale 85251. Shop along world-renowned Fifth Avenue. More than 220 specialty shops featuring gifts, fashions, Native American handcrafts, home furnishings and open-air cafes. MCC. **M-19**

Mesa Market Place Swap Meet (480) 380-SHOP, FAX: (480) 380-5570, 10950 E. Baseline Rd., Mesa 85212. www.mesamarket.com e-mail: paolyth@msn.com 1,800 booths under one roof. Open year-round. Fri., Sat. and Sun. 7am–4pm. Meter system throughout (weekend). Free admission, free parking. **Q-30**

Metrocenter (602) 997-0641, FAX: (602) 870-0983, 9617 N. Metro Pkwy. W., Phoenix 85051. www.westcor.com e-mail: metro@westcor.com Phoenix's largest shopping center, featuring more than 200 shops, Macy's, Dillard's, JCPenney, Sears, Robinsons-MAY, 50 restaurants and a mini amusement park. Fun for the entire family! **J-13**

Phoenix Mercado (602) 256-6322, FAX: (602) 253-6343, Vestar Property Management, 242 E. Monroe St. #24, Phoenix 85004. Open-air mall with Southwestern theme. Specialty shops, restaurants, ASU Downtown Center, 24-hr. preschool, hair salon. Available for outdoor special events. **N-14**

Prime Outlets at New River (623) 465-9500, FAX: (623) 465-9513, 4250 W. Anthem Wy., Phoenix 85086. www.primeoutlets.com Voted Arizona's Best Manufacturer's Outlet Mall with more than 90 shops! Food court, RV parking, Customer service center. Information. North on I-17, Anthem Way exit 229. MCC. **A-12**

Scottsdale Fashion Square Information and Concierge: (480) 941-0140, Tourism: (480) 994-8048, 7000 E. Camelback Rd., Ste. 500, Scottsdale 85251. www.fashionsquare.com e-mail: sfsourism@westcor.com The Southwest's largest mall, Scottsdale Fashion Square offers the upscale department stores, nearly 70 exclusive retailers, two luxury theater complexes and more than 30 restaurants and food cafes. AE, MC, V. **M-19**

Scottsdale Pavilions (480) 991-6001, Pima and Indian Bend roads, Scottsdale. Scottsdale's premier shopping destination—more than 80 shops and services. Tenants include: Circuit City, Home Depot, Mervyn's, Sports Authority, Homeplace, Cost Plus, Target, Toys R Us, United Artist Theatre and more. **K-20**

SHOP ARIZONA–Retail, Restaurants & Attractions (602) 687-1007, FAX: (602) 678-1014, 628 W. Hayward Ave., Phoenix 85021. www.arizonagate.com/shoparizona e-mail: sdm@aol.com Representing a premiere collection of attractions, restaurants and shopping destinations, including Western theme parks, museums, shopping centers, downtown entertainment and antique districts, retailers and restaurants. **B-20**

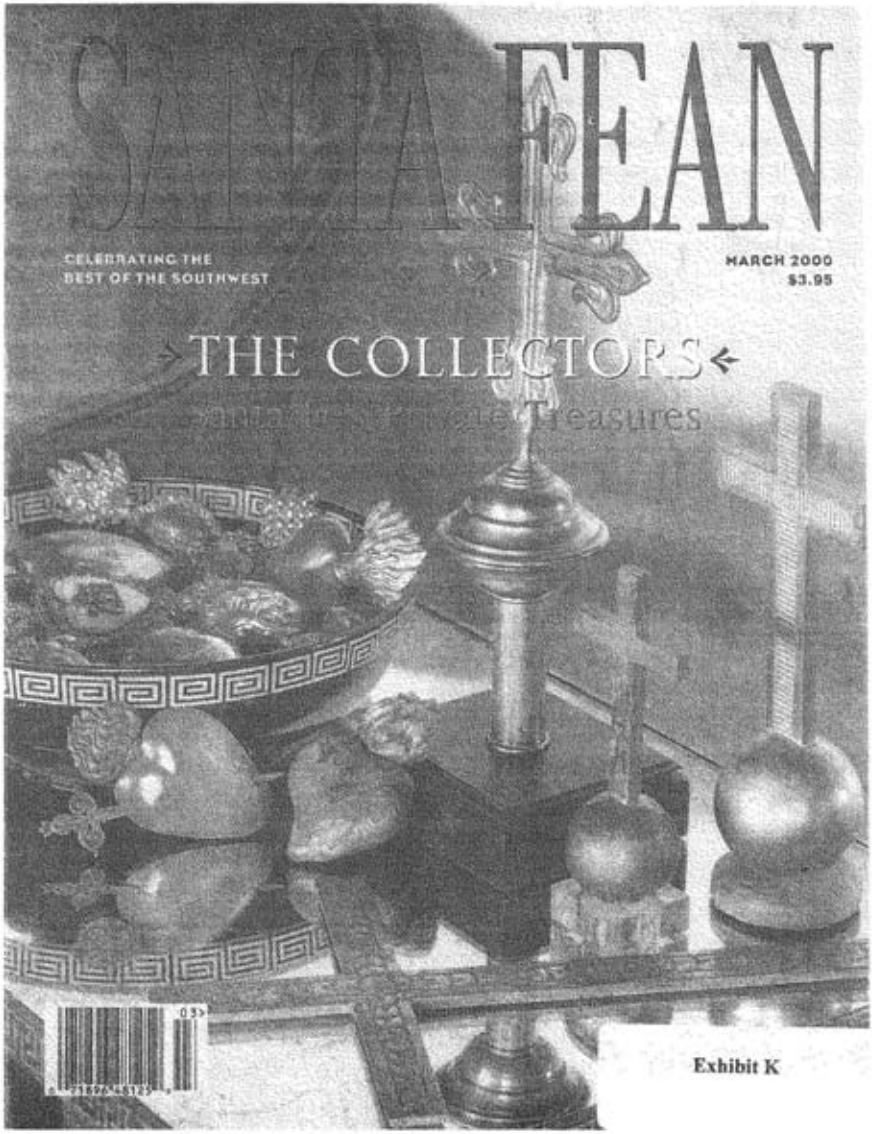

SANTA FEAN
CELEBRATING THE
BEST OF THE SOUTHWEST
MARCH 2000
$3.95
THE COLLECTORS
Treasures

Exhibit K

OPENINGS & EXHIBITIONS

Alexandra Stevens Gallery of Fine Art 115 *Bent.* 505-758-1399. *Event:* Ongoing Works by artists including Millie Benge, Charles Ewing, Arlene LaDell Hayes and Barry McCuen. Open Mon–Sat 10–5, Sun 11–4.

Big Sun Gallery Historic San Francisco Church Plaza, Rancho de Taos. 505-758-3100. *Event:* Through Mar 31 Santos and bolsas by folk artist Lydia Garcia. Call for hours.

Blue Rain Gallery 115 Tiva Plaza. 505-751-0066. *Event:* Ongoing Regular gallery artists including Paul Surber, Nathan Solano, Cecile Romero, Auriane Borts, Tammy Garcia and Nora Naranjo. Daily 10–6.

Dos Lunas Gallery 115 E Plaza. 505-751-4822. *Event:* March 18 from 5–7, the gallery will host a reception for watercolor artist Greg Moon. Moon will demonstrate his unique techniques in watercolors of nocturnal landscapes. Enjoy refreshments and while watching an artist in action. Open Daily 10–6.

Farnsworth Gallery Taos 110 Paseo del Pueblo Norte. 505-758-0776. *Event:* Ongoing Regular gallery artists including Lee Brotherton, Dan Budnik, Wilson Crawford, John Farnsworth, Michael Kanteena, and Mark Rosa. Mar 18 John Farnsworth guides. Call for hours.

Fenix Gallery 228-B Pueblo Norte. 505-758-9120. *Event:* Mar Works by Earl Stroh, plus a group exhibition featuring masterpieces by Ken O'Neill and a window installation by Valley Neilson. Mon–Sat 10–5, Sun 12–5.

Gallery A 105-107 Kit Carson. 505-758-2343. *Event:* Ongoing Regular gallery artists including Fran Larsen, Mike Larsen, Jacqueline Rochester, Lee Rammel, Elizabeth Sandia, Jan Myers, David Schwindt, John Mendoza, Grace Kloss, Frances Dodd, Mick Shirnovek, Theodore T. Gall, Philomene Bennett, Charles Gatewood and Richard Murphy. Daily 10–5.

Gallery Elena 110 Morada Lane. 505-758-9094. Also, 108 Kit Carson. 505-751-4535. *Event:* Ongoing Works by celebrated gallery artists Velvy Vigil, Dan Vigil, Michael Vigil and David Hostetler. Tue–Sat 10–5, Sun 12–4.

Harwood Museum 238 Ledoux. 505-758-9826. *Event:* Ongoing The museum spans 200

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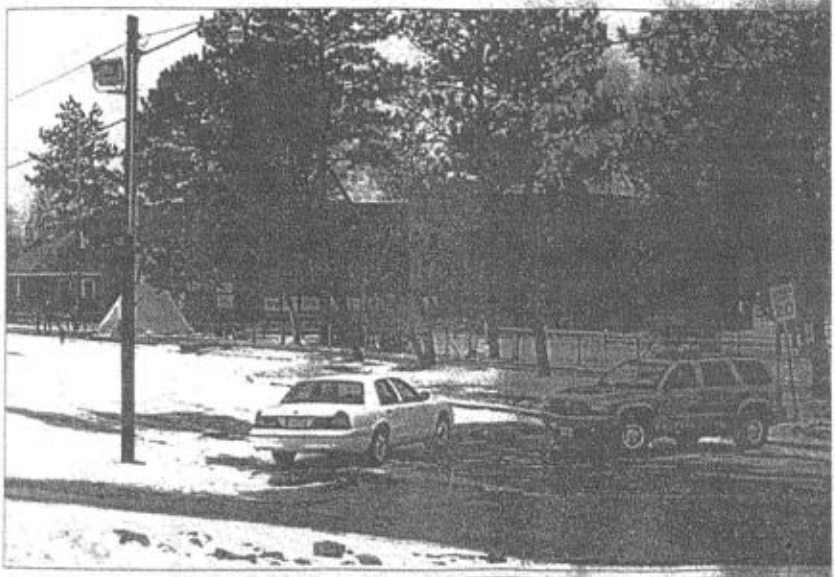
Information
Indian Arts and Crafts Board, U.S. Department of the Interior, 1849 C Street, NW MS 4004-MIB, Washington, DC 20240. Telephone 202 208-3773.

Sierra del Norte
SANTA FE

INDIAN COUNTRY
TODAY

Wednesday, February 2, 2000 www.indiancountry.com

Pine Ridge Grass Root



President Clinton silent on MacDonald pardon

In a wheelchair in a Fort Worth prison, his recognition grows

Reserve cente

By Jamie Monastyraki

WALPOLE
Ontario – Clo
U.S. and Canada b
With their

Exhibit L

I believe in it."

The most feared aspect of the takeover is the continuing potential for deadly violence. Many people bring up 1973 when members of the American Indian Movement came to Pine Ridge and held Wounded Knee. Family members took sides and people were shot, houses were riddled with bullets and some people died.

As each day passes, people who authorities and the media claiming to have heard gunshots coming from the Red Cloud tribal building. Group leaders assure everyone there are no arms or ammunition in the building. But, everyone admits tensions are high.

During the Jan. 26 meeting the focus remained on removal of Jacobs, a complete audit of all records and a change to Gordon, Neb., for audit. FBI agents would not confirm the seizure.

■ *"He's still the treasurer, now we have to stay here," said Oliver Red Cloud, one of the leaders of the grass-roots group.*

Occupiers remain insistent that general fund records also be audited.

Their argument is that Jacobs and finance committee members cannot account for millions of dollars that were spent. Jacobs and the finance committee said that because of a budget shortfall inherited by the present administration, a tornado in Oglala and a need to line and break down any doors.

"Come together as a Lakota Nation. All I ask is to communicate. If we don't, we are going to get people hurt," Ecoffey told the group.

At one point during the meeting, there was a testy exchange between Ecoffey and attorney Germain Trimble. Trimble said Ecoffey was authorized to call a council meeting because of a "state of affairs" and, she said, there was no attempt at an emergency council meeting.

"That's not right," Ecoffey said. "The BIA has no authority to call the council into session and I have no authority to suspend the council."

At one point Trimble attempted to show, with the help of a photocopied cashier's check for $5,500 drawn on the

Buying or Selling Indian Art? Know the Law!

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To receive a *free brochure* on the Indian Arts and Crafts Act, please send your mailing address to:
Indian Arts and Crafts Board
U.S. Department of the Interior
1849 C Street, NW,
MS 4004-MIB
Washington, DC
20240

Telephone
202 208 3773

◆ Please send a **free brochure** on the Indian Arts and Crafts Act to:

Name

Street

City State Zip

Exhibit N

Indian Arts and Crafts Board 1999/2000
Enforcement of the Indian Arts and Crafts Act - Public Outreach and Education

June 1999

Red Earth Festival - Oklahoma City, Oklahoma

- IACB chief curator went to booths, handed out *Misrepresentation* brochures, and talked with artists about the Act.

August 1999

Indian Market - Santa Fe, New Mexico

- IACB had an informational booth on the plaza.
- IACB chief curator and market development assistant answered general questions about the Act and talked with artists.
- IACB had an Act advertisement in the official *Indian Market Magazine*.

August 1999

Arizona and New Mexico

- Arizona - IACB Chairperson met with Arizona Assistant U.S. Attorneys to discuss the Act.
- Arizona – IACB Chairperson met with the Manager of the Heard Museum Shop.
- New Mexico - IACB Chairperson met with Southwestern Association for Indian Arts (SWAIA) Executive Director, Indian Arts and Crafts Association (IACA) Executive Director and President, and the New Mexico State Attorney General Consumer Protection Division.
- New Mexico – IACB Chairperson met with artists and artisans at the Santa Fe Indian market, as well as a representative from the Council for Indigenous Arts and Culture.

September 1999

Kituwah Festival – Asheville, North Carolina

- IACB staff member attended the festival and talked to participants about the Act.

September/
October 1999

Indian Arts and Crafts Association (IACA) Market - Mesa, Arizona

- IACB Market development assistant attended IACA market, handed out Misrepresentation brochures, and talked with artists and other market participants about the Act.
- Also visited tribal museums in Phoenix, Scottsdale, Sacaton, and Maricopa to talk about the Act and IACB programs.
- Met with the assistant to the director for Native American Relations at the Heard Museum to discuss the Act, IACB programs, and potential IACB workshop or conference at the museum.

December 1999

Oklahoma City/Anadarko/Tulsa, Oklahoma

- IACB acting director and market development assistant visited retail stores, galleries, and museums to discuss the Act and hand out information.

January/ February 2000	**Rapid City, South Dakota** • IACB acting director and market development assistant visited retail shops to discuss the Act, hand out information, and follow-up on previous Act complaints.
February 2000	**United Southern and Eastern Tribes (USET) Conference - Washington, DC** • IACB Chairperson gave presentation on the Indian Arts and Crafts Act to the USET Cultural Committee.
March 2000	**Atlanta Spirit of America, Native American and Wildlife Festival - Atlanta, Georgia** • IACB staffer attended the festival and talked with artists about the Act.

Tentative Upcoming Outreach

June 2000	Red Earth Festival - Oklahoma City, Oklahoma
June 2000	Eiteljorg Indian Market - Indianapolis, Indiana
August 2000	Indian Market - Santa Fe, New Mexico
August 2000	Conference of U.S. Attorneys - Sun Valley, Idaho
September 2000	Northern Plains Tribal Arts - Sioux Falls, South Dakota
September 2000	Meet with Navajo and Hopi tribal councils, artisans, and arts guilds
October 2000	Indian Arts and Crafts Association (IACA) Market - Phoenix, Arizona
October 2000	Alaska Federation of Natives - Anchorage, Alaska

Creation of the *Misrepresentation* and *Indian Arts and Crafts Act* Brochures

March 1999	Over 20,000 *Misrepresentation* brochures have been distributed to federally-recognized Indian tribes, U.S. and State Attorneys General, State arts councils, State Governors, Indian museums and cultural centers, membership of the Indian Arts and Crafts Association, other Indian arts and crafts businesses, and individuals, businesses, and organizations nationwide that have previously requested information on the law. The Indian Arts and Crafts Board's three museums provide the *Misrepresentation* brochure and additional information on the Indian Arts and Crafts Act to their visitors and regional communities. Additionally, a significant number of daily requests for the *Misrepresentation* brochure and copies of the Act and regulations are generated by the extensive number of law advertisements in key trade, tourist, and Indian publications.
June 2000	*Indian Arts and Crafts Act* brochure available for distribution. This new brochure specifically addresses the procedure for filing misrepresentation complaints with the IACB, and encourages people to submit valid complaints to assist in active enforcement of the Act.

Creation of Web Site

January 2000	Indian Arts and Crafts Board web site made available to the public. The web site includes the Indian Arts and Crafts Act statute, regulations, overview, and the process for filing misrepresentation complaints under the Act. Web site visitors may e-mail the IACB with questions, complaints, or requests for more information on the Act. The web site also features the IACB's museums, exhibition program, and the Source Directory of Indian owned and operated arts and crafts businesses. The web address is www.iacb.doi.gov.

Exhibit O

Total Number of Written Misrepresentation Complaints for Period of October 1996 - April 2000 (45 Complaints)

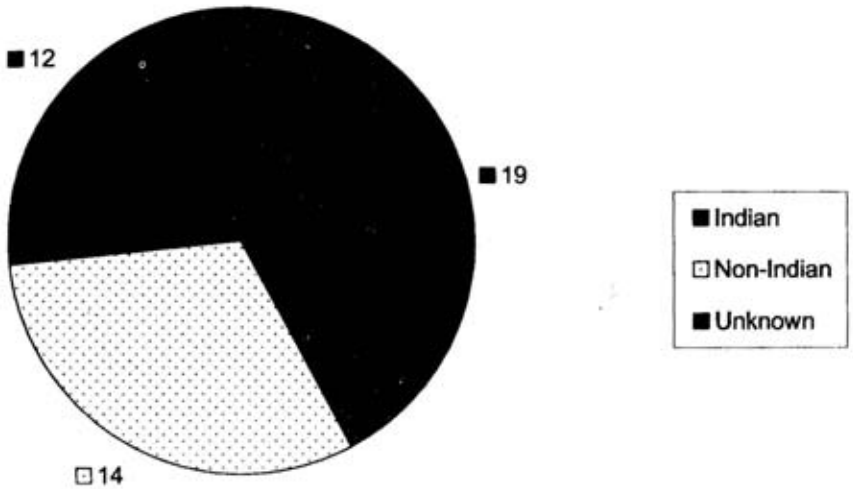
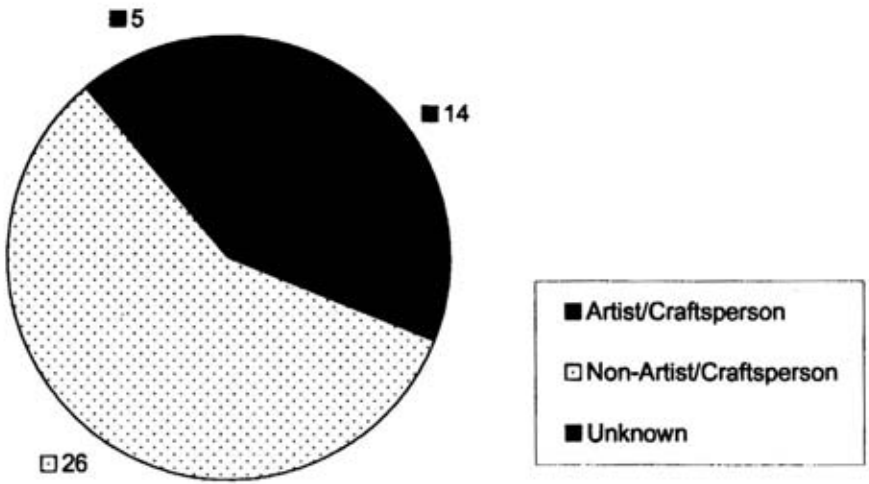


Exhibit P

Total Number of Written Misrepresentation Complaints for Period of October 1996 - April 2000 (45 Complaints)



TESTIMONY OF MARK C. VAN NORMAN
Director, Office of Tribal Justice
U.S. Department of Justice
Before the Senate Indian Affairs Committee
May 17, 2000

Good morning. Mr. Chairman, Mr. Vice-Chairman, and Members of the Committee, I am Mark Van Norman, Director of the Office of Tribal Justice, Department of Justice.

Thank you for inviting the Department to testify concerning the Indian Arts and Crafts Act. Let me begin by saying that the Department of Justice recognizes the importance of working with Indian tribes on a government-to-government basis to address problems in Indian country. Congress and the Executive Branch acknowledge the crucial role that promoting economic development plays toward meeting Indian country needs. Economic development opportunities can enhance the resources available to tribal governments for addressing the problems they face, including law enforcement problems. Moreover, the lack of economic opportunities in Indian communities, as in any community, can generate significant social problems, not the least of which are those related to crime problems.

For those reasons, the Department of Justice has worked cooperatively with other federal agencies to promote Indian country economic development. In August 1998, the Department of Justice participated in the White House conference on "Building Economic Self-Determination in Indian Communities." The President, the Attorney General, and the Secretaries of Agriculture, Housing and Urban Development, and Interior addressed the conference attendees, emphasizing the importance of tribal economic development to the Administration, including the Department of Justice. In particular, the Attorney General noted the importance of promoting strong tribal law enforcement and tribal courts to provide a positive environment for business

development in Indian country. Also, as an outgrowth of this conference, the Department of Justice, along with all other cabinet-level agencies, will participate in the creation of an "Access Center," which will provide phone-in callers with a "one-stop" source of information on federal programs to promote Indian economic development.

The conference also featured unique mention of the Indian arts and crafts industry. Dominic Ortiz, the young Native American man who introduced President Clinton at the conference, was financing his college education through his Indian arts and crafts business. Mr. Ortiz explained in regard to his business that:

> I have a business story I must tell because American Indian Business Leaders made my dream of creating a wholesale network of Native American arts and crafts a reality.
>
> I began my journey into the free market about two years ago, with the hopes of raising enough funds so that I could attend law school at the turn of the century. And I began this summer with the distribution of Native American jewelry to seven states and a contract to supply one of the largest casinos in Kansas, the Kickapoo Nation, with a retail jewelry store in order to provide jobs and increase revenues.

This is just one of the many examples of the opportunities that the Indian arts and crafts industry provides to Native Americans.

The Indian arts and crafts industry is an important source of economic development in Indian country. The House Report accompanying the 1990 amendments to the Indian Arts and Crafts Act notes that "[t]his industry's value has been estimated at $400-$800 million annually,"[1] and apparently this industry is growing. An April 1998 article in USA Today reported that Americans and foreign tourists spend as much as $1 billion each year on Native American arts

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[1] House Report 101-400(I), 101st Cong., __ Sess. (1990) at 5.

and crafts.[2] The same article reports that the average family that visits a New Mexico Indian Reservation spends $191 on arts and crafts. The Indian arts and crafts industry is, in many respects, one of the best examples of grass roots entrepreneurship. It takes advantage of, and promotes, tribal culture and traditional artisan skills, and requires minimal capital outlay. Arts and crafts can be marketed through the mail or by other means that minimize barriers to economic development, such as remoteness or lack of local infrastructure, that often impede other economic efforts. It also promotes national unity, affording opportunities for people to learn about Native American traditions through the items they purchase, thereby bringing people closer together.

The Federal Government has a longstanding policy of working to promote this industry. The Indian Arts and Crafts Act was first enacted in 1935 to promote Indian economic welfare through the development of arts and crafts and the expansion of their market. The 1935 Actcreated the Indian Arts and Crafts Board within the Department of the Interior. It recognized the importance to this industry of promoting product genuineness by, among other things, empowering the Board "to create Government trademarks of genuineness" for Indian-made products. The 1935 Act also included criminal provisions to protect the market for genuine Indian-made arts and crafts. These criminal provisions made it a misdemeanor to counterfeit trademarks issued by the Board, to make a false statement to obtain a Board trademark, and to sell products as Indian products when the seller knew they were not.[3] Those violations were

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[2] "$1 billion industry reeling as faux crafts flood market," USA Today, April 8, 1998 at 1A.

[3] P.L. 74-355, secs. 5-6, 49 Stat. 892-93.

subjected persons to imprisonment of up to six months and fines up to $2000.[4]

Congress amended the Act again in 1990 to enhance the protections it afforded against false claims that products are Indian-made. The 1990 amendments created a civil cause of action and enhanced the criminal causes of action. The 1990 amendments also expanded the Board's powers, including the addition of powers relating to the Act's enforcement provisions. Section 5 of the Act authorizes the Board to refer complaints that goods are falsely being sold as Indian-made to the FBI for investigation, to review the investigation report, and to recommend to the Attorney General that criminal proceedings be instituted.[5] Section 5 also authorizes the Board to recommend to the Secretary of the Interior that he request the Attorney General to institute a civil action under the Act.

The Act's criminal provisions, after 1990 amendments, make it a felony to counterfeit or falsely obtain Board trademarks and a felony to "knowingly" "offer or display for sale or sell any good . . . in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization."[6] Persons who violate the prohibition against falsely selling goods as Indian-made may be fined up to $250,000 and imprisoned up to five years for first violations, and fined up to $1 million and imprisoned up to fifteen years for subsequent violations. Corporations face fines of up to $1 million or $5 million for first and subsequent violations.

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[4] In 1948, Congress amended the criminal provisions to reduce the maximum fine to $500. 62 Stat. 759.

[5] 25 U.S.C. sec. 305d.

[6] 18 U.S.C. sec. 1159.

The Act defines "Indian tribe" to include federal- and state-recognized tribes and defines "Indian arts and crafts organization" to mean an "arts and crafts marketing organization composed of members of Indian tribes." "Indian" is defined to mean a member of a tribe or persons who a tribe certifies as "an Indian artisan." The Act also authorizes the Secretary of the Interior to define by regulation the terms "Indian product" and "product of a particular Indian tribe." The 1990 amendments also enhanced the penalties for counterfeiting Board trademarks and making false statements to obtain those trademarks to up to five years' imprisonment for individuals and fines up to $1 million for corporations convicted of first violations, and up to fifteen years and $1 million for individuals and $5 million for corporations convicted of subsequent violations.

With respect to civil remedies, the 1990 Amendments authorize either the Attorney General, upon the request of the Secretary of the Interior, or Indian tribes to bring actions against persons who sell goods or display them in a manner that falsely suggests they are Indian produced.[7] Upon proving a violation, the Attorney General or the tribe may obtain an injunction and recover the greater of treble damages resulting from the violation or $1000 for each day the product is offered or displayed, punitive damages, costs, and attorneys' fees. Fines or damages recovered in those actions are to be paid to the tribe, individual Indian, or arts and crafts organization that suffered damage as a result of the violations.

In recent years, the Department has undertaken several enforcement activities under the Act through United States Attorney's Offices. In 1998, the District of South Dakota filed an indictment against a defendant who sold goods to the Journey Museum in Rapid City and to

[7] 25 U.S.C. sec. 305e.

Korczak's Heritage, Inc., a shop near the proposed Crazy Horse Monument in the Black Hills, in a manner that falsely suggested they were Indian produced. The defendant pled guilty to a separate offense charged in the same indictment and, as part of the plea agreement, agreed to remove the words "NATIVE AMERICAN" from all goods he produces and to cease making any claim to being an Indian as part of any efforts to sell products he makes.

In 1993, the District of New Mexico received a referral that a retailer was falsely selling items as Indian-made. The case was prosecuted in 1994, resulting in a diversionary disposition.[8] That district also reports receiving referrals in other instances but declining to prosecute them for lack of evidence.

The District of Utah received a complaint from a tourist who purchased a belt buckle after being told by a store clerk that it was Hopi-made when in fact it was not. After investigation, no charges were filed because there was insufficient evidence to determine that the store clerk made the statement intentionally and the store offered a full refund.

In 1994, the District of Arizona investigated a case stemming from the discovery by a well-known Hopi artist of copies of a piece of his jewelry for sale in an Arizona retail store. The jewelry in question had been made from a wax mold created from the artist's original work at the behest of a wholesaler, who then sold them to the retailer where the artist discovered them for sale. After investigation, it appeared that the retailer believed, based on his examination of the items, that the items were actually Native American-made, and therefore he was not "knowingly" violating the Act. The evidence suggested, meanwhile, that the wholesaler made no statements

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[8] The U.S. Attorney's Office does not retain files dating back to 1994, so we could not confirm whether the case was charged under 18 U.S.C. sec. 1159 or another statute.

commerce."[10] In 1996, the Federal Trade Commission enforced that provision by filing an action in federal district court in the Western District of Washington against two persons who falsely represented Native American-style carvings as authentic Native Alaskan-made artwork. The defendants sold those carvings wholesale to retail shops throughout Washington and Alaska and from one of the defendants' retail stores. Those carvings typically sold at retail for prices between $250 and $500. The defendants submitted to a consent decree requiring them each to pay $20,000 fines and to undertake specific measures to prevent them from continuing to deceive purchasers of the origin of their products. I have submitted a copy of a press release from the Federal Trade Commission that more completely describes that action for inclusion in the record with my testimony today.

In addition, section 1907(c) of the Omnibus Trade and Competitiveness Act of 1988,[11] directs the Secretary of the Treasury to "prescribe and implement regulations" to require country of origin marking for Native American-style jewelry, arts and crafts. Those regulations are set forth in Title 19 of the Code of Federal Regulations, section 134.43. In current form, they require permanent marking on imported products that incorporate Native American design or "could possibly be mistaken for . . . [goods] made by Native Americans."[12] They require permanent or indelible marking, except when the country of origin is a NAFTA country or where "it is technically or commercially infeasible" to do so, in which case string tags or adhesive labels

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[10] 15 U.S.C. sec. 45.

[11] P.L. 100-418, sec. 1907(c), 102 Stat. 1315.

[12] 19 C.F.R. sections 134.43(c)(1), (d)(1).

also here to testify, and we look forward to hearing about the Ho-Chunk Nation's experiences under the Act's civil enforcement provisions.

With respect to the federal government, the Act envisions coordinated enforcement responsibilities between the Board, the Department of the Interior, and the Justice Department. As I noted earlier, the Act authorizes the Board to receive complaints and refer them to the FBI for investigation, then review the investigation reports and make recommendations to the Attorney General concerning criminal enforcement. The Act also authorizes the Board to recommend to the Secretary of the Interior that he request the Attorney General to initiate a civil action. In addition, to ensure that the Act and its requirements are receiving the full attention that they are due, the Departments of Justice and Interior have initiated inter-agency discussions concerning enforcement of the Act. We are exploring the possibility of developing an inter-agency memorandum of understanding to formalize internal procedures for carrying out our agencies' respective roles under the Act. In addition, the Board has developed and disseminated materials to educate tribes and the public about protections the Act affords against false claims that goods are Indian produced. In October 1996, Interior promulgated regulations defining key terms in the Act and setting forth how to file complaints of violations. And, recently, the Board has filled the vacancies among its Commissioners and acquired additional full-time staff. Those efforts will lead to increased efforts to promote the important policies reflected in the Act.

I should also note that there are other relevant legal protections available against false claims that arts and crafts products are Indian produced. Section 5 of the Federal Trade Commission Act makes unlawful "unfair and deceptive acts and practices in or affecting

to the retailer about the origin of the jewelry, making it difficult to prove that the wholesaler "knowingly" sold the work in a way that "falsely suggested" an Indian origin, and prosecution was declined. The Indian artist, however, was able to pursue a civil action against the wholesaler.

The U.S. Attorney's Office for the District of Minnesota reports dealing with complaints informally by referring them to Interior who, in turn, contacts the vendor involved and explains the legal issues related to representing items as Indian arts and crafts.

As these examples suggest, one reason why convictions may be difficult to obtain under the Act is the requirement that the defendant "knowingly" violate the Act. While it is provable that a product is being sold as an "Indian product" when it is not, it is more difficult to gather evidence and then prove that the seller actually knew at the time of transfer that the product was not an "Indian product."

In regard to its civil provisions, the Act is enforceable by either the Attorney General or an Indian tribe. Recognizing Interior's and the Board's expertise in these areas, the Act authorizes the Attorney General to bring actions under the Act "upon request of the Secretary of the Interior" and authorizes the Board to "recommend that the Secretary of the Interior refer . . . matter[s] to the Attorney General for civil action."[9] To date, the Secretary has not requested the Attorney General to initiate a civil action under the Act, so the Attorney General has not pursued any. The Ho-Chunk Nation, as an Indian tribe also authorized to pursue actions under the Act, has initiated a number of these actions. The Ho-Chunk Nation's claims survived constitutional and standing challenges before the district court. I note that the Ho-Chunk Nation's President is

[9] 25 U.S.C. sec. 305d.

may be used.[13] The Committee may wish to examine whether the exception allowing for adhesive or string tags, which are easily removable once an item enters the United States, whenever a more permanent tag is "commercially infeasible" allows importers to inappropriately circumvent the protection this regulation provides. The Committee may also wish to consider whether a statutory provision further defining "commercially infeasible" in these circumstances might be appropriate.

In addition to these federal protections, a number of states have enacted provisions that specifically protect against false claims that products are Indian-made,[14] while many more have general consumer protection statutes to address false sales claims of all kinds that might be applied against false claims that products are Indian-made.

Again, I thank the Committee for the opportunity to present testimony today. The Indian arts and crafts industry is an important part of Indian country economic development. That being the case, the protections the Act affords the Indian arts and crafts industry reflect an important part of the Federal Government's policy of promoting that economic development.

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[13] 19 C.F.R. sections 134.43(c)(3), (d)(3).

[14] See, e.g., Ak. Stats. secs. 45.54.010 et seq.; Ariz. Rev. Stat. Ann. secs. 44-1231 to 44-1231.05; Cal. Ann. sec. 17569; N.M. Stat. Ann. secs. 30-33-1 to 30-33-11.

TESTIMONY OF JACOB H. LONETREE
PRESIDENT OF THE
HO-CHUNK NATION
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
ON
THE INDIAN ARTS AND CRAFTS ACT OF 1990
MAY 17, 2000

Honorable Members of the Committee

It is indeed an honor to appear before you upon the invitation of Chairman Nighthorse Campbell to present testimony on the Committee's oversight of the Indian Arts and Crafts Act of 1990 (the "Act" or "IACA").

It has been ten years since the passage of this act which is vitally important to the protection of Indian artisans and craftspeople.

The Act requires that products that purport to be Indian made indeed be Indian made. It provides a valuable tool to preserve the cultural integrity and commercial value of these products of Native American hands and spirits.

THE IMPORTANCE OF NATIVE AMERICAN ARTS AND CRAFTS

The term "arts and crafts" does not do justice to the cultural creations about which we speak. I attach as Exhibit 1 to this testimony a statement of the Ho-Chunk Nation Traditional Court composed of Clan Elders describing the depth of cultural meaning and importance of these items. These works embody the culture and identity of a people, and reflect personal and family history. They are a fundamental means of expression as to who we are as Native Americans and as members of our respective Tribes.

Native American Arts and Crafts also have an important economic place in Indian Country. Many individuals and families rely on the production and sale of these items for their livelihood. The Ho-Chunk Nation is developing an enterprise to provide an outlet for these artists of the Ho-Chunk Nation and other tribes. We call this enterprise the Wonk Sheek Trading Company, our language's term for "Native Peoples". We are actively seeking to set up distribution channels for this enterprise as part of our economic development and diversification efforts. The Ho-Chunk Nation has been represented in trade missions to Germany and we have discussed this and other development issues with commercial interests from Japan. We know that the market for authentic Indian arts and crafts is international.

IMPACT OF COUNTERFEIT GOODS

The cultural integrity and economic viability of authentic Indian arts and crafts are threatened by the substantial market in counterfeit Indian products. Many of these products are imported and almost all are cheaply priced and of inferior quality. I attach a copy of the articles appearing in the April 8, 1998 issue of USA Today describing this problem as Exhibit 2. Unfortunately, the problem is still as real today. If anything, its scope may have expanded.

INDIAN ARTS AND CRAFTS ACT OF 1990

Congress provided a powerful tool to deal with this problem through the Indian Arts and Crafts Act of 1990. The reason that the problem has not been adequately dealt with is the lack of enforcement of that law. Although there are powerful criminal and civil deterrents to counterfeiting Indian goods contained in the law, the public enforcement mechanism has not been used. The reasons for that lack of enforcement should be addressed by the Indian Arts Board and U.S. Department of Justice. However, the fact of non-enforcement is clear. It is only through the private right of action authorized by the Act that this law has begun to have life. The Ho-Chunk Nation is proud of its collaboration with Native American Arts, Inc. to pursue the enforcement of the Act.

BACKGROUND OF NATIVE AMERICAN ARTS

In 1996, Native American Arts, Inc., an Indian arts and crafts organization was organized by members of the Ho-Chunk Nation to market and distribute only authentic Native American made arts, crafts, and jewelry. It is headquartered in the Chicago, Illinois area. The authenticity of the Native American made products was to be a main selling point along with high quality. After the operation was launched, it was determined that the market place was being flooded with imitation Indian products being sold as authentic. Retailers and wholesale suppliers falsely suggested or falsely represented that their products were authentic Indian-made products when they were not. Subsequent investigation revealed that many of the imitation products were made in Mexico, China, and the Far East.

In addition, Native American Arts tried to get retail space in shopping malls around Chicago and on some occasions was turned down because other retailers in the same mall were selling competing Indian products. It was later determined that some of those retailers were selling imitation Indian products as being authentic.

SUMMARY OF PRIVATE ENFORCEMENT PROGRAM RESULTS

Native American Arts originally filed lawsuits directly as an "Indian arts and crafts organization" under the Act. A Federal District Court in the Northern District of Illinois ruled that the action must be brought by either an Indian tribe or the U.S. Government on behalf of the Indian arts and crafts organization.

In a major effort to address the problem and to advance its cultural and economic interests, the Ho-Chunk Nation then brought suit as a representative Plaintiff for and on behalf of Native American Arts, Inc. The Ho-Chunk Nation has now brought twelve lawsuits under the IACA in the Northern District of Illinois. Three of the twelve cases are still pending and nine have been resolved through settlement. The exact terms of the settlements are confidential under court orders which we must honor. But the public record reveals that we have secured injunctions against nine of the defendants. Those injunctions prohibit any future violation of the Indian Arts and Crafts Act. Some of the injunctions provide detailed provisions for prominent disclaimers that some Indian style products are non Indian-made. One injunction provides for detailed continuing oversight of the defendant's marketing methods regarding Indian style goods.

These actions are expensive and difficult cases brought after extensive investigations. But they can and have been effective.

JUDICIAL PRECEDENT

We have secured several key judicial rulings under the Indian Arts and Crafts Act including defending its constitutional validity, and several additional rulings involving discovery issues. The key judicial rulings are Ho-Chunk Nation et. al. v. Village Originals, Inc. 25 F. Supp. 2d 876 (1998), 1998 U.S. Dist. LEXIS 17921 and Ho-Chunk Nation et. al. v. Nature Gifts, Inc. 1999 U.S. Dist. LEXIS 3687 (N.D. Ill. 1999).

Those rulings rejected constitutional challenges to the Indian Arts and Crafts Act based upon First Amendment free speech grounds. These rulings held that the statute regulated only false advertising and false representations which are outside any constitutional protection. These opinions also held that the IACA is a strict liability statute and that the defendant need not intend to violate the IACA. In so ruling, the courts drew an analogy to the Lanham Act. Now, under this case law, if the defendant displays, offers, or sells products falsely suggested to be Indian-made products, they are liable without regard to their intent.

Native American Arts, Inc. v. J.C. Penney Company, Inc., 5 F. Supp. 2d 599 (1998), is the case where Judge Castillo ruled that an action under the IACA on behalf of an Indian arts and craft organization must be brought by a tribe or the federal Government. Previously, the suit was brought directly by and in the name of Native American Arts, Inc. It was because of this ruling that suits were brought thereafter by the Ho-Chunk Nation on behalf of Native American Arts, Inc. In Ho-Chunk Nation et. al v. J.C. Penney, Inc., Judge Kocoras issued a ruling on the application of claims against suppliers as Third-party Defendants. 1999 U.S. Dist. LEXIS 10716 (N.D. Ill. 1999). Judge Kocoras also denied a summary judgment motion by J.C. Penney Company, Inc. at 1998 U.S. Dist. LEXIS 17536 (N.D. Ill. 1998).

ADDITIONAL TESTIMONY

Our attorney who prosecuted these cases, Michael Patrick Mullen of the Chicago law firm of Mullen & Foster has submitted to this Committee written testimony on behalf of Native American Arts, Inc. Among other things, that testimony discusses technical problems involved in enforcing the statute and contains some suggestions for improvements to the Indian Arts and

Crafts Act. The Committee may wish to refer to that testimony for discussion of technical aspects of prosecuting cases under the statute and to consider the suggested improvements.

OTHER ISSUES

There are other issues affecting cultural integrity and economic viability of Native American traditional products and creations which deserve attention under existing law and, possibly, through new legislation. Bootlegging of Native American music is one. Misleading advertising and misrepresentations on the Internet are another. It is gratifying to have the value of Native American cultures recognized, but there are many who find it easy to misuse and distort cultural elements for their own gain.

CONCLUSION

Our efforts have had a beneficial impact in the marketplace for Indian arts and crafts. Some suppliers and retailers now use prominent disclaimers if they sell Indian style products which are not Indian-made. Those disclaimers now appear in catalogs and advertising materials, on the Internet and at point of sale locations. However, we believe that much more needs to be done. The marketplace is still saturated with imitation Indian style products falsely suggested to be Indian-made. This wrongful conduct continues to displace authentic Indian-made products in the marketplace and undermines the price and quality of authentic Indian goods. It also displaces job opportunities for Native Americans and results in continued economic hardship to Native Americans. We intend to remain vigilant regarding this problem and will pursue additional enforcement of the Indian Arts and Crafts Act where appropriate.

EXHIBIT 1
May 17, 2000

WRITTEN TESTIMONY OF TRADITIONAL COURT (CLAN ELDERS) HO CHUNK NATION

A FEDERALLY RECOGNIZED INDIAN TRIBE

Honorable Members of the Committee

It is our honor to submit the following written testimony on behalf of the Ho Chunk Nation in support of testimony submitted by President Jacob LoneTree, on the Committee's oversight hearing of the Indian Arts and Crafts Act of 1990.

It has been only ten years since the passage of this act, but a lifetime of injustice to many Indian artisans. It is our wish to present the following background; brief though it is in comparison to the complex lifestyle of an Indian artisan.

As Clan Leaders, it is one of our many duties to provide guidance, to assist and promote movements to protect our people. This is a priority of the Ho Chunk Nation and is demonstrated with the official adoption of a Traditional Court established pursuant to and by the authority of the Judiciary Act of 1995, Ho Chunk Nation. We submit to you an insight to the life of an Indian artisan in the Ho Chunk Nation, a lifestyle representative of many Indian Nations in the United States.

The Native American Nations are indigenous to this land. The land is sacred to them; and so is every plant, animal and living creation. What we know as Native Art and Crafts is a coverall name for items that once had a very important functional and sacred use to help our people in their daily lives.

There should be another name for arts and crafts, because that describes articles that are simply made for profit as you see some of the White culture that pick up old barn doors, add flowers and sell it as a home decoration. This is called an art and craft.

Native American (Ho Chunk) arts were first gifted to our people through a vision and/or prayer. This is not a short process because for many tribes, there are sacrifices of time that need to be made before even making a prayer requesting knowledge. This includes and is not limited to fasting and vigilant prayer. Once the knowledge requested through prayer is received, then a ceremony of thanksgiving is given.

EXHIBIT 1
May 17, 2000

The originator of an article then passed it down to a child, a grandchild or a relative in order to keep the tradition going. Native American (Ho Chunk) art in its simplest form was functional, as it was gifted to the people for a specific purpose by the Creator. These purposes range from an article that was made for something as important as a healing to a piece of art that was made for a very functional use, such as the well known basketry of the Ho Chunk People. Because the art is held sacred, one must receive permission before attempting to make an art form.

The Ho Chunk Culture is based upon respect. This characteristic is demonstrated through asking permission and giving permission for every part of our culture. Even before entering the Pow-wow arena, permission is sought by either the new dancer themselves or a parent. One might think that this is only a social gathering, but in fact, it is a celebration of life and each dance was born out of an issue of everyday life, such as celebrating good hunting, a good harvest or the new year (Spring). There are too numerous issues to mention regarding this one issue of pow-wow. We mention this because it clearly demonstrates the complex issue of asking and receiving permission and giving thanks. The clothes the dancer will wear are made by first asking or receiving permission from an elder. The colors he/she will wear are representative of their clan.

The intangible thing that separates Native Art from the generic terminology "arts and crafts" is the fact that the art produced by Indian nations is an extension of their heart and soul. A Native artist cannot, for the most part, go out to the local store and purchase raw materials to make their art or craft. The process for obtaining the raw materials is an invested effort of harvesting either animals, plants, or other natural materials that first need to be processed to a usable form. Even this is premised by a prayer ceremony to the Creator, before taking from the land. The Native artist has already invested much work before they can actually sit down and begin to craft the piece of art. The time and effort , not to mention the emotional, spiritual and thought that is invested into an art form is not represented in the price that he/she receives on the market.

Through necessity and survival, the native people continue to make crafts for profit to feed their families, but in all of that, they still look to the Creator for inspiration and thank Him for the talent, the ideas, the colors, and the materials to make the Arts and Crafts. It remains a very spiritual act in creating an art or craft; and many still practice the "old Ho Chunk teaching" in that a flaw is inconspicuously made in the art piece in respect to the Creator, knowing that He is the only Perfect Creator.

In conclusion the Traditional Court firmly advocates that the Indian Arts and Crafts Act of 1990 must be enforced to protect the native artist; further we

EXHIBIT 1
May 17, 2000

believe that it will extend the history of native people and perpetuate the life of native cultures. This literally will support the survival of not only a culture, but the socio-economic endeavors of the Native People indigenous to this land.

The Traditional Court submits this testimony with signature affixed below:

Willard A. Lonetree, Recording Secretary
Ho Chunk Nation Traditional Court

Date 5/11/00

EXHIBIT 4

HO-CHUNK NATION

Business Department

MEMORANDUM

DATE: May 10, 2000

TO: Jacob Lonetree, President
Ho-Chunk Nation

FROM: Bill Johnson, Executive Director
Department of Business, Ho-Chunk Nation

RE: Sale of Indian Arts and Crafts

I was pleased to hear that you have been invited by the Honorable Ben Nighthorse Campbell, United States Senator from Colorado and Chairman of the Senate's Committee on Indian Affairs, to present testimony before his Committee regarding implementation of the Indian Arts and Crafts Act of 1990.

Implementation of this Act is essential to the successful revival of Indian talents that have almost become lost. Implementation is needed to help protect the rights of these talented Indian artisans. The ability of Indian tribes to successfully market the many handmade arts and crafts of their people is also critically dependent on this Act.

In the case of Indian arts and crafts, mass production and modest import taxes on Indian "knockoffs" have really become enemies to this business, as have copyright and trademark infringements. In the American Indian's attempt to bring back cultural practices that are so important to the history of our country, this Act will provide a start toward protection of the sale of authentic Indian made arts and crafts. Implementation of this Act is a good springboard, but teeth will have to be added over time to ensure fair prices for these beautiful and inspiring handmade art and crafts.

Our own dream of the Wonk Sheek Trading Company cannot and will not be successful without the protection that can come from this Act passed almost a decade ago by Congress. Attached for your reference is a summary of the Wonk Sheek Trading Company business plan, and another summary of a diversification opportunity for the Ho-Chunk Nation which includes the distribution of arts and crafts from the Ho-Chunk culture as well as from other tribes.

DEPARTMENT OF BUSINESS
P.O. Box 667, Black River Falls, WI 54615
1.800.255.9466 • 715.284.9186 • FAX 715.284.1536

Sales of Indian arts and crafts are being held back because non-Indians are mass producing items from our culture and heritage at prices far below what Indian people can offer to just break even. It is estimated that the loss of revenue to Indian tribes and individuals is in the middle seven figures. According to individuals and companies who are active in both the National Indian Business Association (NIBA) and the Native American Business Alliance (NABA), the loss of revenue is much higher due to Indian people being discouraged from continuing their craftsmenship. This is happening because non-Indians are seizing the opportunity to import or mass produce Indian arts and crafts at much lower costs. Many believe the lost revenue number is approaching $100 million.

However, no matter how you look at it the number is alarming. At this rate the beautiful music of an authentic Indian wooden flute may not be around. The dreamcatchers from my Ojibwa people will continue to not have holes at the center of the dreamcatcher, which would never happen if they were meticulously handcrafted rather then mass produced. This is why implementation of the Act is so important.

I hope the attachments and this memo will be helpful as you give your testimony next Wednesday before the Senate Committee on Indian Affairs. Opportunities for a long neglected people are being lost. Implementation of the Act may help bring back these opportunities.

cc: Ken Whitehorse, Presidents Office, Ho-Chunk Nation
Gary Brownell, Attorney General, Ho-Chunk Nation
Jeff DeCora, Legislative Counsel, Ho-Chunk Nation
Suzette LaMere, Cultural Resources Office, Ho-Chunk Nation

HUD ICBG GRANT #B-95-SR-55-0301

Wonk Sheek Warehouse

DRAFT

Final Status and Evaluation Report

Planning and Development Division **April 17, 2000**

A. Progress

The Wonk Sheek Warehouse was substantially complete as of mid-October 1999. The Ho-Chunk Nation Department of Business will soon take delivery on the furniture, fixtures, and equipment to make the warehouse a fully functional operation, i.e., shelving, display cases, cash register, jumbo ladders, conveyor, pallet jacks, order picking carts, wire containers, and racks.

B. Expenditure of Funds

All grant funds were expended during the Ho-Chunk Nation's fiscal year ending June 30, 2000. We will provide a copy of the "Schedule of Expenditures of Federal Awards Year Ended June 30, 2000," as soon as the Nation's audit is complete. We will also provide a copy of the Department of Interior's letter approving this audit as soon as it is received.

C. Grantee Assessment

With the completion of the Wonk Sheek Trading Company Warehouse, the Ho-Chunk Nation Department of Business is well on its way to meeting the community development goals of diversifying the Nation's economy; promoting, developing, and preserving traditional crafts; providing technical support for Tribal craftspeople; and employing Tribal members.

A minimum of two Tribal members will staff the facility, one in the retail area and one in the warehouse. The retail area will sell to Tribal craftspeople the supplies needed to produce most native crafts, such as beads, yearn, needles, thread, leather, hides, etc. Initially, finished products will be sold at existing Tribal retail locations throughout Wisconsin.

As the Warehouse becomes established, the Ho-Chunk Nation Executive Director of the Department of Business will continue to work with his staff to develop and implement a plan to expand the number of retail outlets, with the ultimate goal of expanding into catalog sales.

Good morning,

My name is Jason Takala Sr. I am a member of the Hopi tribe. I am a gold and silversmith specializing in Hopi Overlay jewelry. Thank you for the chance to tell my story. I have sttached the following items to help you understand my testimony.

In 1993 my wife Margie and I went to Sedona AZ. to deliver some orders that Mr. Garland had placed with me. As we were admiring other artists work I came to a showcase with rings on a tray. I saw a ring that appeared to be my work. I asked the salesperson if I could see the ring. She took it out and gave me the ring. After observing the ring I realized that it was a casting from one of my original rings that I had made some time back. The ring was cast in 14K casting and I had only completed six rings in 14K gold. This can be observed on the attachments. By casting these rings my trademark, which I put on the inside of the rings, had been filed with solder. I could tell because there was a slight imperfection on the inside of the ring where my trademark should have been. The 14K stamp on the copied ring fit my 14K stamp exactly. No two 14K stamps are exactly alike.

I made a claim under the Indian Arts and Crafts Protection Act of 1990. I believe my claim was the first act of its kind.

I would like to compliment and thank the US attorney's office in Phoenix AZ. Especially assistant US attorney Tom LeClaire for taking such an interest in my case. Also Tony Brown, an investigator for the US department of Interior. Unfortunately their hard work and dedication to this claim was not able to serve an indictment.

The main problems attorney Christopher Kramer and I encountered in trying to bring a claim for the damages were as follows:

Tribe: Said they could not expand public funds to sue for the benefit of a private individual.
They were also worried about potential liabilities (counter claims).

US Attorney: No resources to pursue civilly.
Possibly same problem of public funds for private person?

As a practical matter, no one will able to recover under the act.

As an artist, I am very thankful for my given talent. My uncles told me "this is your given talent and no one will ever take it from you". " This is your to keep and work with. It will die slowly with you as you start to grow older. But, this did not happen. Somebody did take my talent and made a mold out of my piece (the ring) and mislead the people who observe the American Indian Act.

The economic impact on me is obvious. The copies of my work made through casting are nearly perfect, but sell for 20% of the cost of an original. I get no royalty or fees. The market is deluted.

One of the problems we had in our lawsuit under copyright and trademark law was that we could not prove who actually made the copies. All we could do was show that they had possession of the copies.

If we had been able to bring a claim under the Act, we would have been able to show that they were displaying the copies as if they were genuine, and they should have known better. I would have been

able to collect presumption damages.

I as an artist am no different from the big corporations like Sony, Walt Disney, Paramount, and RCA.

Just because I am one individual Hopi artist working with my hands to create one-of-a-kind Hopi jewelry, I should not be treated no differently as these large corporations under the copyright law.

The US government should not favor anybody under these laws.

MEMORANDUM

To: Chris

From: Pam

Date: April 14, 1994

Re: Complaints to State Attorney General and Federal Indian Arts and Crafts Board - Jason Takala

I. Indian Arts and Crafts Board

The Indian Arts and Crafts Act of 1990 expanded the powers of the Indian Arts and Crafts Board, which operates under the Department of the Interior. Under the amended statute, the Board has the authority to receive complaints of violations of Section 18 U.S.C. 1159 which prohibits the sale of any good "in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States." 18 U.S.C. 1159(a). After reviewing these complaints, the Board may refer the matter to the FBI for investigation. 25 U.S.C. 305d(a). After reviewing the investigation report, the Board may recommend to the Attorney General that criminal proceedings be instituted. Id. The Board may also recommend that the Secretary of the Interior refer the matter to the Attorney General for civil action. 25 U.S.C. 305d(b).

On April 13, 1994, I spoke with Pat Andrews of the Indian Arts and Crafts Board. She informed me that a complaint need only consist of a letter outlining the facts of the particular case sent to the following address:

Geoffrey Stamm
Indian Arts and Crafts Board
Department of the Interior
Room 4004-MIB
Washington, D.C. 20240
(202) 208-3773

According to Ms. Andrews, regulations implementing the 1990 amendments have not yet been adopted. This means that any action would be very slow in coming. Current practice appears to be limited to sending "a very strong letter" from the Board to the offending party once the complaint has been reviewed.

Despite the limited relief currently available from the Board, it might be useful to get them involved at this time. The cost of

[illegible]ending the complaint would be minimal and a letter from the Board would improve Mr. Takala's negotiating position.

In addition, it may be possible for the Hopi tribe to initiate a civil action on behalf of Mr. Takala. 25 U.S.C. 305e(c)(1)(B). Although the legislative history indicates that action may be brought by "any person aggrieved by the prohibited conduct," the final version of the statute does not allow for it. I also spoke with Meredith Stanton at the Indian Arts and Crafts Board who confirmed this fact. Ms. Stanton asked that we keep them informed of our situation and is sending me some Interior Department publications on the subject.

II. Arizona Attorney General

The Attorney General's office also requires a letter outlining the facts of the case along with copies of any supporting "evidence." Unlike the Indian Arts and Crafts Board, they were extremely unhelpful. The person in charge of these complaints is Deborah Vasquez. I have not yet been able to reach Ms. Vasquez. Although the statute directs the attorney general to promulgate rules to implement and enforce the statute, these regulations have apparently not been adopted.

The letter should be sent to:

Attorney General - State of Arizona
1275 W. Washington
Phoenix, Arizona 85007

Attn: Deborah Vasquez

The Special Investigations Division of the Attorney General's office has been involved in a lawsuit regarding the sale of counterfeit Indian jewelry in Scottsdale. Perhaps there will be some precedent in that suit for us to follow.

TAKALA

Chris - The following summarizes the potential problems we have discussed relating to Jason Takala's cause of action for copyright infringement. This outline should serve useful in our consultation with Martha Blue on Wednesday.

I. STATUTE OF LIMITATIONS

A civil copyright action must be brought within three years after the claim accrues. 17 U.S.C. 507. A claim "accrues" at "the time that the infringement upon which the suit is based occurred." Nimmer on Copyright 12.05. If the infringement occurred within three years prior to filing, the action will not be barred even if prior infringements by the same party as to the same work are barred because they occurred more than three years previously. Id.

The seventh circuit, in Taylor v. Meirick, held that if a series of acts constitute a "continuing wrong," then only the last such act need occur within the statutory period to create liability for all such acts. 712 F.2d 1112 (7th Cir. 1983). The court stated: "knowing [defendant] had placed infringing copies in the hands of his dealers [he] could not sit on his hands while they sold them." Id. at 1117. The court did not define "continuing wrong" and other courts have split on the doctrine's application.

Once a defendant establishes a statute of limitations defense in a copyright action the plaintiff may demonstrate equitable reasons for tolling the statute. Nimmer 12.05. In Taylor, Judge Posner stated:

> Although many cases state that mere ignorance of a cause of action does not toll the statute of limitations, in context these statements invariably mean only that the plaintiff has a duty of diligence: it is not enough that he did not discover he had a cause of action, if a reasonable man in his shoes would have.

712 F.2d at 1118. He summarized by stating that the Copyright Act statute of limitations "is tolled until the plaintiff learned or by reasonable diligence could have learned that he had a cause of action." Id. at 1117.

A statute of limitations problem may also arise where the complaint has been filed within the statutory period, but compliance with the procedural requirement of copyright registration does not occur until a later date, after the statutory period has elapsed. Nimmer 12.05. At least one court has suggested that a later registration could "relate back." See 510 F. Supp. 43 (N.D. Cal. 1981).

II. Failure to Affix Copyright Notice

Although Mr. Takala recognizes the ring in question to be a "knock-off" of his work he does not remember when the original ring was made. It is clear however, that Mr. Takala did not begin affixing any type of copyright symbol to his work until 19___. Currently, Mr. Takala uses only the symbol and his name. It should be suggested to Mr. Takala that he also include the year in his notice in order to comply with Copyright Office requirements.

If the ring was "published" after March 1, 1989 notice would not be required to secure copyright protection. However, if it was first published prior to March 1, 1989 all protection may have been lost by failure to affix copyright notice. Works published between January 1, 1978 and March 1, 1989 were subject to "savings" provisions, but those provisions are now moot.

The notice provisions also raise the issue of exactly what Mr. Takala seeks to copyright. The original ring probably cannot be copyrighted since there is no way to track down the original or even determine when it was made. It might be possible to copyright Mr. Takala's version of the Man-in-the-Maze design if his additions can be identified. If the design is copyrighted, it should be determined whether the copyrightable elements appear in every piece Mr. Takala creates, or whether each design should have separate copyright.

Finally, if the design is copyrightable there may be room for arguing that the omission of the copyright notice is excusable. In Peter Pan Fabrics, Inc. v. Martin Weiner Corp., Judge Learned Hand held that "at least in the case of a deliberate copyist, the absence of a notice on a design will constitute a defense only if the defendant assumes the burden and proves that the notice could have been embodied in the design without impairing its market value." Nimmer 7.13[D]; 274 F.2d 487 (2d Cir. 1960). However, it has been suggested that the principle stated in this opinion is limited to cases where proper notice was affixed and thereafter removed. Nimmer 7.13[D] n. 108.

The Federal Indian Arts and Crafts Protection Act of 1990

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Purpose:

According to both the House Judiciary and House Interior and Insular Affairs Committee reports, the purpose of the Indian Arts and Crafts Protection Act of 1990 (25 U.S.C. 305a, et. seq. and 18 U.S.C. 1159) is "to protect Indian artists from unfair competition from counterfeits."

In a 1985 report, the United States Department of Commerce estimated the market for Indian Arts and Crafts at $400 to $800 million. We can reasonably assume that the market for native arts and crafts has expanded steadily in the ten years since that report.

The same report estimated that imported imitations alone were siphoning off 10 - 20 percent from the genuine manufacturers' markets. Thus, as of 1985, imported counterfeits and imitations were costing Native American artists between $40 million and $160 million annually.

The report did not estimate the impact of domestically produced imitations and counterfeits. While we are unaware of any studies, it is our perception that much of the counterfeit or imitation art currently on the market is of domestic origin. For these reasons, we believe the Commerce Department's figures are conservative in terms of the cost of counterfeits and imitations to the genuine manufacturers.

The committees' inclusion of these estimates in their reports emphasizes the positive economic impact of arts and crafts production for Native Americans. The Act seeks to remedy a problem costing Native American artists tens or more probably hundreds of millions of dollars annually. Even assuming a conservative figure of $100 million lost annually to counterfeiters and imitators, since the passage of the Act in 1990 Native American manufacturers of genuine goods have lost over $500 million to counterfeiters. The figure is probably closer to one billion dollars.

History:

In spite of the enormous adverse economic impact of counterfeiters and imitators on Native artists producing genuine goods, very little has been done to enforce the Act. In order to understand the enforcement scheme, and the problems that currently exist with enforcement, we must understand the background and history of the Act itself.

The Act amended 25 U.S.C. 305a et. seq. and 18 U.S.C. 1159 among other laws. The predecessor laws had been on the books since 1935. At the time the amendments were proposed to Congress by Congressmen Ben Nighthorse Campbell and Jon Kyl in 1989, however, there had not been a single prosecution under the Act for over 50 years. As the committee reports wryly note: "Although this law has been in effect for many years, very little has been done to enforce it." The same might be said of the amended Act.

Key Provisions and Changes:

The Act amended the provisions of 25 U.S.C. 305a, which created and set forth the powers and duties of the Indian Arts and Crafts Board, and the provisions of 18 U.S.C. 1159, which set forth criminal penalties for misrepresenting goods and products as being Indian produced or the product of a particular Indian artist, organization or Tribe. These misrepresentations can also result in civil penalties under 25 U.S.C. 305e.

A principal reason for the lack of enforcement for the 1935 Act was that the criminal statute, former 18 U.S.C. 1159, required "willfulness" and "intent" to prove a violation. House Report No.: 101-400(I), February 6, 1985, page 4. The new Act no longer requires proof of willfulness or intent for the criminal penalty to apply. Under the new Act, if a person "knowingly" offers or displays for sale or sells any good in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian Tribe or Indian Arts and Crafts organization, criminal penalties apply.

The distinction between "knowingly" and "willfully" or "intentionally" may not be clear to a layman. However, these are terms of art having very distinct meanings in criminal law. It is much easier to prove that a person had knowledge of his act than the person intended to perpetrate the elements of a crime.

In the context of the Act, a dealer might display counterfeit jewelry on the same tray with genuine jewelry. The jewelry might be displayed in a manner that falsely suggests that the counterfeits are genuine. In order to impose criminal sanctions under the old law, the prosecutor

would need to prove that the dealer intended to cause the confusion. Under the new law, the prosecution could simply show that he knew that he was displaying counterfeits and genuine articles on the same tray. It would not be necessary to show that he intended to cause confusion, but merely that the display falsely suggested that the counterfeits were also genuine.

Of course, there are more subtleties in this distinction which the courts will need to determine as cases arise. We are currently unaware of any court decision which interprets these specific provisions of the Act. However, it is crystal clear that congress intended to make the law easier to enforce by making its elements easier to prove.

Criminal penalties to be imposed under the 1990 Act are much more stringent than those available under the old Act. Under the 1990 Act, an individual guilty of a first violation can be fined up to $250,000 or be sentenced to five (5) years in prison, or both. Each subsequent violation by an individual is punishable by up to $1,000,000 in fines or fifteen (15) years in prison, or both. A "person" other than an individual, such as corporations, can be fined up to $1,000,000 in a case of a first violation. Each subsequent violation by a "person" other than an individual is punishable by a fine of up to $5,000,000.

The Act also added civil penalties. It is easier to prove a civil violation than a criminal violation. The Act downgraded the mental state necessary to prove a criminal from willful and intentional to mere knowledge. The availability of a civil remedy does not hinge on the proof of any particular mental state. In order to invoke the civil remedies, the plaintiff must simply show that

a good was displayed for sale or sold in a manner which falsely suggested it was genuine. The defendant's mental state is relevant only to damages.

If a civil defendant displays for sale or sells a counterfeit or imitation good in a manner that suggests it is genuine, the plaintiff can ask the Court to award 1) injunctive relief, i.e.: a court order that they must cease doing so; 2) the greater of treble damages or not less than $1,000.00 for each day on which the offer or display for sale or sale continues. The court also has the discretion to award attorneys' fees and costs of suit.

The court may also award punitive damages. Although not specified in the statute, in general there must be an element of recklessness, maliciousness or intent for an award of punitive damages. In the context of the Act's statutory scheme, a court probably would find a "knowing" violation of the Act sufficient to warrant an award of punitive damages.

In a civil action, the plaintiff only needs to prove the case to a "preponderance" of the evidence: That it is "more likely than not" that the defendant committed a violation. This is a much lighter burden than the government's burden in a criminal case, which is to prove its case beyond a reasonable doubt. While a defendant might escape criminal sanctions because the case against him or her cannot be proven beyond a reasonable doubt, they will not necessarily escape punitive sanctions, if even in the existence of a reasonable doubt it is still more likely than not that the defendant knowingly committed the violation. By adding the civil sanctions in 25 U.S.C. 305e the Act has again made it easier to remedy the effect of and/or enjoin counterfeiting.

Procedures:

If an artist, arts and crafts organization or the Tribe suspects a violation of the Act, the proper procedure is to make a complaint to the Indian Arts and Crafts Trade Board at the Department of the Interior. 25 U.S.C. 305a charges the Secretary of Interior with "the function and the duty" to promote the economic welfare of Indian Tribes and individuals through the development of Indian Arts and Crafts. As part of this function and duty, the Department of the Interior, through the Indian Arts and Crafts Trade Board, has the authority to act on these complaints.

The Board can refer the matter to the F.B.I. for investigation. Based on the F.B.I.'s report, the Board can recommend, but cannot require, that the Attorney General commence either criminal or civil proceedings under the Act.

Standing:

The United States Attorney General has the authority to institute criminal proceedings. Either the United States Attorney General or a Tribe may institute civil proceedings. At the time of the Judiciary Committee report, the Act contemplated that an individual aggrieved by a violation of the Act could institute civil proceedings. This provision was apparently deleted, as it does not appear in the final version of the Act.

One of the primary problems with the Act is the issue of standing. An artist whose work is being counterfeited must rely on the good offices of either the Federal government or the Tribe to which he/she belongs to protect his or her rights. We can only speculate that individual standing was deleted because it would tempt Federal or Tribal governments to shirk their responsibility to

pursue these cases. They might take the position that aggrieved individuals should sue on their own behalf. However, individuals often lack the resources (time and money) necessary to pursue complex and lengthy investigations and litigation. This is particularly true where the counterfeiters are well organized and well financed as compared to the individual artists who want to enforce their rights.

The Department of the Interior clearly has a duty to pursue these cases under 25 U.S.C. 305a. It has a specific duty to protect and promote Indian arts and crafts. The Justice Department's duty is to uphold the laws of the United States and prosecute violations of those laws.

Difference between Federal and State Law:

There are several differences between the Act and State laws covering the same subject matter. Normally, State laws would be preempted by Federal law. However, the Judiciary Committee report specifically states that a preemption clause was deleted from the Act. That committee noted that the states should be permitted to protect their own Indian arts and crafts, provided they do not interfere with Federal law. Therefore, state laws dealing with the subject are still in effect.

From the standpoint of enforcement, one of the major differences between the Act and Arizona law is that under Arizona law, an Indian can legally imitate or counterfeit the work of another Indian Tribe. That is not permissible under the Act. For example, if a Navajo artisan sells or displays for sale Hopi style jewelry in a manner that falsely suggests that it is a product of a member of the Hopi Tribe, that would be actionable under Federal law. Under Arizona law it would not be actionable. Arizona arts and crafts laws consider an Indian an Indian regardless of

the Tribe to which he or she belongs. Federal law distinguishes not only between Indians and non-Indians, but among the various Tribes.

Recommendation and Conclusion:

We believe the following would be appropriate in light of the provisions of the Act and matters discussed in this opinion:

1. Disseminate information regarding the Act and its provisions to artists and businesspeople;
2. Encourage legitimate complaints against individuals or organizations who copy, imitate or counterfeit Native American art;
3. Vigorously pursue complaints with the Department of the Interior;
4. Make sure that any complaints directed to the Department of the Interior are brought to the attention of an agency or attorney charged with protection of Native American arts and crafts;
5. Demand that Tribes pursue civil actions against alleged violators. The creation of a Tribal Arts and Crafts Commissioners or other appropriate bodies charged with the Tribes' authority to investigate and pursue violations in the name of Tribes may be appropriate. The commissioner could recommend that an attorney hired or retained by the commission pursue these cases. The commissioner would need the Tribe's authority to either sue in the name of the Tribe or to assign its right of action to the aggrieved individual artist or organization in an appropriate case.

My office is currently pursuing a claim under the Act on behalf of a Hopi artist. The Department of the Interior has been very cooperative in investigating this matter. The Solicitor General's office was quick to assign a U.S. Attorney to work on the case. This had led us to believe that the Federal government takes these matters very seriously, however instances of complaint are few and far between. Also, the investigation in that case is for possible criminal violations. Given the workloads in U.S. Attorneys' offices, it is about certain that no civil action or sanctions will result, even if there is a criminal prosecution. Thus, the artist actually harmed by the violation will probably not be compensated under the Act, even if the perpetrators are punished.

We should have two (2) objectives:

1. Protecting the artists and legitimate tradespeople, who lose millions of dollars every year to counterfeiters and imitators;
2. Protection of the public from counterfeit goods.

Unfortunately, individuals and organizations do not have standing to take any direct action under the Act. That standing is reserved to the Federal government and the Tribes.

Kirkpatrick & Kramer
a professional corporation

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Fax: (602) 774-1833

Ann L. Kirkpatrick
Christopher W. Kramer

June 22, 1994

Mr. Geoffrey Stamm
Indian Arts and Crafts Board
Department of the Interior
Room 4044-MIB
Washington, D.C. 20240

Dear Mr. Stamm:

I am writing on behalf of my client, Jason Takala, to request that the Secretary of the Interior recommend to the Attorney General that civil action be taken against Robert Lewis d.b.a. Lewis Traders of Holbrook, Arizona, and/or other appropriate individuals or entities under the provisions of 25 U.S.C. 305e(c)(1)(A). In addition, we request the matter be referred to the Federal Bureau of Investigation for appropriate action under 25 U.S.C. 305d(a).

Mr. Takala is a Hopi artist of wide reputation. He has received numerous awards for his craftsmanship, including ribbons in shows at the Heard Museum in Phoenix, Arizona and the Museum of Northern Arizona in Flagstaff, Arizona. Mr. Takala's work is highly distinctive and easily recognizable to those familiar with Hopi jewelry.

Earlier this year, Mr. Takala discovered a copy of one of his rings for sale at Garland's, a store in Sedona, Arizona. The ring in question contained a "Man-in-the-Maze" design in the center with a pattern on either side. Although the Man-in-the-Maze design is popular with many artists, Mr. Takala's interpretation is distinctive. For example, Mr. Takala's design is made with a very fine line. Mr. Takala also lifts his engraving tool each time he makes a new line rather than connecting the entire maze together in one undisturbed line. He uses eight cuts where other artists use only two. In addition, the pattern on either side of the maze design was created by Mr. Takala as a symbol of "unity." His inspiration for the

pattern was the logo used by the United Way which shows two hands clasped together in "unity."

The counterfeit ring was made from a mold of Mr. Takala's original. In addition to the distinctiveness of the design, this is apparent for several reasons. First, Mr. Takala's trademark on the interior band appears to have been filled in with solder prior to the molding. There is an imperfection on the inside of the ring where the trademark had been in the original. Second, the counterfeit ring has no solder line. Hand made original work is made from a flat sheet of metal. Therefore, when it is bent into ring shape it must be soldered on the bottom. Finally, Mr. Takala's 14kt stamp fits perfectly with the 14kt impression in the copy.

According to store records, the ring was sold to them by Robert Lewis of Lewis Traders. Mr. Lewis had dealt in Mr. Takala's original work for several years prior to this incident. He was familiar with both the distinctiveness and the value of Mr. Takala's work. An original Jason Takala 14kt gold ring may sell for $1,500 or more. The counterfeit ring was sold by Mr. Lewis for about $350.

Mr. Lewis says he bought the counterfeit ring from Ron McGee of McGee's Trading Post. Mr. McGee has done business with Mr. Takala for several years. He denies he made or sold copies of Mr. Takala's work. The only thing we know for certain is that Mr. Lewis sold at least two copies to Garlands, who sold at least one copy to one of their customers.

Although only one counterfeit ring has come into Mr. Takala's possession, it is highly unlikely that this is an isolated incident. In order to make a mold of a ring the original must be destroyed. The resulting mold, however, can be used to make a number of copies. According to Garland's, at least one other copy was sold by them to a buyer in California. This has not been confirmed. Given the price of the original ring, however, it would not make sense for anyone to make only one copy.

On March 14, 1994, we contacted Mr. Lewis concerning these facts. A copy of my letter to Mr. Lewis is attached and incorporated by this reference. Through his attorney, Mr. Lewis admitted selling the ring but claimed that he believed it to be an original Jason Takala design. It is unlikely, however, that a trader of Mr. Lewis' experience with Hopi jewelry in general and familiarity with Mr. Takala's work in particular could have made such an error. In addition, Mr. Lewis has been unable or unwilling to provide us with any records indicating where he obtained the counterfeit ring.

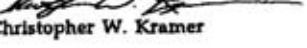
Enclosed please find a copy of Garland's price card. Should any additional information be necessary to your investigation please do not hesitate to contact me. It is my understanding that Mr. Lewis may be reached through his attorney.

Van C. Bethancourt, Esq.
1116 E. Greenway, Suite 101
Mesa, Arizona 85203-4351

Thank you for your cooperation in this matter.

Very truly yours,

KIRKPATRICK & KRAMER, P.C.



Christopher W. Kramer

CWK:ad

cc: Van C. Bethancourt, Esq.

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Ann L. Kirkpatrick
Christopher W. Kramer

October 20, 1994

Special Agent Anthony L. Brown
Department of the Interior
3225 N. Central Ave., Suite 811
Phoenix, AZ 85012

Re: Our client: Jason Takala
File No. CFI93-001

Dear Special Agent Brown:

When we met in Phoenix last summer, we discussed Mr. Takala's complaint against Bob Lewis under the Federal Indian Arts and Crafts Protection Act, 25 USC § 305, et. seq. and 18 USC § 1159. As you may recall, Mr. Lewis sold two copies of one Mr. Takala's original designs to Garland's Trading Post in Sedona. Garland's in turn sold one of those copies to a customer and the other to Mr. Takala.

The copies have been made by taking a relatively inexpensive silver ring and creating a cast. Gold is then poured into the mold, which can be used to make nine to ten copies. A cast ring takes five to ten minutes to make and costs somewhere in the neighborhood of $ 150.00 to produce. The equipment required to produce these copies costs somewhere in the neighborhood of $ 500.00.

An original Jason Takala fourteen karat gold band ring, of the type we discussed, costs around $ 1,500.00 retail, and $ 800.00 to $ 900.00 wholesale. It takes hours to produce, since each ring is individually designed, cut and formed. Obviously, someone making ten of these rings in an hour at the cost of $ 150.00 each can significantly undercut the market for the originals. As you know, part of the purpose of the Department of the Interior's Indian Arts and Crafts Board is to protect the market for Native American artists producing original, authenic works.

Mr. Takala's has learned that an outfit in eastern Gallup, New Mexico named "Al Zuni" is mass producing copies of original Native American jewelry. Ron McGee, of McGee Traders in Keams Canyon, Arizona, obtained at least two of these fakes according to Mr. Takala. Neither is molded from Mr. Takala's work. It is our concern that Al Zuni may have been source of the copies which Mr. Lewis obatined and sold to Garland's, assuming he was not the source. However, we have no direct evidence at this time.

I have spoken with Milland Lomakema, the Executive Director of the Hopi Arts and Crafts Cooperative Guild. He informs me that Al Zuni is believed to be a major source of counterfeit Hopi-style jewelry. I have not spoken with Mr. McGee, but Mr. Takala informs me that Mr. Mcgee should be able to confirm this information.

I hope this information proves useful in your investigation. If we can be of any assistance, please do not hesitate to contact us.

Very truly yours,

KIRKPATRICK & KRAMER, P.C.

Christopher W. Kramer

CWK:ciw
cc: Jason Takala

Milland Lomakema, Sr.
Executive Director,
Hopi Arts and Crafts Cooperative Guild

Testimony of the
Council for Indigenous Art and Culture
Presented By Andy P. Abeita

Submitted to
The United States Senate
Committee on Indian Affairs
Oversight Hearing
on the
Implementation of the American Indian Arts and Crafts Protection Act
Public Law 101-644

May 17, 2000

I am a Native American Indian artist from Isleta pueblo, a commercial trade consultant, in the Handcraft Sector for the United Nations International Trade Centre and the first American Indian president of the Indian Arts and Crafts Association (IACA).

The last ten years I have been working with several Indian arts organizations and Indian Tribes under the auspices of the IACA in the area of aboriginal arts and crafts preservation and legal protections. As time had passed myself and other devoted members of the IACA board had found it necessary to create a separate educational resource organization with a not for profit 501 c3 status in order to adequately address governmental and public sector art and cultural related legal and educational concerns. In 1997, I founded the Council for Indigenous Arts and Culture. The recently created Council for Indigenous Arts and Culture received its federal tax designation 501 c3 status in 1998. Since it's inception **CIAC** has undertaken projects that primarily center around Indigenous North American native communities and the difficulties that these communities are facing in trying to protect and preserve their native arts and culture, in the ever changing world around them.

I speak four different Indian languages and have worked professionally as an artist for the last 15 years. I come from a small American Indian community called Isleta Pueblo, located 13 miles south of Albuquerque, New Mexico.

For centuries, arts and handcrafts have played an important role in both the religious and social dichotomies of our Indian people. The images that you see in most all of the designs used in Native American arts and crafts are religious in nature. Even the hand fabrication process used in the creation of such works is often a reflection of an individual artisans relationship with tools that begin with a beating heart, mind and spirit. Our history ties us to this earth and our Creator is evident in most all you will see in the images of the cultural arts of the Native American artisan.

HISTORY: Case Example

In Isleta Pueblo, over the last 50 years we have seen our artist population decline from 150 to 30 full time craftsmen and women. The most significant losses were in the late 1960's through the 1980's. Historically, we have been known for our fine coiled red clay pottery and fine old Spanish style jewelry. They are fast becoming a dying art. Unfair competition from import fakes and mechanically cast pottery and jewelry is now often being sold to the unsuspecting consumer as Indian handmade. This threat has made it almost impossible to compete fairly in the commercial market place. Forcing generations of potters and silversmiths to discontinue the trade. Which in turn essentially removes the next generation from having a chance to continue the tradition.

Currently, through our organization CIAC, we are networking with many American Indian tribes as well as Canadian aboriginal tribes in developing a certification trademark for each tribe to register with the US and or Canadian patents office. The purpose of the trademark is to develop an authenticating insignia. Which can be indelibly marked into the handmade products of each individual member of each respected tribal sovereign, hence authenticating an artist members work as being a genuine original deriving from the Indian nation as well as an individual member of that constituency. Currently, we are creating the interior protections policy for the trademarks usage, as well as specific policy and regulations for its use in commercial trade, in and out of their own tribal jurisdictions. (* For clarification of Trade mark distinctions see attached memo)

American Indian tribes involved in this project are trying their best under the circumstances to facilitate this new arts and crafts initiative. But, until recently most of them did not realize the magnitude of the problem, and finding funding sources with a limited government appropriated budget is almost impossible. We have found that grassroots needs assessment studies with direct community involvement has helped us tremendously at the local level in some communities. The concept of direct community involvement in economic development has made a big difference in the community's vision of itself. It works.

HISTORY : Statistical data

In **1980**, the US Census / Bureau of Indian Affairs conducted a nation wide census survey of 554 American Indian tribes in the US. The purpose of the survey was help establish statistical data on native populations and economic conditions in Indian country. Included in this survey were the Indian tribal nations of Zuni with a population of 10,000, Hopi with a population of 13,000, Navajo with a population of 245,000 and many river pueblo tribes of New Mexico with an average population of 3 to 5,000 each. This hand full of Indian tribes are noted as being the nations leading producers of hand-

made Indian arts and crafts, both ethnic and contemporary in the current commercial market.

This census survey indicated in the above mentioned communities that there was an average of a **30% to 40% unemployment rate in 1980**. Also noteworthy is that up to **85%** of the families surveyed reported that arts and crafts were either a primary or secondary form of income. Industry experts with the Indian Arts and Crafts Association point out that the Indian arts and crafts industry was in a historical all time peak in the over all business in that general time frame.

In another US Census / Bureau of Indian Affairs census poll taken in **1990** these same tribes were found to report an **unemployment rate of between 50 and 65 %.**

In **1985**, a related survey done by the **US Department of Commerce** indicated that the Indian arts and crafts industry was estimated to be generating between $700 and $800 million dollars annually in gross revenue.

In **1997**, at an Indian Arts and Crafts Association sanctioned meeting held in Albuquerque, New Mexico, the **US Indian Arts and Crafts Board** indicated to a multi-tribal delegation, that the industry was generating well over $1 Billion annually and growing.

	1980	**1990**
Unemployment Rate:	**35%**	**57.5%**
	1985	**1997**
Industry Annual Gross Revenue:	**$ 750 million**	**$ 1.2 Billion**

Industry statistics clearly indicate that the industry is growing, undoubtedly. The Indian Arts and Crafts Association reports that more businesses than ever are carrying American Indian style handcrafts and jewelry. The association has a mailing list of over 12,000 businesses. But, the unemployment rate and the gross revenue reports expose an interesting concept in supply and demand growth. The supply is growing, but, who is making the product?

The historical promotion and commercial successes derived from the sales of American Indian goods has also contributed to the onslaught of commercial imitations that have found their way into the market place both locally into Indian country, as well as the national level. We have also seen the growth of imitations beginning to takeover a substantial portion of the international market.

Investigative reports from cities around the world such as Santa Fe, New Mexico,

Los Angeles, California, New York, New York, Paris, France, Milan, Italy, Tokyo, Japan and Frankfurt, Germany indicate large quantities of fake arts and crafts being represented as authentic and original American Indian art works. The statistical data found in the surveys done by the US Census / Bureau of Indian affairs is yet to be analyzed by either tribal administrations or US governmental agencies. But, none the less the information has lead the way for the Council for Indigenous Arts and Culture to utilize the data as best as we are able.

The United States Customs Office reported to the CIAC that since 1990, countries such as the Philippines, Mexico, Thailand, Pakistan and China have been importing an average of $30 million dollars annually combined in American Indian style arts and crafts. Although the US Customs agency stated that the dollar amount was an estimate not a fact, the numbers are quite significant nonetheless. Some of these items include jewelry, artifact reproductions, pottery, ethnic crafts and textiles.

Enforcement of Public Law 101-644

New Mexico and Arizona provide the world market with roughly 80% of all commercial Indian hand-made goods. The CIAC has been working with law enforcement agencies in both US and State government agencies in combating the fraudulent sales of Indian arts and crafts in these regions. Recent investigations have uncovered that many businesses in these several states also participate in the multi-million dollar sales of fake Indian arts and crafts.

It is an important element within the CIAC's mission to promote national consumer education, as well as law enforcement education for Indian arts and crafts. Statistical information gathered from industry sources over the last five years indicate that up to 50% of all Indian arts and crafts sold in the United States may not be Indian handmade, by definition.

The federal regulation under the PL 101-644 does not offer explanitory definitions for method of creation but several states Indian arts and crafts statutes do. There are three definitions under those regulations. **Hand-made** which is defined as taking manual labor and raw material and producing a final product. **Hand-crafted** means to take pre-made parts and pieces and to manually assemble them to create a final product. And **Machine-made** means a product that is totally machine made.

Education

The federal government and the State of New Mexico have Indian arts and crafts protections laws. The biggest problem has been a lack of education on their behalf. CIAC research had found that these government agencies and their agents have not had an opportunity to be trained on how to identify Indian and or non-Indian products. In 1995, under the leadership of then IACA, president Mrs. Pam Phillips the IACA began the training process for agents, than in 1997, the CIAC continued the practice

providing both classroom and field training for law enforcement agents. Included in this training are members of the NM and Arizona's Offices of the Attorney General, FBI, US Customs, Office of the Inspector General and World Customs agents.

US Customs

The US Customs law, "1989 Omnibus Fair Trade Bill reg.19 CFR Sec. E 134.43 actually requires that any and all Indian style jewelry or crafts imported into the US **must were a country of origin stamp indelibly marked into each individual piece of jewelry or craft** entering US boundaries. The biggest down side to the law is that a loop hole was created in the language. Whereas the term under exceptions read, "Unless technically or commercially infeasible." The intent of the law is to force importer / manufacturers to mark their goods indelibly with the country of origin. As read in the law, *by die-stamping or otherwise permanently marking the goods as to country of origin*. Example, many manufacturers have found that by attaching to jewelry a small soldered wire(so called permanently attached) with a tag indicating the country of origin, US customs port inspectors allow the products to pass inspection (There are over 330 ports of entry into the US.). After passing the customs port many unscrupulous importers and unethical arts and crafts dealers simply snip off the wire tags and begin to sell the goods as authentic American Indian art works.

Basic cost for goods deriving from products created in many foreign countries are often sold in the US at one fourth the cost of US production, because of low wages paid to workers in those countries.

Based upon the information acquired through the US customs service, the manufacturing of American Indian ethnic and contemporary arts and handcrafts has created an enhanced economy for many individuals of countries outside of the United States and Canada. Living in a free society American Indians hold no grudges against free enterprise or the jobs created by a successful industry. But, the key to successfully marketing any ethnic or commercially produced good regardless of what country you live in is to properly identify the individual producer and or the country as to where the good was produced. From the old saying "Give credit where credit is due."

Trademark Provisions

Consumer Confidence is Key

Trademarks protect consumers by helping them make decisions in the marketplace for goods or services. The law of trademarks rests not alone on the property rights of the trademark owner, but in the right of the consuming public to be told the truth. Thus, in a trademark infringement lawsuit, a plaintiff acts as the vicarious avenger of consumer interests. At present, consumers of Indian Arts and Crafts are confused, not specifically

as to whether an individual Indian artist created a work but rather as to whether the work in question is a genuine Indian work and not a cheap imitation.

Consumer confidence in Indian Arts and Crafts is perhaps at an all time low. Instances abound of consumers being misled as to the authenticity of a piece of art work. In general consumers are at a disadvantage vis-a-versa sellers because of their inability to judge the authenticity of a piece of Native art work. To date, a number of debates have taken place within Indian Country as to what form of trademark will best serve consumers in Navajo and in other Indian nations. The merits of regular trademarks, collective trademarks and certification trademarks have all been considered.

A regular trademark does not adequately resolve such consumer confidence issues; instead, a regular trademark typically resolves confusion as to a source, such as an individual artist or company. To perform this function, a regular trademark must identify a single source, not multiple sources. On this basis, a regular trademark is not the correct tool because many artists cannot fit squarely within the single source concept required by trademark law. A regular trademark works for franchises because every franchisee sells the same product, whereas, artists within an Indian nation do not.

A Certification Trademark

Collective trademarks do not address the confidence problem either. According to the United States Patent and Trademark Office's Manual for Trademark Examining Procedure, if a collective trademark takes into account characteristics of a good, then it is properly classified as a certification trademark. Thus, to boost consumer confidence in the marketplace for Indian arts and crafts, a certification trademark is the correct tool.

Certification Trademark Project

Indian nations are slowly learning the benefits of a certification trademark for certifying that goods are (i) made by a member of the Indian nation and (ii) that the goods are handmade. Again, the goal is to boost consumer confidence and to let them know when they are buying an authentic Indian handmade good.

This trademark when adopted by Native tribes will assist the industry as well as the tribes themselves in the authentication of the arts and crafts goods of their particular tribal members. Currently, the CIAC is assisting the Navajo nation, the Zuni nation, and the Hopi tribe in actively developing the **trademark initiative**. Although the focus of our efforts have been in these three primary art producing tribes, the river pueblos of New Mexico are also heavily affected by the onslaught of fake arts and crafts in their market as well.

The certification trademark project considers that the Indian nation will own the trademark and an authority within the nation will administer the trademark. (Application forms for an artisan's use of a certification trademark have been drafted and

enforcement issues have been taken under consideration.) The authority, however, cannot be involved in the sale or manufacture of goods to be certified, which adds an additional measure of confidence. Consider Underwriter's Laboratories for example. How would a consumer respond to UL certification if Underwriter's Laboratories manufactured and sold their own line of goods? With consumer confidence in the Indian arts and crafts market so low, this protective measure is well worth any additional administrative burden.

Overall, plans for executing a certification trademark project are at an advanced stage in Navajo and in the Pueblo of Zuni. Support from Federal and State governments would be greatly appreciated. However, it is imperative that the ownership and administration of the certification trademark be the responsibility and within the sole control of the Indian nation. Federal and State governments can help by supporting the trademark's administrative authority financially and through education. Federal and State governments can also help by working with the Indian nation's Department of Justice, especially in instances of certification trademark infringement.

Support a Certification Trademark Program

The Certification Trademark Project has been put together by Indian nations for Indian nations to address the root of economic harm in the market for authentic, handmade Indian arts and crafts. Whatever way the Federal government plans to help, it must support this mission and not dilute it. Furtherance of a program supporting individual trademarks for individual artists may dilute this effort; therefore, we ask that the United States Congress choose to support the certification trademark project only.

We further believe an opportunity exists for incorporating a certification trademark provision into the Indian Arts and Crafts Act. Such a provision may help clarify and strengthen the Act.

Testimony of the
Indian Arts and Crafts Association
Presented by Tony Eriacho Jr.

Submitted to United States Senate
Committee on Indian Affairs
Oversight Hearing on the
Implementation of the 1990 Indian Arts and Crafts Act
Public law 101-644

May 17, 2000

Greetings to members of this Congressional committee hearing:

My name is Tony Eriacho Jr. I am an enrolled member of the Zuni Tribe, in western New Mexico. Our tribe is one of the major producers of Native American Indian arts & crafts. Zuni arts & crafts are known, collected and traded all over the world. I am one of a few Native American owned businesses that buys and sells authentic Indian Art. The name of my business is Eriacho Arts and Crafts. We carry solely Zuni made Indian Arts & Crafts. My wife Ola and I also make Zuni inlay jewelry and sell our own work. I am a member of the Indian Arts & Crafts Association (IACA) with dual memberships as an artist and also as a wholesale/retail member. For the year 2000 I was elected Artist/Craftsperson representative for the Indian Arts & Crafts Association (IACA) by the membership. And currently I am Vice-President of the Council for Indigenous Arts & Culture (CIAC). At the local level I am also President of a local artist organization called the Zuni Cultural Arts Council (ZCAC). Currently the IACA is the only national trade association within the Indian Art industry who's primary purpose is to promote native American arts and crafts throughout the trade. Its (IACA) membership represents a broad membership of dealers, collectors, museums and artisans. The IACA sponsors two annual wholesale trade shows of Indian Art. IACA's mission is to protect and promote Native American Indian Art.

In November of 1999, the Zuni Cultural Arts Council did a needs assessment study in Zuni with the help of CIAC. What that study found was that in the community of Zuni, the majority of my people rely on the sale of their arts & crafts as a primary form of income. The study indicated that up to 85% of the working population rely on arts & crafts sales as either a primary or secondary form of income. Most of the artists that produce their work do not know the full picture of how the Indian art industry is structured. All they know is that what they are currently making now is getting harder and harder to sell, and sometimes is sold for less than what was received just 10 years ago. Several people in the community have evidence that their work is being copied overseas without their permission. In a number of instances we have been able to show them imported replicas of their work. This practice of overseas manufacturing is taking the livelihood away from these artisans. When artists see actual samples of these copies, they understand why it is getting harder and harder for them to sell their work. This puts pressure on the local governments to try and find a solution to this problem. My personal inquiries to the Zuni Tribal Council found that the issue of the lack of enforcement of the 1990 act is a concern to them. The

tribal administrations' opinion is that in light of the purpose of the Act, the Act would be better served where there is better enforcement capability, such as in the Office of the Inspector General, Dept. of Treasury/US Customs, Dept of Justice, etc.

Historically we know that since the 1930's there has been the temptation by unscrupulous dealers to manufacture and produce bogus look-alikes. Beginning in 1935 the development of the Indian Arts And Crafts Board was developed specifically to combat these practices. Most recently (1990) this issue of misrepresentation was to be addressed by the IACB. Since then, there has been no meaningful deterrent to those who misrepresent non-Indian art as Indian Handmade. Very little enforcement of the current 1990 Indian Arts and Crafts Act has taken place and there needs to be more involvement from the IACB if in fact it is their objective to enforce the 1990 provisions of the act.

Examples of misrepresentations of Indian Art can be seen at many Native American events such as Pow Wow's, some juried Indian Art Shows and stores in general. There is no monitoring of these events to survey the amount of fraud taking place. Promoters of these events do not have a resource to call upon to help them enforce their rules. Also, these event promoters do not know how to interpret the law. No one knows the difference between imported copies or real Indian art. So promoters are under the impression that their vendors or artist know about the law.

In 1998 under the administration of New Mexico Attorney General Tom Udall, the IACA and the CIAC were able to gain a special appropriation to address the issue of consumer fraud and misrepresentation of imported product as Indian Made. Unfortunately, the summer that the appropriations were made available elections were taking place. By the end of the year, of 70 potential cases that were investigated, only 13 cases were deemed serious enough to be prosecutable according to the incoming Attorney General Patricia Madrid. So as a result, of these 13 cases, 7 cases were settled. Although the intent was to prosecute these cases as criminal, these cases were reclassified as civil cases and settled for fines of less than $ 10,000. This injustice is not the best way to help enforce the act. Artist that were involved in these cases that were supposed to go to court were willing to testify to make an impact for the act. But they were disappointed. For the longest time Native American Indians (artists) have been given the short end of the stick. How is the act going to encourage involvement of artisans, if this is the result?

The 1990 Indian Arts & Crafts Act is a piece of legislation that was supposed to strengthen the act passed in 1935. Formally, the IACA and CIAC are in support of this legislation and believe that it can be utilized in a positive manner. In Indian communities, enforcement of the Act has become a joke. It is like a paper tiger with no teeth. It looks good on paper, but there is no one to enforce the Act. An example of how the act can be effective is:

- To provide educational displays at major Native American events, so it educates the buyers and collectors of Indian Art as well as the promoters of these events.
- Make promoters aware of the resource and responsibilities available to them regarding complying with the Act. This information may be provided through the IACB or through such organizations as the IACA or the CIAC.
- Empower an agency to do something instead of doing lip service.

- Board membership of the IACB need to include Native Artisans and Natives who are deeply involved in the Indian Art industry to effectively enforce and monitor misrepresentations.
- US Customs needs to be educated so that they become more aware of their responsibilities to enforce the indelible marking rule (19 CFR sec.134). The peel off stickers need to be discontinued.
- There are no experts to speak of in the IACB who know the difference between real or fake Indian Art. There needs to be support from IACB / BIA and or DOI in support of our Tribal Certification Trademark project efforts. Ownership and administration of the Tribal Certification Mark needs to be the responsibility of and sole control of the Indian Nation involved. However, Federal and state Governments can help support the trademark's administrative authority financially and through education.
- The incorporation of some type of certification mark provision to the 1990 Act should also be considered as part of a way to strengthen and clarify the act.

IACA believes that an intelligent plan can be devised that can impact the market with minimal new grant resources. It is the desire of the IACA to contribute to an effective solution by working hand in hand with the Indian Arts and Crafts Board and the Federal government. IACA is currently attempting to raise funds to implement the following activities:

(1) IACA has an internal enforcement, certification process and logo for its members that it intends to market and promote to the general public so that the public can have assurance that IACA members are ethical.
(2) IACA is currently working with tribes with its sister organization, CIAC to assist them in the development of tribal trademarks that can be licensed to tribal artist.
(3) IACA is seeking resources to educate Indian artists about how to protect themselves, build a case and prosecute people who copy their work. Tribal trademarks will facilitate this process.
(4) IACA is establishing a working relationship with a group of lawyers with considerable expertise in this area that have indicated their interest in forming a alliance with our organization to provide legal counsel on a contingency basis for cases involving fraud, misrepresentations or copyright violation of Indian art.
(5) IACA is exploring working with our own legal counsel and would like to work with the IACB to develop cases and assist in prosecution. At the same time, IACA believes that cases must be developed and selected with great care so that it is not abused and the most flagrant violators are prosecuted. IACA also believes that these cases should be handled with a minimum of publicity, and even though the law allows going after people who unknowingly misrepresent Indian art this would be a mistake. We do not want people who sell Indian art to be afraid unless they knowingly misrepresent products in order to profit thereby.

There are many more people in the Indian art business who represent Indian Art correctly to the best of their knowledge, than who don't. Substantial impact can be made by going after a relatively few number of people. IACA intends to take advantage of this trip to Washington to discuss the initiation of a constructive working relationship with IACB based upon the above plans.

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May 11, 2000

Via Federal Express

The Honorable Senator Ben Nighthorse Campbell
Chairman, Committee on Indian Affairs
United States Senate,
838 Hart Senate Building
Washington, D.C.

RE: Oversight Hearing Regarding Indian Arts and Craft Act–May 17, 2000

Dear Chairman Campbell and Distinguished Senators:

I wish to submit this testimony to the Committee for consideration in connection with the oversight hearing regarding the Indian Arts and Crafts Act of 1990 (hereafter "IACA").

I am the attorney for Native American Arts, Inc., an Indian arts and craft organization under the Indian Arts and Craft Act of 1990. I am also the attorney who prosecuted the cases discussed herein for Ho-Chunk Nation and Native American Arts, Inc. Native American Arts, Inc., (hereafter "NAA"), is the real party in interest and the participant in an IACA enforcement program in the Chicago area with the Ho-Chunk Nation. NAA is composed of members of the Ho-Chunk Nation. We have instituted twelve (12) lawsuits in the Northern District of Illinois with the Ho-Chunk Nation styled Ho-Chunk Nation, for and on behalf of Native American Arts, Inc., v. various named defendants. To date, we have successfully resolved nine cases by settlement against eleven defendants. We have secured injunctions against nine of these defendants. We understand that no other civil lawsuits to enforce this statute have been prosecuted.

We have secured several key judicial rulings under the IACA and several rulings involving discovery issues. The key judicial rulings are Ho-Chunk Nation et. al. v. Village Originals, Inc. 25 F. Supp. 2d 876 (1998), 1998 U.S. Dist. LEXIS 17921 and Ho-Chunk Nation et. al. v. Nature Gifts, Inc. 1999 U.S. Dist. LEXIS 3687 (N.D. Ill. 1999). Those rulings rejected constitutional challenges to the Indian Arts and Crafts Act based upon First Amendment free speech grounds. These rulings held the statute regulated only false advertising and false representation outside any constitutional protection. These opinions also held that the IACA is a strict liability statute and that the defendant need not intend to violate the IACA. In so ruling, the courts drew an analogy to the Lanham Act. Now, under this case

law, if the defendant displays, offers, or sells products falsely suggested to be Indian-made Indian products, they are liable without regard to their intent.

In Native American Arts, Inc. v. J.C. Penny Company, Inc., 5 F. Supp. 2d 599 (1998), Judge Castillo ruled on a key standing issue, holding that an action under the IACA on behalf of an Indian arts and craft organization must be brought by a tribe or the federal Government. Previously, the suit was brought directly by and in the name of NAA. It was because of this ruling that suits were brought thereafter by the Ho-Chunk Nation on behalf of Native American Arts , Inc. In Ho-Chunk Nation et. al. v. J.C. Penney Company, Inc., Judge Kocoras issued a ruling on the viability and application of claims against suppliers as Third-party Defendants. 1999 U.S. Dist. LEXIS 10716 (N.D. Ill. 1999). Judge Kocoras also denied a summary judgment motion by J.C. Penney Company, Inc. at 1998 U.S. Dist. LEXIS 17536 (N.D. Ill. 1998).

The background of the cases follow. In late 1995, Ho-Chunk Tribal members Mary Decorah Mullen and Matthew Mullen decided to open a marketing organization to market only authentic Native American made arts, crafts, and jewelry at retail and wholesale. Native American Arts was incorporated in April 1996 for that purpose. Their mission statement and business plan provided that they would personally make Indian style products and recruit other Ho-Chunk and other Native American artisans to make authentic Indian products to be marketed by Native American Arts. Native American Arts would market only authentic Indian products made by Native Americans and the authenticity of the products would be the main selling point along with high quality. After starting the operation, Matt and Mary tried to find other suppliers of authentic Native American products. In doing so, they sought out wholesaler suppliers who said they had authentic Indian made products for sale. They also visited local retailers asking for authentic Indian products to see what the retailers were selling as Indian products, and to possibly identify additional suppliers of authentic Indian-made products.

They purchased numerous products from several retailers, including a national retailer, which were misrepresented to be authentic Inidan-made products. Later investigation proved they were violative products made in Mexico, China, or the Far East. They were not authentic Indian-made products. When suspicions about the authenticity of products arose, wholesalers who said they were selling authentic Indian-made products were asked to identify the Native Americans who made the product and furnish a certificate of tribal membership for the artist. Many could not produce such proof and later additional investigation proved their products were imitations, usually imports, not made by Native Americans.

In addition, Native American Arts was trying to get retail cart space in shopping malls around Chicago. They were turned down in several shopping malls because other retailers in the mall sold competing Indian products. Native American Arts later found out these retailers were

also selling imitation Indian products as being authentic. Native American Arts did get a retail cart space in Golf Mill Shopping Center near Chicago to sell their authentic Indian-made products. They found out that a major retailer was selling imitation Indian products as authentic just down the corridor in the same mall, in direct competition with the authentic Indian products sold by Native American Arts.

To summarize, Native American Arts found that the Indian products marketplace was being saturated with imitation Indian products represented to be authentic Indian-made by retailers and wholesalers. Their authentic Indian-made products could not compete price wise with the cheaper imitation products made in Mexico, China and other locations. Further, the quality of the imitation products are generally inferior and undermine the perception of authentic Indian-made Indian products in the market. This damages the goodwill and reputation of Indian products generally.

Native American Arts sought legal help to see what could be done. We recommended suit under the IACA, to prohibit persons from falsely suggesting a product was an Indian-made Indian product and to seek injunctions and damages for violations. The problem with the IACA was that no one had brought any suits under the Act or attempted to enforce the statute. Neither the Government, the Indian Arts and Crafts Board, any tribes, or private parties had brought suits under this statute.

Native American Arts also had other well recognized bases to sue under the well established Consumer Fraud Act and the Deceptive Trade Practices Act for these same facts. We decided to bring suits by Native American Arts under the Consumer Fraud Act, the Deceptive Trade Practices Act and the IACA using three separate counts in the same Complaints against several retailers and wholesalers. Those lawsuits were originally filed in the name of Native American Arts and were for the benefit of Native American Arts who would receive damages and secure injunctions to prevent this conduct by the Defendants. We also expanded our investigations to bring an enforcement program by filing suits against other violators in Chicagoland which had injured Native American Arts. When Judge Castillo ruled against an Indian arts and crafts organization bringing the lawsuit directly, the cases were then amended to be brought by the Ho-Chunk Nation on behalf of Native American Arts, Inc.

We believe that our efforts have had a beneficial impact in the marketplace for Indian arts and crafts. Some suppliers and retailers now use prominent disclaimers if they sell Indian style products. Yet that is only the tip of the iceberg. MUCH MORE NEEDS TO BE DONE. Based upon our experience prosecuting these cases, we wish to share our experience with the Committee including some suggestions on strengthening and improving the IACA. We think the IACA can be improved in the areas of standing to sue, damages, and the definition of Indian products.

We believe that a major reason for the lack of wide spread enforcement of the IACA is not a lack of need, because violations are rampant in the market place with many violators ignoring the requirements of the Act. The wide spread violations and the lack of wider enforcement is attributable to the difficulty in bringing a suit to enforce the Act. The party with the most direct motivation because they have actually suffered the injury directly, i.e. the injured Indian arts and craft organization, or the Indian artisan must sue through a tribe or the Government. If tribes, themselves sell Indian products and are directly injured, they are motivated to sue. Where a tribe is called upon to act as a representative plaintiff for an Indian or an Indian arts and craft organization, they are less motivated. Suing as a representative plaintiff presents problems of possible liability exposure as well as costs and expenses including attorney fees. It also can divert limited tribal resources, which resources may be needed for other pressing tribal needs. The best way to correct this problem is to grant the right to bring an enforcement action directly by the injured party, i.e. the injured Indian or Indian arts and craft organization. Revision of the Act would appear to be necessary to correct this flaw.

Another standing problem is the lack of clarity whether an action can be brought directly against a manufacturer or supplier of a violative product when the injured party is not in direct competition with the manufacturer or supplier. We think the IACA does allow such suits but it is unclear. Clarification of the Act would be helpful, and revision may be necessary.

A great difficulty in these cases, like other consumer protection type statutes, is the difficulty of proving and quantifying actual damages. The statutory $1,000 per day damage clause is designed to provide specified damages recognizing that damages are difficult to measure and prove. This provision is a strong one and should provide great deterrence to violations. But proving actual damages is still necessary to compare such actual trebled damages to the statutory $1,000 per day damage amount. Many times lost or diminished sales are difficult or impossible to show. Yet there is a very real damage to a competing entity. The problem is an inability to secure evidence of lost or diminished sales. Part of the damage theory we have been employing and advocating in our cases, includes recovery of the amount of the defendant's profits from the sale of the violative products. We draw an analogy to the Lanham Act to support that approach. But the Lanham Act has an express provision on this point which is not included in the language of the IACA.

Finally the definition of "Indian product " could be greatly improved by the generous use of specific examples. However, we recognize that this issue may be better taken up with the Indian Arts and Crafts Board in their regulations.

MULLEN & FOSTER

The Honorable Senator Ben Nighthorse Campell
May 11, 2000

We appreciate the opportunity to submit testimony and would welcome any questions or comments. We stand ready to assist the Committee in its very important work in anyway. Thank you.

Respectfully submitted,

Michael P. Mullen, as attorney for
Native American Arts, Inc.

MPM/ts
cc. Ho-Chunk Nation President Jacob Lonetree

FTC news

Federal Trade Commission Washington, D.C. 20580 (202) 326-2180
FOR RELEASE: APRIL 12, 1996

IVORY JACK'S AND NORTHWEST TRIBAL ARTS AGREE TO SETTLE FTC CHARGES THAT THEY SOLD FAKE NATIVE AMERICAN ARTWORK
Settlements include payments of $20,000 by each individual defendant

Two Seattle-based companies and their owners, Kurt Tripp and Ngoc Ly, have settled Federal Trade Commission allegations that they falsely represented Native American-style carvings as authentic Native-made artwork. As part of the settlement, the two individual defendants will each pay $20,000 as disgorgement, be prohibited from misrepresenting that their Native American-style artwork was made by Native Americans, and be required to follow procedures to prevent such misrepresentations at the retail level for products they offer at wholesale.

The FTC complaint, filed in federal district court, alleges that the defendants misrepresented that the artwork they produced and sold was the work of Eskimo carvers Ron Komok and Eddie Lyngoc. Eddie Lyngoc is a pseudonym for Ngoc Ly, and Ron Komok is an Eskimo, who did not actually produce the several thousand carvings attributed to him. The complaint also alleges that the carvings produced by Ly were sold by Ivory Jack's at wholesale to retail shops throughout Washington and Alaska and represented as Native-made. Ly also sold the carvings in his retail store representing the pieces as Native-made. The artwork sold at retail for between $120 to $4,000 or more, with the most popular pieces selling for between $250 and $500.

In addition to providing the artwork, the complaint alleges, the defendants provided shopowners with biographies describing Ron Komok's Native-American heritage and training in carving, and hangtags stating that the carvings sold by Ivory Jack's are Native-made.

- more -

(Ivory Jack's Trading--04/12/96)

The proposed consent decrees settling these charges, subject to court approval, would prohibit the defendants, in connection with the sale of Native-American style art objects, from representing that any such object is Native-made or that any such object is made in Alaska or made from materials of Alaskan origin, unless such is true and from misrepresenting the source of such objects, their country of origin, or the materials from which they are made.

The settlements would require the defendants, when purchasing Native-American style art objects for resale, to confirm from the supplier, the place and manner in which the object was produced, in order to determine whether the object can lawfully be represented as Native-made. In addition, for each art object that the defendants sell at wholesale, they must be able to validate the authenticity of the pieces by having a written description of the artist who created the object. The description should include information such as where the artist was born, where he/she resides, whether he/she is affiliated with any tribal organization, and if so, the name, and whether the artist uses a name other than his/her legal name, and if so, the artists' true name.

The settlements would also require the defendants to clearly and conspicuously label all Native-made objects valued at $100 or more and offered for retail sale as being Native-made. The defendants would also be required to prominently display a poster where retail customers can see it before making a purchase, stating that only those items marked "Native-made" are made exclusively by Native Americans.

In addition, the consent decrees would require the defendants to notify past wholesaler customers of the terms of the settlements and to advise past customers that they cannot sell the work of specific artists, Eddie Lyngoc and Ron Komok, as Native-made.

Finally, the proposed settlement contains various reporting provisions designed to assist the FTC in monitoring the defendants' compliance.

The FTC's Seattle Regional Office handled the investigation. They received tremendous assistance in this matter from the Alaska Attorney General Office.

The Commission vote to authorize filing of the complaint and proposed consent decree was 5-0. They were filed on April 11, 1996, in the U.S. District Court for the Western District of Washington, in Seattle.

(Ivory Jack's Trading--04/12/96)

NOTE: This consent decree is for settlement purposes only and does not constitute an admission by the defendants of a law violation. Consent decrees have the force of law when signed by the judge.

Copies of the complaint and consent decrees are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-2222; TTY for the hearing impaired 202-326-2502. To find out the latest news as it is announced, call the FTC NewsPhone recording at 202-326-2710 FTC news releases and other materials also are available on the Internet at the FTC's World Wide Web site at: *http://www.ftc.gov*

# # #

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(FTC File No. 942-3034)

(Civil Action No. C96-563C)

(ivory-j)

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June 1, 2000

The Honorable Ben Nighthorse Campbell
Chairman, Committee on Indian Affairs
United States Senate
838 Hart Office Building
Washington, DC 20510

Re: Oversight Hearing on Implementation of the Indian Arts and Crafts Act of 1990

Dear Senator Campbell:

I write this letter to supplement the record the Senate Committee on Indian Affairs has developed in conjunction with the May 17, 2000 Oversight Hearing on the Implementation of the Indian Arts and Crafts Act of 1990, Pub. L. 101-644 (the "Act"). The Cow Creek Band of Umpqua Tribe of Indians thanks the Committee for holding the oversight hearing and requests that the Committee take these comments into consideration should the Committee decide to take any action to facilitate the implementation of the Act.

The oversight hearing developed additional information concerning the protections the Act provides to individual Indian artisans. However, the Act provides protections which we believe are too often overlooked. As set forth below, additional clarification concerning the full scope of the Act coupled with the promulgation of additional regulations will help to educate the public in general, and the impacted business and Indian communities in particular, about the protections the Act provides,

Nature of the Act. The Act is a "truth in advertising" law that promotes Indian self-determination and economic self-sufficiency, while simultaneously protecting the general public from misrepresentation. To this end, it creates a mechanism for the United States or an Indian tribe to bring civil actions to stop companies and individuals from misrepresenting "goods" as "Indian produced, an Indian product, or the product of a particular Indian tribe or Indian arts and crafts organization". 25 U.S.C. § 305e(a). The Indian Arts and Crafts Board ("IACB"), a semi- independent agency located within the Interior Department, is charged with primary responsibility for promulgating the regulations necessary for implementing the Act.

The Act was designed both to authorize civil (and criminal) actions against unscrupulous businesspeople, and to change the behavior of individuals and companies seeking to tap the lucrative Indian goods market under threat of such civil suits. However, a major practical problem arises when an Indian tribe or individual Indian attempts to use the civil action authorities under the Act to change the behavior of these unscrupulous businesspeople. The reference in 25 U.S.C. § 305e(a) authorizes civil action for "injunctive or other equitable relief" and the recovery of damages. The ability to recover damages is, as it should be, in addition to the ability to obtain injunctive or other equitable relief Unfortunately, some individuals and companies have offered an interpretation of the Act which would make actual damage to the plaintiff a necessary requirement for obtaining relief The damages to individual Indian artisans, Indian tribes and Indian organizations for violations of the Act are difficult to quantify. Moreover, an interpretation which requires actual damage to the plaintiff would undercut the remedial nature of the Act.

Such an interpretation is also inconsistent with regulations that the IACB has already promulgated. For example, in 25 CFR § 309.3(a), the IACB addresses the impermissibility under the Act of the unqualified and unsubstantiated use of the terms "Indian" and "Native American." Clearly, the Act would prove to be hollow if a company could market a good as "Indian" or "Native American" without fear of reprisal because the use of such terms caused no quantifiable damage to an individual Indian, an Indian tribe or an Indian organization. We recommend that the Committee clarify that actual damage to an Indian tribe, individual Indian artisan or Indian arts and crafts organization is not a prerequisite to the availability of a civil action for injunctive or other equitable relief under the Act.

"Indian made." During the course of the oversight hearing, there was some discussion about the difficulty in understanding what is meant by "Indian made" under the Act. Senator Campbell referenced a situation where machine-produced, hand-painted pots were not permitted by one federal agency to be sold on federal land as "Indian made." It is our understanding that during the course of this discussion, the term "made" in this context was interpreted as meaning "hand manipulated" by an Indian rather than the mere act of an Indian pressing a button on a machine. This is an issue that we believe needs to be clarified and we take this opportunity to do so for the Committee's record.

We note that the regulations that the IACB promulgated for implementing the Act define the term "Indian product" to be more broad in scope. Specifically, 25 CFR § 309.2(d)(2) provides several non-exclusive "illustrations" of what constitutes an "Indian product" and references art works and crafts in a "non-traditional Indian style or medium." It also references "handcrafts" as part of the non-exclusive fist. Thus, the Act, as interpreted by the IACB, is not limited in coverage to "hand manipulated" items, and would cover the types of hand-painted, machine-fired pots that were the topic of brief conversation during the hearing. We support this pro-Indian and pro-tribal interpretation of the Act, and believe that it is necessary for the Act to be able to confer upon Indian tribes and individual Indians the full promotional and protective values the Congress had envisioned. More narrow readings of the Act should be rejected.

The Need for Additional Regulations. We believe that regulations for implementing the trademark provisions of the Act, which Congress enacted nearly a decade ago, are long overdue and should be promulgated as quickly as possible. With the addition of a former Patent and Trademark Office attorney to the IACB staff, we would expect that the IACB would be able to issue trademark program regulations in draft form within the next several months.

We also believe that the IACB's current regulations for implementing the Act, those found at 25 CFR Part 309, fail to address the full scope of the authority granted under the Act. Specifically, the Act addresses, among other things, the misrepresentation of "any good" as "Indian produced." Neither the Act nor the IACB's implementing regulations define these terms. Because of the IACB's failure to define these terms, individual Indians, Indian tribes and Indian organizations are denied the full benefits of the Act. An Indian tribe believing it is aggrieved and wishing to pursue a civil action under the Act to enjoin an individual from selling an article of commerce in a manner which falsely suggests it is produced by Indians, should be able to obtain the sought-after injunctive relief under the Act. The regulations should be revised to also clarify that the Act makes this relief available. The Committee should direct the IACB to define these terms by regulation in a manner which is consistent with the goals embodied in the Act of promoting Indian self-determination and economic self-sufficiency.

Finally, we share the Committee's concern with the results of the complaint process the IACB currently has in place. We believe that part of the problem rests with a lack of clear guidance for complaint content as well as clear procedures for complaint processing and investigation. While we commend the efforts of the IACB to pursue an interagency memorandum of understanding ("MOU") to put needed protocols in place, the existence of such an MOU would still fail to overcome a major obstacle to increasing the quantity and quality of complaints-the availability of information. To resolve this issue, we recommend that the Committee direct the IACB and the Department of Justice, coordinated through the Office of Tribal Justice, to jointly issue regulations which more fully describe what should be included in a complaint, how complaints are submitted, how complaints are processed, and what each agency's roles and responsibilities (with specific time deadlines) are for ensuring that complaints are timely processed.

We thank the Senate Committee on Indian Affairs for its work on behalf of Indian tribes and individual Indians. We appreciate the opportunity to provide the Committee with these additional comments and recommendations and hope that they will prove to be useful as the Committee considers options and alternatives for more effective implementation and enforcement of the Act.

Sincerely,

Sue Shaffer

Sue Shaffer
Tribal Chairman

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