

Statement for the Record of the International Association of Professional Numismatists (“IAPN”) (14, rue de la Bourse, 1000 Brussels, Belgium or P.O. Box 1057, Clifton, New Jersey 07014), the Professional Numismatists Guild (“PNG”) (3950 Concordia Lane, Fallbrook, California 92028) and the Ancient Coin Collectors Guild (“ACCG”) (PO Box 911, Gainesville, MO 65655) for Hearing on S.1631, the Customs Facilitation and Trade Enforcement Act of 2009*

S. 1631 Sec. 310- Training Should Include Other Perspectives and be Accessible to All

By Peter K. Tompa[†]

October 20, 2009

S. 1631 Sec. 310 (a) mandates that “that appropriate personnel of the U.S. Customs and Border Protection Agency are trained in the detection, identification and detention of archaeological and ethnological materials the importation of which violates the customs and trade laws of the United States.” Subsection (b) authorizes “U.S. Customs and Border Protection to accept training and other support services from experts outside of the Federal Government in the detection, identification, and detention of archaeological or ethnological materials described in subsection (a).”

While IAPN, PNG and ACCG support the concept of training in principle, they are concerned that members of the archaeological community with “an ax to grind” against collectors will take advantage of this legislation to indoctrinate U.S. Customs personnel with their anti-collecting ideology. To ensure that any such training is performed as fairly as possible, IAPN, PNG and ACCG propose that the following be added as subsection (c) to the legislation:

(c) Transparency, Fairness and Accountability- The Commissioner of U.S. Customs and Border Protection shall require any training described in subsections (a) and (b) to incorporate the views of museums, archaeologists, collectors and members of the trade in archaeological or

* The IAPN is a nonprofit organization of the leading international numismatic firms. It was founded in 1951 in an effort to help reestablish friendships between professional numismatists that had been badly frayed during World War II. The objects of IAPN are the development of a healthy and prosperous numismatic trade conducted according to the highest standards of business ethics and commercial practice. The IAPN has 113 member firms, situated in five continents and 21 countries.

The PNG is a nonprofit organization founded in 1955. The PNG's motto, "Knowledge, Integrity, Responsibility" continues to reflect its aims, and is expressed in the strict requirements for election to membership to the PNG. The PNG has over 300 members across the United States and abroad.

The ACCG is a Missouri based nonprofit organization committed to promoting the free and independent collecting of coins from antiquity through education, political action and consumer protection. The goal of this guild, founded in 2004, is to foster an environment in which the general public can confidently and legally acquire and hold any numismatic item of historical interest regardless of date or place of origin. Membership of the ACCG is comprised of collectors and numismatic professionals who care passionately about preserving, studying and displaying ancient coins from all cultures. In addition to individual memberships, the guild is supported by 20 Affiliate Member organizations representing an aggregate of more than 5,000 ancient coin collectors.

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ethnological materials. Such training material shall also be posted on the Internet to ensure that it is made available to the public.

A. Coin Collecting Brings Diverse Peoples Together to Foster Scholarship and to Preserve Millions of Small Artifacts from the Past

Elements within the archaeological community typically portray all collectors in a negative light. However, numismatics is a peaceable pursuit that fosters the appreciation of other cultures and that brings peoples of diverse nations together through a shared common interest at international coin fairs, through a vast universe of numismatic publications, and through modern communication media like the Internet.

Historical coins are so numerous with millions of examples extant that stewardship of the world's numismatic heritage requires interested members of the public to collect, study, conserve, record and publish historical coins both individually and collectively through membership in and support of organizations such as The American Numismatic Association, The American Numismatic Society, The Ancient Coin Collectors Guild, The Royal Numismatic Society, The Swiss Numismatic Society and hundreds—if not thousands—of local numismatic clubs. There is little, if any, public financial support for the study of numismatics. Without private efforts, our understanding of the historical coins would be much the poorer.

B. The Issue

The small businesses of the numismatic trade and collectors are entitled to fair enforcement of import restrictions on cultural artifacts. Mandates for training of Customs agents “in the detection, identification, and detention” of banned material should encourage fair enforcement, but the use of trainers from the archaeological community with “an ax to grind” against the trade and collectors carries with it the danger that unfair enforcement will actually result.[‡]

Low net worth small businesses of the numismatic trade and collectors cannot afford to hire lawyers to contest Customs seizures, particularly when, as is typical, the artifacts in question are themselves of low value. Numismatic groups suspect most cultural artifacts seized by U.S. Customs have been abandoned by the importer. Unfair enforcement based on biased training will likely lead to many more uncontested seizures of artifacts that may very well be perfectly “legitimate.”

C. Causes for Concern

By way of example, the numismatic groups are concerned that the following “factoids” will creep into any training that is exclusively performed by members of the archaeological community:

- The archaeological establishment regularly claims that undocumented artifacts “must be stolen.” In fact, historical coins have been traded for at least 500 years as collectibles and

[‡] Archaeologists also have a built-in conflict of interest in providing training or support services related to artifacts from countries in which they undertake archaeological investigations. These archaeologists depend on the governments of those countries to approve excavation permits. This provides a powerful incentive against advocating positions favorable to museums, collectors and members of the trade that might offend the cultural bureaucracies in such countries.

have been held traditionally without provenance and, it is therefore, unreasonable to assume that a coin is “stolen” or “illegally imported” merely because the holder cannot establish a chain of custody beyond receipt from a reputable source. *Compare* AIA Cultural Heritage FAQ (available at <http://www.archaeological.org/media/docs/AIA%20Frequently%20Asked%20Questions.doc>) (last checked, 10/19/09) (“The essential disagreement between museums, private collectors and archaeologists is whether museums and private collectors should acquire ... undocumented artifacts; archaeologists believe most undocumented antiquities are the product of recent site looting and therefore museums should not acquire them.... If such an artifact is dug up and removed from the country without permission it is stolen property....”) *with* the following confidential admission in an official Cypriot Department of Antiquities document, FOIA Release Case Nos. 200402941, 200704168, 200704596, 20076194 (March 18, 2009), Letter from Pavolos Flouretzos, Director, Cypriot Department of Antiquities to [Redacted], dated 14 May 2007, Appendix II Coin Collections Introduction (“Florentzos FOIA release) (Exhibit A) (“The continuous circulation of coins for many centuries amongst collectors and between collectors and museums make any attempt to locate their exact find spot extremely difficult. For the same reasons, in most cases it is impossible to pinpoint the provenance of the coins belonging to private collections sold during auctions.”).

- The archaeological establishment often ignores the reality that a particular kind of object can potentially have several different “find spots.” This may result in artifacts being detained merely because they “look” like an artifact on the “designated list” for import restrictions. In fact, certain artifacts like historical coins traveled widely in ancient times as hard currency and in more recent times as collectibles. One cannot reasonably assume they were found where they were thought to be made. *Compare* Jeremy Kahn, “U.S. Imposes Restrictions Importing Cypriot Coins,” N.Y. Times (July 18, 2007) (available at <http://jeremy-kahn.com/articles/18Jul07-CypriotCoin.pdf>) (quoting the President of the Archaeological Institute of America (“AIA”) as stating, “Coins minted in Cyprus were very rarely taken from the Island in antiquity.”) *with* Florentzos FOIA release (Exhibit A) (admitting, “It is true that Cypriot coins shared the same destiny as all other coins of the ancient world. As a standard media of exchange they circulated all over the ancient world due to their small size, which facilitated their easy transport... The continuous circulation of coins for many centuries amongst collectors and between collectors and museums make any attempt to locate their exact find spot extremely difficult.”).
- The archaeological establishment also claims that artifacts should be treated as “stolen” under foreign cultural patrimony laws even where identical “unprovenanced” artifacts are openly available for sale in such countries. For example, the AIA successfully lobbied for import restrictions on a wide variety of “unprovenanced” cultural artifacts from China—including some coins – despite the existence of a massive, open internal market for the very same artifacts within China itself. *Compare* Letter from Jane C. Waldbaum, President of AIA, to Jay Kislak, CPAC Chair (Feb. 3, 2005) (available at http://www.archaeological.org/pdfs/archaeologywatch/China/AIA_CPAC_China_letter.p

df) (last checked, 10/19/09) with Don Yanchunas, *Coin Collecting in China*, Coinage Magazine 40 (May 24, 2006) (discussing the internal Chinese market for ancient coins).

D. The Solution

In order to allay these concerns, Congress should require any training to incorporate the views of museums, collectors and members of the trade. Such training should also touch on other issues of concern to these groups. For example, numismatic groups are concerned about counterfeit U.S. and Foreign collector coins entering the U.S. from China. Such coins should be marked as “copies” under applicable law, but this requirement is often ignored. These fakes can be deceptive to coin collectors and even some numismatic dealers. See *Inside a Chinese Coin Counterfeiting Ring*, About.com: coins (available at <http://coins.about.com/od/worldcoins/ig/Chinese-Counterfeiting-Ring/>) (last checked, 10/19/09). Training U.S. Customs in their detection can help keep such items from the U.S. marketplace.

Congress should also require that training to be posted on-line to promote transparency and help ensure accuracy. Collectors, museums, dealers and their representatives on the State Department’s Cultural Property Advisory Committee have raised serious concerns about transparency and fairness of process in the State Department’s program for imposing import restrictions. See Declaration of Jay I. Kislak (April 20, 2009) filed in *Ancient Coin Collectors Guild, et al. v. United States Department of State*, C.A. No. 07-2074 (D.D.C) (Exhibit B) (without attachments). See also *The Who, What, Why and How of the Cultural Property Advisory Committee (CPAC)*, 10 IFAR Journal Nos. 3 & 4 2008/2009 at 24; Jeremy Kahn, *Art: Is the U.S. Protecting Foreign Artifacts? Don’t Ask*, N.Y. Times (April 8, 2007) (available at <http://jeremy-kahn.com/articles/08Apr07-ProtectingForeignArtifacts.pdf>) (last checked, 10/19/09); Jeremy Kahn, *Coin Dealers Sue State Dept. for Details on Import Bans*, N.Y. Times (Nov. 17, 2007) (available at <http://jeremy-kahn.com/articles/17Nov07-CoinLawsuit.pdf>) (last checked, 10/19/09).

These concerns expressed by others suggest U.S. Customs may also refuse to release details about this training unless it is posted on-line. Unfortunately, prior experience also strongly suggests that Freedom of Information Act requests for such training materials are likely to be ignored or denied. Although U.S. Customs administers import restrictions on cultural goods, the decision to impose them is made by the U.S. State Department. It is instructive to note that the State Department only processed many of the numismatic group’s FOIA requests—some of which were three (3) years old—after the numismatic groups filed a lawsuit. That lawsuit remains pending before the U.S. District Court for the District of Columbia.

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MINISTRY OF COMMUNICATIONS AND WORKS
DEPARTMENT OF ANTIQUITIES
NICOSIA-CYPRUS

14 May 2007

B6

RELEASED IN PART
B6

Subject: Request by the Government of the Republic of Cyprus for the renewal of the Memorandum of Understanding with the USA Government, concerning the imposition of import restrictions on pre-classical and classical archaeological objects and Byzantine period ecclesiastical and ritual ethnological material.

As far as the introduction to part III is concerned, I would like to inform you that there has been a mistake, which is now rectified. Initially the idea was to divide the chapter in part 1 and 2 but as work proceeded it became apparent that it was better to have a unified corpus. In our rush to finish the introduction was not accordingly modified.

We are now attaching the corrected paragraph and hope that it will be accepted.

(Pavlos Flourentzos)
Director
Department of Antiquities

c.c.: - Embassy of Cyprus
2211 R Street NW
Washington, DC 20008
Fax: 202 483 6710

- Ministry of Foreign Affairs
(Through General Director of
Ministry of Communications and Works)

EXHIBIT A

FH/NN

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: FRANK TUMMINIA
DATE/CASE ID: 11 MAR 2009 200706194

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APPENDIX II COIN COLLECTIONS Introduction

Following the Memorandum of Understanding (MoU) between the Republic of Cyprus and the Government of the United States of America, the Department of Antiquities of Cyprus requests the Government of the United States to reconsider including coins in this agreement.

It is true that Cypriot coins shared the same destiny as all other coins of the ancient world. As a standard media of exchange they circulated all over the ancient world due to their small size, which facilitated their easy transport. Their size and intrinsic value, as well as their role as a primary source for the documentation of ancient history made them an attractive object to collectors since ancient times (e.g. collections of Ptolemies and Roman Emperors). The renewal of the interest of wealthy noblemen, in the post Medieval times, in the creation of private collections led them to spend much time traveling in Europe and the Mediterranean to collect "beautiful" objects and coins.

Most of the collections assembled in the eighteenth century had different destinies as time passed. Many of them were donated to public museums at the turn of the 20th century and constituted the subject of many catalogues. Other collections were sold and changed hands between collectors, while other collections passed into the hands of the heirs of collectors, who had no interest in keeping them and therefore these were divided, sold and added to already existing private collections.

For the same reasons, size and intrinsic value, coins are an attractive object to looters in modern times as they have been in the past. Nowadays, that archaeological excavations are conducted scientifically, coins can be extremely useful tools for the archeologist, and therefore for the history of the excavated area. The information they provide can be a significant instrument for the dating of a building or of the different phases of a building, for the knowledge of the economic contacts of the specific place or of the religious beliefs and practices of the area, etc.

Many articles of the Antiquities Law of 1935, chapter 31, of the Republic of Cyprus, provide for the prevention of illegal trading and circulation of coins. Under section I, articles 3 and 4 the Law specifies the Government as the owner of any antiquity laying under or upon any land. Under section VII, articles 26 and 27, the Law forbids the possession, dealing or export of any antiquity without the relevant license and provides for imprisonment and/or a fine in the case of breaking the law.

The continuous circulation of coins for many centuries amongst collectors and between collectors and museums makes any attempt to locate their exact find spot extremely difficult. For the same reasons, in most of the cases it is impossible to pinpoint the provenance of the coins belonging to private collections sold during auctions. The only case in which the provenance of the coins could be ascertained is when they form part of a homogeneous ensemble of a hoard, coming in general from systematic excavations, which are usually published and are thus well known.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANCIENT COIN COLLECTORS GUILD
et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF STATE

Defendant.

Civil No. 07-2074 (RJL)

DECLARATION OF JAY L. KISLAK

1. I was appointed by President George W. Bush to serve as the Chairman of the United States Cultural Property Advisory Committee ("CPAC"). I served in that capacity from 2003 to 2008. During that period, CPAC reviewed among others applications by the People's Republic of China for new import restrictions on cultural artifacts and requests made by the Republic of Italy and the Republic of Cyprus for the extension of then current restrictions.
2. As Chairman of CPAC, I became generally familiar with the operation of U.S. law related to the imposition of import restrictions on cultural artifacts, including the Convention on Cultural Property Implementation Act ("CPIA").
3. CPAC was constituted under the CPIA to recommend an informed balance between efforts to control looting at archeological sites and the legitimate international exchange of cultural artifacts.
4. The U.S. Department of State Bureau of Educational and Cultural Affairs' Cultural Heritage Center acts as CPAC's secretariat. During my tenure as Chairman of CPAC, I



- became concerned about the secretive operations of the Cultural Heritage Center and its lack of transparency in processing requests for import restrictions made on behalf of foreign states. I believe this lack of transparency has hampered the ability of museums, private parties and others to make useful presentations to CPAC. I also believe that this lack of transparency has also hampered the ability of CPAC to provide recommendations to the executive branch about the best way to balance efforts to control looting at archeological sites against the legitimate international exchange of cultural artifacts.
5. I believe that the release of details of foreign requests for import restrictions could promote transparency and allow CPAC to be better able to make recommendations. I also believe that the release of CPAC's reports in full could also promote the same goals. I do not believe that release of this material after a decision has been made will discourage CPAC members from discussing the merits of each case. To the contrary, release of CPAC reports will allow interested parties to frame their arguments more effectively when import restrictions come up for renewal every five (5) years. In addition, release of this documentation will also promote the accountability of Cultural Heritage Center Staff to both CPAC and the public at large.
6. Release of more details about the Chinese, Italian and Cypriot requests at the time the requests were made could have encouraged better informed public comment about the requests at CPAC's public sessions. Now that decisions on the Chinese request and the Italian and Cypriot renewal have been made, I fail to see any reason why this material should be withheld from the public any longer.
7. I am told that Section 303 (g) of the CIA requires the State Department to report to Congress any differences between CPAC's recommendations and the State Department's

ultimate decision to impose import restrictions. In this regard, the release of the most recent CPAC report related to Cyprus and its discussion about coins could clarify misleading information contained in official State Department documents.

8. I specifically recall the Cypriot request that then current import restrictions on other cultural artifacts be extended to coins was a matter of great public controversy. CPAC considered the question specifically and I recall a special vote being taken on this particular issue.
9. With that in mind, I have reviewed both an official State Department Press Release and a State Department report made pursuant to CIA Section 303 (g) about the MOU with Cyprus. Copies of these documents have been attached to this declaration as Exhibits 1 and 2. I believe it is absolutely false to suggest in those materials that the State Department's decision to extend import restrictions to ancient coins was consistent with CPAC's recommendations. The full release of CPAC's recommendations with regard to coins could be in the public interest because it should clarify misleading information contained in official State Department documents.
10. I have read this statement and everything in it is true, accurate, and correct to the best of my knowledge. I have had the chance to make any corrections, additions, or deletions that I desire.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief. 28 U.S.C. § 1746.

Dated: April 20 2009



Jay I. Kislak