

# POLICY BRIEF



## How to End Impunity for Antiquities Traffickers: Assemble a Cultural Heritage Crimes Prosecution Team

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## ABOUT THE AUTHOR



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## ABOUT THE THINK TANK

The Antiquities Coalition unites a diverse group of experts in the global fight against cultural racketeering: the illicit trade in art and antiquities. This plunder for profit funds crime, armed conflict, and violent extremist organizations around the world—erasing our past and threatening our future. Through innovative and practical solutions, we tackle this challenge head on, empowering communities and countries in crisis.

In 2016, as part of this mission, we launched the Antiquities Coalition Think Tank, joining forces with international experts, including leaders in the fields of preservation, business, law, security, and technology. Together, we are bringing high-quality and results-oriented research to the world's decision-makers, especially those in the government and private sectors. Our goal is to strengthen policy makers' understanding of the challenges facing our shared heritage, and more importantly, help them develop better solutions to protect it.

We invite you to learn more at [thinktank.theantiquitiescoalition.org](http://thinktank.theantiquitiescoalition.org).



**Homeland Security Investigations returns “most wanted” antiquities to the government of India. Source: Immigrations and Customs Enforcement**

## Executive Summary

The Department of Justice (DOJ) is in a unique position to take concrete action against the illicit antiquities trade, by appointing designated prosecutors at United States Attorneys’ Offices and Main Justice, who can bring criminal cases against traffickers, securing the convictions and sentences needed to end impunity for their crimes.

In just the last decade, the Department of Homeland Security (DHS) has recovered and returned more than 7,500 illicit artifacts to thirty countries as part of its fight against the global traffic of cultural heritage. Restituting stolen property is a legitimate goal, but rarely has it led to the successful prosecution, conviction, or imprisonment of antiquities traffickers. As a result, known wrongdoers remain in business, and the American art market’s vulnerability to cultural heritage contraband persists. By prioritizing repatriations over indictments, this “seize and send” policy has failed to curb a vast black market industry, which officials say is funding transnational crime, conflict, and terrorism.

The Department of Justice (DOJ) is in a unique position to take concrete action against this illegal trade, and with a minimum investment of resources. By appointing specially designated prosecutors at United States Attorneys’ Offices and Main Justice who can bring criminal cases against antiquities traffickers, the DOJ could secure the convictions and sentences needed to end impunity for these crimes while providing both general and specific deterrence against future offenses. The DOJ already has a roadmap with its Environmental Crimes Section (ECS), whose successful prosecutions of wildlife traffickers demonstrate a tried and tested model. A similar office of Cultural Heritage Crimes (CHC) Prosecutors should now be established to hold antiquities traffickers accountable, to disrupt and dismantle their networks, and to give support to police and prosecutors at the local, county, state, and federal levels.

This policy brief explains why CHC Prosecutors are needed, how they can bring antiquities traffickers to justice, and how they can close the American art market to looted and smuggled heritage.



## Introduction

Antiquities traffickers destroy heritage and violate U.S. laws, yet they rarely are convicted or imprisoned.

Transnational antiquities traffickers commit felony crimes by peddling the world’s cultural, historical, religious, and archaeological heritage in America’s opaque art and antiquities market.<sup>1</sup> Instead of serving prison time, they dodge court convictions and grow ill-gotten profits through fraud, smuggling, money laundering, false reporting, and dealing in stolen property. Meanwhile, the Federal Bureau of Investigation (FBI) warns that antiquities trafficking may supply financial support to terrorists.<sup>2</sup>

While contraband antiquities<sup>3</sup> have been seized and forfeited by U.S. Customs and Border Protection (CBP)—when customs officers actually have detected these hard-to-find imports—smugglers, dealers, and their accomplices have faced few prosecutions. Even when this has occurred, most defendants have exited the courthouse with minor convictions or light sentences, still retaining their cash and their criminal infrastructures.

Antiquities traffickers know that their risk of getting caught and suffering a criminal penalty is low. Boosting this problem is a critical lack of prosecutors assigned to cultural heritage cases, or who actually accept such cases for possible indictment. The trend of non-prosecution is reinforced by a prevailing federal law enforcement strategy that favors repatriations over arrests. Too many conversations focused on evidentiary barriers to convictions, rather than solutions, compound the problem, while the scarcity of criminal court cases strengthens the perception that antiquities trafficking is a novelty crime, not one that harms peoples’ cultures, histories, and faith traditions or that causes severe economic and reputational damage to America’s antiquities marketplace. Amplifying the problem too is the recent departure of America’s top antiquities forfeiture attorney.

The Department of Justice should assemble a Cultural Heritage Crimes (CHC) Prosecution Team to end impunity for antiquities traffickers.

A key solution to bringing antiquities traffickers to justice is the assignment of a team of prosecutors focused on Cultural Heritage Crimes (CHC). This CHC Team might be assembled in the same way that the Department of Justice (DOJ) targets narcotics, gangs, child exploitation, and other topic-specific crimes with “Sections.” Because transnational antiquities trafficking mimics the methods and scope of wildlife trafficking, the objectives and activities of DOJ’s Environmental Crimes Section (ECS) could be mirrored. Ultimately, specially designated CHC prosecutors would gain the knowledge and experience needed to guide investigations successfully, to convict wrongdoers, to dismantle criminal infrastructures, and to suggest effective policy recommendations.

## The Problem

Prosecutions of transnational antiquities traffickers is scarce.

In a letter to the court submitted on behalf of former U.S. Attorney Loretta Lynch, a federal prosecutor in Brooklyn, New York confirmed the “rarity of cultural property smuggling prosecutions.”<sup>4</sup> An Assistant U.S. Attorney (AUSA) in Los Angeles, meanwhile, told a judge that “it is rare that law enforcement officials have the opportunity to catch a broker, bulk sellers, or gallery owner that drives the illicit market for archeological resources.”<sup>5</sup> In fact, there have been so few prosecutions that legal observers usually can recite the small universe of published cases,<sup>6</sup> which is one reason why this transnational crime likely is perceived by a number of judges,



attorneys, and police more as a curiosity rather than a severe crime.

The scarcity of prosecutions is believed to be driven by the absence of assigned prosecutors guiding investigations and AUSAs who have declined to indict traffickers. Strongly reinforcing this situation is the Department of Homeland Security's (DHS) stated mission to seize and forfeit cultural heritage contraband rather than investigating and indicting antiquities traffickers. DHS takes a leading role to investigate "crimes involving the illicit importation and distribution of cultural property."

Homeland Security has favored a "seize and send" policy over the customary "investigate and indict" practice of law enforcement.

DHS relies heavily on a non-criminal court procedure known as forfeiture to vest government officials with legal title to seized artifacts so that the United States can send objects back to their countries of origin. Expressing support for this "seize and send" policy, former DHS Secretary Janet Napolitano proclaimed, "We will continue to work to ensure cultural artifacts and treasures that were stolen and entered this country illegally are recovered and returned to their rightful home nations."<sup>7</sup> Immigration and Customs Enforcement's (ICE) Cultural Property, Art, and Antiquities Program firmly embraces this mission, explaining on its website, "Returning a nation's looted cultural heritage or stolen artwork, promotes goodwill with foreign governments and citizens, while significantly protecting the world's cultural heritage and knowledge of past civilizations."<sup>8</sup>

The seize and send policy strays substantially from the traditional police practice of investigating and charging criminals, perhaps fueled by an unyielding pessimism among some that the traditional burdens of proof required in all criminal court cases hinders prosecutions of antiquities traffickers. Incredibly, the highly placed former Homeland Security Investigations (HSI) New York chief once confessed that developing criminal cases was just too hard for his enforcement agency. "The focus is always to return stolen property to its rightful owners," he said. "You have to have a legal basis to prove those items, and you have to prove certain things and that proves very difficult."<sup>9</sup>

While the seize and send policy has value to improve diplomatic relations, to increase global awareness of transnational antiquities trafficking, and to remove contraband from the hands of dealers and smugglers, decision-makers must first adopt a genuine law enforcement and prosecution-centered approach focused on convicting perpetrators. Current government conduct allows antiquities traffickers to dodge the justice system and avoid prison, while the public and policymakers are left in the dark about criminal conduct (considered to be a public wrong) that otherwise would be known through freely available court records.

Such impunity may come as a surprise to Americans when they learn that prosecutors must prove, as a matter of law, that a person committed a crime before seized artifacts can be forfeited. So why aren't smugglers arrested?

There was no answer to this question in a case uncovered last year through a Freedom of Information Act (FOIA) request.<sup>10</sup> The papers released by DHS described a trafficking ring suspected of illegal importation, money laundering, and possibly terrorism.

CBP intercepted an express package at Liberty International Airport in Newark, New Jersey that contained a late Roman period wine jug, three fifth century B.C. Scythian gold foil appliqués, and two antique gold ornaments. The importer falsely



declared the objects as “BRASS JUGS PLATED PENDANTS” of British origin worth £650 GBP (\$1050 USD). A CBP Supervisory Officer wrote that customs agents and ICE “determined that these items were being brought in with a false country of origin, undervalued and were” from a different time in history. A report explained that “the SME [subject matter expert] ... elucidated that none of the items in this shipment could have had Great Britain as a country of origin.” “These items were seized for being violation of 18 USC 545-Smuggling Goods into the United States.”

The wine jug and gold pieces were bound for a man residing in Manhattan, whose address matched the same location as a registered New York company. DHS characterized the business as one “suspected of antiquities smuggling and money laundering,” and the Treasury Enforcement Communications System broadcast these warnings: “INDIVIDUAL IS SUSPECTED OF DEALING IN ILLICIT CULTURAL PROPERTY DETAIN ALL SHIPMENTS...;” “BUSINESS IS SUSPECTED OF DEALING IN ILLICIT CULTURAL PROPERTY BEING SMUGGLED FROM AFGHANISTAN AND PAKISTAN...” One investigator expressed alarm, “Just learning that the principles (sic) have prior (failed and closed) investigations into them for money laundering, Cult. Prop. [cultural property] smuggling, and possible terrorism ties to Afghanistan.” Serious concerns like these should have warranted an experienced federal prosecutor to be assigned to the case, but the documents plainly admitted, “No AUSA.”

The investigation concluded with a publicized repatriation ceremony held at the Afghan embassy in Washington, DC.<sup>11</sup> There were no arrests, no indictments, and no convictions, not even for those who lied on the customs form.

**The Afghan Ambassador Eklil Hakim and HSI Associate Director John Connolly at the 2013 repatriation ceremony. Source: Immigrations and Customs Enforcement**





In cases where there have been prosecutions, they have typically yielded poor results and have left traffickers in business.

On the rare occasions when attorneys have targeted antiquities smugglers for federal prosecution, the cases have produced “a pattern of non-incarcerative sentences [that have] failed to have a deterrent effect” so that, as one AUSA observed, the “remote possibility of a non-jail felony conviction has become the cost of doing business.”<sup>12</sup> Criminal infrastructures have remained intact, leaving the traffickers’ supply, transportation, conservation, distribution, marketing, sales, legal, and accounting networks operational. “Unlike securities dealers or government contractors, dealers in cultural property can continue to work in the same field despite convictions for smuggling and lying to government agents,” wrote the prosecutor in *U.S. v. Khouli et al.*

The *Khouli* case illustrates an attempt to prosecute, but with muted success. ICE’s Special Agent in Charge remarked that the arrests represented “a groundbreaking [sic] case for Homeland Security Investigations.”<sup>13</sup> But the felonies charged against four defendants resulted in no conviction for a Virginia collector, only a deferred prosecution;<sup>14</sup> a reduced misdemeanor conviction for one Michigan dealer, who paid a fine;<sup>15</sup> and a sentence of one-year probation with six months home confinement and 200 hours community service for the principal defendant, a New York dealer who faced 20 years in prison.<sup>16</sup> The fourth co-defendant, hailing from the Middle East, remains a fugitive.

ICE initially declared that it “dismantled an organization responsible for conspiring to smuggle Egyptian Middle Eastern and Asian antiquities into the United States and conspiring to launder money in furtherance of smuggling,” yet that hope was not realized. Both antiquities dealers remain in business today.<sup>17</sup>

A gap in civil forfeiture experience needs to be filled.

Beyond the need for effective criminal prosecutions, successfully litigating civil forfeitures may be at risk now that America’s top antiquities forfeiture prosecutor, Sharon Cohen Levin, has left the public sector. Attorney Levin served nineteen years as Chief of the Money Laundering and Asset Forfeiture Unit in the U.S. Attorney’s Office (USAO) for the Southern District of New York (SDNY). She pioneered efforts to successfully forfeit cultural heritage material.<sup>18</sup> Her lost expertise increases the odds that legal missteps could occur. The Ka Nefer Nefer case in St. Louis, Missouri is one example where prosecutors without antiquities forfeiture experience failed to confiscate an allegedly stolen mummy mask and return it to Egypt.<sup>19</sup>

## Policy Recommendations

A team of Cultural Heritage Crimes Prosecutors should be created to focus on transnational antiquities trafficking and related crimes.

At least four specialized attorneys should be assigned to focus on transnational antiquities trafficking and related cultural heritage crimes.<sup>20</sup> Known as Cultural Heritage Crimes prosecutors, or the CHC Team, they would be tasked to build the framework needed to indict antiquities traffickers, pursue felony convictions, press for meaningful sentences, dismantle criminal networks, forfeit inventories and profits, disrupt criminal networks, and bring distinct attention to global heritage smuggling that arrives on American soil.

There are different ways to structure this proposal. One suggestion is to have an attorney lead a new CHC Section in the Criminal Division at DOJ in Washington,



DC (Main Justice).<sup>21</sup> A prosecutor in the Asset Forfeiture and Money Laundering Section at Main Justice would be assigned to work with the new Section. A third attorney would be assigned to handle cultural property cases in the Criminal Division at the U.S. Attorney's Office in Manhattan (SDNY), right in the heart of America's antiques marketplace. A fourth attorney would be assigned to pursue forfeitures and repatriations in that office's Civil Division. Meanwhile, the existing Cultural Property Law Enforcement Coordinator at the Executive Office for United States Attorneys would continue to provide support and training to prosecutors in the field. The attorneys would be expected to work with each other, with other AUSAs outside the new Section, and with existing overseas legal attachés; to work with federal officers and investigators at CBP, the FBI Art Crime Team, U.S. Fish and Wildlife, HSI, IRS, the National Park Service, and the Department of the Treasury; and to work with the Department of State's Cultural Heritage Center, the Department of Defense, and the Smithsonian Institution. In this fashion, CHC prosecutors would be the point of contact with all agencies that encounter transnational antiquities crimes.

To take strong action against the illicit trade, the CHC Team should have an expanded mission.

The CHC Team's express mission would be to:

- Hold antiquities traffickers accountable by seeking criminal convictions and meaningful sentences sufficient to provide specific and general deterrence.
- Disrupt and dismantle criminal infrastructures by breaking supply, transportation, conservation, distribution, marketing, and sales networks through civil and criminal forfeitures.
- Provide expertise, information, and support concerning cultural heritage investigations and prosecutions nationally and internationally.
- Define investigative and prosecution protocols.
- Partner with state, county, and local authorities to tap into additional resources—and sometimes more favorable law.
- Elevate the status of antiquities trafficking crimes.
- Cultivate confidential informants and sharpen intelligence of black market operations.
- Expand the list of expert witnesses to authenticate artifacts.
- Assemble examples of practices in the antiquities market that will give legislators and regulators the information they need to enact stronger measures to decrease antiquities trafficking.
- Provide investigative and legal training to USAOs, police and customs agencies, and foreign law enforcement.
- Liaise with relevant foreign officials and organizations.<sup>22</sup>



The CHC Team would be most effective in transnational cases.

U.S. Attorneys would continue to take responsibility for investigations and prosecutions of cases that originate within their own districts, while the CHC Section at Main Justice would be responsible for investigating and prosecuting crimes on a nationwide basis. CHC attorneys, meanwhile, would apply forfeiture rules to confiscate contraband artifacts and to disrupt sales, supply, transportation, conservation, distribution, marketing, accounting, and financing infrastructures supporting criminal networks. Generally speaking, CHC prosecutors would prove most effective in cases that (a) involve investigations crossing state and international lines, (b) present unique issues of law, (c) affect international relations, (d) require expediency, or (e) demand special resources.



CHC prosecutors must partner with state, county, and local authorities to be successful.

While federal CHC prosecutors are needed to enforce U.S. laws that forbid importing goods illegally, falsifying import paperwork, money laundering, wire fraud, and more, successful CHC attorneys must partner with state, county, and local prosecutors, particularly when handling receiving stolen property cases. That is because state laws may be more favorable.<sup>23</sup> Already county and district attorneys have a wealth of experience dealing with felony receiving stolen property cases in their own jurisdictions, and they can help expand and advance prosecutions against receivers of stolen antiquities. Matthew Bogdanos, a prosecutor at the New York County District Attorney's Office, already is pioneering successful efforts with federal HSI Special Agent Brent Easter to enforce New York State statutes against transnational cultural property traffickers.<sup>24</sup> Such partnerships must continue.

The day-to-day criminal casework undertaken by the CHC Team undoubtedly will sharpen their trial and investigative skills, greatly improving efforts to uncover trafficking operations and convict dealers, smugglers, and accomplices. Shaped by a growth of experience, the attorneys should be able to offer clear descriptions to



Regular case work will enhance CHC prosecutors' skills and pave the way for prosecutorial and investigative innovations.

judges and juries of traffickers' complex money trails, cloaked trafficking routes, and papered shell corporations, all built to move illicit artifacts into the mainstream American marketplace behind the disguise of legitimacy.

They also should be able to dispel the notion that it is too hard to prosecute traffickers, following the lead of determined prosecutors throughout America who have devised or endorsed smart strategies and new methods to overcome tough obstacles. The introduction of victimless prosecutions in the 1980s and 1990s in domestic violence cases; the advancement of technical accident reconstruction in the 1980s and 1990s in motor vehicle homicide prosecutions; and the creation of Child Advocacy Centers in the 1990s and 2000s in child sexual assault cases all illustrate innovations that made tough-to-prove cases much easier to prosecute, sparked by the determination to hold criminal defendants accountable. In like fashion, it is expected that CHC attorneys will develop better practices to target antiquities crime.

Best practices that could be employed at the outset might include charging defendants with easier-to-prove crimes, using more court-admissible indirect and circumstantial evidence to buttress direct evidence, tracking smuggled antiquities through the sales chain rather than immediately seizing objects at the border, securing more witness cooperation, cultivating reliable confidential informants, employing more judicially authorized surveillance technologies, and prioritizing investigative targets to systematically move against low-level players like conservators in order to catch high-level players like dealers and smugglers. DOJ, in fact, already outlines a prosecution framework in ordinary property cases that encourages the cultivation of “[i]nformants familiar with the technicalities of particular fields of business enterprise” and that recommends electronic surveillance<sup>25</sup> to advance “the prosecution of fences who operate legitimate businesses and sell stolen property to the public.”<sup>26</sup>

Wildlife trafficking prosecutions offer a roadmap for the CHC Team.

Because many objectives of the CHC Team are expected to mirror those pursued by ECS prosecutors, the investigation and prosecution of wildlife trafficking cases may serve as a model for CHC prosecutors. U.S. Fish and Wildlife Service (USFWS) agents rely on designated prosecutors to supply legal and investigative advice. Following the best practice employed by prosecutors' offices at the federal, state, county, and local levels—the practice of assigning an attorney to a serious or complicated felony investigation at the outset—DOJ explains, “An ECS prosecutor often gets involved early in an investigation, such as when the investigator swears out a search warrant or when a grand jury’s investigative power is needed. Once the necessary evidence is collected, the prosecutor presents the case to the grand jury for indictment. After indictment, the prosecutor guides the case through complex white collar and environmental law issues and prepares it for trial.”<sup>27</sup> CHC prosecutors could do the same.

It is noteworthy that the first time a court sentenced an antiquities dealer to prison since Frederick Schultz’s incarceration in 2002<sup>28</sup> was when Environmental Crimes Chief Joseph Johns in the Central District of California prosecuted dealer John Markell. In 2015, Markell was sentenced to eighteen months in prison,<sup>29</sup> and it may be the first time that a dealer actually served time behind bars for violating the federal smuggling statute.<sup>30</sup> Owner of Silk Road Design Gallery, Markell imported antiquities from four Southeast Asian countries knowing that the artifacts were looted archaeology. He inflated the artifacts’ price tags when donating them to museums in order to claim false tax deductions.



The success of the CHC prosecutors may expand the team to other critical districts.

As CHC prosecutors in New York City and Main Justice build capacity, increase expertise, gain confidence, and, most importantly, secure meaningful convictions, additional CHC Team members might be assigned to USAOs in the Eastern District of New York, where illegal imports come through JFK International Airport; or to the District of New Jersey, site of Newark Liberty International Airport; or to the Central District of California, home of Los Angeles International Airport

## Conclusion

In summary, with a minimum investment of resources, the DOJ can increase its effectiveness in the fight against the illicit antiquities trade.

- The DOJ should create a team of at least four specialized CHC Prosecutors, who will work with federal investigators to prosecute dealers, smugglers, and their accomplices who traffic antiquities. Initially, these positions would be split between Washington, DC (Main Justice) and New York (center of the global art market).
- The CHC Team would work to indict antiquities traffickers, pursue felony convictions, and press for meaningful sentences. The impact would go far beyond the individual cases prosecuted, enabling authorities to dismantle criminal networks, seize inventories and profits, and deter further crimes.
- CHC attorneys would define investigative and prosecution best practices and protocols, while providing expertise, training, and other support to federal, state, county, and local prosecutors and police, both in the United States and overseas.
- Through successful prosecutions and convictions, as well capacity building efforts, the CHC Team would lay the groundwork for adding designated prosecutors to other critical districts throughout the country.
- The intelligence gathered from multiple criminal investigations would give policymakers the information they need to develop and implement more effective measures to disrupt antiquities trafficking and related crimes like fraud, money laundering, and terrorist financing.

Taken together, implementing these recommendations would more effectively hold antiquities traffickers criminally accountable for the harm they cause to cultural heritage and possibly to U.S. national security.

# Endnotes

<sup>1</sup> A 2012 Basel Institute on Governance report titled *Basel Art Trade Guidelines* accurately observed: “In comparison with other trade sectors, the art market faces a higher risk of exposure to dubious trade practices. This is due to the volume of illegal or legally questionable transactions, which is noticeably higher in this sector than in other globally active markets. Far more serious than shady dealings in a legal grey area, the sector’s shadow economy encompasses issues ranging from looted art, professional counterfeiting and fake certificates to the use of art sales for the purpose of money laundering.”

<sup>2</sup> FBI News, “ISIL and Antiquities Trafficking: FBI Warns Dealers, Collectors About Terrorist Loot.” August 26, 2015. Retrieved October 17, 2016, from <https://www.fbi.gov/news/stories/2015/august/isil-and-antiquities-trafficking/isil-and-antiquities-trafficking>. See also Fatfi-gafi, “Financial Action Task Force, National Money Laundering and Terrorist Financing Risk Assessment” February 2013. <http://www.fatf-gafi.org/documents/documents/nationalmoneylaunderingandterroristfinancingriskassessment.html>.

<sup>3</sup> “Antiquities” is a term used here to cover archaeological, numismatic, and other cultural and religious objects over 250 years old.

<sup>4</sup> Orenstein, K. “Letter to Hon. Edward R. Korman, US District Court Eastern District of New York, U.S. v. Khouli et al. Criminal Docket No. 11-340.” November 13, 2012

<sup>5</sup> St. Hilaire, R. “Cultural Heritage Lawyer Rick St. Hilaire: Museum Raids Cases: Rare Antiquities. Rare Convictions for Gallery Owners. Rare Prison Sentence.” December 17, 2015. Retrieved June 22, 2016, from <http://culturalheritagelawyer.blogspot.com/2015/12/museum-raids-cases-rare-antiquities.html>

<sup>6</sup> Some examples are: United States v. Malter, 09-CR-834 (C.D. Cal.) (a case that included Malter Galleries, Inc.). Charges dropped involving illegal pre-Hispanic ceramic vessels and artifacts from El Salvador upon pleas of guilty to illegal artifacts trafficking from federal land in violation of the Archaeological Resources Protection Act. Sentence included one year home detention, two years’ probation, and \$8,000 fine; United States v. Perez, 07-CR-499 (C.D. Cal.). Plea of guilty to a single count indictment of smuggling a pre-Hispanic bowl from El Salvador without an export permit as required by the Cultural Property Implementation Act. Sentence included six months house arrest and fine of \$10,000; United States v. Johnson, 08-CR-491 (S.D.N.Y.). Guilty plea to misdemeanor count (dropped from a felony) of receiving stolen property from Egypt within special maritime and territorial jurisdiction. Sentence included restitution of \$21,200 and 18 months’ probation with the first six months served in home detention; United States v. Braude, 03-CR-1009 (E.D.N.Y.). Guilty pleas to smuggling and false statements for trafficking three Iraqi cylinder seals. Sentence included six months house arrest and \$2000 fine.

<sup>7</sup> ICE News, “ICE returns stolen and looted art and antiquities to Italy.” (2012, April 25). Retrieved June 22, 2016, from <https://www.ice.gov/news/releases/ice-returns-stolen-and-looted-art-and-antiquities-italy>

<sup>8</sup> ICE News, “Cultural Property, Art and Antiquities Investigations.” (n.d.). Retrieved June 22, 2016, from <https://www.ice.gov/cultural-art-investigations>

<sup>9</sup> Felch, J. “Feds: Subhash Kapoor ‘one of the most prolific commodities smugglers in the world.’” December 6, 2012. Retrieved June 22, 2016, from <https://chasingaphrodite.com/2012/12/06/feds-subhash-kapoor-one-of-the-most-prolific-commodities-smugglers-in-the-world/>

<sup>10</sup> St. Hilaire, R. “Cultural Heritage Lawyer Rick St. Hilaire: Antiquities Trafficking Investigation Reveals Suspected Ties to Terrorism and Money Laundering -- ‘Seize and Send’ Outcome Flags Need for Special Prosecutors.” September 30, 2015. Retrieved June 22, 2016, from <http://culturalheritagelawyer.blogspot.com/2015/09/newly-obtained-documents-reveal.html>

<sup>11</sup> ICE News, “ICE returns stolen antiquities to Islamic Republic of Afghanistan.” September 8, 2013. Retrieved June 22, 2016, from <https://www.ice.gov/news/releases/ice-returns-stolen-antiquities-islamic-republic-afghanistan>

<sup>12</sup> Orenstein, K. “Letter to Hon. Edward R. Korman, US District Court Eastern District of New York, U.S. v. Khouli et al. Criminal Docket No. 11-340.” November 13, 2012

<sup>13</sup> ICE News, “ICE makes arrests and seizes cultural artifacts stolen from Egypt.” July 14, 2011. Retrieved June 22, 2016, from <https://www.ice.gov/news/releases/ice-makes-arrests-and-seizes-cultural-artifacts-stolen-egypt>

<sup>14</sup> St. Hilaire, R. “Cultural Heritage Lawyer Rick St. Hilaire: U.S. v. Khouli et al. Update: Motion to Defer Prosecution Ushers Rapid End to Antiquities Case.” January 28, 2013. Retrieved June 22, 2016, from <http://culturalheritagelawyer.blogspot.com/2013/01/us-v-khouli-et-al-update-motion-to.html>

<sup>15</sup> St. Hilaire, R. “Cultural Heritage Lawyer Rick St. Hilaire: U.S. v. Khouli et al. Update: Second Guilty Plea Expected Today in Egyptian Antiquities Case. December 21, 2012. Retrieved June 22, 2016, from <http://culturalheritagelawyer.blogspot.com/2012/12/us-v-khouli-et-al-update-second-guilty.html>

<sup>16</sup> St. Hilaire, R. “Cultural Heritage Lawyer Rick St. Hilaire: Jail or No Jail? Sentencing Arguments Filed in US v. Khouli.” November 18, 2012. Retrieved June 22, 2016, from <http://culturalheritagelawyer.blogspot.com/2012/11/jail-or-no-jail-sentencing-arguments.html>

<sup>17</sup> ICE News, “ICE makes arrests and seizes cultural artifacts stolen from Egypt.” July 14, 2011. Retrieved June 22, 2016, from <https://www.ice.gov/news/releases/ice-makes-arrests-and-seizes-cultural-artifacts-stolen-egypt>

<sup>18</sup> Art-Crime Blogspot, “Sharon Cohen Levin Wins ARCA's 2013 Art Policing and Recovery Award ~ ARCA blog.” March 25, 2013. Retrieved June 22, 2016, from <http://art-crime.blogspot.com/2013/03/sharon-cohen-levin-wins-arcas-2013-art.html>

<sup>19</sup> St. Hilaire, R. “Cultural Heritage Lawyer Rick St. Hilaire: SLAM Dunks Declaratory Judgment Action, Leaving Feds With No Forum to Claim That Ka Nefer Nefer is Stolen.” June 25, 2014. Retrieved June 22, 2016, from <http://culturalheritagelawyer.blogspot.com/2014/06/slam-dunks-declaratory-judgment-action.html>

<sup>20</sup> Related crimes may include trafficking of fossils, religious icons, moon rocks, ceremonial masks, and any other collectors’ objects of historical, archaeological, religious, paleontological, ethnographic, mineralogical, anatomical, and numismatic interest, regardless of age.

<sup>21</sup> The DOJ’s Human Rights and Special Prosecutions Section reports that it investigates and prosecutes international antiquities trafficking cases, but the Section’s web site at <https://www.justice.gov/criminal-hrsp/how-report-human-rights-violator> does not mention any relevant investigations or cases.

<sup>22</sup> See U.S. Dept. of Justice, U.S. Attorney’s Manual, Environmental Crimes, Title 5, 5-11.000, available at <https://www.justice.gov/usam/usam-5-11000-environmental-crimes>

<sup>23</sup> Receiving stolen property may be more challenging to prosecute under the federal National Stolen Property Act (NSPA) because proof is needed to show that the defendant knew the property he received was stolen. But every State has a receiving stolen property statute that prohibits a person from selling, transporting, or receiving stolen property. Many of these State laws give county and district attorneys distinct advantages over their federal counterparts, allowing them to more easily hold criminal dealers accountable. For example, over two-thirds of the States permit reduced proof of a criminal defendant’s mental state, only requiring proof that the receiver of stolen goods should know, had reason to know, had reason to believe, or simply believed that the property offered for sale was stolen or probably stolen. A federal prosecutor, by contrast, is required to prove that a dealer actually knew the object was stolen. More importantly, almost one quarter of the States codify a legal assumption that a dealer in goods is presumed to know an object was stolen. N.Y. Penal Law § 165.55(2) is an example: “A...person in the business of buying, selling or otherwise dealing in property who possesses stolen property is presumed to know that such property was stolen if he obtained it without having ascertained by reasonable inquiry that the person from whom he obtained it had a legal right to possess it.” In New York, like other States, it is no defense that somebody else besides the receiver stole the property or that the property was stolen from a completely different jurisdiction. The States also do not rigidly mandate proving stolen objects to be worth \$5,000 or more as the NSPA requires. In the States, generally the value of the stolen goods determines whether a criminal charge is classified as a felony or a misdemeanor; it does not determine whether a receiver of stolen property can be prosecuted or not.

<sup>24</sup> One example is the conviction he secured in the case of *People v. Aaron Freedman* (N.Y. Sup. Ct. No. 13-091098). Manager of Subhash Kapoor's Art of the Past gallery in New York City, Freedman pleaded guilty in 2013 to felony conspiracy and five counts of felony criminal possession of stolen property.

<sup>25</sup> US Dept. of Justice, Criminal Resources Manual, Sec. 1345, available at <https://www.justice.gov/usam/criminal-resource-manual-1345-fencing-investigations>.

<sup>26</sup> US Dept. of Justice, U.S. Attorneys’ Manual 9-61.400, available at <http://www.justice.gov/usam/usam-9-61000-crimes-involving-property#9-61.400>

<sup>27</sup> Department of Justice, “Environmental Crimes Section.” (n.d.). Retrieved June 22, 2016, from <http://www.justice.gov/enrd/environmental-crimes-section/>

<sup>28</sup> See *US v. Schultz*, 333 F.3d 393 (2nd Cir. 2003).

<sup>29</sup> St. Hilaire, R. “Cultural Heritage Lawyer Rick St. Hilaire: Museum Raids Cases: Rare Antiquities. Rare Convictions for Gallery Owners. Rare Prison Sentence.” December 17, 2015. Retrieved June 22, 2016, from <http://culturalheritagelawyer.blogspot.com/2015/12/museum-raids-cases-rare-antiquities.htm>

<sup>30</sup> 18 U.S.C. § 542