

MENU 



A lawyer's commentary on cultural property law and its impact on cultural property crime, antiquities trafficking, looted archaeology, illicit trade, art theft, heritage preservation, and museum risk management.

ANTIQUITIES TRAFFICKING | BURMA | CAMBODIA | CHINA | IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) | INTERNAL REVENUE SERVICE (IRS) | LACMA | MUSEUMS | NATIONAL PARK SERVICE | PROSECUTIONS | SMUGGLING | THAILAND

Museum Raids Cases: Rare Antiquities. Rare Convictions for Gallery Owners. Rare Prison Sentence.

BY RICK ST. HILAIRE DECEMBER 17, 2015

In the annals of cultural property law, prosecutions targeting transnational antiquities trafficking networks are rare. Even more rare are felony convictions. Scarcer still are prison sentences.



So what happened this week to a pair of California gallery owners tied in with the [“Museum Raids”](#) cases is a momentous achievement, an example of careful and intelligent case development by the U.S. Attorney’s Office for the Central District of California, resulting in felony convictions for antiquities traffickers rather than the usual [“seize and send”](#) photo-op that cultural property watchers are accustomed to witnessing.

Jonathan and Carolyn Markell, aged 70 and 68 and owners of Silk Roads Design Gallery, were sentenced on Monday for their role in an elaborate scheme that mixed international heritage trafficking with tax evasion.

Calling the crime “significant,” United States District Judge Dean D. Pregerson said it was “important to send a message” to art collectors, gallery owners and museums that they should avoid collecting and trading looted antiquities.

The court handed down an 18 month prison term to Jonathan Markell on a felony count of conspiring to import goods using false statements in violation of [18 U.S.C. § 371](#) (conspiracy) and [18 U.S.C. § 542](#) (importing goods using false statements). His wife, Carolyn, received a sentence of probation on a felony charge of conspiracy to commit tax evasion pursuant to [18 U.S.C. § 371](#). Jonathan Markell also pleaded guilty to conspiracy to commit tax evasion.

“Mr. Markell’s greed placed his art gallery’s profits above the culture and heritage of the people of Thailand,” said United States Attorney Eileen M. Decker in a press release.

There were no complaints about the court’s 1 1/2 year sentence, even though prosecutors sought a 2 ½ year prison term for Jonathan Markell because, in prosecutors’ words, “it is clear that Jonathan Markell has no respect for the law— not this nation’s laws, nor those of other nations.”

In seeking a prison term, prosecutors, notably among them Assistant U.S. Attorney and Environmental Crimes Chief Joseph Johns, sought both [specific deterrence](#) and [general deterrence](#).

The attorneys pointed out the obvious to the court, 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.” That is why, they contended,

Defendant Jonathan Markell’s antiquities smuggling case presents a unique opportunity to send a message and afford adequate deterrence to the ‘upper end’ of the criminal black market for looted archeological resources, i.e., the brokers and gallery owners who sell their wares to the collectors. If we are able to diminish and disincentivize the market (or demand) for illegal antiquities, then we may have an equal effect on taking the monetary incentives out of the act of looting itself. It is the market, or demand, which drives the looters at the ground level to provide the supply of stolen antiquities to meet that demand.

Jonathan Markell’s sentence of 18 months behind bars perhaps is the most ordered by a court in a transnational antiquities trafficking case since [U.S. v. Schultz](#), a federal case from 2002 that saw Frederick Schultz, a high profile and successful Manhattan antiquities dealer, sentenced to serve 33 months in prison after a jury found the defendant guilty of the felony of receiving stolen Egyptian antiquities that had been transported in interstate and foreign commerce in violation of [18 U.S.C. § 371](#) (conspiracy) and [18 U.S.C. § 2315](#) (the National Stolen Property Act).

That case failed to serve as a warning to the Markells as the investigation into the husband and wife and their co-conspirators began the following year, in 2003 when a National Park Service (NPS) special agent began to uncover the trafficking network that had been smuggling archaeological material from Southeast Asia.

In January 2008, federal agents from several law enforcement agencies raided a variety of locations, including [four museums](#) in California. Police descended on the Los Angeles County Museum of Art, the Bowers Museum, the Pacific Asia Museum, and the Mingei Museum with search warrants to “seize in place” ancient

objects identified as potential evidence. Officials simultaneously seized evidence from the Markell's home as well as their art gallery.

The museum raids generated three published criminal cases:

- *United States v. Robert Olson and Marc Pettibone, et al.*, which charged a conspiracy to smuggle Southeast Asian artifacts, including from Thailand and Cambodia, into the United States beginning in 2004;
- *United States v. Robert Olson and Jonathan Markell*, which charged a conspiracy to smuggle Southeast Asian artifacts, including Burmese antiquities obtained in Thailand beginning in 2003; and
- *United States v. Jonathan Markell andCarolynn Markell*, which charged a conspiracy to commit tax fraud by making false statements when donating smuggled artifacts to museums in an effort to receive tax deductions.

[Sidebar: At least one media report by the [Pasadena Patch](#) suggests that legal action against unnamed museums resulted in deferred prosecution agreements. These agreements do not appear in the court system's public files. It is possible that they are held privately by the U.S. Attorney's Office and not subject to public disclosure]

The Markells pleaded guilty to criminal charges on April 16 after signing a written agreement with federal prosecutors the previous month..

As part of the deal, both defendants conceded that they conspired to knowingly and intentionally defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful government functions of the Internal Revenue Service (IRS) in the ascertainment, computation, assessment, and collection of income taxes, by promoting and participating in a false charitable deduction scheme for the purpose of improperly claiming charitable deductions on federal income tax returns.

The Markells agreed to repatriate 337 artifacts by ocean-borne cargo to their countries of origin, specifically China, Thailand, Cambodia, and Burma; to pay the \$25,000 estimated shipping cost; and to cooperate with the IRS to calculate back taxes and penalties from 2004 through 2007, estimated to be \$39,891.

In a court pleading filed on December 3, attorneys for the government elaborated on the facts of the case:

In short, Jonathan and Carolyn Markell jointly owned and operated the business Markell Imports, Inc., doing business as the Silk Roads Design Gallery (“Silk Roads”). The Markells’ business model consisted of their purchase and importation of art, antiques, and archeological resources from Southeast Asia, and their resale of such merchandise through their Silk Roads art gallery in West Hollywood.

Part of their business model included the intentional use of false declarations and statements in United States Customs entry documents to “smuggle” or introduce the archeological resources “antiquities” into the United States.

The lawyers flagged a contention made by the Markells, one that is often echoed by ethically ambivalent antiquities dealers who complain that filling out customs forms is too burdensome for small business owners:

During [a police interview], Jonathan Markell stated that he and Carolyn Markell falsified the customs documents to disguise what they were importing because the United States Immigration and Customs Enforcement classification process is difficult if they actually identify a piece as an “antique.” Carolyn Markell agreed with her husband’s statement.

The Markells further justified their behavior by claiming that United States Customs forces people to lie on import declarations because of the delay in clearing Customs if they properly identify an object as an antique.

Prosecutors added that the Markells failed to fully disclose their criminal conduct to investigators. “For example, they did not admit that Jonathan Markell had conspired with [a] co-defendant to not only falsely describe Burmese and Khmer antiquities in United States Customs import documents ... but also to falsely declare the import value of those antiquities as 25% of their true purchase price.”

The attorneys said that neither defendant “admitted ... that they knew that it was illegal to export archeological resources/antiquities from the countries of China, Thailand, and Burma—which is most likely the reason that the antiquities were falsely described in United States Customs import documentation.”

Focusing on the pairs’ systematic plan to dodge federal taxes, prosecutors noted that the operation “was heavily dependent upon the ready availability of Southeast Asian antiquities obtained ... through the antiquities smuggling scheme

... The Southeast Asian antiquities smuggled into the United States ... were bundled and sold for approximately \$1,500. The[] \$1,500 'package' typically included antiquities from Ban Chiang, Thailand, false sales invoices to reflect an earlier sales date, along with a fraudulently inflated \$5,000 appraisal that contained a fraudulent expert's signature."

Prosecutors called the defendants' conduct a "complete contempt for this Nation's rule of law," spotlighting "Carolyn Markell's discussion of the [International Emergency Economic Powers Act](#) ("IEEPA") [Burmese sanctions](#) with the undercover agent ('UC') in this case":

During that discussion, she told the UC that she had been extremely worried about the last shipment of antiquities that she and Jonathan Markell had brought into the United States from Thailand in September 2006—which had included 7 Burmese statues. She related to the UC that the President of the United States had prohibited entry of any Burmese items into the country, and that she had lost sleep worrying that their import shipment would be intercepted by United States Customs authorities. She told the UC that she did not care about being dishonest, but that she didn't want to get caught.

Jonathan Markell, meanwhile, "brought up a Los Angeles Daily News article about an individual that had been prosecuted for a tax evasion scheme involving antiquities and a museum," according to prosecutors. "Jonathan Markell laughed about the article, and then asked the UC if he thought that he (Jonathan Markell) was going to jail (for the tax evasion scheme). Jonathan Markell told the UC that the person who had been caught must have done something pretty stupid, and that the government was not going to look at any donation under \$10,000."

The tax scheme relied on the couples' assumptions that customs officials would overlook mislabeled illegal shipments and that museums and collectors would fail to conduct the [due diligence](#) necessary to verify the archaeological objects' legitimate collecting histories.

Antiquities mostly from Thailand's Ban Chiang World Heritage site were used to fuel the fraud, according to recitals found in the plea agreement, which described how Jonathan Markell "solicited co-conspirators to buy a 'charitable donation package' that included one or more Ban Chiang antiquities to be donated to a charitable institution." Then "Silk Roads Design Gallery prepared false appraisals for donations of these antiquities to charitable institutions, such as museums and universities using another person's name." Jonathan Markell thereafter "contacted charitable



institutions to get them to accept his, defendant Carolyn Markell's, and his co-conspirators donations." Specifically, prosecutors alleged:

"On or about December 26, 2003, CAROLYN MARKELL sent an email to a museum representative regarding the provenance of donated items as being a purchase in 1984.

Defendant CAROLYN MARKELL determined that she and defendant JONATHAN MARKELL would purchase items to be donated from a certain co-conspirator. Between an unknown date and January 2008, although defendant JONATHAN MARKELL knew that the seller of a donated item could not appraise the item for tax purposes, he prepared appraisals that falsely inflated the value of donation items he sold as part of a "donation package" he sold to co-conspirators. ... In or about April 2007, defendant JONATHAN MARKELL advised an unindicted co-conspirator to change the listed purchase date on a museum donation form because it needed to appear that the co-conspirator had held the item for years, namely, ten years, to take the inflated value as a tax deduction. On or about March 10, 2006, defendant CAROLYN MARKELL contacted a museum curator to discuss the museum's policies and requirements. On or about June 14, 2006, defendant JONATHAN MARKELL solicited a Thailand museum curator's electronic signature which he fraudulently inserted on appraisals of items to be donated that he had prepared. ... On or about March 27, 2007, defendant JONATHAN MARKELL electronically mailed a request to the museum curator in Thailand to sign forms to support co-conspirators' charitable donation tax deductions and to sign six to eight blank forms in blue, to support fraudulently future donations. On or about December 13, 2007, JONATHAN and CAROLYN MARKELL delivered donations to a museum on behalf of a client. Around December 2007, defendant JONATHAN MARKELL donated Ban Chiang antiquities to a museum on behalf of co-conspirators, charging them \$3,450 for

the items and appraisals to support an \$11,425 charitable donation income tax deduction.

Meanwhile, from 2004 through 2007, the Markells regularly donated Ban Chiang artifacts to an unidentified museum(s) and took a charitable tax deduction, “knowing the items had been stolen from the country of Thailand.”

In their steady march toward convictions and incarceration, the U.S. Attorney’s Office tapped into its experience with wildlife trafficking cases—[an instructive parallel to antiquities trafficking cases](#). Prosecutors wrote in a sentencing pleading dated Dec 3, 2015:

There are two types of archeological resource looters: (1) the looter that digs up and collects artifacts as a hobby for his or her own personal collection; and (2) the looter that digs up artifacts for the purpose of selling them to brokers or gallery operators. As with the protection of threatened and endangered wildlife species, the key to protecting and conserving archeological resources is to eliminate markets for illicit/looted antiquities. Without the existence of brokers, middlemen, and gallery owners who are willing to knowingly and intentionally profit from sales of parts and products of threatened or endangered wildlife species or looted archeological resources, there is little monetary incentive for wildlife poachers or archeological resource looters to engage in their nefarious trades.

One might be tempted to think that the archeological resource looter squatting in the deep mud and steaming jungle highlands of Ban Chiang, Thailand is primarily to blame for the devastation of pristine archeological sites and the information lost thereby—just as one might be tempted to lay the bulk of the blame for the loss of the last Northern White Rhinoceros at the feet of the poacher who killed it; but that line of thinking is incorrect. It is individuals such as Jonathan Markell ... the importers, the buyers, and the gallery owners who purchase and acquire such archeological resources or wildlife products for profitable resale who are primarily to blame for the underlying devastation. For these are the individuals who create the markets that create the monetary incentives that drive the poachers and looters into the fields.

The government’s lawyers thereby laid the groundwork to argue for a prison term, “to reflect that seriousness and to promote respect for the law and to provide just punishment for the offense.”

Meanwhile, they made the important point that “[a]rcheological resources are non-renewable. The looting of archeological resources causes widespread destruction of archeological sites and results in the loss of archeological information which would be gleaned from a properly excavated site.”

They informed the court as well about the enormous impact of cultural plundering on the Thai people. “Many villages throughout Southeast Asia have been deprived of the opportunity to grow an economy based on archeological tourism because their heritage and archeological resources have been devastated by looting activity to supply to the purveyors of ‘stolen time,’ such as defendant Jonathan Markell.”

Prosecutors poignantly added, “Criminal conduct, like that committed by defendant Jonathan Markell in this case, serves to deprive individuals from other countries of their own distinctive histories and heritages—in essence stealing not just their antiquities, but their ‘time and history.’”

Two witnesses reinforced these arguments when they testified this week at the sentencing hearing. One witness was the NPS agent who investigated the case, and the other was archaeologist Dr. Joyce White, director of the [Ban Chiang Project](#) housed at the University of Pennsylvania Museum.

Dr. White analyzed more than 10,000 artifacts, mostly from Thailand, which police obtained through Operation Antiquity, the code name used by NPS, U.S.

Immigration and Customs Enforcement Homeland Security Investigations, and IRS Criminal Investigation for the Museum Raids investigation.

In a court Declaration, Dr. White made clear that antiquities exported from Thailand generally require a permit from the Thai Fine Arts Department. But, remarkably, she only saw one or two samples of antiquities where a permit actually had been obtained despite the thousands of samples examined.

Dr. White also noted that most of the artifacts were found intact, indicating that they had been illegally dug-up. “Intact artifacts are rare in archaeological sites and tend to come from human burials,” which would require “large scale excavations.”

The prison term and felony convictions imposed by Judge Pregerson this week are hoped to decrease the incentive to industrially excavate overseas archaeological sites overseas and to deter smuggling of contraband cultural property into the American marketplace.

More details about the cases can be found on Jason Felch's [Chasing Aphrodite blog](#) and at [Trafficking Culture](#).

Photo credits: William Schenold and Kiwiodyse

Text copyrighted 2015 by Cultural Heritage Lawyer, a blog commenting on matters of cultural property law, art law, cultural heritage policy, antiquities trafficking, and museum risk management. Blog url: culturalheritagelawyer.blogspot.com. Any unauthorized reproduction or retransmission of any blog post without the express written consent of CHL is prohibited. CHL is a service of [Red Arch Cultural Heritage Law & Policy Research, Inc.](#)

©2010–2022 Cultural Heritage Lawyer Rick St. Hilaire. Content discussing cultural heritage law, art law, looted antiquities, stolen artifacts, and museum risk management that is general information only, not legal advice.

← **PREVIOUS**

Federal Agents Easter and DiGiovanni
Lauded in Heritage Trafficking
Documentary

NEXT →

“Antiques” from Syria: U.S. Cultural
Property Import Stats Raise Suspicion

Similar Posts

Court Dismisses Dinosaur Forfeiture Case

By Rick St. Hilaire
December 5, 2018

Cultural Heritage Trafficking Requires Deterrence

By Rick St. Hilaire
December 17, 2014