

**American Bar Association  
International Cultural Property Committee  
Examines  
Collecting Chinese Art and Antiquities: Hot Trade Heats Up**

4 May 2007  
at the Fairmont Hotel, Washington, DC



*Jade cong. China, Neolithic period, Liangzhu culture, about 2500 BC, The British Museum*  
No one has ever given any explanation of the meaning or purpose of jade cong after 200 years of excavation and study

## **American Bar Association International Cultural Property Committee Examines Collecting Chinese Art and Antiquities: Hot Trade Heats Up**

### **Report**

A panel discussion sponsored by the International Cultural Property Committee of the Section of International Law & Practice of the American Bar Association and co-sponsored by the Lawyers' Committee for Cultural Heritage Preservation. The program was held Friday, 4 May 2007, 4:30-6:00 pm, at the Fairmont Hotel, Washington, DC.

#### **COLLECTING CHINESE ART AND ANTIQUITIES: HOT TRADE HEATS UP**

Collecting Chinese antiquities is back in fashion today. This program sought to investigate some of the legal and ethical dilemmas of contemporary collecting in this field. China is one of the largest source countries for antiquities in the world and has requested a bilateral agreement with the United States to help curb some of the illicit trafficking of cultural property currently taking place. Although CPAC (the Cultural Property Advisory Committee) in Washington has met to discuss this request for a new bilateral agreement with China in conjunction with a public session, a decision on whether there should be an agreement is still pending. The issues addressed in this program included looting of archeological sites; unprovenanced cultural property; and the problem of fakes, forgeries and authenticity -- discussed from various points of view and ideologies.

#### **Speakers:**

Mr. James J. Lally, J.J. Lally & Co. Oriental Art, New York, NY

Dr. Anne Underhill, Field Museum of Natural History, Chicago, IL

Dr. James Ulak, Freer & Sackler Galleries, Smithsonian Institute, Washington, DC

Mr. Jerome L. Hanifin, Serko Simon Gluck & Kane LLP, New York, NY

Prof. Patty Gerstenblith, DePaul University College of Law, Chicago, IL

Program Moderator: Bonnie Czeglédi, International Art & Cultural Heritage Law, Barrister & Solicitor, and Director of the Institute of Art and Cultural Heritage, Toronto, Canada

**Mr. James J. Lally**

**J.J. Lally & Co. Oriental Art, New York, NY**

**Summary:**

Today China dominates the international market for Chinese art. In 1949, the communist party confiscated art from private citizens and banned all trade in art and antiques. Today there are more than 45 Chinese art auctioneers in Beijing alone. China today is the fastest-growing and highest-volume world center of the Chinese art market.

In 2005 Chinese art sales at public auctions inside China rose to a new record total of more than US \$1.8 billion, while Chinese art sales in the US were US \$65 million, accounting for less than 4 percent of the world market.

Sponsored by major Chinese museums, the 2006 Asia Int'l Arts and Antiques Fair held in HK had 136 exhibitors, making it the largest Asian Art Fair in the world – more than three times larger than the NY Asian Art Fair. Out of the 136 exhibitors at the 2006 AIAA Fair in HK, 72 were Chinese dealers 7 were from the US.

The US should support Chinese efforts to preserve and protect the Chinese patrimony, but in the face of such a massive, rapid-growing market inside China, closing the US border to Chinese art would not have any practical effect on the situation in China or in the international market.

*Biography*

*James J. Lally has been professionally involved in the Chinese art market for more than 35 years. He was an appraiser, auctioneer and executive at Sotheby's from 1970 until 1985. Mr. Lally acted as the director of Sotheby's Chinese art department in New York from 1974 until 1985 and as a director of Sotheby's Hong Kong subsidiary from 1974 until 1985. He was president of Sotheby's North America in 1984 and 1985. He resigned in 1985 when Sotheby's was taken over by A. Alfred Taubman. In 1986 he established J.J. Lally & Co., a Chinese art gallery and advisory service in New York working with private collectors and museums in America and around the world.*

**Dr. Anne Underhill**

**Field Museum of Natural History, Chicago. IL**

**Summary:**

The Chinese Antiquities Trade: Why it is a Problem and What Should be Done

Collecting and selling Chinese antiquities are activities that have taken place in the U.S. for many years. Archaeologists like myself maintain that it is the responsibility of each individual or museum planning to acquire Chinese antiquities to ascertain the history of the objects. Objects

arriving in the U.S. relatively recently most likely were looted from archaeological sites and smuggled out of China. Looting robs everyone of irreplaceable information about the past, and the international market is one major force that fuels it. Instead of polarizing the views of archaeologists versus antiquities dealers, we should collaborate to work with people in China on solutions to reduce the looting of ancient sites, the internal art market, and the smuggling of antiquities (especially from Hong Kong). Supporting China's request to restrict the import of antiquities into the U.S. would set a good example to other countries known to have active markets for Chinese antiquities and would make it more feasible to work with people in China on solutions to the problems.

### *Biography*

*Dr. Anne Underhill is an archaeologist at the Field Museum in Chicago the current Chair of the Department of Anthropology there, and also an Adjunct Associate Professor at the University of Illinois-Chicago as well as Northwestern. She is the American director of one of the longest running Sino-foreign archaeological projects in China, involving 12 years of survey to find ancient sites and 4 years of excavation at the late prehistoric town of Liangchengzhen. Her research interests include ancient craft specialization and the emergence of social stratification.*

### **Dr. James Ulak**

**Freer & Sackler Galleries, Smithsonian Institute, Washington, DC**

### **Summary:**

#### Museums and Collecting Chinese Art

Representing the Freer Gallery of Art and Arthur M. Sackler Gallery of the Smithsonian Institution, Dr. Ulak briefly remarked the historic importance of Chinese art holdings in the two museums. He noted that since the Smithsonian Institution's ratification of the UNESCO Conventions in 1973 and with the subsequent additions of American Association of Museum Directors Guidelines; CITES requirements and the comparatively recent requirements to vet for works that may have been illegally confiscated during the Nazi Era, the layers of due diligence make it virtually impossible for any museum within the Smithsonian system to acquire all but the most "exquisitely provenanced" works.

For Chinese art in the Freer and Sackler this has resulted, at a minimum, in a very inadequate representation of the important archeological discoveries of the past thirty forty years.

He argued for the creation of a home-government operated system which would: monitor the movement of cultural patrimony; rank and protect objects according to importance (national treasure; important cultural object, etc.); allow collectors and museums worldwide to acquire significant works through purchase so that fine examples of Chinese art and archeology might be legally and permanently held outside China.

## *Biography*

*Dr. James T. Ulak is currently the Deputy Director of the Freer Gallery of Art and the Arthur M. Sackler Gallery of the Smithsonian Institution. He has held this position since September 2002. A specialist in the history of narrative painting production in 14th and received his PhD from Case Western Reserve University (Cleveland) in 1994. He served as a researcher at the Cleveland Museum of Art (1982-85), was associate curator of Asian art at Yale University Art Gallery (1987-89), associate curator of Japanese art at the Art Institute of Chicago (1989-1994) and curator of Japanese art at the Freer and Sackler galleries from 1995 to the present.*

*In addition to supervising curatorial, research, archival, conservation, conservation science activities and fine arts collections management at the Freer and Sackler Galleries, Dr. Ulak has been extensively involved in the development and funding of programs for research in East Asian painting conservation. He has published on a wide range of topics in Japanese art. In addition to medieval Japanese narrative painting, he has written on 18th century "eccentric" painters, and on Japan's artistic encounters with modernity in the late 19th and early 20th century. In addition to his work at the Freer and Sackler Galleries, he serves as an advisor to a number of museums, private collections and foundations in the United States, Europe and Japan.*

*Dr. Ulak also holds degrees in philosophy and theology. He was a resident of Japan for approximately 15 years. He lives in Washington with his wife, Kim Sammis, who is an architect, and his daughter, Claire.*

## **Mr. Jerome L. Hanifin**

### **Serko Simon Gluck & Kane LLP, New York, NY**

## *Biography*

*Jerry Hanifin is a partner with the customs and international trade law firm of Serko Simon Gluck & Kane LLP.*

*Jerry is involved in all aspects of the firm's litigation practice. He assists clients in obtaining favorable rulings from U.S. Customs and Border Protection on classification, value issues, and qualification for duty preference programs such as the Generalized System of Preferences and Caribbean Basin Initiative. He has extensive experience representing clients in Customs penalty actions, trademark and copyright forfeiture proceedings, and country of origin investigations. He conducts Customs compliance audits and assessments for clients and assists them in qualifying for Customs' C-TPAT and Importer Self Assessment programs.*

*Jerry leads the firm's International Art Trade practice, which represents and counsels museums, art dealers, an auction house, and art and antiquities collectors on all aspects of the importation and exportation of antiquities and works of art.*

**Prof. Patty Gerstenblith**

**DePaul University College of Law, Chicago, IL**

**Summary:**

In 2004 China submitted a request to the United States to impose import restrictions on archaeological material dating through the Qing Dynasty, which ended in 1911, pursuant to the Convention on Cultural Property Implementation Act and Article 9 of the 1970 UNESCO Convention. While under the CPIA, archaeological objects must be at least 250 years old to qualify for protection, the four statutory requirements are satisfied with respect to the older materials outlined in China's request. First, the archaeological heritage of China has suffered from considerable looting of sites, creating jeopardy to the cultural patrimony of China. Second, China has taken internal measures to preserve its archaeological heritage, particularly by enacting protective laws and policing its archaeological sites. Third, the number of States Parties to the 1970 UNESCO Convention has grown considerably and now includes many market countries such as the UK, Switzerland and France. While nations utilize different means to restrict the import of undocumented archaeological objects, the underlying function of these laws should be evaluated rather than simply their form. The Senate Report accompanying the CPIA urged that "the formula measuring the presence and worth of a 'concerted international effort' not be so mechanical as to preclude the conclusion of an agreement ... where the purposes of the legislation nevertheless would be served by doing so." The Senate intended this requirement to be interpreted with a significant degree of flexibility on a case-by-case basis. Finally, China has in the past participated in numerous examples of cultural interchange that do not threaten its archaeological heritage, and a bilateral agreement will only help to further such mutually-beneficial cooperation.

*Biography*

*Patty Gerstenblith has been Professor of Law at DePaul University College of Law since 1984. She is Director of DePaul's program in art and cultural heritage law and Co-Chair of the American Bar Association's International Cultural Property Committee. She served as Editor-in-Chief of the International Journal of Cultural Property from 1995 to 2002 and as a public representative on the President's Cultural Property Advisory Committee from 2000 to 2003. Her book, Art, Cultural Heritage and the Law, was published in 2004. She received her J.D. from Northwestern University and a Ph.D. from Harvard University in Fine Art and Anthropology. She served as a clerk to the Honorable Richard D. Cudahy of the Seventh Circuit Court of Appeals in 1983-84.*