

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

May 17, 2000

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

Background

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

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

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

Enforcement of the Indian Arts and Crafts Act

1) Outreach

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

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

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

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

In FY 2000, despite a tight budget, the IACB expanded its efforts to implement the Act through a widespread public outreach program. This outreach program is critical to enforcement of the Act because it seeks to educate Indian tribes, the Indian arts and crafts industry, and consumers about the Act's requirements and prohibitions in an effort to encourage the broadest possible compliance with the Act. The outreach program, with a significant focus on the Southwest, includes in-depth, on-site meetings and teleconferences with Indian tribes, arts and crafts

organizations, and related State and federal government entities. Some of this activity began in June 1999 and will continue throughout FY 2000 (*see* Exhibit “N”). Exhibit “N” provides more details about the IACB outreach activities.

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

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

2) Complaints Regarding Potential Violations

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

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

The following year, the IACB received a separate complaint from the Hopi Tribe regarding Navajo “Kachina” Dolls used in another Time-Life Books promotion for “The American Indians” book series. The Hopi Tribe was concerned about the misleading use of Hopi cultural information in describing products made by non-Hopi artisans. The IACB contacted Time-Life Books and the Navajo “Kachina” Doll distributor on behalf of the Hopi Tribe. The IACB

confirmed that the Kachinas were Navajo made. Time-Life Books' Senior Vice President of Law and Business Affairs informed us that Time-Life Books had decided to discontinue the use of the brochure referred to in the initial complaint, as well as the second brochure, which replaced "Navajo" for "Hopi" within the text referred to in the second complaint.

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

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

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

The IACB is working to create a formal referral process both within the Department of the Interior and between the Department of the Interior and the Department of Justice. At the Department of the Interior, the IACB is working with representatives from the Office of the Inspector General and senior attorneys from the Office of the Solicitor to develop an effective procedure for identifying, investigating, and ultimately constructing case referrals for alleged violations of the Act.

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

Trademark Regulations

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

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

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

The first problem we came across in drafting the trademark regulations concerns the scope of the IACB's trademark responsibilities towards Indian arts and crafts organizations. Under the 1990 amendments to the Act, the IACB is given several separate and distinct trademark functions. It is authorized to *create* trademarks of genuineness and quality for the IACB *and* for individual Indians, Indian tribes and Indian arts and crafts organizations. But this is *all* that it is authorized to do for Indian arts and crafts organizations, for they are not mentioned again in the trademark provisions of the Act. The later sections of the Act, which specify which entities may have their trademark registered by the IACB, leave out any mention of Indian arts and crafts organizations. The practical effect of this will be to deny Indian art cooperatives and enterprises--be they the Navajo Arts and Crafts Enterprise, Hopi Arts and Crafts-Silvercraft Cooperative Guild, Zuni Cultural Arts Council, or any other deserving organization of Indian artists and craftspeople--nearly all of the trademark benefits contemplated by the Act. Given that the stated purpose of the Act was to *expand* the IACB's trademark powers rather than to *contract* them, we want to make absolutely certain that the trademark regulations fairly and correctly serve Indian arts and crafts organizations.

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

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

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

The IACB is currently exploring ways it can craft trademark regulations that will allow it to file applications for "trademarks owned by the government" where the owners in fact are individual Indians or Indian tribes. Recently, IACB representatives met with representatives of the USPTO to obtain their position on the matter. The USPTO expressed concerns that permitting the IACB to obtain registrations on behalf of individual Indians or Indian tribes, when the IACB is not the owner of the mark sought to be registered, raises issues of conflict with the Lanham Act's ownership requirement. While these issues require further study, it currently appears that the Act does not allow the IACB to register marks owned by individual Indians or Indian tribes. The IACB is working with the USPTO to resolve these issues, and intends to seek a formal opinion on the matter from the Solicitor of the USPTO. The Committee may wish to consider whether an amendment to clarify section 2(g)(3) might be appropriate. We would be happy to provide proposed amendment language.

Museums

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

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

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

The Sioux Indian Museum in Rapid City, South Dakota, works closely with a Lakota Advisory Committee comprised of tribal members from the Rosebud, Pine Ridge, and Cheyenne River Reservations. Together, they develop and implement programs featuring dance, flute playing, storytelling, bow and arrow making, parfleche crafting, and beadwork. As part of its community outreach, with the assistance of the Lakota Advisory Committee and the Lakota College in Kyle, South Dakota, the Sioux Indian Museum trained college interns to inventory museum collections, install exhibits, and serve as museum tour guides. The Sioux Indian Museum also tailors many of their tours and presentations to visiting children’s groups. In particular, the museum works to build the Indian children’s appreciation of their rich cultural heritage and works with Indian and non-Indian groups to foster cross-cultural understanding. Through their tours, programming, and exhibits, the museum works to dispel many of the stereotypes, prejudices, and misunderstandings of historic and contemporary Sioux culture. Furthermore, as an example of the IACB museums’ efforts to promote regional Indian Arts and Crafts Act education efforts, this past winter the Sioux Indian Museum curator participated as a panelist in an important 30 minute public interest spot on South Dakota’s public television station addressing the importance of the Act.

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

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

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

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

Earmark

The IACB's FY 2000 budget is \$1,001,000. Of this amount, \$290,000 was earmarked by Congress for enforcement of the Act. The President's budget request for the IACB in FY 2001 requests \$1,123,000, providing an increase of \$100,000 for Act enforcement. The IACB understands that consideration is being given to a possible increase in the current earmark to

\$390,000, regardless of whether or not the IACB FY 2001 budget is increased. If this were to occur, it would have an adverse impact on the IACB's three regional museums and national economic development programs. The IACB would have to reduce its economic development assistance to Indian tribes, artists, artisans, marketing organizations, and businesses. Also, there would be reductions in staffing, hours of operations of the IACB's three regional museums, exhibitions, promotional publications, and related outreach activities and services.

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

Conclusion

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

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