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Three Contemporary Prosecution Case Studies and
the Challenges Affecting the Indian Arts and Crafts Act

DISSERTATION

A dissertation submitted in partial fulfillment of the requirements
for the degree of Doctor of Philosophy in the
College of Fine Arts at the
University of Kentucky

By

Tiffini Bowers

Lexington, Kentucky

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and Dr. Heather Hope Kuruvilla, J.D., Professor of Arts Administration

Lexington, Kentucky

2024

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ABSTRACT OF DISSERTATION

Three Contemporary Prosecution Case Studies and the Challenges Affecting the Indian Arts and Crafts Act

The Indian Arts and Crafts Act (IACA) is America's only federal arts policy. This study explores the IACA and the challenges contemporary prosecution cases identify for arts stakeholders, along with the implementation and effectiveness since the 2010 Act, to understand better the social and public policy implications and challenges for arts stakeholders. A qualitative study using multiple legal case studies, document analysis, and semi-structured interviews, along with an elite theory theoretical framework, anchors the research. Findings support existing research by indicating the main challenge is the definition and complexity of Indian identity; additional significant findings that contribute to future policy changes and cultural understanding included the absence of environmental considerations in the IACA, the lack of the policy to live up to its goal to successfully promote Native arts and crafts, and the need for more education around the IACA. For arts stakeholders knowledge of IACA is essential given America's colonial history and ongoing relationship with Native Nations, wherein the political relationship intersects and interacts with the successful administration of arts at policy, regulation, and compliance levels.

KEYWORDS: INDIAN, ARTS, CRAFTS, ACT, POLICY

Tiffini Bowers

04/17/2024

Date

THREE CONTEMPORARY PROSECUTION CASE STUDIES
AND THE CHALLENGES AFFECTING
THE INDIAN ARTS AND CRAFTS ACT

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DEDICATION

To my grandparents Lydia J. and Raleigh Bowers.

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CHAPTER 1. INTRODUCTION

Today's market for Indian-made goods currently exceeds \$1 billion in revenue, but it is estimated that \$400 to \$500 million of that demand is being satisfied from nonIndian, and largely, non-U.S. sources. (Senate Rep. no. 106-452 2000, under "Background")

This qualitative study explores the intersection of the Indian Arts and Crafts Act (hereinafter IACA or the Act) since the Amendments Act of 2010 and three contemporary prosecution cases in New Mexico to better understand the implementation of the Indian Arts and Crafts Act through multiple case studies and arts stakeholder interviews.

1.1 Overview of Research

The IACA is the only federal arts policy specific to one political group tied to the history of the United States; it functions with both regulation and promotion at its core. Through legal prosecution multiple case study analysis, and interviews with arts administrators, the implementation of the Act in relation to elite theory was examined to better understand the Act's impact following the 2010 Amendment. The Department of the Interior solicited public opinion about proposed changes to the Act in 2023 and future changes to the IACA, which are likely given the historic and legislative trajectory. As an arts administrator, it is beneficial and vital to understand the ways the IACA works and the effect of its influence from both a federal and arts administrative application.

1.2 Background and Significance of Research

Enacted in 1935, IACA differs from other federal cultural arts legislation because it is based on political status versus being considered a general funding appropriation, like the National Endowment for the Arts (NEA) and National Endowment for the Humanities

(NEH). In 2023, the Indian Arts and Crafts Board (IACB) primary purposes were to pursue prosecution for the production and sale of fake Native American goods, market Native Crafts to encourage industry development, and provides education about what is lawful when identifying as a Native artist within the United States. Despite eighty-six years of legislative efforts, less than ten cases involving violation of IACA have gone to trial (GAO 2011b, 19), Native Artists face challenges of identification due to federal qualifications (Grant 2002, 15-17), and millions of dollars worth of fake Native American goods flood the arts retail market each year benefiting non-Native peoples (GAO 2011b, 9).

The Indian Arts and Crafts Act (IACA) (25 U.S.C. § 305-305f) and subsequent legislation, amendments, and policies sought, “To promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes” (§ 305a). Within the original Act, the “promote” clause is further defined, stipulating, “It shall be the function and the duty of the IACA Board to promote the economic welfare of Indian tribes and the Indian wards of the Government through the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship” (§ 305a)

Issues around legislative accountability, IACA structure, and enforcement for the benefit of Native Peoples have been and are complex. Artists, arts administrators, and art retailers face increasing IACA regulations and compliance issues as legislative modifications endeavor to address violations and loopholes while simultaneously enforcing “promoted development” within a defined policy framework. The regulations that apply to Native cultural arts and no other groups are policy nonpareil in American arts.

Former IACB Member and Chairperson Jana McKeag explained that

misappropriation of cultural identity, misrepresentation of goods, and the economic impact are part of why the IACA exists, “That’s why it’s one race, one ethnic group, one culture, one sovereign nation that has this identification” (interview via Zoom with the author, September 8, 2023). Rodney Thomas, an author, retired Army Colonel, and independent researcher, broadens the perspective on IACA when asked about its significance, “The fact that cultural history was being stolen, quite frankly. So, the passage of the Act, I think, was probably one of the most significant pieces of legislation when it came to, certainly, a bit more than a tacit recognition of sovereignty and of cultural ownership” (interview via Zoom with the author, September 12, 2023).

The federal government, more specifically the Department of the Interior (DOI) in conjunction with the IACA Board (IACB) and state and federally recognized Native Nations (Federal and State recognized), are the two main actors that govern how policies and legislation are applied and get shaped for future effectiveness. Per the IACA of 1935, the IACB comprises five commissioners appointed by the Secretary of the Interior, who generally serve a term of four years. Commissioners are not compensated for service and can be public officers or private citizens, with a chairperson elected by the board (25 U.S.C. § 305). At inception, the IACB did not have any Native commissioners; however, by 2023, the entire Board is comprised of Native People. Historically, commissioners were well-educated, had social influence, and had the right political alignment with then-current administrations. A press release from 1963, a time roughly midway between the original Act and the subsequent enhanced 1990 Act, provides an example of the IACB composition.

Secretary of the Interior Stewart L. Udall today announced the reappointment of Vincent Price, the actor and art connoisseur, for an additional four-year term as a member of the Indian Arts and Crafts Board....Mr. Price will serve on the present

Board with its chairman, Dr. Frederick J. Dockstader, director of the Museum of the American Indian, New York, N. Y.; Rene d'Harnoncourt, director, Museum of Modern Art, New York, N. Y.; Erich Kohlberg, international dealer in arts and crafts, of Denver, Colo.; and Lloyd New Kiva, artist-craftsman and director of arts at the Institute of American Indian Art in Santa Fe, N. Mex. (DOI 1963).

Hierarchically, within the federal government, the IACB, which “implements and enforces IACA” (DOI n.d.-c) exists under the Office of the Secretary within the Department of the Interior (DOI n.d.-b) which “plays a central role in how the United States stewards its public lands, increases environmental protections, pursues environmental justice, and honors our nation-to-nation relationship with Tribes” (DOI n.d.-a). Structurally, this places the governance of Native People's arts and crafts within the federal government; it is noteworthy that the association with land management in the description of responsibilities of the Secretary of Interior, given the loss of lands by Native Peoples since Western colonialism. Additionally, the relationship dynamic is defined as one nation and another nation, wherein Tribes are domestic dependent nations.

This historical and contemporary topic is significant because America was built upon lands forcibly acquired, and indigenous populations are subjected to an unequal government-to-government relationship with the United States;¹ however, related cultural policy affects all citizens in some way. Representative of the social mores of the time, the 1935 IACA sought to preserve cultural practice as a matter of cultural policy and claim Native cultural products for a broader American identity. This policy approach would last for 55 years, slowly influenced by a changing American society, pressure for reform from Native peoples at the grassroots level, and pressure from policymakers. The federal Termination and Relocation policies of the 1950s and 60s aggressively sought full

¹ Government-to government refers to native nations as domestic dependent nations within the United States. The University of Alaska, General Principals of Federal Indian Law definition, “Domestic Dependent Nations: Although tribes are recognized as having inherent sovereignty, they are recognized as being ‘domestic dependent nations.’ Tribes are ‘domestic’ because they are within the boundaries of the United States. They are ‘dependent’ because they are subject to the power and responsibility of the federal government. They are ‘nations’ because they exercise sovereign powers over their people, property, and activities that affect them (UAF 2024).”

assimilation, and the Indian Civil Rights Act of 1968 shifted the balance of power by instituting American civil rights and limiting the authority Native Nations could apply to their members. With growing concern about imitation products in the marketplace, Native artists and businesses formed the Indian Arts and Crafts Association in 1974 (First American Traders, n.d.). Significantly, the Indian Self-Determination and Education Assistance Act of 1975 allowed more autonomy and the opportunity “to assume the responsibility for programs and services administered to them on behalf of the Secretary of the Interior through contractual agreements” (BIA, n.d.).

1.3 Problem Statement & Research Questions

Functioning as an arts policy affecting Native Americans and the public, the Indian Arts and Crafts Act has been criticized since its inception based on the literature survey conducted for this research. A perennial question in legal and arts administration circles is whether or not IACA is effective. Since its enactment in 1935, the Act, and subsequent amendments, continue to face criticism from the Native Peoples it is meant to serve and related stakeholders in arts administration, including gallery professionals and retailers, about whether the legislation is successful in its purpose “to promote the development of Indian Arts and Crafts” (25 U.S.C. § 305a) or if the legislation has evolved to something divorced from its intent based on legal case histories. While IACA legislation continues to favor prosecution, this researcher believes the effectiveness of IACA cannot be fully known until we better understand the legal cases and the current impact/landscape of the policy on arts stakeholders, if we intend to function and evaluate policy for change. This research examines collected interviews with artists, arts administrators, and art retailers as well as three contemporary legal cases that intersect with the Indigenous art market differently, involving a gallery owner and artist, a jewelry retailer, and a product importer to answer

the research questions: "What challenges do contemporary IACA prosecutions identify for arts stakeholders?" How do these challenges impact the development of Indian arts and crafts products?

1.4 Purpose Statement

This qualitative study explores the Indian Arts and Crafts Act and three contemporary prosecution cases in New Mexico since the Amendments Act of 2010. Along with arts stakeholder interviews it seeks to better understand the modern implementation of the policy through a multiple case study approach, exploratory and descriptive analysis, and a Constructivist worldview (Creswell and Creswell 2018, 119). Classical elite theory is the theoretical framework for the evaluation of case studies and policy enactment for artists, arts administrators, and retailers to make meaning while adding to the limited body of scholarship about IACA. For this research, the Indian Arts and Crafts Act (IACA) will be generally defined as a federal policy enacted in 1935 for the benefit of Native Peoples and the promotion of a market for Native art and craftsmanship (Galanda 2018).

1.5 Theoretical Framework

The aim is to understand what challenges are identified in contemporary IACA prosecution cases for arts stakeholders and how these challenges impact the development of Indian arts and crafts products. The study assumes that IACA is an elitist policy and builds on other work in the field by adding contemporary analysis during a period of increased prosecution and shifts in “non-elites to elite positions” (Anyebe 2018, 4), specifically the appointment of Deb Haaland, the first Native American United States Secretary of the Interior in 2021. For the operationalization of this study, classical elite theory, also referred to simply as elite theory, is used as a lens for examining multiple case studies, conducting analysis, and making recommendations.

Elite theory is rooted in the concept of seventeenth-century commodities of excellence and later extended to social groups (Bottomore 1993, 8); Vilfredo Pareto (1848–1923), Gaetano Mosca (1858–1941), and Robert Michels (1876–1936) are considered the founders of elite theory. Derived from twentieth-century political theorist James Burnham’s *The Machiavellians: Defenders of Freedom* (Burnham 1943), six tenets (as summarized and categorized by Damele and Campos 2022) could be applied to the IACA. Specifically, the theoretical framework for this research adopts the philosophy based on three of James Burnham’s tenets of classical elite theory (Damele and Campos 2022): the belief that the federal government wants to maintain power and privilege (#1), Native Nations are forced through policy to participate (#2) and a political formula that correlates with a generally accepted religion, ideology or myth (#3) (Burnham 1943, as categorized by Damele and Campos 2022).

The use of elite theory as a framework complements America’s history of colonization and the relationship with Native People evidenced through war, genocide, assimilation, and acculturation; IACA could be considered a governmental extension of historical practice through policy. Linda Tuhiwai Smith, in *Decolonizing Methodologies: Research and Indigenous Peoples*, states,

The nexus between cultural ways of knowing, scientific discoveries, economic impulses, and imperial power enabled the West to make ideological claims to having a superior civilization. The ‘idea’ of the West became a reality when it was re-presented back to Indigenous nations through colonialism. By the nineteenth century colonialism not only meant the imposition of Western authority over Indigenous lands, Indigenous modes of production and Indigenous law and government, but the imposition of Western authority over all aspects of Indigenous knowledges, languages, and cultures. (2021, 73)

Additionally, elite theory frames the choice to collect and analyze data produced by the government (elite) and include grey literature resources (non-elite), interview stakeholders (artists, arts administrators, retailers) from both elite and non-elite groups, and interrogate power relationships in the analysis and considerations for future policy

amendments. According to López in *Elite Theory*, “Overall, elite research methods are broad” (2013, 3-4), and this study employs two of the most popular approaches: “historical comparative analysis” (López 2013, 4) and interviews. Offering an overall native perspective on research, Thuiwai Smith explains,

From an Indigenous perspective Western research is more than just research that is located in a positivist tradition. It is research which brings to bear, on any study of Indigenous peoples, a cultural orientation, a set of values, a different conceptualization of such things as time, space and subjectivity, different and competing theories of knowledge, highly specialized forms of language, and structures of power. (2021, 49)

This research study uses elite theory as a way to explore an aspect of these “structures of power” (Smith 2021, 49) endeavoring not to cause harm but to generate knowledge through understanding and identifying challenges related to the IACA. Elite theory can omit Indigenous perspectives; Thuiwai Smith, in *Decolonizing Methodologies*, offers applicable insight explaining that part of the colonial system/structure forces people into alignment and that her work counters that by providing a new way to think about knowledge(s) for social transformation (2021, 73, 74, 288). Interestingly, Thuiwai Smith also talks about Indigenous Elites and how they are a result of this alignment with colonialism as well (2021, 73, 74), further demonstrating a lack of inclusion of Indigenous perspectives in dominant and accepted systems/structures.

Since the mid-nineteenth century, the applications and conceptualization of elite theory have evolved, e.g., Democratic Elitism; however, what remains central is that “Elite theory draws on a master distinction between elites and non-elites to advance explanatory constructs that can be assessed empirically for accuracy or plausibility. But because theories are always aspectual— they explain particular aspects of an observable phenomenon or set of phenomena—elite theory is actually a constellation of aspectual

theories” (Best and Higley 2018, 33). Mainly employed in political science and sociology disciplines, elite theory is relevant and has value when applied to public policy; Anyebe explains, “This model posits that, contrary to the belief that pluralism has in-built mechanism for ensuring equity in the share of power and influence in society, in reality, public policy is, by and large, the mirror image of the ruling elite’s interest” (Anyebe 2018, 9). Higley, Burton, and Field state, “We argue only that elite theory illuminates the flow of modern political history and contemporary events better than competing theories.” (Higley, Burton and Field 1990, 421), aligning with the research and organizational approach of this study. Hill and Klarner reinforce the value of elite theory when examining public policy through their historically focused empirical tests in “The Many Faces of Elite Power in the ‘System of 1896’” stating,

We have also demonstrated that traditional elite theory and contemporary public policy theory are entirely compatible at some points and that multiple, logically related propositions about elite power and the agenda status and adoption of particular public policies can be formulated from those theories and systematically tested...While traditional elite theory per se may appear dated to some, concern with elite power generally and economic elite power particularly remains central to political science today. (2002, 1133-1134)

Both Classic and more modern or New Elite Paradigms are not without criticism and share root issues. *The Palgrave Handbook of Political Elites* explains, “Enthusiasts of participatory democracy painted elite theory as anti-democratic and authoritarian in thrust” (Pakulski 2018, 11). Cammack points out the inconsistency with definitions of “elite” (Cammack 1990) and the “line between elites and non-elites is blurred” (Cammack 1990, 416). In “What Elite Theory Should Have Learned, and Still Can Learn, from W.E.B. Dubois,” Sall and Khan expand on the diversity of defining the elite, “Early attention of classic elite scholars to a cabal-like or interlocked group of elites, while at times fruitful, ignores how we should not simply think of an elite, but instead of different kinds of elites” (Sall and Khan 2016). Finally, López draws attention to the difficulties with causal research

relationships, “Currently, elite literature presents concerns over both elite action’s effect on structure and structural constraints for elite action. Since elite behavior is particularly hard to measure, elite research has engaged in sophisticated and clever methodological tools, ranging from elite surveys to political ethnography” (López 2013, 2).

To address the criticisms of elite theory, this study will not address the policy in a broader sociological or political science disciplinary perspective as it relates to democracy; authority will be addressed as it relates to the power relationships of elite and non-elites. For this research, the researcher adopts the western dichotomy that elites are defined as the federal government and, by extension, the foundational establishment and continuation of the IACB and IACA; non-elites are defined as all other actors, including Native Nations and the public. The causal relationship concern is addressed by exploring the enactment of IACA restricted to multiple case studies wherein the federal government or IACB is the prosecutor or initiator of action and decision maker throughout the legal process, paired with stakeholder interviews to interpret, make meaning, and identify challenges. Elite theory will guide historical policy analysis, interview questions, data collection, frame multiple case studies, and future recommendations by examining power and privilege, force, and welfare framed by Burnham’s summarized tenets (Damele and Campos 2022).

1.6 Delimitations and Limitations

For the purposes of this study, the federal government and IACA/IACB were considered the Elite, and interviewees were considered the Non-Elite. All three federal criminal cases were tried or pleaded in the New Mexico District Court; however, the geographical circumstances have a factual correlation to Native populations and political incentives to prosecute combined with the low number of total prosecutions as opposed to this work being a study of New Mexico and the IACA. The terms Indian, Native, Indigenous and Tribes, Peoples and Nation(s) are used interchangeably similar to the

variety of use by people and found in resources. Federal Indian Law is based on the political status of Native Nations and debatably IACA is also referred to as racialized or based on race in some sources. It was assumed that all interviewees were truthful and the study findings represent a portion of a larger context and may not be generalizable for an entire population. The terms author and researcher are used interchangeably to refer to the writer of this text. Although steps have been taken to mitigate researcher error and bias, it may still exist despite technical and supervisory reviews.

1.7 Chapter Overviews

Organized within five broad themes, this study includes five chapters, concluding with interpretive findings and final recommendations in the concluding Discussion Chapter.

Chapter 1.

Introduction and Background provides an overview of the study by summarizing the Background and Significance of the Research, stating the Problem Statement and Research Questions, Purpose Statement, a brief overview of the Theoretical Framework, Study Delimitations and Limitations, in addition to the Chapter Overview to understand the structure of the research presented.

Chapter 2. *Legislative History of IACA* describes the historical and legislative precursors of the IACA and provides a chronological legislative overview of each act, amendment and final regulation of the study.

Chapter 3. *Literature Review* demonstrates the current academic literature and the approach to the subject matter organized topically by Legislative History, Law and Legislation, Native Identity, Fakes and Frauds, and Framing Cultural Policy—these

foundational categories for understanding the legislation, trajectory, and its dual legal and arts complexity.

Chapter 4. *Methodology and Theoretical Framework* explains the study design supporting the research: a qualitative multiple case study approach (methodology), document analysis and interview (methods), Constructivist worldview, and elite theory (framework) (Creswell and Creswell 2018, 119). The study approach is justified within the context of academic research, and the Selection of Legal Cases, interview protocols, data analysis strategy, and Ethics are discussed.

Chapter 5. *Legal Case Studies Results* presents the deductive and indicative coding analysis strategy along with the corresponding results for the legal case studies. The top code occurrences from data analysis for frequency and other significant findings are set out.

Chapter 6. *Interviews Results* presents the deductive and indicative coding analysis strategy along with the corresponding results for the interviews. The top code occurrences from data analysis for frequency and other significant findings are set out.

Chapter 7. *Discussion* interprets the results of the multiple case study and interview coding and analysis, and offers final recommendations for future IACA policy considerations.

1.8 Conclusion

The study research questions in summary examine: How challenges are affecting the IACA Board in developing a market for Indian art and craftsmanship products? The research approach examines three legal cases that intersect with the Indigenous art market

differently, involving a gallery owner and artist, a jewelry retailer, and a product importer. While analyzing federal policy and resulting legal cases is not new, studying this grouping of current circumstances in this way has yet to be undertaken to the present researcher's knowledge. This study will provide insight about challenges, applicable considerations for future policy debate and contribute to filling the gap in scholarship around IACA, Indigenous Peoples, and United States federal cultural arts policy in general. The lack of scholarship in this area is significant because America was built upon lands forcibly acquired, and indigenous populations are subjected to an unequal government-to-government relationship with the United States; however, a related cultural policy supported by taxation affects all citizens in some way. Thus, this study is well warranted and positioned considering the future trajectory of IACA policy change and the projected growth of arts administration positions in the United States (Borninski 2023).

CHAPTER 2. LEGISLATIVE HISTORY OF IACA

This section aims to describe the historical and legislative precursors of the IACA and provide an overview of changes, terminology, and diverse perspectives that inform and contribute to understanding the scholarly resources that provide context for this research (See Figure 2.1).

The basis for IACA is rooted in the effects of colonialism and spurred by the momentum in the early 20th Twentieth Century around arts and crafts as a vehicle for economic relief (Schrader 1981, 6). The 1928 Meriam Report, a government survey, reflected the very poor conditions of Indian peoples, lands, and care of Indian children in residential schools (Indian Reorganization Act 1934). Within the “General Summary and Findings and Recommendations” section of the Report, a precursor for the IACA can be found,

In supplementing the Indian incomes and in home decoration, encouragement should be given to native Indian arts and industries. They appeal to the Indians’ interest, afford an opportunity for self expression, and, properly managed, will yield considerable revenue, much more than can be secured by encouraging them to duplicate the handiwork of the whites. Their designs can be readily adapted to articles for which the commercial demand is reasonably good (Meriam 1928, 45).

Robert Fay Schrader (1983) provides more historical context in *The Indian Arts & Crafts Board: An Aspect of New Deal Indian Policy*, wherein the author cites the tension between industrialization and historic craftsmanship,

As a result, the commissioners of Indian affairs, through their superintendents in the field, began as early as 1863 to praise the Indians’ ingenious craft skills. As the years passed, however, the Indian Office came to emphasize the development of Indian crafts into manufacturing industries. Contrary to the popular emphasis on arts and crafts was as an antidote to the effects of industrialization, the motivation behind the federal government’s early role in Indian arts and crafts was a desire to industrialize the Indians (3).

Figure 2.1 IACA Legislative Timeline²

IACA Legislative Timeline			
1935	1990	2000	2010
<p>Act Created: "To Promote the development of Indian Arts and Crafts and create a board to assist therein and for other purposes"</p> <p>Indian Arts and Crafts Board created in the DOI.</p> <p>Function of the IACB is "to promote the economic welfare of Indian tribes and wards of the Government through the development of Indian arts and crafts, expansion of the market" for such products."</p> <p>Powers granted include: market research, technical research, advice and assistance, experimentation with and through selected agencies, encourage government and private agencies activities, management assistance of operating groups, loan recommendation for production and sale, creation of a government trademark for genuineness and quality, and regulation for such.</p> <p>Counterfeit or imitate trademarks subject to \$2000 fine or 6 months imprisonment or both.</p> <p>Willful misrepresentation of Indian products or goods for sale is a misdemeanor crime with fine not exceeding \$2000 or 6 months imprisonment or both.</p> <p>Responsibility of the district attorney to start and prosecute in court for penalty enforcement.</p>	<p>"An Act: To expand the powers of the Indian Arts and Crafts Board, and for other purposes."</p> <p>"A truth-in-advertising law that prohibits misrepresentation in the marketing of Indian art and craft products within the United States."</p> <p>The IACB can receive complaints of Misrepresentation of Indian Produced Goods and Products and refer them to the FBI and the US Attorney General. "(b) IACB can recommend the Secretary of the Interior refer matters to the US Attorney General for civil action."</p> <p>Criminal Penalty: "First violation, fined not more than \$250,000 or imprisoned not more than five years, or both, and, if other than an individual, be fined not more than \$1,000,000; and (2) in the case of subsequent violations, if an individual, be fined not more than \$1,000,000 or imprisoned not more than fifteen years, or both, and, if other than an individual, be fined not more than \$5,000,000."</p> <p>The terms Indian, Indian product and Indian Tribe are defined (inclusive of State and Federal).</p> <p>Civil Action can be brought in court for misrepresentation.</p>	<p>An Act: To improve the cause of action for misrepresentation of Indian arts and crafts.</p> <p>Amendments to Civil Action Provisions: Insert "directly or indirectly" language for individuals.</p> <p>Added: "damages shall include any and all gross profits accrued by the defendant as a result of the activities found to violate..."</p> <p>Added: "by an Indian arts and crafts organization on behalf of itself, or by an Indian on behalf of himself or herself."</p> <p>Added: "the amount for the costs of investigation awarded pursuant to subsection (b) and reimburse the Board the amount of such costs incurred as a direct result of Board activities in the suit,"</p> <p>"Not later than 180 days after the date of enactment of the Indian Arts and Crafts Enforcement Act of 2000, the Board shall promulgate regulations to include in the definition of the term 'Indian product' specific examples of such product to provide guidance to Indian artisans as well as to purveyors and consumers of Indian arts and crafts, as defined under this Act."</p>	<p>An Act: To protect Indian arts and crafts through the improvement of applicable criminal proceedings, and for other purposes.</p> <p>Referral not required—A Federal law enforcement officer may investigate an alleged violation.</p> <p>On receiving the findings of an investigation, the Board may—“(A) recommend to the Attorney General that criminal proceedings be initiated under section 1159 of title 18, and “(B) provide such support to the Attorney General as the Attorney General determines to be appropriate.”</p> <p>Also, the Board may recommend that the Attorney General initiate a civil action.</p> <p>Definition of Indian, expanded to include someone "certified as an Indian artisan by an Indian tribe."</p> <p>The term 'Indian tribe' expanded to include, for purposes Definitions only, "an Indian group that has been formally recognized as an Indian tribe by—(i) a State legislature; (ii) a State commission; or (iii) another similar organization vested with State legislative tribal recognition authority."</p> <p>Added: Penalty - "in the case of a first violation by that person—“(A) if the applicable goods are offered or displayed for sale at a total price of \$1,000 or more, or if the applicable goods are sold for a total price of \$1,000 or more."</p>

² Graphic created by the researcher and represents summary and quoted information from Indian Arts and Crafts legislation from the Department of the Interior website; Final Regulations (1990 & 2000) are not included. It is not comprehensive but helps understand the chronology and trajectory relative to this study (Department of the Interior 2024).

The Wheeler-Howard Act, or the Indian Reorganization Act (1934), was responsive legislation to the Meriam Report. Ellinghaus, in *Blood Will Tell*, outlines the 1934 legislation as an attempt to address the historic failure to deal with the “Indian Problem” (Ellinghaus 2017), describing it as “the product of a philosophical reaction against, and a legislative reversal of, previous policies of land allotment and assimilation” (Ellinghaus 2017, 72). Thereafter, preservation became the focus, and in 1934, under Franklin D. Roosevelt's administration a consulting group that later evolved into a committee recommended a new government agency (Schrader 1983) to address “the whole problem of Indian arts and crafts in relation to the economic and cultural welfare of the American Indians” (Schrader 1983, 93). The following year, the Indian Arts and Crafts Board (25 U.S.C. § 305) was established (*Federal Register* 2003) and the Indian Arts and Crafts Act of 1935 was approved by Congress on August 27, 1935 (25 U.S.C. § 305-305f).

2.1 Indian Arts and Crafts Act of 1935

The initial language in the Act explains the operational power relationship, economic purpose and goal, and defines promotion through the execution of the Indian Arts and Crafts Board (IACB) activities (a-i). Section Two states, “It shall be the function and the duty of the Board to promote the economic welfare of Indian tribes and the Indian wards of the Government through the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship” (25 U.S.C. § 305a). Created within the Department of the Interior and composed of five Commissioners with varying terms, the IACB composition permitted uncompensated public officers and private citizens, with an exception for incidental expense reimbursement (25 U.S.C. § 305). As the legislation reads, the IACB was given legal authority to conduct market and

technical research, experiment with other agencies and make recommendations, coordinate activities, offer management assistance on projects, employ staff, create and enter into legal contracts, establish business rules, report violations for prosecution and issue fines, as well as institute trademarks of authenticity against misrepresentation of Indian-made products (25 U.S.C. § 305-305f).

Insight can be gained into the government's perspective shortly after the application of the policy through the “Annual Report of the Secretary of the Interior for the Fiscal Year Ending June 30, 1940,” which reports the working purpose of the IACB as having a “threefold purpose of educating the Indian craftsman in modern commercial methods, of expanding the market for Indian goods, and of protecting both the consumer and the Indian producer from cheaply imitated wares” (DOI 1940, 394).

Assessing the literature surrounding the 1935 IACA, there is consensus that the ongoing economic welfare of Native Americans was of fiscal and social concern for the federal government, with arts and craftsmanship viewed as a possible solution. The IACB was an extension of this concern, and the policy established legal authority for the IACB to conduct specific activities in an effort to improve economic conditions through the arts (25 U.S.C. § 305-305f). In the policy, the term “promote” is used in relation to the economic welfare of Native Peoples and the development of a market for Indian arts and crafts (25 U.S.C. § 305a) with some vagueness about how to specifically accomplish or measure this task. At its core, IACB and IACA are policy solutions to what the federal government deemed an “Indian problem” that employs arts and crafts as a solution.

2.2 Indian Arts and Crafts Act of 1990

Cited as the “Indian Arts and Crafts Act of 1990” (Pub. L. 101-644), the second in the chronology of IACA legislation, states it is “An Act to expand the powers of the Indian Arts and Crafts Board, and for other purposes” and became effective on November 29, 1990. Introduced during the 101st United States Congress, the Act was proposed by Republican Senator John Kyl from Arizona (H.R. 2006 1990) and passed by the United States House of Representatives on October 27, 1990; the House described it as an Act “to protect Indian artists from unfair competition from counterfeits” (H.R. Report no. 101-400, pt. 1 1990, 3). Reflectively, Rule 1076-AE16 by the Department of the Interior and the Indian Arts and Crafts Board describe the IACA 1990 as a “truth in marketing” law to expand IACB powers and prevent the false advertising of Indian-produced goods through civil and criminal sanctions (*Federal Register* 2003, under “Background”). Accordingly, the Background section of House Report 101-400 (1990) provides historical context for the changes in the 1990 Act relative to the 1935 Act, “Although this law has been in effect for many years, very little has been done to enforce it. There is little information available which documents the effectiveness of the Board in assisting Indian artists in registering trademarks or in the enforcement of the law against violations.” Additionally, along the trajectory of federal policy, the 1990 Act represents a ‘pendulum swing’ in favor of tribal sovereignty (The University of Alaska Fairbanks 2024, under “General Principles of Federal Indian Law), comparable with other legislation at the time, such as the Native American Languages Act [Public Law 101-477], passed on October 30, 1990 and the NAGPRA (Native American Graves Protection and Repatriation Act), Pub. L. 101-601; 25 U.S.C. passed on November 16, 1990.

Provisions 25 U.S.C section 305a (Promotion of Economic Welfare Through the Development of Arts and Crafts; Powers of Board), 18 U.S.C. section 1158 (Counterfeiting Indian Arts and Crafts Board Trademark) and section 1159 (Misrepresentation of Indian Produced Goods and Products) were amended with this Act (H.R.2006, 1990). The powers of the IACA Board expanded with the 1990 Amendment to include the ability to register and assign trademarks without charge to Indian individuals or Tribes and the ability to pursue or defend relative to U.S. Patent and Trademark legal proceedings (Pub. L. 101644, § 102) The ability to refer Indian goods and product complaints and violations to the Federal Bureau of Investigation (FBI) and recommend the Attorney General institute criminal proceedings as well as refer the matter to the Secretary of the Interior to refer for a civil action widened the prosecutorial scope of the IACA Board and allowed for a more dominant effect in the art marketplace (Pub. L. 101-644, § 103).

2.3 Final Regulations of Indian Arts and Crafts Act of 1990

The Final Regulations of the Indian Arts and Crafts Act of 1990 (*Federal Register* 1996) were effective on November 20, 1996; the purpose is explained in the document summary, “This rule adopts regulations to carry out Public Law 101-644, the Indian Arts and Crafts Act of 1990. The regulations define the nature and Indian origin of products the law covers and specify procedures for carrying out the law. The trademark provisions of the Act are not included in this rulemaking and will be treated at a later time” (*Federal Register* 1996, 54551). The Federal Registrar, the official federal government journal, detailed the 1994 Public Participation component of the legislative process, wherein thirty-six public comments were received (*Federal Register* 1996); concluding, “A broad range of respondents expressed their support of the proposed regulations. These comments

emphasized the crucial contribution of art and craft work production and sales to the economic development of Indian individuals and tribes throughout the nation” (*Federal Register* 1996, 54552).

Scholars and numerous federal resources agree the IACA of 1990 is a result of little being done to enforce the 1935 Act through criminal prosecution and establishing trademarks to counter misrepresentations (H.R. 2006, 1990). Focusing on preventing misrepresentations or fraud, the 1990 Act changes expanded the IACB's powers to recommend prosecution to other government authorities, increased jail time and fines, and allowed for civil in addition to criminal prosecution (Pub. L. 101-644). The definition of “Indian” is clarified in this set of legislation (1990 Act and Final Regulations) and includes both State and Federal recognized Tribes (*Federal Register* 1996, 54553). Unlike the 1935 Act, public participation and comments are a component of the policymaking (*Federal Registrar* 1996).

2.4 Indian Arts and Crafts Enforcement Act of 2000

Ten years after the 1990 Act was passed, new legislation was warranted. “At the Committee on Indian Affairs Hearing in Washington, D.C. on May 17th, the Chairman of the Committee, the Honorable Ben Nighthorse Campbell, Senator from Colorado, opened with comments that set the stage for discussing the decade-old 1990 Act and its application toward new legislation:

It troubles me a great deal that since the original act was passed in 1935, there has not been a single civil or criminal prosecution under that act.... We were told at the time that they needed more money. They could not deal with the enforcement until they got more money. We put more money in the budget, but still nothing has happened. I firmly believe that at a minimum, the United States can and should

assure itself that whatever goods are sold on Federal lands are sold in compliance with the Indian Arts and Crafts Act. (Indian Arts and Crafts Senate Hearing 2000) At the same hearing, Chairperson of the Indian Arts and Crafts Board, Faith Roessel, agreed with the purpose of IACA as economic development and market expansion and further explained, “Our programs and activities come within the context of the act's three goals: education, compliance, and prevention. Education is a key activity of the Board” (Indian Arts and Crafts Senate Hearing 2000, 15). Later, adding to her testimony, “Over the last 4 years, the Board has received a total of 45 written complaints alleging violations of the act. I should add that some cases have been resolved at the administrative level through Board-initiated phone calls, letters and settlements” (Indian Arts and Crafts Senate Hearing 2000, 16).

On November 9, 2000, the Indian Arts and Crafts Enforcement Act of 2000 (Pub. L. 106-497) was signed into law with the stated purpose, “To improve the cause of action for misrepresentation of Indian arts and crafts,” containing amendments only to Section 6 “Amendments to Civil Action Provisions” (Pub. L. 106-497 § 6). Additional context can be found in Senate Report 106-452 (2000), “The purpose of S. 2872 is to provide technical amendments to improve the enforcement of the IACA for the protection of the economic and cultural integrity of authentic Indian arts and crafts, and for other purposes” (under “Purpose”). The “Background” section of the Senate Report states the reason for the amendment:

Today's market for Indian-made goods currently exceeds \$1 billion in revenue, but it is estimated that \$400 to \$500 million of that demand is being satisfied from nonIndian, and largely, non-U.S. sources. This growing influx of inauthentic Indian arts and crafts has dramatically affected the Indian arts and crafts market by driving down prices, and tainting consumer confidence in and the cultural integrity of the market. With Native communities plagued by unemployment and stagnant economies, the flood of fake Indian arts and crafts is decimating one of the few forms of entrepreneurship and economic development on Indian reservations.

Furthermore, the Senate Indian Affairs Committee Report comparably states,

In 1990, the Act was amended to provide stronger enforcement through enhanced civil and criminal sanctions. Even with these strengthened enforcement provisions,

to date there has yet to be a civil or criminal conviction under this Act. In addition, the Department of Interior has yet to issue trademark regulations regarding the trademark provisions pursuant to the organic Act and the 1990 amendments to the organic Act. (Senate Rep. no. 106-452 2000, under “Background)

The Indian Arts and Crafts Enforcement Act of 2000 introduced changes for the misrepresentation of Indian products including: “any and all gross profits accrued by the defendant as a result of such activities” (Pub. Law 106-497); “authorizes both Indian arts and crafts organizations and individual Indians to bring suit for alleged violations of the Act” (Senate Rep. no. 106-452 2000, under “Background”); “authorized the Attorney General to allocate a portion of the damages collected in a successful prosecution to reimburse the IACB for its costs in investigating and bringing about the successful prosecution of the suit” (Senate Rep. no. 106-452 2000, under “Section-by-Section Analysis”); and defines “specific examples of Indian products to provide guidance to the artisans, as well as purveyors and consumers, of Indian arts and crafts” (Senate Rep. no. 106-452 2000, under “Section-by-Section Analysis”). The Act concludes, “Not later than 180 days after the date of enactment of the Indian Arts and Crafts Enforcement Act of 2000, the Board shall promulgate regulations to include in the definition of the term ‘Indian product’ specific examples of such product to provide guidance to Indian artisans as well as to purveyors and consumers of Indian arts and crafts, as defined under this Act” (Senate Rep. no. 106-452 2000, under “Changes in Existing Law”).

2.5 Final Regulations of Indian Arts and Crafts Enforcement Act of 2000

The Federal Register Vol. 68, No. 113, summarizes the Final Regulations of the Indian Arts and Crafts Enforcement Act of 2000 (Pub. L. 106-497), effective on September

10, 2003, stating, “This final rule carries out the 2000 Act by clarifying the definition of ‘Indian product.’ It also provides specific examples of items that may be marketed as Indian products and those that may not, thereby informing the public as to when an individual may be subject to civil or criminal penalties for falsely marketing a good as an ‘Indian product’” (*Federal Register* 2003, 35165). The “Public Participation” component administered by the IACB regarding this definition is described as, “Following written and telephone communications and subsequent teleconference consultations with designated representatives from a broad range of interested Tribes, the IACB published the proposed rulemaking for the 2000 Act on May 21, 2001” (*Federal Register* 2003, 35165). The twenty-five public comments resulted in “... a variety of comments, including concern for the protection of Indian artists and artisans’ economic livelihood, suggestions for changes to the proposed product categories, product items, and descriptions, as well as requests to further clarify that the labor component of the Indian art or craft product must be entirely Indian” (*Federal Register* 2003, 35165). The definition per the Rules and Regulations indicates,

In general. The term “Indian product” means any art or craft product made by an Indian. For this purpose, the term “made by an Indian” means that an Indian has provided the artistic or craft work labor necessary to implement an artistic design through a substantial transformation of materials to produce the art or craft work. This may include more than one Indian working together. The labor component of the product, however, must be entirely Indian for the Indian art or craft object to be an “Indian product.” (*Federal Register* 2003, 35164)

The Indian Arts and Crafts Enforcement Act of 2000 includes the word “enforcement” in the title, reflecting its evolution and focus on product misrepresentation. Numerous legislators agreed that enforcement of the policy was still an issue following the 1990 Act (Indian Arts and Crafts Senate Hearing 2000); furthermore, IACB had yet to fully establish

trademark regulations (Senate Rep. no. 106-452 2000, under “Background”). IACB contended enforcement was taking place and provided an interpretation of the policy goals as education and preservation (Indian Arts and Crafts Senate Hearing 2000). The 2000 Enforcement Act establishes the ability for Indian individuals and organizations to bring suit, an increase in the amount of civil suit monetary recovery, and IACB to be reimbursed for some successful prosecution activities; (Senate Rep. no. 106-452 2000, under “Changes in Existing Law”) it is complimented by a clarified definition of “Indian product” (*Federal Register* 2003, 35164).

2.6 Indian Arts and Crafts Amendments Act of 2010

The Senate Hearing in 2017 exemplified multiple opinions following the 2010 Amendment centering around the need for updated criminal legislation to accommodate IACA, reexamining who is defined as “Indian,” and the original intent of the Act relative to where the policy has currently evolved (Cultural Sovereignty Series Senate Hearing 2017).

The Indian Arts and Crafts Amendments Act of 2010 (Pub. L. 111-211) was sponsored by Representative Ed Pastor, a Democrat from Arizona, on January 27, 2009, (H.R. 725 2010) and enacted on July 29, 2010, (Pub. L. 111-211) with an aim “To protect Indian arts and crafts through the improvement of applicable criminal proceedings, and for other purposes” (Pub. L. 111-211). The authority to facilitate prosecution was increased through the ability of the IACA Board to bring civil and criminal actions, broadening the investigation scope to any federal law officer and the IACA Board’s ability to refer allegations for such (H.R. 725 2010, under “Summary”). The amendment further requires

the results of investigations to be reported to the prosecuting authority or the IACB (H.R. 725 2010, under “Summary”).

Before the legislation passed, concerns about the intersections and focus on expanding law enforcement relative to existing law were articulated in the Second Session of the House by Representative by Daniel E. Lungren, a Republican from California, who stated,

Mr. Speaker, although I intend to support this legislation, the process under which the bill has been brought up can only be described as stranger than fiction. While it might have been appropriate to consider under suspension an act to protect Indian arts crafts, the guts of that bill have been replaced with language that dramatically affect the criminal justice system on tribal lands (156 Congress Record 2010, H5867).

Other concerns can be found earlier in the January 19, 2010 Congressional Record from Representative Rob Bishop, a Republican from Utah, who supported the bill but expressed concern over broadening the authority of law enforcement. He reasoned that since art misrepresentation is specific, he suggested that enforcement belongs with agencies already suited to counterfeit art and Tribal investigations (156 Congressional Record 2010, H154). Democratic President Barack H. Obama highlighted support for arts and crafts fraud prevention at the intersection of Tribal and Federal Governments (Tribal Law and Order Act) during his “Remarks on Signing Legislation, to Protect Indian Arts and Crafts Through the Improvement of Applicable Criminal Proceedings, and for Other Purposes” (2010).

Reflecting on the IACA Amendments Act of 2010 and the policy to date at the Committee on Indian Affairs Field Hearings on July 7, 2017 in Santa Fe, New Mexico, Meredith Stanton, Chairperson of the IACB, addressed the criticism of the IACA by pointing out the progress made with the 2010 Amendment. She explained the effects of

broadening law enforcement beyond FBI jurisdiction, “This led to the 2012 agreement between the Board and the U.S. Fish and Wildlife Service. Since then, the scope and depth of Act investigations have increased exponentially” (Cultural Sovereignty Series Senate Hearing 2017, 11). Additionally, Stanton addressed the effectiveness of the IACB toward the processing of complaints and handling of violations, “Since 1996, the Board has received over 1,700 complaints of alleged Act violations, of which 1,300 have been addressed to date.... We've had 22 Federal prosecutions in New Mexico, Alaska, Utah, Michigan, South Dakota, and Missouri” (11-12).

William Woody, Chief, Office of Law Enforcement, U.S. Fish and Wildlife Service, provided insight about Native Identity and IACA violations, stating, “Another area of concern uncovered by our investigations is individual, high-profile artists utilizing false tribal affiliations. These artists promote a fraudulent cultural standing within the Native art community and take lucrative art show slots away from legitimate Native artists” (Cultural Sovereignty Series Senate Hearing 2017, 18) Cherokee Tribal Member David Montgomery addressed artists under the current legislation, citing the growing number of State recognized Tribes, stating,

I know I speak for many Indian artists who would like the IACA to be updated to remove state-recognized tribes from the language of the law. As has been acknowledged by all federally-recognized tribes and several states facing the question of “state-recognition” of supposed tribes within their borders, it has long been determined that tribal recognition and issues concerning Indian tribes is the exclusive domain of the Federal government since the earliest days of the republic, and covered under the Commerce Clause of the U.S. Constitution” (Cultural Sovereignty Series Senate Hearing 2017, 73).

Gretchen C.F. Shappert, Assistant Director, Indian and Violent Cyber Crime, U.S. Department of Justice, echoed points made by others, including Stanton, about the outreach

and importance of education for IACA (Cultural Sovereignty Series Senate Hearing 2017, 19-21), stating “Criminal prosecutions are not the only way that Federal prosecutors support enforcement of the Indian Arts and Crafts Act. Representatives of the New Mexico U.S. Attorney's Office have engaged in frequent outreach initiatives to tribal leaders and community members to inform them about the purpose and provisions of the Act” (Cultural Sovereignty Series Senate Hearing 2017, 20). Cheyenne-Arapaho Master Artist, Harvey Pratt stressed the importance of art to a community and tradition beyond production, linked to economic welfare and the harm fake productions cause, stating, “We're also being robbed economically, culturally, and spiritually” (Cultural Sovereignty Series Senate Hearing 2017, 35). Joyce Begay-Foss, Director of Living Tradition Education Center at the Museum of Indian Arts and Culture expressed concern for the “cultural and intellectual property rights” (Cultural Sovereignty Series Senate Hearing 2017, 51) inherent in misrepresentation.

CHAPTER 3. LITERATURE REVIEW

Scholarship concerning the Indian Arts and Crafts Act (IACA) remains small-scale and periodized, centering around the legal analysis and failure to prioritize Native objectives relative to newly passed amendments; however, humanities and social science approaches and foci, including feminism, psychology, and history are beginning to be more prevalent. Criticism about the effectiveness of IACA is not new and has been debated since the Act's inception. This literature review represents key themes and scholarly insight for understanding the IACA toward identifying specific contemporary challenges related to the primary and secondary market for selling Indian arts and crafts.

The review is organized within five central themes essential to comprehending the policy and research study: (1) Legislative History of IACA, (2) Law and Legislation Overview, (3) Native Identity and IACA, (4) Art Market Fakes/ Frauds, and (5) Framing Cultural Policy. The first section discusses the legislative history of each Act, subsequent Amendments and related Final Regulations. In contrast, the second provides a summary of the history and evolution of the legislation (IACA), thereby providing context for the present study. The third section, Native Identity and IACA, reflects the complexity of federal policy created about and for a specific group of people, explaining the primary subject of the policy while highlighting the political causation. The fourth section, Arts Market Fakes/Frauds, explains current IACA enactment specific to legal prosecution cases and available art market statistics, demonstrating how the multiple case study research is timely and relevant. The final section situates the research within the larger American federal cultural arts policy context, bringing situational awareness to the study and complimenting the historical context in the first section.

3.1 Law and Legislation Overview

The IACA was established with the purpose of promoting Indian Arts and Crafts and has been in effect since 1935 (25 U.S.C. § 305-305f). Since its inception 88 years ago, there have been three amendments to the Act in 1990, 2000, 2010, and two sets of final regulations in 1990 and 2000. Commonalities exist in the rationale for each new Act, which all center around enforcement of the policy by the IACB, albeit with a different focus or changes in existing areas like misrepresentation (1990 Act) or prosecution (2010 Act), or increased fines and jail time and defining terminology used in the policy. Since the 1990 Act, there has been more public participation in law-making through comments and hearings, and one could argue public awareness. The IACA has evolved with the historical trajectory of the United States, and it reflects the people and government influences that are part of its legislative history.

Per the original Act of 1935, the Indian Arts and Crafts Act (IACA) and subsequent legislation and policies sought “To promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes” (25 U.S.C. § 305a). It is noteworthy that development and promotion is inextricably linked to economic welfare and art market expansion for products of Indian craftsmanship within the authoritative framework of the IACB and IACA. Significantly, the Indian Self-Determination and Education Assistance Act of 1975 allowed more autonomy and the opportunity “to assume the responsibility for programs and services administered to them on behalf of the Secretary of the Interior through contractual agreements” (BIA, n.d.).

The 1990 Act is described as a “truth in marketing” law to prevent the false advertising of Indian-produced goods through civil and criminal sanctions (*Federal*

Register 2003, under “Background”). Pursuing better policy, the powers of the IACA Board expanded with the 1990 Amendment to include the ability to register and assign U.S. Patent trademarks without charge to Indian individuals or Tribes and the ability to pursue or defend cases relative to U.S. Patent and Trademark legal proceedings (Pub. L. 101-644, § 102). The 1990 Act also widened the prosecutorial scope of the IACA Board giving them the ability to refer Indian goods and product complaints and violations to the Federal Bureau of Investigation (FBI), recommend the Attorney General institute criminal proceedings, as well as refer the matter to the Secretary of the Interior to refer civil action, which allowed for a more dominant effect in the art marketplace (Pub. L. 101-644, § 102).

Changes to the 1935 Act in 1990 were driven in part by significant economic factors, including the criticized but prevalent 1985 Department of Commerce annual gross sale estimates of \$400 - 800 million for Indian Arts and Crafts; with 20% of the market misrepresented. Based on inflation this figure exceeds \$1 billion in 2023 (GAO 2011b, 9). The most recent study in 2011, by the United States Government Accountability Office (GAO 2011a), investigated contemporary economic figures and cautioned historical and current data use in the report “Indian Arts And Crafts: Size of Market and Extent of Misrepresentation Are Unknown,” stating “No national database specifically tracks Indian arts and crafts sales or misrepresentation, and GAO found that no other national databases contain information specific or comprehensive enough to be used for developing reliable estimates.” Additionally, in the proceeding years, it is noteworthy that Native and Non-Native peoples organized to address objectives outlined in the 1935 Act. Organizations like the Indian Arts and Crafts Association was organized in Gallup, New Mexico in 1974 as “a national non-profit association of Indian arts and crafts dealers, traders, collectors, and

Native American craftsmen” to address topics like theft, genuine products, and fake imports (The Navajo Times 1976, A-14). The 1976 Navajo Times indicates the organization had 750 members and “According to Executive Director Jean Herzegh, the IACA [Indian Arts and Crafts Association] will step up efforts to work closely with legislators across the U.S. to design and implements [sic] legislation to protect the consumer and lend credibility to the Indian arts and crafts market (The Navajo Times 1976, A-14).”

Despite marked movement toward effectiveness and autonomy the 1990 Act, championed by Native American Congressman Ben Nighthorse Campbell, was met with justifiable criticism. In “Of Kitsch and Kachinas: A Critical Analysis of the “Indian Arts and Crafts Act of 1990,” Hapiuk states, “This note concludes that the Indian Arts and Crafts Act of 1990 is flawed because it fails to acknowledge the historical development of Indian Tribes and Indian arts and crafts and to appreciate fully the dialogical ways that contemporary Indian identity is constructed” (2001, 1014). One of the few more holistic surveys of IACA, Hapiuk examines the wide-ranging consequences resulting from the federal legislation aimed at curtailing overseas imitations by promoting his certification mark solution with legal modifications but fails to address the impacts of practical application thoroughly (2001, 1067-1069). An editorial in *Indian Country Today* describes the practical application, “It's doubtful that any sale of Indian-looking work has been stopped by that little label ‘Native American-made,’ though we would hope some consideration is given for Native American artists. It is not out of line to inform consumers interested in work by Indian people that it is indeed those people who did the work” (*Indian Country Today* 1993). Roberto Iraola, in “The Civil and Criminal Penalty Provisions of the Indian Arts and Crafts Act of 1990,” offers a more expanded view than Hapiuk by

providing fundamental information about the legal challenges and successes related to the implementation of IACA law, providing a legal understanding ranging from the inception of the Act in 1935 through 2005 (Iraola 2005).

These criticisms led to the creation of the Indian Arts and Crafts Enforcement Act of 2000, including the Final Regulations of the Act of 2000 (*Federal Register* 2003, 35164), which sought to strengthen the cause for action to correct the misrepresentation of Indian arts and crafts by promulgating regulations to include a definition and clarification of “Indian product” and provide specific examples to guide Indian artisans, purveyors, and consumers.

The Indian Arts and Crafts Amendments Act of 2010 was enacted “to protect Indian arts and crafts through the improvement of applicable criminal proceedings, and for other purposes” (Pub. L. 111-211). In addition, the authority to facilitate prosecution was increased through the ability of the IACA Board to bring civil and criminal actions, broadening the investigation scope to any federal law officer and the IACA Board’s ability to refer allegations to such (H.R. 725 2010, under “Title I”). These changes allowed the IACA Board to exercise greater regulatory control over market actors by leveraging the legal process’s improvements and allowing other regulatory stakeholders to engage in the process with them.

3.2 Native Identity and IACA

Native Identity is complicated and remains a topic of debate in relation to the IACA. Hilary Weaver describes some of the many ways identity translates and the variety of terminology in “Indigenous Identity: What Is It and Who Really Has

It?,” “Indigenous identity is a truly complex and somewhat controversial topic. There is little agreement on precisely what constitutes an indigenous identity, how to measure it, and who truly has it. Indeed, there is not even a consensus on appropriate terms. Are we talking about Indians, American Indians, Native Americans, indigenous people, or First Nations people? Are we talking about Sioux or Lakota? Navajo or Diné? Chippewa, Ojibway, or Anishnabe? Once we get that sorted out, are we talking about race, ethnicity, cultural identity, tribal identity, acculturation, enculturation, bicultural identity, multicultural identity, or some other form of identity (Weaver 2001, 240)?” The various definitions of Indian identity and the terminology used to describe it vary greatly, examples include enrolled member, non-enrolled member, absentee member, etc. Weaver explains “three facets of identity – self-identification, community identification and external identification (Weaver 2001, 240)” e.g., recognition by state and federal governments.

Giving fair weight to the controversy around identity defined by federal directives and excluding other Natives, the connections between racism, colonialism, and art are evident. According to Haozous et al. in “Blood Politics, Ethnic Identity, and Racial Misclassification among American Indians and Alaska Natives,” “The racialized AI/AN [American Indian/Alaska Native] identity classification derives from an inherited view that phenotypical characteristics that are genetically determined equal an ascribed classification, such as American Indian or Alaska Native. No other US population must persevere through such sociopolitical hoops in order to claim an identity. Federal policies have created the racialized AI/AN identity, and federal policies continue to enact a racialized AI/AN identity through strict requirements to obtain federal recognition and

services.” How Native identity is defined has financial and social implications, and who is making the determination, e.g., the federal government, since Native Nations are recognized as sovereign governments. The federal government's responsibility to Native Peoples as a result of colonization is further complicated by the fact that not all Native Peoples agree on how Native Identity should be defined in IACA, as seen in public comments at Senate Hearings (Cultural Sovereignty Series Senate Hearing 2017) and the State of Oklahoma’s passing of HB 2261 (NCAI Res. #PHX-16-068 2016). Native Identity is a vital component of IACA and who and what the policy is charged with doing.

In fact, Oklahoma passed a state law in 2016 to protect Indian arts and crafts artists and collectors (Smoot 2017), that “further limits the definition to tribes ‘federally recognized’ by the U.S. Bureau of Indian Affairs” (Smoot 2017). A 2016 Resolution (PHX16-068) from The National Congress of American Indians (NCAI) responded to Oklahoma’s passing of HB 2261, stating, “Although Federal law recognizes a broader class of Native artists, including members of state-recognized tribes, Oklahoma attempts to override that express protection, by limiting the definition of ‘American Indian’ and related nomenclature to mean exclusively those who are members of tribes listed as federally recognized by the BIA [Bureau of Indian Affairs]” (NCAI Res. #PHX-16-068 2016). NCAI resolved to “affirm the inherent dignity and identity of all American Indian peoples and opposes any effort to alienate citizens of historic American Indian Nations from their identity, culture, inherent rights, or from federal regulations or international policies under which they are protected” (NCAI Res. #PHX-16-068 2016). Meredith Stanton, then Chairperson of the IACB, articulated connections between identity, the directives of the policy, and public value, stating, “We are committed to protecting Indian artists from

competition with counterfeit Indian art, which hinders the passing down from one generation to the next of important Indian traditions, heritage, and skills – true American treasure” (Cultural Sovereignty Series Senate Hearing 2017, under “Statement of Meredith Stanton”). Grant draws on quotes from Meredith Stanton, then chairman of the IACB, and other significant persons to effectively represent sentiments in “What Is Indian Art and Who Can Sell It?” The author demonstrates the effectiveness of the IACA and conveys the public request for information, cooperation across cultural entities, and the increase in fraud reports (Grant 2002).

IACA provides protections for Native artists through a system by which validation of identity is established. Elisa Harkins expounded on this point in a 2014 video in two parts entitled “Fake,” presented as part of an exhibit at the Missoula Art Museum (MAM), where she expresses her struggle with authenticity as a Native person adopted by Non-Native parents at birth and thereby disconnected from the tangible elements of identity (Friedrickson 2017). In “How Native Americans in the Arts are Preserving Tradition in a Changing World,” Gilio-Whitaker offers another perspective, “Today, making a living as an artist is mediated by market forces with demands of its own. At stake are complex dynamics that weave together identity and culture with Non-Native expectations about value based on authenticity. This inevitably involves stubborn stereotypes born from lack of knowledge. It also means that the Native artist, no matter the genre or medium, wittingly or unwittingly is cast in the role of educator” (Gilio-Whitaker 2018).

With scientific advances, some suggest using genetic and other tests to validate identity and examining Native American identity gathered through data collection provides a basis for understanding the scientific complexity. Blanchard et al. and Huyser

both use post-structuralist approaches, providing a critical look at whether the data being collected about Native American identity is accurate, challenging, and beneficial toward related but different decision-making ends. In “We Don’t Need a Swab in Our Mouth to Prove Who We Are: Identity, Resistance, and Adaptation of Genetic Ancestry Testing among Native American Communities,” Blanchard et al. (2019) outline the inequalities and social factors that contribute to the debate around Native identity and genetic testing while highlighting the fundamental flaws in scientific and cultural understanding relative to Native communities. Huyser aligns with post-structuralism by focusing on the historical data collection methods by the US Census and the American Community Survey while pointing out the structural and theoretical flaws in gathering, politicalization, and participation in “Data and Native American Identity” (Huyser 2020). Both articles contribute to the understanding of Native Identity relative to the gathering and use of data for a wide variety of purposes. Blanchard et al. self-describe it as “one of the first studies to document perceptions of GAT (Genetic Ancestry Testing) among self-identified indigenous individuals living in communities with a high concentration of indigenous populations,” (Blanchard et al. 2019, under “Conclusion”) while Huyser adds to the limitations of data offering more agency by Native communities as a viable solution (Huyser 2020). Huyser summarizes the important complexity of identity as it relates to this research study, stating, “Ultimately, the American Indian and Alaska Native identity is inherently political. It is political through the formal enrollment and connection to Native Nations. For federally recognized tribes, this also confers a government-to-government relationship between the U.S. federal government and the tribal government. Thus, the complex nature of Native identification necessitates the importance of a multidimensional measurement of race— self-reported race, socially assigned race—and

questions about the connection to a Native Nation or Native community” (Huyser 2020, under “Lesson Learned and Navigating Forward”).

3.3 Art Market Fakes and Frauds

Misrepresentation can be considered the root cause and driving factor of prosecutions and IACB perceptions of effectiveness (Cultural Sovereignty Series Senate Hearing 2017, 8). Before 1990, very few cases were prosecuted under the IACA; this significantly limited the perceived authority of the IACA and shaped its actionable scope relative to the “promoted development” of the art market for Indian Arts and Crafts. As a result, reliance on education as prevention became an operating model that remains in effect in 2023; IACA Board sent warning letters to 45% of the alleged violators between 2006-2010 (GAO 2011a). During the four fiscal years 2006 - 2010, the IACA Board received 649 complaints, of which 23% were apparent violations (GAO 2011b, 14). However, no cases were filed in federal court, citing sporadic support from law enforcement due to other priorities (GAO 2011a). The allegations during these four years involved retail store sales (49%), internet sales (33%), and other venues such as individual sellers and powwows (GAO 2011b, 14). Communication and enforcement are inextricably intertwined with effective legal policy, as well as stakeholder relationships and participation. By 2017, the IACB established new partnerships, e.g., The Department of Fish and Wildlife, who initiated 22 prosecutions for violations and indicated that the number of unresolved complaints was 413, almost a quarter of the total number of complaints reported since 1996, with most complaints resolved through administrative means such as warning letters (Cultural Sovereignty Series Senate Hearing 2017, 13). The increased success of IACA in combating fraud in production, marketing, and Native Identity, was recognized in 2017, according to Frank Madeson in “Do the Laws on

Counterfeit Native Art Go Far Enough?"; but the author counters that internet violations and insignificant fines for lucrative companies were also areas in need of attention (Madeson 2017).

According to Kuckkahn (2007) in "Indian Identity in the Arts": "As a result of several centuries of assimilation and the restructuring of traditional governments, it is not always the case that those who have been elected to run a tribe's governmental affairs are also leaders in the community in terms of arts and cultural issues" (under "The Challenge of Implementing a Legislatively Defined Identity"). Other business stakeholders have witnessed complicated relationships, increased penalties for violations, and the need to modify how they conduct business to ensure compliance; this has been considered beneficial and detrimental by Natives and Non-Natives on both sides of the debate. Kuckkhan critically balances both Indigenous and Non-Indigenous perspectives from a multi-disciplinary case study approach while pointing out flaws with current practices. Kuckkhan further explains, "The Act does not provide clear guidance to Native arts administrators and others who market Native art, but it is up to the person enforcing the rules to broker sometimes tenuous personal and political relationships in the field" (Kuckkahn 2007, under "The Dilemma of Drawing and Holding the Line). L. Jeanne Kaufmann, in "Indian Art: Fakes and Frauds; Tribes and State Policymakers Take Steps to Protect Native Arts and Crafts," offers a less considered perspective, stating, "But it's not just disreputable dealers causing the problem. Tribes accuse each other of misusing symbols and misinterpreting their art" (2001, under "Tribes Imitate Each Other).

Jana McKeag (Cherokee Nation of Oklahoma), then Chairperson of the IACB, addresses the domestic aspect as part notice and plea in "Indian Arts and Crafts Board Promoting

Local Control of Museums.” It outlines the economic effect of the Indian Arts and Craft Act (IACA) for three museums in South Dakota, Montana, and Oklahoma by explaining how the IACB can no longer provide financial support due to the urgent need to fight counterfeiting associated with the implementation of the IACA (McKeag 2012). The author emphasizes museum ownership and maintaining collections while ironically stressing the intentions of the IACA to preserve culture and promote economic selfreliance. At the intersection of modern Native business and art, Colleen Echohawk, CEO of Eighth Generation, an “art and lifestyle brand” (Eighth Generation, n.d.) owned by the Snoqualmie Tribe, advances the perspective that “America’s original art is Native American Art” (Echohawk 2024), while the company addresses the historic legacy and challenges through purposeful initiatives. Their website states, “Our Inspired Natives™ Project, anchored by the tagline ‘Inspired Natives™, not Native-inspired,’ builds business capacity among cultural artists while addressing the economic impact of cultural appropriation” (Eighth Generation, n.d.).

Production-related commercial loopholes can be found, like the renaming of an overseas town so goods can be marked “Made in Zuni,” which carries implications of being Native-made; (Cornell 2018) In addition, cultural institutions must perform the required checks to ensure the artwork is authentic or face fines that can lead to closure. Southwest Museum Curator Janeen Antoine articulates this point in an LA Times article, “...people are afraid of showing Indian art now and getting slammed with severe penalties. We don’t want to be art police... Cultural values aren’t transmitted through federal sanction. The bottom line is that someone will buy art by the quality of the work, not if someone’s carrying a card” (Quinn 1992). Joyce Begay-Foss, quoted in “Native American Artists Call

for an End to Counterfeits,” provides a scenario for consideration, “I’m talking about the weaver that wants to make a couple hundred dollars. She can’t sell that rug because you can buy a knockoff for thirty bucks. It’s really frustrating for artists” (Etman 2017).

As mentioned in the initial Act of 1935, dealing with misrepresentation is a major component of developing a market for Indian arts and crafts that directly relates to economic welfare (25 U.S.C. § 305-305f). The IACB is responsible for the administration of the policy relative to fakes and frauds and has been given authority to engage in this regard toward improving conditions, e.g., undertaking research, prosecutions, and education (25 U.S.C. § 305-305f).

3.4 Framing Cultural Policy

Cultural development in the 21st century has been unpredictably complex and everevolving. Best described by Rivera and Acosta “...public agenda seems to be culture-blind in a lot of ways. On the other extreme, when invoked as a resource, culture is often seen as a magic wand, as a recently found gold mine ready to be exploited for immediate profit. Between these poles, culture’s potentialities of actively having a role in personal and collective strategies to deal with everyday challenges, and build resilient and transformative practices, can be overshadowed” (2018, 431-432). Priorities, challenges, and opportunities stem from technological innovation and social and economic influences. The competing needs of varied private and public stakeholders make contemporary approaches to cultural arts survival hard to define, measure, and research given the gaps in available evidence (Campbell and Cox 2018). Among the most significant challenges facing cultural development is “that arts and heritage have ceased to be considered ‘sacred

objects' and are understood as practices in which meanings are embedded in the particular contexts in which they emerge. Thus, their significance and connotations are subjected to continuous transformation" (Rivera and Acosta 2018, 445).

The patterns, trends, and changes noticed in historical government rationales for provisioning the arts and culture were driven by messaging about improving communities, promoting education, fostering public utility, and inter/national prominence (Abt 2009). Patterns emerge in the push and pull between broader stakeholders (public, artists, academia, corporations, benefactors, and government) over influence or ultimate purpose in arts administration; this has a direct impact on the diversity of production and forever changes the trajectories and parameters of cultural production (Cameron 1989). Having no formal national cultural arts policy historically contributed to a number of factors including the tension around public outcry for education, using tax dollars for arts support, professionalization in museums coupled with the establishment of art history departments in universities, unemployment changes in the labor market due to new electronic media (Adams and Goldbard 1995), new urban elites seeking cultural separation from others (DiMaggio 1988, 71), and the need to generate respect and prestige beyond local boundaries (Cameron 1989, 67). The implications for arts and culture in the United States means inheriting a legacy of cultural stratification that has a perpetual influence on policy, art valuation, artistic production, and society. IACA is part of the broader domestic cultural arts landscape. Suzanne Benally, in "Whose Myth? Native American Perspectives on Cultural Policy," offers inclusion through diverse representation and perspective and acceptance of historical impact as a way to frame policy discourse. The author provides a Native American perspective on arts while interrogating the concept of inclusion,

explaining, “For Indigenous people, life is art; there is no separation in an integrated worldview” (Benally 2001). Likewise, Linda Tuhiwai Smith, in *Decolonizing Methodologies*, explains,

Colonialism was, in part, an image of imperialism, a particular realization of the imperial imagination. It was also, in part, an image of the future nation it would become. In this image lie images of the Other, stark contrasts and subtle nuances, of the ways in which the Indigenous communities were perceived and dealt with, which make the stories of colonialism part of a grander narrative and yet part also of a very local, very specific experience. (2021, 26).

Offering a different perspective and delineating the potential types of work required for future cultural policy, Michael O’Hare, in “Arts Policy Research for the Next 25 Years,” notes, “Generally, the intellectual work that will inform optimal practice of the arts will be assertive and mushy without an economic framework. But none of it can be useful within a purely economic paradigm. Policy analysis for the arts needs out-of-the-box economists and interdisciplinary collaboration” (2008, 290).

Situating IACA in the broader context of cultural policy, IACA is unique and politicized, but has an impact on the arts administration landscape. As the policy evolves, it does so within the specific artistic context and climate of the United States, which has domestic and international ties, influence, and challenges. Understanding IACA within the United States cultural arts framework is helpful for all artists, arts administrators, and retailers as we embrace the future.

3.5 Literature Conclusion

By examining the existing research, it is clear that IACA is both beneficial and problematic for a myriad of reasons. Limited and inconsistent archival and statistical information makes this and other research studies more important for interpreting IACA and contributing to gaps in scholarship and available information. Past studies of the IACA

have not directly addressed elite theory, prosecution cases since the last IACA amendment (2010), and the IACA policy directive to “promote development” in concert with stakeholder feedback to make meaning. Due to scope and resources, this study does not comprehensively analyze the IACA, the IACA Board, American political or racialized policy, or sensitive information about Native Cultures. More scholarship, research, and analysis are necessary to make cultural policy-relevant and valuable, including reexamining America’s obligation to Native Peoples and consensus building with Native Nations.

CHAPTER 4. METHODOLOGY AND THEORETICAL FRAMEWORK

This chapter introduces the methodology and theoretical framework utilized for this research study to explore the IACA and what and how challenges in contemporary prosecution cases impact the development of Indian arts and crafts products. A qualitative multiple case study approach (methodology) utilizing document analysis and interview as the data collection methods, Constructivist worldview, and elite theory (framework) (Creswell and Creswell 2018, 119) structure and support the study. The research aims to construct meaning from the relationship (Mills, Durepos, and Wiebe 2010) between policy and enactment, understand policy enactment and direction, and make recommendations. The following sections explain the academically accepted perspectives and tools applied for the research and the strategy employed to explore the study's research questions. The Methodology Type, Theoretical Framework, Constructivist Worldview, and Multiple Case Study Approach sections describe the research study foundation. The study's theoretical framework and methodology intersect, wherein the interviews provide the perspectives of the non-elites, and the case law gives the perspective of the elites. The Selection of Legal Cases section explains what case studies were chosen and why; Document Analysis defines the documents used, access, and how they will be applied to address the aims of the study; Interviews outlines the questions, relationship to elite theory, and management of collected data; Data Analysis explains the coding for interview data collected, and Ethics addresses the research positionality, process, and conflicts.

4.1 Methodology Type

Qualitative and Quantitative methods are not purely distinct, and a research project

could be carried out with a combination of characteristics from each (Creswell and Creswell 2018, 3). This project is more qualitative than mixed methods or quantitative. Mixed methods is described as the “mixing or integration of the quantitative and qualitative data” (Creswell and Creswell 2018, 213). Creswell and Creswell (2018) explain the difference between qualitative and quantitative methods as words versus numbers (4), closed versus open-ended questions and responses, and the philosophical approach and technical methods of research (180-183). Qualitative research can further be understood as observation for meaning, while quantitative can be understood as an instrument or experiment to prove or disprove (Creswell and Creswell 2018, 4). Claire Anderson (2010), in “Presenting and Evaluation Qualitative Research,” explains some of the challenges in conducting this type of research, “Qualitative research is often criticized as biased, small scale, anecdotal, and/or lacking rigor; however, when it is carried out properly it is unbiased, in depth, valid, reliable, credible and rigorous” (under “Rigour in Qualitative Research”).

Data Collection, Analysis, and Interpretation for qualitative and quantitative are different but have accepted academic processes; qualitative is considered more textual social science and humanities-based than quantitative, which is more numerical, experimental, and science-based (Creswell and Creswell 2018, 11-14). The qualitative methodology classification for my study is further supported by the study's interpretive goals and descriptive structure. In alignment with accepted qualitative methodology, additional study elements include (a) open-ended questions to ascertain the perspective of participants or those affected by the IACA, (b) descriptive analysis to evidence what patterns and themes are present (both challenges and effective impact), and (c) self

reflexivity to explain and contextualizes the researcher's position in relation to the topic and events (Creswell and Creswell 2018, 180-183). Furthermore, the qualitative "practices of research" outlined in *Research Design* (Creswell and Creswell 2018, 5, 17) are appropriate and evidenced in this study through "focus on a single phenomena [IACA], making data interpretations and making recommendations for change" (203). Quantitative data functions as narrative support for the analysis and/or conclusions.

There is a historical and social component to understanding policy. Klenke bolsters the chosen literature analysis study approach, "Some qualitative researchers adopt a strictly methods-oriented view and define qualitative research as a set of specific research tools such as case studies, focus groups, life histories, structured interviews, observations, and content analysis of a variety of texts" (Klenke 2016, 33). Understanding the historical and social components of IACA policy through current literary scholarship serves as the basis for understanding the research contribution, how it has traditionally functioned for interested audiences, and the existing academic literature gaps. Additionally, the qualitative approach is better suited given the researcher's social science education and experience.

4.2 Theoretical Framework

As mentioned in the Introduction, classical elite theory as a theoretical framework is rooted in the concept of seventeenth-century commodities of excellence and later extended to social groups (Bottomore 1993, 8); Vilfredo Pareto (1848–1923), Gaetano Mosca (1858–1941), and Robert Michels (1876–1936) are considered the founders of elite theory. In *The Ruling Class*., Mosca states,

Among the constant facts and tendencies that are to be found in all political organisms, one is so obvious that it is apparent to the most casual eye. In all

societies - from societies that are very meagerly developed and have barely attained the dawnings of civilization, down to the most advanced and powerful societies - two classes of people appear - a class that rules and a class that is ruled.² The first class, always the less numerous, performs all political functions, monopolizes power and enjoys the advantages that power brings, whereas the second, the more numerous class, is directed and controlled by the first, in a manner that is now more or less legal, now more or less arbitrary and violent. (1939, 50)

Damele and Campos (2022) summarized and categorized the tenets of classical elite theory from James Burnham's 1943 prominent work *The Machiavellians: Defenders of Freedom*:

1. The primary object of every elite or ruling class is to preserve power and privilege.
2. The rule of the elite is based upon (not-necessarily explicit) force and fraud.
3. The social structure is sustained by a political formula that typically correlates with a generally accepted religion, ideology or myth.
4. Every elite has two opposing tendencies: (a) an aristocratic tendency, by which the elite seeks to preserve the ruling position of its members and to prevent others from entering its ranks;(b) a democratic tendency by which (i) new elements force their way into the elite from below or (ii) the ruling class opens ranks and absorbs new elements from below.
5. In the long run, the democratic tendency always prevails. Consequently, no social structure is permanent, and no stable utopia is possible.
6. When the aristocratic tendency prevails, rapid shifts occur in the composition and structure of elites (e.g., social revolutions).

For the operationalization of this study, classical elite theory is used as criteria for examining multiple case studies, conducting analysis, and making recommendations; specifically, the theoretical framework for this research adopts the philosophy based on James Burnham's above tenets of classical elite theory, focusing on the following tenets:

² In some Native Nations the concept of “-a class that rules and a class that is ruled” does not directly translate e.g., governance by a general council. The U.S. Department of the Interior, “How are tribal governments organized?,” states “An elected tribal council and chief executive, recognized as such by the Secretary of the Interior, have authority to speak and act for the tribe as a whole, and to represent it in negotiations with federal, state, and local governments (DOI 2024).”

the belief that the federal government wants to maintain power and privilege (#1), Native Nations are forced through policy to participate (#2) a political formula that correlates with a generally accepted religion, ideology or myth (#3) (Burnham 1943, as categorized by Damele and Campos 2022). Tenets #4 – 6, were not applicable in this case because they reflect Burnham’s philosophy of democratic elitism, which is a later development reflecting the evolution of elite theory (Burnham 1943, as categorized by Damele and Campos 2022).

4.3 Constructivist Worldview

Tracing the unique qualities and influences of constructivist theory in arts administration studies highlights key distinctions for what Fairhurst and Grant describe as constructivist terms or “realities constructed through social processes in which meanings are negotiated, a consensus formed, and contestation is possible” (2010, 174). The paradigm “assumes a relativist ontology (there are multiple realities), a subjectivist epistemology (knower and respondent co-create understandings), and a naturalistic (in the natural world) set of methodological procedures (Denzin and Lincoln 2005, 24). The Constructivist Paradigm and the Values Branch are illustrated in Figure 3.1 from *Program Evaluation Theory and Practice* (Mertens and Wilson 2019, 207).

Figure 4.1 The Constructivist Paradigm and Values Branch.

The Constructivist Paradigm and the Values Branch

Description	Axiological assumption	Ontological assumption	Epistemological assumption	Methodological assumption
Focuses primarily on identifying multiple values and perspectives through qualitative methods	Evaluator aware of own values and those of others	Multiple, socially constructed realities	Meaningful dialogue and reflection to create knowledge	Primarily qualitative, but quantitative if needed, and participatory

More specifically, an interpretivism philosophy with an inductive analysis approach was applied to archival research or existing literature using qualitative methods, allowing for patterns and conclusions (Bouchrika 2021) to be determined. Qualitative paradigms go beyond casual predictions and make meaning by considering context (Bhandari 2020). Situating the study in a broader context, constructivist paradigms work best because interpretation is needed, and understanding is the goal. Elite theory (secondary) and a constructivist worldview (primary) are not in conflict but complement and test one another through probing stakeholder understanding (elite and non-elite) and the meanings made about IACA by participants, with correlations to policy enactment, specifically through contemporary prosecution cases.

4.4 Multiple Case Study Approach

As defined by *Research Design*, “Case studies are a design of inquiry found in many fields, especially evaluation, in which the researcher develops an in-depth analysis of a case, often a program, event, activity, process, or one or more individuals” (Creswell and Creswell 2018, 13). Yin in *Case Study Research*, explains that case study is “appropriate

for ‘how’ and ‘why’ questions” (Yin 2009, 27) and can “contribute to our knowledge of individual, group, organizational, social, political and related phenomena” (4). Creswell and Creswell (2018) estimate that four to five case studies tend to be included in qualitative research studies.

Case studies can be used in a variety of ways and combinations for research. Yin states, “Whether single or multiple, you also can choose to keep your case holistic or to have embedded subcases within an overall holistic case” (2012, 7). Baxter and Jack, in “Qualitative Case Study Methodology,” delineate, “A multiple or collective case study will allow the researcher to analyze within each setting and across settings. While a holistic case study with embedded units only allows the researcher to understand one unique/extreme/critical case. In a multiple case study, we are examining several cases to understand the similarities and differences between the cases” (Baxter and Jack 2008, 550). Moreover, they explain case study can produce “robust and reliable, but it can also be extremely time-consuming and expensive to conduct” (550). According to Yin, “In fact, good case studies benefit from having multiple sources of evidence (2012, 10),” stating, “In so doing, you will be triangulating—or establishing converging lines of evidence—which will make your findings as robust as possible” (13). Likewise, Creswell and Creswell agree, “If themes are established based on converging several sources of data or perspectives from participants, then this process can be claimed as adding to the validity of the study” (2018, 200).

For this research, legal case documents provide multiple case study data for analysis to construct meaning from the relationship (Bhandari 2020, under “Approaches to Qualitative Research”) between policy and enactment, specifically four single cases with

one case embedded within an overarching case, referred to as three prosecution cases going forward. Of the “six common sources of evidence in doing case studies,” this research includes interviews, archival records, and documents (Yin 2012, 10-13)⁴ that support the examination of IACA from multiple sources of evidence and varied viewpoints (Baxter and Jack 2008, 556). This qualitative approach supports the exploratory aims of the study.

The final product aims to provide a complex and holistic overview to understand the Research Problem Statement/Question: “What policy improvements and challenges can be identified by exploring the policy implementation of IACA and three contemporary prosecution case studies?” The answers to this will fill a gap in the existing literature by studying this grouping of legal cases combined with arts administrator interviews, which has not been undertaken in this way, to the present researcher's knowledge. Moreover, it serves potential stakeholder and general public audiences by providing “description versus experiments” information, following existing scholarship on the topic evidenced in multiple humanities disciplines about IACA.

4.5 Selection of Legal Cases

Surveying prosecution cases following the most recent policy, the Indian Arts and Crafts Amendments Act of 2010, there are a limited number of cases for research; however, they provide a great resource toward understanding the IACA and the subsequent amendments and regulations, mostly centered around enacting and refining prosecution.

4

Note that Yin distinguishes archival such as legal or government records from documents like newspapers and personal correspondence.

During the United States Senate’s “Cultural Sovereignty Series: Modernizing the Indian Arts and Crafts Act to Honor Native Identity and Expression” held on July 7, 2017, Meredith Stanton, then Chairperson of the IACB, explained the geographical concentration in the southwest and the prosecutorial landscape,

Since 1996, the Board has received over 1,700 complaints of alleged Act violations, of which 1,295 have been closed and 413 remain open investigations. Many of these were handled administratively, through letters informing businesses and individuals about the Act and Act compliance. Others were referred for investigation to federal, and at times State, law enforcement authorities, depending on the nature of the complaint and jurisdiction. To date, there have been 22 federal prosecutions in New Mexico, Alaska, Utah, South Dakota, and Missouri. (Cultural Sovereignty Series Senate Hearing 2017, 11-12)

Since most violations are resolved at various stages before reaching court, determining and selecting cases to examine was based on availability and the following inclusion and exclusion factors.

Inclusion criteria were: a) initiated for prosecution by IACB, b) prosecuted after the Indian Arts and Crafts Amendments Act of 2010, c) final plea, judgment, or a completed case, d) that the defendant is an artist, arts administrator, or retailer (stakeholders), and e) required to be a criminal, not a civil case. This criterion allows for research specific to a segment of the cultural arts community and is narrow enough in scope to be practical for execution purposes but informative about challenges that pertain to the three stakeholders as it relates to IACA. Limiting the selection to cases referred by IACB for prosecution permits a closer examination of how policy is enacted by those in government charged explicitly with carrying out the policy, complementing the Elite theory theoretical framework. Prosecution after the most recent legislation (2010) makes the study contemporary and relevant toward application, and any resulting recommendations have a

chance to provide value to the arts community. The conclusion or final judgment of a case allows for a more complete set of records for research and examination as well as a chance for scholarship to be produced. While plea deals are considered for this study, efforts will be made to include cases that have been to court because they provide a comprehensive wealth of information; the individual, social, and economic information that surfaces as a result of court proceedings is invaluable to understanding IACA in a multi-faceted way and how it is or is not working. The selection of stakeholders is the result of interest by the researcher, representation in the pool of available cases to select from, and the potential value or importance the research could have; specifically, artists are producers, arts administrators are decision makers, and retailers are business operators, all of whom have an influential impact on the art market and intersect at varying levels. Not including civil cases allowed the project's scope to be viable and focused on an applicable subset of data for the study.

Exclusion criteria were: a) initiated for prosecution by individuals, tribal organizations, Tribes, or others, b) prosecuted before the Indian Arts and Crafts Amendments Act of 2010, c) no final judgment or an incomplete case, d) the defendant is not identified as an artist, arts administrator, or retailer (stakeholders), and e) civil cases. Cases initiated for prosecution by entities other than the IACB provide a different and less aligned orientation to determining the challenges of the IACA, given the diversity of challenges, including access to research documentation and resources. Cases prosecuted before 2010 are so few in number that more data may be needed for acceptable qualitative research. Incomplete documentation and ongoing court cases could prevent the timely progression of research, notwithstanding extending the project indefinitely. Not refining

the stakeholders would result in too much data for analysis given the project scope, and selecting cases with Native Nations as prosecutors may pose a conflict of interest based on previous professional project work. Additionally, civil cases require different criteria for final determination. Since IACB was given authority to bring civil suit later in the legislative trajectory, it does not allow for a more comprehensive pairing with elite theory.

The shortlist of cases included *United States v. Natchez*, Case No. CR 15-2843MCA (10th Cir. D.N.M. 2016); *United States v. Nael Ali*, Case No. 1:15-cr-3762-JCH, 115 (D.N.M. 2018); *United States v. Sterling Islands, Inc.*, Case No. CR 18-4176 JB, 391 F. Supp. 3d 1027 (D.N.M. 2019); *United States v. Aysheh*, No. :17-cr-00370-JCH (D.N.M. 2019); *United States v. Van Dyke*, Case No. 2:21-cr-00216-RSM (D. Wash. 2021); *United States v. Rath*, Case No. 2:21-mj-00626-BAT (D. Wash. 2021); and *United States v. Haack*, Case No. 1:18-cr-00928-MV (D.N.M. 2018). The following three selections were chosen for their application to the selected arts stakeholders and the variety of scope.

United States v. Natchez, 2016, Case No. CR 15-2843-MCA (2016), *United States v. Ali et al.*, 2018, Case No. 1:15-cr-3762-JCH (2018), and *United States v. Sterling Islands, Inc.*, Case No. CR 18-4176 JB (2019) were final selections because of their relationship to the research topic, the timeframe, specifically being initiated following the last and most recent IACA amendment and the diversity of defendants. These three cases comprise the multiple case studies for this research study. The defendants complement the identified stakeholders (artists, arts administrators, and retailers) that will be interviewed and who are also my target audience. All four criminal federal cases were tried or pleaded in the New Mexico District Court; however, the geographical circumstances have a factual correlation

to Native populations and political incentives to prosecute versus being a study of New Mexico and the IACA because of the low number of total prosecutions.

United States v. Natchez, 2016, Case No. CR 15-2843 details three counts for sale of artwork by gallery, artist/Natchez who was not enrolled as a Native American, and willingly and knowingly made false representations; *United States v. Ali et al.*, 2018, Case No. 1:15-cr-3762 describes Mohammad Abed Manasra, a jewelry supplier, Nael Ali a jewelry store owner, and Christina Bowen an employee, who were charged with four counts for violating IACA; *United States v. Sterling Islands, Inc.*, 2019, Case No. CR 184176 sets out five counts for importing fake Native American jewelry for wholesale and retail sale. The diverse selection of cases comprising a gallery owner/artist, jewelry store owners, and retail importer have broad applicability and relatability to the cultural arts community in various capacities, including curation, museum store sales, administrative directives, and employment opportunities. Using case studies in combination with interviews provides a contemporary and defined perspective on IACA.

By examining the three cases, the goal is to evaluate congressional intent, IACA in practice/action, IACA Policy, and court enforcement to determine what patterns can be evidenced through comparison for similarities, differences, and anomalies or outliers (B. Steenken, pers. comm., March 13, 2023).

4.6 Data Collection

Maxwell, in “Designing a Qualitative Study,” summarizes the study’s operational aspects of data collection and analysis as an ongoing, iterative process with modification, mitigation, and influence (2009, 214-215). Morgan states, “Qualitative researchers rely on

various types of ways to collect data. In some cases, they create the data, but sometimes they use pre-existing data” (Morgan 2022); later adding, “In both cases, researchers are active in discovering, collecting, and making decisions about which materials will be analyzed and which will be ignored” (Morgan 2022). Merriam and Tisdell point out the challenges with documents “Because documents generally are not produced for research purposes, the information they offer may not be in a form that is useful (or understandable) to the investigator...However, if documents are found to be illuminating to the topic of research and incorporated into the process of inductively building categories and theoretical constructs in the first place, they then become evidence in support of the findings” (Merriam and Tisdell 2015, 181). Additionally they caution, “Another major problem with documentary materials is determining their authenticity and accuracy. Even public records that purport to be objective and accurate contain built-in biases that a researcher may not be aware of” (Merriam and Tisdell 2015, 181).

The data collection process was simultaneous, with data being included and eliminated toward relevance and topic applicability. Both primary and secondary sources were used in the form of existing literature and collected research data to examine IACA and identify challenges related to the development of the market for Indian arts and crafts. Documents included government records, scholarship, newspaper articles, legal case documents, and supporting materials. Government records about IACA and IACB primarily reside with the National Archives and Records Administration (NARA); some have been digitized; however, most are not, and they are stored at different locations based on the government office that created the records. Scholarly literature was available through libraries in physical and digital form. Interviews were conducted by the author,

thereby creating new research data for the study. Most of the documents for the selected legal cases were accessible online through the U.S. Government Publishing Office (GPO), Westlaw, and Public Access to Court Electronic Records (PACER); otherwise, digital court dockets were obtained from the United States District Court of New Mexico, the federal court where each case was filed.

All of the documents provide a rich dataset to analyze and provide insight into challenges and applicable considerations for future IACA policy debates and the generation of new concepts to evolve from the data. Government records were a primary source of historical information that helped to explain the process and decisions that resulted in policy enactment, creating a context for understanding the study. Scholarly literature allowed for the inclusion of previous opinions and analysis about the research to be considered while serving as a basis for identifying historical patterns and secondary analysis relative to specific research aims. Although newspapers can be biased in perspective, the social value allows for the underrepresented voices and perspectives in the academy, including Native Peoples, to be included; additionally, sources like *Indian Country Today* center information produced by and about Native Peoples. Multiple case study assessment allowed for a current description and analysis of IACA policy in action to find patterns, differences, make comparisons, and draw conclusions.

Given the available scholarly data, limitations included access to federal documentation, incomplete quantitative data, limited access to legal case information, respecting cultural sensitivities, and use of “grey” literature that reflects the underrepresentation of Native scholars and colonial systems of oppression and exclusion. To overcome limitations, the framework and design were flexible to accommodate the

available data. The study's data sampling includes secondary data analysis to explore the topic, both primary and secondary sources for diverse perspectives, archival research for official government records and statistics, stakeholder interviews, and consultation with experts to process ideas. This approach complements a large amount of available data, albeit unequal in representative stakeholder perspectives, and indicates the limitations of available periodized academic scholarship. The goal is to provide a more balanced and informative look at the policy for consideration in the greater historical context.

4.7 Document Analysis

“Document analysis is a valuable research method that has been used for many years. This method consists of analyzing various types of documents including books, newspaper articles, academic journal articles, and institutional reports” (Morgan 2022, under “Introduction”). Coffey, in “Analysing Documents,” posits, “Documents then are resources to be ‘mined’ but also topics to be studied” (2014, under “Analytical Strategies”). Furthermore, “Documents provide a mechanism and vehicle for understanding and making sense of social and organization practices...” (Coffey 2014, under “Analysing Documents”) later adding, “Thus we can approach documents in terms of the frequency of words, phrases or other elements or characteristics. We can index and code data to identify key themes and thus generate theoretical categories and identify patterns” (under “Analytical Strategies”). In “Document Analysis as a Qualitative Research Method,” Bowen (2009, 31-32) describes the advantages of document analysis as “less time consuming, public availability, cost-effective, unaffected by the research process, stability, exactness, coverage (timeframe); disadvantages include insufficient detail, low retrievability, and what Yin referred to as biased selectivity in researcher selection”

[referencing Yin, Robert. 1994. *Case Study Research: Design and Methods*, 80.].

For this study, document analysis includes a review of existing literature for context, archival records and documents for similarities and outliers, triangulation for validity, and coding for interpretation and to create meaning. Interpretation included summarizing findings toward identifying challenges and recommendations, comparing literature with findings among prosecution cases and stakeholder inquiries, and “stating limitations and future research” (Creswell and Creswell 2018, 198). The deductive categories for document coding were derived from the theoretical framework and literature review organizational categories. Firstly, elite theory: the belief that the federal government wants to maintain power and privilege (#1), Native Nations are forced through policy to participate (#2), and a political formula that correlates with a generally accepted religion, ideology or myth (#3) (Burnham 1943, as categorized by Damele and Campos 2022); since #3 was extremely abstract, it was better suited for inductive coding to see if something emerged. Secondly, the Literature Review Organizational Categories: Law and Legislation, Native Identity, Fakes and Frauds, and Framing Cultural Policy. Through analysis, the data dictated additional inductive coding categories; priority was given to elite theory guided by the research questions. The same coding was used for documents and interviews and is available in Appendix B.

The writing strategy synthesizes the literature and data collected, and diagrams were created to enhance understanding and inform, with a narrative general approach that will include descriptions and coding of multiple case studies (Creswell and Creswell 2018, 202-203).

4.8 Interviews

According to Merriam and Tisdell, “Interviewing is necessary when we cannot observe behavior, feelings, or how people interpret the world around them. It is also necessary to interview when we are interested in past events that are impossible to replicate” (Merriam and Tisdell 2015, 108). Interviews conducted with stakeholders were collected, stored, transcribed, analyzed, and managed in Dedoose, “A cross-platform app for analyzing qualitative and mixed methods research with text, photos, audio, videos, spreadsheet data and more” (Dedoose, n.d.-b). Aligned with qualitative methods, six (6) total interviews containing open-ended interview questions were conducted with individual stakeholders (artists, arts administrators, and retailers) and others who had experience with IACA or were identified through professional association networks as such, with no current association with the researcher. All participants had varying levels of professional relationships with IACA to inform the study from a participant perspective. Open-ended questions aligned with constructivism by allowing meaning to be constructed through participant feedback (Creswell and Creswell 2018, 8). The interview data collection stopped at six total interviews to account for saturation or theoretical saturation within a social theory as defined by Bryant and Charmaz as “the point at which gathering more data about a theoretical category reveals no new properties nor yields any further theoretical insights about the emerging grounded theory” (2019, under “Discursive Glossary of Terms”).

In “Are Case Studies More than Sophisticated Storytelling? Methodological Problems of Qualitative Empirical Research Mainly Based on Semi-Structured

Interviews,” Diefenbach acknowledges that conscious and unconscious factors can influence quality (2009, 880-881), but states, “Interviews can reveal ideas and deliver insights no other method can provide” (882). This is true when considering the value interviews add to this research in relation to legal case data alone; Diefenbach goes on to say, “Case studies do not place and explain the data in a historical and structural context, there is a lack of critical and constructive contribution to social practice” (889). Additionally, interviews allow for the participation of the public or those affected by the policy, specifically the stakeholders in this case, to be taken into account while testing the validity of elite theory.

4.8.1 Sampling

As mentioned previously, the interview sample for the study was drawn from artists, arts administrators, and retailers (stakeholders) having a professional relationship with the IACA or an association with the IACA in some capacity through their stakeholder role. Additional inclusion criteria included participants working, unemployed, or retired, any age, geographic location limited to residents of the United States and Native Nations within the boundaries of the U.S., and any education level. These characteristics allowed for targeted correlation to those familiar with IACA, opened participation to those who may or may not be considered elite per the theory and definition in this research, allowed for perspectives with the entire scope of the legislative history of the Act (1935-2023), and geographic or regional differences to be considered since the policy is national in scope and application. Due to the complexity and diversity of cultural affiliation or Native identity, a voluntary option to disclose this information was provided during the interview process; however, it is not an inclusion or exclusion criteria due to the feasibility of

validating personal information for dissertation research purposes and not presuming agency to determine identity while trying to exercise cultural sensitivity.

Exclusion criteria included arts stakeholders solely outside of the identified roles for this study (artists, arts administrators, and retailers); however, overlap with other stakeholder roles, past professional capacities, or multiple stakeholder capacities do not exclude interview participants e.g., an interviewee could be an artist and retailer (two stakeholder roles) or an arts administrator and Arts Board Member (one stakeholder role considered for the study and one not). Stakeholders residing outside of the United States and within Native Nations outside the boundaries of the U.S. were not included since they are not within the legal jurisdiction of the United States. Since associations with IACA can vary greatly, and the diversity of experiences is valid input toward understanding the impact and effectiveness of the policy, therefore no qualification or time limit was considered for exclusion, e.g., as a young Native artist, you may grow up with varied understandings, considerations, and practices influenced by IACA in specific or broad ways or as a life-long gallery owner you may have just encountered it with the recent acquisition of a painting by a Native artist under the 2010, or latest, Amendment. Recognizing that interview data collection is dependent on willing participants within a specific timeframe, the study fell slightly short of its ideal target sample for the study of 34 interviews from each stakeholder group representing various ages, education levels, and geographic locations within the United States.

Each stakeholder group was selected for some of the factors identified by Parker et al. (2022) in “Factors to Consider During Identification and Invitation of Individuals in a Multi-Stakeholder Research Partnership,” including “Financial and non-financial

relationships... expertise or experience... and influence” (under “Stage 2”). Additionally, each of the three selected stakeholder groups has a unique relationship to Burnham’s (1943) “power and privilege” (as categorized by Damele and Campos 2022) relative to elite theory and expanded on below.

As previously mentioned, the study’s theoretical framework and methodology intersect, wherein the interviews provide the perspectives of the non-elites, and the case law gives the perspective of the elites. The perspectives artists, arts administrators, and retailers provide are wholistically valuable as actors primarily outside the government (or Elite) structure and within the broader art market hierarchy that IACA attempts to influence through policy. As a compliment, the case studies examined in this study represent the stakeholder groups serving as evidence reflective of the influence, decision-making agency, hierarchical structure, the relationship to arts and economic welfare, and the impact of IACA policy. Interviewing stakeholder groups provides primary evidence that can validate or refute the case study analysis, introduce new concepts through data, and the documentation of the study contributes to arts scholarship inclusive of participant perspectives. More specifically, artists are dependent on the art market for economic welfare, craftsmanship producers, influences of style and trends, and can experience varying degrees of “power and privilege” (Burnham 1943, as categorized by Damele and Campos 2022), e.g., popularity and celebrity endorsement. Arts administrators may need to fundraise as well as depend on the art market for a living wage; they have an added responsibility to follow policy and enact procedures for the benefit of other staff while managing institutional solvency. Exercising greater influence through organizational impact, administrators provide insight into hierarchy from an operational approach nested

in authoritative decision-making and the ability to assign validity or worth through artistic selections. Small and large retailers are tied to art market economics and can be producers of arts and crafts, employers, and market influencers through communications like social media or other medium, including television commercials. Varying degrees of “power and privilege” (Burnham 1943, as categorized by Damele and Campos 2022) for retailers include but are not limited to creating market exclusivity through intellectual and reproduction rights, equipment to mass produce goods, the ability to influence geographic regions through product development, stylistic choices, and wages for art market actors like artists.

4.8.2 Recruitment

The Recruitment Letter (Appendix A) explains the purpose of the study, interview method, participant qualifications, and expectations. Participants from stakeholder groups (artists, arts administrators, and retailers) were identified by the author who had no current association with the researcher, including professional association networks, all with varying levels of professional relationship to IACA, to inform the study from a participant perspective. Professional Networks included but were not limited to the Cooperstown Graduate Program in Museum Studies alumni directory; museums and cultural arts organizations that deal in Native arts and craftsmanship, e.g., Autry Museum of the American West; and current and former colleagues of the researcher. When the contacted individual suggested another participant, the lead was utilized based on UKY IRB protocols and the existing research needs; snowball sampling was not conducted.

Fifty-two interview requests were sent, resulting in eight total interviews; six were used for data analysis and two for narrative support. A response rate of 15.3% is below

standard considering results reported in “Survey Response Rate Levels and Trends in Organizational Research” by Baruch and Holtom, wherein “The average response rate for studies that utilized data collected from individuals was 52.7 percent with a standard deviation of 20.4, while the average response rate for studies that utilized data collected from organizations was 35.7 percent with a standard deviation of 18.8” (2008, 1139). The low response rate was in part due to the 2023 Department of the Interior’s public hearings about proposed changes to the Indian Arts and Crafts Act that were taking place; this increased attention around compliance having potential economic implications, notwithstanding the potential risks of speaking as an individual artist and/or member of a community as part of the official federal record.

4.8.3 Instrumentation

Interviews were conducted by the researcher using a questionnaire comprised of qualitative instruments used to collect research data. The qualitative information gathered through interviews provided data for analysis in relation to elite theory, enactment and understanding of the IACA policy, and addressed the research questions and problem statement for the study.

The IACA Interview Questions and the script followed the University of Kentucky E-IRB protocols for approval.

Interview Questions: Set 1 (Arts Stakeholders)

Interviewee Background

1. Name and affiliation/profession/cultural affiliation.
2. Tell me how you got involved in your current arts role.
3. Where/how did you first become interested in Native American Arts?

4. How would you describe your success in the field?
5. What has been challenging in this field for you?

Indian Arts and Crafts Act

6. Describe your awareness of IACA and interaction/experience.
 1. How much do you know about IACA?
 2. How has it impacted your work as an artist/retailer/arts administrator?

Fakes and Frauds

7. How did you learn about fakes/frauds in Indian arts and crafts?
 1. What is the role of education about fakes/frauds (misrepresentation) from IACA?
 2. Has IACA helped you understand more about fakes/frauds in Indian arts and crafts? If yes, what did you learn?

Promotion

8. Does IACA live up to its goal to “promote the development of Indian arts and crafts”? Explain.
 1. Do you think IACA successfully encourages the development of Indian arts and crafts in your experience? Why or why not?

Economic Welfare

9. Does IACA promote the economic welfare of Native Peoples? Explain
 1. In your experience, how has IACA helped Native People in the development of their arts & crafts? Or support the sale of Indian Arts and Crafts in the general retail art market?

Education

10. What would you like to know/learn more about?
 1. What specific information about IACA do you want to know? How would learning more information about IACA help?

Conclusion

11. What would you tell someone who wanted to be involved (as an artist, arts administrator, or retailer) in Indian arts and crafts?

More specifically, questions 1 - 5 provide background and validity of target participant stakeholders, questions 6 - 7 relate to the theoretical framework of the study to interpret and make meaning, questions 8 - 9 reflect the stated policy purposes of the IACA, and questions 10 - 11 correlate to the research questions for the study.

4.8.4 Interview Protocol

A semi-standardized interview approach using the same structured questions for each participant aligns with many qualitative studies according to Gerry and Lacey, “They retain the flexibility necessary to follow issues raised by participants that had not been anticipated” (2010, 349). The interview data supported the research by exploring similarities and differences, surfacing new information for consideration, and documenting the feedback of the population affected by and who participate in some degree in IACA today. Interviews were conducted via Zoom with individual participants; each interview was recorded, and the live transcription feature was enabled to aid in data collection and for accessibility purposes during the interview.

Once University of Kentucky E- IRB approval was granted, the participants were sent the Survey/Questionnaire Invitation Cover Letter and the Consent to Participate in a Research Study forms explaining the research study, Zoom equipment, the expected timeframe (forty-five minutes each), risks, voluntary participation, and the University of Kentucky contact information for any questions. Participants were emailed to schedule the interview within the next six weeks via Zoom on a computer or phone. Additionally, participants could withdraw from the study at any time. Participants did not have to answer uncomfortable questions, and those partial results would be counted as a complete

interview. Information from the interview data collection will only be used for this research study and will be accessible to participants upon request until the study is completed.

4.9 Interview Data Analysis

Interviews were conducted via Zoom with individual participants; as mentioned earlier, each interview had the live transcription feature enabled to aid in data collection. In addition, notes were taken during each interview. Interview data was coded to develop descriptions and themes for analysis (Creswell and Creswell 2018, 193). According to Johnny Saldaña in *The Coding Manual for Qualitative Researchers*, “A code in qualitative inquiry is most often a word or short phrase that symbolically assigns a summative salient, essence-capturing, and/or evocative attribute for a portion of language-based or visual data” (2015, 3). The study applied a two-tiered coding approach. Initially the study used the First-Cycle coding method of attribute or descriptive coding wherein information is recorded about “variables of interest” (Saldaña 2015, 71), allowing for initial data organization, e.g., artist, retailer. The Second-Cycle coding method is pattern coding, which, according to Miles and Huberman (1994, 69), is “explanatory or inferential codes, ones that identify an emergent theme, configuration or explanation. They pull together a lot of material into a more meaningful and parsimonious unit of analysis. They are a sort of meta-code.... Pattern coding is a way of grouping those summaries into smaller sets, themes or constructs.” This approach supports further evaluation and integration of analyzed documents and collected interview data to make comparisons and draw conclusions. The deductive codes are derived from my theoretical framework and literature review organizational categories: elite theory: the belief that the federal government wants to maintain power and privilege (#1) and Native Nations are forced through policy to

participate (#2). Elite theory: a political formula that correlates with a generally accepted religion, ideology or myth (#3) was very abstract and was not applied in deductive coding; the decision was made to see if something emerged through inductive coding that correlated to tenet number three (Burnham 1943, as categorized by Damele and Campos 2022) and Literature Review organizational categories: Law and Legislation, Native Identity, Fakes and Frauds, and Framing Cultural Policy. The data dictated additional inductive coding categories; priority was given to elite theory guided by my research question. The same coding was used for documents and interviews.

All of the information collected for this research study, specifically interviews and document analysis, provided the necessary data to evaluate and identify if there are challenges associated with the policy, thereby exploring the research questions: "What challenges do contemporary IACA prosecutions identify for arts stakeholders?" How do these challenges impact the development of Indian arts and crafts products? This approach fulfills the purpose of the study to explore the Indian Arts and Crafts Act and contemporary prosecution cases to understand better the modern implementation of the Indian Arts and Crafts Act while adding to the limited body of scholarship about IACA.

4.10 Ethics

I have considered positionality and consider this as a contribution to scholarship from the perspective of a graduate student, not a professional, for a segment of arts stakeholders that attempts to provide a general and culturally sensitive approach to the subject. Any conflicts were circumvented through the existing and outlined University of Kentucky E- IRB protocols for research. There were no identified ethical considerations with the interview data collection, however I recognize that unethical research involving

and within Indigenous communities is a historical and ongoing problem that has caused lasting harm. In an effort to mitigate this, I utilized my professional network to identify interviewees (degree of relational trust and researcher community responsibility), provided information about the collection, use of data, and openly answered questions. Additionally, intentional efforts were made to include native voices in this study through resource selection and the incorporation of interviews into the study design. I am currently working with Native American collections (art/artifacts) in my profession and this research both increases my knowledge and informs that work.

4.11 Conclusion

The above methodology and methods contribute to the research using a qualitative approach (methodology), document analysis and interviews (methods), Constructivist worldview, and elite theory (framework). Both primary and secondary sources were used in the form of existing literature and collected research data to examine IACA and identify what challenges the contemporary prosecution cases hold for arts stakeholders related to the development of the market for Indian arts and crafts. This approach aligns with accepted academic standards and will uniquely contribute to arts administration scholarship.

CHAPTER 5. LEGAL CASE STUDIES RESULTS

This chapter explains the coding and results of multiple or three legal case studies as part of this qualitative study, utilizing an elite theory framework with a Constructivist worldview with the aim of answering the research questions. The process included deductive coding, inductive coding, and thematic identification. The legal case selections, legal case summaries, data collection, interview questions, data collection, and legal case studies coding results are outlined below to explain the process and results.

5.1 The Legal Case Selections

The diverse selection of cases comprising a gallery owner/artist, jewelry store owner, and retail importer have broad applicability and relatability to the cultural arts community in various capacities, including curation, museum store sales, administrative directives, and employment opportunities. The three cases are: *United States v. Natchez*, 2016, No. CR 15-2843; *United States v. Nael Ali et al*, 2018, Case No. 1:15-cr-3762 and the associated Case No. 1:15CR03762-001JCH; and *United States v. Sterling Islands, Inc.*, 2019, Case No. CR 18-4176. All three cases involve charges brought under 18 U.S.C. § 1159: Misrepresentation of Indian Produced Goods and Products.

5.2 Legal Case Summaries

5.2.1 *United States v. Natchez*, 2016, Case No. CR 15-2843-MCA

This case details three counts for sale of artwork by gallery, whereby artist/Natchez who was not enrolled as a Native American in any recognized Tribe, willingly and knowingly made false representations about artistic production.

Stanley Natchez was charged with three counts in New Mexico District Court; two counts for violating 18 U.S.C. § 1159- Misrepresentation of Indian Goods and Products and one count of violating 18 U.S.C. § 1001- Statements or entries generally (*U.S. v. Natchez* 2016, 2-3). According to court documents in *U.S. v. Natchez* about Counts 1 and 2 (violating 18 U.S.C. § 1159):

...unlawfully, and knowingly offered to sell and displayed for sale goods that falsely suggested the goods were Indian produced, Indian products, the product of a particular Indian tribe and the product of an Indian arts and craft organization, resident within the United States, specifically several paintings were displayed and offered for sale by STANLEY NATCHEZ, at his art gallery, for a total price in excess of \$1,000 and were falsely marketed as Indian produced, Indian products, the product of a particular Indian tribe and the product of an Indian arts and crafts organization, in that STANLEY NATCHEZ, the artist, is not an enrolled member of a recognized Indian tribe and is not a certified Indian artisan, nor a member of an Indian arts and crafts organization, as those terms are defined in Title 18, United States Code Section 1159(c)(1), (3) and (4). (U.S. v. Natchez 2016, 2)

Count 3 (violating 18 U.S.C. § 1001) stipulated, Natchez:

...did willfully and knowingly make materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the Government of the United States, i.e., during an interview conducted by Special Agent Noel Wagner of the United States Fish and Wildlife Service who was conducting an official investigation, at STANLEY NATCHEZ'S art gallery in Santa Fe, in the District of New Mexico. (U.S. v. Natchez 2016, 3)

During an official investigation interview, Natchez was accused of lying about marketing his goods as Shoshone/Paiute Indian because his Fernandefio-Tataviam Band of Mission Indians group affiliation was not federally or state-recognized resulting in previously rejected applications to markets and festivals (*U.S. v. Natchez 2016*, under “Count 3”).

Natchez moved to dismiss all counts, arguing the opposite was true, in that his goods were not marketed as Shoshone/Paiute, his Tataviam affiliation was not a problem, and he received invitations to participate in markets, festivals and art shows (*U.S. v. Natchez 2016*, 3). The defendant’s (Natchez) legal team sought to dismiss counts one and two, based on Natchez’s membership in a Tribe recognized by the Native American Heritage Commission (NAHC) interpreted as a California or state commission; thereby not violating IACA. Furthermore, defendant’s counsel alleged that Natchez’s First Amendment Rights and Equal Protection of the laws were violated and there was not enough evidence of criminality for prosecution (*U.S. v. Natchez 2016*, under “Counts I and II”); specifically, “prosecuting Mr. Natchez for describing his Native heritage when he sells his paintings violates the First Amendment.” [Defendant’s Motion to Dismiss: Doc. 24, p. 8]” (Memorandum Opinion and Order, *U.S. v. Natchez 2016*, 4) and “singling out one Native American artist from other Native American artists for prosecution, based on the absence of amorphously defined ‘recognition’ status would violate principles of equal protection.” [Doc. 24, p. 8]” (Memorandum Opinion and Order, *U.S. v. Natchez 2016*, 4).

The core issues at the heart of the case are the IACA definition of Indian and whether the NAHC is a State Commission that can convey Tribal or Indian recognition. After review, the court found that NAHC has the implied and express authority to recognize Native American Tribes in California (*U.S. v. Natchez 2016*, 15). This made counts one,

two, and three not pertinent if Natchez is a member of a State Recognized Tribe. The case concluded with an Order of Dismissal Without Prejudice on August 9, 2016 (*U.S. v. Natchez* 2016).

5.2.2 *United States v. Nael Ali*, Case No. 1:15-cr-3762-JCH (2018) and the *United States v. Mohammad Manasra*, Case No. 1:15CR03762-003nd (2018)

This case describes Mohammad Abed Manasra, a jewelry supplier, Nael Ali, a jewelry store owner, and Christina Bowen an employee, who were charged with four counts for violating IACA; as well as the associated Case No. 1:15CR03762-003nd which outlines Nael Ali's involvement as a supplier of jewelry made in the Philippines.

Documents filed on October 20, 2015, indicted Nael Ali, Mohammad Manasra, and Christina Bowen on four counts: U.S.C. § 371- Conspiracy to Violate the Indian Arts and Crafts Act (one count) and U.S.C. § 1159- Violation of the Indian Arts and Crafts Act (three counts) (Redacted Indictment, *U.S. v. Ali et al.* 2015, E.C.F. 2).

The indictment reads:

From on or about November 26, 2012, and continuing to on about June 5, 2014, in Bernalillo County, in the District of New Mexico and elsewhere, the defendants, NAEL ALI, CHRISTINA BOWEN, and MOHAMMAD MANASRA, knowingly, unlawfully and willfully combined, conspired, confederated, agreed, and acted interdependently with one another and with others known and unknown to the Grand Jury to commit violations of the Indian Arts and Crafts Act, contrary to 18 U.S.C. § 1159. (Redacted Indictment, U.S. v. Ali et al. 2015, E.C.F. 2)

The Manner and Means section of the indictment document specifies:

2. *It was part of the conspiracy that NAEL ALI would make regular payments to MOHAMMED MANASRA to supply NAEL ALI's jewelry stores with Indian-style jewelry manufactured in the Philippines.*

3. *It was further part of the conspiracy that at NAEL ALI's jewelry stores, NAEL ALI and his employees, including CHRISTINA BOWEN, would display, offer*

for sale and sell the Filipino-manufactured, Indian-style jewelry as genuine Indianmade jewelry. (Redacted Indictment, U.S. v. Ali et al. 2015, E.C.F. 2)

Ali operated multiple galleries and sold jewelry to other stores e.g., Turquoise Canyon in Virginia (\$13,100 in April of 2011) and the Oneida Indian Nation (\$28,085 in April of 2013) (Redacted Superseding Indictment, *U.S. v. Ali et al.* 2015, E.C.F. 42). Additionally, Ali sold to an undercover federal agent with and without mock artist initials/markings stating that the jewelry was Indian-produced (Redacted Superseding Indictment, *U.S. v. Ali et al.* 2015, E.C.F. 42). Christina Bowen was removed from the case on March 3, 23, 2016 as part of a superseded indictment (confirmed by author via telephone communication with New Mexico District Court Records Department, August 16, 2023). Ali was subsequently indicted in *United States v. Aysheh, et al.*, 17 CR 370 (Ninth Motion to Continue Trial and Extend Time for Filing Motions, *U.S. v. Ali et al.* 2017, E.C.F. 88).

Both Manasra and Ali made plea agreements admitting guilt. Manasra made acknowledgments, stating.

Nonetheless, I intentionally told the UC [Under Cover] that the kokopelli set was "Zuni," and the rings, bracelet and cluster set were "Navajo." The manner of display, offer and sale, all falsely suggested that all of the Philippine-made, Native American-style jewelry was made by members of federally recognized Indian tribes. I understand that both the Zuni and Navajo tribes are federally recognized Indian tribes and are resident within the United States (Plea Agreement as to Mohammad Manasra, U.S. v. Ali 2017, E.C.F. 97).

Ali admitted to mixing Indian-produced jewelry with that made in the Philippines, but representing it all as Indian-made jewelry (Plea Agreement as to Nael Ali, *U.S. v. Ali* 2017, E.C.F. 102). Moreover, Ali stated,

Following my training, direction and example, my employee displayed and sold some of the counterfeit jewelry to the UC [Under Cover] in a manner that suggested

it was an Indian product, or the product of a particular Indian tribe, resident in the United States. Specifically in exchange for \$1,115 U.S. currency, my employee sold the UC five (5) rings stamped with “CK” initials, one (1) ring stamped with a yucca symbol, one (1) ring stamped with “NB” initials, one (1) ring stamped with “OY” initials, three (3) rings stamped with a raincloud symbol, and one (1) ring stamped with a feather symbol. My employees represented the jewelry as Navajo made. The jewelry my employees sold to the UC was Native-American in style, but I knew it was actually made in the Philippines and not by Indians. Nonetheless, I intentionally stocked that jewelry in a manner falsely suggesting it was Indian made, provided lists for the employees to reference the symbols and initials to falsely suggest the jewelry was Indian made, and trained the employees to tell customers the jewelry was Native American-made and to reference the fraudulent list that I created. I understand that both the Zuni and Navajo tribes are federally recognized Indian tribes and are resident within the United States. (Plea Agreement as to Nael Ali, U.S. v. Ali 2017, E.C.F 102).

Manasra was sentenced to “2 days or time served, whichever is less” (*U.S. v. Manasra* 2018) for Violation of the Indian Arts and Crafts Act (18 U.S.C. § 1159) and one year of supervised release, mandatory collection of DNA, special conditions of supervision including access to financial information, no unapproved interaction with co-defendant(s) or co-conspirator(s) (Amended Judgement in a Criminal Case, *U.S. v. Manasra* 2018), “40 hours of community service during the first year of probation” (Amended Judgement in a Criminal Case, *U.S. v. Manasra* 2018,), and accurate tax return filing (Amended Judgement in a Criminal Case, *U.S. v. Manasra* 2018). Ali pleaded guilty to two counts of 18 U.S.C. § 1159 - Violations of the Indian Arts and Crafts Act and was sentenced to imprisonment six months for each count (consecutive twelve months total), mandatory DNA collection, special conditions of supervision including providing access to financial information and no unapproved interaction with co-defendant(s) or co-conspirator(s), a restitution payment of \$9,048.78, forfeiture of profit in more than 5,000 pieces of jewelry (Amended Judgement in a Criminal Case, *U.S. v. Manasra* 2018) and “a money judgment in the amount of \$3,840.38, representing a portion of the net profit the defendant derived from

the offense charged, along with accurate tax return filing” (Amended Judgement in a Criminal Case, *U.S. v. Manasra* 2018).

5.2.3 United States v. Sterling Islands,
Inc., 2019, No. CR 18-4176 JB

This case sets out five counts for importing fake Native American jewelry for wholesale and retail sale.

Containing five counts and seven defendants, this case was cited in the court record for its legal complexity (Redacted Indictment, *U.S. v. Sterling Islands Inc.* 2018, E.C.F. 2). The defendants included Sterling Islands Inc., Al-Zuni Global Jewelry, Inc., Jawad “Joe” Khalaf; Nader Khalaf; Nashat “Nash” Khalaf; Zaher Mostafa, and Taha “Tom” Shawar, with five counts in the Redacted Indictment: “Count 1: 18 U.S.C. § 371: Conspiracy; Counts 2 and 3: 18 U.S.C. § 545: Smuggling Goods into the United States; 18 U.S.C. § 2: Aiding and Abetting. Counts 4 and 5: 18 U.S.C. § 1159: Misrepresentation of Indian Produced Goods and Products; 18 U.S.C. §2: Aiding and Abetting” (Redacted Indictment, *U.S. v. Sterling Islands Inc.* 2018, E.C.F. 2).

STERLING ISLANDS INC. (hereinafter, “STERLING ISLANDS”) is a registered corporation in the Commonwealth of Virginia. The primary business office for STERLING ISLANDS is located in Albuquerque, New Mexico. STERLING ISLANDS has imported Native American-style jewelry, arts, and crafts into the United States from a factory in the Republic of the Philippines and sold such jewelry, arts, and crafts to various Wholesale and retail businesses in New Mexico and elsewhere JAWAD KHALAF is the owner and president of STERLING ISLANDS. NADER KHALAF is a manager of STERLING ISLANDS (Redacted Indictment, U.S. v. Sterling Islands Inc. 2018, E.C.F. 2).

Furthermore, the indictment alleges:

From at least as early as 2009 to October 2015, in Bernalillo and McKinley Counties, in the District of New Mexico, and elsewhere, the defendants, STERLING ISLANDS, AL-ZUNI-GLOBAL, JAWAD KHALAF, NADER KHALAF, NASHAT KHALAF, MOSTAFA, and SHAWAR, knowingly, unlawfully, and willfully combined, conspired, confederated, agreed, and acted interdependently With one

another and with others known and unknown to the Grand Jury to commit the offenses of smuggling goods into the United States, contrary to 18 U.S.C. § 545, and violating the Indian Arts and Crafts Act, contrary to 18 U.S.C. § 1159 (Redacted Indictment, U.S. v. Sterling Islands Inc. 2018, E.C.F. 2).

Among the allegations were that the defendants were receiving millions of dollars in revenue for misrepresenting Indian products, copying/reproducing Native American jewelry for customers, and using removable stickers with no other marks of origin (Redacted Indictment, *U.S. v. Sterling Islands Inc.* 2018, E.C.F. 2). The defendants sought to dismiss Counts 2, 3, and partially dismiss Count 1” (Federal Rules of Criminal Procedure 12(b)(3)(B)(v)). The core issues were what constitutes a law and whether the Indictment “fails to state an offense against Defendants... as required by rule 12(b)(3)(B)(v)” [Failure to State an Offense] of the Federal Rules of Criminal Procedure (Federal Rules of Criminal Procedure 12(b)(3)(B)(v)), because 19 C.F.R. § 134.43 [Methods of Marking Specific Articles] fails to qualify as a law which the Defendants may be charged with violating” (Memorandum Opinion and Order, *U.S. v. Sterling Island Inc.* 2019).

The Court concludes that (i) a Treasury Department regulation constitutes a law for the purposes of 18 U.S.C. § 545’s contrary-to-law element, because the plain meaning of the word law in 18 U.S.C. § 545 includes both statutes and regulations; (ii) Treasury Department regulation 19 C.F.R. § 134.43 constitutes a law for 18 U.S.C. § 545’s purposes; and (iii) the Indictment states an offense against the Defendants in Counts 1, 2, and 3. The Court denies the Motion. (Memorandum Opinion and Order, U.S. v. Sterling Island Inc. 2019)

Ultimately, the organization plead guilty to count 5: U.S.C. § 1159 Misrepresentation of Indian Produced Goods and Products and was sentenced to five years probation, “50 hours of community service during the first year of probation” (*U.S. v. Sterling Island Inc.* 2020), “disclosure of business financial records” (*U.S. v. Sterling Island Inc.* 2020), no changes in

business (e.g., name change or bankruptcy), development of a crime prevention program, and submission to inspection (*U.S. v. Sterling Island Inc.* 2020). Within the Schedule of Payments of the Judgment, it states:

The defendant and the co-defendants will release in claim to the \$288,738.94 to the United States seized on or about October 29, 2015. In addition, defendant and codefendants agree to collectively provide a total of an additional \$300,000 to the Indian Arts and Crafts Board, an agency within the Department of Interior. Those funds will be paid over a period of four years from the date of the judgement in this case as more fully set forth in a promissory note the parties executed.

This plea is entered into in conjunction with a corresponding civil forfeiture settlement in United States v. 99,337 pieces of counterfeit Native American jewelry in Case No. 16-1304 LF-KBM.

*Based on the defendant's lack of financial resources, the Court will not impose a fine or a portion of a fine. However, in accordance with U.S.S.G. 5E1.2(e), the Court has imposed as a special condition that the defendant complete community service. The Court concludes the total combined sanction without a fine or alternative sanction, other than the defendant complete community service, is sufficiently punitive. (Judgment in a Criminal Case, *U.S. v. Sterling Island Inc.* 2020, 4)*

5.3 Data Collection

The three cases of interest *United States v. Natchez*, 2016, Case No. CR 15-2843MCA, *United States v. Nael Ali*, 2018, Case No. 1:15-cr-3762-JCH, and *United States v. Sterling Islands, Inc.*, 2019, Case No. CR 18-4176 JB were examined using court documents presenting final decisions by the United States District Court of New Mexico in the form of one Memorandum Opinion and Order, one Amended Judgment in a Criminal Case, and two Judgements in a criminal case. The *U.S. v. Natchez* has two documents that are significant to the final decision; each document was considered separately since one is a standard Order and “is not considered a ruling on the merits” (Legal Information Institute 2022) and the other (Memorandum) contained the merits of the case necessary for data

analysis. Since the documents were not being compared against one another this approach is valid.

Two defendants (Ali and Manasra) with separate judgments are part of the *U.S. v. Ali et al.* case, although there are two separate criminal case numbers, they are considered one case for the purposes of this study and its analysis because the defendants were indicted together; as mentioned earlier the third defendant (Bowen) was removed from the case on March 3, 23, 2016 as part of a superseded indictment (confirmed by author via telephone communication with New Mexico District Court Records Department, August 16, 2023). Additionally, *U.S. v. Ali et al.* has a relationship to the *U.S. v. Sterling Islands, Inc.* case but is treated as separate, since it is an independent legal case and the operational function of the defendant is different; with reference to the Sentencing Brief, “The case against Defendants Nael Ali and Mohammad Manasra relates to the investigation of Sterling, as well as I.J. Wholesale, Inc. (‘IJW’)... Sterling worked in concert with Filipino corporation FA4U to design, import, and supply Sterling’s Filipino-made jewelry to jewelry stores across New Mexico that would fraudulently sell the jewelry as Native American-made in violation of the Indian Arts and Crafts Act (‘IACA’), 18 U.S.C. § 1159” (Sentencing Memorandum, *U.S. v. Ali* 2018, E.C.F. 123). In short, “Mr. Ali and Mr. Manasra served as both retailers and wholesalers of Sterling’s counterfeit jewelry” (Sentencing Memorandum, *U.S. v. Ali* 2018, E.C.F. 123).

5.4 Legal Case Studies Coding Approach

The deductive or first-cycle coding approach included the three legal case studies; notwithstanding, the data may reveal additional data (inductive). The second-cycle coding process involved codes being applied to segments of data and then re-examination for

comparison, patterns, and outliers (LibGuides 2024). Conceptual analysis was performed by the researcher to understand and link themes and concepts (Mailman School of Public Health, n.d.). “The main goal was to examine occurrences of selected terms and ideas in the data. Terms may be explicit or implicit” (Mailman School of Public Health, n.d.).

Dedoose software was used for data organization, coding, and visual presentation.

5.5 Legal Case Studies Coding Process

The documents were all read before any coding. Both deductive and inductive coding were applied using Dedoose software. Deductive codes were derived from the study's theoretical framework and organizational categories: elite theory: the belief that the federal government wants to maintain power and privilege (#1) and elite theory: Native Nations are forced through policy to participate (#2). Elite theory: a political formula that correlates with a generally accepted religion, ideology or myth (#3) was very abstract and was not applied in deductive coding, the decision was made to see if something emerged through inductive coding that correlated to tenet number three (Burnham 1943, as categorized by Damele and Campos 2022). Organizational Categories include: Law and Legislation, Native Identity, Fakes and Frauds, and Framing Cultural Policy. [Note: Full set of codes and definitions are available in Appendix B.]

5.5.1 Deductive Codes

Seven deductive codes were applied to relevant data in first-cycle coding. Second cycle coding was applied to important information that did not fit the pre-determined deductive codes through the generation of child codes and/or new parent codes. The code definitions were used as inclusion criteria and co-coding was applied as warranted. Data

excerpts were organized by code and investigated as stand-alone collections for interpretation into broader descriptive themes. The results were examined by the top five codes applied in terms of numerical count or frequency with an effort toward replicability for the validity of this study, code information accompanies excerpts.

Table 5-1 Deductive Codes

<p>Arts Stakeholder Definition</p>	<p>Arts stakeholders identified ones for this study (artists, arts administrators, and retailers); however, overlap with other stakeholder roles, past professional capacities or multiple stakeholder capacities do not exclude interview participants, e.g., an interviewee can be an artist and retailer (two stakeholder roles) or an arts administrator and Arts Board Member (one stakeholder role considered for the study and one not). Stakeholders residing outside of the United States and within Native Nations outside the boundaries of the U.S. will not be included since they are not within the legal jurisdiction of the United States.</p>
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Table 5-1 continued

<p>Nature of Offense</p>	<p>Type or categorization of crime described in the legal document by the court.</p>
<p>Argument of US</p>	<p>“Oral argument – lawyers summary of the United States position before the court seeking prosecution” (DOJ, n.d.)</p>
<p>Argument of Defendant</p>	<p>“Oral argument - lawyers summary of the defendant’s position before the court to answer an accusation” (DOJ, n.d.)</p>
<p>Judgment or Sentence</p>	<p>Final verdict or punishment in the case.</p>
<p>Elite theory: Power and/or Privilege</p>	<p>Derived from James Burnham’s <i>The Machiavellians, Defenders of Freedom</i>, the tenets of classical elite theory include: “1. The primary object of every elite or ruling class is to preserve power and privilege” (Damele and Campos 2022, 2).</p> <p>In this case, the federal government is considered the Elite.</p> <p>“The first class, always the less numerous, performs all political functions, monopolizes power and enjoys the advantages that power brings, whereas the second, the more numerous class, is directed and controlled by the first, in a manner that is more or less legal, now more or less arbitrary and violent, and supplies the first, in appearance at least, with material means of subsistence and with the instrumentalities that are essential to the vitality of the political organism” (Mosca 1939, 50).</p>

Table 5-1 continued

<p>Elite theory: Force Native Nations to Participate / Forced Participation</p>	<p>Derived from James Burnham's <i>The Machiavellians, Defenders of Freedom</i>, the tenets of classical elite theory include: "2. The rule of the elite is based upon (not-necessarily explicit) force and fraud" (Damele and Campos 2022, 2)</p> <p>In this case, the federal government is considered the Elite.</p> <p>"The first class, always the less numerous, performs all political functions, monopolizes power and enjoys the advantages that power brings, whereas the second, the more numerous class, is directed and controlled by the first, in a manner that is now more or less legal, now more or less arbitrary and violent, and supplies the first, in appearance at least, with material means of subsistence and with the instrumentalities that are essential to the vitality of the political organism" (Mosca 1939, 50).</p> <p>According to Burnham, this requires "...the positive role of myth in political action" (1943, 122). He continues, "Though the myth is not scientific theory and is therefore not required to conform to the facts, it is nevertheless not at all arbitrary. Not just any myth will do. A myth that serves to weld together a social group-nation, people or class-must be capable of arousing their most profound sentiments and must at the same time direct energies toward the solution of the real problems which the group faces in its actual environment" (123-124).</p>
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The application of deductive codes resulted in the code frequency counts for the definition above: Arts Stakeholder Definition (0), Nature of Offense (0), Argument of US (4), Argument of Defendant (1), Judgement or Sentence (0), Power & Privilege (6), and Forced Participation (0).

5.5.2 Inductive Codes

Second-cycle inductive coding produced forty-two child codes under the seven deductive parent codes and four additional parent codes. The four new inductive parent codes and definitions are listed below.

Table 5-2 Inductive Codes

Counts Per Defendant	“Counts refer to the basis for bringing a case, including each cause of action in civil cases or charge in criminal cases. Lawsuits can involve multiple counts in which someone can be held liable. For example, assault and battery are separate causes of action that often are both present in a lawsuit” (Legal Information Institute 2023a).
Defendant Position	Whether “the defendant a) pleaded guilty to count(s), b) pleaded nolo contendere to count(s) which was accepted by the court, c) was found guilty on count(s) after a plea of not guilty” (<i>U.S. v. Ali et al.</i> 2015).
Document Type	What document is being coded for case analysis in Dedoose.

<p>Economic Welfare</p>	<p>“The basis or rationale for the IACA policy is the promoting the economic welfare of Native Peoples” (25 U.S.C. § 305-305f).</p> <p>Enacted by Congress in 1935, the Indian Arts and Crafts Act (IACA) and subsequent legislation and policies sought, “To promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes.” Within Section Two of the original Act, the “promote” clause is further defined stipulating, “It shall be the function and the duty of the IACA Board to promote the economic welfare of Indian tribes and the Indian wards of the Government through the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship” (25 U.S.C. § 305-305f).</p>
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The coding hierarchy with all deductive and inductive parent and child codes:

Green dots = parent code; blue dots = child code; pink dots = child code under a child code.

Figure 5.1 Deductive and Inductive Code Hierarchy



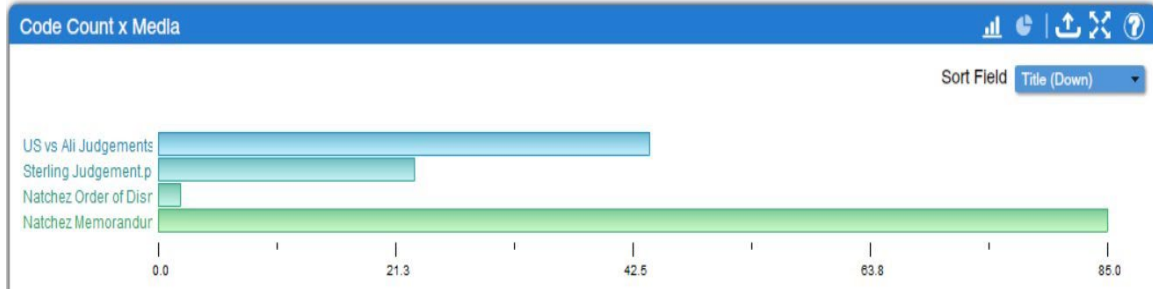
Figure 5.1 continued

▼	•	<input checked="" type="checkbox"/>	Merit in Bringing the Case to Court
		•	<input checked="" type="checkbox"/> Motion to Dismiss
		•	<input checked="" type="checkbox"/> 25 U.S. Code § 305e - Cause of action for misrepresentation of Indian produced goods
		•	<input checked="" type="checkbox"/> 18 U.S. Code § 1159 - Misrepresentation of Indian produced goods and products
		•	<input checked="" type="checkbox"/> Not Defined in IACA
		•	<input checked="" type="checkbox"/> False Statements Accountability Act
		•	<input checked="" type="checkbox"/> Not Enrolled Member Per IACA Definiton
		•	<input checked="" type="checkbox"/> Economic Welfare
		•	<input checked="" type="checkbox"/> Forced Participation
▼	•	<input checked="" type="checkbox"/>	Judgement or Sentence
▼	•	<input checked="" type="checkbox"/>	Imprisonment
		•	<input checked="" type="checkbox"/> Imprisonment Process
		•	<input checked="" type="checkbox"/> Dismissal Without Prejudice
		•	<input checked="" type="checkbox"/> Community Service
▼	•	<input checked="" type="checkbox"/>	Monetary Penalty
		•	<input checked="" type="checkbox"/> JVTa Assessment
		•	<input checked="" type="checkbox"/> Fine
	▶	•	<input checked="" type="checkbox"/> Assessment
		•	<input checked="" type="checkbox"/> Restitution
	▶	•	<input checked="" type="checkbox"/> Schedule of Payments
▼	•	<input checked="" type="checkbox"/>	Probation
		•	<input checked="" type="checkbox"/> Mandatory Conditions
	▶	•	<input checked="" type="checkbox"/> Special Conditions of Supervision
▼	•	<input checked="" type="checkbox"/>	Nature of Offense
		•	<input checked="" type="checkbox"/> False Statements Accountability Act
		•	<input checked="" type="checkbox"/> Misrepresentation of Indian Produced Goods and Products
		•	<input checked="" type="checkbox"/> Vlolation of IACA
		•	<input checked="" type="checkbox"/> Power & Priviledge

5.6 Legal Case Coding Results

Code counts per document are demonstrated in the Dedoose Code Count x Media Chart in Figure 4.2 indicating US v. Ali (44), Sterling Judgment (23), Natchez Order (2), and Natchez Memorandum (85) for a total of one-hundred and fifty-six codes applied.

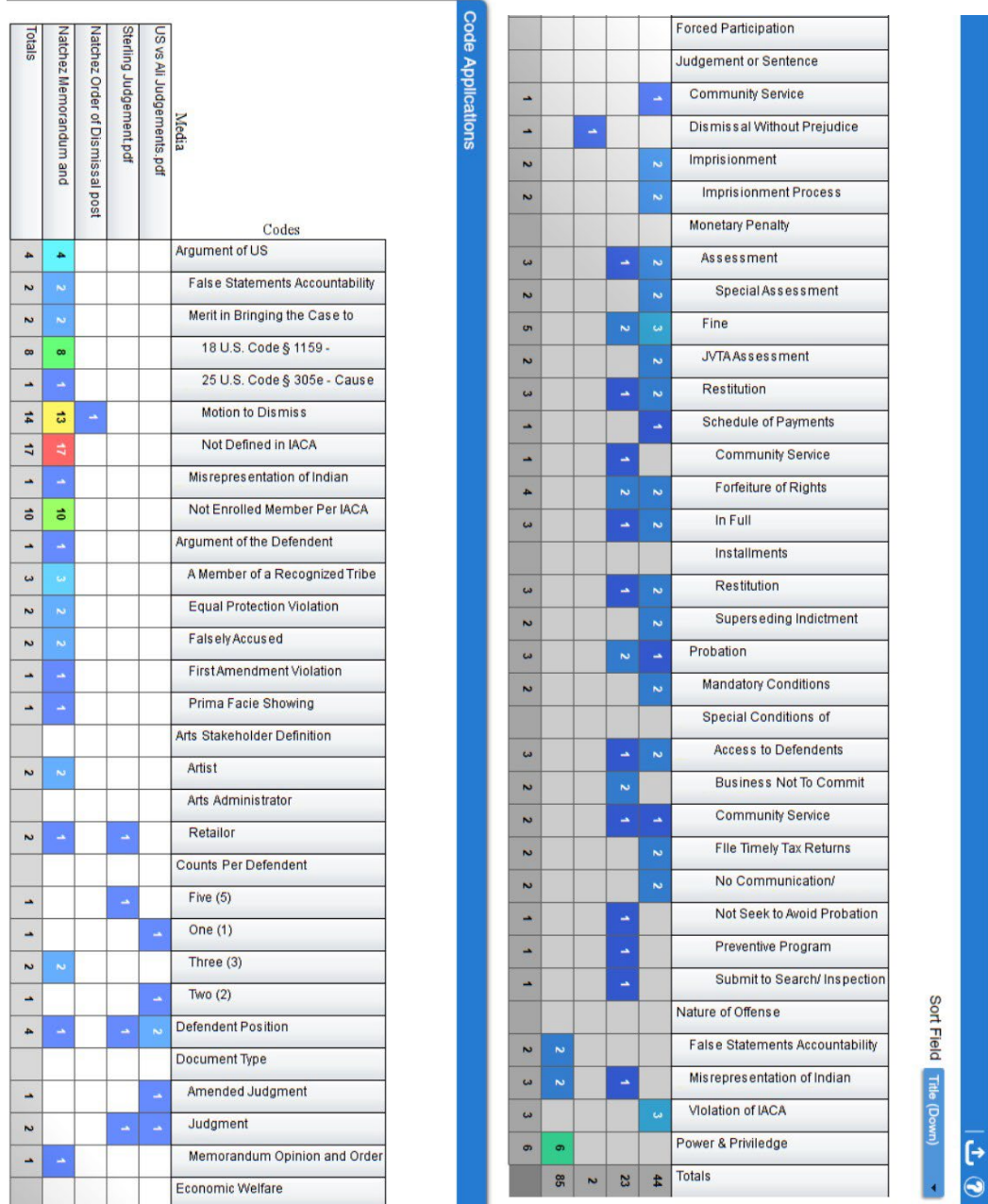
Figure 5.2 Dedoose Code Count x Media Chart



The Dedoose Code Applications Chart in Figure 4.3 demonstrates the frequency per code by case study document(s) (Dedoose, n.d.-a). Results for the final decision legal case documents indicate no excerpts were coded for *Arts Stakeholder Definition (general)*, *Arts Stakeholder Definition: Arts Administrator, Counts Per Defendant (general)*, *Document Type (general)*, *Economic Welfare*, *Forced Participation*, *Judgement or Sentence: Monetary Penalty*, *Schedule of Payment: Installments*, *Probation: Special Conditions of Supervision (general)*, *Nature of Offense (general)*. The frequency of excerpts coded ranges from one to seventeen, with *Not Defined in IACA* having the most occurrences (17) in the Natchez Memorandum Opinion and Order document. In descending order of the top five code applications, taking into account the previously mentioned instance, *Argument of US/Merit in Bringing the Case to Court/Motion to Dismiss* had fourteen (14) associations, *Argument of US/Not Enrolled Member Per IACA* was coded ten (10) times, *Argument of US/Merit in Bringing the Case to Court/18 U.S.*

Code §1159 - Misrepresentation of Indian Produced Goods and Products had eight (8) attributions, with *Power & Privilege* being coded six (6) times.

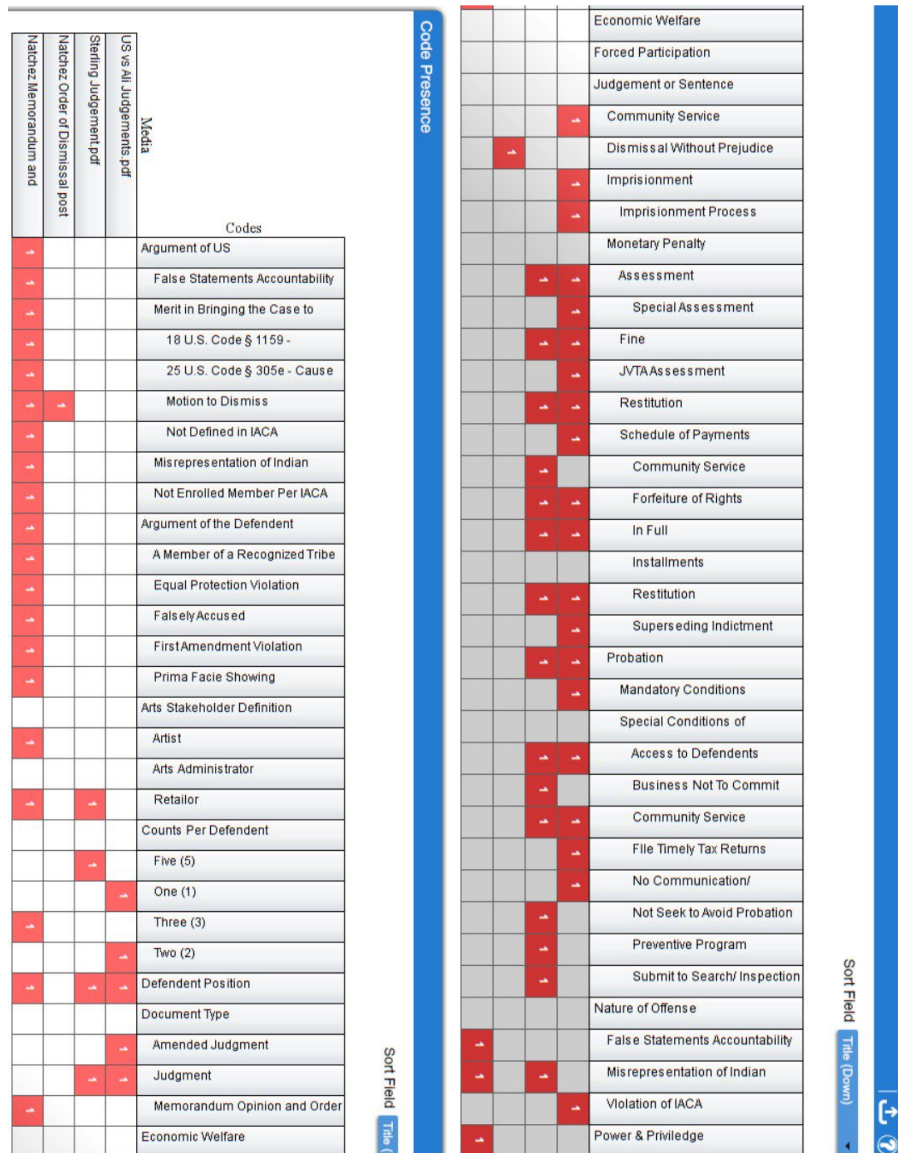
Figure 5.3 Dedoose Code Applications Chart



It is significant to note most of the coded results are found in the Natchez Memorandum Opinion and Order, a more descriptive and lengthy type of final case documentation for

analysis. This is further demonstrated in the Dedoose Code Presence Chart below, wherein the “code application across media” (Lieber and Grummert 2022) shows commonalities in coding instances where the final case study documentation is similar, e.g., *Judgments* versus *Memorandum Opinion and Order*. The two case studies with final Judgments are more heavily coded in the *Judgment or Sentence* areas. In contrast, the *Memorandum Opinion and Order* are coded more in the argumentative and rationale of the cases. This aligns with the similarities and differences of case studies and how both contribute to a broader understanding of the IACA prosecutions. No inductive codes emerged that demonstrating a political formula that correlates with a generally accepted religion, ideology or myth or elite theory tenet #3 (Burnham 1943, as categorized by Damele and Campos 2022).

Figure 5.4 Dedoose Code Presence Chart



5.6.1 Top Five Code Application Analysis

Examining the top five codes for frequency, larger themes can be derived from the case study data. The majority of the data coding skews to the Natchez Memorandum Opinion and Order due to the amount of data contained in the document, which means that frequency of occurrence takes on less of a representative nature in terms of overall case evaluation.

Excerpts by Case:

- US v. Ali contained 81.8% of the Maximum (55) and 36.0% of the Sum (125)
- Sterling represented 41.8% of the Maximum (55) with 18.4% of the Sum (125)
- Natchez Order of Dismissal had 3.6% of the Maximum (55) and 1.6% of the Sum (125)
- Natchez Memorandum Opinion and Order contained 100.0% of the Maximum (55) and 44.0% of the Sum (125)

5.6.1.1 Not Defined in IACA

Under the parent code *Argument of the US* and child code of *Merit in Bringing the Case to Court*, the code *Not Defined in IACA*, received the most applications of all codes. *Not Defined in IACA* code refers to vague law or precedent or not being identified in the Indian Arts and Crafts Policy. Fourteen out of seventeen or 82.35% times this code was used, the same excerpt was co-coded with an additional 1 -2 codes including: *Not Enrolled Member Per IACA Definition, 18 U.S. Code §1159 - Misrepresentation of Indian Produced Goods and Products, Power & Privilege, Motion to Dismiss.*

After multiple review comparisons for similarities, differences, and outliers, the excerpts were interpreted in the following reoccurring subthemes: a) impact of state statutes in conjunction with IACA (*U.S. v. Natchez* 2016), b) no legislative history for guidance (*U.S. v. Natchez* 2016) c) terminology and definitions not defined in IACA (*U.S. v. Natchez* 2016), and d) unclear authority granted to make determinations (*U.S. v. Natchez* 2016).

Excerpt examples included:

In the *U.S. v. Natchez* Memorandum Opinion and Order, the main issue before the court relative to the IACA prosecution is explained:

The court will analyze the authority granted by the California Legislature to the NAHC⁶ [Native American Heritage Commission], to determine whether it is a commission which has the legislative authority to recognize Indian tribes (Memorandum Opinion and Order, U.S. v. Natchez 2016, 11).

Within the same document, under the Analysis section, terms and language relative to the Act are explained under the section header: “Is the Native American Heritage Commission a ‘State Commission’ as Defined by the IACA?”:

‘State Commission’ is not defined in the IACA. The parties submit no state law defining a ‘state commission,’ under the IACA, nor has the court found any (Memorandum Opinion and Order, U.S. v. Natchez 2016, 10).

Later in the document, the authority outside of the federal government to recognize Native Nations is debated with no formal plan for determination.

The United States offers no litmus test for measuring which powers are sufficient in order to ‘formally recognize’ a tribe within the measuring of Section 1159(c)(B) (Memorandum Opinion and Order, U.S. v. Natchez 2016, 16).

Based on the evaluation of the excerpt and coding and co-coding relationships, two larger themes present in the data are 1) unclear operation guidance at the intersection of state and federal law and 2) an absence of clear legislative authority to make final determinations.

5.6.1.2 Motion to Dismiss

Under parent code, Argument of *the US*, and child code *Merit in Bringing the Case to Court, Motion to Dismiss* received the second most code applications. One case study, *U.S. v. Natchez*, resulted in a motion to dismiss, or “a formal request for a court to dismiss a case” (Legal Information Institute 2023b). Co-codes for excerpts included: *Power & Privilege, Not Defined in IACA, Not Enrolled Member Per IACA Definition, 18 U.S. Code §1159- Misrepresentation of Indian Produced Goods and Products, Equal Protection*

Violation, and False Statements Accountability Act.

Figure 5.5 Dedoose Active Excerpts Query for code: Motion to Dismiss, for all media where the value is true

Media	Codes Count	Codes Short	Code: Motion to Dismiss
Natchez Memorandum and Order.pdf	3	Power & Privilege, Not Defined in IACA, Motion to Dismiss	true
Natchez Memorandum and Order.pdf	1	Motion to Dismiss	true
Natchez Memorandum and Order.pdf	1	Motion to Dismiss	true
Natchez Memorandum and Order.pdf	3	Motion to Dismiss, Power & Privilege, Not Enrolled Member Per IACA Definiton	true
Natchez Memorandum and Order.pdf	2	Not Defined in IACA, Motion to Dismiss	true
Natchez Memorandum and Order.pdf	2	Motion to Dismiss, Not Defined in IACA	true
Natchez Memorandum and Order.pdf	4	Motion to Dismiss, Not Defined in IACA, 18 U.S. Code § 1159 - Misrepresentation of Indian produced goods and products, Not Enrolled...	true
Natchez Memorandum and Order.pdf	1	Motion to Dismiss	true
Natchez Memorandum and Order.pdf	2	Motion to Dismiss, Power & Privilege	true
Natchez Memorandum and Order.pdf	2	Motion to Dismiss, Equal Protection Violation	true
Natchez Memorandum and Order.pdf	2	Motion to Dismiss, 18 U.S. Code § 1159 - Misrepresentation of Indian produced goods and products	true
Natchez Memorandum and Order.pdf	2	False Statements Accountability Act, Motion to Dismiss	true
Natchez Memorandum and Order.pdf	1	Motion to Dismiss	true
Natchez Order of Dismissal post Order...	1	Motion to Dismiss	true

Excerpts demonstrate the larger theme of perceived and actual power, authority, and ability of the court to make or not make a decision in a case. Subthemes presented in the excerpts included a) operation and process around gathering information needed for prosecution/trial (*U.S. v. Natchez* 2016), and b) determinations in cases are dependent on the information presented at the time and can be reversed or upheld during the course of legal proceedings. Examples of coded excerpts from the case court documents:

Under the Motion to Dismiss section of the *U.S. v. Natchez* Memorandum, the United States argues: *Given the limited nature of allowable motions to dismiss, the Court cannot address most issues raised by Defendant. For example, Defendant's argument that, as applied, the statute violates his First Amendment rights [Doc. 24, p. 14] depends in large part the evidence which will be developed at trial* (Memorandum Opinion and Order, *U.S. v. Natchez* 2016, 5).

Later in *the* same section, analysis leads the Court to consider the various legal implications and avenues available for evidence for prosecution:

Further, for the Court to consider most of the evidence submitted by the parties, the Court would be required to hold a hearing and take substantially the same testimony and evidence that would be taken at trial, which, as stated in Pope, would be "not only needlessly repetitive but . . . might also facilitate an end-run around the limited discovery rules governing criminal prosecutions." Pope, 613 F.3d at 1259. (Memorandum Opinion and Order, U.S. v. Natchez 2016, 8)

Under the section, "Is the Native American Heritage Commission a 'State Commission' as Defined by the IACA?," part of the analysis and rationale considered is explained:

As shown by the Court's review of pertinent legislative action regarding the NAHC, the NAHC had the implied legislative authority to recognize "California Native American tribes" as of 1976, and the express authority to do so as of 2004.8 S.B. 18, § 6; Cal. Civil Code § 815.3(c); Cal. Gov. Code § 65352(a)(11). Given this authority, the Court concludes that the NAHC is the type of "State commission"

Congress intended to allow to formally recognize an Indian group as an Indian tribe under 18 U.S.C. § 1159(c)(3)(B)(ii).10. (Memorandum Opinion and Order, U.S. v. Natchez 2016, 15)

For Counts I and II (Violation of 18 U.S.C. § 1159(a)), based on the superseding indictment theory that Natchez was not enrolled in a recognized Tribe (Memorandum Opinion and Order, *U.S. v. Natchez* 2016, 19) it is stated that:

At this juncture the Court denies the Motion to Dismiss Counts I and II. Defendant may renew his motion to dismiss prior to trial should the parties stipulate that Defendant is an enrolled member of the Fernandeano-Tataviam Band of Mission Indians and the Fernandeano-Tataviam Band of Mission Indians is a tribe recognized by the NAHC. Further, as stated earlier (pages 7-8) Defendant's First Amendment and Equal Protection arguments must await development of the evidence at trial.

For Count III, the *U.S. v. Natchez* Memorandum concludes with a denied motion to dismiss and the following text as part of the explanation:

Defendant is not an Indian as defined by 18 U.S.C. § 1159. In this context, the pertinent decision was whether to move forward with seeking a criminal conviction or pursuing civil remedies, and a jury could determine that Defendant's statements could have influenced the United States' decision to move forward with charges. See U.S. v. Brittain, 931 F.2d 1413, 1416 (10th Cir. 1991) (distinguishing Radetsky from situation in which false statements could have influenced the decision to seek EPA enforcement), abrogated on other grounds by Gaudin, 515 U.S. at 518-19. Thus, the Court must allow the jury to determine the materiality of Defendant's statements. (Memorandum Opinion and Order, U.S. v. Natchez 2016, 21)

5.6.1.3 Not Enrolled Member Per IACA

Under parent code *Argument of the US*, child code *Not Enrolled Member Per IACA* received ten (10) code applications. Based on §1159. Misrepresentation of Indian Produced Goods and Products, section (c) the term "Indian" is defined:

(1) the term "Indian" means any individual who is a member of an Indian tribe, or for the purposes of this section is certified as an Indian artisan by an Indian tribe;
(2) the terms "Indian product" and "product of a particular Indian tribe or Indian

arts and crafts organization" has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior; (3) the term "Indian tribe" means- (A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and (4) the term "Indian arts and crafts organization" means any legally established arts and crafts marketing organization composed of members of Indian tribes.

With the exception of one excerpt, this code appears with co-code(s) every time in the data, with *Not Defined in IACA* being the most associated co-code occurring six out of ten times.

The complete list of co-codes included: *Not Defined in IACA, Artist, False Statements Accountability Act, Motion to Dismiss, Power & Privilege, and 18 U.S. Code §1159 - Misrepresentation of Indian Produced Goods and Products.*

Based on analysis, the data excerpts present subthemes of a) correlation of information to existing legal definitions, b) definition of Indian Tribe and state authority to determine such, c) varying definitions of state or federally recognized Tribes, and d) history of criminal intent of IACA. Exemplary excerpts are contained below.

Under Counts I and II of the *U.S. v. Natchez*, the definition of Indian is compared with the prosecution's understanding of the defendant:

Stanley Natchez, the artist, is not an enrolled member of a recognized Indian tribe and is not a certified Indian artisan, nor a member of [an] Indian arts and crafts organization, as those terms are defined in Title 18, United States Code Section 1159(c)(1), (3) and (4). (Memorandum Opinion and Order, U.S. v. Natchez 2016, 19)

Significant to the case, the definitions of federal and state recognized Tribes are described along with how they intersect in other legislation:

And most importantly for purposes of this case, in addition to all of the powers described above, Senate Bill 18 identifies California Native American tribes as those that are “on the contact list maintained by the Native American Heritage Commission.” S.B. 18, §§ 2, 4, 6, 7. (Memorandum Opinion and Order, U.S. v. Natchez 2016, 13)

Furthermore, looking ahead in the document within the same section, “Is the Native American Heritage Commission a ‘State Commission’ as Defined by the IACA?”, we find another example:

In 2014 (effective January 1, 2015 to June 23, 2015),⁷ the California Legislature again defined a California Native American tribe as “a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission” for purposes of tribal consultation under the California Environmental Quality Act. Cal Stat. c. 532, § 3 (hereafter, A.B. 52), codified at Cal. Stat. Pub. Res. § 21073. (Memorandum Opinion and Order, U.S. v. Natchez 2016, 14)

Within the same document, part of Count 3 (violation of 18 U.S.C. § 1001(a)(2)), couples the federal definition of Indian, federal and state recognition and perceived criminal intent about the case; it reads:

The statements and representations were false because STANLEY NATCHEZ then and there knew that he had marketed his goods as produced by a Shoshone/Paiute Indian, that he had attempted to market his art at Indian art exhibits and at Indian art shows, that he had had problems with his Tataviam group affiliation when seeking admission to art shows that require tribal affiliation because the Tataviam group is not federally or state recognized, that he had applied for admission to the Eiteljorg Indian Market and Festival, which application was rejected because STANLEY NATCHEZ was not affiliated with a state or federally recognized Indian tribe, and that his application to participate in the Heard Museum art show was rejected because STANLEY NATCHEZ was not affiliated with a state or federally recognized Indian tribe. (Memorandum Opinion and Order, U.S. v. Natchez 2016, 3)

Legislative history is a consideration for how the questions in the case will be decided; an argument is made “...the rule of lenity requires a broader interpretation of “State commission” (Memorandum Opinion and Order, U.S. v. Natchez 2016, 14):

The IACA and its legislative history point to no intent to criminalize the unqualified representation by a person that his or her personally created art is Indian or Native American art when that person is a member of a group which has, in some form, been recognized by a state to be a member of an Indian or Native American tribe. (Memorandum Opinion and Order, U.S. v. Natchez 2016, 18)

The larger theme of inconsistent definitions of Indian, thereby Enrolled Member, have legal implications at the state and federal levels impacting federal prosecutability.

5.6.1.4 18 U.S. Code §1159

Under the parent code of *Argument of the US* and child code *Merit in Bringing the Case to Court*, code 18 U.S. Code §1159 was applied eight (8) times. The specific statute, 18 U.S.C. § 1159 can be summarized as “(a) It is unlawful to offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States.”

Observations of data included a correlation between 18 U.S. Code §1159 - *Misrepresentation of Indian Produced Goods and Products* (8 codes applied), and co-coding of *Not Defined in IACA (Motion to Dismiss, Power & Privilege, and Not Enrolled Per IACA Definition)*.

Examining the excerpts for 18 U.S. Code §1159 - *Misrepresentation of Indian Produced Goods and Products*, sub-themes of a) determining authority and indicative criteria to “‘formally recognize’ a tribe” (Memorandum Opinion and Order, *U.S. v. Natchez* 2016, 16), b) deferring to other government agencies to make determinations when a definition is inexact (*U.S. v. Natchez* 2016), and c) definition of “Indian tribe” per IACA and associated legislative history (*U.S. v. Natchez* 2016), leading to a larger theme of no

clear, consistent, measurable definition(s) of Indian Tribe and what/who has the authority to make this determination.

Figure 5.6 Dedoose Active Excerpts Query for code: 18 U.S. Code §1159 - Misrepresentation of Indian Produced Goods and Products, for all media where the value is true

Code: 18 U.S. Code § 1159 ...	Cod...	Code: Motion to Dismiss	Code: Not Defined In IACA ▼	Code: ...	Code: Not Enrolled Member Per IACA Definiton
true	false	false	true	false	false
true	false	true	true	false	true
true	false	false	true	false	false
true	false	false	true	false	false
true	false	false	true	false	false
true	false	false	false	false	false
true	false	false	false	false	false
true	false	true	false	false	false

The application of 18 U.S. Code §1159 was central to the prosecution of U.S. v.

Natchez:

In the criminal statute, an “Indian” is defined as “any individual who is a member of an Indian tribe[.]” 18 U.S.C. § 1159(c)(1). The statute’s definition of “Indian tribe” is the key provision in this case... (Memorandum Opinion and Order, U.S. v. Natchez 2016, 5).

In the Memorandum Opinion and Order, the defendant posits compliance with the definition of Indian is and where authority lies for determination:

Defendant argues that he is an Indian as defined by 18 U.S.C. § 1159(c)(3)(B)(ii), because he is a member of a tribe which is “an Indian group that has been formally recognized as an Indian tribe by . . . (b) a State commission.” While only the jury as fact-finder can decide whether Defendant is a member of the Fernandeano Tataviam Band of Mission Indians (the Tataviam), or whether the Tataviam has been recognized as a tribe by the “Native American Heritage Commission” (NAHC) of California,³ the Court can decide the legal question of whether California’s NAHC is “State commission” as set forth in the IACA (Memorandum Opinion and Order, U.S. v. Natchez 2016, 9).

Represented in the document, the position of the U.S. government provides more context for the government agency and determining authority in the definition of Indian Tribe:

Further, referring to the “limited powers” of the NAHC, the United States disputes whether the power to list a California Native American tribe vested in the NAHC is the same power to “formally recognize” a tribe set forth in Section 1159(c)(3)(B). [Doc. 29, pp. 4-5] (Memorandum Opinion and Order, U.S. v. Natchez 2016, 16).

5.6.1.5 Power & Privilege

Derived from James Burnham’s “The Machiavellians: Defenders of Freedom,” the tenets of classical elite theory include: “1. The primary object of every elite or ruling class is to preserve power and privilege” (as categorized by Damele and Campos 2022). In this case, the federal government is considered the Elite. Examining the excerpts, the code was

never applied alone; always with at least one co-code of *Motion to Dismiss, Not Enrolled Member Per IACA Definition, 18 U.S. Code §1159 - Misrepresentation of Indian Produced Goods and Products, Not Defined in IACA*, and *Argument of US*.

Figure 5.7 Dedoose Active Excerpts Query for code: Power & Privilege, for all media where the value is true

Media	Codes Count	Codes Short	Code: Power & Privil...
Natchez Memorandum and Order.pdf	3	Motion to Dismiss, Power & Privilege, Not Enrolled Member Per IACA Definiton	true
Natchez Memorandum and Order.pdf	3	Power & Privilege, 18 U.S. Code § 1159 - Misrepresentation of Indian produced goods and products, Not Defined in IACA	true
Natchez Memorandum and Order.pdf	2	Not Defined in IACA, Power & Privilege	true
Natchez Memorandum and Order.pdf	2	Power & Privilege, Argument of US	true
Natchez Memorandum and Order.pdf	3	Power & Privilege, Not Defined in IACA, Motion to Dismiss	true
Natchez Memorandum and Order.pdf	2	Motion to Dismiss, Power & Privilege	true

The excerpts exhibit subthemes of a) decision-making based on declared authority, b) the power to analyze toward determination, and c) the ability to direct process/operation. All of the excerpts can be grouped under the larger theme of the authority to interpret the law, direct process, and make determinations.

On the first page of the Memorandum Opinion and Order, context is provided about the defendant's request for a Motion to Dismiss and intended process:

The starting place for the Court's review, therefore, is not the evidence produced by the parties but the language of the Superseding Indictment (U Memorandum Opinion and Order, U.S. v. Natchez 2016, 1).

Some of the authority of the Court in making determinations in the case is outlined under the section entitled, "Is the Native American Heritage Commission a 'State Commission' as Defined by the IACA?":

Congress did not, and thus the Court will not, attempt to create a bright-line rule regarding the authority vested in a "State commission." Both the unrestricted definition of "State commission" and the legislative history here require a broader meaning of the term (Memorandum Opinion and Order, U.S. v. Natchez 2016, 18).

Later in the same section, a decision by the Court is explained:

Accordingly, and for purposes of the this [sic] statute only, the Court concludes that the legislative history behind the NAHC establish that it is a “State commission” with the authority to “formally recognize” a group as an “Indian tribe” for purposes of 18 U.S.C. § 1159(c)(3)(B)(ii).13” (Memorandum Opinion and Order, U.S. v. Natchez 2016, 18).

Summarizing the top three excerpts described above, the larger eight themes include:

- Unclear operational guidance at the intersection of state and federal law and an absence of clear legislative authority to make final determinations.
- Excerpts demonstrate the larger theme of perceived and actual power, authority, and ability of the court to make or not make a decision in a case.
- Inconsistent definitions of Indian Tribe, thereby Enrolled Member with implications at the state and federal levels that impact federal prosecutability.
- No clear, consistent, measurable definition(s) of Indian Tribe and what/who has the authority to make this determination.
- The authority to interpret the law, direct process, and make determinations.
- A pattern of statements posits the prosecution of IACA violates other legal protections.
- Judgements and sentences range in length and contain unique considerations per defendant.
- A pattern emerges demonstrated in the legal debate of guilty versus innocent or false statement versus truth, that parallels the definition of “Indian.”

Only one code, *Power & Privilege*, of the two associated with elite theory (*Power & Privilege*, and *Forced Participation*) aligned with the legal case studies data.

CHAPTER 6. INTERVIEWS RESULTS

This chapter explains the coding and results of six stakeholder interviews as part of this qualitative study, utilizing an elite theory framework with a Constructivist worldview with the aim of answering the research questions: “What challenges do contemporary IACA prosecutions identify for arts stakeholders?” How do these challenges impact the development of Indian arts and crafts products? The process used included deductive coding, inductive coding, and thematic identification. The interview participant demographics, interview questions, data collection, data analysis, and coding results are outlined below to explain the process and results.

6.1 Participant Demographics

Interview subjects were Native and Non-Native, between 21-100 years old, and selected for their interaction, experience, and/or knowledge of the Indian Arts and Crafts Act. The six primary interviewees were arts stakeholders (artists, arts administrators, and retailers), and the two secondary interviewees were others who contributed to understanding the policy for narrative inclusion in the study rather than data for analysis. The two secondary interviewees were identified as a lobbyist and former Indian Arts and Crafts Board Member, as well as past Chairman of the IACA Board, and a retired Army Colonel, independent researcher, and author.

The six primary interviewees all identified as arts administrators, with four participants having a dual arts stakeholder role of artist (two interviewees) and retailer (two interviewees), see Figure 5.1. The six participants’ job titles include or have included community archivist, curator of exhibitions, co-director and co-founder of an arts

consulting company, former executive director of a Native Arts organization, museum director of programs and public events, and artist and business owner. At the time of the interview, participants represented the Northeast, Midwest, and Western geographic regions of the United States. One participant requested to be anonymous and known only by their professional title. All interviewees answered every question.

Figure 6.1 Dedoose Code Applications Chart excerpt

Arts Stakeholder Definition	Artist	Arts Administrator	Retailer
		1	1
		1	
		1	1
	1	1	
		1	
	1	1	
	2	6	2

6.2 Interview Questions

Two sets of questions were utilized: Set 1 for arts stakeholders (artists, arts administrators, and retailers) and Set 2 for those who did not fit this strict definition but were useful for narrative interpretation; six arts stakeholders were interviewed for analysis, and two others for narrative contribution, for a total of eight interviews. Both sets of questions were derived from the literature review, legal case study data coding, two tenets of elite theory (Power & Privilege and Forced Participation), and the study research

questions. Each set of questions was similar but tailored for each interview participant category of either arts stakeholders or others.

Interview Questions: Set 1 (Arts Stakeholders)

Interviewee Background

1. Name and affiliation/profession/cultural affiliation.
2. Tell me how you got involved in your current arts role.
3. Where/how did you first become interested in Native American Arts?
4. How would you describe your success in the field?
5. What has been challenging in this field for you?

Indian Arts and Crafts Act

6. Describe your awareness of IACA and interaction/experience.
 1. How much do you know about IACA?
 2. How has it impacted your work as an artist/retailer/arts administrator?

Fakes and Frauds

7. How did you learn about fakes/frauds in Indian arts and crafts?
 1. What is the role of education about fakes/frauds (misrepresentation) from IACA?
 2. Has IACA helped you understand more about fakes/frauds in Indian arts and crafts? If yes, what did you learn?

Promotion

8. Does IACA live up to its goal to “promote the development of Indian arts and crafts”? Explain.
 1. Do you think IACA successfully encourages the development of Indian arts and crafts in your experience? Why or why not?

Economic Welfare

9. Does IACA promote the economic welfare of Native Peoples? Explain.

1. In your experience, how has IACA helped Native People in the development of their arts & crafts? Or support the sale of Indian Arts and Crafts in the general retail art market?

Education

10. What would you like to know/learn more about?
 1. What specific information about IACA do you want to know? How would learning more information about IACA help?

Conclusion

11. What would you tell someone who wanted to be involved (as an artist, arts administrator, or retailer) in Indian arts and crafts?

Interview Questions: Set 2 (Others)

Interviewee Background

1. Name and affiliation/profession/cultural affiliation.
2. Tell me about your current role/profession.

Indian Arts and Crafts Act

3. Describe your awareness of IACA and interaction/experience.
 1. When did you first hear about the IACA?
 2. Does the IACA relate to your current work and if so, how?
4. What do you believe the role of the IACB to be?
 1. What function does the IACB perform and why?
5. Do you believe IACA is significant legislation? Why or why not?
 1. What contributed to the need for the legislation?
 2. What social needs was the Act addressing?
6. Who were some of the legislators and lobbyists that contributed to the 1990 Act passing?
 1. Why were these legislators and lobbyists important and what may have influenced them to support IACA?
7. What were some of the opposing socio-political opinions against the 1990 Amendment?

8. In your opinion, is the federal prosecution of IACA violations beneficial or not? Explain
 1. What good outcomes result from taking violators to court?
 2. What challenges result from engaging the federal legal system to address IACA violations?

Promotion

9. Does IACA live up to its goal to “promote the development of Indian arts and crafts”? Explain
 1. Do you think IACA successfully encourages the development of Indian arts and crafts in your experience? Why or why not?

Economic Welfare

10. Does IACA promote the economic welfare of Native Peoples? Explain
 1. In your experience, how has IACA helped Native People develop their arts & crafts? Or support the sale of Indian Arts and Crafts in the general retail art market?

Conclusion

11. What changes do you think the future of IACA policy will include?

6.3 Data Collection

The University of Kentucky granted the study an Exempt research approval through the Institutional Review Board (IRB). The researcher's professional network was used to identify possible interview participants from the study audience group (artists, arts administrators, and retailers) and others having experience with IACA. Undue influence was minimized by not asking anyone who knew or had an existing relationship with the researcher to participate. Potential interviewees were contacted by email requesting participation via Zoom video meeting software. Fifty-two interview invitations were sent representing artists (12%), retailers (23%), and arts administrators (65%) identified by network connections and based on available public information. Invitations to participate were fortuitously sent to all geographical regions in the United States, resulting in eight

Zoom interviews incorporating transcription. Six of the eight interviewees fit the study definition of arts stakeholders, and two were used for narrative contribution. Transcripts were downloaded and formatted to correct inconsistencies, remove duplicate words due to technical errors, and make reading easier, e.g., bolded question text for easy visual identification. Formatted transcripts were uploaded into Dedoose software for coding.

6.4 Data Analysis

6.4.1 Coding Approach and Process

The six interview transcripts were all read before coding. Using Dedoose, the same seven deductive codes and definitions used for the legal case study documents were applied to the interview transcripts: *Arts Stakeholder Definition*, *Nature of Offense*, *Argument of US*, *Argument of Defendant*, *Judgement or Sentence*, *Elite Theory: Power & Privilege*, and *Elite Theory: Force Native Nations to Participate*. Second-cycle coding identified important information that did not fit the predetermined codes (deductive) and it either generated child codes, fit into existing child codes from prior legal case study coding, or created new parent codes. The second-cycle coding approach evaluated each interview individually. Data excerpts from second-cycle coding were examined, organized by code, and investigated as stand-alone collections for interpretation into broader descriptive themes. Individual thematic interview data was then examined across all six interview results, with thematic data being derived from the top three codes in terms of pattern or occurrence. With an effort toward replicability for the validity of this study, code information accompanies excerpts. For this study, Interview with Anonymous is the same

as Interview with Native American Artist; due to a need to comply with Chicago style formatting and software display limitations.

6.5 Deductive Coding Results

The seven Deductive codes were applied a total of eighty-seven times for all six interviews. The code count per interview is explained below and represented at a summary level in the Dedoose Code Count x Media chart (Dedoose 2023).

Interview SB, 9 codes applied, 26.5% of the Maximum (34), 10.3% of Sum (87).

Interview RSH, 8 codes applied, 23.5% of Maximum (34), 9.2% of Sum (87).

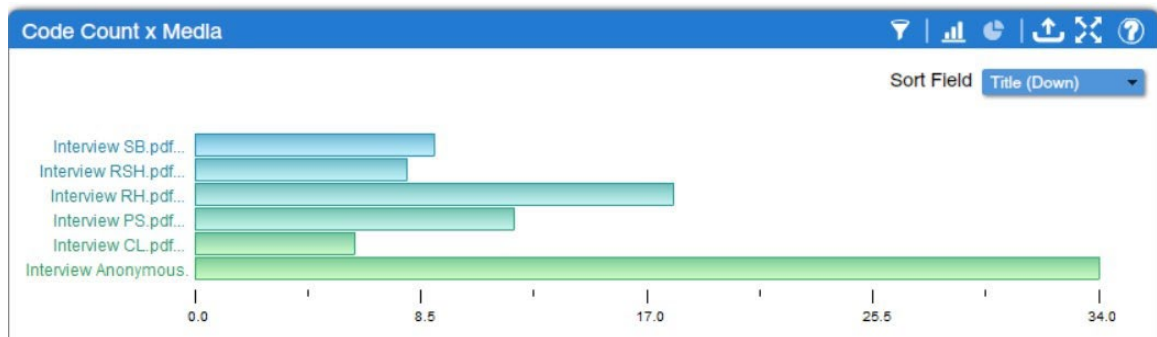
Interview RH, 18 codes applied, 52.9% of Maximum (34), 20.7% of Sum (87).

Interview PS, 12 codes applied, 35.3 % of the Maximum(34), 13.8% of Sum (87).

Interview CL, 6 codes applied, 17.6% of Maximum (34), 6.9% of Sum (87).

Interview Anonymous, 34 codes applied, 100% of the Maximum, 39.1% of the Sum (87).

Figure 6.2 Dedoose Code Count x Media Chart



Deductive *code application* in Dedoose resulted in the following occurrences:

Arts Stakeholder Definition (10), *Nature of Offense* (20), *Argument of US* (22),
Argument of Defendant (1), *Judgment or Sentence* (0), *Elite Theory: Power & Privilege*

(18), and *Elite Theory: Force Participation by Native Nations* (16). Sorted by code and examined holistically, all participants had one occurrence of *Arts Administrator Definition* = Arts Administrator, *Nature of Offense*, and *Elite Theory: Force Participation by Native Nations* (100%). Four interviews included *Argument of the US* (66.6%), and all but one interview was coded for *Elite Theory: Power & Privilege* (83.3%). *Argument of the Defendant* received one total code (16.6%) while *Judgement or Sentence* received no code applications (0%) across interviews. The top three deductive codes in order of decreasing frequency were *Argument of the US*, *Nature of Offense*, and *Elite Theory: Power & Privilege*.

6.6 Inductive Coding Results

Inductive code application to the six interview transcripts resulted in sixteen new parent codes and sixty-four child codes derived from the interviewee data. The inductive parent and child codes are listed below. The coding hierarchy shows the parent code italicized with the child codes listed below after dashes for individual separation. No code emerged demonstrating a political formula that correlates with a generally accepted religion, ideology or myth (elite theory tenet #3). Coding for the study was cyclical, starting with the legal cases and followed by the interviews; the total coding hierarchy with definitions is listed in Appendix B.

Table 6-1 Inductive Parent and Child Codes

<p><i>Affiliation</i></p> <ul style="list-style-type: none"> - <i>Native</i> - <i>Non-Native</i> - <i>Native Not Enrolled</i> 	<p>How Native American Art is Understood</p>
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Table 6-1 continued

<p><i>Application of IACA</i></p>	<p>Important to the Continuation of Artwork</p> <ul style="list-style-type: none"> - Acceptance into the Mainstream - Access to Land - Accreditation Process
<p><i>Art Trends</i></p> <ul style="list-style-type: none"> - New Generational Characteristics - Not Collecting 	<p>Interest in Native American Arts (Q3)</p> <ul style="list-style-type: none"> - New Job - Museums - Education - Political Movements - Relationships with People
<p><i>Awareness of IACA (Q6)</i></p> <ul style="list-style-type: none"> - No Impact - Always Aware - Employment Experience - Access to Land - Retail Marketplace - Student - Working Artist 	<p>Learn More About IACA (Q10)</p> <ul style="list-style-type: none"> - Responsibility of the Government - Demographic Information - Land Conservation, Preservation and Land Access - Communication - Sponsored Activities - Where to Find Information About IACA
<p>Challenges with the IACA</p> <ul style="list-style-type: none"> - Making Mistakes - Diversity of Enrollment - Easier to Opt Out - How to Work Within the Law - Lack of Implementation Resources - Compliance Over Time - Not Federally or State Recognized - Not State Recognized Ancestral Lands - Personal Motivations - Public Confusion and Risk - Read and Understand the Law 	<p>Learn about Fakes and Frauds (Q7)</p> <ul style="list-style-type: none"> - Early in Life Before Formal Education - Became Part of the Community - Abundance of Retail Merchandise - Education - Word of Mouth
<p>Challenges in the Field (Q5)</p> <ul style="list-style-type: none"> - International Borders - Being Non-Native and Working in NA Arts - Funding - Academic Recognition - Not Being Enrolled 	<p>Native Identity</p> <ul style="list-style-type: none"> - Institution Requires Proof - Complexity of Self-Identity - Artists Decide - Marketplace Inclusivity

Table 6-1 continued

<ul style="list-style-type: none"> - Recognition as Living - Research 	
<p>Deceptive Marketing</p>	<p>Traditional vs Contemporary Art Tension</p>
<p>Goal to Promote Development (Q8)</p> <ul style="list-style-type: none"> - No - More Promotion Needed - Having Shows - Others Promote Native American Artwork - Yes 	<p>Want to Be Involved (Q11)</p> <ul style="list-style-type: none"> - Continuum - Artists: Open to Definition of NA Art - Be Aware of the Law - About Relationship and Conversation - Decide, Plan and Do the Work - Go to the Source/Community

Examining all six of the interviews, the following coding applications were observed:

Figure 6.3 continued

Challenges with the JACA	Compliance Over Time	Diversity of Enrollment	Easier to Opt Out	How to Work Within the Law	Lack of Implementation	Making Mistakes	Not Federally or State	Not State Recognized Ancestral	Personal Motivations	Public Confusion and Risk	Read and Understand the Law	Challenging in the Field (O5)	Academic Recognition	Being Non-Native and Working in	Funding	International Borders	Not Being Enrolled	Recognition as Living	Research	Counts Per Defendant	Five (5)	One (1)	Three (3)	Two (2)	Deceptive Marketing	Defendant Position	Document Type	Amended Judgment	Judgment	Memorandum Opinion and Order	Economic Welfare	Forced Participation	Goal to Promote Development (O8)	Having Shows	More Promotion Needed	No	Others Promote NAArtwork	Yes	How NAArt is Understood	Important to Continuation of Artwork	Acceptance into the Mainstream	Access to Land	Accreditation Process				
	1				2		1			1			1					2							1								3		3		1	2									
		1						2	1	2	3																																				
			1											2																																	
						1								2	4	1																															
		3												2																																	
1	4	1	2	2	1	1	2	1	3	4		1	4	4	1	1	2	1											4	16	2	3	5	7	3	10	1	3				2					

Sort Field Title (Down)

Learn about Fakes & Frauds (O7)	Abundance of Retail Merchandise	Become Part of the Community	Early in Life Before Formal	Education	Word of Mouth	Native Identity	Artists Decide	Complexity of Self Identity	Institution Requires Proof	Marketplace Inclusivity	Nature of Offense	False Statements Accountability	Misrepresentation of Indian	Violation of JACA	Power & Privilege	Traditional vs Contemporary Art	Want to Be Involved (O11)	About Relationship and	Artists: Open to Definition of NA	Be Aware of the Law	Continuum	Decide, Plan and Do the Work	Go to the Source/Community	Totals
					1										5			1						26
			1			5								2		6		3	2		1			58
		1			2	1							1		2	1						1		45
	1			1				1	2				1	3	3	2	2			2	1			44
	3			5									2	1	1	1			1					36
						2		1					3	6	7								1	68
4	1	1	6	3	8			2	2				9	12	17	9		4	3	2	2	1	1	

In terms of frequency, the top five code applications for all interviews in descending order are *Application of IACA* (25), *Power & Privilege* (17), *Forced Participation* (16), *Violation of IACA* (12), *How NA Art is Understood* (10).

Theoretical coding for *Forced Participation* (elite theory) and *Arts Stakeholder Definition* for Arts Administrator were the only codes present across each interview (Dedoose 2023).

6.7 Individual Interview Analysis

6.7.1 Interviewee SB

Interviewee SB (interview via Zoom with author, September 6, 2023) was a Non-Native, former Executive Director of a Native Arts Organization in the Western region of the United States. They became interested in Native American Arts through education, experience, and relationships with people. The twenty-six codes were applied to twentyfour interview excerpts. The top three code occurrences in descending order were *Power & Privilege* (5), *Forced Participation* (3), and *More Promotion Needed* (3).

Theoretical Coding for *Power & Privilege* was demonstrated across interview questions in excerpts centered around land and the authority to gain or administer access related to Culture.

Interviewee SB describes work as a researcher, trained in landscape architecture and geography, working directly with “Native people who were actual practitioners” when asked to explain their awareness of IACA and interaction/experience:

And it was more about accessing land or you know, traditional practitioners come to ask to be able to gather materials for their traditional arts.

Further explanation was given relative to whether the IACA promotes the economic welfare of Native Peoples:

So, for me, land access played a very significant role in perpetuating culture and how plants are cared for that, in turn, can turn into a basket or whatever it may be. When asked what they would like to know/learn more about in regard to IACA, Interviewee SB responded in part with an inquiry:

What does that mean for land conservation and preservation? What does that mean for access, right? Because tribes have a right. The government and I would say during my tenure with the basket weavers association, we did a create policy. I would love to see if that policy is still being implemented by the Bureau of Land Management and the Forest Service around accessing traditional gathering areas for whatever it is. You know, whether it's basketry or food, or medicine, whatever that may be, and how does that fit into, you know, the Act, itself, right? You know, like there needs to be conversations with all the different agencies. No, I'd love to know more about that.

Additional theoretical coding for *Forced Participation* was evidenced when Interviewee SB was asked to explain how they learned about fakes and frauds:

Just like word of mouth through people that I knew... in my circles that I walked in, you know, they would say watch out for that person or watch out, you know...the folks that I would work with would be very vocal in that...

Whether the IACA lives up to its goal to “promote the development of Indian arts and crafts,” Interviewee SB explained *More Promotion Needed* to be done to live up to the Act’s goal of promoting the development of Indian Arts and Crafts and promoting the economic welfare of Native Peoples:

But, I really think that there needs to be more invested in it and more promotion of it. Because in the end, I think it's so interconnected into how we care for place. And the traditional arts tell that living story of relationship, place, and people, and yeah so for me it's not enough.

Interviewee SB later provided additional information:

Access to the development of art practitioners, and businesses around that kind of thing. You know, yeah I think there's a lot more that could be done.

6.7.2 Interviewee RSH

Interviewee RSH, interviewed via Zoom by the author September 11, 2023, was a Native, Community Archivist in the Western region of the United States. They became formally interested in Native American Arts through higher education. Fifty-eight codes were applied to thirty-eight interview excerpts. The top four code occurrences in descending order were *Application of IACA* (10), *How NA Art is Understood* (5), *Native Identity* (5), and *Traditional vs. Contemporary Art* (5). The top three could not be determined since three categories all had five applications.

Interviewee RSH provided examples of the *Application of IACA* across various interview questions. When asked to describe their awareness of the IACA and any interaction/ experience, Interviewee RSH provided information about when the Act was first introduced and its use trajectory relative to their experience:

In the beginning, they were committed to collecting the information on the artists who brought work in. And then all of a sudden it was like, well I shouldn't say all of a sudden, but then over time there was kind of this lackadaisical approach to like, oh, here's my tribal identification, right? I mean, I would go with friends who, you

know, made jewelry, for example, to different places and it was very rare. You know, just 5 years out. That people would ask for anything. And that was kind of a bummer, right? To see happen and so the artists themselves could offer it, but, it wasn't really requested. And I've been in some places where it's absolutely essential in order to be able to show your work, you have to have proof of your Native identity, but it's kind of far and few between that I've noticed.

Interviewee RSH described another example of how IACA was working in response to the same question:

I have a sister who lives in Santa Fe and when I go visit her I go to many galleries and I ask them, you know, do you have information on this artist or that and most times they don't and they don't even know that they're supposed to. So, or they claim that they don't know that they're supposed to. So all of this is part of that, like lack of resources given to people to implement the law. Because there should be people. And forgive my ignorance here. I don't know if there are people who have been hired to do that kind of spot checking around, to say, OK., to report, and because the law comes with fines and things like that. And I don't know if anybody's ever been called out on it.

Interviewee RSH further explained the dichotomy in the application of IACA reflecting on the time when they were a student and the 1990 Law had been recently passed:

It was an interesting; it was like a good time to be able to observe responses. That people had both, you know, artists and people who sold the work. And yeah, so you know when I go to Santa Fe, I go to the plaza, right? And I'm walking around and even the people that sell on the plaza, some of them will have their ID out, some of them won't and it's not that it matters to me, but I find the inconsistency in the practice of identifying is what is.

When asked about how they first became interested in Native American Arts, Interviewee RSH emphasized *How NA Art is Understood* as complicated, and there are expectations of Non-Natives for Native Artists:

Well, art has always been, you know, "art." It isn't understood that way in Native Communities. It never really has been. It is now, but it never was before. We were taught that there's a difference between the objects that we create and the objects that are considered art, you know?

Recounting their time as a graduate student, Interviewee RSH further explained the tension that existed:

I mean, a lot's changed, so while I was in that master's program, one of the things that captured my attention along with all of that [Native artists feeling pressure to make art people would buy] was that there are certain types of art that rarely get written about or get studied in Indian country.

Additionally, Interviewee RSH discussed the absences in dialogue around Native Art:

This complexity of this tension in the Native art world. And how difficult it can be to just exist as an artist and also as somebody who really wanted people to appreciate Native art in its breath.

When asked to describe their awareness of the Indian Arts and Crafts Act and any interaction/ experience, Interviewee RSH, recalled the connections to *Native Identity* and the limits of legal protections:

We're finally going to have something in place. And then, you know, on the flip side of that were the many artists who were not members of federally recognized tribes and if they weren't recognized by the state they could provide letters or evidence of membership, but people did not ignore it, it wasn't considered legitimate identification for this law. So that was really hard, especially here in Cali. But I think all over the country, I was in California at the time, and there were lots and

lots of people I knew who were like, this is just, it's really hard because we're not recognized, or we don't have, you know, whatever issues we're going on. When asked how they learned about fakes and frauds in Indian arts and crafts, Interviewee RSH recalls discussions with other students about limitations and the broader art market:

I remember talking with a lot of the students at IAIA (Institute of American Indian Arts) about how like frustrated they felt. That people could copy their work. And sell it. They were also very frustrated by the fact that a lot of Native-inspired designs, like companies that just make things that are inspired by Native art, are building fortunes and the people who actually are doing the work don't get much visibility or attention.

RSH identified a difference between *Traditional vs. Contemporary Arts* for artists and the retail art market:

So I started noticing some of these gaps in appreciation for the fact that Native people have always been expected to create a very particular kind of aesthetic in their own work as artists. I myself am an artist and I started to think about how I never like was out on the market or anything as you know marketed as a native artist but I think one thing that I saw was when I spoke to Native people who were artists, the pressure that they felt around having to make objects that people wanted them to make rather than what they felt compelled to do.

When asked if the Indian Arts and Crafts Act lives up to its goal to “promote the development of Indian arts and crafts” (25 U.S.C. § 305a), Interviewee RSH describes what artists face and interplay with the law:

Traditional art that's been made and is continuing to be made but here are some contemporary artists that are really you know shifting and changing some of their traditional designs into other things. There's contemporary artists that are not even doing anything that remotely looks traditional and just having these open dialogues, that wouldn't be such a difficult thing to do. But for some reason the government has not, well

I know why, I mean, you know they really aren't that concerned about Native people but you know like something that simple would actually fulfill the obligation of this law, but they haven't done it to my knowledge. I've not ever heard about it or seen it or known anybody who's been involved in that.

6.7.3 Interviewee RH

Interviewee RH did not identify as either Native or Non-Native and serves as a Museum Director of Programs and Public Events in the Western region of the United States (interview via Zoom with author, September 15, 2023). They became formally interested in Native American Arts through new employment. Forty-five codes were applied to thirtyfive interview excerpts. The top three code occurrences in descending order were *Forced Participation* (5), *Not Collecting* (3), *Read and Understand the Law* (3).

Theoretical coding for *Forced Participation* resulted when Interviewee RH shared a multi-faceted perspective when asked to describe their awareness of IACA and interaction or experience:

So, you know, he [executive director] challenged me to dig into the Act and figure out how we're gonna work within this, how we're going to balance the needs of our institution and the needs of the law in a way that does not put the institution at risk. And we drafted language, which we include with our marketplace.

An excerpt from the drafted language, read during the interview, provides more context and geographic background about one institution's conformity with IACA:

The American Indian Arts Marketplace is a showcase for artists from over 40 Native tribes across all of North America, including from our own state of California. Like all other tribes around the country, California's tribes have a tragic and tumultuous

history. In the 1950s the federal government's continued attempts to force assimilation on the entire Native American population resulted in the termination (i.e., loss of federally recognized status) of more than 109 tribes. In California, this came about through the Rancheria Act of 1958, which resulted in the termination of the federal status of 44 Indian tribes.

Some artists here today are descendants of California tribes that are not currently recognized by the United States federal government. Those artists will be identified with an asterisk () following their tribal affiliation. We encourage you to meet these and all of the artists here today to learn more about their cultural identities and rich histories.*

When asked how they learned about fakes and frauds in Indian arts and crafts,

Interviewee RH explained that there is a new generation of collectors in Los Angeles that consider *Not Collecting*:

People have many different heritage and backgrounds. And the number of them, I would say, you know, under the age of 40 that I talked to they come to the festival. They appreciate the art. They enjoy all the museum has to offer. But they say, I could never own it. I can't put this in my home because there's too much explaining to do so that people don't think it's cultural appropriation.

Additionally, RH explained the Act itself may be a hindrance for those who may be gallerists or small museums:

And you look at it, you know the logical thing is you know what? I don't really recognize this, it's too complicated, or if you're in LA, I'm just gonna collect Latino art.

Interviewee RH reflected on their experience of being able to *Read and Understand the Law*.

[I] had no prior legal training, you know, worked with contracts, but not really digging into federal legislation. And it's a complicated thing to understand. Just try

to read the law to understand how it applies to the institution to be able to advise the institution. But it gets even more complicated here.

They added additional context when asked to describe their awareness of IACA and interactions and experiences:

We cannot - We cannot - produce an art festival and not include our neighbors, the ancestral caretakers of this land, we cannot exclude the Tongva people, we cannot exclude the Tataviam, we cannot exclude them because some are recognized, some are not. So it's figuring out how we thread that needle. To be able to comply with the federal law. Complying with the spirit of the law, which is to provide economic opportunity and promote awareness of traditional Native arts. But figure out how to do that within the act and that hasn't actually, I'll be honest, not been easy. When asked whether the IACA promotes the economic welfare of Native Peoples in the general retail market, Interviewee RH, explained they were not an expert in the efficacy of the Act, adding to the background understanding:

Most of the folks in the retail market, these are gonna be small businesses. They're gonna be nonprofits. They don't have access, and I think the Act in the way that it's described makes things scary.

6.7.4 Interviewee PS

Interviewee PS identified as Non-Native and serves as co-director and co-founder of an arts consulting company in the Midwest region of the United States (interviewed via Zoom by author, September 1, 2023). They became formally interested in Native American Arts through new employment. The forty- four codes were applied to twenty-seven interview excerpts. The top three code occurrences in descending order were *Application of IACA* (9), *Misrepresentation of Indian Produced Goods and Products* (3), and *Violation of IACA* (3).

When Interviewee PS was asked if IACA lives up to its goal to promote the development of Indian arts and crafts, benefits and limitations are central to their answer about the *Application of IACA*:

I think like any I'll offer some. Diplomacy here at the beginning. I think that, like any federal law, especially pertaining to native people. It's again, it's being made for a lot of different situations and a lot of different things. Realities on the ground and in community and I think overall, it does a pretty good job of trying to encourage truth in advertising. Of raising attitudes or understanding of why that might be. Necessary why what's happening in the real world and all the fakes and the folks that are that may not have the trouble.

Familial connections and things. I do think that there are a lot of holes in it. I think that there are a lot of things like well, just looking at every tribe in the country, everyone has such a different path to enrollment and a lot of stories of people who didn't enroll actively and who still are tribal members and still have that tribal history and or community history.

In response to the same question, Interviewee PS added their overall perspective about IACA:

I do think that in general, I'm glad that it's there. I'm glad that there is a baseline and some sort of direction that really lifts up the tribal government as the decisionmaker and supports tribal sovereignty from that standpoint.

Instances of the *Misrepresentation of Indian Produced Goods and Products and Violations of IACA* were discussed when Interviewee PS was asked to describe awareness of IACA and their interaction and experience including an art show, soon after becoming employed in a new role and area retail sales:

And that first year I ran the show myself, a representative who worked at the [redacted] Museum here in [redacted] had come down. Had seen our list of winners and had some concerns about a couple of the people that had won. I had

no or very little understanding of the law prior to that and so I had a crash course in understanding what it was.

Understanding that we had a couple of artists who had entered who we hadn't documented. And when asked for documentation of enrollment or compliance with the federal law they couldn't. So we had to pivot pretty quickly. Those were not offered for sale after that moment, you know, that was a quick pivot to adjust.

But there are in the region and here in [redacted], there are non-Native owned businesses that sell Native things or say that they sell Native things and it's general knowledge that there are replicas made by Non-Native people that are mixed in and people understand the impact that that has on them.

6.7.5 Interviewee CL

Interviewee CL (interviewed via Zoom by author, September 19, 2023) identified as Non-Native and serves as a Curator of Exhibitions in the Northeast region of the United States. They became formally interested in Native American Arts in a museum setting as a child. The thirty-six codes were applied to thirty interview excerpts. The top three code occurrences in descending order were *Education* (5), *Funding* (4), and *Abundance of Retail Merchandise* (3).

When asked about the role of *Education* relative to fakes and frauds of Indian produced goods and products, Interviewee CL spoke about enforcement, individual and institutional impacts, and provided an example from their current institution's gift shop practices:

I think that's really where the rubber meets the road. Because it's not going to happen just from the enforcement standpoint. I think education is a huge piece of it because I think there's a lot of folks who don't really understand why it matters.

We have things that children can afford, like some beadwork and bracelets and things, even though they're only \$10 items; we have an artist bio for every single piece of artwork we have in the museum that we sell in the shop...

Interviewee CI summarized their perspective:

But I think education for all, individual or institution, is very important. And probably equally important if not enforcement is.

Interviewee CL cited *Funding* and the various applications that it can have working with Native arts as one of the things that has been challenging in this field for them:

...we also have this international border that we deal with often, and that becomes challenging in terms of shipping in terms of grant funding where you know some of my funding does not allow for international travel. Or with international artists or considered international artists by the funding agency, even though you know, they are still Mohawk. So there's, those international boundaries are pretty much a challenge.

The interviewee provides an additional perspective when answering the same question:

Well, I mean, now, the really nuts and bolts. Logistics. We are a very small museum. We're an independent nonprofit, which means from every year we raise all of our funds. From the ground up every year. There's very little money for research because we're such a small staff we have no one. There's no one dedicated. More context about the funding impacts was provided in Interviewee CL's description of what success looks like in the field:

There's also this misconception that is built into the field that comes from the artist's point of view, and that is, somehow museums are very well funded.

In response to how they learned about fakes and frauds in Indian arts and crafts, they recalled the *Abundance of Retail Merchandise*, providing examples of catalog marketing and a trip to the Southwest:

Hmm. I mean, you're surrounded by them. I mean, I think of every time, all the catalogs I get to come to my house that you know I opened them and I just cringe. I don't remember not ever seeing that sort of thing. It seems like it's so prevalent.

And even when I was traveling in the Southwest, I would admire artwork. And even in some of the Mohawk, you know, the Haudenosaunee communities I'd go into the gift shops and there would be art from the community members, but there would also be art that I knew darn well looking at it was not produced in that community and probably was not produced by a Native person. So even within the communities that's done. So I think there's been an awareness of it since as long as I've worked in the field.

6.7.6 Interviewee Anonymous

Interviewee Anonymous identified as Not Enrolled and of Native Ancestry and was interviewed via Zoom by the author on September 19, 2023. They serve as a Visual Artist in the Eastern region of the United States. They became formally interested in Native American Arts through political activism. Sixty-eight codes were applied to thirty-eight interview excerpts. The four code occurrences in descending order were *Power & Privilege* (7), *Application of IACA* (6), *Misrepresentation of Indian Produced Goods and Products* (6), and *Violation of IACA* (6). The top three could not be determined since three categories had the same number of code applications.

Interviewee Anonymous was asked to describe their success and challenges in the field and documented membership was provided as an answer to both questions:

A lot of times you have to have federal recognition. So I have documentation from my relatives and so, sometimes you know, they'll accept it and sometimes they won't. They'll say, oh, you gotta be regularly recognized because I'm not enrolled. I'm not a political citizen.

When Interviewee Anonymous was asked if the IACA lives up to its goal to “promote the development of Indian arts and crafts” (25 U.S.C. § 305a), theoretical coding for *Power & Privilege* with regards to elite theory was applied:

Well, I just don't, I'm not happy about the idea of separating arts and crafts. I don't see a separation, cause that's a Western construct. So I totally don't like the Western construct of the philosophy. Because it's not coming from an Indigenous place.

Interviewee Anonymous supplemented by expanding on the cultural context between art and craft:

It's all traditional arts. It's not craft. It's traditional because in the Western European construct of all arts and crafts is looked upon below arts. It's hierarchical. So we're not hierarchical. So that's why for Indigenous people arts and crafts doesn't work. It's traditional arts.

When asked if the IACA helped, Interviewee Anonymous understand more about fakes and frauds, they explained both the benefits and restrictions of the *Application of IACA* coupled with *Violations of the IACA*:

Because there have been fakes and frauds, you know, there have been, work that they make in China, and then they sell these arts and crafts in so-called Indian trading posts. They were selling stuff from China. And so people got kind of pissed off because and you can't blame them and I totally don't blame them for wanting to

protect themselves, but I feel that there are some people that have been hurt along the way because of the restrictions.

An example of the broader impacts of the Act, relative to the *Misrepresentation of Indian Produced Goods and Products* was described by Interviewee Anonymous when asked to describe awareness of IACA and interactions and experiences. A well-known Cherokee artist is the subject of reflection:

Do you know that she was denied being in shows because she did not have documentation even though everybody knew her family and that she was Cherokee? I was furious. And this non-native person, they got papers saying they're just paper on paper, it says they're native and that's accepted, and a person who's actually Native is not accepted, and that blew my mind. I was so upset behind that. That she told me that story oh my god You're kidding me!

This woman is clearly a Cherokee woman, and she was not, and I don't know why the Indian arts and crafts board would not accept her.

But I understand why it was established because it's a lot of people that, you know, made in China stuff that was selling.

Yeah, stuff. But it's very tenuous. I mean, you know, life is complicated, and it isn't that black and white, you know? So yeah, a lot of times people are impacted by the restrictions. That. And, so, yeah, you know that has been a thorn in my side.

6.8 Interview Data Overview

Of the eleven interview questions, five were about the Interviewee's Background, and six were organized around the stated goals of the policy, elite theory, the theoretical grounding of the study, as well as education and providing guidance.

Examining the data, all six of the Interviewees became aware of the IACA through a variety of ways, including employment, the retail marketplace, as a student, and as a working artist (question 6).

Respondents also learned about fakes and frauds of Indian-produced goods through different means, such as the abundance of retail merchandise, becoming part of the Native community early on in life before formal education, through formal education, and word of mouth from others (question 7).

All but one interviewee agreed that the IACA does not live up to its goal to “promote the development of Indian arts and crafts” (25 U.S.C. § 305a) with half of the interviewees emphasizing that others in general promote Native American Art (question 8).

Whether the Act promotes the economic welfare of Native Peoples had mixed results (question nine), with two responding yes, two were unsure, one said no, and one interviewee responded both yes and no, making the distinction between the Act in theory (yes) and in practice (no) (RSH, interview, 9/11/2023).

When asked what the interviewees would like to learn more about the IACA, the range of responses included demographic information, land conservation, preservation and access, the responsibility of the government, if there were sponsored activities in conjunction with the policy, and where to generally find information about the IACA (question 10).

The last question asked was what advice the interviewees would give to someone who wanted to be involved in Indian arts and crafts, two respondents said it’s about

relationships and conversations, two recommended having an openness about the definition of Native American Art, one respondent mentioned awareness of the law (IACA), two interviewees mentioned understanding the continuum of art meaning that it is about living people that have experiences over time (RSH, interview 9/11/2023), and one mentioned going to the source or community for information (question 11).

6.9 Thematic Identification

Dedoose coding for the top three codes in terms of frequency produced categories of importance. However, this coded data did not fully convey the thematic understanding of interviews, so an additional approach was taken: each individual interview was reviewed for specific themes. The following table shows the individual themes derived and organized by the interviewee. Enumerate letters a, b, c, and d, reflect the organization of codes into four broader themes across interviews. The four themes are described below and there is some overlap and continuity with the Dedoose coding results above. Thematic outliers included: *Others Promote Native American Art* (i.e., not IACA/IACB), *Abundance of Retail Merchandise*, and *Funding*.

Table 6-2 Themes by Interviewee

<p style="text-align: center;">Interviewee SB</p> <ul style="list-style-type: none"> - Land Access and Preservation (b) - Others Promote NA Art, not IACA/IACB 	<p style="text-align: center;">Interviewee PS</p> <ul style="list-style-type: none"> - Complexity of Self-identity (a) - Traditional vs. Contemporary Art (d) - Important to the Continuation of Artwork (b)
<p style="text-align: center;">Interviewee RSH</p> <ul style="list-style-type: none"> - New Generation Characteristics (c) - Traditional vs. Contemporary Art (d) - Important to the Continuation of Artwork (b) - Native Identity (a) 	<p style="text-align: center;">Interviewee CL</p> <ul style="list-style-type: none"> - Education - Traditional vs. Contemporary Artwork (d) - Abundance of Retail Merchandise - Funding
<p style="text-align: center;">Interviewee RH</p> <ul style="list-style-type: none"> - New Generation Characteristics (c) - Public Confusion and Risk - How to Work within the Law (a) - Traditional vs. Contemporary Artwork (d) 	<p style="text-align: center;">Interviewee Anonymous</p> <ul style="list-style-type: none"> - New Generation Characteristics (c) - Diversity of Enrollment (a) - How NA Art is Understood (d)

(a) Complexity of Native Identity is defined as the variety and different ways one is considered a member of a Native American Tribe including federal or state recognition or another status relative to Native American ancestry or affiliation, and how that identity does or does not meet IACA standards. Four out of six interviews demonstrated characteristics of this theme and impact. Best summed up by Interviewee PS, this theme was evidenced in examples by other interviewees:

...well, just looking at every tribe in the country, everyone has such a different path to enrollment and a lot of stories of people who didn't enroll actively and who still are tribal members and still have that tribal history and or community history.

Interviewee Anonymous described an example of the *Complexity of Native Identity* from their experience regarding a very well-known artist:

Do you know that she was denied being in shows because she did not have documentation, even though everybody knew her family and that she was Cherokee?

Interviewee RH explained the compliance with IACA and provided an example of how this worked at their institution's marketplace through the language used for printed materials and on the website. In addition to incorporating text that describes IACA and its intent, the institution's materials made accommodations for the *Complexity of Native Identity* by allowing for self-identification:

So, you know, he [executive director] challenged me to dig into the act and figure out how we're gonna work within this, how we're going to balance the needs of our institution and the needs of the law in a way that does not put the institution at risk. And we drafted language, which we include with our marketplace.

Native artists carefully choose how they wish their tribal affiliations to be listed so as to reflect history, geography, culture, and other important aspects of their identities.

(b) Important to the Continuation of Artwork is defined as being significant or necessary to the creation of Native American arts and crafts in the future was emphasized in three out of the six interviews. When asked if the IACA lives up to its goal to promote the development of Indian Arts and Crafts, Interviewee RSH responded no, adding context about the understood purpose of the law:

No, and the reason is again that you know, the law was a really good one and it, it, it's kind of like the road, right, good intentions. But then there was like this big desire to really help us...Ensure that native people weren't getting taken advantage

of and their work wasn't being stolen, their ideas weren't being taken, all of that kind of stuff. And to help promote the continuance of Native people learning how to do this stuff. But as I mentioned earlier, I would say for the first five years, it was, you know, like on fire and then just slowly, slowly, slowly, it started to kind of become less and less relevant, and because there aren't people who have been hired to work on this stuff then there's really little oversight.

Interviewee PS provided context for the continuum of art linked to the tension between Traditional and Contemporary Art:

That dichotomy of traditional and contemporary, we [they and their partner] really talk about and really believe in a continuum of creativity that just doesn't fall into that. So I do think that there's some things I've seen and the imagery they use and the language that really supports this idea that the only native art is the old stuff or the old techniques or the romanticized version of Native people even though the law applies to all art forms.

(c) **New Generation Characteristics**, defined as characteristics and descriptions of what current artists are experiencing or trends in art was identified as a theme for half (3 out of 6) of the interviews. Interviewee RSH explains what artists are doing and the limitations of the law and Interviewee RH's comments relate to trends in the current art market:

Traditional art that's been made and is continuing to be made but there are some contemporary artists that are really you know shifting and changing some of their traditional designs into other things. There's contemporary artists that are not even doing anything that remotely looks traditional and just having these open dialogues, that wouldn't be such a difficult thing to do. But for some reason, the government has not, well I know why, I mean you know they really aren't that concerned about Native people, but you know like something that simple would actually fulfill the obligation of this law, but they haven't done it.

When asked how they learned about fakes and frauds, Interviewee RH explained that there is a new generation of collectors that is different from their predecessors:

The next generation of artists, as I say, there's a generation of people out there that know the name of the chicken that laid their egg and the name of the farmer that grew their lettuce and they want to know the artists that they collect from.

(d) Traditional vs. Contemporary Art is defined as the difference between what IACA recognizes as traditional arts and crafts and contemporary Native American art; and how this difference impacts the retail market and development of arts and crafts. The theme was evident in five of the six interviews in various ways. Interviewee RSH explained the difference is a foundational understanding:

Well, art has always been, you know, "art." It isn't understood that way in Native Communities. It never really has been. It is now, but it never was before. We were taught that there's a difference between the objects that we create and the objects that are considered art, you know?

Interviewee Anonymous provided an example of how the language used in the law conflicts with Native understanding of arts:

Okay. I would say that I don't care for the word crafts and separating the words crafts and arts. It's all traditional arts. It's not craft. It's traditional because in the Western European construct of all arts, crafts is looked upon below arts. It's hierarchical. So we're not hierarchical. So that's why, for Indigenous people, arts and crafts doesn't work. It's traditional arts. Beadwork, pottery, basket-making, they're traditional arts. They're not crafts... I just do not agree with how they're judging arts as opposed to crafts.

Interviewee CL also included this theme in their reflective response when asked what they would tell someone who wanted to be involved in Indian Arts and Crafts:

I think it's very easy for artists and institutions to be swayed by what their audiences expect. This art should look like this, what it should include, what kind of vocabulary it should include. It is a hole. I know there's a balance for the artist between making a marketable item that will sell to the public, but ... I like to think that we encourage the artist ... to create to be not afraid to work outside of those parameters and really push envelopes and challenge the expectations of, you know, the, boundaries of what indigenous arts look like and smell like and feel like.

6.10 Conclusion

This chapter explains the coding and results of six interviews with arts administrators as part of this qualitative study grounded in elite Theory. In total, seven deductive codes were applied eighty-seven times, and inductive coding resulted in sixteen parent codes and sixty-four child codes. The top five code applications in terms of frequency for all interviews in descending order are *Application of IACA*, *Power & Privilege*, *Forced Participation*, *Violation of IACA*, and *How NA Art is Understood*, with elite theory represented in second and third place order. The additional themes derived from separate thematic analysis of the interviews, in no particular order, included *Complexity of Native Identity*, *Important to the Continuation of Artwork*, *New Generation Characteristics*, and *Traditional vs. Contemporary Art*. Collectively, these results demonstrate code categories representing law, identity, and artwork. The next chapter will explore the study results and their application.

CHAPTER 7. DISCUSSION

This qualitative study explores the intersection of the Indian Arts and Crafts Act, arts stakeholders (artists, arts administrators, and retailers), and three contemporary prosecution cases in New Mexico within the last ten years to better understand the implementation of the Indian Arts and Crafts Act through legal prosecution case studies as policy enactment. This chapter includes the study's major findings to answer the questions: What challenges the contemporary prosecution cases of IACA identify for arts stakeholders? How do these challenges impact the development of Indian arts and crafts products? A multiple case study approach (methodology), document analysis and interviews (methods), Constructivist worldview, and classical elite theory (framework) (Creswell and Creswell 2018, 119) structure and support the research. For the purposes of this study, the federal government was considered the Elite, and interviewees were considered the Non-Elite. This chapter includes a Key Results Summary, Interpretive Results, Limitations of the Study, and Other Significant Findings.

7.1 Key Results Summary

The key finding for both the multiple legal case studies and interview data centers on the complexity of Native Identity. The legal case study analysis identified thematic challenges of contemporary prosecution cases that apply to arts stakeholders, summarized as unclear operation guidance at the intersection of state and federal law and inconsistent definitions of Indian that impact federal prosecutability. The Interview data also evidenced the complexity of Native Identity through the *Application of IACA*, the *Misrepresentation of Indian Produced Goods and Products*, and how *Native American Art is generally*

understood. These thematic challenges impact the development of Indian arts and crafts products through the implementation and effectiveness of the policy, limiting the creative and natural trajectory of Native American Arts and not fully realizing more success in preventing fakes and frauds in the arts and crafts market.

The data supports the presence of classical elite theory relative to the Indian Arts and Crafts Act and the theory's application from an elite or federal government perspective and a non-elite or arts administrator perspective. One tenet of elite theory, *Power & Privilege*, out of the two examined for this study, had the most impact in investigating the three contemporary legal cases. The interviews, however, revealed both tenets of elite theory, *Power & Privilege*, and *Forced Participation by Native Nations* as factors associated with the IACA for arts stakeholders. No data emerged clearly demonstrating elite theory tenet #3, a political formula correlating with a generally accepted religion, ideology or myth (Burnham 1943, as categorized by Damele and Campos 2022).

7.2 Interpretive Findings

The following sections discuss the results of the study organized by elite theory, legal cases and interviews, study limitations, other significant findings and final recommendations for future policy.

7.2.1 Elite Theory

The data supports that elite theory applies to both legal cases and interviews in varying degrees. Specifically, *Power & Privilege* was coded in the top five (5 of 5) results for legal cases. Derived from James Burnham's 1943 *The Machiavellians: Defenders of*

Freedom, this associated tenet of classical elite theory: “1. The primary object of every elite or ruling class is to preserve power and privilege” (as categorized by Damele and Campos 2022). Interview data analysis identified both tenets of elite theory relevant to the study in the top 5 most frequently coded. Specifically, *Power & Privilege* (2 of 5) and *Forced Participation* (3 of 5). *Forced Participation* is also derived from Burnham’s *The Machiavellians*, and this tenet of classical elite theory includes: “2. The rule of the elite is based upon (not-necessarily explicit) force and fraud” (Damele and Campos 2022). The study’s theoretical framework and methodology intersect, wherein the interviews provide the perspectives of the non-elites, and the case law gives the perspective of the elites. Based on findings, elite theory is evidenced by the elite (legal cases) and non-elite (interviews).

7.2.2 Legal Cases and Interviews

From the legal case analysis, the thematic challenges related to contemporary prosecution cases that can apply to arts stakeholders: a) Unclear operation guidance at the intersection of state and federal law and an absence of clear legislative authority to make final determinations, b) inconsistent definitions of Indian Tribe, thereby Enrolled Member with legal implications at the state and federal levels that impact federal prosecutability, c) No clear, consistent, measurable definition(s) of Indian Tribe and what/who has the authority to make this determination, and d) a pattern emerged demonstrated in the legal debate of guilty versus innocent or false statement versus truth, that parallels the definition of “Indian”.

The Interview data also evidenced the complexity of Native Identity through the *Application of IACA, How Native American Art is Understood, Traditional vs.*

Contemporary Native Art Production Tensions, Misrepresentation of Indian Produced Goods and Products, Violations of the IACA, Education about IACA, Not Collecting Native American Art and New Generation Artist Characteristics. These findings center around the complexity of Native identity and the myriad of ways it can impact the development and production of Native American art and the application of IACA.

The legal case data analysis (a – d, listed above) provided information that supports the fluidity of how Native American identity is understood in the federal legal system, how it is the basis for prosecution but also a challenge considering the authority to determine Native identity sometimes lies with state governments that later gets challenged at the federal level. There is also no consistent or identifiable mechanism to recognize state authority or at least not at the investigative stage of prosecutive viability (*U.S. v. Natchez*); granted, sometimes it takes prosecution to establish this guideline or vet the specific circumstance or claim to Native identity. For arts stakeholders, determining if someone is Native per the IACA definition and whether you are working within the law becomes very difficult to do. Potential prosecution and compliance can be scary for arts stakeholders and carries reputational risk, financial implications, and impacts professional decision-making, e.g., whether to display only federally recognized artists since compliance with the law may be more easily understood. This compliance sometimes comes at a cost for Native communities and arts stakeholders who may be local to institutions and not feel acknowledged or included in traditional homelands, furthering or enforcing the authority of the Elite (federal government) and, more broadly, impacting the economic welfare of some Natives over others.

Through interviews, the non-elite or arts administrators' perspective demonstrated

how the IACA and the complexity of Indian identity have affected their work. It revealed that the policy is a representation of not fully understanding Native Culture (and identity) and how it is living and Native Peoples are evolving, or not being static. This misunderstanding or legal structure leads to conflict for arts stakeholders who occupy another place in this negotiation and application of IACA. How Native contemporary arts are less valued than what was classified as traditional at the time of policy implementation (1935), and how that impacts decisions by contemporary artists has real economic and creative impacts.

These non-elite perspectives relate to the need for changes to the policy at roughly ten-year intervals witnessed since 1990 and the expectation that it will continue to do so e.g., the 2023 DOI Public Hearings about the IACA. As a new generation of collectors decides what is collectible and what the relationship is to traditional or contemporary arts, one wonders if social justice movements and awareness of sovereignty are impacting the IACA. It is clear that the misrepresentation of Indian-produced goods and products has a significant impact, but whether IACA is addressing this as much as possible and whether prosecution is the most effective way seems debatable. Many people that the policy is meant to serve believe in the concept but criticize the results of the application or working implementation. The policy has not evolved fast enough with sufficient resources, Native input, and interagency support, e.g., for prosecution to be effective. Development of Indian arts and crafts products by the current IACB standards seems limited to out-of-date activities like exhibits, art shows, and education; not keeping pace with technological advances, international retail laws (e.g., internet sales), and intellectual and copyright law to be effective at a relevant pace. Additionally, IACA has an opposite effect than intended,

in that the lack of operational clarity for arts administrators in understanding and applying the law leads some professionals, institutions, retailers, etc. to stay away from Native arts and crafts for fear of prosecution and/or risks to professional reputations. These assessments center around the complexity of Native identity and the myriad of ways it can impact the development and production of Native American art and the application of IACA.

7.3 Study Limitations

Existing literature shows that IACA is both beneficial and problematic for a myriad of reasons. Most scholarship points out the inadequacies of the legislation to enforce penalties, involve and prioritize Native objectives, and fulfill the directive to effectively promote the development of the Indian arts and crafts market in a rapidly changing world. Literature also centers around Native identity and the legal aspects of policy, often with humanities and social science approaches and foci, including feminism, psychology, and history. This research provides an examination of three recent prosecution cases (since the Amendments Act of 2010) specifically to identify challenges for arts stakeholders and the impact on the development of Indian arts and crafts products, thereby filling a gap in the existing analysis during a critical time in history, as Deb Haaland was appointed the first Native American United States Secretary of the Interior in 2021. To the author's knowledge, past studies of the IACA have not directly addressed elite theory, prosecution cases since the last IACA amendment (2010), and the IACA policy directive to "promote development" in concert with art stakeholder feedback to make meaning; making this contribution to scholarship unique. The goal was to provide a more balanced and informative look at the policy for consideration in the greater historical context.

Limited and inconsistent archival and statistical information made this and other qualitative research studies more critical for interpreting IACA and contributing to filling gaps in scholarship and the amount of available information. Access to federal documentation and legal case information required the scope of the study to be narrowed down. The use of “grey” literature and interview data was reflective of the underrepresentation of Native scholars and colonial systems of oppression and exclusion. This approach complements a large amount of available data, albeit unequal in representative stakeholder perspectives, and indicates the limitations of available periodized academic scholarship. From the standpoint of diversity, the study could have included more interview participants who identified as Native and included representation from a broader geographic area. The study's theoretical basis could have been more current; however, it represents the foundation of philosophical thought, proving longstanding evidence of its validity through expanded theoretical evolutions, e.g., democratic elitism. Additionally, the original Act is concurrent with the interpretations of elite theory by Mosca (1939) and Burnham (1943) (Grainger 2024).

Although the findings of this study can be used to formulate recommendations for future policy considerations, it needs to be more comprehensive in scope to apply to all arts stakeholders. Future research could include more arts stakeholders, broadening the range of interviewees, looking at more legal cases, or narrowing the scope of legal cases by criteria like plea agreements. Inclusion of Indigenous researchers and voices to this conversation will positively expand the discourse around the IACA. Additionally, the field of arts administration research would benefit from including more diverse or

underrepresented perspectives like those considered the Non-Elite for this study to better understand policy impact and implementation.

7.4 Other Significant Findings

Both multiple case study and interview data analysis data suggest that there are more challenges outside the legal framework of prosecution cases. How and what cases get selected by the IACB for prosecution and the enforcement around IACA are vague. The interview data revealed that Native identity also has an individual component that is not accounted for in the federal and state definitions and that individual choice is not accounted for. The relationship between land, plants, conservation, and preservation of space can be necessary for Native arts and crafts but is often overlooked. For example, does the policy support or facilitate returning lands so that arts can continue to be protected? Education about IACA and how one can work within the law, including interpretation of the law. The concept that the IACA promotes Native arts and crafts seems unjustified, given that most interviewees agreed it is the artists, arts administrators, and retailers who promote Native arts and that more promotion is needed. Lastly, the creative evolution of art and craft, along with the tension around traditional versus contemporary Native art production, will continue since Native Culture is living, and IACA delineated what traditional is within a Euro-centric framework and enforces compliance through policy with prosecutory tools.

7.5 Final Recommendations for Future Policy

The following recommendations for IACA policy directly relate to the study research questions and are grounded in the results from both the multiple legal case studies and interview analysis:

- Give Native Peoples more autonomy in defining what Native American arts and crafts are/mean going forward through public participation and promote that new definition after integrating it into policy.
- Given the definable number of state governments, determine the recognized Native Tribes per state, thereby allowing arts administrators to determine if an artist meets the criteria for IACA.
- Different education initiatives about the IACA should be explicitly undertaken for artists, arts administrators, and retailers.
- More interagency collaboration and resource sharing for effective enforcement of IACA in addition to a multi-pronged approach for compliance for both physical and digital.
- Include both traditional and contemporary art production and development specifically in the policy.
- Expand the policy to include land acquisition and preservation relative to arts and crafts production.
- Seek funding, partnerships, and policy revisions that allow for a competitive advantage in contemporary arts that effectively promotes the development of Indian arts and crafts that meet the challenges of today's art market, e.g., filming incentives for Native film studios or non-Native film studios utilize Native artistic talent.
- Future policy needs to consider and clearly delineate how the identity of artists will historically be classified or operationalized, given the possibility that future legislation may or may not consider an artist to be "Indian" given the changing definitions.

7.6 Conclusion

By examining 75 years of IACA, we gain insight into the defining cultural policy dynamics and America's unique and paternalistic relationship with indigenous populations. The policy's evolution reflects the changing social history of the nation that more recently bends toward autonomy, albeit complex and imperfect. Stakeholders face increasing regulations and compliance just as the IACA Board endeavors to address the violations and loopholes better while simultaneously enforcing "promoted development" within a narrow and loosely defined policy framework. The regulations that apply to Native cultural arts,

and not other groups, do not place an unreasonable burden on businesses or cultural institutions; they are best described as inconvenient and manageably restrictive.

By identifying challenges in contemporary IACA prosecutorial case studies, we better understand IACA, its application, and considerations for future policy amendments. Much more scholarship and research, including a re-examination of America's obligation to Native peoples and consensus building with input from Native Nations, is necessary to move forward in any substantial way and make related cultural policy-relevant and useful. Future legislation must balance administrative responsibilities, a growing digital marketplace economy, and past perceptions of production and culture while allowing for the evolutionary realities and expanse of Indigenous peoples' cultural arts. Notwithstanding, future IACA legislation must straddle legal clarification and operational understanding for all stakeholders to be relevant and useful. Contemporary arts administrators must recognize that Native Nations, artists, and goods operate within a different national framework while simultaneously promoting equity and actively counteracting marginalization.

APPENDICES

APPENDIX 1. STUDY RECRUITMENT LETTER

Survey/Questionnaire Invitation Cover Letter/Script

To XXXXX:

Researchers at the University of Kentucky are inviting you to take part in a interview about the Indian Arts and Crafts Act influence, application, impact and challenges as part of PhD student dissertation research. You are receiving this interview request because you because you are aware of and/or had experience with the IACA in some capacity.

Although you may not get personal benefit from taking part in this research study, your responses may help us understand more about the IACA. Some volunteers experience satisfaction from knowing they have contributed to research that may possibly benefit others in the future.

If you do not want to be in the study, there are no other choices except not to take part in the study.

If you want to be in the study, respond to this email indicating you would like to take part in the study and dates and times you are available to be interviewed.

The interview will take about 45 minutes to complete.

There are no known risks to participating in this study.

Your information collected for this study will NOT be used or shared for future research studies, even if we remove the identifiable information like your name. If requested in writing prior to the interview taking place, participants can be identified by a general label like a title, instead of by name.

We hope to receive completed questionnaires from about 10 people, so your answers are important to us. Of course, you have a choice about whether or not to complete the interview but if you do participate, you are free to skip any questions or discontinue at any time. You will not be penalized in any way for skipping or discontinuing the survey.

If you have questions about the study, please feel free to ask; my contact information is given below.

Thank you in advance for your assistance with this important project. To ensure your responses/opinions will be included, please schedule the interview within two weeks or 14 days of receipt.

Sincerely,

Tiffini Bowers, PhD student and Principal Investigator
Arts Administration Department, University of Kentucky
E-MAIL: tbo230@uky.edu
Faculty Advisor: Rachel Shane, P.h.D., rachel.shane@uky.edu

If you have complaints, suggestions, or questions about your rights as a research volunteer, contact the staff in the University of Kentucky Office of Research Integrity at 859-257-9428 or toll-free at 1-866-400-9428.

APPENDIX 2. FULL SET OF CODES AND DEFINITIONS

Affiliation (Q1)

From Interview question 1: Name and affiliation/profession/cultural affiliation. Specifically, if someone identified as Native or Non-Native.

Native

Person identifies as Native American

Native Not Enrolled

Person identifies as Native American but is not currently enrolled as a member of a Tribe/Nation.

Non-Native

Person does not identify as Native American.

Application of IACA

How the IACA is experienced in action or operationalized; including specific examples.

Argument of the Defendant

“Oral argument- lawyers summary of the defendant’s position before the court to answer accusations.”

United States Department of Justice. “Legal Terms Glossary.” Accessed May 12, 2023. <https://www.justice.gov/usao/justice-101/glossary#:~:text='oral%20argument%20%2D%20An%20opportunity%20for,to%20answer%20the%20judges'%20questions>.

A Member of a Recognized Tribe

According to the definition provided in IACA

Equal Protection Violation

“Equal Protection refers to the idea that a governmental body may not deny people equal protection of its governing laws. The governing body state must treat an individual in the same manner as others in similar conditions and circumstances... Equal protection forces a state to govern impartially—not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective. Thus, the equal protection clause is crucial to the protection of civil rights.”

Cornell Law School Legal Information Institute. “Equal Protection.” Accessed July 9, 2023. https://www.law.cornell.edu/wex/equal_protection.

Falsely Accused

“False Allegation: An allegation that is untrue in that the events that were alleged did not occur.”

Law Insider. “False Allegation Definition.” Accessed July 9, 2023.

<https://www.lawinsider.com/dictionary/false-allegation>.

First Amendment Violation

“The First Amendment of the United States Constitution protects the right to freedom of religion and freedom of expression from government interference. It prohibits any laws that establish a national religion, impede the free exercise of religion, abridge the freedom of speech, infringe upon the freedom of the press, interfere with the right to peaceably assemble, or prohibit citizens from petitioning for a governmental redress of grievances.”

Cornell Law School Legal Information Institute. “First Amendment.” Accessed July 9, 2023.

https://www.law.cornell.edu/wex/first_amendment#:~:text='It%20prohibits%20any%20laws%20that,a%20governmental%20redress%20of%20grievances.

Prima Facie Showing

“A prima facie case is the establishment of a legally required rebuttable presumption. A prima facie case is a cause of action or defense that is sufficiently established by a party's evidence to justify a verdict in his or her favor, provided such evidence is not rebutted by the other party.”

Cornell Law School Legal Information Institute. “Prima Facie.” Accessed July 9, 2023.

https://www.law.cornell.edu/wex/prima_facie.

Argument of the US

“Oral argument - lawyers summary of the United States position before the court seeking prosecution.”

United States Department of Justice. “Legal Terms Glossary.” Accessed May 12, 2023. May 12,

2023. <https://www.justice.gov/usaojustice/101/glossary#:~:text='oral%20argument%20%2D%20An%20opportunity%20for,to%20answer%20the%20judges'%20questions>.

False Statements Accountability Act

“The new 18 U.S.C. § 1001, effective October 11, 1996, reads as follows:

Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully --'

1. falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

2. makes any materially false, fictitious, or fraudulent statement or representation; or
 3. makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.
- b. Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.
- c. With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only in --'
1. administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or
 2. any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.”

The United States Department of Justice. “902. 1996 Amendments to 18 U.S.C. § 1001.” Accessed January 21, 2023. [https://www.justice.gov / archives/jm/criminal'- 'resource-manual-902-1996-amendments-18-usc-1001.](https://www.justice.gov/archives/jm/criminal-resource-manual-902-1996-amendments-18-usc-1001)

Merit in Bringing the Case to Court

“The phrase ‘on the merits’ refers to a case whose decision rests upon the law as it applied to the particular evidence and facts presented in the case. This is in opposition to cases whose decisions rest upon procedural grounds. The distinction between decisions that rest on the merits rather than on procedural grounds is important because a decision on the merits is considered final and is thus bound by res judicata. If a decision is bound by res judicata, the parties involved in the case may not later raise those same claims in a subsequent case. Instead, a party that disagrees with the decision must appeal the decision, file a motion for a new trial, or a file a motion to reconsider. Decisions that do not rest on the merits, however, are not bound by res judicata because the claims were not properly heard. Thus, these claims may be brought forth in a subsequent case, excluding dismissals due to a failure to state a claim.”

Cornell Law School Legal Information Institute. “On the merits”. Accessed January 21, 2023. [https://www.law.cornell.edu/wex/ on_the_merits#:~:text='The%20phrase%20%E2%80%9Con%20the%20merits,decisions%20rest%20upon% 20procedural %20grounds.](https://www.law.cornell.edu/wex/on_the_merits#:~:text='The%20phrase%20%E2%80%9Con%20the%20merits,decisions%20rest%20upon%20procedural%20grounds.)

18 U.S. Code § 1159 -Misrepresentation of Indian produced goods and products

18 U.S. Code § 1159 - Misrepresentation of Indian produced goods and products

(a) It is unlawful to offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States.

(b) Penalty.—Any person that knowingly violates subsection (a) shall—

(1) in the case of a first violation by that person—

(A) if the applicable goods are offered or displayed for sale at a total price of \$1,000 or more, or if the applicable goods are sold for a total price of \$1,000 or more— (i) in the case of an individual, be fined not more than \$250,000, imprisoned for not more than 5 years, or both; and

(ii) in the case of a person other than an individual, be fined not more than \$1,000,000; and

(B) if the applicable goods are offered or displayed for sale at a total price of less than \$1,000, or if the applicable goods are sold for a total price of less than \$1,000—

(i) in the case of an individual, be fined not more than \$25,000, imprisoned for not more than 1 year, or both; and

(ii) in the case of a person other than an individual, be fined not more than

\$100,000; and

(2) in the case of a subsequent violation by that person, regardless of the amount for which any good is offered or displayed for sale or sold—

(A) in the case of an individual, be fined under this title, imprisoned for not more than 15 years, or both; and

(B) in the case of a person other than an individual, be fined not more than

\$5,000,000.

(c) As used in this section—

(1) the term “Indian” means any individual who is a member of an Indian tribe, or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

(2) the terms “Indian product” and “product of a particular Indian tribe or Indian arts and crafts organization” has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

(3) the term “Indian tribe”—

(A) has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b); [1] and

(B) includes, for purposes of this section only, an Indian group that has been formally recognized as an Indian tribe by—

(i) a State legislature;

(ii) a State commission; or

(iii) another similar organization vested with State legislative tribal recognition authority; and

(4) the term “Indian arts and crafts organization” means any legally established arts and crafts marketing organization composed of members of Indian tribes.

(d) In the event that any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.

Legal Information Institute. "18 U.S. Code § 1159 - Misrepresentation of Indian produced goods and products," Accessed August 16, 2023. <https://www.law.cornell.edu/uscode/text/18/1159>.

25 U.S. Code § 305e – Cause of action for misrepresentation of Indian produced goods
“Definitions In this section:

(1) Indian

The term “Indian” means an individual that— (A) is a member of an Indian tribe; or (B) is certified as an Indian artisan by an Indian tribe.

(2) Indian product

The term “Indian product” has the meaning given the term in any regulation promulgated by the Secretary.

(3) Indian tribe

(A) In general The term “Indian tribe” has the meaning given the term in section 5304 of this title.

(B) Inclusion

The term “Indian tribe” includes, for purposes of this section only, an Indian group that has been formally recognized as an Indian tribe by—

(i) a State legislature; (ii) a State commission; or (iii) another similar organization vested with State legislative tribal recognition authority.

(4) Secretary The term “Secretary” means the Secretary of the Interior.

(b) Injunctive or equitable relief; damages

A person specified in subsection (d) may, in a civil action in a court of competent jurisdiction, bring an action against a person who, directly or indirectly, offers or displays for sale or sells a good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States, to— (1) obtain injunctive or other equitable relief; and (2) recover the greater of— (A) treble damages; or (B) in the case of each aggrieved individual Indian, Indian tribe, or Indian arts and crafts organization, not less than

\$1,000 for each day on which the offer or display for sale or sale continues.

For purposes of paragraph (2)(A), damages shall include any and all gross profits accrued by the defendant as a result of the activities found to violate this subsection.

(c) Punitive damages; attorney’s fee

In addition to the relief specified in subsection (b), the court may award punitive damages and the costs of the civil action and a reasonable attorney’s fee.

(d) Persons that may initiate civil actions

(1) In general A civil action under subsection (b) may be initiated by—

(A) the Attorney General, at the request of the Secretary acting on behalf of— (i) an Indian tribe; (ii) an Indian; or (iii) an Indian arts and crafts organization;

(B) an Indian tribe, acting on behalf of— (i) the Indian tribe; (ii) a member of that Indian tribe; or (iii) an Indian arts and crafts organization;

(C) an Indian; or (D) an Indian arts and crafts organization.

(2) Disposition of amounts recovered

(A) In general Except as provided in subparagraph (B), an amount recovered in a civil action under this section shall be paid to the Indian tribe, the Indian, or the Indian arts and crafts organization on the behalf of which the civil action was initiated.

(B) Exceptions (i) Attorney General In the case of a civil action initiated under paragraph (1)(A), the Attorney General may deduct from the amount— (I)the amount of the cost of the civil action and reasonable attorney’s fees awarded under subsection (c), to be deposite ..

Cornell Law School Legal Information Institute. “25 U.S. Code § 305e - Cause of action for misrepresentation of Indian produced goods.” Accessed August 16, 2023. <https://www.law.cornell.edu/uscode/text/25/305e#:~:text=%5B25%20U.S.C.,18%2C%20United%20Stat%20Code.%E2%80%9D>

Motion to Dismiss

“A motion to dismiss is a formal request for a court to dismiss a case.”

Legal Information Institute. “Motion to Dismiss.” Accessed August 16, 2023. https://www.law.cornell.edu/wex/motion_to_dismiss.

Not Defined in IACA

Vague law or precedent or not identified in the IACA Policy.

Misrepresentation of Indian Produced Goods and Products

§1159. Misrepresentation of Indian produced goods and products.

(a) It is unlawful to offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States.”

House.gov. “18 USC 1159: Misrepresentation of Indian produced goods and products.” Accessed July 8, 2023. <https://uscode.house.gov/view.xhtml?req='granuleid%3AUSC-2000-title18+section1159&num='0&edition='2000>.

Not Enrolled Member Per IACA Definition

§1159. Misrepresentation of Indian produced goods and products, section (c):

"(1) the term “Indian” means any individual who is a member of an Indian tribe, or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

(2) the terms “Indian product” and “product of a particular Indian tribe or Indian arts and crafts organization” has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

(3) the term “Indian tribe” means-

(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and

(4) the term “Indian arts and crafts organization” means any legally established arts and crafts marketing organization composed of members of Indian tribes.”

House.gov. “18 USC 1159: Misrepresentation of Indian produced goods and products” Accessed July 8, 2023. <https://uscode.house.gov/view.xhtml?req='granuleid %3AUSC-2000-title18 section1159&num='0&edition'='2000>.

Art Trends

“The general movement over time of a statistically detectable change” and “a current style or preference”

Merriam-Webster.com. “trend”. Accessed July 8, 2023. <https://www.merriam-webster.com/dictionary/trend>

New Generation Characteristics

Characteristics or descriptions of what current artists are experiencing or trends in art.

Not Collecting

A practice or decision to not collect Native American arts or crafts.

Arts Stakeholder Definition

Arts stakeholders identified for this study (artists, arts administrators, and retailers); however, overlap with other stakeholder roles, past professional capacities or multiple stakeholder capacities do not exclude interview participants e.g., an interviewee can be an artist and retailer (two stakeholder roles) or an arts administrator and Arts Board Member (one stakeholder role considered for the study and one not). Stakeholders residing outside of the United States and within Native Nations outside the boundaries of the U.S. will not be included, since they are not within the legal jurisdiction of the United States.

Artist

“a person who practices any of the various creative arts, such as a sculptor, novelist, poet, or filmmaker.” and “a person who produces paintings or drawings as a profession or hobby”

Oxford Languages Dictionary. “Artist.” Accessed July 8, 2023. <https://languages.oup.com/dictionaries/>

Arts Administrator

Arts administrators are decision makers in arts organizations, as a profession or hobby with varying levels of influence.

Retailer

One who sells designs, produces and/or manufactures products for retail or wholesale purchase in the United States. This includes associated business operations.

Awareness of IACA (Q6)

From Interview Question #6. Describe your awareness of IACA and interaction/experience.

Access to Land

The ability to obtain resources on or from the land or places; physical access.

Always Aware

To know something forever or as long as one can remember.

Employment Experience

To gain through work/job duties; learning on the job.

No Impact

No experience or influence.

Retail Marketplace

“The marketplace refers to the activity of buying and selling products.”; public buying and selling.

Collins English Dictionary. “Marketplace Definition and Meaning.” Accessed November 6, 2023. <https://www.collinsdictionary.com/dictionary/english/marketplace>.

Student

“A student is a person who is studying at an elementary school, secondary school, college, or university.”

Collins English Dictionary. “Student Definition and Meaning.” Accessed November 6, 2023. <https://www.collinsdictionary.com/us/dictionary/english/student>.

Working Artist

"a person who produces works in any of the arts that are primarily subject to aesthetic criteria" as part of employment, business or ongoing engagement.

Collins English Dictionary. “Artist” and “Meaning.” Accessed November 6, 2023. <https://www.collinsdictionary.com/dictionary/english/marketplace> and <https://www.collinsdictionary.com/dictionary/english/artist#:~:text='a%20person%20who%20works%20in,for%20form%2C%20effect%2C%20etc>.

Challenges with the IACA

Compliance Over Time

Adhering to the law over time with the same level of application and purpose.

Diversity of Enrollment

The many different ways one can be enrolled in a Tribe or Native Nation for membership.

Easier to Opt Out

“causing or involving little difficulty or discomfort” and “to choose not to participate in something.”

“Easy Definition and; Meaning.” Opt Out. Accessed November 5, 2023. <https://www.merriam-webster.com/dictionary/easy>

Merriam-Webster.com. “Opt Out Definition and Meaning.” Accessed November 5, 2023. <https://www.merriam-webster.com/dictionary/opt%20out>.

How to Work Within the Law

Ways to adhere to the law but meet other objectives that may or may not be in conflict; creative solutions or resolutions.

Lack of Implementation Resources

Limited or no resources to accomplish a goal or complete a task.

Making Mistakes

“a wrong action or statement proceeding from faulty judgment, inadequate knowledge, or inattention”

Collins English Dictionary. “Mistake Definition and Meaning.” Accessed November 6, 2023. <https://www.merriam-webster.com/dictionary/mistake>.

Not Federally or State Recognized

Neither recognized by the Federal or the State government.

“Federal recognition gives the tribes legal status and requires the federal government to provide certain benefits. Federally recognized tribes have a government-to-government relationship with the United States.”

“State tribal recognition does not confer the same benefits as federally recognized tribes; it acknowledges tribal status within the state but does not guarantee funding from the state or federal government.”

National Conference of State Legislatures. “Brief State Recognition of American Indian Tribes.” Accessed November 5, 2023. <https://www.ncsl.org/quad'-caucus/state-recognition-of'-american-indian-tribes>.

Not State Recognized Ancestral Lands

State government does not formally recognize a tribe or group of Native Peoples as inhabitants of land in a particular place.

Personal Motivations

“a motivating force, stimulus, or influence: Incentive” that centers an individuals wants, goals, or needs.

Merriam-Webster.com. “Motivations Definition and Meaning.” Accessed November 5, 2023. <https://www.merriam-webster.com/dictionary/motivations>.

Public Confusion and Risk

Uncertainty about IACA on a general scale and the risk that accompanies misinterpretation of the law e.g., social media criticism.

Read and Understand the Law

Ability to comprehend and apply the law, specifically IACA given available resources and documentation.

Challenging in the Field (Q5)

References Interview Question #5: What has been challenging in this field for you?

Academic Recognition

Participatory Research had value

Being Non-Native and Working in NA Arts

Not Native American and working with Native arts and crafts in a professional employment situation.

Funding

Financial resources for conducting arts and culture activities in the museum.

International Borders

“The border between two countries or regions is the dividing line between them.”

Collins English Dictionary. “International Border Definition and Meaning Accessed November 6, 2023. <https://www.collinsdictionary.com/dictionary/english/marketplace>. <https://www.collinsdictionary.com/us/dictionary/english/international> - 'border

Not Being Enrolled

Not recognized as a member of a federally or state recognized Native American Tribe/Nation.

Recognition as Living

Native American people and culture are not recognized as alive /present in contemporary social consciousness.

Research

Academic research activities generally.

Counts Per Defendant

“Counts refer to the basis for bringing a case, including each cause of action in civil cases or

charge in criminal cases. Lawsuits can involve multiple counts in which someone can be held liable. For example, assault and battery are separate causes of action that often are both present in a lawsuit”

Legal Information Institute. “Count.” Accessed November 6, 2023.
<https://www.law.cornell.edu/wex/count>.

Five (5)

Five Counts of Misrepresentation of Indian Produced Good and Products.

One

(1)

One count: Violation of the Indian Arts and Crafts Acts.

Three (3)

One (1) for Violation of the False Statements and Accountability Act.

Two (2) for Violation of 18 U.S.C. 1159(a): Misrepresentation of Indian produced goods and products

Two (2)

Two counts (Violation of IACA).

Deceptive Marketing

Untruthful advertising meant to deceive consumers and the public about a product, good or service.

Defendant Position

Whether “the defendant a) pleaded guilty to count(s), b) pleaded nolo contendere to count(s) which was accepted by the court, c) was found guilty on count(s) after a plea of not guilty.

New Mexico District Court. “Judgement Form.” New Mexico: New Mexico District Court, 2016.

Document Type

What document is being coded for case study analysis in Dedoose.

Amended Judgment

"An amended judgment refers to a trial court correcting a substantive error in an original judgment. Usually a judgment is amended to correct a manifest error of law or fact. Such amendments are made to clear any misconceptions in the original judgment. Any omissions or erroneous descriptions in an original judgment shall also be corrected by amending the judgment.”

US Legal Inc. “Amended Judgment Law and Legal Definition.” Accessed July 9, 2023.
<https://definitions.uslegal.com/a/amended-judgment/#:~:text='An%20amended%20judgment%20refers%20to,misconceptions%20in%20the%20original%20judgment>.

Judgment

“Judgement means the final decision made by a court or tribunal. After the judges consider

all the relevant evidence of the legal trial and consider all rights and obligations, the plaintiff and defendant will receive the final ruling. This judgment could end the potential or existing dispute among the dispute parties by listing which side was ruled in favor of, and listing what remedies are to be awarded.

According to U.S.C. §636(c)(3), each party could appeal directly to the court of appeal(s) against the existing judgment.

Legal Information Institute. "Judgment." Accessed July 9, 2023. <https://www.law.cornell.edu/wex/judgment>.

Memorandum Opinion and Order

"Memorandum Opinion is a brief opinion of a court that announces the result of a case without extensive discussion. There is no elaboration because the decision follows a well-established legal principle or does not relate to any point of law." and "Court orders are the means in which decisions or judgments of judicial officers are issued from a court. They can include: an order made after a hearing by a judicial officer, or an order made after parties who have reached their own agreement have applied to a court for consent orders."

US Legal, Inc. "Memorandum Opinion Law and Legal Definition." Accessed July 9, 2023. <https://definitions.uslegal.com/m/memorandum-opinion/> and https://www.law.cornell.edu/wex/court_order#:~:text='Court%20orders%20are%20the%20means,a%20court%20for%20consent%20orders.

Economic Welfare

"The basis or rationale for the IACA policy is the promoting the economic welfare of Native Peoples."

Enacted by Congress in 1935, the Indian Arts and Crafts Act (IACA) and subsequent legislation and policies sought, "To promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes." Within Section Two of the original Act, the "promote" clause is further defined stipulating, "It shall be the function and the duty of the IACA Board to promote the economic welfare of Indian tribes and the Indian wards of the Government through the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship."

U.S. Department of the Interior. "Indian Arts and Crafts Act of 1935." Accessed January 16, 2023. <https://www.doi.gov/IACA Board/indian-arts-and-crafts-act-1935>.

Forced Participation

"Derived from James Burnham's "The Machiavellians. defenders of freedom.", the tenets of classical elite theory include:

2. The rule of the elite is based upon (not-necessarily explicit) force and fraud."

In this case, the federal government is considered the Elite. Definition of force (Oxford Languages via Google Dictionary Box) “coercion or compulsion, especially with the use or threat of violence.” and “make (someone) do something against their will.” Definition of Fraud (Oxford Languages via Google Dictionary Box) “a person or thing intended to deceive others, typically by unjustifiably claiming or being credited with accomplishments or qualities.” and “wrongful or criminal deception intended to result in financial or personal gain.”

Burnham, James. “The Machiavellians. defenders of freedom.” (London: Putnam & Co; 1943), quoted in Damele, Giovanni, and Andre Santos Campos. “Introduction. Elite theory: Philosophical Challenges.” *Topoi* 41, no. 1 (2022): 1-5. <https://languages.oup.com/google-dictionary-en/>

Goal to Promote Development (Q8)

From Interview Question # 8. Does IACA live up to its goal to “promote the development of Indian arts and crafts”?

Having Shows

IACB Indian art market and events.

More Promotion Needed

IACA Needs to do more to promote Native American Arts.

No

IACA does not live up to its goal to promote the development of Indian Arts and Crafts.

Others Promote NA Artwork

Others (not IACB) promote Native American Artwork; independent or outside of the policy.

Yes

IACA does live up to its goal to promote the development of Indian Arts and Crafts.

How NA Arts is Understood

Current perceptions of what Native American art is or should be.

Important to Continuation of Artwork

Significant or necessary to the creation of Native American arts and crafts in the future.

Acceptance into the Mainstream

“People, activities, or ideas that are part of the mainstream are regarded as the most typical, normal, and conventional because they belong to the same group or system as most others of their kind.”

Collins English Dictionary. “Mainstream Definition and Meaning.” Accessed November 6, 2023. <https://www.collinsdictionary.com/us/dictionary/english/mainstream-acceptance#:~:text='People%2C%20activities%2C%20or%20ideas%20that,mot%20others%20of%20their%20kind.>

Access to Land

The ability to obtain resources on or from the land or places; physical access.

Accreditation Process

“to recognize or vouch for as conforming with a standard” in a formal way.

Merriam-Webster.com. “Accreditation Definition & Meaning.” Accessed November 5, 2023. <https://www.merriam-webster.com/dictionary/accreditation>.

Interest in NA Arts (Q3)

From Interview question #3: Where/how did you first become interested in Native American Arts?

Education

Formal school education.

Museums

“an institution devoted to the procurement, care, study and display of objects of lasting interest or value; also: a place where objects are exhibited.”

Merriam-Webster.com. “Museum Definition & Meaning.” Accessed November 5, 2023. <https://www.merriam-webster.com/dictionary/museum>.

New Job

New employment experience.

Political Movements

Organized social justice activities that center the advancement of people of color and change.

Relationships with People

“a state of affairs existing between those having relations or dealings.”

Merriam-Webster.com. “Relationship Definition & Meaning.” Accessed November 5, 2023. <https://www.merriam-webster.com/dictionary/relationship>.

Judgment or Sentence

Final verdict or punishment in case.

Community Service

“Community service is unpaid work that benefits the community. A judge can often sentence a convicted defendant to community service as an alternative to a jail sentence.”

Legal Information Institute. “Community Service.” Accessed July 8, 2023. https://www.law.cornell.edu/wex/community_service.

Dismissal Without Prejudice

“When a court dismisses a claim but leaves the plaintiff free to bring a subsequent suit based on the same grounds as the dismissed claim.

Legal Information Institute. “Dismissal without Prejudice.” Accessed July 8, 2023.
https://www.law.cornell.edu/wex/dismissal_without_prejudice.

Imprisonment

“To imprison means to confine or physically restrict one’s personal liberty, usually in a jail or prison. As a penalty of violating a criminal law, imprisonment varies differently from federal to state.”

Legal Information Institute. “Imprison.” Accessed July 9, 2023.
<https://www.law.cornell.edu/wex/imprison>.

Imprisonment Process

Whether “a) the defendant is remanded to the custody of the US Marshal, b) shall surrender to the US Marshal at a later date, c) shall surrender for service of sentence at the institution designated by the Bureau of Prisons.”

New Mexico District Court. “Judgement Form.” New Mexico: New Mexico District Court, 2016.

Probation

“A court-imposed criminal sentence that, subject to stated conditions and restrictions, releases a convicted criminal defendant into the community instead of confining them to jail or prison.”

Legal Information Institute. “Probation.” Accessed July 8, 2023.
<https://www.law.cornell.edu/wex/probation>.

Mandatory Conditions

Conditions associated with imprisonment; these compliment the “Standard Conditions of Supervision” that do not have selections/check boxes options.

Special Conditions of Supervision

“Special conditions provide for additional sanctions (in the case of probation or parole), restrictions, correctional interventions, or monitoring tools as necessary to achieve the purposes of sentencing in the individual case.”

United States Courts. “Chapter 1: Authority (Probation and Supervised Release Conditions).” Accessed July 9, 2023. <https://www.uscourts.gov/services-forms/authority-probation-supervised-release-conditions#:~:text='Special%20conditions%20provide%20for%20additional,Standard%20Conditions%20of%20Supervision>.

Access to Defendants Financial Information

As requested, agreed upon or required by the Court the defendant (s) will provide individual or business financial information.

Business Not to Commit Any Other Crime

Condition to not engage in any additional criminal behavior (business specific).

Community Service

As a special condition of supervision; 40 hours (Ali).

File Timely Tax Returns

"Tax returns are mandatory yearly filings with the Internal Revenue Service (IRS) or other tax agencies for state and local entities which detail the tax obligations of the taxpayer or organization. The tax return contains calculations of a person or organization's taxable income, claimed deductions, and claimed tax credits which ends with their tax liability. The tax return is not necessarily a final calculation of the person or organization's tax liability. Rather, the tax return is the original calculations submitted to the government agency by the filer or their tax accountant which may or may not be accepted by the government agency as correct. In order to avoid fees or other punishment, a tax return must be submitted on time as dictated by the relevant government agency."

Legal Information Institute. "Tax return." Accessed July 9, 2023.

https://www.law.cornell.edu/wex/tax_return

No Communication/Interaction with Co-defendant(s)/ conspirator (s)

Not engaging in "a process by which information is exchanged between individuals through a common system of symbols, signs, or behavior."

Merriam-Webster.com. "Communication definition." Accessed July 9, 2023.

<https://www.merriam-webster.com/dictionary/communication>.

Not Seek to Avoid Probation

Take n actions to change financial or current status in name or business to avoid judgement ordered by the court.

New Mexico District Court. "Judgement Form." New Mexico: New Mexico District Court, 2015.

Preventive Program

Plan ordered by the court addressing specific future conduct.

Submit to Search/Inspection

"You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner."

United States Courts “Chapter 3: Search and Seizure (Probation and Supervised Release Conditions).” Accessed July 9, 2023. <https://www.uscourts.gov/services-forms/search'-seizure-probation-supervised-release-conditions>.

Learn about Fakes & Frauds (Q7)

Refers to Interview Question# 7 How did you learn about fakes/frauds in Indian arts and crafts?

Abundance of Retail Merchandise

Large amounts of Indian arts and crafts products for sale.

Become Part of the Community

Acceptance into the Native Community as an outsider; sharing of information and culture.

Early in Life Before Formal Education

Young child not yet attending school.

Education

While attending school/engaged in formal education.

Word of Mouth

Information gained through conversation and interaction with others

Learn More About IACA (Q10)

From Interview Question #10 What specific information about IACA do you want to know? How would learning more information about IACA help?

Communication

“a process by which information is exchanged between individuals through a common system of symbols, signs, or behavior.”

Merriam-Webster.com. “Communication definition.” Accessed on July 9, 2023. <https://www.merriamwebster.com/dictionary/communication>.

Demographic Information

“the statistical characteristics of human populations (such as age or income) used especially to identify markets.”

Merriam-Webster.com. “Demographics Definition & Meaning.” Accessed November 5, 2023. <https://www.merriam-webster.com/dictionary/demographics>.

Land Conservation, Preservation and Land Access

“Conservation is generally associated with the protection of natural resources.”; maintenance and ability to physically gather natural resources for use.

NPS.gov. “Conservation, Preservation, and the National Park Service.” Accessed November 5, 2023. ”[https://www.nps.gov/teachers/classrooms/conservation-preservation-and-the-national-park-service.htm#:~:text=' Conservation%20is% 20generally% 20associated% 20with,buildings%2C% 20objects%2C%20and% 20landscapes](https://www.nps.gov/teachers/classrooms/conservation-preservation-and-the-national-park-service.htm#:~:text='Conservation%20is%20generally%20associated%20with,buildings%2C%20objects%2C%20and%20landscapes).

Responsibility of the Government

What falls under the purview of the federal government to do as part of an agreement or shared understanding.

Sponsored Activities

Events the IACB holds/organizes in conjunction with IACA.

Where to Find Information About IACA

What places (physical or digital) is information about the Indian Arts and Crafts Board be available.

Monetary Penalty

“Monetary Penalty means any monetary payment ordered or imposed by a court and/or agreed with, or ordered or imposed by, any other entity, whether through a judgment, order, deferred prosecution agreement, non-prosecution agreement, declination or otherwise, including, fines, penalties, restitution, forfeiture and/or disgorgement.”

Law Insider. “Monetary Penalty Definition.” Accessed July 8, 2023. <https://www.lawinsider.com/dictionary/monetary-penalty>.

Assessment

"18 U.S. Code § 3013 - Special assessment on convicted persons

(a) The court shall assess on any person convicted of an offense against the United States—

(1) in the case of an infraction or a misdemeanor— (A) if the defendant is an individual—

(i) the amount of \$5 in the case of an infraction or a class C misdemeanor;

(ii) the amount of \$10 in the case of a class B misdemeanor; and

(iii) the amount of \$25 in the case of a class A misdemeanor; and (B) if the defendant is a person other than an individual—

(i) the amount of \$25 in the case of an infraction or a class C misdemeanor;

(ii) the amount of \$50 in the case of a class B misdemeanor; and

(iii) the amount of \$125 in the case of a class A misdemeanor;

(2) in the case of a felony—

(A) the amount of \$100 if the defendant is an individual; and

(B) the amount of \$400 if the defendant is a person other than an individual. (b)Such amount so assessed shall be collected in the manner that fines are collected in criminal cases.

(c) The obligation to pay an assessment ceases five years after the date of the judgment. This subsection shall apply to all assessments irrespective of the date of imposition.

(d) For the purposes of this section, an offense under section 13 of this title is an offense against the United States.”

Legal Information Institute. “18 U.S. Code § 3013 - Special Assessment on Convicted Persons.” Accessed August 15, 2023. <https://www.law.cornell.edu/uscode/text/18/3013>.

Special Assessment

“(a) The court shall assess on any person convicted of an offense against the United States -

(1) in the case of an infraction or a misdemeanor— (A)if the defendant is an individual—

(i) the amount of \$5 in the case of an infraction or a class C misdemeanor;

(ii) the amount of \$10 in the case of a class B misdemeanor; and

(iii) the amount of \$25 in the case of a class A misdemeanor; and (B)if the defendant is a person other than an individual—

(i) the amount of \$25 in the case of an infraction or a class C misdemeanor;

(ii) the amount of \$50 in the case of a class B misdemeanor; and

(iii) the amount of \$125 in the case of a class A misdemeanor;

(2)in the case of a felony—

(A) the amount of \$100 if the defendant is an individual; and

(B) the amount of \$400 if the defendant is a person other than an individual. (b)Such amount so assessed shall be collected in the manner that fines are collected in criminal cases.

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(d) For the purposes of this section, an offense under section 13 of this title is an offense against the United States.”

Legal Information Institute. “Special Assessment.” Accessed August 15, 2023. <https://www.law.cornell.edu/uscode/text/18/3013>.

Fine

"Fine - a monetary penalty associated with an offense imposed as part of a judgment and commitment."

Legal Information Institute." "Definition: Fine from 28 CFR § 571.51." Accessed July 9, 2023. https://www.law.cornell.edu/definitions/index.php?width='840&height='800&iframe='true&def_id='732d481efbc96deccb11fd57c01b7001&term_occur='999&term_src='Title%3A28%3AChapter%3AV%3ASubchapter%3AD%3APart%3A571%3ASubpart%3AF%3A571.51#:~:text='Fine%20%2D%20a%20monetary%20penalty%20associated,of%20a%20judgment%20and%20commitment.

JVTA Assessment

"The JVTA provides restitution and justice for victims of human trafficking and child pornography by imposing fines and penalties against offenders. The money paid through fines will be placed into the Domestic Trafficking Victims Fund for grants to enhance programs that assist trafficking victims and provide services for victims of child pornography. The Act also provides law enforcement across the country with resources to establish or enhance task forces against human trafficking, fund prosecution, and create trafficking victim services. Moreover, producers of child pornography are now classified as human traffickers under the Act."

Rhoden, Andrew. "What You Should Know about the Justice for Victims of Trafficking Act of 2015." Americanbar.org. Accessed July 9, 2023.

https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/august-2015/what-you-should-know-about-the-justice-for-victims-of-trafficking/.

Schedule of Payments

"Payment schedule" means the amount that is being paid by a defendant in installments, or by a certain date to satisfy a criminal accounts receivable for the defendant." It also includes other instructions that apply regarding a range of conditions associated with the court decision.

Utah.gov. "Utah Code Criminal Accounts Receivable and Costs Chapter 32B Effective ..." Accessed July 9, 2023. https://le.utah.gov/xcode/Title77/Chapter32B/C77-32b_2021050520210701.pdf.

Community Service

"Community service is unpaid work that benefits the community. A judge can often sentence a convicted defendant to community service as an alternative to a jail sentence."

Legal Information Institute. "Community Service." Accessed July 8, 2023. https://www.law.cornell.edu/wex/community_service.

Forfeiture of Rights

"Criminal forfeiture is an in personam proceeding brought by the criminal prosecution

against an offender, resulting in the forfeiture of the offender's property, assets, and proceeds directly or indirectly obtained from the criminal activity. Unlike civil forfeiture, criminal forfeiture requires a conviction."

Legal Information Institute. "Criminal Forfeiture." Accessed July 9, 2023.
[https://www.law.cornell.edu/wex/criminal_forfeiture #:~:text='Criminal%20forfeiture%20is%20an%20in,criminal%20forfeiture%20requires%20a%20conviction.](https://www.law.cornell.edu/wex/criminal_forfeiture#:~:text='Criminal%20forfeiture%20is%20an%20in,criminal%20forfeiture%20requires%20a%20conviction.)

In Full

All of the amount is due.

Installments

"Installments are debt payments made on a periodic, regular basis in which the total principal and interest owed is divided into smaller chunks. Installment schedules can vary from biweekly to monthly payments. In most cases, the payment amounts are fixed or set to equal amounts."

Britannica.com. "Installments." Accessed July, 2023.
[https://www.britannica.com/money/installment-payment.](https://www.britannica.com/money/installment-payment)

Restitution

"Refers both to disgorging something which has been taken, and to compensation for loss or injury done..."

In criminal cases: Full or partial compensation for loss paid by a criminal to a victim that is ordered as part of a criminal sentence or as a condition of probation."

Legal Information Institute. "Restitution." Accessed July 9, 2023.
[https://www.law.cornell.edu/wex/restitution.](https://www.law.cornell.edu/wex/restitution)

Superseding Indictment (money judgement)

"A superseding indictment is an additional charge that is filed against a defendant after the original indictment. This usually happens when new evidence or information arises that warrants an additional charge. A superseding indictment can occur at any time during the proceedings, from the initial filing to the conclusion of the trial."

Seddiq Law Maryland. "Federal Indictment Process - FAQ." Accessed March 6, 2021.
<https://www.seddiqlaw.com/federal-criminal-defense/federal-'indictment-process-faq#:~:text='A%20superseding%20indictment%20is%20an,that%20warrants%20an%20additional%20charge.>

Native Identity

Whether someone has federal or state recognition as a member of a Native American Tribe or Nation or another status relative to Native American ancestry or affiliation.

Artists Decide

Let the artist decide /describe Native Identity.

Complexity of Self Identity

Ways of Identifying as Native that don't fit the conventional federal or state recognition definitions.

Institution Requires Proof

Arts business or organization require proof of Indian Identity to comply with IACA.

Marketplace Inclusivity

Retail marketplace activities permit artists to participate whether they are federally, state or not recognized.

Name of Offense

Type or categorization of crime described in the legal document by the court.

False Statements Accountability Act

"The new 18 U.S.C. § 1001, effective October 11, 1996, reads as follows:

Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully --'

1. falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 2. makes any materially false, fictitious, or fraudulent statement or representation; or
 3. makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.
- b. Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.
- c. With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only in --'
1. administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or
 2. any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.”

“902. 1996 Amendments to 18 U.S.C. § 1001.” The United States Department of Justice, January 21, 2020. [https:// www.justice.gov/ archives/jm/criminal-resource-manual-902-1996-amendments-18-usc-1001](https://www.justice.gov/archives/jm/criminal-resource-manual-902-1996-amendments-18-usc-1001).

Misrepresentation of Indian Produced Goods and Products
§1159. Misrepresentation of Indian produced goods and products

(a) It is unlawful to offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States.”

House.gov. “18 USC 1159: Misrepresentation of Indian produced goods and products.” Accessed July 8, 2023. <https://uscode.house.gov/view.xhtml?req='granuleid%3A USC-2000-title18-section1159&num'=0&edition'=2000>.

Violation of IACA

Breach of the Indian Arts and Crafts Act (federal policy).

Power & Privilege

“Derived from James Burnham’s “The Machiavellians, defenders of freedom.”, the tents of classical elite theory include:

1. The primary object of every elite or ruling class is to preserve power and privilege.”

In this case, the federal government is considered the elite.

Burnham, James. “The Machiavellians. defenders of freedom.” (London: Putnam & Co; 1943), quoted in Damele, Giovanni, and Andre Santos Campos. “Introduction. Elite Theory: Philosophical Challenges.” *Topoi* 41, no. 1 (2022): 1-5.

Traditional vs Contemporary Art Tension

Difference between what IACA recognizes as traditional arts and crafts and contemporary Native American Art; and how this difference impacts the retail market and development of arts and crafts.

Want to Be Involved (Q11)

From Interview Question #11, What specific information about IACA do you want to know? How would learning more information about IACA help?

About Relationship and Conversation

"a state of affairs existing between those having relations or dealings."

Merriam-Weber.com. “Relationship Definition & Meaning.” Accessed November 5, 2023. <https://www.merriam-webster.com/dictionary/relationship>.

Artists: Open to Definition of NA Art

Advice to artists, to be open to what Native American Art is and looks like.

Be Aware of the Law

Know and understand the IACA.

Continuum

“a coherent whole characterized as a collection, sequence, or progression of values or elements varying by minute degrees.”

Merriam-Weber.com. “Continuum Definition & Meaning.” Accessed November 5, 2023.
<https://www.merriam-webster.com/continuum>.

Decide, Plan and Do the Work

Commit, prepare and work hard.

Go to the Source/Community

Go to the Native Community that the information or arts come from first.

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VITA

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