



INTERNATIONAL ASSOCIATION OF DEALERS IN ANCIENT ART

## IADAA NEWSLETTER AUGUST 2021

### **Italy wins US case as it seeks to reclaim marble statue**

Associated Press News: August 5: This case, involving IADAA member Alan Safani, is of vital importance because it illustrates how the Constitutional rights of US citizens are under attack from within.

It involves an attempt by the Safani gallery in Manhattan to sue the Italian government for demanding the seizure and return of an ancient marble head, which Italy says is of Alexander the Great. Italy also says the head was probably stolen and illegally exported.

As reported here, the court has ruled in favour of Italy and against the gallery's claim for compensation over the head's loss.

So what's the problem?

Firstly, Italy has provided no evidence whatsoever that the head is illicit; it just says it thinks it probably is.

Secondly, the head has not just suddenly appeared on the market, it has been around for decades and widely published in at least one prominent collection, as well as being bought and sold at public auction. This means that Italy, which would have

known about it for all this time, could have put in its claim years ago, but didn't. Why?

Thirdly, if Safani is right, and his property has been seized without any evidence of wrongdoing, why should his claim against Italy fail?

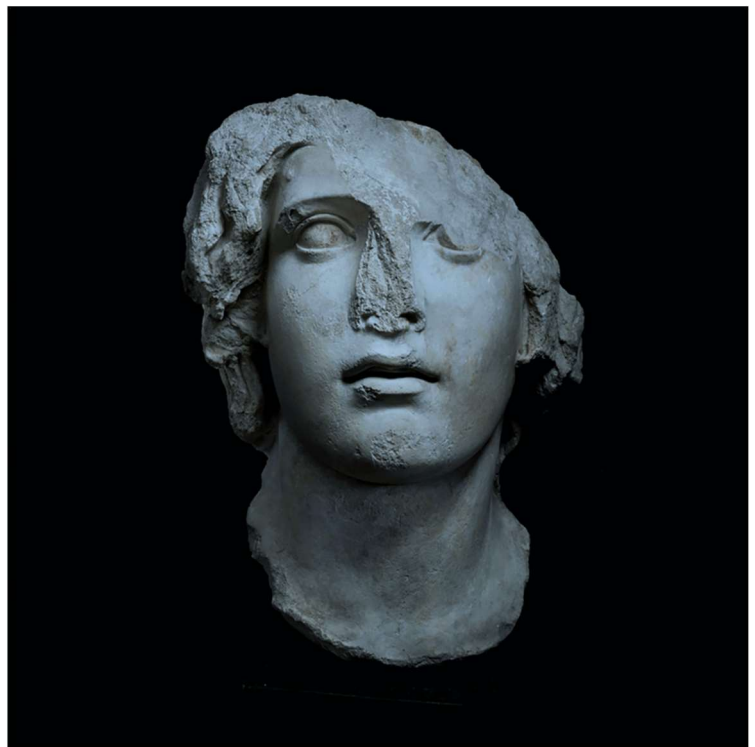
To grasp what is happening in this case is to understand what has now become widespread practice across the United States, an unConstitutional injustice officially supported by the authorities, including Homeland Security and ICE, the US Customs service, as well as law enforcement such as the New York District Attorney's office.

It's an unConstitutional injustice happening right under the noses of the American people without them noticing and it has been going on for some time.

At fault are bilateral agreements called Memoranda of Understanding (MoUs) as well as US statute law that effectively supersedes Constitutional rights as together they oil the wheels of international diplomacy and

business. Those who pay the price for these acts of convenience are the American people themselves, as well as minority groups within repressive

regimes, like Turkey, with whom the US establishes MoUs.



***Above: The disputed bust.  
Image courtesy of Safani Gallery***

Let's look at the court case again. If Italy has made the claim without evidence, and Safani has been arbitrarily deprived of his property (in breach of the Fifth and Fourteenth Amendments of the United States Constitution), how can due process have taken place and why would the court not allow the gallery to sue Italy for compensation?

In short, it has nothing to do with the merits of Safani's claim; this is all about the Foreign Sovereign Immunities Act (FSIA), which simply prevents the US court from prosecuting Italy in this way because it removes the decision to do so from the court's jurisdiction.

Safani's lawyer David Schoen has argued that Italy is using the FSIA to avoid going to court, presumably because it can't prove that the head is stolen.

"That should trouble every honest American citizen — dealer or collector — based on the facts of this case," Schoen says.

What has been noticeable in recent years is just how many seizures and returns take place in New York rather than anywhere else, and this goes some way to explaining why Italy may have waited years to make its claim: US law makes it far more likely that source countries will succeed in winning back artefacts regardless of the lack of evidence (*See Art & Antiquities crossing borders. Whose law wins?*).

Italy needed to wait until Safani, who had bought the head in the UK, had imported it into the US. This is partially to do with good faith purchases and statutes of limitations under the law, which vary from country to country, as well as court decisions over whose jurisdiction counts when claims are international.

Crucial to any understanding, though, is the fact that Memoranda of Understanding allow the US to bypass the Constitution and basic human rights relating to property as set out in international conventions such as the United Nations Universal Declaration on Human Rights (Article 17:2). They do so by effectively reversing the burden of proof when it comes to cultural property. In other words, you're guilty until proven innocent. You can see this clearly from the comments made concerning the Safani case by Matthew Bogdanos, Assistant D.A. in New York and head of the Antiquities Unit. He makes no claim as to evidence, only to the lack of it: "Nothing exists except questions," he says, ignoring the fact that it cuts both ways: he has not produced the evidence to show the head is illicit, while Safani's extensive due diligence counters the illicit claim.

Imagine you are a US citizen who collects ancient art from around the Mediterranean basin. You see a piece you are interested in coming up for auction in France. It is very well documented and has been known for generations, having been in several private collections and loaned for major public exhibitions at museums.

The exact circumstances of its acquisition and export from Anatolia in the early to mid-19<sup>th</sup> century are unknown. This may be because records were not kept at the time, as they often were not, or that any records that did exist have long since been lost or mislaid.

What is known is that at the time, such items could be and were legally traded and exported. Turkey instituted no restrictive laws for cultural property at all until 1869, exports being regulated until then by Islamic jurisprudence. Having been published widely for many decades without challenge, the artefact's legitimacy as a piece of private property seems solid.

You proceed with the purchase, having carried out all of the necessary due diligence, and import the item to the United States with all the relevant accompanying paperwork.

As it reaches US Customs, officials inspect the piece and ask you to provide them with a legitimate export licence – from Turkey – showing that the piece was legally exported from Anatolia in the early to mid-19<sup>th</sup> century according to local laws of the time.

When you are unable to do this, under the terms of the MoU that the US signed with Turkey on January 19, 2021, unless Turkey "issues a license which certifies that such exportation was not in violation of its laws" (see Article 1:1), Customs seize the artefact and return it to

Turkey. They do so marking the return at a widely publicised official media event, during which they celebrate the fact that this is another victory in the fight against illicit antiquities. How often do Turkey (or other countries), seeking the return of as many artefacts as possible, issue such licences?

The impression given is that Customs intervened during what was a smuggling operation to bring stolen property into the US; as can be seen by the explanation above, the truth is very different.

This sort of thing is happening all of the time, with the media unwittingly playing along and reporting, without question, the official line that these items are illicit, when they clearly are not.

It appears that half the time officials undertaking such work don't care because such 'victories' show how good they are at their jobs.

Another reason may well be that they do not fully understand what is going on themselves. This was clear from a case involving the return of artefacts to Mexico recently, where a US Customs official seemed to think, erroneously, that collecting and private ownership of antiquities under any circumstances was illegal.

When questioned directly about what evidence they had of any crime being committed in relation to this case, US Customs confirmed there was none, yet still conducted the official return ceremony, as can be seen in the video, as though this was another success story in the fight against looting and smuggling.

The items involved had been stored in an Arizona museum for years and came to light during an audit, with those who discovered them becoming worried that maybe the museum shouldn't have Mexican artefacts in its collection, regardless of the fact that nothing showed they were there as the result of any laws being broken.

No evidence came to light of wrongdoing when the museum voluntarily handed over the artefacts to Homeland Security with a view to returning them to Mexico, who then called in Customs to handle the case.

Not seized, then, but voluntarily returned and without any evidence of a crime, as confirmed by Customs. However, if you read the headlines relating to the case, or saw the TV coverage including the interview with the Customs official handling it, you would have thought that this was the culmination of a major crime-busting initiative.

Italy's MoU with the US has now been extended until 2026. This includes conditions set out in section 2606 of the US Code covering customs duties on cultural property, including import restrictions. Section (a) puts it in the same category as the Turkey MoU example given above – guilty until proven innocent again.

Some academics, archaeologists and politicians – notably in countries like Mexico, Egypt, Syria, Turkey and Iraq, but also on a widespread basis in the West – argue that any trade in cultural heritage from their country is immoral and therefore illicit. They don't just mean artefacts looted and smuggled in recent years when the locals laws would ban any such trade, they also mean trade in items that were legitimately sold and exported decades and even centuries ago.

Many of these people acknowledge that evidence of wrongdoing is rarely available and certainly extremely difficult to come by. Their solution is to reverse the burden of proof and rule that everything must be deemed illicit unless unimpeachable evidence proves otherwise. Some have even gone as far as to redefine the meaning of the word illicit (European Commission report by Ecorys, see page 47, footnote 19) so that it does not mean unlawful but can also simply mean immoral, according to their personal preferences.

When you look at many of the countries who take this view, it is noticeable that they have one thing in common: they are not democracies and do not value or honour the rights of

the individual. Indeed most, if not all, oppress free speech, journalists and democracy campaigners, as well as minority racial groups, such as the Kurds.

These, then, are the partners that the United States is cosyng up to via its bilateral agreements at the cost of its own citizens' rights.

If it is now US policy to subsume basic human rights in the interests of international accord in this way, then it should be explicit in its intent so that voters know where they stand.

How many of them truly grasp what is happening?

News that Nigeria is soon to establish an MoU with the US will show specialists in other disciplines, such as tribal art, exactly what these bilateral agreements can mean.

Alan Safani does not intend to leave the matter there. As his lawyer has stated: "There is no competent evidence at all that the head was ever stolen."

A Manhattan antiquities dealer may not be the first person that the world in general takes pity on as they fight for justice, but if their rights as a citizen don't matter, then why should anyone else's?

**Aztec-era skull among ancient artifacts seized from shipment in Kentucky, feds say**

Lexington Herald and Leader: August 2: This article, which seems to be a straightforward article relating to Mexican artefacts being smuggled into the United States, is interesting because it confirms the significance of bilateral agreements, as explained above.



"Most countries have laws to protect their cultural property, such as art, artifacts, antiquities or other archaeological and ethnological material," it states. "These laws include export controls and national ownership of cultural property. Therefore, although they do not necessarily confer ownership, consignees or importers must have documents such as export permits and receipts when importing such items into the United States.

"The Department of Homeland Security enforces the cultural property import restrictions agreed to in bilateral agreements that the United States has concluded with 20 countries and through emergency import restrictions for three additional countries. These bilateral agreements protect cultural property by restricting import into the U.S. of certain categories of archaeological and ethnological materials, thus reducing the incentive for looting at heritage sites." *Photo courtesy of U.S. CUSTOMS AND BORDER PROTECTION*

**Document reveals pro-Hadi Yemeni minister involved in smuggling antiquities**

**Press TV Iran: August 2:** "A recent classified document has revealed that a high-ranking official from the administration of Yemen's fugitive former president, Abd Rabbuh Mansur Hadi, is in close contact with criminal networks that loot archaeological goods and artwork from ancient heritage sites across the war-stricken country, and sell them to antiquities traffickers," this report begins.

Although it provides no supporting evidence to back up its further claims, it adds that "smuggled antiquities are sold at very low prices in the European market".

However, this is more complex than it seems because despite the document being shared on social media, the Saudi Arabia's Oversight and Anti-Corruption Authority has discredited it, presumably because it is the Saudis themselves, who have been blamed.

"The Gulf Institute for Democracy and Human Rights (GIDHR) said in a report that the Saudi-led coalition is targeting Yemeni historical and cultural sites in addition to civilian infrastructure."

Chairman of the GIDHR Yahya al-Hadid added that Saudi-led attacks had destroyed 80% of Yemen's antiquities and monuments, and that antiquities experts could not enter the country to repair the cultural heritage site because of the tight blockade on Yemen. He further accuses smugglers of trafficking Yemeni antiquities to Saudi Arabia and the United Arab Emirates.

"Some Yemeni treasures have resurfaced in private collections in Persian Gulf countries, including Qatar and Kuwait," Jeremie, an expert in the archaeology of the Arabian Peninsula at France's National Centre for Scientific Research, said.

Schiettecatte is also reported as claiming that because Saudi Arabia is a major market for Western arms sales, destruction of Yemeni heritage has elicited less international outcry than the desecration of artifacts in Syria and Iraq.

### **Minister for Digital and Culture reaffirms UK commitment to strengthen the role of culture in addressing the climate crisis at G20 Culture Meeting**

UK Government media release: August 4: Culture Minister Caroline Dinenage has pledged the UK to prioritising the protection of cultural heritage and tackling illicit trade in artefacts. She made the promise during the G20 Culture Ministers' Meeting in Rome at the end of July.

The 32-point Rome Declaration of the G20 Culture Ministers lists five priorities, of which the top priority is "The protection of cultural heritage and tackling illicit trafficking."

"The Minister also visited the Carabinieri to see Italian expertise in policing the illicit trafficking of cultural property," it reports.

### **How do you spot a looted antique? Germany brings in team of experts to help**

Art Newspaper: August 10: Dr Markus Hilgert, now the general secretary of the Cultural Foundation of the German Federal States, has secured a €600,000 grant to follow up the €1.2m ILLICID project relating to illicit trade.

This article raised so many questions that IADAA chairman Vincent Geerling contacted the Art Newspaper, which invited him to submit a letter on the subject. Here is what he said:

Madam – (How do you spot a looted antique? Germany brings in team of experts to help, *Art Newspaper*, August 10). The German government awarding a €600,000 grant to follow up the €1.2m ILLICID project relating to illicit antiquities raises more questions than it answers. Both projects are connected to the very restrictive German Cultural Property law passed in 2016, aimed at fighting against Germany's status as an "El Dorado of the illegal cultural artifacts trade", as claimed by Germany's Federal Criminal Police Office (BKA) in 2014.

ILLICID launched on the assumption that "profits from illicit trade in cultural goods are an important pillar of organized crime", while in the same sentence acknowledged that no reliable data existed to show this. In other words, it had come to a conclusion even before investigating. Neither ILLICID nor the German government has ever shown any evidence to support these claims.

At the time, I called the law "a solution looking for a problem". Well, five years later, the problem still has not been found, and soon the law will be evaluated.

From Culture Minister Monika Grütters' comments that the NEXUD project will provide "reliable answers from the academic community", it seems clear that market experts will not be involved, yet they handle far more objects than academics so are mostly in a better position to assess them. The trade has offered to help with this, but so far has received no official response.

The Image-recognition software (already funded by the German government to the tune of €500,000) cannot detect fakes or illicit items, so alerts will depend on the team of experts. Will they be vetting everything offered for sale, and how will they limit the 'web crawlers' to the German market? With all this, how can their reaction be "swift" as described? If not, what's the point of this exercise?

Dr Hilgert, who will lead the project after heading ILLICID, is quoted as saying that trade is six times what he previously thought. Is that illicit trade, legitimate trade or web-based trade, as the article does not say? Your article quotes him as saying that the ILLICID report's main findings were that available information is "inadequate to ascertain whether items offered [on the internet] for sale are being traded legally or illegally". If so, on what did he base his new figure, and what is it in absolute rather than comparative terms?

The only reliable data on the scale of the problem of illicit trade in cultural property in Germany comes from the German government itself. In official answers to parliamentary questions on March 2, 2021, it stated that from the introduction of the Cultural Property Act on August 6, 2016 until the end of June 2020, Germany made a total 61 cultural property seizures on suspicion of import or export violations – 15 a year on average across the whole of Germany's 16 states. As far as we know, not a single case of terror financing has been found. However, as cases are investigated at state rather than federal level, the government says it has no idea of the outcomes. By any measure, this is not a huge problem, so why throw so much money and resources at it?

Three simple questions:

- How many items among the 386,500 ILLICID studied were conclusively looted and trafficked? As far as I know, this has never been answered.
- How many of the 61 seizures investigated across four years proved to be valid?
- How many cases of terrorist financing (finding this out is one of the main goals of the German law) have been uncovered in the past five years?

Surely these and other questions regarding methodology, technology and expertise should be answered before committing significant sums to yet another project of this type?

Meanwhile, despite it knowing since last October that the figure was bogus, UNESCO continues to promote the value of illicit trade in antiquities as \$10 billion a year as part of its equally bogus advertising campaign, The Real Price of Art. The bogus \$10 billion is oft-quoted to justify clamping down on legitimate trade, appearing in numerous media and academic articles, including this morning as I write.

### **Vincent Geerling**

Chairman

International Association of Dealers in Ancient Art (IADAA)

### **92 people arrested in Turkey for smuggling antiquities to the United States**

The Daily Guardian: August 11: A widespread operation across the whole country has led to the arrest of 92 suspects relating to the alleged smuggling of antiquities to the United States via Eastern Europe.

The suspects were traced through bank transfers involving a total of €2.5 million, it was reported.

"Most things have been auctioned off on websites that contain false property documents," the report claimed.

### **A New Polish Law Will Make It Practically Impossible to Pursue Restitution Claims for Nazi-Looted Artworks**

Artnet News: August 16: The Polish government has changed the law on the Statute of Limitations, reducing it to 30 years.

“The law will lead to the dismissal of thousands of cases that have been under litigation for years, Łukasz Bernatowicz, a lawyer who represents numerous claimants in restitution cases told *Politico*.”

It will also put Nazi-looted artworks beyond the scope of claims, a move that has attracted serious criticisms internationally.

### **Iraq: Graft and security issues feed illegal antiquity trade**

Africa News: August 23: An interesting article that focuses on key issues surrounding looting and trafficking, including the poverty of people living on the ground near vulnerable sites in conflict zones, the fear and danger of armed gangs who come to loot in lawless places and the lack of resources available to deal with the problem.

“In a country where an estimated 27 percent of the 40 million citizens live below the poverty line, the authorities say they have other priorities,” the article states.

Laith Majid Hussein, director of the Iraqi State Board of Antiquities and Heritage, says random exhumations – opportunistic digging – are common, adding: “We don't have statistics on the number of antiquities that end up as contraband.”

Much of what is taken is smuggled out to Gulf countries, it is claimed.

Where the article does put a figure on the value of looted antiquities, it states: “It said that in 2015, “of IS's annual income, deemed to be between US \$2.35 billion and \$2.68 billion, antiquities trafficking and (in-state) taxation accounted for US \$20 million”.”

It does not give its source for this, and the antiquities figure of \$20 million certainly does not match the considerably smaller figure usually given for the period, based on documentation from the Abu Sayyaf raid in Syria in May 2015.

In conclusion, the article regrets that protecting antiquities is not a priority because the government in Iraq is weak and badly resourced.

Bearing in mind commitments and priorities under the UNESCO Convention, addressing this weakness should become more of a priority for international bodies in supporting Iraq.

### **United States and Albania Sign Cultural Property Agreement**

Mirage: August 24: The United States has signed its 21<sup>st</sup> Memorandum of Understanding with another country, in this case Albania, with a view to protecting cultural heritage. The release states that “the agreement also gives U.S. law enforcement the ability to repatriate trafficked cultural objects back to Albania, and it will foster interchange of Albanian cultural heritage with U.S. institutions”.

What it does not reveal, however, are the true implications of what this means, as set out in the article at the top of this newsletter.

Nigeria has announced that it, too, will be signing an MoU with the US.

### **The coming tsunami of illicit antiquities from Afghanistan**

Inkstick: August 24: The fear over what the Taliban might do to Afghanistan's heritage is palpable and understandable after the fate of the Bamiyan Buddhas in 2001. And the desperate state that many Afghans will now find themselves in will make the temptation to loot stronger, so raising the alarm now is certainly advisable.

However, instead of taking an informed and authoritative approach, this article exploits the crisis to push more propaganda, making wild claims and failing to check facts, thereby



peddling serious inaccuracies. The fact that it was written by an academic and a former ambassador who should know better – and should have checked their sources more thoroughly – is shameful.

“A flood of Greek, Bactrian, Kushan, and Gandharan pottery, coins, jewelry, sculptures, and bas reliefs will soon appear in the principal nodes of the vast global market in illicit antiquities, from Basel to Istanbul, Dubai, and Hong Kong,” they claim.

“The monetary value of these illicit cultural exports will be considerable, perhaps in the range of hundreds of millions or even several billion dollars per year.” (Not true and easy to check.)

What the authorities should be doing is to assess the situation, work out what practical measures can be taken for protecting vulnerable sites on the ground in the context of the new regime, and how diplomacy and aid could be used to encourage the Taliban and Afghans to protect and respect their heritage.

No one is saying that this will come anywhere close to being an easy task, but this is where the focus should lie, not in the sort of mindless rant that this article presents.

The authors of this article would do well to read the Art Newspaper’s more considered editorial, *Protocols are already available to help save Afghanistan’s cultural heritage*.

In it, New York art law attorney Frank K. Lord IV acknowledges the current chaos and tragedy, but adds a note of hope.

“The Association of Art Museum Directors (AAMD) has established protocols for protecting cultural property at risk from conflict, and we must hope that those protocols, or steps like them, are being followed,” he writes.

Reviewing the previous trail of Taliban destruction in 2001, Lord focuses on how, in 2015, the AAMD put into place Protocols for Safe Havens for Works of Cultural Significance from Countries in Crisis.

“Essentially, the protocols allow museums to take at-risk objects into their custody and hold them until safe return to the source country is possible,” he adds.

This support network brings considerable risks, he acknowledges, in terms of both reputation and cost for the museums taking part.

However, he adds: “In the context of a Taliban takeover of Afghanistan, concerns about intervention are outweighed by the dangers.”

According to *The Week*, meanwhile, the Taliban have announced that looting and trafficking of antiquities would be considered an offence.

In the end, it remains to be seen how the Taliban can be trusted to keep their word on this.

However, in another article published in *Arts & Culture* on August 29, Melissa Gronlund strikes a different note: “...when the Taliban entered Kabul this month, they posted guards around the National Museum of Afghanistan, saving its antiquities from any feared looting. No vandalism or destruction of major heritage sites has yet been reported.”

Gronlund even points out that restoration work has started at the Machine Khana, part of an urban transformation project being undertaken in an industrial site in central Kabul. “It was temporarily suspended when the Taliban first entered the capital, and opened again on Saturday, with 600 labourers and technicians showing up to work.”

Ajmal Maiwandi, chief executive of the Aga Khan Trust for Culture in Afghanistan, is “cautiously optimistic about cultural heritage” under the Taliban and says that “discussions so far with lower to mid-level Taliban operatives, the message they have heard is that culture heritage is to be protected”.

A similar message comes from Philippe Marquis, head of the French Archaeological Delegation, but warns: “The management of cultural heritage should be possible, but it will rely on western countries’ willingness to work with the Taliban.”



The article argues that the Taliban's apparently softening approach on this matter may be part of its effort to seek international legitimacy.

**Looted 2,700-year-old bricks—discovered in Swiss warehouse—are returned to Iran**

Art Newspaper: August 26: The culmination of a tale that started in the 1970s that led to a group of 51 decorated bricks dating to c.700BC being excavated illegally from Qalaichi in Iran.

They made their way to Switzerland where, in 1981, they were being kept in storage by an Iranian dealer who contacted the British Museum with a view to a sale.

When the BM's Keeper of the Middle East travelled to see them, he advised the dealer that they were probably looted and illegally exported and that they should be returned.

Curtis was ignored and the bricks eventually seized after the dealer failed to pay the rent on his storage and the warehouse owners called in the authorities.

The importance of this story relates to the nature of the bricks themselves, which reveal the artistry of the Mannaean civilisation from which they came. *One is shown here courtesy of the Iran National Museum in Tehran*, where they are now safely housed.

The museum is celebrating their return and what they reveal in a new exhibition, *The Repatriated Boukan Glazed Brick Collection from Switzerland*.



**New York dealer arrested for selling 'cookie cutter' manufactured goods as authentic antiquities**

Art Newspaper: August 26: This report focuses on the extraordinary story of Mehrdad Sadigh, a New York antiquities dealer and owner of Sadigh Gallery, who is facing charges over what the Manhattan District Attorney has called a decades-long scheme to pass off fake artefacts as ancient treasures to unsuspecting customers.

As the report explains, it was the trade itself who turned him in: "Authorities were tipped off to Sadigh's enterprise when other dealers they were investigating for selling looted antiquities asked why "the guy selling all the fakes" was being ignored", according to Assistant DA Matthews Bogdanos, the head of the DA's Antiquities Trafficking Unit, in an interview with the *New York Times*.