

Office of the Inspector General  
U.S. Department of Justice  
Investigations Division  
950 Pennsylvania Avenue, N.W.  
Room 4706  
Washington, DC 20530

Dear Sir or Madam:

I hereby request that you investigate the actions of Brian Cornell, Bart Fitzgerald and their activities and unknown others in the matter described below:

I am:  
Christopher Kortlander  
P. O. Box 200  
Townhall  
Garryowen, MT 59031  
406-638-2020  
406-628-2019 (f)  
[chris@cusermuseum.org](mailto:chris@cusermuseum.org)

Person(s) complained about  
Brian Cornell  
Bureau of Land Management  
Montana State Office  
5001 Southgate Drive  
Billings, MT 59101

Bart Fitzgerald  
Bureau of Land Management  
Montana State Office  
5001 Southgate Drive  
Billings, MT 59101

PLUS other unknown federal agents from the BLM, Fish & Wildlife, Office of the Inspector General and the FBI. I believe my Constitutional Rights have been violated as setforth herein by the BLM and its agents.

THIS complaint is concerning the procedures, policies and activities of agents leading up to and subsequent to a raid by the BLM on premises owned by me in Garryowen, MT which occurred on or about March 31, 2005 and involved dozens of federal agents and other local support personal.

The actions of the agent(s) were such that they endeavored to create a situation where I was setup to commit a crime although there was NO credible evidence that I would otherwise commit a crime. The entrapment effort of the agents and agencies involved in investigating me were in direct violation of the laws of the United States and in violation of my Constitutional rights.

The actions of the agents leading up to the raid and thereafter spanned more than a decade of interaction between the agents, the BLM, the United States and me. The story plays out as follows:

**CHRIS KORTLANDER**

- 1) KORTLANDER is a resident of and the owner of Garryowen, Montana and operates several business entities, all located at the Town of Garryowen, a wholly owned private town. The town consisted of the Custer Battlefield Museum, a Subway Sandwich Shop and CONOCO gas station, with a C-store, a U.S. Post Office, and the Trading Post (owned and operated by Putt Thompson). In addition, KORTLANDER headed a for-profit corporation, Historical Rarities, Inc. which dealt in historical artifacts and was a substantial source of the funding for the ongoing operation of the Custer Battlefield Museum. On or about March 31, 2005 KORTLANDER and KORTLANDER's building(s) were the targets of a federal raid by dozens of armed federal agents. According to the Search Warrant that was presented at the time, agents were looking ONLY for U.S. Army Eagle Buttons and one uniform suspender buckle that had been sold to KORTLANDER.

**Buying Garryowen:**

- 2) KORTLANDER previously lived in Malibu California with his wife. Malibu was devastated by wildfires in November (3<sup>rd</sup>) 1993. The area was declared a federal disaster area by President Bill Clinton. Only nine days before the fire, KORTLANDER bought an option to purchase the historic town site of Garryowen, Montana. This option, exercised after the fire allowed KORTLANDER to apply for and receive disaster related financing to help purchase and build Garryowen when all of his California assets were destroyed in the fire.
  
- 3) The application was submitted immediately after the fire, and it was approved about a year later. (KORTLANDER was the only recipient of SBA disaster funding ever to be allowed to rebuild a business outside the federal disaster area.) KORTLANDER and his wife lived for a year in a FEMA funded shelter while processing the SBA disaster application.
  
- 4) Garryowen was built in 1994-1995 and when the building was framed and the roof was still being built, KORTLANDER moved to Garryowen. His wife did not accompany him.
  
- 5) In 2004, the Governor of Montana awarded KORTLANDER the Tourism Person of the Year. In addition, KORTLANDER had been active in Montana law enforcement, volunteering as a Reserve Sheriff's Deputy until he began a run for Big Horn County

Sheriff in 2001. He was elected to the Board of Directors of Custer Country, a state chartered non-profit tourist organization serving southeastern Montana. He was involved in a court battle challenging a tax imposed on non-Indians by the Crow Tribe. That case eventually was decided in KORTLANDER's favor by the U.S. Supreme Court.

KORTLANDER has NO criminal record.

- 6) Since the Raid, KORTLANDER has been an invited guest of President Barack Obama, during the presentation of the 2009 Presidential Medal of Freedom Award Ceremony, at the White House, and in 2010, he successfully passed a FBI/Infragard background investigation and is now a proud member of the FBI's Infragard organization.

#### THE CUSTER BATTLEFIELD MUSEUM:

- 7) In December, 1991, the federal government changed the name of the Custer Battlefield National Monument and abandoned the name *Custer Battlefield Museum* under President George Bush. KORTLANDER filed to take the name as soon as it became available (December, 1991). There was also concurrent discussion of creating a new entrance to the Battlefield that would utilize exit 514 from Interstate 90. Exit 514 is the exit to the town of Garryowen. This discussion continues today, although little or no progress has been made for the last several years.

LEE LINGARD and JASON PITCH

- 8) In 1996 KORTLANDER dated Cathy Lingard. She was the ex-wife of Lee Lingard, BLM undercover Special Agent and a former Navy SEAL. She had obtained a restraining order against Lee Lingard for being physically and emotionally threatening to her. Lee Lingard used his position in the BLM to monitor her activities. This was also true when she began dating KORTLANDER. Lingard utilized a 'snitch' named Jason Pitch to interact with KORTLANDER's businesses, especially Historical Rarities, which focused on buying and selling western collectibles, especially items associated with the famous Custer's Last Stand of 1876,
  
- 9) Pitsch was building the (Nightengale/Smith) 'Fort Custer' adjacent to Garryowen at about the same time KORTLANDER was building Garryowen. Pitsch befriended KORTLANDER, revealing that he was working 'undercover' with the BLM for the federal government.
  
- 10) From 1995 to 1998 Pitsch functioned as something of a "double agent" providing information to his BLM handlers, while slipping information to KORTLANDER, among others. Pitsch had been selling Custer Battlefield artifacts on EBay and was investigated for possibly selling contraband artifacts. In the process of the investigation Pitsch was converted into a paid BLM undercover, confidential informant. This was based upon his connections to those who dealt in Custer- and Indian-related artifacts in the region.

- 11) During these years, whenever Pitsch was coming to Garryowen with undercover BLM agent Lee Lingard (his BLM handler), Pitsch would advise KORTLANDER of his intent to visit and report any contraband activity. There was never any such contraband activity at Garryowen, but Pitsch was interested in parlaying his informant status into whatever ego or prestige may serve to enhance his personal perceived value and credibility. He bragged about his position with federal agents and agencies.
  
- 12) Pitsch said he was a paid confidential informant working under Lee Lingard. Pitsch told KORTLANDER of his informant status and that information was later confirmed by Lingard's ex-wife, Cathy Lingard. Pitsch had long term relationship with Lee Lingard, enjoying a common interest especially in shooting Lingard's government issued machine guns, and buying and selling Nazi collectibles.
  
- 13) In 1996 KORTLANDER dated Cathy Lingard. She was the ex-wife of Lee Lingard. Lingard was by then known to be a BLM undercover Special Agent and was a former Navy SEAL. She had obtained a restraining order against Lee Lingard for being physically and emotionally threatening. Lee Lingard used his position in the BLM to monitor her activities. This was also true when she began dating KORTLANDER.

- 14) Lee Lingard surveilled KORTLANDER and Cathy Lingard when she would visit Garryowen, spending the night. Lee Lingard also would use a government car and equipment to spy upon KORTLANDER and Cathy Lingard. Cathy Lingard described Lee Lingard as dangerous and had obtained a restraining order against him. KORTLANDER and Cathy Lingard's relationship dissolved after a few months because of the issues involving Lee Lingard.
  
- 15) KORTLANDER turned Lee Lingard into the OIG in 1995 because of threats reported by Cathy Lingard regarding Lee Lingard, which concerned Cathy Lingard's and KORTLANDER's safety. OIG said they would investigate the matter in subsequent months. A response was received dated February 9, 1996, saying that BLM internal affairs had been advised of the investigation into Lingard.
  
- 16) OIG sent in a three-man internal affairs team from Washington, D.C. to the Billings BLM headquarters to investigate KORTLANDER's report. As a result of the OIG investigation, the undercover investigative division involving Lee Lingard was disbanded.
  
- 17) In 1998 Lingard's paid informant, Jason Pitsch, was caught in a parallel FBI nationwide child pornography sting. He was subsequently convicted and sentenced to three years in Federal prison, but placed on probation. He subsequently violated his

probation resulting in his having to serve out his prison time. Convicted of downloading child pornography from the Internet, he pleaded guilty to violating his probationary sentence. Senior federal judge Jack Shanstrom sentenced the defendant, Jason Pitsch, to 30 months in prison and ordered sex offender treatment. The judge had given Pitsch a break in April 1998 when he sentenced him to three years of probation after he pled guilty to a charge of sexual exploitation of children.

- 18) The BLM brought a new agent into Montana from Utah. In 1996, Bart Fitzgerald was appointed to be the Special Agent in Charge of BLM law enforcement in Montana.
- 19) While Pitsch was obtaining funding for the construction of the structure now referred to as the Smith/Nightengale Fort, an issue arose concerning the status of artifacts found on the land. The land was privately owned fee land and there had been some question as to the legality of owning and selling artifacts found and removed from the property. Lee Lingard had written a letter on official BLM/DOI letterhead to Pitsch's bank, providing government opinion that Pitsch's Custer Battlefield artifact collection was obtained legally (ostensibly because it was on private land, not federal). The bank needed that documentation to verify that artifacts had been legally obtained so that the artifacts could be pledged, and the bank could accept those artifacts as collateral that would allow Pitsch to obtain a federally funded SBA loan to build a fort-style building next to Garryowen. Lee Lingard's letter would later serve as the legal basis for KORTLANDER's sale of Custer Battlefield artifacts acquired from private fee land around the battle site owned by Pitsch and others on EBay auctions.



20) Pitsch located and obtained many of the artifacts he possessed and sold on his father's fee property. Much of the property owned by Pitsch's father is now owned by the Custer Battlefield Preservation Committee (CBPC). Pitsch used a metal detector to find many Custer artifacts from his father's land, which is inside the exterior perimeter of the Custer Battlefield (NOT to be confused with the Big Horn National Monument). The Pitsch property borders KORTLANDER's Garryowen Town on three sides. KORTLANDER acquired many items over a span of several years directly from Pitsch, and Pitsch provided KORTLANDER with a copy of Lingard's letter. KORTLANDER acquired additional battlefield and Custer related artifacts from SBA and bankruptcy sales and others, and from his own private land at Garryowen.

21) Nearly 10 years later KORTLANDER received a letter from the BLM Billings office instructing him to cease and desist using the BLM letter written by Lingard on his EBay auctions. The Government claimed that Lee Lingard had no official authorization to make such an authentication claim for the pieces in question, nor did he have the authority to issue the 1996 letter for Pitsch. It was not until 11 years after it was written that the BLM attempted to discredit the letter.

22) The explanation given by the BLM was that Lee Lingard had no legal standing to make such an authentication claim for the pieces in question, *because he had not seen them physically removed from non-federal lands*. Upon the BLM's realization that Lingard's letter did not give legal status to the debated artifacts, the Billings office of the BLM then used the letter as a tool against KORTLANDER, alleging he had knowingly sold pieces that were not from the Battlefield.

23) The same letter had been used to justify the financing of a federal SBA loan to Pitsch.

The letter was used to justify the SBA lending a half of a million dollars of funds based upon the ability to claim legal possession of the artifacts in question as well as the right to sell, pledge or otherwise possess and transfer such artifacts.

24) Later the SBA foreclosed on Jason Pitsch's \$500,000 loan. The same letter was used

by the SBA to document that the artifacts were legal for private parties to buy, possess and sell. KORTLANDER was approached by the SBA in 2000 to resell the collateralized Pitsch/Custer collection for SBA, but KORTLANDER did not. The SBA did a public auction with Christie's in NY.

25) In June 2003, Pitsch was caught/arrested a second time with child pornography

(involving Garryowen CPU) and was convicted and sent to prison. He was using a computer owned by Putt Thompson at the Garryowen Trading Post, which Thompson leased and operated. At this time, KORTLANDER was a reserve Big Horn County Sheriff's deputy and turned in Pitsch, having observed him viewing nude (child porn) pictures of children on the computer while walking around the public area of the Garryowen property.

26) According to press reports at the time (of his arrest), Pitsch was on probation for a

1998 child porn conviction. Pitsch was nearing the end of his probationary sentence when

his probation officer learned that he had been using computers in violation of his sentence.

- 27) On this second conviction Pitsch was sentenced to three years in federal prison and three years on supervised release. Senior U.S. District Judge Jack Shanstrom also ordered Jason Dean Pitsch, 34, to pay full restitution for his legal defense in both cases, saying Pitsch has significant assets in Indian artifacts, possibly worth up to \$200,000.
- 28) Shanstrom said Pitsch still owed \$2,222 for reimbursement for his public defense from his first conviction. Billings attorney Robert Kelleher Jr., who was appointed to represent Pitsch in the 2<sup>nd</sup> case, said his bill was less than \$5,000. Kelleher said most of Pitsch's assets are his collection of Indian artifacts. According to Kelleher, the best way to liquidate such artifacts would be through the Internet, but Pitsch is prohibited from using a computer. Shanstrom had dismissed a second count of receiving child porn.
- 29) While Pitsch was on probation the SBA foreclosed on the Pitsch property (1999) for non-payment, and sold it at public auction to Smith (Nightengale), July 7, 2001.
- 30) Lingard and Pitsch were a productive team in terms of convictions, but the manner and means were not well supervised and caused personal tragedies for others that got in their way. Federal Probation Officer Dennis Darrington was one of those who fell victim to an aggressive Lingard/Pitsch investigation.

31) Writing to Senator Tom Daschle in 1999, Darrington said of Lingard and the BLM law enforcement system; “Misrepresenting and twisting the facts are all too common and are taking a terrible toll on our societal values.”

**ROBERT NIGHTENGALE:**

32) Nightengale is an amateur Custer historian. Nightengale wrote a book (Little Big Horn, August 1, 1996) that was privately published. The book, published in hard back in the style of a ‘coffee table’ presentation, was not well received critically. Nightengale was criticized in reviews as a “cultist”.

33) Leonard R. Cleavelin wrote a review, posted at Amazon.com. *I wanted to like this book; I really did. It's lavishly illustrated with some of the finest color plates I've seen in any book on any subject. The layout, both graphics and typography, is obviously a labor of love. Unfortunately, the author is a "Custer cultist" with a paranoiac strain. The basic thesis of the book is that, at the fateful battle on the banks of the Little Bighorn, George Armstrong Custer had a plan that might well have succeeded, had he not been betrayed by officers who deliberately disobeyed his orders with the specific intent of causing Custer's death in battle. In support of this thesis, Nightengale charges Major Marcus A. Reno and Captain Frederick W. Benteen with committing deliberate perjury at the Army Court of Inquiry into Reno's conduct at the battle, and accuses the U.S. Army of a deliberate cover-up of Reno and Benteen's misconduct. Strong accusations, and to be fair to the author there is some evidence that can be interpreted to support such a thesis. Unfortunately, instead of weighing such evidence with an eye to probability, Nightengale*

*weighs the evidence only in such a manner as to support his preconceived conspiracy theory. This book is not a reasoned study of the battle; it is a brief in support of Nightengale's misguided attempt to have the Army Board for Correction of Military Records review the findings of the Reno Court of Inquiry (for the curious, Nightengale includes the supporting paperwork for that action in appendices). This is most definitely not a book for the novice Custer/Little Bighorn student. Veteran Custer buffs can read this book with some benefit (I personally think that spotting the errors and omissions in the text is an excellent test of one's understanding of the battle and the literature surrounding it), provided one recognizes and makes allowances for the fact that Nightengale is not acting as a historian, but as the prosecutor of Reno and Benteen. In summary, I was going to characterize this book as "worthless," but then I realized that was unfair. This book provides an excellent example to prospective authors and historians of how not to write a book about the Battle of the Little Bighorn.*

34) Another reviewer stated: *Robert Nightengale introduces an interesting theory about 'Custer's Last Stand', however, he is not a professional historian, nor is he, unfortunately, a professional or trained researcher. His theories are simply not supported by historical fact.*

35) Another signed review (by M. Higgins) offers yet another perspective on Nightengale's work. *I've read a few books on LBH and Custer and this one takes the cake for going after Capt. Benteen. If Custer had attacked the Indians with half the vigor that Nightengale goes after Benteen, Custer would have died in a rocking chair in the*

*1930s instead of the dusty plains of Montana in 1876. I imagine someone with more knowledge of the fight could take the arguments presented in this book to task. I found the points raised provocative, fun and funny*

- 36) KORTLANDER met Nightengale in about 1995. He was writing the book. He had approached Putt Thompson to sell and sign the book and Thompson referred him to KORTLANDER. While he was waiting for his book to be published, Nightengale took to sleeping in the Custer Battlefield Museum's parking lot in his van.
- 37) Nightengale was a volunteer at the Custer Battlefield Museum beginning in 2000, but was fired/dismissed about a year later for theft and other issues involving pornography and displaying suggestive sexual behavior towards other employees and museum volunteers. Specifically Nightengale was fired for overt suggestive sexual actions toward female employees and towards KORTLANDER's special needs son, Clinton. Further he was frequently observed intoxicated in the morning at the Museum. In addition, Nightengale evidenced violent acts directed toward KORTLANDER.
- 38) An intervention was attempted before his dismissal when KORTLANDER and several employees confronted Nightengale about his actions and his frequent intoxication. KORTLANDER offered to pay for his alcohol detox treatment, but the offer was refused.

39) Nightengale is not an American Indian, but he did acquire a female friend named Janice Smith. Smith is an adopted, enrolled member of the Snoqualmie Tribe in Washington State, although her status as a Native American Indian is not recognized for any benefit status by the Bureau of Indian Affairs, and she has no tribal voting rights. Nightengale is the recipient of a pension he is entitled to as the widower of a member of the U.S. armed forces. If he married, he would forfeit that pension. Nightengale and Smith have not married for that reason. For many years they have continued to refer to each other as 'my fiancé'.

40) When the SBA foreclosed its loan against Jason Pitsch, Janice Smith purchased the Fort near Garryowen. She (and thus Nightengale) took possession of the "Fort" but didn't operate it as a business as far as can be determined. At various times they allowed travelers to part RV's on their property and also on adjacent property they didn't own. However, this activity brought them into a conflict with the CBPC which owned adjacent property. The CBPC brought a quiet title action in Big Horn District Court to quiet title to the disputed land. That action is set for trial later this year (2010).

41) When in 2002, KORTLANDER sought election to be Big Horn County Sheriff, Nightengale became an antagonist of KORTLANDER by making various scandalous and false accusations about KORTLANDER. He was aided in this effort by Janice Smith.

KORTLANDER's efforts to counter the libelous and slanderous statements by Nightengale, Smith and others who then repeated them on the 'moccasin telegraph' that routinely spreads negative rumors around the Crow Reservation and Big Horn County, were unsuccessful.

42) KORTLANDER ran for Big Horn County Sheriff in 2002, after serving as a fully activated reserve deputy in 1998 and/or 1999. Incumbent Sheriff Larsen Medicine Horse fired KORTLANDER in May 2000, citing allegations of workman's comp fraud. The Sheriff restarted his investigation of KORTLANDER in 2002 when KORTLANDER filed for Sheriff. The Montana Attorney General ended the investigation of KORTLANDER in July 2002 with no evidence of wrongdoing; it was purely a political move by Medicine Horse during the campaign. Nightengale circled on the periphery of the investigation and election but had no active part other than to verbally harass KORTLANDER, making assertions of a breach of moral turpitude.

43) The fact is that Larson Medicine Horse, the incumbent Sheriff, had fabricated evidence against KORTLANDER, hoping that the resulting ongoing investigation would taint KORTLANDER, fatally injuring his bid to unseat Medicine Horse. That, in fact, was the result. Not surprisingly, the Montana Attorney General declined to prosecute Medicine Horse for fabrication of evidence in a criminal investigation.

44) In another matter, while working as a reserve sheriff deputy, KORTLANDER made a traffic stop, resulting in a DUI arrest upon a Native American Crow Indian. He observed during the stop that the Indian was transporting freshly killed eagle parts hanging from the rear view mirror. KORTLANDER seized the eagle parts as evidence and reported the



feathers to a local agent of the U.S. Fish and Wildlife Service, Doug Grossman.

KORTLANDER was verbally reprimanded by Sheriff Medicine Horse, for seizing the eagle feathers and parts, on the belief that these were legal for an Indian to possess. It should be pointed out that eagles are a valued part of Indian ceremonial culture and that Medicine Horse was/is a medicine man in the Crow Tribe hierarchy. It should also be noted that possession of eagle parts or feathers (post Eagle Protection Act), requires a federal permit even if possessed by a Native American.

45) Nightengale did go to a local paper owned by Al Sargent with his allegations and this precipitated the start of a court action seeking a restraining order against Nightengale, resulting in him being declared a stalker of KORTLANDER. Sargent published Nightengale's allegations but later printed a retraction when the report was demonstrated to be false and libelous.

46) Five (5) days after the election Nightengale physically assaulted KORTLANDER in the Garryowen Subway shop and was arrested by Deputy Sheriff Deb Winburn. Nightengale pled guilty to a misdemeanor. Thereafter Chris obtained the restraining order(s). Nightengale is effectively judgment proof, making the pursuit of monetary damages ineffective in modifying Nightengale's malicious libelous and slanderous statement and actions.

47) KORTLANDER lost the 2002 election but brought suit against Nightengale eventually obtaining a restraining order naming Nightengale as a stalker. The order was made permanent in 2007 as Nightengale continued his verbal disparagement to anyone

who would listen. This included the willing ears of various federal agents including federal agents of the BLM.

48) Unfortunately, Nightengale was not gainfully employed, had no assets (including royalties from the book he authored) and no seizable assets to enforce any potential judgment KORTLANDER could be awarded for libel and slander. Simply, Nightengale was and remains judgment proof.

49) His (and thus Janice Smith's) only perceived purpose in life is and seems to remain stalking KORTLANDER and abusing the court process in an attempt to deny KORTLANDER and the CBPC the peaceful enjoyment of their respective property rights, while attempting to use the intimidation of abusive use judicial process, plus ongoing libel and slander to extract a possible cash bonanza from others.

50) In this effort, Brian Cornell (and the federal agencies involved and charged with law enforcement on federal lands and the Crow Reservation) has been complicit.

## **BART FITZGERALD**

51) The highlight of Bart Fitzgerald's career had come in 1996 in Utah when he aided in the capture of infamous artifact thief Earl Shumway. The feat earned Fitzgerald a three (3) page feature article in the June 10, 1996 edition of People Magazine titled Grave Responsibility. It also resulted in a 6 ½ year prison sentence for Shumway, by far the longest, if not the first prison sentence ever meted out for stealing artifacts from (Anasazi Indian) burial sites. Over the next several years he labored to justify the promotion and placement in Montana.

52) Fitzgerald thus came to Montana with significant notoriety and by the end of 1996 he was the BLM Special Agent in Charge in Montana. As such he was Lee Lingard's supervisor and probably took the action of disbanding the BLM undercover operation that Lingard had been a part of. Fitzgerald would have acted to remove Lingard from the BLM, resulting in Lingard's transfer to HUD. These changes in the BLM undercover operations and in Lingard's job were the direct result of Kortlander's complaint to the OIG.

53) In Montana, Fitzgerald and his fellow agents were energized to pursue vandals and grave robbers with more confidence and expected to produce results.

54) In February 2005, the BLM and Fitzgerald were involved in the investigation and arrest of Jeffrey Stevens who had a 35 year history of robbing small museums. In press reports Fitzgerald called Stevens a 'serial thief' who had targeted small museums because security was not as sophisticated as at larger museums. The BLM had gotten involved because that agency was charged with protecting American Indian artifacts. As the investigation was closing in on him, Stevens actually contacted an attorney to turn himself in and cooperated with authorities.

55) In March, 2005, the BLM and Fitzgerald and two dozen federal agents reportedly looking for American Indian artifacts, descended on Garryowen, Montana with weapons drawn and a search warrant. For most of the day, the agents dismantled KORTLANDER's life, residence and businesses. Using lies, intimidation and embarrassment, as well as the threat of force against KORTLANDER, his business tenants, employees and volunteers, the federal agents abused their discretion as federal agents and the Constitutional rights of KORTLANDER and others.

### **BRIAN CORNELL**

56) Brian Cornell. BLM Special Agent, was the lead agent in the investigation and the interrogation of KORTLANDER. However, this was not the first investigation that Cornell had been involved with and it is not the first time that Cornell had a problem with the content of a search warrant.

57) In 2003, Cornell was involved in the issuance and execution of a search warrant on Mr. Dan Boechler. The problems with the warrant were challenged by his attorney in a Motion to Re-open Evidentiary Hearing, and a Suppression Hearing. Boechler's attorney expressed serious concerns with Cornell's testimony in that case and a motion for judicial review of the matter was made moot because of a Plea Agreement to misdemeanors instead of the felonies that had been charged in the Indictment.

58) In a May 26, 2005 follow up letter to the Inspector General for Program Integrity, Department of the Interior in Washington, D.C., Boechler's attorney wrote; *"Based upon my knowledge of the circumstances, I do not believe that Agent Cornell made and inadvertent or good faith mistaken statement during the course of his testimony.*

*Although there was a large team of law-enforcement personnel who assisted Agent Cornell in the execution of the warrant, none could, or would, verify {Cornell's statement that necessary documents} accompanied the Warrant on the search; and certainly none were able to testify that it was served with the Warrant. **It is my belief that Agent Cornell's testimony was materially false.**"*

## **THE INVESTIGATION OF KORTLANDER AND GARRYOWEN**

59) The investigation of KORTLANDER now in question is acknowledged to have begun in 2003 with complaints from a couple of different un-named sources. The complaints apparently didn't come from any of the customers that did business with any of KORTLANDER's various endeavors at Garryowen. It is believed that complaints came from any one or two of the following individuals:

60) Pitsch and Nightengale who have been discussed above, and are likely sources for BLM agents. Other probable sources of complaints would likely have been Big Horn County Sheriff Larson Medicine Horse, and Briefs publisher Al Sargent of Hardin.

61) The BLM stated in its application for the search warrant that items sold by KORTLANDER on EBay and elsewhere consisted of small artifacts such as small arms ammunition casings, buttons, bullets and such. It should be noted that NO items of Indian origin were reported by the BLM as being sold on EBay nor anywhere.

- 62) The BLM early on decided to focus on KORTLANDER and his business selling artifacts on EBay. In 2003, the BLM working ‘undercover’ purchased a button from Historical Rarities through the EBay auction process.
- 63) The complaints as reported in the application for the 2005 Search Warrant, alleged that “*KORTLANDER was selling artifacts purported to have been recovered from the battlefield where the infamous Battle of the Little Big Horn took place.*” The BLM implies that possessing or selling items from the battlefield is illegal and worthy of investigation. However, the fact is that it NOT illegal in any way to possess, buy, sell or trade artifacts recovered from privately owned land within the perimeter of the battlefield. See ARPA
- 64) It must be first understood that the Little Bighorn Battlefield is an area more than five (5) mile long and one (1) mile wide and only a small portion of the battlefield is part of the Big Horn Battlefield National Monument. The majority of the land, including the place where the battle began (Garryowen) is fee land in private ownership.
- 65) In 1994, when BLM agent Lee Lingard wrote the letter stating the status of artifacts found and removed from private fee land, he was correctly telling the SBA and the federally insured bank(s) actually issuing the relevant loan(s) that artifacts found on private property (even if within the battlefield) are legal to own, buy, sell and remove from the battlefield, or even to use as collateral for federally insured (SBA) loans.

66) Thus, it was for that purpose that KORTLANDER used copies of that same letter to advise his clients that they were not engaging in an illegal or nefarious transaction.

67) The BLM (through agent Brian Cornell) through the Search Warrant application advised the Federal District Court in Billings, MT that Cornell and the BLM believed the reports (the complaints) they had received and determined that further investigation was warranted. It should be noted however, that there was no violation of any federal law alleged in the reports. There was only an allegation that KORTLANDER was selling artifacts – a completely legal activity. This supports the conclusion that BLM law enforcement in Montana had a proclivity to go after KORTLANDER without even an allegation of criminal activity.

68) In the application for Search Warrant, the BLM also told the same court that KORTLANDER advertised that he buys, sells and appraises artifacts. Again this is a completely legal claim, concerning legal activities. They even reported that KORTLANDER “accepted walk-in sellers of artifacts”, that report attributed to a former business associate. Mostly like this former business associate would be either Robert Nightengale, or Jason Pitsch.

69) What Cornell and the BLM was doing in the Search Warrant application was taking two areas of federal law, ARPA and NAGPRA, and ‘spinning’ completely legal

activities, into implied criminal activity. The effect is to twist the facts in such a way as to gain the approval of a federal magistrate by a misleading recitation of facts and the law. This was a breach of policy and procedure and in violation of the Constitutional protections of the Bill of Rights, reflective of federal agents interested only in personal motivations and not the Constitutional interest of justice.

70) The attitudes and actions of the federal agents in obtaining the 2005 Search Warrant were repeated when a second Search Warrant was obtained in 2008. The second application and Search Warrant will be discussed more fully below.

71) And the BLM reported that the U.S. Fish and Wildlife Service had previously conducted an undercover investigation (believed to have been in 2002). There was never any allegation that ANY unlawful activity of ANY sort had taken place. But the USF&WS undercover agents had represented themselves to be collectors of artifacts. and KORTLANDER asked if the agents had anything to sell, during their visit to Garryowen.

72) It needs to be understood that in the world of collectors and museums that items are constantly being bought, sold and traded. This is the very activity in which Kortlander, Historical Rarities and the Custer Battlefield Museum engage. This is also the process that acquired items for display at the Custer Battlefield Museum as well as all other



museums, including federal museums. However, there was no report of ANY unlawful activity from that USF&WS undercover operation, because KORTLANDER operated in a totally lawful manner.

73) Even the only scurrilous activity attributed to KORTLANDER from the USF&WS undercover investigation was that KORTLANDER had asked the “collectors” if they had anything they wanted to sell. And this is, of course, a completely lawful activity and question.

74) Evidently there had been another ‘complaint’ made to USF&WS that KORTLANDER was a bad guy, but the reality was that nothing illegal was happening at Garryowen. In recounting this episode to the federal court, Cornell again was spinning a completely lawful activity into something illegal that demanded investigation.

75) So on this allegedly dark track record, the BLM determined that the allegations outlined above had merit and “required further investigation.” So BLM agent Brian Cornell set about to conduct a ‘entrapment’ sting, focusing on KORTLANDER. He acquired some uniform buttons and a uniform suspender buckle, which were surreptitiously marked for identification. These were identical to items already owned by Kortlander and to a button the BLM purchased from Historical Rarities in 2003.

- 76) Next, the BLM dispatched an undercover agent(s) to entrap KORTLANDER. Of those attempting to sell to KORTLANDER was a man identifying himself as Rudy Zapada. Apparently he couldn't find KORTLANDER until his second visit to Garryowen in mid-December 2004. He had concocted a hard luck story of being stranded in Montana and needing to find some money to get home. He needed gas money. Although KORTLANDER had initially avoided meeting with the undercover agent, he did so when advised that the undercover agent was a stranded traveler.
- 77) From several items offered, only three buttons and a suspender button were purchased from the agent. The \$50 price was enough to get the stranded traveler down the road. KORTLANDER was trying to be a good guy, but instead the entrapment was underway.
- 78) Later that month, BLM agents started to buy items from KORTLANDER. They bought three items according to Court statements. The first one was purchased later the same month. But there was no violation of law.
- 79) Over the next several weeks that followed, Historical Rarities received several telephone calls repeatedly soliciting that Historical Rarities list uniform civil war/Indian war buttons for sale on EBay. These calls are now believed to have come from Cornell. Because of other more pressing issues of business it was several weeks before the request could be acknowledged and another button listed on the EBay auction site. During this

time Historical Rarities was conducting literally 1000's of auctions each year and this portion of the business was largely handled by administrative assistants and interns.

80) In February or March, 2005, KORTLANDER was contacted by a man he now understands to be Agent Brian Cornell. He identified himself as a father with an overseas soldier son and a buyer on EBay. A few months after KORTLANDER had purchased the buttons and suspender buckle in the parking lot of Garryowen, his office personnel had been contacted by telephone numerous times about buying a military button through EBay. KORTLANDER didn't pay any attention to the multiple solicitations, but finally acquiesced when the caller told KORTLANDER's assistant that he wanted the button(s) for his son who was serving in Iraq.

81) In February, a second button was purchased by BLM, and this time a 'marked' button was delivered to an undercover buyer. However, there was no accompanying paperwork that certified its point of origination – its provenance.

82) More than a month later working undercover, agent Brian Cornell, indicates that he contacted KORTLANDER by phone complaining about missing paperwork. He asserted that KORTLANDER then agreed to sell another, additional button. However, that transaction for a third button was never completed. No other paperwork was ever

provided by KORTLANDER and no other sale occurred, despite the assertion of Cornell that a third transaction had taken place.

83) The BLM obtained a Search Warrant asserting that KORTLANDER was *'any person to knowingly defraud, or devise a scheme to defraud, using wire in interstate commerce or through the mail'*. The problem is that in obtaining the Search Warrant, there was no crime committed, and the only truth is that the BLM and its agents including agent in charge Bart Fitzgerald and agent Brian Cornell created a scheme for the entrapment of KORTLANDER.

**THE RAID, May 31, 2005, raid by BLM, et al.**

84) Early on the morning of Thursday, March 31, 2005, KORTLANDER was in Hardin doing a live radio interview promoting tourism on the Crow Reservation with Rich Solberg, owner of the local radio station. At approximately 9:00 a.m. KORTLANDER received a call on his cell phone from Putt Thompson (lessee of the Garryowen Trading Post Store and Curator of the Custer Battlefield Museum). Mr. Thompson said, "Chris, you'd better get back here right away. There are federal agents with search warrants and guns and they are threatening to break down your doors." KORTLANDER asked Mr. Thompson who was in charge of the federal agents. Mr. Thompson put Federal BLM agent Brian Cornell on the phone.

85) Agent Cornell asked where KORTLANDER was and was told that KORTLANDER

was in Hardin doing a radio show. Cornell told KORTLANDER that if he did not want his doors busted down that KORTLANDER had better get back to Garryowen right away, or Cornell was going to forcibly enter on his own. KORTLANDER explained that he was only 30 minutes away and asked Cornell to please wait.

86) Mr. Thompson, Fred Oyebi and Lucinda Small (employees of the Garryowen Trading Post) were present at the Trading Post when the agents arrived. Mr. Oyebi and Ms. Small were asked for their identification and were detained at the front counter. They were asked if they had any weapons. Mr. Thompson was patted down.

87) The Agents detained the above three at the front desk for approximately 25 minutes. BLM agent Cornell asked Mr. Thompson where KORTLANDER was and Mr. Thompson told them he wasn't sure, saying he didn't think KORTLANDER was there because his truck was gone. Mr. Thompson said that agent Cornell asked if anyone had keys for any of the doors. Agent Cornell said if they did not produce the keys, he would instruct his men to break the doors down. Agent Cornell repeated this statement four times. Agent Cornell told Mr. Thompson, Fred Oyebi, and Lucinda Small that they were to stay at the front counter of the Garryowen Trading Post until he decided to release them.

88) KORTLANDER arrived at Garryowen at approximately 9:30 a.m. and saw that Garryowen was surrounded by BLM law enforcement vehicles all around the perimeter of the property. KORTLANDER parked his truck in front of the Trading Post, and was immediately approached by an armed BLM federal agent who asked if he had any weapons. KORTLANDER replied “No” and then was patted down. The agent then told KORTLANDER that he needed to look in his truck. Without KORTLANDER signing consent to search, the agent then thoroughly searched KORTLANDER’s truck, finding nothing.

89) KORTLANDER then entered the Trading Post where he was met by Agent Cornell. He told KORTLANDER that they had a federal search warrant. Upon reviewing the search warrant KORTLANDER realized it was limited and not for the whole complex. The Federal warrant was to search only the store and the Custer Battlefield Museum for evidence, contraband etc. associated with violations of 18 US Code 1341 Mail Fraud and Fraud by Wire. (See U S District Court March 31, 2005 SEARCH WARRANT attached as Exhibit A).

90) Agent Cornell and Joe Waller (Office of Inspector General) brought KORTLANDER back to the Trading Post office in the rear of the store. KORTLANDER requested that agent Cornell brief him as to what this was about. He said something to the effect that he would tell KORTLANDER “when the time was right.”

91) As KORTLANDER entered the Trading Post Office he looked to his left (north) and saw that an agent was standing at the door to KORTLANDER's upstairs residence. This agent had the door open and KORTLANDER watched him and others go upstairs to KORTLANDER's residence. KORTLANDER saw that they had the door propped open so it would not automatically close and self lock. This door has an expensive push button combination and an automatic door closer installed. KORTLANDER was not aware of who opened the door accessing his residence at that time, but has since learned (through statements from other employees) that James Fowler (Custer Battlefield Museum volunteer docent) either let the agents in or gave the combination to the agents, who then gained access to KORTLANDER's private upstairs residence AND the basement where the vault is located. Please note that the Agents accessed KORTLANDER's residence and basement (neither of which was on the search warrant) PRIOR to his arrival at Garryowen and BEFORE he signed the consent to search.

92) Once the Federal Agents figured out that they did not have the right warrant for the areas they wanted to search, Cornell and Waller talked to KORTLANDER and explained that Brian Cornell was with the Bureau of Land Management and the lead law enforcement officer in charge of the search, and that Joe Waller was there just as another federal agent for back-up assistance.

93) After they had already entered KORTLANDER's residence the basement area of the main building, Cornell told KORTLANDER that they needed consent from him to clear the whole property for security reasons. Cornell explained that KORTLANDER could cooperate with them and make their job easier, or he could refuse and they would forcibly break my doors down. Cornell said that this consent was to do a "security walk through" to make sure that no one else was on the property. KORTLANDER reluctantly complied with the consent as he did not want to anger the federal officers, nor did he want his doors or property destroyed. It is important to note that they had *already* accessed all private areas behind locked doors; they were just covering their actions after the fact.

94) KORTLANDER was threatened and intimidated into cooperation by Cornell and the federal agents.

95) Three BLM photography teams were making video tapes of the search process and the activities of the agents should be available through a review of those tapes through the BLM.

96) About 20 minutes after KORTLANDER signed the "security walk through consent form," Cornell and Waller came back to him and explained that they had made a mistake and did not have the right areas on the warrant that they felt they needed to search.



97) Thus, KORTLANDER was coerced and intimidated to agree to a General Search.

Agent Cornell told KORTLANDER that the federal judge would be angry and that jail time would be increased unless Kortlander agreed to a General Search. Cornell stated that the delay would incur extra expense to the federal government and extend the search by at least an additional day. Cornell further threatened to bust down doors if KORTLANDER did not cooperate, allowing them the unlimited access they said they needed.

98) Hundreds of items and priceless artifacts that belonged to KORTLANDER

personally, Historical Rarities, Inc. and to the Custer Battlefield Museum

(KORTLANDER is the founding director of the Museum – a 501(c) 3 nonprofit corporation.) were seized and catalogued as evidence.

99) All this time KORTLANDER was placed in the Garryowen Trading Post office and

had an armed federal agent assigned to him and was told that KORTLANDER needed to stay in the office. KORTLANDER asked the armed federal agent if he could go to the bathroom. The agent checked with Cornell and Cornell said “Yes.” A federal agent followed KORTLANDER to the restroom and stood outside the door. KORTLANDER then returned to the Trading Post office still accompanied by that Federal agent.

100) Waller and Cornell explained to KORTLANDER that they thought he was fraudulently selling artifacts that were reported to be authentic to the Custer Battlefield, but were not. KORTLANDER told them that they were mistaken. Cornell and Waller said that KORTLANDER had purchased three buttons and a suspender buckle from one of their undercover agents the third week of December 2004, and that they were not identified as being from the Custer Battlefield when sold to KORTLANDER.

101) KORTLANDER did recall purchasing the items the agents had mentioned from a stranded Hispanic man driving a truck with an Arizona license plate. KORTLANDER also remembered making a photocopy of his driver's license. KORTLANDER did not recall the story he was given about the artifacts. Over the course of the ensuing three to four months, the artifacts were apparently misplaced and presumably accidentally commingled with buttons known to be Custer battlefield artifacts. The non-Custer buttons that KORTLANDER purchased from the undercover agent are essentially identical to those issued to the 7th Cavalry and other Indian war military personnel during the Indian wars era. Many of the same men who fought in the Civil War also fought in the Indian Wars and had the identical uniform accoutrements and decorations on their Union issued uniforms.

102) When KORTLANDER purchased small, loose items such as the buttons/suspender buckle, he stored them in a fishing box with numerous separated compartments. He

thought that he had put the items purchase from the undercover agent in the proper section of the tackle box (isolated from real 7th Calvary battlefield artifacts).

103) A few months after purchasing the items from the undercover agent, KORTLANDER's museum interns and employees listed some Custer Battlefield artifacts on EBay together with the items that KORTLANDER purchased from the agent in December 2004, and the agent's items were mistakenly listed as real Custer Battlefield artifacts. KORTLANDER had not intended to sell any of the buttons purchased from the undercover agent. The items were ONLY purchased to help a stranded traveler, who asserted that he was out of gas and needed money to get on to his destination.

104) The true Custer Battlefield artifacts were accompanied by a Bureau of Land Management letter, written by former federal BLM agent Lee Lingard to Jason Pitsch in 1994. When Mr. Pitsch sold KORTLANDER his items, he gave KORTLANDER the Lee Lingard letter to help document that those artifacts were legally obtained. In the EBay sale, the item sold accidentally had the Lingard letter included.

105) In all of the EBay auctions, including the microdotted items purchased from the undercover agent, the selection of the items and listing of same on EBay and then shipping those items to EBay purchasers was done by others and KORTLANDER was not personally involved in those activities. It was always KORTLANDER's intent and

policy only to sell authentic items.

106) The listing and fulfillment of EBay sales was handled by staff – paid or volunteer.

KORTLANDER is uncertain as to whether the button had been comingled accidentally with other **identical** buttons of known provenance or if there had simply been a mistake in grabbing the wrong button from the wrong compartment of the ‘fishing’ box for shipment.

107) Agent Cornell became quite aggressive during the questioning, saying that he **KNEW**

KORTLANDER was lying and knowingly had done this on purpose. He then accused KORTLANDER of getting rich off this “scheme,” and said something about KORTLANDER lining his pockets with cash. KORTLANDER told agent Cornell not to put words in his mouth and that it was not an intentional act. KORTLANDER then explained that his collectibles business, Historical Rarities, had auctioned more than 7,000 items on EBay over the past few years, and that overseeing so many concurrent auctions is a complex and complicated process. On a few rare occasions in the past, Historical Rarities has mistakenly sent the wrong item to the winning bidder -- this is not unheard of in this business, and it is certainly not intentional, and is corrected when realized.

- 108) Mistakes can happen, for example as currently reported at Arlington National Cemetery which has apparently lost, misplaced and mismarked the accurate records of some 6,600 graves and veterans.
- 109) Agent Cornell then asked KORTLANDER about the corporate structure of Garryowen. KORTLANDER told him that the Custer Battlefield Museum was a non-profit 501(c)3 corporation with KORTLANDER as President. Cornell wanted to know the structure of KORTLANDER's other corporations. Joe Waller was taking notes. KORTLANDER told them the other corporations included Historical Rarities Inc. and that he was the only corporate officer. He identified Historical Land Preservation Inc. and that it did business as Garryowen Subway and Garryowen Conoco.
- 110) KORTLANDER further explained that *Historic Land Preservation* was the operating identity for the town of Garryowen. He explained how Historical Rarities supports the activities of the non-profit Museum, so that the Museum can exist financially. He said Historical Rarities loans the Museum money by selling artifacts, documents, books, etc., and has made many loans to the Custer Battlefield Museum's operating accounts. These loans are fully documented in the Quicken bookkeeping computer program.
- 111) Cornell then returned to his diatribe about KORTLANDER's supposed knowledge of and intention to attribute false documentation to historical artifacts for personal profit and

gain. KORTLANDER denied this again, stating that there had been a simple, honest mistake.

112) Agent Cornell told KORTLANDER that he was the one who had spoken with him on phone “so quit lying to me.” He said KORTLANDER had told him he was going to de-accession items from museum to sell to Cornell, which if said may be partially true and requires some background explanation. KORTLANDER, however, doesn’t have any recollection of this supposed phone conversation.

113) Historical Rarities owns collections of historical artifacts and ephemera and is a for-profit corporation. It has loaned the Custer Battlefield Museum different parts of its collection for display to the public. The Museum has many ongoing operating expenses such as electricity, heat, phone, employee payroll, insurance, and so on. The Museum pays rent when it can, but not consistently. Because Historical Rarities can sell things to make money, it loans money to the Museum so that it can operate 365 days a year.

114) From time to time, KORTLANDER will rotate historical items that have been loaned from Historical Rarities into the Museum. When these rotated items are posted on EBay, they are listed as having been exhibited in the Museum or de-accessioned from a collection. KORTLANDER didn’t feel (and still does not believe) that this is a

falsehood, because the items being sold HAVE been a part of the displays in the Museum. (the Custer Battlefield has never sold any of its permanent, owned artifacts.)

115) The Custer Battlefield Museum also borrows money from Little Horn Bank in Hardin to keep operating. From time to time, Historical Rarities will make a large sale and use those proceeds to pay off the Museum's loans. Money from artifact sales goes to Historical Rarities. The Museum owes Historical Rarities money because Historical Rarities lends the Museum operating capital (interest free) to keep things ongoing.

116) Part of the collection owned by Historical Rarities is on loan to The Custer Battlefield Museum and is housed under the same roof. When an item is sold item on EBay, the money is deposited into a Historical Rarities account, and some of those proceeds may go to pay the Museum's debt to Historical Rarities. In the last ten years, Historical Rarities has lent the Custer Battlefield Museum more than \$65,000.00. Historical Rarities rarely gets paid back by the Museum because the Museum never breaks even.

117) Cornell repeatedly asked KORTLANDER to sign a consent form to search the back house, KORTLANDER's office, and KORTLANDER's upstairs residence. KORTLANDER asked if he could call Sol Newhart, one of his attorneys in Billings. KORTLANDER asked Newhart if he should sign the consent to search the entire facility. Newhart asked if KORTLANDER had anything illegal, and KORTLANDER explained

to him that he had a small quantity of Medical Marijuana and nothing else, so Newhart said “yes” to giving consent.

118) KORTLANDER wanted to cooperate with the federal agents, extending an olive branch of cooperation and because he believed the federal search to be a mistake as he had no criminal intent nor had he done anything unlawful. KORTLANDER believed that his cooperation would result in a rapid resolution of the matter. It should be pointed out that at NO time was KORTLANDER ever given his Miranda warnings.

119) Agent Cornell asked KORTLANDER if there was any contraband in the building. KORTLANDER told him that there was some medical marijuana and that he did not consider it contraband because it was used to relieve pain from a serious spinal disease. KORTLANDER has had four spinal surgeries, and can anticipate more, as his condition worsens. (See that letter to the Department of Public Health and Services Licensing Bureau dated March 4, 2005 requesting assistance to obtain a Medical Marijuana Permit. Exhibit B) At the time of the raid Montana statute provided for the use of Medical Marijuana and a Ninth U.S. Circuit Court of Appeals decision had ruled that state law allowing the use of Medical Marijuana would be recognized by the United States. So at the time of the raid, KORTLANDER was in compliance with State law and Federal court opinion regarding his possession of Medical Marijuana.

120) Cornell asked KORTLANDER where the marijuana was located and was told that it was in secure part of his residence in a zippered pouch. Cornell asked if there was anything else and was told “no”. He asked if there were any booby traps, or anything else that might hurt or injure his officers and again was told ‘no’.



121) The agents went through KORTLANDER's medicine chest, laying out all the prescription medications on the bed and photographing them. They asked why KORTLANDER had so many doctors and so many prescriptions (accusing KORTLANDER of "prescription shopping"). KORTLANDER explained to them that he has a severe degenerative spinal disease. He further told them that he doesn't like taking pills, but when the disease progresses, it paralyzes him and is extremely painful. When this occurs, KORTLANDER ends up using polio crutches until corrective spinal surgery is done. He went on to explain that he has three or four *more* dead discs in his spine and WILL need more spinal surgeries in the future.

122) KORTLANDER explained that all the drugs had been obtained legally, and that he retained the prescribed drugs for the future medical problems that he will have to endure. At no time he said, has he ever abused any narcotic, nor has he gone prescription or doctor shopping. KORTLANDER does not have an addictive personality.

123) That morning, before the radio interview, KORTLANDER was on pain medication and it started to wear off by the time he was being interviewed by the federal agents affecting his concentration. His spinal cord had begun hurting again, and he asked to take a pain pill. The agents escorted KORTLANDER upstairs to his bathroom where he

took a pain pill. Please note that KORTLANDER was on strong pain medication during this whole ordeal.

124) Cornell got in KORTLANDER's face and threatened to use Rhonda (his administrative assistant) against him, since she was the one who helped him list the Internet auctions. Cornell said that "she is facing prison time" and if KORTLANDER cooperated he would see what he could do. KORTLANDER told agent Cornell that Rhonda simply inputs the information that she is given into the computer for the EBay auctions. He told Cornell that she had nothing to do with this, and that she has no idea about KORTLANDER's corporate finances or how KORTLANDER obtained items for the collections, whether they are acquired for the Museum or Historical Rarities. KORTLANDER explained to the agents that he didn't have the manpower or money to inventory all the collections and catalog them properly. KORTLANDER said that this needs to be done and he was working hard to raise funds in order to accomplish that task.

125) At that time, KORTLANDER was under contract with a fundraising and lobbying company in Washington D.C to develop a strategic plan for a new, \$50 million museum at Garryowen which would have involved the Crow Indian Nation. (See strategic plan – Exhibit C) However, in subsequent weeks the fundraising and lobbying company, upon learning of the federal raid on Garryowen, abandoned the project because of the negative publicity, and because they did not want to taint their name by representing someone who was under federal investigation. This cost KORTLANDER the \$15,000 non-refundable

money he had tendered to obtain their services.

126) The agents had questions about locked drawers in his office, which KORTLANDER opened for them. Whenever they wanted KORTLANDER to enter the office area, from outside the building they would yell “Mr. KORTLANDER is with me. Let us know when we can enter.” KORTLANDER assumed they were planting surveillance equipment in his office, as there were several occasions that he had to wait up to ten minutes to be allowed entry.

127) KORTLANDER asked agent Cornell what would happen to the medical marijuana if he signed the consent. Cornell told KORTLANDER that his boss, Bart Fitzgerald, is not interested in that and probably would not even charge KORTLANDER with possession of such a small amount. (A 35 mm film canister, not half full) Many months later the United States Attorney threatened KORTLANDER with 30 years in prison for habitual addict while in possession of firearms. This was one of nine federal felonies that KORTLANDER was threatened with following the raid.

128) Cornell knew about the basement museum walk in vault but failed to put the basement of the main building on the search warrant. He then threatened KORTLANDER, saying if he did not open the vault he would call a locksmith with a torch and destroy the vault door to gain access. At that point KORTLANDER was in tears and he opened the vault.

129) Cornell and other federal agents escorted KORTLANDER into the vault where he had some unidentified bones that were found during the excavation and building of Garryowen, ten years earlier. In 1996, KORTLANDER voluntarily had sent these bones to Dr. Doug Scott, retired (then archeologist with the National Park Service) to make sure they were not human remains. This was done to satisfy NAGPRA requirements. Scott returned the bones after identifying them as animal bones. (See Scott letter, Exhibit e) The agents did not have a clue as to the identity of Doug Scott. *(Dr. Scott has authored two important books on archaeology and artifacts from the Custer Battlefield, and was employed by the DOI. KORTLANDER still has that letter, written on DOI stationary.)* While in the vault, federal Fish and Wildlife agent, Doug Grossman, waved the bones three inches in front of KORTLANDER's face and yelled "These are little girl bones. Where is she buried?" Grossman had a smirk on his face and kept repeating that statement and question. The video camera team was out of the vault when Grossman's outburst occurred, but Agent Cornell was present.

130) KORTLANDER tried to explain the letter he had from Dr. Scott, but his explanation was dismissed without consideration.

131) Doug Grossman asked KORTLANDER about the medicine bundles in the vault. KORTLANDER explained that many were left at the museum by individuals, some anonymously. KORTLANDER explained that when Native Americans convert to Christianity they are instructed to get shed their medicine bundles because they do not

need such physical items to have direct contact with God. The Crow know that KORTLANDER has a secure facility to keep their ancestors' artifacts intact and preserved for future generations to study and learn from.

132) Grossman asked KORTLANDER where the war bonnet in the museum came from.

KORTLANDER explained that it came from the Spear family, and had belonged to Chief Little Wolf. The Spears obtained it directly from the Little Wolf family in the 1930s. He further explained that, as Director of the Custer Battlefield Museum, he had completed the proper IRS documentation (IRS Form # 8283) for the bonnet, noting that the Museum was the recipient of the donated gift. Grossman said that this was a felony, because the recipient received a benefit for that donation. This is not true. (See *Sammons v. C.I.R.*, 838 F.2d 330 (9th Cir. 1988)) KORTLANDER said that the receipt of donated feathers is common practice among Native American and Western museums in the United States, and that there is plenty of Federal case law to back this up. Grossman said "I don't think so. You're not an attorney. The good news is that I'm not going to smash all your cases in the museum and take your questioned items. Do not move anything outside of this museum; it is part of a crime scene."

133) Grossman then asked about a footlocker which had articles of Laban Little Wolf's inside. KORTLANDER explained that this specific collection had been exhibited for three years at the Gene Autry Western Heritage Museum in Los Angeles, and had also been exhibited at the Custer Battlefield Museum.

134) In KORTLANDER's bedroom, agents found two oversized firecrackers (M-500's); one seven inches long, the other 10 inches long. When asked where they came from, KORTLANDER told the agents that every 4<sup>th</sup> of July, Indians on the reservation build these fireworks and that he had received them as a birthday gift. One had the words 'happy birthday Kortlander' written on it. KORTLANDER further stated that he had used them in the past to blow up a beaver dam on his property. KORTLANDER made sure that Cornell did see the dam before the search was completed.

135) The agents asked about BIA law enforcement manuals in the office. KORTLANDER produced a letter signed by a former federal BIA chief of police, authorizing him to help start a BIA/Tribal reserve police division. Due to a change in the BIA police chief, this reserve police department never materialized.

136) The agents asked KORTLANDER about some letters from Don Dahlside, a loan officer with the SBA, which KORTLANDER received when he purchased some of Jason Pitsch's Battlefield artifact collection. The letter stated that KORTLANDER had purchased shell casings from the SBA public auction of Pitsch's repossessed battlefield artifacts, which had been part of the original Pitsch collection.

137) At the time of the raid in March 2005, BLM Agent Brian Cornell and/or members of his investigative team disparaged my reputation in the community by telling then Big Horn County Sheriff Larsen Medicine Horse that I was a grave robber.

138) On the day of the raid, the BLM contacted Big Horn County Sheriff Larson Medicine Horse and advised him of the subsequent raid which was about to occur. BLM asked Sheriff Medicine Horse for a deputy to be part of the raid team. Big Horn County Sheriff Larsen Medicine Horse, acting under the color of authority of the federal government, immediately contacted the press, to alert them of the raid and to advise that they should send someone down to Garryowen to cover the story.

139) USA Carl Rogstad who assisted in obtaining the Search Warrants and the prosecution of this matter was also the USA in the case of *Berger v. Hanlon* (526 U.S. 808 (1999)). In that case the BLM and Rogstad were chastised in federal court for informing media of a federal raid. The Supreme Court there held that "police violate the Fourth Amendment rights of homeowners when they allow members of the media to accompany them during the execution of a warrant in their home."

## **AFTER THE RAID**

140) In the months and years that followed federal agents contacted everyone who had ever done business with KORTLANDER. In the interviews, customers were told that KORTLANDER had engaged in criminal activity. Further past customers were intimidated to speak negatively about KORTLANDER. This had the immediate effect of destroying KORTLANDER's business and reputation,

141) Federal agents further spoke publicly and privately about the investigation, impugning the reputation of KORTLANDER, stating and implying that KORTLANDER was engaged in various criminal activities. This all further damaged the business and reputation of KORTLANDER.

142) One of the first disasters of the post raid experience was that a line of credit at a local bank (Little Horn State Bank) was 'called' following the publicity of the raid. The calling of the line of credit nearly financially destroyed KORTLANDER. He was forced to scramble and utilize non-commercial friendships to obtain the operating capital he needed. The ultimate affect was to unnecessarily strain friendship while jeopardizing his business credit worthiness.

#### HERBERT HOOVER PRESIDENTIAL LIBRARY

143) Notable, was a request from the HERBERT HOOVER PRESIDENTIAL LIBRARY that contacted KORTLANDER and the Custer Battlefield Museum and in 2007 a museum to museum loan was requested and arranged. For six months, beginning in



March 2007, some 10 items were loaned by KORTLANDER and the Custer Battlefield Museum to the Herbert Hoover Presidential Library, including '*John Sitting Bull's eagle feather war bonnet*'.

144) It needs to be pointed out that the HHPL is administered by the National Archive and Records Administration. The federally administered HHPL arranged to have the borrowed items shipped and INSURED, with a declared value of \$40,000 on the war bonnet. Of course, it is against federal law for a value to be placed upon eagle feathered items, but in this case it was an agency of the federal government that was doing the valuation and insuring.

## **HERITAGE AUCTIONS**

145) The cost of defending against the much threatened federal prosecution, alleging nine serious felonies (possibly totaling punishment of over 130 years in federal prison), plus many misdemeanors was significant and the attendant publicity not only destroyed KORTLANDER's business, but also cost him his operating lines of credit while costing him thousands of dollars in attorney's fees. Plus he was advised to secure significant amounts of money for a defense fund, in anticipation of a federal indictment. Looking for additional financing he determined to sell the Township of Garryowen, including much of HIS personal property. In 2006 he contacted a nationally known auction company for that purpose.

146) A representative of the company – Heritage Auctions -- traveled to Garryowen to inspect the premises and review the items of KORTLANDER's personal property that would be sold. Arrangements for the auction were finalized but although much of KORTLANDER's personal property was auctioned for sale, an auction for the premises and more personal items never occurred.

147) In 2008, KORTLANDER filed a federal lawsuit against the Texas company – Heritage Auctions -- for breach of contract, fraudulent business practices (RICO), and conversion. During the discovery stage of that lawsuit, federal agents contacted and interacted with Heritage Auctions. In communications with Heritage Auctions, federal agents made untrue, fraudulent statements concerning KORTLANDER and the assets he was attempting to sell.

148) BLM Agent Brian Cornell traveled to Dallas, Texas between November 2008 and August 2009 to continue Cornell's pursuit of KORTLANDER. This was also while Heritage Auctions was engaged in the civil action with KORTLANDER. While Agent Cornell was in Dallas, he told Heritage Auctions CEO Steve Ivey and his employees and attorneys that:

- A. KORTLANDER was illegally selling items donated to the Custer Battlefield Museum through their auction, for KORTLANDER's personal benefit; and that
- B. KORTLANDER was consigning a rare book for sale by Heritage Auctions which was stolen property. The book, **Machiavelli Discourses**, 1<sup>st</sup> English edition, printed 1636, had been in KORTLANDER's collection

since he bought in 1988 from a Los Angeles County Marshal and long time school friend; and that

C. KORTLANDER was trying to sell eagle feathers and other feathers from protected species that were illegal to sell. (This was a ludicrous assertion that was repeated in Federal Court to obtain a 2<sup>nd</sup> Search Warrant to seize items containing eagle feathers from the Custer Battlefield Museum in 2008.)

149) These statements were all false, but Heritage Auctions used the information to justify their failure to perform as they had contracted and represented.

150) As a direct result of the tortuous, libelous and slanderous statements and assertions of federal agents, Heritage counterclaimed against KORTLANDER, alleging millions of dollars of damages. The result was a serious degradation of KORTLANDER's case against Heritage, all to KORTLANDER's financial damage, and directly attributable to the willful misrepresentations, lies and malicious efforts to malign and convict him by federal agents.

151) Once again, Brian Cornell had unlawfully acted to damage KORTLANDER, in his reputation and financially in his business, by making false statements about him and his business.

### **JASON PITSCH AFTER THE RAID**

152) In 2009, Jason Pitch had been released from prison, but was still on probation when he started to reappear around Garryowen. In a published reference to a native grave site

on property formerly owned by Pitsch's father, Pitsch had documented his invasion of the Limber Bones burial site in a magazine article with photographs in May 2009. The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) made the very activities that Pitsch reported in the article (published in May 2009, in Greasy Grass, by Custer Battlefield Historical & Museum Association) illegal and felonies punishable by fine and imprisonment of up to 5 years.

153) KORTLANDER reported this incident was referred to Pitsch's federal probation officer, Carlos Jones. He in turn brought the matter to the attention of Brian Cornell. Cornell dismissed the documented evidence of the crime on lands within the jurisdiction of the BLM and simply advised that nothing was going to be done. Of course, Cornell is the same BLM agent who determined that allegations (possibly from Pitsch) that KORTLANDER was selling buttons (and NOT artifacts from desecrated Indian burial sites) was sufficient reason to set up an investigation and entrapment of KORTLANDER.

154) Even at this time, a quick review of EBay and other marketing sales sites reveals that Pitsch is again selling battlefield artifacts including Indian funerary items.

## **HEALTH AND PHYSICAL SUFFERING**

155) KORTLANDER suffers from a chronic disease – Ehlers-Danlos Syndrome – which was diagnosed during the course of KORTLANDER's subjection to the federal investigation following the raid. **Ehlers-Danlos Syndrome (EDS)** is a group of inherited connective tissue disorders, caused by a defect in the synthesis of collagen (a protein in connective tissue). The collagen in connective tissue helps tissues to resist deformation (decreases its elasticity). In the skin, muscles, ligaments, blood vessels, and visceral

organs collagen plays a very significant role and with increased elasticity, secondary to abnormal collagen, pathology results.

156) Depending on the individual mutation, the severity of the syndrome can vary from mild to life-threatening. There is no cure and treatment is supportive, including close monitoring of the digestive, excretory and particularly the cardiovascular systems. Corrective surgery may help with some of the problems that may develop in certain types of EDS, although the condition means that extra caution is advised and special practices observed.

157) KORTLANDER has been diagnosed with the most severe type of the disease and therefore his life expectancy is severely compromised, and his condition has been aggravated by the stress and threat of federal criminal prosecution. Following the 2008 raid, KORTLANDER was afflicted with shingles and heart palpitations that required hospitalization. The result of his condition is that he is unable to independently obtain health insurance and must depend upon State insurance coverage for his health care.

158) As a result of KORTLANDER's federally aggravated physical conditions, he has been deemed to be uninsurable. He has not been able to renew the \$1.5 million life insurance policy that was been in place for the past decade. This will have significant financial implications to his mentally impaired adult son.

159) LEGAL EXPENSES

- 160) Following the federal raid on his business in 2005, KORTLANDER was forced to retain the services and assistance of several lawyers and law firms. Months and years after the raid, KORTLANDER was repeatedly threatened verbally and in writing with criminal indictments and prison.
- 161) KORTLANDER was presented with a *draft* federal indictment, being told that he MUST plead to federal felonies or face the certain full force and wrath of the United States. KORTLANDER, though his attorney was repeatedly advised that he would be indicted during the next term of the federal grand jury if he did not agree to plead guilty immediately. This happen several times over a span of years. KORTLANDER did not agree to plead guilty to felony charges.
- 162) At various times through the nearly five years following the raid, KORTLANDER was threatened with up to nine felonies, that was reduced in ensuing negotiations down to six felonies, down to three felonies, down to a single felony and finally multiple misdemeanors. The entire experience was designed by the federal agents and the United States attorney to terrorize KORTLANDER for nearly five years following the 2005 raid.

#### THE SECOND RAID:

- 163) In March 2005, the BLM raided KORTLANDER and his Garryowen businesses and residence. There were many items seized during the raid. Extensive, but lawfully possessed artifacts were seized. In addition, computers were seized, searched and the information therein utilized to thoroughly investigate the businesses, associations and

activities of Chris KORTLANDER. His employees were interviewed and threatened with criminal charges if they did not cooperate in the investigation. And customers across the country were contacted and interviewed, being advised that federal agents were conducting a criminal investigation into the person and business of KORTLANDER.

164) After three years of intimate examination, Brian Cornell determined that more intimidation was needed in order to coerce a 'confession' from KORTLANDER. So Cornell took statements that KORTLANDER was attempting to sell Garryowen and expanded those statements to mean that he was selling Eagle feathers and migratory bird feathers.

165) The statements attributed to various sources are clearly 'spinning' the facts as the attributed sources have denied ever making the statements attributed to them. But the truth was spun to Cornell's purpose of garnering a conviction at any cost.

166) In September, 2008 Cornell declared that KORTLANDER knowingly had offered for sale, barter, or offer to barter migratory bird feathers and parts – again amounting to felonies. Once again, Cornell had submitted an affidavit to the federal bench, spinning the facts to obtain a 2<sup>nd</sup> Search Warrant. Again a search warrant was issued and items were seized out of display cases in the Custer Battlefield Museum. This, of course, is a museum where the items were on display to the public and NOT FOR SALE.

167) The assertion that KORTLANDER was attempting to sell ANY feathers in a public sale, is so ludicrous that for KORTLANDER to be THAT stupid, he would likely be determined to be insane. KORTLANDER operated continually under the advise of legal

counsel and most certainly would never have done anything that would have been guaranteed to draw the immediate attention of circling federal investigators and prosecutors. If Cornell's sworn statement is to be believed, then there was never any need for any undercover operation. KORTLANDER allegedly was handing them their prosecution case on the proverbial platter.

168) It needs to be pointed out that ALL the items seized in 2008 were also present and on public display when the March 2005 raid took place.

169) The investigation and raids of Garryowen represent more than a conspiracy to damage KORTLANDER. The actions of BLM Special Agent Brian Cornell, supervised by BLM Special Agent in Charge Bart Fitzgerald amounted to an abuse of resources for personal and political purposes that had little, even nothing to do with their charged purpose of protecting Indian artifacts on federal lands.

170) KORTLANDER had drawn the attention of the BLM when he dealt with a corrupt BLM agent (Lingard) who was stalking his ex-wife. KORTLANDER joined law enforcement becoming a reserve deputy and even a deputy in the Big Horn County Sheriff's office. He reported crime in the person of BLM informant Jason Pitsch who was later convicted for child pornography, eventually serving time in federal prison.

171) Having befriended Nightengale, he eventually gained a personal stalker (with a lifetime restraining order) with an unstable alcoholic personality and a vindictive attitude. A political opponent, the Sheriff of Big Horn County initiated investigation(s) into KORTLANDER during the election cycle which KORTLANDER narrowly lost.



- 172) Bart Fitzgerald was in need of a success to reinvigorate his career that was on a high before arriving in Montana, and in need of another high visibility success after nearly a decade in Montana. He was willing to believe that KORTLANDER must be dirty because of the rumors and reports from questionable sources – and from sources with a personal or political axe to grind.
- 173) Brian Cornell was an aggressive agent, seeking to gain a conviction. The need for a conviction became greater as the costly ‘investigation’ progressed. The cost of the raid alone with dozens of federal agents from several states would require results. Thus the investigation pursuing ANY infraction that would result in a conviction was followed.
- 174) The pursuit of KORTLANDER produced wisps of smoke that only demonstrated that there was no fire, no crime. The only almost sin would have been the result of an entrapment staged to get an innocent man to commit a crime.
- 175) The BLM expended huge sums of money and resources in addition to destroying whatever they could of KORTLANDER and whatever business endeavors with which KORTLANDER has been associated from the time of the raid March 31, 2005 until August 9, 2009. And the harassment continued on for even longer.
- 176) The Sixth Amendment to the Constitution states in part: *In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, ... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him...*
- 177) For four and a half (4½) years the BLM and the federal government investigated, harangued, slandered, threatened and intimidated KORTLANDER with the full weight of

the federal government. Never with enough evidence to obtain even an indictment, the lies and misrepresentations of Cornell and others unlawfully and wrongfully denied KORTLANDER his most fundamental Constitutional rights. And then when KORTLANDER asked to know about the nature of the information and accusations against him, and to know and thus confront the witnesses against him, that information is again being withheld.

178) The assertions made by federal agents and by the United States Attorney prosecuting KORTLANDER show either a gross misunderstanding of the laws of the United States as they apply to Eagle feathers and the feathers of migratory birds, OR they reflect the malicious statements of agents intent on frightening KORTLANDER and others into giving testimony and confessions that serve only to enhance the careers of the federal employees involved. Justice was never the goal of this investigation.

179) Brian Cornell travelled all over the country and into Canada, talking to those who had ever done business with KORTLANDER. He talked to those that bought from KORTLANDER and he talked to those who sold to KORTLANDER. He also talked to everyone he could who had ever donated anything to the Custer Battlefield Museum.

180) Now comes the big surprise: THOSE CORNELL INTERVIEWED TOLD HIM THEY WOULD NOT HAVE BOUGHT FROM KORTLANDER IF THE ITEMS HAD NOT COME FROM THE BATTLEFIELD. DUH.... Who thinks that the statements relayed by Cornell may have been affected by the fact that a United States federal law enforcement officer, investigating KORTLANDER was asking the questions and interpreting the answers? (See Application for 2<sup>nd</sup> Search Warrant – 2008)

181) In 1997, the so-called Hyde Amendment was passed. The **Hyde Amendment** is a federal statute (USC Title 18,3006A) introduced as a rider to an appropriation bill by the United States Congress. The Justice Department was intensely opposed to the statute. The purpose of the statute is to allow federal courts to award attorneys' fees and court costs to criminal defendants "where the court finds that the position of the United States was 'vexatious, frivolous, or in bad faith' ". In such cases, the federal court may allow victims to recover some of the costs they incurred in fighting the government's investigation and prosecution by authorizing an award of attorneys' fees and court costs to a criminal defendant when the prosecution's evidence is so baseless as to be "frivolous".

182) The evidence gathered for the various Search Warrants was entirely the product of (a) entrapment by an ambitious 'sting' operation, (b) based upon the testimony and reports of known felons and stalkers with obvious prejudice towards KORTLANDER, or (c) contrived by Cornell and others so as to 'spin' facts into a scenario to reach a desired end, rather than serving justice or realizing the truth of the matters being examined.

183) While Brian Cornell has been reassigned to the Department of Reclamation, he continues to be a central clearance point of Freedom Of Information Act requests from KORTLANDER seeking information and records regarding the BLM investigation and prosecution. The delay of more than eight (8) months in the BLM's response(s) can be directly attributed to delays encouraged and enabled by the foot dragging of Cornell. It is reasonable to conclude that Cornell and others at the BLM are engaged in a cover-up, intended to deny KORTLANDER, his Constitutional and statutory remedies.

184) Despite repeated requests, and many communications from KORTLANDER for clarification of details of the his FOIA requests, as of this moment KORTLANDER has received NO documents in response to his requests for information about him from the BLM, FBI, USA, DOJ, DOI, USF&WS, HUD and numerous records centers.

These are the points that the Office of Inspector General should be focusing on when considering my request.

- 1- That there was a willingness to further careers by taking down a prominent member of the artifact collector and dealer community who also founded a non-profit museum to preserve the very historical artifacts that U.S. laws also seek to protect and preserve.
- 2- The decision to investigate and pursue the entrapment of KORTLANDER was made almost instantly, with dual investigations involving undercover operations in 2003 by the BLM and the USF&WS.
- 3- That the informants used including those making the original complaints each had a known personal motivation to lie about and disparage KORTLANDER.
- 4- That Search Warrants issued and served did not adequately and accurately identify the locations to be searched and describe items to be seized that were illegal.

- 5- KORTLANDER had damaged the operation of BLM law enforcement in Montana by reporting the unlawful activities of its agents and undercover informants, activities that resulted in changes in employment of a BLM Special Agent, the reassignment of several BLM special agents and sent an undercover informant to prison.
  
- 6- That Cornell lied to Heritage Auctions by stating that the Machiavelli book, published in 1636, had been stolen and that KORTLANDER was sell museum items to his person benefit.
  
- 7- That the Constitutional rights of Kortlander were violated knowingly, willingly and repeatedly in an ongoing effort to extort a confession and a conviction from Kortlander.

Respectfully submitted, and declared to be truthful to the best of my knowledge.

Dated ; August \_\_\_\_,2010

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Christopher S. Kortlander