

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION  
REVIEW COMMITTEE MEETING

TUESDAY, MARCH 3, 2015

VOLUME 1

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION  
REVIEW COMMITTEE MEETING**

10:00 a.m.

Tuesday, March 3, 2015

University of Massachusetts

Amherst

Murray D. Lincoln Campus Center

Amherst Room

Amherst, MA

**COMMITTEE MEMBERS PRESENT:**

Ms. LindaLee Kuuleilani Farm

Ms. Sonya Atalay

Mr. Alexander Barker

Mr. Armand Minthorn

Ms. Shannon Keller O'Loughlin

Mr. Dennis O'Rourke

Mr. Steve Titla

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1        CALL TO ORDER

2                LINDALEE FARM: Good morning, everyone. I'm so  
3        glad that everyone could make it this morning.  
4        It's an absolutely beautiful day with the snow and  
5        the sun. It looks like it's going to be a  
6        wonderful day all day today. I'd like to call this  
7        meeting to order, and Madam DFO, if you would  
8        officially call the meeting to order.

9                MELANIE O'BRIEN: Well, we have a little  
10       technical issue here. Yes, I'll go ahead and call  
11       this meeting to order. Good morning, everyone. My  
12       name is Melanie O'Brien, and I am the Designated  
13       Federal Official to the Native American Graves  
14       Protection and Repatriation Review Committee. This  
15       is a duly-constituted meeting of the Review  
16       Committee, having been noticed in the Federal  
17       Register on November 20, 2014, and held according  
18       to the provisions of the Federal Advisory Committee  
19       Act.

20               To start the meeting, I will go ahead and call  
21       the roll. Sonya Atalay?

22               SONYA ATALAY: Here.

23               MELANIE O'BRIEN: Alexander Barker?

24               ALEXANDER BARKER: Here.

25               MELANIE O'BRIEN: LindaLee Farm?

1 LINDALEE FARM: Here.

2 MELANIE O'BRIEN: Armand Minthorn?

3 ARMAND MINTHORN: Here.

4 MELANIE O'BRIEN: Shannon O'Loughlin?

5 SHANNON KELLER O'LOUGHLIN: Here.

6 MELANIE O'BRIEN: Dennis O'Rourke?

7 DENNIS O'ROURKE: Here.

8 MELANIE O'BRIEN: Steve Titla?

9 STEVE TITLA: Here.

10 MELANIE O'BRIEN: And with that, Madam Chair,  
11 you can continue with the meeting.

12 LINDALEE FARM: Good morning, and I would like  
13 to ask Armand to please give our opening invocation  
14 this morning. We welcome Armand back to the Review  
15 Committee. He has served in the past, and we are  
16 very fortunate to have him back with us and to have  
17 his wisdom and knowledge that he has from the past  
18 and will bring to the present and the future.  
19 Armand.

20 **OPENING INVOCATION**

21 ARMAND MINTHORN: (Native American language.)

22 Today, as this sun and land is our witness, we  
23 come together here. It's with prayer and song that  
24 we straighten up our hearts and our mind. Today,  
25 as we open here, it's with prayer and song that we

1 can be thankful for our life, thankful for our  
2 family and our friends. And it is true today, our  
3 Creator has a plan for you to be here. Our Creator  
4 has a plan for each one of us. We don't know what  
5 our Creator has planned for tomorrow or the next  
6 day or the next day. But when we can carry  
7 something in our heart and mind, we can be  
8 prepared.

9 And today, as we pray with one another, one  
10 heart, one mind, we ask for guidance in our daily  
11 life, and we too give thanks every day. So as this  
12 song is being sung here, I'm going to ask each one  
13 of you to pray how you've been taught so that we  
14 can be with one heart and one mind, so we can all  
15 make a sound with our heart so our Creator will  
16 know who we are, what we have in our mind and heart  
17 to put up from our heart, maybe a need or a  
18 direction or an answer that we are looking for.  
19 And the best way we can do that is with one  
20 another. So today a big thank you to each one of  
21 you that are here, a big thank you that we can make  
22 time to pray with one another. So now, I'll sing  
23 one song with a bell here.

24 (Native American song.)

25 Thank you.

1           LINDALEE FARM: Thank you very much, Armand,  
2           for opening us today, and I would like to thank the  
3           University of Massachusetts at Amherst for hosting  
4           us and for allowing us to be here. And a special  
5           thank you to Sonya, one of our very own, for making  
6           it all possible. Thank you very much. This is a  
7           wonderful setting. And I'm from Hawaii, but I  
8           enjoy the snow out on the ground. It's absolutely  
9           beautiful. So thank you.

10           Madam DFO.

11           MELANIE O'BRIEN: All right. And first on the  
12           agenda this morning is a welcome by the University  
13           of Massachusetts - Amherst. Provost Katherine  
14           Newman was not able to join us this morning, but we  
15           do have Elizabeth Chilton, who is the Associate  
16           Vice Chancellor for Research and Engagement, and  
17           also Alice Nash, who is the Director of the  
18           Certificate Program in Native American Indian  
19           Studies and an associate professor of history.

20           **WELCOME**

21           ELIZABETH CHILTON: I hope you don't mind if I  
22           turn. I just don't want to have my back to anyone.  
23           Good morning, everyone, and thank you for coming on  
24           behalf of the University of Massachusetts. It  
25           really is a great honor to be able to host this



1 meeting today. And I have worn many hats over the  
2 years on our campus. I am currently the Associate  
3 Vice Chancellor for Research and Engagement, and I  
4 work on behalf of the university to promote and  
5 support both basic and applied research, engagement  
6 with a wide variety of stakeholders outside the  
7 university, and also support our compliance efforts  
8 and responsibilities. So hosting this meeting  
9 obviously touches on all of those areas that now  
10 I'm paying special attention to, and I'm very  
11 honored to be able to offer this welcome.

12 But this is a new role for me at the  
13 university. I'm also a professor in the  
14 Anthropology Department and an archeologist, and  
15 for many years I've conducted cultural resources  
16 management projects, as well as academic archeology  
17 here in New England. And I've worked both in  
18 public, private and museum settings, and so I'm  
19 well aware of the legal, ethical and the cultural  
20 and social responsibilities of NAGPRA and  
21 repatriation more generally. And I know that  
22 you'll hear from him in a little bit, but I wanted  
23 to give a special thanks to Robert Paynter, who has  
24 been our repatriation chair for decades, actually,  
25 and I feel that this day really comes about as a

1 group effort, a number of us working on behalf of  
2 both repatriation and Native American Indian  
3 studies in an academic setting on this campus. So  
4 I wanted to thank him and also thank all of the  
5 dedicated faculty and students in the five  
6 colleges.

7 We're one of five colleges here in this little  
8 piece of the valley, and all of those colleges and  
9 students have been involved over the years, both in  
10 repatriation and in Native American Indian studies,  
11 which I think Alice might say a little bit about.  
12 But several years ago when I was the department  
13 chair of anthropology, we made a proposal. We had  
14 been doing so much work in the anthropology  
15 department, we made a proposal to the provost at  
16 that time to hire a full-time repatriation  
17 coordinator, and at that time we were very grateful  
18 to bring Rae Gould to our campus. She really  
19 provided a lot of leadership, and seeing our  
20 repatriation responsibilities beyond the compliance  
21 piece, because as a public university we are also  
22 responsible for scholarship and for teaching  
23 students, and really she was able to be  
24 instrumental in helping us broaden this view of  
25 repatriation to include our Native American Indian

1       Studies Program, to be able to think more broadly  
2       about engaged anthropology, which at that time  
3       brought us – gratefully brought us Sonya Atalay.  
4       And so I feel like all these series of events have  
5       really brought us to this day, and I want to thank  
6       Sonya and Alice for her leadership in that, and  
7       Julie Woods, who is our current repatriation  
8       coordinator.

9               So all in all, I really just want to thank you  
10       for being here. It's really important for our  
11       students to be able to take part in the audience,  
12       for our faculty and students to be able to host  
13       this event. And thank you and welcome again to the  
14       University of Massachusetts.

15               LINDALEE FARM: Thank you.

16               ALICE NASH: So on behalf of the university and  
17       Provost Katherine Newman, who could not be here  
18       today, and also the Chancellor of the university,  
19       Kumble Subbaswamy, who would have been here but he  
20       is out of town. The honor falls to me to thank you  
21       for being here and to welcome you. And I find  
22       myself moved to take the opportunity to say that we  
23       are on the land that was once called Nolwotogg, and  
24       the communities in this area, other communities  
25       include Agawam, which is Springfield, Woronoco,

1       which today is Westfield, Pucumtuck, which today is  
2       Deerfield. And we do know the names of some of the  
3       men and women who lived in this area who signed  
4       documents back in the seventeenth century. Men  
5       like Quonquont, Umpanchla, Chickwalopp. Women like  
6       Awonusk (phonetic), Michaslisk (phonetic). Men and  
7       women who may in fact be direct beneficiaries of  
8       the work that is being done by you, by colleagues  
9       here at UMass Amherst, by all those of you who have  
10      dedicated your lives to working on repatriation.

11           So this is a very important and historic  
12      meeting, and especially when we talk about circles  
13      coming around, I'm an eleventh generation  
14      descendant of the white colonists who came to  
15      Hadley, right, and established the town, so how do  
16      I wind up as directing the Certificate Program in  
17      Native American Indian Studies? Well, I don't  
18      begin to understand, but I'm so honored to speak  
19      those names to you and to congratulate you on your  
20      important work and to thank you for what you do.

21           LINDALEE FARM: Thank you both very much. We  
22      are indeed pleased and honored to be here.

23           Madam DFO?

24           MELANIE O'BRIEN: We will move forward. The  
25      next item on the agenda is a report from the

1 National NAGPRA Program, an update on the program.  
2 I will be giving most of the update. I will turn  
3 it over to David Tarler for some updates as well.

4 **REPORT: NATIONAL NAGPRA PROGRAM UPDATE**

5 MELANIE O'BRIEN: So to start with, I wanted to  
6 update you on the status of hiring a permanent  
7 program manager for the National NAGPRA Program.  
8 The job was announced on January 22nd. The  
9 announcement closed on February 12th. The hiring  
10 process is underway, and Dr. Stephanie Toothman,  
11 the Associate Director for Cultural Resources,  
12 where this program falls within the National Park  
13 Service, hopes that the position will be filled  
14 soon. And that's the extent of the update on the  
15 hiring process. It's underway.

16 I'll ask you to go ahead and ask questions as  
17 we go through the report, if there's anything you  
18 have as I finish each item.

19 LINDALEE FARM: Armand.

20 ARMAND MINTHORN: How soon is soon?

21 MELANIE O'BRIEN: I wish that I could tell you.  
22 I don't know. Their hope is soon.

23 ARMAND MINTHORN: Okay.

24 LINDALEE FARM: Shannon.

25 SHANNON KELLER O'LOUGHLIN: Thank you. And I

1       suppose there's no way that the public can know who  
2       the candidates are for this position or any  
3       opportunity for the public to provide – or the  
4       Review Committee to provide any feedback to the  
5       National Park Service.

6               MELANIE O'BRIEN: Not that I'm aware of under  
7       the hiring process.

8               LINDALEE FARM: Sonya.

9               SONYA ATALAY: Do you have a sense at this  
10      point whether there are finalists for the position  
11      or whether they're just going through the  
12      applications? Do you have any sense of where  
13      things are at in that hiring process?

14              MELANIE O'BRIEN: I do not.

15              LINDALEE FARM: Any other questions on this  
16      issue?

17              MELANIE O'BRIEN: Okay. Moving forward. The  
18      next item I wanted to bring to your attention is  
19      that there will soon be vacancies on the Review  
20      Committee for members from national science and  
21      museum organizations. Tomorrow the Federal  
22      Register will publish a solicitation for  
23      nominations to the Review Committee from national  
24      scientific or museum organizations. The details  
25      for nominating will be found in that solicitation,

1 and again it will publish tomorrow in the Federal  
2 Register. It will be posted to the National NAGPRA  
3 website. There will be three vacancies on the  
4 committee in the next couple of months, although I  
5 will remind the public that all three of those  
6 members may request to be appointed for a two-year  
7 extension, but we are also asking for nominations  
8 from national scientific and museum organizations.

9 LINDALEE FARM: Shannon.

10 SHANNON KELLER O'LOUGHLIN: Melanie or Madam  
11 DFO, would you mind reminding us who those three  
12 positions are that are turning over?

13 MELANIE O'BRIEN: Certainly. Sonya Atalay's  
14 position expires, I think, in the beginning of  
15 April, towards the beginning of April or middle of  
16 the month. Cissy Farm's position is, I think,  
17 April 28, and Alec Barker's is also the same date.

18 SHANNON KELLER O'LOUGHLIN: Thank you.

19 LINDALEE FARM: Any other questions?

20 Thank you.

21 MELANIE O'BRIEN: I wanted to give you an  
22 update on your report to Congress that was  
23 finalized in December at your last meeting. As I'm  
24 sure you were aware, a new Congress came into  
25 session at the beginning of the year. That new

1 Congress did not finalize the membership of the  
2 relevant committees, which are the House  
3 Subcommittee on Indian, Insular and Alaska Native  
4 Affairs and the Senate Committee on Indian Affairs.  
5 Those committees and their membership were not  
6 finalized until the very end of January, so it was  
7 at that time that I submitted the necessary cover  
8 letter to the National Park Service and to the  
9 Director of the National Park Service for his  
10 signature. Those letters are in the Director's  
11 office right now, and I hope that they will be  
12 signed soon. And as soon as they are signed, then  
13 I will deliver those reports to all members of  
14 those Congressional committees.

15 LINDALEE FARM: Well, I have a question then.  
16 When you say "soon," and I realize we're talking  
17 semantics here and you probably don't know, what do  
18 you anticipate the timeframe would be?

19 MELANIE O'BRIEN: Based on the process that we  
20 have at the National Park Service, I would say that  
21 I would hope that within two weeks they will be  
22 delivered.

23 LINDALEE FARM: Thank you.

24 MELANIE O'BRIEN: I also wanted to provide you  
25 with some information on the President's proposed



1 budget for Fiscal Year 2016. On February 2nd, the  
2 President sent his proposed budget for 2016 to  
3 Congress. It included an increase in funding for  
4 the THPO program of a million dollars. NAGPRA  
5 funding in that proposed budget remains level. But  
6 I did think it was important for the committee to  
7 recognize that increase to the THPO budget that has  
8 been requested by the Administration. I also want  
9 to be sure to point out that this is the  
10 Administration's request for 2016. It now goes  
11 through the rest of the budget process.

12 LINDALEE FARM: Any questions? What is the  
13 budget that remains level? Do you have a dollar  
14 figure?

15 MELANIE O'BRIEN: For National NAGPRA?

16 LINDALEE FARM: Yes.

17 MELANIE O'BRIEN: I can tell you the NAGPRA  
18 grant program appropriations is 1.675. There are  
19 additional funds in there for the program budget,  
20 and I don't have those numbers in front of me. I'd  
21 hesitate to give you that.

22 LINDALEE FARM: Okay. Thank you.

23 MELANIE O'BRIEN: Speaking of grants, the next  
24 update I wanted to give you is the status of NAGPRA  
25 grants for Fiscal Year 2015. The first

1       apportionment for Fiscal Year 2015 is for eight  
2       repatriation grants. They are signed by the  
3       Assistant Secretary and should be announced very  
4       shortly. I would say later this week, or the very  
5       first of next week, all eight of those grants will  
6       be announced, and then go forward with executing  
7       the grants, the awards. The competitive  
8       consultation and documentation grants have a  
9       deadline of March 11. The grants will then be  
10      reviewed by a panel, an independent grant review  
11      panel and scored accordingly for award. We expect  
12      to be able to announce the Fiscal Year 2015  
13      consultation and documentation grants in June,  
14      which is our normal schedule.

15           LINDALEE FARM: Okay. Next.

16           MELANIE O'BRIEN: An update on notices that  
17      have been published. We have to date published 67  
18      notices in Fiscal Year 2015. It's on target that  
19      we will meet our normal goal of publishing 150  
20      notices this year. Notice submission and notice  
21      processing has been delayed somewhat due to the  
22      reduction in staffing in our office, but  
23      nevertheless, we have been able to keep up and keep  
24      moving forward with notices, which I personally am  
25      very pleased that we have been able to keep moving

1       those forward. Notice submission has continued to  
2       increase, in the number of notices that have been  
3       submitted but also we have seen an increase in the  
4       size of notices and their complexity.

5               LINDALEE FARM: Thank you.

6               MELANIE O'BRIEN: The other update I wanted to  
7       give you is on the Information Collection Request  
8       for Comments that was published in the Federal  
9       Register and was a part of the meeting materials.  
10      This was also available in the public meeting  
11      materials. That proposed information collection  
12      was published on February 17, 2015. And I'll just  
13      explain a little bit about what that is for you and  
14      also for the public.

15              The Office of Management and Budget, OMB,  
16      requires a renewal every three years of any  
17      regulations that involve collecting information  
18      from nonfederal entities. The renewal process  
19      takes about nine months. The OMB approval on the  
20      current NAGPRA regulations will expire in November.  
21      Therefore, we've started the nine-month process  
22      now. So as I said, on February 17, the first  
23      request for comments on information collection  
24      under NAGPRA was published. The information  
25      collection is limited to information – and I'll

1       translate that, in NAGPRA terms that's inventories,  
2       summaries and notices – that are required by the  
3       regulations from museums essentially under NAGPRA.  
4       The comment period – the current comment period is  
5       for 60 days. It closes on April 20. There will be  
6       another comment period that will occur in the  
7       summer. The NAGPRA Program will be conducting  
8       outreach to a small number of museums to request  
9       comment during both comment periods. And the  
10      published request for comment, as I said, is in the  
11      materials. It's also posted on our website. And I  
12      would encourage anyone here to review that and to  
13      make a comment on that information collection.

14           LINDALEE FARM: Shannon.

15           SHANNON KELLER O'LOUGHLIN: And is this a  
16      Federal Register notice that the Review Committee  
17      has authority to make a comment on as a body?

18           MELANIE O'BRIEN: During the open comment  
19      period, yes.

20           SHANNON KELLER O'LOUGHLIN: Could we put this  
21      in our collective memories that maybe we should  
22      discuss this during an appropriate time in our  
23      agenda of whether we want to address this Federal  
24      Register notice?

25           LINDALEE FARM: Can we add that to our agenda

1 for tomorrow, perhaps?

2 MELANIE O'BRIEN: Certainly.

3 LINDALEE FARM: All right. Any other questions  
4 with respect to this? No.

5 Madam DFO?

6 MELANIE O'BRIEN: Okay. I'd like to ask David  
7 Tarler to give you an update on NAGPRA training and  
8 also civil penalties.

9 DAVID TARLER: Madam Chair, members of the  
10 Review Committee and members of the audience, good  
11 morning. For the record, my name is David Tarler,  
12 and I'm on the staff of the National NAGPRA  
13 Program. I'm pleased to report on training that is  
14 being offered by the National NAGPRA Program and in  
15 partnership with others through the National NAGPRA  
16 Program.

17 In the last five months, there have been  
18 almost one thousand instances where National NAGPRA  
19 Program training has been utilized. Several years  
20 ago the only kinds of trainings that were being  
21 offered by the National NAGPRA Program were in-  
22 person trainings. Subsequently, the program added  
23 webinars to that training. Those were one-time  
24 presentations. Later on, we developed a video  
25 training series, which we made available on demand

1 through our website, and since then we have also  
2 recorded several webinars and made those available  
3 on demand as well.

4 Finally, through the good offices of the  
5 National Museum of the American Indian, the last  
6 iteration of the NAGPRA Basics training that we  
7 have been giving for several years was recorded and  
8 is now available on demand through our website as  
9 well. So as opposed to the 68 attendees at the in-  
10 person iteration of the NAGPRA Basics training in  
11 Washington, DC last November, since the NAGPRA  
12 Basics training has been made available on demand,  
13 there have been 462 views of the NAGPRA Basics  
14 training in the last five months. Added to the 316  
15 views of the recorded webinars, the 138 views of  
16 the NAGPRA video series, the participants in the  
17 grant preparation and writing training that is  
18 being given through a cooperative agreement with  
19 the National Preservation Institute, and the in-  
20 person participation in the NAGPRA Basics training  
21 in last November, there have been about a thousand  
22 instances of utilization of the National NAGPRA  
23 Program training materials. And much of the credit  
24 for making this training available on demand goes  
25 to Mariah Soriano of the National NAGPRA Program.

1           And if you have any questions, I'd be pleased  
2           to answer them.

3           LINDALEE FARM: Sonya.

4           SONYA ATALAY: Thank you for the report, David.  
5           I'm wondering if there are plans – it sounds like  
6           it was great that the NAGPRA Basics training was  
7           recorded. Are there plans for the future in-person  
8           trainings to be recorded and placed online for on-  
9           demand use in the same way?

10          DAVID TARLER: To the extent that we have any  
11          in-person trainings that are going to be given by  
12          the National NAGPRA Program, we certainly plan to  
13          do that. And if there are any new webinars that we  
14          provide, we will certainly record those and make  
15          those available on demand as well.

16          SONYA ATALAY: And is there a way for tribes or  
17          museums or members of the public if they're  
18          interested in a certain topic or something that  
19          they'd like to have a training in, to request that  
20          through the National NAGPRA Program?

21          DAVID TARLER: Yes. Questions, requests,  
22          comments can always be made to the National NAGPRA  
23          Program and they can be sent to our info box at  
24          [NAGPRA\\_info@nps.gov](mailto:NAGPRA_info@nps.gov).

25          SONYA ATALAY: Thank you.

1 LINDALEE FARM: Shannon.

2 SHANNON KELLER O'LOUGHLIN: Hi. David, I have  
3 a question. I'm looking at the seminar trainings  
4 that NAGPRA contracted with the NPI to perform, and  
5 I'm seeing that there's quite a bit of cost. And  
6 could you talk a little bit about the scholarships  
7 that are available so that folks can attend these  
8 trainings, because they're not cheap.

9 DAVID TARLER: There are – there are tuition  
10 waivers available for all of the trainings that do  
11 appear on the National NAGPRA Program website list  
12 of NPI trainings, and those are available to Indian  
13 tribes and Native Hawaiian organizations, as well  
14 as to museums with modest budgets.

15 SHANNON KELLER O'LOUGHLIN: Thank you.

16 LINDALEE FARM: Thank you, David.

17 Oh, I'm sorry. Armand.

18 ARMAND MINTHORN: The training that's offered  
19 either through webinar or in person and through  
20 other means of technology and knowing that there  
21 are some places that are limited with technology or  
22 access to technology, what means can the training  
23 still take place as far as in person for those  
24 kinds of entities or groups that have that – the  
25 least or a lesser capability of technology, in



1 particular back in the West and those other places  
2 that don't have as strong capabilities and/or  
3 resources to even access webinar and/or other  
4 technologies? And sometimes the best training is  
5 in person, rather than watching something on a  
6 screen. So that would be a question.

7 DAVID TARLER: The National NAGPRA Program  
8 would be pleased to hear from any party that needs  
9 or believes it needs training on NAGPRA and is  
10 unable to obtain that training on demand through  
11 the National NAGPRA Program website, and for that  
12 matter, might have a problem financing travel for  
13 an in-person training. With respect to the multi-  
14 segment video series on NAGPRA, we have each of  
15 those segments on CD that we can make available to  
16 anyone that requests them. If we have requests for  
17 invitational travel because the party cannot travel  
18 to a site for in-person training or cannot access  
19 that training electronically, then we can discuss  
20 ways of getting training to that party.

21 To reiterate our response to Shannon's  
22 question about NPI training, there are funds –  
23 there are funds available to – as tuition waivers  
24 for NAGPRA training that is offered through the  
25 cooperative efforts of the National NAGPRA Program

1 and the National Preservation Institute.

2 ARMAND MINTHORN: So I guess just a final  
3 comment, so that kind of word needs to get out,  
4 David, because a lot of people don't know that or  
5 understand that fully. But if the word can be put  
6 out, a lot better, then people would know or groups  
7 would know how they can access and how they can get  
8 monies, how they can get help, and how they can get  
9 the training. So that word has to go out.

10 DAVID TARLER: And I think if we have some  
11 suggestions as how that word can go out and not go  
12 out electronically, because of course that word has  
13 gone out electronically, that information is posted  
14 on our website, that we would – we would take that  
15 advice under consideration. Thank you.

16 ARMAND MINTHORN: That's all.

17 LINDALEE FARM: David, what is the budget for  
18 training within National NAGPRA? Do you know?

19 DAVID TARLER: I do not.

20 LINDALEE FARM: Okay. Perhaps that's some  
21 information that someone could look up and provide  
22 to us, perhaps tomorrow?

23 DAVID TARLER: I don't know if we are  
24 constrained on our budget for training. Obviously,  
25 we have to allocate funds for the entire program.

1 I don't know if the funds – I don't know if our  
2 budget has been broken down to that extent where we  
3 only have a certain amount of funding for training,  
4 and I would defer to Melanie on whether that is the  
5 case and what the numbers are.

6 LINDALEE FARM: Okay. If we could get an  
7 update, Melanie?

8 MELANIE O'BRIEN: Yes, the program budget does  
9 not include a line item for training as such. We  
10 have different categories of funding for the  
11 different program activities, including our Review  
12 Committee meetings and the trainings that typically  
13 coincide with that. We do have funds that are  
14 budgeted to the National Preservation Institute, as  
15 David mentioned, for those scholarships and that  
16 training that's associated through that  
17 partnership. And so I can look up those figures  
18 and give them to you, but for the program budget we  
19 don't have a specific training line item.

20 LINDALEE FARM: All right. And is it a  
21 situation where if that – those monies are not used  
22 they are lost or do they go to other areas within  
23 the budget?

24 MELANIE O'BRIEN: Do you mean in relation to  
25 NPI funds?

1           LINDALEE FARM: Any of the training. With  
2           respect to the training program, I understand that  
3           there's no line item for it. But if the funds are  
4           not used toward training, for instance, there may  
5           be those people who want scholarships or waivers  
6           and that money has to come from someplace. And if  
7           we're not funding that, what happens to the money?

8           MELANIE O'BRIEN: With respect to the NPI  
9           scholarships and that funding, that money continues  
10          to provide only that function through that  
11          cooperative agreement. So those scholarships, the  
12          funds are reserved for that purpose only, and will  
13          continue to be used through this fiscal year and  
14          next fiscal year under that cooperative agreement.

15          LINDALEE FARM: So it's a carryover.

16          MELANIE O'BRIEN: Yes.

17          LINDALEE FARM: I guess I agree with Armand.  
18          The word needs to get out that there are  
19          scholarships available, tuition waivers available,  
20          requests can be made. But I would also like to  
21          know that the funds are actually being used for  
22          that and that there's just not a pile of money  
23          sitting around that is not being used because  
24          people don't know about it and how effective that  
25          is. And if we could somehow promote that so that

1 we get people attending the training who would  
2 benefit from the training and the need to be a  
3 little bit proactive. And you know, it's easy if  
4 you do have access to technology and you can see  
5 all of your options. But there are those who don't  
6 have access to technology and there are probably  
7 those who would benefit the most from the training,  
8 so I don't have any bright ideas, but I would like  
9 to see us reaching out a little bit more.

10 MELANIE O'BRIEN: Certainly, and we can look at  
11 some ways to do that. I will say that today we  
12 have a brochure out on the table of the next  
13 upcoming trainings. I'm stretching my memory a  
14 bit, but I think the next training is in Austin,  
15 Texas. In September, there will be trainings in  
16 Oklahoma, I think Oklahoma City. There are plans  
17 for trainings in January in Alaska, and the other  
18 scheduled events can be found on the flier that's  
19 out here.

20 We do advertise each of those training  
21 sessions and the scholarship deadline through our  
22 mailing listserv, but I understand that may not be  
23 the most effective way of communicating. So we  
24 will look at doing some targeted mailings over the  
25 summer, in anticipation of some of those fall dates

1           that have been scheduled.

2           LINDALEE FARM: All right. And if there's  
3 anyone in the audience who has some suggestions,  
4 please feel free to contact one of us, contact  
5 National NAGPRA with your suggestions as to how we  
6 can reach out to the greater populations who needs  
7 the training.

8           STEVE TITLA: Madam Chair.

9           LINDALEE FARM: Steve.

10          STEVE TITLA: David, with regard to  
11 communication, I agree with Madam Chair and Armand  
12 about the communication to the tribes about these  
13 trainings and scholarships availability. I would  
14 like to suggest that if you all can look at - a lot  
15 of the tribes have newspapers as their  
16 communication within their communities, so if you  
17 can get a list of the newspapers in the country of  
18 all the tribes, and just send them electronically  
19 the notice of scholarships, then they can look at  
20 their newspapers, and maybe follow up with that.  
21 And also there's some tribal radio stations also  
22 out West where I'm from in Arizona. San Carlos  
23 Apache Tribe has a radio station and White Mountain  
24 Apache Tribe has a radio station. Navajo Nation  
25 has a radio station. Those are the ones that I

1 know, but I'm sure there's others that have radio  
2 stations in the country. And maybe you can  
3 announce it on the radio because sometimes those  
4 are public service announcements, and that's where  
5 the public listens to the radio, the tribal  
6 communities. And if you can communicate in their  
7 respective language, I think that would be good.

8 Because what I try to do once I get back to  
9 the home country is to report to the community, and  
10 I'm going to talk to the committee here today or  
11 tomorrow about speaking in the language, in the  
12 Apache language, and explaining to the people what  
13 we did here on the Review Committee. And that's  
14 one thing I can mention is the scholarships and the  
15 training that's available to the tribal members.  
16 Because what we've heard so far in all our meetings  
17 is that tribes want open communications from NAGPRA  
18 and from the Review Committee. And I think that  
19 once we are proactive, and we reach out to the  
20 tribes, then I think that they can get the training  
21 and the scholarships available. And the more  
22 information they have, I think the more they can  
23 participate in this NAGPRA process, because tribes  
24 have told us that the repatriation of remains and  
25 the repatriation of their cultural items, sacred

1 objects, is very important, central to their  
2 culture, tradition, religion. And so the most we  
3 can do to facilitate that process, I think, is  
4 something that will be helpful to them.

5 And if they have disputes with museums, then I  
6 think that they can find out that the Review  
7 Committee is available to facilitate those disputes  
8 for them, where they can appear before us, like at  
9 these meetings here, and present their dispute,  
10 with the museum or whoever it is, or vice versa.  
11 The museum can do the same thing. So we would like  
12 to try to help resolve those disputes as much as  
13 possible. And I think what you are doing is good,  
14 and Melanie, you all are doing a good job, but if  
15 we can reach out some more, I think that tribes  
16 will have the ability to contact us. Thank you.

17 DAVID TARLER: Thank you.

18 LINDALEE FARM: Shannon.

19 SHANNON KELLER O'LOUGHLIN: Just one more quick  
20 thing. I'm wondering if the NPI gathers  
21 information on who is in attendance at their in-  
22 person trainings. I think that information would  
23 be very helpful in seeing if the information is  
24 actually getting out there and there's a good  
25 variety of people coming to these in-person



1 trainings and how many are actually assisted with  
2 the waivers and scholarships, because if I remember  
3 right the NPI cooperative agreement is for three  
4 years, two years, one year? Do you remember?

5 MELANIE O'BRIEN: I think it's three.

6 SHANNON KELLER O'LOUGHLIN: Three years. And I  
7 think the budget for that was about 174,000  
8 dollars.

9 MELANIE O'BRIEN: That's correct.

10 SHANNON KELLER O'LOUGHLIN: So they have two  
11 trainers and then wherever they need to set up for  
12 the – so it sounds like they have some money  
13 available for these waivers that can be used. So  
14 it becomes our collective responsibility to make  
15 sure wherever we go we take this information and  
16 thank you, Steve, for reminding us of that. So if  
17 we could collect some of that data I think it would  
18 be helpful.

19 MELANIE O'BRIEN: Absolutely. I can tell you  
20 that ten scholarships have been used in the first  
21 three trainings that have been offered.

22 DAVID TARLER: In addition, an earlier  
23 cooperative agreement existed between the National  
24 NAGPRA Program and the National Preservation  
25 Institute. And we did receive a report from the

1 National Preservation Institute. I cannot recall  
2 all of the information contained in that report. I  
3 would hope that the information that you're asking  
4 for was contained in that report. I also hope that  
5 that report is available on our website, and  
6 Melanie says that it is. And so I would commend to  
7 you, the Review Committee and to the public as  
8 well, to take a look at that report. It's the  
9 first and only one that's been done by NPI. And if  
10 you believe that there are areas that such a report  
11 on this particular cooperative agreement should  
12 cover, please feel free to make your  
13 recommendations.

14 SHANNON KELLER O'LOUGHLIN: And I do feel that  
15 it's within the Review Committee's authority to  
16 make recommendations on this training because if we  
17 have good education and good training of everyone,  
18 we're going to have fewer disputes and that's - or  
19 at least that's my hopes and my theory.

20 LINDALEE FARM: David, anything further? Civil  
21 penalties?

22 DAVID TARLER: As you know, NAGPRA allows for  
23 the Secretary of the Interior to assess a civil  
24 penalty against a museum that fails to comply with  
25 the requirements of NAGPRA. The process and the

1 enumeration of the different ways that a museum  
2 might fail to comply with the requirements of  
3 NAGPRA are set out in the NAGPRA regulations at  
4 section 10.12. The responsibility for civil  
5 penalties and civil enforcement has been delegated  
6 by the Secretary to the Assistant Secretary of the  
7 Interior for Fish and Wildlife and Parks.

8 At your Review Committee meeting in November  
9 in Washington, DC, you heard from Bob Palmer, who  
10 is the NAGPRA civil penalty investigator. This –  
11 so far this fiscal year in the last five months,  
12 we've received three written allegations of museum  
13 failure to comply. In addition, the Assistant  
14 Secretary has signed one Notice of Museum Failure  
15 to Comply and the museum has received that notice.  
16 As you know, a museum can decide to either take  
17 action or not take action within 45 days of receipt  
18 of the notice, and those 45 days have not yet run.

19 LINDALEE FARM: Sonya.

20 SONYA ATALAY: Could you let us know which  
21 museum it was that received the Notice of Failure  
22 to Comply?

23 DAVID TARLER: There has been no final agency  
24 action yet, and the museum might decide to take no  
25 action. The museum might decide that it wishes to

1        have an administrative hearing, or the museum might  
2        wish that it would like to have informal discussion  
3        with the Assistant Secretary's representative.

4                SONYA ATALAY: So does that mean we aren't able  
5        to know which museum it is at this point?

6                DAVID TARLER: I'll certainly defer to counsel  
7        on that.

8                SONYA ATALAY: Counsel?

9                CARLA MATTIX: It's not public information at  
10       this time.

11               SONYA ATALAY: At the end of the 45 days once  
12       we have the final action taken, then it will become  
13       public information at that point?

14               DAVID TARLER: That's not necessarily final  
15       agency action at that point.

16               CARLA MATTIX: We'll just have to see where we  
17       are in the process at that point.

18               SHANNON KELLER O'LOUGHLIN: Just to clarify, so  
19       you cannot make it public until there has been a  
20       final agency action. Is that correct? Or even if  
21       there --

22               CARLA MATTIX: I think that while we're in the  
23       process of pursuing a civil penalty, the agency  
24       keeps this information within the agency's  
25       deliberative process until we get to the final

1 determination, whatever that final agency action  
2 might be. There's no decree that says at this date  
3 it will become public information. We just kind of  
4 have to see how the process plays out.

5 SHANNON KELLER O'LOUGHLIN: Well, there has to  
6 be some kind of guidance there, though, so I'm just  
7 trying to get your language as to when there's been  
8 a determination as far as whether the museum is  
9 going to take action, whether the museum is not  
10 going to take action, whether they're going to pay  
11 a penalty, whether they're not going to pay a  
12 penalty. After there has been a determination made  
13 basically concluding the matter, at that point in  
14 time it becomes public.

15 CARLA MATTIX: I think at the point where  
16 there's an assessment of a penalty.

17 SHANNON KELLER O'LOUGHLIN: At the assessment  
18 of a penalty stage. And that relates back to the  
19 regulations and how they're drafted, so that at  
20 that stage – and you can see, I think at 10.12, it  
21 goes through a process and then the assessment of a  
22 penalty process is there expressed, and so it's at  
23 that point that it becomes public. Okay. That  
24 makes sense to me. I don't know if it does to  
25 anybody else. Thank you.

1 LINDALEE FARM: Any other questions? Armand.

2 ARMAND MINTHORN: So if a museum or university  
3 chooses to not respond, then what are the steps  
4 after that?

5 DAVID TARLER: If a museum takes no action  
6 within 45 days, then the Assistant Secretary will  
7 make a determination as to whether a civil penalty  
8 is an appropriate remedy. And if so, will provide  
9 a notice of a proposed assessment to the museum, at  
10 which time the museum may elect to pay the penalty  
11 or may petition the Assistant Secretary to remit  
12 the penalty or may ask for an administrative  
13 hearing on the amount of the penalty or on the  
14 penalty itself.

15 ARMAND MINTHORN: Okay. That's all.

16 LINDALEE FARM: Steve.

17 STEVE TITLA: Madam Chair, thank you. David,  
18 Melanie, this seems to be an area where it should  
19 be a transparent process. I think that when the  
20 museum is subject to these kind of actions, I think  
21 that the public should be – should know about it  
22 and it should go out publically so that the tribes  
23 can know about it and so that the museum community  
24 in the country can know about it, and you know, you  
25 have other areas in the administrative process that

1 are public information in the country. The  
2 criminal cases in the country are public records.  
3 Appeal cases are public records. Administrative  
4 law areas are public records. Our tribe is public  
5 record.

6 So I would like to see this as a public  
7 process so everybody knows about it today. Maybe  
8 you can't announce it right now due to your  
9 restrictions, but it would be good – it would have  
10 been good if you could announce it today so that  
11 the public here can know about it and so that we  
12 can know about it. I feel restricted of this  
13 confidential information when I don't think there's  
14 any need that it be confidential.

15 So I was wondering if you or Melanie can work  
16 on having this information be made public at the  
17 earliest moment possible, when these actions are  
18 started in the process. I think that we and the  
19 Review Committee are here to help maybe bring  
20 recommendations to changes in the administrative  
21 law or the law itself where we feel that those  
22 changes need to be made, and this is one area where  
23 I feel that transparency should be – should work  
24 for everybody concerned, especially the tribes and  
25 the museums out there in the country. Thank you,

1 Madam Chair.

2 LINDALEE FARM: Any comments?

3 SONYA ATALAY: I have one.

4 LINDALEE FARM: Sonya.

5 SONYA ATALAY: Thank you, Madam Chair. I  
6 wonder if you might be able to give us just a very  
7 brief update on the progress that Bob Palmer, the  
8 civil penalties investigator, is making at this  
9 point. I know there was a backlog of allegations  
10 when he came to the position, and I just wonder if  
11 you have a sense of how he's moving through there  
12 and the progress that's being made.

13 DAVID TARLER: While Bob was in Washington, DC  
14 last November, we went over the files and we talked  
15 about which allegations we would address and in  
16 which order. And I know that he is - that there is  
17 a plan in place to investigate a number of  
18 allegations and that he is in the process of  
19 investigating some of those. I don't have a report  
20 from him. I do expect to have an update on the  
21 work that he's doing within the next month.

22 LINDALEE FARM: Any follow up? No. Anything  
23 else to add, David?

24 DAVID TARLER: No, Madam Chair.

25 LINDALEE FARM: All right. Thank you very much



1           for your report.

2           DAVID TARLER: Thank you.

3           MELANIE O'BRIEN: I just have a few more items  
4           to update you with regard to the National NAGPRA  
5           Program. I wanted to give you an update on the two  
6           inventory reports that were produced by the  
7           National NAGPRA Program at the Review Committee's  
8           request. Those two reports we have talked about at  
9           many meetings and have been publically available.  
10          The first relates to culturally affiliated human  
11          remains that have not been listed in Notices of  
12          Inventory Completion. Since that report was first  
13          presented to the Review Committee in April of 2014,  
14          we have continued to update that report regularly.  
15          We had put an updated report in your materials.  
16          After that time it was updated again and is  
17          continually posted to our website with any updates.  
18          The updates to that report are primarily for two  
19          reasons: one, because notices are published in the  
20          Federal Register for the human remains that are  
21          culturally affiliated and listed on that report,  
22          and two, through data cleanup, information provided  
23          to the National NAGPRA Program by museums and  
24          federal agencies that allow us to refine and update  
25          the figures in that report for each institution.

1           The other report is the culturally  
2           unidentifiable inventories report. It has also  
3           been updated. Again, an updated version was in  
4           your materials and then there is another update  
5           that is posted to the website. In that case, the  
6           program has continued to do additional research in  
7           the inventory files to allow us to update that  
8           report and include information that was not present  
9           in the database when those reports were first  
10          generated, so that has also led to changes in that  
11          report in addition to information that's been  
12          provided to us by museums and federal agencies that  
13          have allowed us to update that report.

14          For both reports, we have been conducting  
15          updates continually throughout the last year. We  
16          do expect to start moving to a more regular update  
17          process, either quarterly or semi-annually for  
18          those two reports rather than the sort of continual  
19          basis that we have been running on. The Review  
20          Committee had requested at your last meeting that  
21          the National NAGPRA Program work on capturing  
22          information about issues that museums and federal  
23          agencies face related to both of those reports, and  
24          the correspondence that we have received from those  
25          institutions and federal agencies about updating

1 the report and any other issues related  
2 specifically to these two topics. It is our  
3 intention to continue to capture that  
4 correspondence, which we have been doing, and then  
5 at the one-year mark, which will be next month in  
6 April, to gather all of that correspondence and  
7 information that we have received and to start  
8 summarizing and analyzing it so that we can present  
9 to you before your next meeting some synthesized  
10 information about the barriers and progress that  
11 museums and federal agencies have faced in relation  
12 to those two reports specifically.

13 LINDALEE FARM: All right. Sonya.

14 SONYA ATALAY: Thank you for that. I'm looking  
15 through and continually following this on what's on  
16 the website, and I'm wondering what kind of process  
17 are you following in terms of that correspondence  
18 that you described? Is it you're gathering  
19 qualitative information through questions,  
20 interviews or conversations on the phone? What's  
21 the nature of how you're gathering that information  
22 that you'll be reporting to us?

23 MELANIE O'BRIEN: It's generally the  
24 information that's provided to us with an update or  
25 a question, the information that we're sharing with

1 museums and federal agencies that contact us about  
2 their name on the list and what that means and what  
3 information they provide to us and the questions  
4 that they ask us.

5 SONYA ATALAY: Do you feel like you're getting  
6 a sense of what some of those barriers and kind of  
7 challenges are? Do they seem to all fall into the  
8 same category, or are they really varied across the  
9 board? There's some really large numbers, 1,605,  
10 for example, or 2,239 at Arizona State. I mean,  
11 some of these are really large. I'm just wondering  
12 if there are patterns as to why these are  
13 culturally affiliated but then not in notices.

14 MELANIE O'BRIEN: Yes, I think that those  
15 patterns are going to emerge once we can really  
16 look at the information in a cohesive way. It's  
17 not something we've embarked on yet, but I  
18 anticipate we'll be able to see some trends.

19 SONYA ATALAY: Great. Thank you.

20 LINDALEE FARM: Shannon.

21 SHANNON KELLER O'LOUGHLIN: I just want to back  
22 up for a little bit, if we could, Melanie, because  
23 I realize there's a lot of people who are here -  
24 oh, you can't hear me. I realize there's a lot of  
25 people that are here that aren't regular attendees

1 of Review Committee meetings may not know what the  
2 heck we're talking about right now, and these are  
3 very important reports. And so if I could put you  
4 on the spot, Melanie, and could we go back and  
5 explain what the CA report is and what's been done,  
6 and can we explain what the CUI report is and  
7 what's been done?

8 MELANIE O'BRIEN: Certainly. The first report  
9 relates to culturally affiliated human remains that  
10 are not yet listed in Notices of Inventory  
11 Completion. The NAGPRA process, according to the  
12 regulations, provides that museums and federal  
13 agencies submit to the National NAGPRA Program  
14 their inventories when they are complete and  
15 identify culturally affiliated human remains in  
16 those inventories. We have populated a database  
17 with those inventories reflecting the culturally  
18 affiliated human remains.

19 Over the 25 years of NAGPRA and the 22 years  
20 of notice publication, we have identified those  
21 human remains listed in inventories, in culturally  
22 affiliated inventories that have been published in  
23 notices. As a result, we were able to use the  
24 database to show us those culturally affiliated  
25 human remains that are not listed in Notices of

1       Inventory Completion. So that is what the report  
2       represents, are those human remains that are not in  
3       Notices of Inventory Completion.

4               SHANNON KELLER O'LOUGHLIN: So the culturally  
5       affiliated report are a listing of human remains  
6       and associated funerary objects that have been  
7       affiliated with a tribe or Hawaiian organization or  
8       individual but have not yet been repatriated. And  
9       the numbers – this is in the public information  
10      that was gathered. I know Sonya mentioned one  
11      museum, but you have museums who have over 3,000  
12      human remains that have been affiliated but those  
13      have not been repatriated. And the Review  
14      Committee was asking, not understanding why the  
15      notices haven't been done and why the ancestors  
16      haven't gotten back home. So this is why we  
17      generated the report and what this is about. So I  
18      encourage all of you to get a copy of this report  
19      if you don't have it already. Now can you tell us  
20      about the CUI?

21              MELANIE O'BRIEN: Yes.

22              SHANNON KELLER O'LOUGHLIN: Thank you.

23              MELANIE O'BRIEN: The CUI is a little bit  
24      different. The culturally unidentifiable human  
25      remains were also identified in inventories,

1 submitted to the National NAGPRA Program under the  
2 regulations. In 2005, those inventories were put  
3 into a database, and we populated that database  
4 with the information that was provided to the  
5 National NAGPRA Program in those inventories. One  
6 of the pieces of information that was provided  
7 along with those inventories of culturally  
8 unidentifiable human remains was information  
9 related to which tribes those inventories were  
10 being sent to, in accordance with the regulations.

11 We populated the database, the National NAGPRA  
12 Program populated the database in 2005 with that  
13 information, in addition to the human remains and  
14 objects identified in the inventory, information  
15 related to tribes that had been notified of the  
16 inventory or involved in the inventory process.  
17 The field in the database was present and allowed  
18 us to do a query of the database and populate this  
19 report, which indicates those institutions with  
20 culturally unidentifiable human remains for which  
21 we did not have that contact information listed in  
22 the database. So this report reflects that  
23 information.

24 SHANNON KELLER O'LOUGHLIN: So just to  
25 summarize, the CUI report provides information

1       where museums did not give any evidence that they –  
2       not even consulted, but they had not even provided  
3       evidence that they contacted tribes in developing  
4       their inventory. Correct?

5               MELANIE O'BRIEN: Yes, that's correct.

6               SHANNON KELLER O'LOUGHLIN: So if you get ahold  
7       of this report, and just so that everyone is clear,  
8       on the museum end, there are almost 18,000  
9       ancestors who have been considered unidentifiable  
10      or unaffiliated and over 150,000 associated  
11      funerary objects that are considered unidentifiable  
12      where the museum has not done or hasn't shown that  
13      they've done even a basic contact to tribes. So I  
14      would say perhaps consultation hasn't taken place  
15      on these inventories. And as to federal agencies,  
16      the numbers are 1,430 ancestors and 6,634  
17      associated funerary objects. So please get ahold  
18      of this report so you can see what we're talking  
19      about. Sorry. That's what I wanted to talk about.  
20      Armand had a question.

21              LINDALEE FARM: Armand.

22              ARMAND MINTHORN: So these culturally  
23      affiliated remains, they have been determined by a  
24      federal agency and/or museum or university to be  
25      culturally affiliated with a specific tribe or



1 tribes, correct?

2 MELANIE O'BRIEN: Yes, for the culturally  
3 affiliated report, yes.

4 ARMAND MINTHORN: However, there have been no  
5 notices published to state that.

6 MELANIE O'BRIEN: That's correct.

7 ARMAND MINTHORN: And what's the reason?

8 MELANIE O'BRIEN: There are various reasons. I  
9 don't feel comfortable summarizing one or two now.  
10 The Review Committee did receive two reports at the  
11 last meeting in November from two of the  
12 institutions that have the largest numbers there,  
13 and I would point you to reading those reports.  
14 That was Arizona State University provided you a  
15 report in November, and also the Sam Noble Museum.  
16 And the comments and discussion that occurred in  
17 November is in the transcript from that meeting.  
18 Otherwise, I don't want to speculate.

19 ARMAND MINTHORN: Well, in the past this  
20 committee has formally written letters to the  
21 Secretary and Assistant Secretary, and I would hope  
22 that this committee here would consider that to  
23 actually make a formal written concern because if  
24 notices haven't been published then something in  
25 the system either isn't allowing it or something is

1       bottle-necking the notices. And because of this,  
2       these notices not being published, we have sacred  
3       human remains that are sitting and waiting for  
4       final disposition. And this shouldn't be the case  
5       because the intent of this committee, the intent of  
6       the law, and the intent of the Park Service is very  
7       clear. And if we have sacred human remains that  
8       are not being taken care of, then the intent of  
9       this committee isn't being carried out and the  
10      intent of National NAGPRA isn't being carried out  
11      and the intent of the law isn't being carried out.  
12      So this isn't very clear on why these notices  
13      aren't being published, but there needs to be some  
14      clarity and there needs to be some correction, and  
15      this committee can certainly take that step to  
16      begin that process. And a formal letter or a  
17      formal inquiry to the Secretary can help with that  
18      process.

19           MELANIE O'BRIEN: And let me just clarify that  
20      the notices have not been submitted to the National  
21      NAGPRA Program for publication. So it's not that  
22      we have notices pending publication, it's not a  
23      delay within the Department of the Interior on  
24      publication. The burden is on the institution to  
25      draft and submit a notice to our office for

1 publication, and that is the step that has not been  
2 done for these human remains.

3 ALEXANDER BARKER: Madam Chair.

4 LINDALEE FARM: Alec.

5 ALEXANDER BARKER: Thank you, Madam Chair.  
6 Madam DFO, if you could – I'm not sure I entirely  
7 understand. It's certainly a source of very deep  
8 concern if there are that many human remains which  
9 are either culturally affiliated and not in notices  
10 or CUIs where there's not evidence that  
11 consultation has taken place. Can you give us an  
12 update on whether those numbers have changed over  
13 the course of the past year, since my recollection  
14 is that there was a question that some of those  
15 numbers might represent data that may need to be  
16 reconciled or issues where the museum felt that  
17 they had provided that information but it simply  
18 wasn't reflected in the program's databases. Thank  
19 you.

20 MELANIE O'BRIEN: The answer to your question,  
21 and I'll repeat it for the sake of those here who  
22 may not have heard. Alec's question was whether or  
23 not the numbers have changed in those two reports  
24 over the last year, and the answer is yes, the  
25 numbers have changed. And the reasons for those

1 changes have included in both cases information  
2 provided to the National NAGPRA Program about the  
3 human remains listed in both of those reports. So  
4 institutions that have provided us with information  
5 that allowed them to come off of those reports.  
6 And then in addition to that, there have been some  
7 reconciling of the data, some cleaning up of the  
8 information in the database done both by the  
9 National NAGPRA Program and by the museums and  
10 federal agencies to give us better data. So we  
11 certainly have a better picture at this point than  
12 we did a year ago with the numbers as they're  
13 listed in these two reports. So yes, the numbers  
14 have changed.

15 LINDALEE FARM: Alec, do you have any further  
16 follow up for Melanie on that?

17 It just died? Okay. We'll try and get Alec  
18 back in a little bit. He's had some travel  
19 difficulties and he's stuck in an airport. And he  
20 apologizes for not being here, but we're making our  
21 best efforts to include him. He should, fingers  
22 crossed, be here tomorrow to participate.

23 I want to go back to Armand, because I'm not  
24 sure that Armand had finished what he was asking,  
25 and I didn't want you to feel like you were cut

1 off, because Alec can't see us here. So Armand, do  
2 you have anything further?

3 ARMAND MINTHORN: Yes. Well, the tribes,  
4 federal agencies, museums and universities, we all  
5 try to maintain and protect relationships in  
6 working with the NAGPRA law. And those  
7 relationships certainly can have long-standing  
8 benefits, but it doesn't help a relationship when a  
9 museum fails to publish a notice. That's not  
10 productive, and that's not healthy for maintaining  
11 a relationship, a working relationship. And for  
12 whatever reason or reasons that they fail to  
13 publish notices for culturally affiliated sacred  
14 human remains is a question that needs to be  
15 brought forward and certainly we have in the past,  
16 committee members in maintaining those  
17 relationships, made direct contacts to these  
18 entities. And just a simple phone call, a simple  
19 email can have big results. They certainly can.

20 And these museums shouldn't have an excuse to  
21 not publish a notice, and it goes to say the same  
22 for culturally unidentifiable. Failure to contact  
23 tribes isn't an excuse. And again, this is where  
24 the committee can make those efforts, both  
25 individually and as a group. A simple phone call

1 and a simple email can help them and spur them  
2 along, and they can have big results. Maybe they  
3 have a question, an unanswered question, and the  
4 committee member can answer that question or get  
5 help from staff to answer that question. But the  
6 bottom line is to take care of these culturally  
7 affiliated remains. The bottom line is to take  
8 care of these culturally unidentifiable human  
9 remains. So there are means and there are things  
10 that can be done to help with the notices that  
11 these museums and federal agencies are failing to  
12 publish. That's all.

13 LINDALEE FARM: Thank you.

14 Dennis.

15 DENNIS O'ROURKE: Thank you, Madam Chair.

16 ALEXANDER BARKER: Madam Chair?

17 LINDALEE FARM: Oh, can we take Alec? Go  
18 ahead. I apologize, Dennis.

19 DENNIS O'ROURKE: No problem.

20 LINDALEE FARM: Go ahead, Alec.

21 ALEXANDER BARKER: No, please. I'm sorry. I  
22 didn't mean to interrupt.

23 LINDALEE FARM: No, please, go ahead.

24 ALEXANDER BARKER: Melanie, I may have missed  
25 part of your answer, but were you able to give the

1       committee an idea of the actual number of human  
2       remains that have been removed from those lists as  
3       a result of updates and reconciliation of the  
4       database itself?

5           MELANIE O'BRIEN: Yes, so Alec's question was  
6       if I could give some of the numbers related to  
7       these reports. Unfortunately we -- I do not have  
8       figures to give you on which category the changes  
9       resulted from. I can't tell you that this number  
10      is because of notices published and this number is  
11      due to this data cleanup. I can give you the  
12      aggregate figures. We have not done an analysis at  
13      a more detailed level of what category these  
14      changes fit into.

15           ALEXANDER BARKER: Those aggregate numbers  
16      would be helpful, please.

17           MELANIE O'BRIEN: Okay. So, for the culturally  
18      affiliated human remains not listed in Notices of  
19      Inventory Completion, the total number of human  
20      remains listed in the report has been reduced by  
21      20,000. For the culturally unidentifiable  
22      inventory report, the number of human remains  
23      listed in that report has been reduced by 5,000.

24           ARMAND MINTHORN: What's the total number?

25           ALEXANDER BARKER: Thank you.

1 MELANIE O'BRIEN: The total number?

2 ARMAND MINTHORN: You said reduced, but what's  
3 the total number?

4 MELANIE O'BRIEN: For each report?

5 ARMAND MINTHORN: For the culturally  
6 unidentifiable.

7 MELANIE O'BRIEN: Oh, the total number listed  
8 in the culturally unidentifiable report?

9 ARMAND MINTHORN: Yes.

10 MELANIE O'BRIEN: As of February 23rd, which is  
11 an update, there are 19,352 individuals listed in  
12 that CUI inventory report.

13 SHANNON KELLER O'LOUGHLIN: And Melanie, is it  
14 correct, the culturally affiliated report, when you  
15 say reduced 20,000, so we're talking about the  
16 36,462 individuals that were initially listed has  
17 now been reduced by 20,000. So we're approximately  
18 looking at 16,462. Is that correct?

19 MELANIE O'BRIEN: No, so the current list as of  
20 February 19th includes 11,785 human remains not  
21 listed – and you know, actually I'm going to ask  
22 you to give me a minute to revise that number  
23 because I realized when I calculated it last night  
24 I might have calculated it incorrectly. Let me  
25 give you that revised figure.



1 STEVE TITLA: Madam Chair.

2 LINDALEE FARM: Can you do that tomorrow  
3 morning, so that we're not - you're not sitting  
4 there doing the calculation now? Or would you  
5 prefer to do the calculation now?

6 MELANIE O'BRIEN: Yes, so the calculation  
7 actually is 5,000 not listed in notices, so for the  
8 MNI, the human remains not listed in notices, that  
9 has been reduced by about 4,000. The 20,000 refers  
10 to the total number. That has been reduced by  
11 20,000, the total number of human remains. And  
12 that reduction then represents data cleanup in that  
13 report and errors that were reported in that  
14 initial report. So I apologize for giving you the  
15 wrong figures.

16 SHANNON KELLER O'LOUGHLIN: We're at a total at  
17 11,000 -

18 MELANIE O'BRIEN: Not in notices.

19 SHANNON KELLER O'LOUGHLIN: - not in notices,  
20 okay.

21 LINDALEE FARM: Okay. Alec, do you have any  
22 further follow-up questions?

23 ALEXANDER BARKER: No, Madam Chair. Thank you.

24 LINDALEE FARM: Okay. Thank you very much.

25 Armand, do you have anything further?

1           ARMAND MINTHORN: Just a clarifying question,  
2           Melanie. So the culturally affiliated report and  
3           the culturally unidentifiable report, these reports  
4           include federal agencies.

5           MELANIE O'BRIEN: That is correct.

6           ARMAND MINTHORN: Can we – can a list be – I  
7           don't have a list of the federal agencies and/or  
8           museums and universities that are tied to these  
9           reports.

10          MELANIE O'BRIEN: That is listed in the report,  
11          and we can be sure to –

12          ARMAND MINTHORN: But I don't have that report.

13          MELANIE O'BRIEN: Yes, we can get you that, and  
14          it is publically available.

15          ARMAND MINTHORN: Okay.

16          LINDALEE FARM: Okay. Steve.

17          STEVE TITLA: Melanie, my numbers are confused  
18          here.

19          MELANIE O'BRIEN: I know. I'm sorry.

20          STEVE TITLA: On the culturally affiliated I  
21          wrote down 20,000. Is that wrong?

22          MELANIE O'BRIEN: Yes, that's the reduction in  
23          the total number of human remains that the report  
24          is looking at. The report really is about human  
25          remains not in notices and that reduction is about

1 4,000.

2 STEVE TITLA: So what's the number, the  
3 culturally affiliated number?

4 MELANIE O'BRIEN: It's 11,000.

5 STEVE TITLA: And the CUI, how much is that?

6 MELANIE O'BRIEN: The total number of human  
7 remains currently on the CUI report is 19,000.

8 STEVE TITLA: Okay. Madam Chair, Armand brings  
9 up an important point about the past actions of the  
10 Review Committee and contacting the museums or  
11 having some sort of communication with them  
12 regarding these areas of reports. So what is  
13 proper to do here? Do we make a motion or should  
14 we put it on the agenda? What's proper and what's  
15 not proper?

16 MELANIE O'BRIEN: I would recommend that you  
17 take this into consideration and propose discussion  
18 tomorrow when you have time allotted for  
19 subcommittee discussion would be my recommendation.

20 STEVE TITLA: Thank you.

21 LINDALEE FARM: Okay. Shannon.

22 SHANNON KELLER O'LOUGHLIN: And just quickly, I  
23 realize we're a little over time here. Excuse me,  
24 just quickly because I realize we're a little over  
25 time here, the Review Committee did task the

1 National NAGPRA Program to draft communications and  
2 send them out to museums and federal agencies  
3 concerning both of these reports. That process  
4 frankly, in my opinion, in my opinion only, was a  
5 little bit of a mess. So it – we probably should  
6 discuss how best to move forward in a productive  
7 manner during our subcommittee discussions  
8 tomorrow, because you're right, right on the nose,  
9 that's exactly what we need to do and we need to do  
10 it in a good way and in a productive way.

11 LINDALEE FARM: We can have a further  
12 subcommittee report tomorrow. There is time  
13 allotted for that, but Dennis, I don't know if –  
14 you are on that subcommittee, and I don't know if  
15 that's what you wanted to add.

16 DENNIS O'ROURKE: Yes, I was basically going to  
17 say pretty much the same thing Shannon did because  
18 I'm on that subcommittee. I just wanted to clarify  
19 that some of the changes in these numbers probably,  
20 I assume, reflect responses from the contacts that  
21 we asked the National NAGPRA to initiate with the  
22 entities holding the human remains. There –  
23 certainly for a time, I'm not sure I would  
24 characterize it exactly the same way Shannon did,  
25 but there was some lack of communication that we

1 know what was happening for a while. And is it  
2 fair to say that those numbers are continuing to  
3 change and evolve as responses are still coming in  
4 from those contacts that we requested?

5 MELANIE O'BRIEN: Yes, those contacts that you  
6 requested went out in January of last year. So we  
7 do continually see responses to that.

8 DENNIS O'ROURKE: Thank you.

9 LINDALEE FARM: Armand.

10 ARMAND MINTHORN: Final comment.

11 LINDALEE FARM: Yes.

12 ARMAND MINTHORN: Just looking at this list  
13 here, Melanie, museums and federal agencies, you  
14 know, the culturally affiliated but also including  
15 the culturally unidentifiable, this list may  
16 include both of them or just one of them, but would  
17 again recommend to the committee here to invite  
18 those museums here and/or federal agencies to give  
19 a report to this committee to keep them – to keep  
20 them focused. And we could certainly help them,  
21 but they need to understand that their final  
22 actions are dependent on the notices that they give  
23 and disposition of those sacred human remains are  
24 important. And when they can sit in these chairs  
25 and tell everybody here what they're doing and what

1       they're not doing can certainly too make things  
2       happen. But they need to be very upfront and very  
3       clear, especially to this committee on what their  
4       progress is with culturally unidentifiable and  
5       culturally affiliated. That's all.

6               LINDALEE FARM: Sonya.

7               SONYA ATALAY: Briefly. I would just like to  
8       follow up with what Armand said and note that at  
9       the previous meeting in November it was very  
10      helpful for me to hear from Arizona State Museum,  
11      for example, about what is going on with them and  
12      why they're having the challenges and barriers that  
13      they're having, and I would agree that inviting  
14      other museums that we see on this list to come and  
15      to discuss the kind of challenges and barriers, so  
16      that we perhaps as a committee could help forward  
17      the work that they're doing. And if we know what  
18      those barriers are, we're both kind of pushing them  
19      along and we're also helping them to meet and be in  
20      compliance with the work they need to do.

21              I would also add that I think that the  
22      subcommittee when they meet, it would be helpful to  
23      think about the kind of qualitative information  
24      we're gathering through the questions, interviews,  
25      conversations, revisit that, so we as a committee

1 are very aware of the kind of information that's  
2 coming in, so that we can use that to our best  
3 advantage. Thank you.

4 LINDALEE FARM: Okay. Any last words on this?  
5 We can talk about it more tomorrow when we have the  
6 subcommittee reports.

7 MELANIE O'BRIEN: Yes, and I also have  
8 additional information, but I think in the  
9 interests of time we can -- we can move that to  
10 later today or even tomorrow with some additional  
11 updates from the program.

12 LINDALEE FARM: Okay.

13 MELANIE O'BRIEN: We are about well over a half  
14 hour past our timeline and I don't want to delay  
15 our two presentations that we have any further.

16 LINDALEE FARM: Yes, I think we should move  
17 forward with the presentations, and I would prefer  
18 to move forward now rather than take a break for  
19 lunch and then have the presentations afterwards.  
20 But we'll take a short break, unless the presenters  
21 would like to wait until after lunch to do the  
22 presentation. I will defer to the presenters as to  
23 their preference. Do you have a preference,  
24 Ramona?

25 RAMONA PETERS: Well, it's sort of difficult to

1 stand in the way of food –

2 LINDALEE FARM: That's one vote for break for  
3 lunch, and to our other presenter?

4 ROBERT PAYNTER: I agree with Ramona's advice.

5 LINDALEE FARM: Okay. And with Shannon's  
6 request for a short break, perhaps we ought to just  
7 take it all in one and have lunch and then  
8 reconvene. Can we make lunch 15 minutes shorter?  
9 Okay. So we'll all be back here at –

10 MELANIE O'BRIEN: 12:45.

11 LINDALEE FARM: 12:45.

12 MELANIE O'BRIEN: At 12:45 we'll resume.

13 LINDALEE FARM: Okay. And Ramona, we will  
14 start with you at 12:45.

15 Please be prompt. Thank you very much.

16 SONYA ATALAY: And for those who aren't aware,  
17 there is a food court, a lot of food on the second  
18 floor, so you're able to if you'd like to go there  
19 and quickly get a wide choice of food.

20 LINDALEE FARM: Can I ask another question? Is  
21 food allowed in this room?

22 SONYA ATALAY: That I don't know.

23 MELANIE O'BRIEN: Yes.

24 LINDALEE FARM: Okay. So if you are running a  
25 little bit late, bring back your lunch and eat



1 quietly while we have the presentations. Thank  
2 you.

3 **LUNCH**

4 MELANIE O'BRIEN: I wanted to make a couple of  
5 announcements. Again, we do have parking passes  
6 available if anyone needs them. They're on the  
7 table out front. We also would like to ask  
8 everyone who is present to please sign in so that  
9 we can record your presence here. And finally, we  
10 want to remind you to not leave valuables here in  
11 this room overnight.

12 LINDALEE FARM: We'll get started in a minute.

13 MELANIE O'BRIEN: I'll make an additional  
14 announcement for those of you in the audience. We  
15 do have several opportunities for public comment  
16 during these meetings. Today, the first  
17 opportunity is at 2:45. The Review Committee is  
18 interested in receiving comments concerning  
19 progress made and barriers encountered in  
20 implementing NAGPRA. Your public comment will help  
21 inform the Review Committee's annual report to  
22 Congress. So please feel free to come forward and  
23 let me know if you're interested in making a public  
24 comment. There is an opportunity today again at  
25 2:45 and then there are two opportunities tomorrow.

1 LINDALEE FARM: Okay. Thank you, Madam DFO.  
2 Shall we move forward on our agenda?

3 MELANIE O'BRIEN: Yes. So the first item on  
4 our agenda is a presentation from Ramona Peters,  
5 the Tribal Historic Preservation Officer for the  
6 Mashpee Wampanoag Tribe.

7 **PRESENTATION: WAMPANOAG CONFEDERATION**

8 **RAMONA PETERS**

9 RAMONA PETERS: Good afternoon. (Native  
10 American language.) My name is (Native American  
11 language), also called Ramona Peters, from the  
12 Mashpee Wampanoag Tribe, and I'm from the Bear  
13 Clan. I represent as a coordinator for the  
14 Wampanoag Confederation, which I would like to take  
15 a moment to introduce two of the repatriation  
16 officers that we work with, Chief Kenneth Alves  
17 He's over here around the corner, come on. He  
18 represents the Assonet Band of Wampanoag. This is  
19 a band of Wampanoag people who no longer have a  
20 homeland. John Peters, Jr. is the Mashpee Tribe's  
21 repatriation officer. And one other member who is  
22 not with us today, an Elder, Edith Andrews, she  
23 represents the Wampanoag Tribe of Aquinnah or Gay  
24 Head or Martha's Vineyard.

25 We've been repatriating for about 21 years,

1 and the confederation formed in 1996, I believe.  
2 Sometime before that they had a different name, but  
3 we have been involved with NAGPRA for a very long  
4 time. We're also representative of people who you  
5 could call first-contact people on the East Coast.  
6 Our ancestors and our leader at the time,  
7 Massasoit, made a treaty with the pilgrims and they  
8 landed and lived within our homelands. They were  
9 the first to also disinter or dig up some of our  
10 ancestors. And we have repatriated those items,  
11 and we have returned to the earth the remains of  
12 those ancestors and children. So we have been  
13 aware for centuries, almost 400 years now, of what  
14 others are capable of doing in our homeland.

15 To date we have repatriated 522 of our  
16 ancestors. It's been a long process, and through  
17 that process we begin to empathize with other  
18 tribes. As first-contact people, we've been  
19 exposed pretty much the longest. We have good  
20 education. We've been Christianized. We have  
21 traditionalists. We've been able to stay in our  
22 homeland. We were not moved across the  
23 Mississippi, like some of the other eastern tribes.

24 But even for us, repatriation has been rather  
25 difficult, and so what we looked at with the

1 difficulties was the resistances from museums. And  
2 what we noticed was that the resistance from the  
3 museums, we try to understand, I think we're  
4 talking about three worlds here, the one where the  
5 ancestors walk and they walk in ours and they walk  
6 in the museums, and then there is us, the present  
7 day walking with the DNA of thousands of years, and  
8 then there are people who came here, whose  
9 ancestors are from another world, another land, but  
10 yet their worldview creates a resistance to  
11 cooperating in a good way.

12 We looked at those philosophical differences  
13 and we understood that some of it was resources.  
14 Some of the museums did not have enough funds to  
15 staff and do proper inventories and to – some of  
16 the museums are volunteers, and they didn't have  
17 the education to work within National NAGPRA. And  
18 we know that there are some tribes that are in the  
19 same situation. They do not have enough funds.  
20 They are perhaps intimidated by working with the  
21 federal government based on past experiences, and  
22 also that the preponderance of the evidence lies  
23 with the tribes. It's a very big burden.

24 My nation is Totem of the Wolf, and although  
25 the wolf may sing to the moon, it doesn't whine.

1       And when we go to these museums and we're asking  
2       for our ancestors' remains to be repatriated, we do  
3       not want to go whining. We don't want to be  
4       perceived that way. There are things in the NAGPRA  
5       law that I know it's not intentional but it does  
6       impose itself on the dignity of the tribes. I  
7       think after 25 years, perhaps this Review Committee  
8       would see fit to revisit those things that impose  
9       on the tribes.

10       I've heard - just this morning, we talked  
11       about the numbers a little bit. I know that there  
12       are museums who know which tribes they should  
13       perhaps culturally affiliate ancestral remains to,  
14       and perhaps those tribes are not federally  
15       recognized and perhaps those museums do not feel  
16       obligated to notify those tribes. I'm going to ask  
17       the Review Committee if we could instruct museums  
18       to notify all tribes, contemporary people, who may  
19       take on this task. Although it is an honor, it  
20       also is a burden full of responsibilities on many  
21       different levels. But those nonrecognized tribes  
22       do not receive federal monies. If they're able at  
23       least to see the inventories, they may find a  
24       federally recognized tribe to assist them or they  
25       may find a philanthropist or other people who would

1       give them some funds to help them bring their  
2       ancestors home.

3               We had experienced a museum that, although  
4       underfunded, it still – and although it repatriated  
5       or it did all of the paperwork to return human  
6       remains and funerary objects to our confederation  
7       choose not to give the things back. They went  
8       through – we went through the entire process, the  
9       claim, the consultations. We had letters  
10      committing, saying, but they would never allow us  
11      to actually come to the museum and take those  
12      ancestors home. It took us about 18 years. This  
13      particular site I would say, I mentioned Massasoit,  
14      who made the treaty with the pilgrims and allowed  
15      them to begin to settle in our homeland, it is this  
16      very place that these folks and this museum would  
17      not allow us to take those ancestors home. And so  
18      we – there were seven institutions that had parts  
19      of that collection. There are thousands of  
20      funerary objects and impacted 46 graves. It was a  
21      very big and complicated repatriation. But here we  
22      had this very small little museum that was in a  
23      library that refused to return. And so we used the  
24      law. We levied civil penalties. We wrote the  
25      letter and sent it in. And we called David Tarler

1 and spoke to him about it, and he arranged for a  
2 conference call with the museum and the  
3 confederation.

4 I want to encourage tribes who are having  
5 these problems to use the law, to use the civil  
6 penalties. We were successful. It was just almost  
7 like dispute resolution. It wasn't - I mean, they  
8 had their lawyer on the phone and it was  
9 confrontational. But Mr. Tarler's expertise on the  
10 law, he was able to instruct the institution what  
11 they must do, and they couldn't really argue with  
12 it anymore.

13 Within ten days we went to the museum and  
14 retrieved those items. But we never heard anything  
15 else after that. We had two grants from NAGPRA  
16 that dealt with this particular site. Altogether  
17 there might have been 90,000 dollars that we were  
18 not able to utilize in the way we had intended.  
19 That would be what that museum would justifiably  
20 have to pay in fees, I think, when I read the  
21 instructions of civil penalties. They cost us at  
22 least that much, not to mention the emotional  
23 and spiritual burdens put on us by their  
24 resistance. Without museums actually paying the  
25 fees, there's no deterrent really.

1 I would like to see the Review Committee  
2 analyze the process of civil penalties and although  
3 I know the tribes do not receive any financial  
4 benefit from this, rightfully so, what we're really  
5 after is the items we're trying to repatriate  
6 honestly. The travel, all of the costs involved in  
7 repatriation, it's huge. And I know it's that way  
8 for the museums too, but they would be more  
9 inclined to comply with the law if we actually used  
10 or sharpened the teeth of the law, because from  
11 what I could tell there was no follow up after that  
12 conference call. We never knew what happened. We  
13 don't know if that museum paid anything. When we  
14 go to reinter, we have not been able to reinter yet  
15 in that town where this institution is. We don't  
16 know what we're walking into politically.

17 But I do know that deterrents can only work if  
18 they're exercised to the maximum and that we do  
19 need to know who those museums are that are  
20 resistant. Sometimes, at least for us, with our  
21 Elders, if we do something shameful and they know  
22 that we did, we really feel it. For museums in  
23 this country that receive federal money, if on a  
24 national level their names are out there as people  
25 who are doing something shameful, then maybe they



1 wouldn't do it. I think they definitely should be  
2 exposed, and also then other tribes can be prepared  
3 to know what they're up against. There are lots of  
4 tribes who have not engaged in NAGPRA yet because  
5 they are not prepared. They don't have the  
6 infrastructure. They don't have the offices. They  
7 don't have the databases. They don't have the  
8 internet, and so there are a lot of reasons why  
9 tribes aren't engaged. There's a continuation.  
10 We've been fortunate enough to be together for  
11 almost 20 years, the same people. That is not true  
12 for all other tribal nations. There is a big  
13 turnover and there's a turnover in National NAGPRA.

14 I don't want to take up too much more time as  
15 20 years of experience can take, but I do want to  
16 say we are so grateful that NAGPRA exists and we  
17 are very grateful for all of the Review Committee  
18 members that have ever sat and looked over and  
19 listened carefully to the disputes that the tribes,  
20 many, many tribes have brought before this  
21 committee and these committees through these years.  
22 It's meaningful. It's important. It's our human  
23 rights being exercised, and it needs to be better  
24 supported by the federal government. We are faced  
25 with understaffed National NAGPRA. We have sent in

1 and museums have sent in notices for the Federal  
2 Register that have not been able to be posted  
3 because there are not enough staff to handle it,  
4 and the many other things. The accounting, from  
5 what I can understand, it's a contracted person who  
6 is handling the funding. The grants, I've heard  
7 from many tribes, their grants have been mismanaged  
8 and having troubles. There's only one person, and  
9 when you call you may not be able to reach her for  
10 weeks. It's a problem. No reflection.

11 I'm just saying that it's - there's no teeth -  
12 not enough sharpness in the teeth and there's not  
13 enough nourishment going into this huge endeavor.  
14 After 25 years, we need to start to demand more  
15 funds and it has to come from the committee. We'd  
16 also ask the committee if they would send a letter  
17 to the Assistant Secretary to instruct that the  
18 National Parks open themselves for, if necessary, a  
19 tribe needs to reinter on those properties. We've  
20 been having trouble and many tribes have trouble  
21 finding safe, protectable sites for reinterment.  
22 The Wampanoag Nation Confederation has used the  
23 National Seashore, and I know that other tribes  
24 have been successful, but one-by-one we have to go  
25 and ask for this permission. When if, instead, if

1       it came from the top, instructed all those parks,  
2       the tribes would have a much easier process of  
3       going through, rather than each one of us having to  
4       request safe sites for reinterment closest to their  
5       territory. So I want to thank you very much for  
6       your kind attention, and I think that's what I can  
7       offer.

8               LINDALEE FARM: Thank you very much.

9               Ramona, before you take your seat, I'm curious  
10       if any of the Review Committee members has any  
11       comments or questions on that report? Sonya.

12       **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

13              SONYA ATALAY: I just would like to say thank  
14       you for raising the issues that you raised. I've  
15       made notes of what I found to be five of the key  
16       points that I hope that our committee can then  
17       follow up on. Several of these have been things  
18       we've been talking about, particularly the issue of  
19       finding places for reburial on federal lands and in  
20       parks. We've been looking at that, and I know  
21       we'll be following up with that either today or  
22       tomorrow. In terms of demanding more funds from  
23       Congress, that's something we have been working on  
24       and pushing in every report we write to Congress.  
25       And I just ask everyone regularly to talk about -

1 to talk and urge your Congress people to  
2 appropriate more funds for this. So thank you for  
3 that. We are really aware of that and have been  
4 talking about that, how important it is. The fact  
5 that the funding has not increased in the 25 years  
6 is just reprehensible to me. And I know we are in  
7 tough financial times, but I agree one hundred  
8 percent with that, and I thank you for raising that  
9 point.

10 The issue of the grants people and National  
11 NAGPRA having a lot of on their plate and being  
12 overworked, I'd like to think about what we could  
13 do about that and how we can resolve that, and the  
14 issue of notices I think maybe some of that has  
15 been resolved hopefully, but I'd like us to think  
16 about as a committee what we could do to respond to  
17 that point and assist in that. And then in terms  
18 of analyzing the process of civil penalties, I just  
19 wonder if you could speak a little bit about what  
20 you thought might be helpful or what kind of  
21 information, just to give us a sense of what you  
22 had in mind. We have been talking a lot about  
23 civil penalties, and it would be helpful if you had  
24 any suggestions about that request. That would  
25 probably help us perhaps move forward.

1           RAMONA PETERS: The step-by-step – well, it  
2 actually, it was – we didn't go the whole step-by-  
3 step because we used the conference call as sort of  
4 a mediation, I would say, it was more like dispute  
5 resolution that happened. But if a tribe and a  
6 museum was completely resistant – we had all of the  
7 agreements to repatriate. It was just that new  
8 board members decided that they didn't like NAGPRA  
9 and they changed their mind and they were  
10 resistant. So this is maybe a unique case.

11           But for tribes who have not even exercised  
12 civil penalties and they've been extremely patient  
13 like we have with some institutions, we're still  
14 exercising patience and courage in this. But  
15 tribes have to know that this process works on a  
16 step-by-step basis and so if you have a model, I  
17 would like it to be broadcast in some way so that  
18 we see how it works and that it works through the  
19 entire process, especially knowing if the museums  
20 or the institution paid the fees, which again other  
21 museums might look at it and see it as a deterrent.  
22 So I don't know if there's a test case that you  
23 could show us, but I haven't seen one yet and it  
24 would – I think it would be helpful to shore up or  
25 strengthen NAGPRA.

1           SONYA ATALAY: So maybe something that we could  
2           do as a committee would be to ask National NAGPRA  
3           to provide us with some maybe step-by-step  
4           guidelines or something about clarifying what that  
5           process actually is. We talked a little bit about  
6           that this morning, but maybe we could – I guess I  
7           would open that up to ask my fellow Review  
8           Committee members if that's something you would  
9           support or other ideas that you have to help  
10          clarify this issue of civil penalties and what that  
11          process actually is.

12          LINDALEE FARM: Carla.

13          CARLA MATTIX: Before we go too far down the  
14          road of civil penalties, I just also want to remind  
15          the Review Committee that under your section 8  
16          responsibilities, civil penalties is not part of  
17          those responsibilities. I believe there is on the  
18          National NAGPRA website a very clear guidance  
19          already on how to file a civil penalty allegation.  
20          So that is available to the public already, how to  
21          go through the initial steps, and contact  
22          information for anybody that wants to make a civil  
23          penalty allegation is on that website as well, so  
24          they can get more guidance on that matter.

25          RAMONA PETERS: Yes, that's true and that's

1        what we used. There's sort of a form letter that  
2        you can fill in the blanks and that's what we did.  
3        But from there on, it's not as clear what happens  
4        next. And what happens next is the tribes are not  
5        – the tribe was not contacted with any further  
6        information. It went in – the letter went in to  
7        the Assistant Secretary and nothing came back.

8            CARLA MATTIX: And that's because this is  
9        essentially akin to a law enforcement process. So  
10       the process is not, in this instance, transparent.  
11       There is an investigation that goes on, and that is  
12       why the public is not kept apprised of every step  
13       that happens in the investigation. There is a  
14       great deal of prosecutorial discretion involved  
15       with these situations within the government. And  
16       generally once the allegation comes in there is not  
17       going to be any further information about how the  
18       investigation is progressing until we reach some  
19       final stages, such as the final agency action stage  
20       we talked about earlier. So there's just not a lot  
21       of information that is available – because of the  
22       way these investigations play out, there's not  
23       information that's available to be broadcast  
24       publically about this.

25            RAMONA PETERS: Has there been a successful or

1 complete – has there been any complete processes,  
2 investigations and resolve?

3 CARLA MATTIX: Yes, there have been. And in  
4 prior National NAGPRA reports before the committee,  
5 and I believe they might be up on the website as  
6 well, some of the allegations that have gone  
7 through the entire process, where there have been  
8 civil penalties assessed and paid, those are  
9 available to the public. That information is  
10 available, and it's been reported on at prior  
11 meetings. So we can help you find that information  
12 if you'd like.

13 RAMONA PETERS: Well, thank you. I apologize  
14 for my ignorance on that.

15 CARLA MATTIX: Oh, no, no. That's okay.  
16 There's a lot of information on the website.  
17 Sometimes it's hard to find what you're looking  
18 for.

19 LINDALEE FARM: Shannon.

20 SHANNON KELLER O'LOUGHLIN: Thank you. I'd  
21 like to discuss a little bit more about what our  
22 authority is as the Review Committee, because I  
23 don't believe that we're absolved from having these  
24 discussions about civil penalties or informing the  
25 public about civil penalties. And I think in the



1 Act itself there is some ambiguous language about  
2 what our authority covers. One is that we consult  
3 with the Secretary in the development of  
4 regulations to carry out this Act, without the  
5 specific information about 5, 6 and 7, and then the  
6 next provision too that says "performing such other  
7 related functions as the Secretary may assign to  
8 the committee."

9 CARLA MATTIX: Let me just start you off at the  
10 very beginning, because we've been very clear on  
11 this position for the past 25 years at the  
12 Department. Section 8 (a) is the very first  
13 provision that talks about your responsibility. So  
14 before you get into the details, section 8 (a) says  
15 activities under 5, 6 and 7.

16 SHANNON KELLER O'LOUGHLIN: Correct.

17 CARLA MATTIX: And then your charter also says  
18 that.

19 SHANNON KELLER O'LOUGHLIN: Correct.

20 CARLA MATTIX: So we interpret that as meaning  
21 not section -

22 SHANNON KELLER O'LOUGHLIN: I understand that  
23 the Solicitor's Office interprets it that way, but  
24 I say that there's ambiguity here because the  
25 statute is extremely specific about calling out our

1 duties under 5, 6 and 7, and it happens to be under  
2 (c) in which there's ambiguity, that it doesn't  
3 provide the same detail as it does in the rest of  
4 the statute.

5 So I'm saying that though we may not be  
6 overseeing civil penalties, like we oversee section  
7 5, 6 and 7 of the repatriation, that doesn't  
8 absolve us from using Review Committee time and  
9 efforts to hear from the public about their burdens  
10 and their issues with the civil penalty process.  
11 So that you all can hear it, so we can hear it, and  
12 that we could propose potential changes to the  
13 regulations, where we're going to be talking about  
14 – probably tomorrow about forming a subcommittee to  
15 look at revisions to the Act itself and whether  
16 it's called for. And this may be one of those  
17 sections that I would think we would also discuss.

18 So what I'm saying in short is, we understand  
19 that we don't have oversight authority, nor are we  
20 able to get inside information on a continuing  
21 investigation, but that doesn't mean we can't talk  
22 about this and bring to public the importance of  
23 civil penalties and that the civil penalty  
24 provisions are enforced and that the museums who  
25 are failing to comply are penalized so that the Act

1       has teeth. So I wanted to just kind of soapbox.  
2       I'm done now.

3               CARLA MATTIX: And I do agree with that.

4               SHANNON KELLER O'LOUGHLIN: Thank you.

5               CARLA MATTIX: That general concept of  
6       considering how civil penalties plays into the  
7       entire process for NAGPRA compliance and NAGPRA  
8       effectiveness certainly. It's the – any sort of  
9       providing specific instructions to the National  
10      NAGPRA Program to do something with respect to  
11      civil penalties, in particular, where that starts  
12      to cross the line for what is considered to be your  
13      advisory role to the Secretary and your duties  
14      under the charter and the statute.

15              SHANNON KELLER O'LOUGHLIN: If I get a chance,  
16      though, I will tell the Secretary though.

17              SONYA ATALAY: I'd like to follow up, Cissy, if  
18      I may.

19              LINDALEE FARM: Sonya, please.

20              SONYA ATALAY: Just to follow up, so is it  
21      within our authority to request that clear steps in  
22      the process of civil penalties and civil penalties  
23      investigations be provided? So I'm not talking  
24      about details of any particular investigation, but  
25      just stating perhaps, to whom I'm not sure who we

1 would make such a request, that we've heard from  
2 our constituents that this is something they would  
3 like to know more about. That they would like to  
4 know what the process is, not how you bring about  
5 civil penalties. That sounds like that's covered  
6 on the website. But what the process is that it  
7 goes through. It sounds like right now it's a  
8 black box. That it goes into something and no one  
9 knows what happens after that. Is there a way that  
10 we could then, as a committee, request some kind of  
11 a clear, step-by-step process in terms of what  
12 happens after that? Even this morning, I was  
13 stymied trying to use the right language, because  
14 I'm not familiar with it. I don't know what those  
15 steps are and I would like to know that myself.

16 CARLA MATTIX: I think the regulation at 10.12,  
17 clearly lays out the exact process, from the idea  
18 of somebody formulating a concept of an allegation,  
19 how they have to provide that to the Secretary,  
20 what the Secretary's specific steps are that they  
21 have to take in response. That's all laid out in  
22 the regulation. I realize everybody doesn't read  
23 regulations every day. So we can review what's up  
24 on the website to see if there is a way to  
25 summarize that regulation for the public. I think

1       – I believe some of the information is on there,  
2       but perhaps not as detailed as the regulation and  
3       maybe there's an in-between area that we can come  
4       up with to provide more clarity.

5               LINDALEE FARM: Anyone else? David.

6               DAVID TARLER: Thank you, Madam Chair. And I  
7       would like to thank Ramona Peters for her  
8       presentation to you. I would echo what Carla just  
9       said. I believe that the steps as laid out in  
10      section 10.12 of the regulations are clear. I  
11      would commend to you those regulations. I would  
12      commend to you the template for alleging in writing  
13      a museum failure to comply.

14              I believe that the Mashpee Wampanoag Tribe did  
15      understand what the steps were, and they took those  
16      steps and they did so correctly. In this  
17      particular case, the reason that they do not know  
18      what follow up occurred is because simply there has  
19      not yet been any follow up. Quite clearly, the  
20      process is inclusive of not only the museum that  
21      has alleged to have failed to comply, being on  
22      notice, but also any party that alleges a failure  
23      to comply. When the Assistant Secretary makes any  
24      determination in writing, that determination is  
25      always provided to the party that is alleging a

1 failure to comply. The short answer is the tribe  
2 does not know what happened with respect to the  
3 allegation because there have been no  
4 determinations yet made with respect to that  
5 allegation. When there are, the tribe definitely  
6 will be notified. If additional information is  
7 needed in the investigation of the allegation, the  
8 tribe will be contacted. If there is any  
9 determination made at any stage, we'll include the  
10 tribe making the allegation.

11 I think it is important to also note what  
12 Ramona Peters said with respect to the particular  
13 matter at hand, and that is the goal of NAGPRA  
14 whether it be the compliance process or the civil  
15 penalty process is to affect repatriation or  
16 disposition or determining the interest of any  
17 party in particular cultural items. What happened  
18 here was the National NAGPRA Program was able to  
19 speak to both the museum in question and the tribes  
20 in order to resolve any misunderstandings or any  
21 differences of opinion or any dispute with respect  
22 to the process itself. And as a result the process  
23 was followed, and hopefully to the satisfaction of  
24 both the museum and the tribes.

25 The allegation of the failure to comply might

1 have contributed to that process not being short-  
2 circuited and continuing. The work that the  
3 National NAGPRA Program did in providing guidance  
4 to the parties, I hope also played an important  
5 role. But the goal of carrying out the NAGPRA  
6 compliance process was certainly helped by the  
7 National NAGPRA Program assisting the parties in  
8 question. So that if – so that it was not  
9 necessary for both parties to use their scarce  
10 resources to bring a dispute before the NAGPRA  
11 Review Committee, go through the process of the  
12 dispute, go through a recommendation from the  
13 Review Committee, publishing that recommendation in  
14 the Federal Register, and then the museum in  
15 question either agreeing to follow the Review  
16 Committee's recommendation or not.

17 And so I would commend to everyone to follow  
18 Ramona Peter's recommendation, knowing that the  
19 civil penalty process is available but also  
20 availing themselves of the National NAGPRA  
21 Program's ability to speak to parties that might  
22 have a disagreement or need some guidance and guide  
23 them toward the resolution of issues that will  
24 further the NAGPRA compliance process.

25 LINDALEE FARM: Anything further? Ramona, did

1           you want to say anything further?

2           RAMONA PETERS: Just for clarity, we did have a  
3           Federal Register notice from the institution  
4           culturally affiliating to us. That was not the  
5           issue. That was just – so all of the paperwork had  
6           been done, and I think what Mr. Tarler is talking  
7           about is the National NAGPRA Program played a role  
8           as a dispute resolution. I don't know if that's  
9           part of their process normally, but if it isn't it  
10          actually works and it works well. It's always –  
11          rather than going to court I would rather go to a  
12          dispute resolution, and not necessarily that it  
13          would have to come before the Review Committee if  
14          the National NAGPRA Program can play that role too.  
15          So that's where I'm not clear if it is a normal  
16          part of the process or if it was just in the  
17          initiative of Mr. Tarler at the time.

18          DAVID TARLER: Thank you. We offer our  
19          services to museums, Indian tribes, Native Hawaiian  
20          organizations that might have disagreements that is  
21          impeding the progress of the compliance process and  
22          we are always available to provide that assistance.  
23          And we prefer that all parties be present so that  
24          we can speak with one voice and they can hear one  
25          message when we try and facilitate the resolution



1 of disputes between museums and Indian tribes or  
2 Native Hawaiian organizations.

3 LINDALEE FARM: Okay. Thank you, Mr. Tarler.  
4 Thank you very much, Ramona. I guess my sense is  
5 perhaps this is one of those areas in which there  
6 should be a little bit more training or information  
7 being sent out to the tribes. Not everyone has  
8 access to the website, as Armand pointed out to us  
9 earlier today, and that's something we ought to  
10 look into with respect to just getting the  
11 information out there, so people know that it's  
12 available. And I want to thank Ramona for sharing  
13 and for the presentation, because I think it's  
14 helpful for those in the audience to know that  
15 there are avenues out there that can work, and  
16 Mr. Tarler is available to answer some of your  
17 questions and help you where he can. Thank you  
18 very much.

19 DAVID TARLER: Not only myself, but the  
20 National NAGPRA Program as well, and our learned  
21 counsel.

22 LINDALEE FARM: Thank you, everybody. Madam  
23 DFO?

24 MELANIE O'BRIEN: Okay, we will move forward to  
25 our next presentation, which is Robert Paynter, the

1 Chair of the Repatriation Committee, Department of  
2 Anthropology at the University of Massachusetts -  
3 Amherst.

4 LINDALEE FARM: Good afternoon, welcome.

5 ROBERT PAYNTER: Good afternoon.

6 LINDALEE FARM: Thank you for having us  
7 actually.

8 **PRESENTATION: UNIVERSITY OF MASSACHUSETTS -**  
9 **AMHERST REPATRIATION COMMITTEE**

10 **PRESENTATION**

11 ROBERT PAYNTER: Well, I was going to say thank  
12 you for coming. We are honored that the board has  
13 chosen UMass Amherst for their meeting. And we are  
14 very grateful for the hard work that the board does  
15 implementing this very important piece of human  
16 rights legislation, so thank you for your time and  
17 your effort and your thought and your spirit in  
18 helping this through.

19 I'd like to give you a sense of the work that  
20 we've been doing at UMass. And first I need to  
21 point out that the University of Massachusetts  
22 Amherst has been acting in collaboration with  
23 Amherst College, and particularly Tekla Harms at  
24 Amherst College and Smith College, and that would  
25 be Neal Salisbury working on repatriation at Smith

1 College. So when I say "we" sometimes, it's not  
2 the royal "we," it's these institutions and the  
3 people involved.

4 Okay. That first map please. Now this is  
5 like an example of bad PowerPoint 101. It just did  
6 not project anywhere near as well as I had hoped  
7 that it would. This is – I think this map begins  
8 to help you understand, even without being able to  
9 read it in detail, some of the Native history of  
10 this region. It's from Western Abenaki and Smith  
11 College Professor Lisa Brooks's insightful book,  
12 "The Common Pot: The Recovery of Native Space in  
13 the Northeast." The map shows the Northeast, and  
14 it indicates the names of indigenous homelands, of  
15 mission villages, and then the bodies of water, the  
16 lakes and the rivers that were so important to  
17 those communities. And obviously and refreshingly  
18 missing are any of the boundaries imposed by  
19 Europeans on this geography.

20 Let's try the next map, please, which is going  
21 to be just slightly better. I wish we had a larger  
22 screen. So this is the area right around here.  
23 This is the Amherst area, and in it – on the map  
24 you can see the blue arrow. I did get something  
25 right. You can see the big, blue arrow that is

1 pointing roughly to the Amherst area, and  
2 surrounding that area, the names you see are the  
3 names of the communities and the homelands of this  
4 area. Working closest to Amherst, in fact, we are  
5 in the homeland of the Nonotuck people, to the  
6 south are the Agawam and the Woronoco people. To  
7 the north are the Pocumtuck people, and just beyond  
8 are the Sokoki people, members of the Western  
9 Abanaki communities. And if the shades were open  
10 we could actually look out onto – and in fact, the  
11 board is able to look out onto Nonotuck land and  
12 just see a bit of Pocumtuck land to the north if we  
13 were able to look out that side.

14 These were thriving and important communities  
15 well-known by other indigenous communities  
16 throughout the Northeast, including the  
17 Haudenosaunee, as well as the Dutch and the French  
18 and the English. The Pocumtuck people, for  
19 instance, provided maize during a period of  
20 starvation for the English colony in Hartford to  
21 the south, and these communities figured in  
22 Metacom's War, also known as King Philip's war.  
23 Permanent European settlement began in 1630s to the  
24 south in the Springfield area, on the Agawam  
25 homeland.

1           By the middle of the 1700s an English census  
2 counted no Indians in this region. Unfortunately,  
3 the plagues and the wars resulted in horrific  
4 losses of life. But people persisted in this  
5 region as evidenced in vital records, museum  
6 donations, newspaper accounts, and obituaries.  
7 People developed coping strategies in the face of  
8 this invasion, including increasing the size of the  
9 area of their seasonal rounds, so that they would  
10 spend less time in this area. They also sought  
11 refuge with their kin and neighbors, especially to  
12 the north, the east, and the west. And to my mind  
13 to understand how that census came to a count of  
14 zero, it helps to take into consideration the miles  
15 of flat, fertile farmland that you drove through to  
16 get here. Land that was plentiful for wild and  
17 domesticated plants and animals, land that had been  
18 tended to by those five communities for millennia,  
19 and land that was coveted by the English for their  
20 own agricultural practices. This was the richest  
21 farmland in New England. This was Boston's source  
22 of wheat for its bread. And I believe that the  
23 English wanted no cloud on their so-called "title"  
24 to this land. And as a result they made this  
25 region very hostile to people who were too

1       publically asserting their residency in this land,  
2       based on their being Agawam, Woronoco, Nonotuck,  
3       Pocumtuck, or Sokoki. A result of this is that  
4       enough people moved their main residence from these  
5       old homelands to surrounding areas, which had  
6       supportive indigenous communities, and so there are  
7       no federally recognized communities resident in  
8       this region today.

9               This sadly familiar story is relevant for this  
10       meeting of the NAGPRA review board because of its  
11       impact on the repatriation of the approximately one  
12       hundred individuals from this region. Here's how  
13       we coped with this situation. In 2003, we had a  
14       consultation which included representatives from at  
15       the time the only federally recognized tribe in  
16       Massachusetts, the Wampanoag Tribe of Gay Head  
17       (Aquinnah); with the Mashpee Wampanoag community  
18       which has since become federally recognized; the  
19       Assonet Wampanoag community; members of the Nipmuc,  
20       who at the time had a pending federal recognition  
21       petition which was approved by President Clinton  
22       and revoked by President Bush; the Western Abenaki  
23       who also had a pending federal recognition petition  
24       that was turned down; and the Massachusetts  
25       Commission on Indian Affairs, to discuss how to

1 handle the question of affiliation for purposes of  
2 repatriation. The Stockbridge-Munsee Community  
3 Band of Mohican Indians was invited but at the last  
4 minute declined the invitation. The outcome of  
5 that consultation was to consider the individuals  
6 to be culturally unidentifiable because the region  
7 had an historically distinct autonomy and the  
8 clearest lines of descent were to the communities  
9 that were not federally recognized. This meant  
10 that we had to give them a culturally  
11 unidentifiable affiliation.

12 This result is that the CUI designation is  
13 confusing because it conflates two very different  
14 situations. One is the case found throughout the  
15 country when museums claim they cannot find  
16 descendants to consult with or arbitrarily impose a  
17 time limit beyond which establishing affiliation is  
18 deemed impossible. And this is what most people  
19 take the CUI designation to mean. Quite the  
20 contrary in our case, we had a very good idea who  
21 these people were and are and who they're related  
22 to today. And our motives were to repatriate them.  
23 I would think that different measures are needed to  
24 help move the repatriation of CUI individuals  
25 forward, given these two very different sets of

1           circumstances.

2           I am very happy to report, very happy to  
3           report, that we have worked this matter through and  
4           in May of 2014 we did publish a Notice of Inventory  
5           Completion. Here's how we got to that place.  
6           Margaret Bruchac did extensive documentary work on  
7           the Connecticut Valley people and on the Euro  
8           Americans in the late 1800s and early 1900s, who,  
9           quote, "collected," quote, them for Amherst  
10          College, Smith College, and regional museums.  
11          Siobhan Hart and Elizabeth Chilton worked with  
12          Margaret Bruchac to better understand the Native  
13          history of the region. Susan Goode-Null, Pam  
14          Stone, Claire Brown, Alexis Dolphin and Heidi  
15          Bauer-Clapp to the best of their abilities  
16          carefully restored people whose body parts had been  
17          separated. All this work benefited from guidance  
18          from Donna Moody and Ramona Peters, as well as John  
19          Peters, Jr., Troy Phillips, Kenneth Alves, Edith  
20          Andrews and Maurice Foxx. Amherst College had  
21          supported a part-time repatriation coordinator  
22          position filled by Margaret Bruchac, and the UMass  
23          administration in 2010 funded a full-time  
24          repatriation coordinator position which was filled  
25          by Dr. Rae Gould, a Nipmuc person who was deeply



1 involved in their federal recognition petition, as  
2 well as their repatriation work. Rae engaged in  
3 many rounds of consultation with federally  
4 recognized tribes and nonfederally recognized  
5 communities throughout the region. And these  
6 discussions along with scholarship, including that  
7 of Margaret Bruchac, Siobhan Hart, and Lisa Brooks,  
8 resulted in a common understanding of affiliation  
9 and what should be done. Sherry White of the  
10 Stockbridge-Munsee Community Band of Mohicans  
11 provided important evidence during the course of  
12 these consultation, and John Brown of the  
13 Narragansett Indian Tribe and Bettina Washington of  
14 the Wampanoag Tribe of Gay Head (Aquinnah) provided  
15 very helpful advice.

16 The Notice of Inventory Completion includes  
17 the Wampanoag, Nipmuc, and Western Abenaki  
18 communities at the 2003 consultation, along with  
19 the Stockbridge-Munsee Community Band of Mohican  
20 Indians, the Narragansett Indian Tribe, and  
21 Wampanoag Tribe of Gay Head Aquinnah.

22 I and all of us who have worked on this are  
23 very grateful for the many hours of work that was  
24 done by the tribes and the indigenous communities  
25 to help us dispose of our responsibility and reach

1       this conclusion.

2               Could I have the next slide please? Thanks.

3       This is a little better, easier to read, but not  
4       much. I'm sorry, folks. Our repatriation efforts  
5       include more than individuals from this region.  
6       This table presents an overview. Many of the  
7       individuals that were under UMass's control came to  
8       us from Amherst College and Smith College whose  
9       professors in the late 19th and early 20th  
10      centuries were actively opening graves and  
11      cemeteries from this area and from Rhode Island,  
12      Maine, Florida, and Utah. UMass Amherst field  
13      schools – and UMass had an anthropology department  
14      started in 1968. UMass Amherst field schools, one  
15      of which was responding to an inadvertent discovery  
16      of two individuals from nearby Northampton, and  
17      emergency salvage excavations account for other  
18      individuals that we've repatriated from  
19      Massachusetts. Private people also donated human  
20      remains to us, UMass, from Washington State, New  
21      York, and Massachusetts.

22              In all we have published nine notices, and we  
23      are in active consultation about two other sets of  
24      individuals, people from Utah and poorly  
25      provenienced individuals from New York State. When

1       these two cases are completed, all of the  
2       individuals in our control will have been  
3       repatriated.

4               We have been working on summaries of the  
5       collections to repatriate unassociated funerary  
6       objects, sacred objects, and items of cultural  
7       patrimony. We have sent hundreds of summaries of  
8       nearly all of our collections to at least 200  
9       tribes. As we conclude repatriating the few  
10      remaining individuals, more work will be able to be  
11      devoted to these summaries.

12             I would like to close by noting none of this  
13      work could have been possible without the support  
14      of Smith and Amherst Colleges, and especially Tekla  
15      Harms and Neal Salisbury, and the UMass  
16      administration supporting a full-time repatriation  
17      coordinator position. It's now being filled by  
18      Julie Woods on an interim basis and a part-time  
19      basis, while we search for a replacement for Rae.  
20      And Julie is terrific. I would like to mention  
21      Alan Swedlund and Dena Dincauze, who led the  
22      anthropology department's repatriation effort until  
23      I took on being chair in the early 2000s. And I'd  
24      like to mention Martin Wobst, Jaime Arsenault,  
25      Angela Labrador, Joyce White Deer Vincent, Mitchell

1 Mulholland and John Moody who have given steadfast  
2 advice for many years. Thank you.

3 LINDALEE FARM: Thank you. And again, thank  
4 you for having us. Anyone on the committee have  
5 any questions or remarks? No. Thank you so very  
6 much. Oh, sorry. Armand.

7 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

8 ARMAND MINTHORN: I want to commend Amherst and  
9 your folks in your departments that have worked  
10 hard on this. You know it's always good when  
11 people or groups can step up and continue to hold  
12 position until results are realized or results  
13 begin. And certainly this is a case of that.

14 A question, are there federal lands here that  
15 can rebury ancestral remains from these areas?

16 ROBERT PAYNTER: That's a really good question  
17 and thank you for your earlier comments. I  
18 appreciate them. I think not in this region. An  
19 arrangement - there's just not much in the way of  
20 federal lands. Look at Ramona and Jim, I mean, on  
21 the Cape you've got federal lands but - Ramona is  
22 reminding me that the Stockbridge-Munsee have a  
23 cemetery. I do not know much about that. What I  
24 can say is that John Peters, Slow Turtle, conducted  
25 a recommitment ceremony in a town about seven miles

1 north from here, where some of the people that we  
2 repatriated were from, called Deerfield, and the  
3 historic museum – the historical museum there,  
4 Historic Deerfield, Incorporated, donated land for  
5 this purpose and in doing so are in a position to  
6 secure it. They have security themselves for their  
7 own buildings and their own properties that would  
8 be well aware if anyone were to be doing mischief  
9 in that area. I don't know how the repatriation –  
10 how the recommitment and reburial will – I don't  
11 know the details of how it will be handled for  
12 these roughly one hundred individuals from this  
13 region. Those – Rae Gould is conducting those  
14 discussions now. Of course, you know, as the  
15 museum we really shouldn't have much of a say in  
16 that. We'll do anything anyone asks us to do but  
17 keep hands off at this stage.

18 ARMAND MINTHORN: Well, just I guess a  
19 comparison, back west we have many federal agencies  
20 and there are many instances where these federal  
21 agencies, whether they're west, east, north or  
22 south, a lot of them don't know what the other hand  
23 is doing. And they don't realize what other  
24 federal agencies, the same one, has done either in  
25 the north, west or the south. And this is why it's

1           important that these federal agencies understand  
2           that, you know, basically what's good for the goose  
3           is good for the gander.

4           And back west, we have done reburials on  
5           federal lands but we've also done reburials on  
6           state lands. And knowing that the state laws are  
7           different here in this area, but there are state  
8           parks, there are other state lands that possibly  
9           could be considered for reburials, I don't know.  
10          But again, this is where cooperation is key and  
11          relationship with the states are key. And these  
12          certainly can lead to reburials, and what they say,  
13          "no venture, no gain." If you don't ask them then  
14          how are you going to know? No is no, and that's  
15          fine. Move on. Again, the federal agencies here  
16          in the east, they probably don't know what they do  
17          in the west. I'm sure of that. But just those  
18          comments. Thank you.

19          LINDALEE FARM: Thank you for those comments,  
20          and I think tomorrow we'll have a report on  
21          reburials. There's been a report that's been done  
22          at our request, so hopefully there will be an  
23          update and we'll have more information for  
24          everyone, including ourselves. Again, thank you  
25          very much, and you and your group collective are to

1 be commended for your own good work and your  
2 patience in going through this and the  
3 cooperativeness in which it's all being done. So  
4 thank you.

5 ROBERT PAYNTER: Thank you very much.

6 MELANIE O'BRIEN: Okay. Next on our agenda is  
7 an action item, a CUI disposition request from  
8 Texas State University.

9 **ACTION ITEM: CUI DISPOSITION REQUEST - TEXAS STATE**  
10 **UNIVERSITY**  
11 **PRESENTATION**

12 TODD AHLMAN: Thank you very much. My name is  
13 Todd Ahlman. I'm the Director of the Center for  
14 Archaeological Studies at Texas State University.  
15 This is Dr. Mario Garza. He is the - Okay. Sorry.  
16 I will repeat that. I'm Todd Ahlman. I'm the  
17 Director of the Center for Archaeological Studies  
18 at Texas State University. This is Dr. Mario  
19 Garza. Mario, would you introduce yourself?

20 MARIO GARZA: Yes, I'm from the Miakan-Garza  
21 Tribe of the Coahuiltecan Indians. We are a state-  
22 recognized tribe in Texas.

23 TODD AHLMAN: This is my first time doing this,  
24 so please forgive me if I'm not doing it properly,  
25 but I'm going to sort of debrief you all on the

1 process that we've been through already. Dr. Garza  
2 is going to explain sort of the significance of the  
3 site to his people, and then we'll move on from  
4 there.

5 So we - Texas State University, during  
6 construction in September 2011, encountered human  
7 remains on our campus. The remains are from site  
8 41HY160, which is next to Spring Lake, also known  
9 as the San Marco Springs. This is an important  
10 spring in the city of San Marcos, in Hays County,  
11 Texas. Archaeological evidence around the springs  
12 has indicated human - almost continuous human  
13 occupation for the past 13,000 years. It's a very  
14 significant site archeologically and for the tribes  
15 in the region. We received a permit to disinter  
16 the remains per the Texas Health and Safety Code,  
17 chapter 711. In the State of Texas, any cemetery -  
18 and a cemetery is defined as one human remain - one  
19 burial or more, is protected, and so we had to get  
20 a permit to remove the remains. They were  
21 disinterred in December 2011.

22 Because the remains are on nonfederal public  
23 land in Texas, basically state, city, county  
24 remains, they're considered to be held by the  
25 people of the State of Texas and they are a holding



1 of the Texas Historical Commission. Our facility  
2 is a certified curation facility for the Texas  
3 Historical Commission, and we hold them in trust  
4 for the State of Texas and the Texas Historical  
5 Commission. We also qualify as a federal museum  
6 per NAGPRA regulations, and so we engaged in NAGPRA  
7 consultation per the regulations.

8 In May 2012, we initiated consultation with  
9 federally recognized tribes. Please note that in  
10 Hays County, Texas, there are no federally  
11 recognized tribes with aboriginal or tribal land  
12 claims. I don't believe that we have any federally  
13 recognized tribes in Texas.

14 (Inaudible comments.)

15 TODD AHLMAN: We do?

16 MARIO GARZA: No, we don't.

17 STEPHEN SIMPSON: In Texas, yes, you do.

18 MARIO GARZA: We have three museums in Texas,  
19 but the Indians — I mean we have three reservations  
20 in Texas, but the Indians are not original. We're  
21 talking about original Texas Indians.

22 STEPHEN SIMPSON: All right.

23 MARIO GARZA: They moved there less than three  
24 hundred years ago.

25 STEPHEN SIMPSON: All right. Thank you. I

1 stand corrected.

2 MARIO GARZA: Any remains you find that's older  
3 than three hundred is not going to belong to any  
4 federally recognized tribe.

5 TODD AHLMAN: So just to repeat that there are  
6 reservations in the State of Texas, but those  
7 tribes have been there less than two hundred years.

8 And so in May 2012 we began consultation. We  
9 conducted - this consultation said that we were  
10 going to do our analysis and continue consultation  
11 and ask tribes to comment on that. I do not  
12 believe that we received any responses to that  
13 initial consultation. We did conduct osteological  
14 analysis and determined that the remains were  
15 Native American, and in December 2013 did the  
16 follow-up consultation to 27 tribes, as well as the  
17 Miakan-Garza Tribe, telling them about the results  
18 of the osteological analysis and asking them to  
19 continue consultation. The only tribe that  
20 responded affirmatively was the Coushatta of  
21 Louisiana, and asked to be considered a culturally  
22 affiliated tribe if no other tribe stepped forward.  
23 In July of 2014, the Miakan-Garza asked to be  
24 considered a culturally affiliated tribe, and we  
25 entered into negotiations with them as well as the

1       Coushatta. And in November of 2014, the Coushatta  
2       of Louisiana deferred to the Miakan-Garza for  
3       disposition of the remains. And so we are asking  
4       you all for permission for disposition of the  
5       remains to the Miakan-Garza Tribe. And Dr. Garza  
6       can tell you about the significance of the site to  
7       his people.

8           MARIO GARZA: Yes, I wanted to tell you about  
9       the significance of the site. The site, we  
10      consider the site our most sacred site. We have  
11      four sacred water sites, and this one we consider  
12      to be the most sacred of all because this is the  
13      site that we consider to be the origin of our  
14      creation. We believe this is the site where we  
15      came into this world. According to our creation  
16      story, we were created in the underworld and then  
17      we followed the deer and we came out of one of the  
18      springs. Back in 2005 – that's been our creation  
19      story for hundreds of years that I've heard all of  
20      my life.

21           Back in 2005, one of the members of our tribe  
22      told me that he had gone to a presentation on the  
23      rock art called the White Shaman Panel. And the  
24      White Shaman Panel is one of eight hundred rock  
25      arts in an area where the – where the Pecos River

1        verges with the Rio Grande River. So we started  
2        looked at the rock art, and then we noticed – we  
3        started noticing that it had a lot of the elements  
4        of our creation story, and then we noticed that it  
5        had all the elements of our creation story. And  
6        not only that, but it had all the elements or  
7        instructions to our sacred, all-night peyote  
8        ceremony that eventually became the Native American  
9        Church. And we know that the National American  
10       Church developed from our ceremony because there  
11       are four required songs that (inaudible comment)  
12       that does the NAC ceremony does, even if they're  
13       Navajo, Lakota, Comanche, whatever. They have four  
14       mandatory songs that they do: the Beginning Song,  
15       the Midnight Water Song, the Morning Song, and the  
16       Ending Song. And those four songs are in our  
17       Coahuiltecan language, a language that has been  
18       documented from the 1700s by the Spaniards who came  
19       and converted us to Christianity. And also a lot  
20       of the songs that have been recorded by different  
21       tribes are called intertribal, and they think that  
22       they're vocals, they're not really words. But to  
23       us, they're actual words because they're in our  
24       language.

25        If you take – in the rock art, there's four

1        springs. And if you take an aerial photograph of  
2        the actual area where the four springs are, the one  
3        in Austin, Texas, the one in San Marcos where we  
4        live, the one in New Brownsville, Texas, and the  
5        one in San Antonio, the aerial photograph matches  
6        pretty much exactly on the four springs in the rock  
7        art. And it also shows, you know, the upper world  
8        and the underworld, and it shows us coming out  
9        through the spring in San Marcos. And that rock  
10       art has been carbon dated to be over 4,000 years  
11       old.

12                Also the City of San Marcos has been working  
13       for us and is trying to find us – right now they're  
14       negotiating with the Parks and Wildlife Department  
15       for them to allow us to have two acres of their  
16       parkland that we can use for the repatriation site.  
17       And the reason that we're trying to get, you know,  
18       a large area is because San Marcos, Texas, is the  
19       fastest growing small city in the nation. There's a  
20       lot of construction going on and we're afraid that  
21       more remains are going to be uncovered, so we're  
22       trying to prepare for that. And also we're trying  
23       to prepare you for that, because we're going to  
24       come back to you and say, there's some more  
25       remains, please allow us to have them. So we're

1 asking you to allow us to have those remains, and  
2 there's also five other remains that were found in  
3 the area and they're going through the NAGPRA  
4 process also.

5 And I would like to have your permission to  
6 talk about a situation to Texas Indians that we  
7 have relating to repatriation, and I'll take about  
8 five minutes if you'll allow me. Okay. Thank you.

9 Like we have mentioned earlier, there are no  
10 original Texas tribes in Texas that have federal  
11 recognition. We have three reservations in Texas  
12 and the tribes there have federal recognition, but  
13 they have been there less than three hundred years  
14 ago. There's also a lot of tribes that were in  
15 Texas or moved through Texas at one time, like the  
16 Comanches, the Tonkawas, and other Indians that now  
17 have federal recognition, but they are not original  
18 Texas Indians. They all passed through there less  
19 than three hundred years ago. So what we're  
20 dealing with with remains and they're notified for  
21 consultation, most of them, they know they're not  
22 their ancestors so they don't even respond. Some  
23 of them respond and say, we're not going to claim  
24 them because we know they're not our ancestors. So  
25 that's a problem that we have, because all those

1 remains belong to the nonfederally recognized Texas  
2 tribes in the area but we cannot – a lot of times  
3 we're not notified for consultation. In this case  
4 we were because we live in the area and we have  
5 been active and we saw when the remains were  
6 removed. The whole town found out about it when  
7 the remain was found. So that's why we got  
8 involved in the consultation. But what happens  
9 when the process happens in other parts in Texas,  
10 you know, none of the tribes responds, so then all  
11 those remains just keep being added to the  
12 inventories.

13 And another problem that we have, some people  
14 talk about having problems with museums. We have  
15 approached a museum in San Antonio, the Witte  
16 Museum. If somebody asks what's the name, it's the  
17 Witte Museum. And because the groups that have  
18 approached them twice are not federally recognized  
19 the museum would not even talk to them, to the  
20 groups. So that's a problem that we have.

21 Another problem that we have is sometimes some  
22 tribes believe like we believe that the remains  
23 needs to be reburied so the spirit will continue  
24 the journey, so the spirit will be at rest. So  
25 they take the remains to repatriate them. But

1       because they're not from Texas, you know, they  
2       don't get reburied from where they were taken or  
3       close to where they were taken and they take them  
4       back home to another state or whatever. I mean,  
5       it's good that the remains get repatriated, but we  
6       would prefer them not to be repatriated in another  
7       area. And like the last time we got together with  
8       the Mescalero Apache Tribe to get a remain that  
9       would found in (inaudible comment) Texas. So we  
10      worked with them and they said, okay, we can work  
11      together, but they were the ones who actually were  
12      given physical possession of the remains. And  
13      right away the first thing that the cultural  
14      preservation officer told me, he said, I want to  
15      make it clear that we are the ones in charge, and  
16      they let us have the remain, you know, for us to do  
17      some prayers with the remains before they  
18      reinterred them, and we found them an area close to  
19      where they were removed to do that. But that is  
20      not the ceremony that we do with human remains.

21           We have been involved in some repatriation,  
22      and because we're peyote people, our repatriation  
23      ceremony involves doing a sweat lodge so we can  
24      prepare ourselves and then we have an all-night  
25      peyote ceremony with the remains, and then the next



1 day we have a public reinterment where we invite  
2 the public, non-Indians and all this stuff. So if  
3 we do not get physical possession of the remains,  
4 we cannot do our repatriation ceremony.

5 So – another problem thing, another problem  
6 that we have – which there's nothing you can do  
7 about this, but I'll mention it anyway, is that  
8 NAGPRA only pertains to public lands. And in  
9 Texas, 92 percent of the land, the largest state in  
10 the continental United States, 92 percent of the  
11 land is private, and in Texas the mentality about  
12 private land is private land is king. Whoever owns  
13 the land owns what's over the land, on the land,  
14 and under the land. And the repatriations that we  
15 have done have been because the landowner has  
16 allowed for us to have the remains. We repatriated  
17 a hundred – in 1999, we repatriated about 198  
18 remains that were removed from one of the mesas in  
19 San Antonio, Texas, and it took us 33 years to get  
20 the remains back, but they were returned back to  
21 the Catholic diocese. It was the church who gave  
22 us the remains, and we reinterred them back in the  
23 mission. There was another repatriation that was  
24 done on DuPont Corporation property, and the DuPont  
25 corporation gave the remains back to a local Indian

1 group there to repatriate them in the area where  
2 they had been removed. So usually when we have  
3 repatriations it's because the landowner gets the -  
4 owns the remains, gets the remains back, and they  
5 are the ones who allow us and give us the remains  
6 back to repatriate. And there's nothing you can do  
7 about private land. I mean (inaudible comment).  
8 Thank you for listening.

9 LINDALEE FARM: Thank you. Did you want to add  
10 anything else?

11 TODD AHLMAN: No, I think - unless you have any  
12 questions.

13 LINDALEE FARM: Does anyone have any questions?  
14 Armand.

15 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

16 ARMAND MINTHORN: During your presentation, you  
17 mentioned Louisiana.

18 TODD AHLMAN: Yes, sir.

19 ARMAND MINTHORN: And there was a group within  
20 the State of Louisiana that expressed an interest  
21 as well.

22 TODD AHLMAN: The Coushatta Tribe of Louisiana,  
23 yes, sir.

24 ARMAND MINTHORN: And they were the only ones  
25 that responded?

1           TODD AHLMAN: They were the only ones who  
2           responded with an interest to be culturally  
3           affiliated. We received several responses with  
4           tribes deferring because they – the remains  
5           predated their interest in the State of Texas.

6           ARMAND MINTHORN: So it sounds like the  
7           majority of tribes deferred.

8           TODD AHLMAN: Yes, sir.

9           ARMAND MINTHORN: Okay. One of the keys of  
10          beginning and maintaining a relationship with  
11          tribes is consultation. And even today there are  
12          still federal agencies and museums and universities  
13          that continue to understand that consultation is  
14          sending a letter or making a phone call. That's  
15          not consultation. That is not consultation.  
16          Receiving a letter and being invited to consult,  
17          no. You don't do it that way. Consultation is  
18          when we sit down just like we are now. That's what  
19          consultation is. Consultation can never be  
20          concluded. It never ends.

21          This is from experience, and it can't be  
22          expressed enough. Adequate and consistent  
23          consultation can bring results. Adequate and  
24          consistent consultation can bring all involved  
25          parties to the same table to talk about the same

1        thing and arrive at the same conclusions. That's a  
2        result of consultation. I expressed that because  
3        we continue to deal with this in the west, and  
4        there are federal agencies now, there are museums  
5        and universities now that are beginning to  
6        understand what consultation is. The written rules  
7        or regulations, every federal agency has them on  
8        how they're to consult with tribes. Many of them  
9        don't use it.

10        The NAGPRA process calls for consultation.  
11        Inadvertent discovery, there's a process. If that  
12        process isn't adhered to or followed then things  
13        may take longer or there may be confusion or there  
14        may be defers, and that's okay. But trusting that  
15        museums and universities need to understand that  
16        consultation is vital, it's very important, and it  
17        has to happen. And there is no substitute than  
18        face to face, sitting at the same table. There's  
19        no substitute for that. So just to express that  
20        because you mentioned consultation several times,  
21        and this is an ongoing experience for many tribes.  
22        This is what we deal with at home, what  
23        consultation means and what it is supposed to do.  
24        So I just – just to mention those experiences.  
25        Thank you.

1 LINDALEE FARM: Thank you. Anyone else have  
2 any questions? Sonya.

3 SONYA ATALAY: I have two brief questions. I  
4 read carefully through the materials and in – I saw  
5 two different times mentioned. One was September  
6 2011, which I understand one individual was found  
7 in an inadvertent discovery, and in another point  
8 in the materials there's a discussion about  
9 December 2011 where remains of one individual were  
10 removed. And I'm wondering – it looks here that  
11 you're requesting disposition of one individual.  
12 So were there two different individuals at those  
13 different dates or could you clarify that for me?

14 TODD AHLMAN: Sure. The remains were  
15 identified in September 2011. Because there was  
16 one set of remains, it became a protected cemetery  
17 in the State of Texas, which required us to obtain  
18 – have that declared a cemetery and then obtain  
19 court approval to disinter the remains. And that's  
20 why that happened in December 2011.

21 SONYA ATALAY: That makes a lot more sense.  
22 Thank you for that. And then there's a point in  
23 here in which you mention that artifacts – you  
24 mention artifacts that were found with or near the  
25 remains, but then at another point it says that the

1 artifacts were determined not to be associated with  
2 the remains, and I'm just wondering -

3 TODD AHLMAN: The artifacts tended to be older  
4 than the remains that we found. As I mentioned, it  
5 was an active site, and so basically when they  
6 buried the individual they disinterred artifacts  
7 that were already there, and they were mixed as  
8 part of the burial fill.

9 SONYA ATALAY: So are those artifacts - they  
10 are not going - being returned as well as AFOs  
11 because they're not associated. Is that correct?

12 TODD AHLMAN: Correct.

13 SONYA ATALAY: Okay. Thank you for that.

14 LINDALEE FARM: Okay. Anyone else have any  
15 questions?

16 MELANIE O'BRIEN: I have Alec on the phone, I  
17 think. He might have a question.

18 LINDALEE FARM: Alec.

19 MELANIE O'BRIEN: Alec, are you still there?

20 ALEXANDER BARKER: I am. I think my question  
21 has been addressed. It was really a question about  
22 how many tribes had been consulted and whether they  
23 had responded. It wasn't clear from the  
24 documentation, but I think that question has  
25 largely been addressed by the discussion.

1 LINDALEE FARM: Okay. Any other question,  
2 Alec, while we have you on the phone?

3 ALEXANDER BARKER: No, Madam Chair, but thank  
4 you.

5 LINDALEE FARM: Thank you. I have a question,  
6 all of the tribes that were contacted, whether or  
7 not there was actual consultation or not, who were  
8 invited to consult, did anyone object to the  
9 repatriation?

10 TODD AHLMAN: We submitted – I sent out a  
11 letter with the notice that we were going to ask  
12 for this disposition about 45 days ago, and no  
13 tribes have responded to that. It's my intention  
14 that – to call them and now try to do face-to-face  
15 meetings. Unfortunately, I don't have a lot of  
16 money to spend on this, so I don't know how  
17 effective I will be to get our university to bring  
18 money for that, but we've not heard any response  
19 from tribes, other than the Coughatta, who have  
20 been supportive of this.

21 LINDALEE FARM: Okay. So you've heard from the  
22 Coughatta, and I do see that email in the materials  
23 in which they were going ahead and saying that they  
24 have no issue and that they will defer, but have  
25 you heard from anyone else or has it been silence

1 or -

2 TODD AHLMAN: It has been silence, yes, ma'am.

3 LINDALEE FARM: Okay. So you have no response.

4 So there's actually not been a no deferral, there's  
5 just been no response.

6 TODD AHLMAN: No response.

7 LINDALEE FARM: Okay.

8 TODD AHLMAN: And in fact, in other  
9 consultation we've engaged, we typically have no  
10 response.

11 LINDALEE FARM: And where did you get the list  
12 that you sent the mailing?

13 TODD AHLMAN: The list is a list published by  
14 the Texas Historical Commission of tribes that have  
15 expressed interest to them to be consulted for  
16 repatriation in the State of Texas, as well as  
17 using the NAGPRA website.

18 LINDALEE FARM: As a general rule, do these  
19 tribes respond? Do you know what is their  
20 practice?

21 TODD AHLMAN: That I'm not sure of. This is my  
22 first go-around on this.

23 LINDALEE FARM: Okay. Any further comments,  
24 questions? No. Okay. Does anyone want to propose  
25 a motion as to what we should do? Dennis.



1        REVIEW COMMITTEE MOTION

2                DENNIS O'ROURKE: I would move that we approve  
3        the proposal to repatriate the set of remains as  
4        proposed by Texas.

5                SONYA ATALAY: Someone else approves,  
6        apparently.

7                SHANNON KELLER O'LOUGHLIN: I think that was a  
8        second.

9                DENNIS O'ROURKE: I still do, Madam Chair.

10               STEVE TITLA: I second the motion.

11               LINDALEE FARM: Second.

12               SONYA ATALAY: I have one friendly amendment,  
13        if I might, just to change the wording to  
14        "disposition."

15               DENNIS O'ROURKE: I'm sorry, yes.

16               SONYA ATALAY: Friendly amendment.

17               LINDALEE FARM: Okay. Any further discussion?

18               ARMAND MINTHORN: Question.

19               LINDALEE FARM: Yes.

20               ARMAND MINTHORN: Question.

21               LINDALEE FARM: Oh, you call the question.

22               ARMAND MINTHORN: Yes, call the question.

23               LINDALEE FARM: Okay, the question has been  
24        called. All in favor say aye?

25               SONYA ATALAY: Aye.

1 LINDALEE FARM: Aye.

2 ARMAND MINTHORN: Aye.

3 SHANNON KELLER O'LOUGHLIN: Aye.

4 DENNIS O'ROURKE: Aye.

5 STEVE TITLA: Aye.

6 LINDALEE FARM: All opposed?

7 Congratulations, we will proceed. Oh, I'm  
8 sorry, Alec?

9 MELANIE O'BRIEN: Alec, do you want to vote?

10 ALEXANDER BARKER: I'm sorry, I thought I did.

11 MELANIE O'BRIEN: Just for the record, will you  
12 vote your – state your vote?

13 ALEXANDER BARKER: Aye.

14 MELANIE O'BRIEN: Thank you.

15 LINDALEE FARM: We'll go ahead and we'll  
16 proceed in due course, Madam DFO, with the  
17 recommendation that the disposition take place, and  
18 we look forward to seeing you again.

19 TODD AHLMAN: Well, that was going to be a  
20 question I have. We actually – we have remains  
21 that we have had published in the inventories  
22 published on the NAGPRA website that the Miakan-  
23 Garza have requested disposition of from San  
24 Marcos. Would we need to go through this process  
25 again, or is there a way that we could get approval

1 for that here? Or I guess that's a lawyerly  
2 question.

3 MARIO GARZA: That's going to happen on the  
4 other five remains.

5 MELANIE O'BRIEN: Yes, we would need to go  
6 through the same process in preparing the  
7 information for the Review Committee to review for  
8 each of those instances. We can do them  
9 collectively, and we can also coordinate  
10 presentations by telephone, as well as the in-  
11 person presentation. But yes, we will need to  
12 continue the process.

13 TODD AHLMAN: Okay.

14 MELANIE O'BRIEN: And just for the committee's  
15 information and for yours, the Review Committee has  
16 recommended this disposition. It is now the  
17 process that we present that recommendation to the  
18 Secretary of the Interior who will do an  
19 independent review and make a recommendation, and I  
20 will submit to you then a letter with the  
21 Secretary's determination on that.

22 TODD AHLMAN: And then we need to then continue  
23 our discussions with the Native American tribes  
24 about that disposition. Is that correct?

25 MELANIE O'BRIEN: We will get to the point

1       where we publish the notice in the Federal  
2       Register, and that's sort of the last step. So  
3       you'll want to be sure you've been in touch with  
4       those tribes before that publishes.

5               TODD AHLMAN: Okay. And I won't call it  
6       consultation. I'll call it discussions. Do you  
7       like that one better?

8               LINDALEE FARM: Well, go ahead, Armand.

9               TODD AHLMAN: Because I personally don't like  
10      the term consultation because it sounds one-sided.

11              ARMAND MINTHORN: Well, according to – and  
12      again, it's in black and white, when and where and  
13      why consultation is to take place within the  
14      statute, but also whether it be the National  
15      Historic Preservation Act, NEPA, what have you,  
16      consultation is always good when it can continue.  
17      And if you want to call it discussions, that's  
18      fine. But the discussions, of course, are going to  
19      have the same results of consultation, correct?

20              TODD AHLMAN: That is correct.

21              ARMAND MINTHORN: Okay.

22              TODD AHLMAN: An ongoing dialogue of our  
23      intentions.

24              ARMAND MINTHORN: Right. Right. So you can  
25      call it dialogue, discussion, but it will have the

1 same results. That is consultation.

2 TODD AHLMAN: I agree.

3 ARMAND MINTHORN: Okay.

4 MARIO GARZA: Can I mention something also?  
5 Also, you have to consider the financial burden on  
6 us to come before you every time they uncover a  
7 human remain. I mean, this was hard for us  
8 financially to come here.

9 LINDALEE FARM: Right. And I think what Madam  
10 DFO is suggesting is that you get all of the five  
11 together, you know what the process is like, there  
12 is essentially a checklist. You have to prove  
13 certain things. Your documentation that was  
14 presented to us actually was pretty clear, and you  
15 hit everything that you needed to hit. I mean, one  
16 of the things is that none of the ones that you  
17 consulted with objected. That's why I asked the  
18 question. If you can get all that done and send it  
19 on to the National NAGPRA, you don't have to appear  
20 in person.

21 It's always very helpful, at least for me  
22 being on the Review Committee, to see you face to  
23 face, to be able to ask you questions, and to  
24 actually have a dialogue. But if you do it via  
25 phone, I think now that you've been here the first

1 time and you know what needs to be done, that's  
2 fine. But you have to meet every little thing on  
3 the checklist for every single one of the human  
4 remains. And one of the things that we're going to  
5 ask is do we have jurisdiction to even consider  
6 this and to make the recommendation.

7 So if you do your paperwork nice and clean,  
8 and I think you've done a good job for a first  
9 time, then it makes it so much easier. And then we  
10 can just get on the phone, we can go through them,  
11 and we can definitely wish you well because we do  
12 want these dispositions to go forward, but we also  
13 have a responsibility when we make our  
14 recommendation to the Secretary, because we're not  
15 the final word. All we're doing is making a  
16 recommendation. We're sort of like the  
17 gatekeepers.

18 So by all means, we don't want you to expend  
19 additional funds. Now that we've seen you, I think  
20 that's very, very helpful. The next go-around if  
21 you want to do them one at a time, that's fine, or  
22 five altogether. Work with Melanie or others at  
23 National NAGPRA. They will work with you to make  
24 it easy and to have this go through. If there are  
25 any questions, you've perhaps not met something on

1 the checklist, talk to Melanie about it and how it  
2 can be dealt with. So we're hoping maybe not to  
3 see you, but just to talk to you.

4 MARIO GARZA: Well, for me it was a very good  
5 experience to come here and to look at the process  
6 in action and to also meet all of you, because now  
7 I have a face for the committee, or several faces.  
8 Well, thank you.

9 LINDALEE FARM: Thank you.

10 MELANIE O'BRIEN: Okay. Madam Chair, we are  
11 slightly behind. Nevertheless, what would you like  
12 to do? Would you like to continue? Would you like  
13 to take a break?

14 LINDALEE FARM: Does anybody want to take a  
15 short break? Shall we take a short break? Ten  
16 minutes.

17 MELANIE O'BRIEN: Ten minutes. Okay, we will  
18 resume at 2:40.

19 LINDALEE FARM: Thank you.

20 **BREAK**

21 LINDALEE FARM: And thank you, everyone, for  
22 being so patient. I know that we're a little bit  
23 behind on our agenda, but we would like to provide  
24 everyone who wants to participate to participate,  
25 so again I apologize for being a little bit late,

1 but we will move quickly so that there is time for  
2 public comment. All right.

3 MELANIE O'BRIEN: Okay. So the next item on  
4 the agenda is the initial discussion of the Review  
5 Committee's 2015 report to Congress.

6 DENNIS O'ROURKE: Madam Chair.

7 LINDALEE FARM: Okay. Dennis.

8 **ACTION ITEM: INITIAL DISCUSSION OF THE REVIEW**

9 **COMMITTEE 2015 REPORT TO CONGRESS**

10 DENNIS O'ROURKE: Well, Shannon O'Loughlin and  
11 I are the subcommittee responsible for drafting the  
12 report to Congress for this year and I can say  
13 after less than a full day of our first meeting of  
14 the year, we have no formal report yet, but we  
15 would encourage anyone to bring issues or items  
16 that you think should be addressed or that we might  
17 consider addressing in that report to our  
18 attention, either directly individually here, via  
19 email or through the National NAGPRA office, and we  
20 would be more happy to take on board any  
21 suggestions or concerns anyone might have.  
22 Shannon.

23 LINDALEE FARM: Okay. Shannon.

24 SHANNON KELLER O'LOUGHLIN: Or also today  
25 during public comment period is a good time to



1 present those items you'd like to see in our report  
2 to Congress. And if you are not familiar with what  
3 a report to Congress looks like, our current one is  
4 not yet available online. Is that right?

5 MELANIE O'BRIEN: No, not yet.

6 SHANNON KELLER O'LOUGHLIN: But you can see the  
7 2013 report to Congress is available on the NAGPRA  
8 website.

9 LINDALEE FARM: Okay. Thank you very much for  
10 that report and update.

11 MELANIE O'BRIEN: Okay. The next item on the  
12 agenda is a discussion and review of the Review  
13 Committee's dispute procedures.

14 LINDALEE FARM: Oh, I'm sorry. Armand, did you  
15 have a question?

16 ARMAND MINTHORN: Well, I was just asking when  
17 the report is due.

18 MELANIE O'BRIEN: Your report to Congress  
19 covers the calendar year, so you finish it in  
20 typically a December meeting. You vote on the  
21 final report, and that's the end of the report.

22 ARMAND MINTHORN: Okay.

23 LINDALEE FARM: Historically, what we've done  
24 is we've sort of started drafting and getting ideas  
25 for the report at the first meeting and the second

1 meeting, and then we have a special telephonic  
2 meeting in December solely for the purpose of  
3 finalizing the report so that we can get it out at  
4 the year end.

5 ARMAND MINTHORN: Okay.

6 LINDALEE FARM: Madam DFO.

7 MELANIE O'BRIEN: Okay. So moving on to a  
8 discussion and review of the Review Committee's  
9 dispute procedures.

10 LINDALEE FARM: Sonya.

11 **ACTION ITEM: DISCUSSION AND REVIEW OF THE REVIEW**  
12 **COMMITTEE'S DISPUTE PROCEDURES**

13 SONYA ATALAY: This will be a brief report. We  
14 will be following up on this item tomorrow. But  
15 just to let you know very briefly those of you who  
16 were at our November meeting will recall that we  
17 had a discussion about the draft dispute procedures  
18 at that time. We've incorporated some of the  
19 suggestions and the discussion that we had. We had  
20 comments from the Society for American Archaeology.  
21 We've taken those comments into consideration and  
22 integrated those into our draft, and we are  
23 currently finalizing the draft. We've been  
24 continuing to work on it. We have been talking  
25 about it. There are several points that we want to

1       finalize and we will have the final discussion  
2       tomorrow. It's on the agenda, I believe, in the  
3       afternoon. And we'll leave it at that for now.

4               LINDALEE FARM: Okay. Any questions? Thank  
5       you, Sonya.

6               MELANIE O'BRIEN: Okay. The next item on the  
7       agenda is a presentation by the Bureau of Land  
8       Management and the Bureau of Indian Affairs, Emily  
9       Palus and Annie Pardo.

10              LINDALEE FARM: Good afternoon.

11              ANNIE PARDO: Good afternoon.

12              EMILY PALUS: Good afternoon.

13       **PRESENTATION: BUREAU OF LAND MANAGEMENT AND BUREAU**  
14       **OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR**

15              ANNIE PARDO: For the record, my name is Annie  
16       Pardo, I'm the – oh, thank you. For the record, my  
17       name is Annie Pardo. I'm the Acting Chief of the  
18       Division of Environmental and Cultural Resources  
19       Management at the Bureau of Indian Affairs.

20              EMILY PALUS: Good afternoon. My name is Emily  
21       Palus. I'm the Deputy Division Chief for the  
22       Bureau of Land Management's Division of Cultural,  
23       Paleontological Resources, and Tribal Consultation  
24       in our Washington office, in Washington, DC.

25              BRYAN LAUSTEN: Good afternoon. My name is

1 Bryan Lausten. I am the Acting NAGPRA Coordinator  
2 for the BLM. I'm here on a temporary detail for  
3 120 days from Arizona.

4 LINDALEE FARM: Welcome.

5 **PRESENTATION: BUREAU OF INDIAN AFFAIRS**

6 ANNIE PARDO: Thank you. Good afternoon, Madam  
7 Chair and members of the NAGPRA Review Committee.  
8 Again, my name is Annie Pardo, and I'm the Acting  
9 Chief of the Division of Environmental and Cultural  
10 Resources Management at the Bureau of Indian  
11 Affairs. I'm also the BIA NAGPRA Coordinator. I  
12 last presented to you November 2012, and I  
13 appreciate this opportunity to provide you with a  
14 brief update on BIA's NAGPRA work and our successes  
15 and challenges in working with nonfederal  
16 repositories. I'm here with Emily Palus and Bryan  
17 Lausten from the Bureau of Land Management, who  
18 will also speak on NAGPRA compliance for  
19 collections in nonfederal repositories, a shared  
20 issue and concern.

21 The BIA asserts control over archeological  
22 items, including those subject to NAGPRA that were  
23 removed from tribal lands under the authority of  
24 the Antiquities Act between June 8, 1906 and  
25 October 31, 1979. We also include items that were

1 removed without authority during this period. BIA  
2 has collections in more than 160 repositories.  
3 Some are BIA facilities, some belong to other DOI  
4 bureaus including BLM, and the rest are nonfederal  
5 repositories, including university departments,  
6 museums, historical societies and tribal museums.

7 At this time, the BIA has collections with  
8 NAGPRA items in 37 repositories. Out of these, 10  
9 repositories continue to house NAGPRA items for  
10 which notices have been published, but the  
11 affiliated tribes have not yet made arrangements to  
12 repatriate the items. I just submitted a draft  
13 notice with one more repository. That leaves us  
14 with 26 repositories to work with. Five of these  
15 26 repositories – the Museum of Northern Arizona,  
16 the Autry National Center, the Arizona State  
17 Museum, the Nebraska State Historical Society, and  
18 the Museum of Indian Arts and Culture – continue to  
19 work under contract, going through their  
20 collections, determining which ones are BIA's, and  
21 assessing the human remains to determine the  
22 minimum number of individuals, gender, age. Then  
23 they will put together the provenience and other  
24 information the BIA can report to potentially  
25 affiliated tribes. One additional repository, the

1 Fowler Museum at UCLA, just completed a contract,  
2 and we plan to enter into a second contract with  
3 them pending a funding proposal, which I will talk  
4 about in a bit. There are two more repositories  
5 for which I hope to secure funding.

6 Out of 18 remaining repositories, one is a BIA  
7 facility that recently received a set of human  
8 remains in a package mailed to one of our offices.  
9 We've had a physical anthropologist assess these  
10 remains. I have a letter drafted to potentially  
11 affiliated tribes and I'm awaiting the final report  
12 to include with this mailing. For the 17 other  
13 repositories, the identified NAGPRA items have been  
14 reported to National NAGPRA and are in the CUI  
15 database. Potentially affiliated tribes have been  
16 notified by mail or through discussions with the  
17 BIA, as well as the individual repositories.  
18 Follow-up mailings will go out to the tribes  
19 regarding the holdings in these 17 repositories,  
20 with an invitation to consult.

21 As far as the funding opportunities, last year  
22 Congress appropriated funds to the Department for  
23 preserving and managing museum collections. The  
24 Department put out a call for proposals and I was  
25 successful in receiving 98,000 dollars in funds for

1 NAGPRA work at three repositories, the Nebraska  
2 State Historical Society, the Autry National  
3 Center, and the Museum of Northern Arizona. The  
4 work is ongoing, and at Nebraska and the Autry, the  
5 work is focused on going through site, accession,  
6 and catalogue records to identify which are BIA's,  
7 physically locate the collections, and go through  
8 them to find any items subject to NAGPRA. At the  
9 Museum of Northern Arizona, an osteologist has been  
10 assessing the human remains to determine gender,  
11 age, and the minimum number of individuals. The  
12 associated funerary objects are being catalogued  
13 and photographed. It will take additional contract  
14 work, but once we have all the information  
15 assembled, we can notify potentially affiliated  
16 tribes and invite them to consult.

17 This year I submitted six funding proposals  
18 for NAGPRA work at six repositories. I'm trying to  
19 continue the good work at the Fowler, the Autry and  
20 the Museum of Northern Arizona in these new  
21 proposals. And I hope to find out in the near  
22 future whether any of the BIA proposals will be  
23 funded. The museum program has a small amount of  
24 funds that will be used for at least some of the  
25 projects that are not successful in getting the DOI

1 funding.

2 The BIA has enjoyed wonderful working  
3 relationships with museums that have led to  
4 successful tribal consultation, the publication of  
5 notices, and repatriations. The Arizona State  
6 Museum has been an incredible partner with the BIA  
7 for many years, and we're currently working  
8 together on a large repatriation. This is the  
9 repository with the largest collections of BIA  
10 NAGPRA items, and we look forward to continuing our  
11 work together.

12 I want to talk about some of the challenges,  
13 when I came to this job nearly five years ago, I  
14 began introducing myself to staff at the non-BIA  
15 repositories that had previously been identified as  
16 housing BIA collections, and I asked them about the  
17 status of those collections. This was something  
18 new because the last program manager/NAGPRA  
19 coordinator left in 2003, and there might not have  
20 been as much contact with BIA staff. In response,  
21 the staff at some repositories were incredibly  
22 helpful, and we have engaged in productive work  
23 over these years. I've also received some less  
24 than helpful responses. One repository emailed,  
25 "Send us a list of all the sites that you have, and



1 we'll tell you whether we have any collections from  
2 those sites." Another repository sent a letter  
3 telling me the number of phone calls and emails the  
4 repository staff have had with the BIA over a  
5 period of ten years, though promising to continue  
6 communicating with the BIA. And one other  
7 repository replied, "Give us copies of any permits  
8 our institution may have received, and we will  
9 check to see if we have any of those collections  
10 here." Over time, we've been able to get through  
11 these communication hurdles and make slow progress.

12 I find that if I keep asking, eventually I  
13 will hit just upon the right question to get needed  
14 information. I understand that repositories  
15 struggle with staffing and resource shortages, but  
16 there are foundational questions that need to be  
17 answered and there's basic information to which  
18 repository staff have access and I do not. I've  
19 offered to pay for labor and supplies for  
20 repository staff to send me copies of permits and  
21 records. Once I have some sense of the collections  
22 involved, I can develop a statement of work and  
23 cost estimates and seek funding opportunities.  
24 I've been to the National Archives and dug through  
25 permits, but they're filed by year and not always

1       consecutively and definitely not always by the  
2       individual repositories. It's very much a needle  
3       in a haystack, where I browse and hope to stumble  
4       upon something useful.

5           I'll give you specific positive examples.  
6       Staff at some nonfederal repositories have shared  
7       with me their historical knowledge about their  
8       institution's expeditions, with dates and  
9       excavation sites. A few repositories have told me  
10      about earlier transfers of their collections to  
11      other repositories or advise that they house  
12      partial collections from expeditions that were  
13      funded by other repositories who obtained the  
14      permits. This is very helpful in assembling the  
15      pieces of the puzzle, and I might not have learned  
16      this through other means.

17           If I'm searching through permits, I might be  
18      able to find a permit allowing repository X to  
19      conduct work in a certain location during a certain  
20      period, and the permit states that the collections  
21      from the excavation would need to be housed at that  
22      repository, but nowhere in the permit does it tell  
23      me that the collections were later moved to  
24      repositories A, B, C, D, and so on. Generally  
25      staff and repositories have records that show what

1       became of the original collections. This  
2       information is critical in finding where these  
3       collections went.

4               Typically repositories keep copies of the  
5       permits. Staff at repositories have been very  
6       helpful by sharing these, along with their  
7       accession records, site records, and catalogue  
8       records. I do not have information to this  
9       intellectual information – excuse me, I don't have  
10      access to this intellectual information from  
11      nonfederal repositories. Each repository has its  
12      own system or systems of recordkeeping. Some are  
13      in electronic formats. Most records are still  
14      paper. For me to travel to each repository, have  
15      the individual repository staff explain their  
16      unique systems to me, and then for me to conduct  
17      research is both time- and cost-prohibitive.

18             The experiences that I presented to you only  
19      cover the repositories that I know house BIA  
20      collections. What about the others? The Institute  
21      of Museum and Library Services, IMLS, maintains a  
22      list on its website of 35,000 museums in the United  
23      States. This list does not include all of the  
24      university departments of archeology, anthropology  
25      and others that may house NAGPRA items. How many

1 more does this add to the list of potential  
2 repositories? How many will provide information to  
3 federal agencies about potential federal  
4 collections? How can we as federal agency  
5 employees access this critical information? I  
6 haven't found anything that requires a nonfederal  
7 repository to advise a federal agency that the  
8 repository houses federal collections.

9 Ms. Keller O'Loughlin said last November,  
10 quote, "My concern under NAGPRA is this, it's kind  
11 of a chicken or egg thing and I want to make sure  
12 that museums understand that they should not be  
13 sitting on their hands waiting for a federal agency  
14 to contact them." As federal agencies we are  
15 limited by law, specifically the Paperwork  
16 Reduction Act, to the amount of information that we  
17 can ask from a nonfederal entity. And there's a  
18 burden on us to go through certain hurdles in order  
19 to collect information.

20 The Department recently published a Federal  
21 Register notice for information collection that  
22 would allow DOI bureaus to seek information about  
23 our federal collections from nonfederal  
24 repositories. We are hopeful that this will help  
25 us with efforts to locate NAGPRA items in

1 nonfederal repositories. However, once we clear  
2 these hurdles there is nothing to compel museums  
3 and universities to respond to us. To enhance DOI  
4 bureau staff capacity to find collections, the  
5 Department has been working with the Army Corps of  
6 Engineers on an interagency agreement, and  
7 currently attorneys for both agencies are working  
8 out the details. Once this agreement is in place,  
9 individual bureaus can develop a project agreement  
10 or statement of work, transfer funds, and have the  
11 Army Corps Mandatory Center of Expertise for the  
12 Curation and Management of Archaeological  
13 Collections conduct work, including researching  
14 potential federal collections at previously  
15 unidentified repositories. If we can find the  
16 funding, this may be one route to identifying  
17 collections in repositories. BIA had previously  
18 contracted with the center, and this is how we were  
19 able to identify most of the nonfederal  
20 repositories that we know of today.

21 One other challenge that we all face involves  
22 the indirect costs that primarily university-  
23 affiliated museums or university departments charge  
24 when we enter into contracts. In the past, the  
25 indirect costs were around 25 to 35 percent. Now,

1 we have been seeing more than 40 percent and up to  
2 53 percent at some institutions. I understand that  
3 they need to pay their bills and keep their lights  
4 on, but this really affects how far our limited  
5 dollars will go. So for example, if I can get  
6 funding from the Department for 50,000 dollars for  
7 a contract, with a 53 percent indirect cost rate,  
8 26,500 of that will go to the university, and not  
9 even to the museum, which may get a tiny sum out of  
10 that. Out of the 50,000 dollars that should go  
11 towards NAGPRA work, only 23,500 actually will.  
12 This is a huge hit for the federal agency and will  
13 ultimately result in less work being done for  
14 tribes. For museums and university departments,  
15 that means potentially fewer government dollars  
16 going to them for contracts because if a federal  
17 agency must choose between funding a contract with  
18 a 25 percent indirect cost rate over one that  
19 charges 50 percent or more, that makes for an easy  
20 fiscally responsible decision.

21 Finally, to provide you with a brief update on  
22 the current status of NAGPRA items in BIA  
23 collections, the BIA has published notices  
24 accounting for 1,902 individuals and 21,048  
25 associated funerary objects. Of these, we have

1 repatriated 1,874 individuals and 20,736 associated  
2 funerary objects.

3 I am really grateful to the incredibly  
4 dedicated staff at the repositories housing BIA's  
5 NAGPRA items. Our relationships may have begun  
6 with a few miscues, progressed through a lot of  
7 phone calls, emails, and occasional face-to-face  
8 meetings, but we are making steady progress. I  
9 look forward to continuing the good work that we've  
10 been doing together.

11 My intent in coming before you today is not to  
12 place blame, but to explain that this very  
13 important work that we do takes time and resources,  
14 and we're definitely moving forward. Each NAGPRA  
15 situation is unique, and each one requires positive  
16 working relationships and strong commitments from  
17 all parties involved. I believe that we have that  
18 now. There is more work that we need to do to and  
19 partnerships with non-BIA repositories that we need  
20 to build and maintain. In the spirit of NAGPRA, I  
21 hope that we can work together with cooperation and  
22 collaboration.

23 Thank you for this opportunity, and after my  
24 colleagues from BLM complete their presentations,  
25 we will be happy to answer your questions.

LINDALEE FARM: Thank you.

**PRESENTATION: BUREAU OF LAND MANAGEMENT**

EMILY PALUS: Thank you, Annie. Good afternoon, Madam Chair, members of the NAGPRA Review Committee. We very much appreciate the opportunity to speak before you today and in conjunction with the Bureau of Indian Affairs. During the Bureau of Land Management presentation before the committee in November 2014, we provided an update on BLM NAGPRA implementation and compliance. A key aspect of the process for achieving resolution is working with repositories housing federal collections. As Ms. Pardo has shared from her experiences working at the Bureau of Indian Affairs, there are many successes and wonderful partnerships and there are many challenges and barriers. In our presentation this afternoon, we'll be sharing more historical context on how we arrived at the current situation with so many federal collections and BLM collections in repositories and offer some possible solutions.

Within BLM due to our constrained resources for cultural resource funding, we tend to direct efforts on those projects that will likely yield successes, those repositories that are working with



1       us collaboratively, and there are many positive  
2       examples. However, what haunts us are the far more  
3       complicated projects and those for which  
4       repositories are not collaborative, and thus those  
5       ancestors and those objects remain unavailable for  
6       repatriation.

7               For the BLM, working with repositories, which  
8       include museums, universities, state agencies and  
9       other educational institutions and sometimes other  
10      federal agencies, is a critical aspect of our  
11      NAGPRA compliance. As been shared with previous  
12      presentations, most collections for which the BLM  
13      is responsible, those from BLM public lands or  
14      General Land Office lands, our predecessor agency,  
15      are held in nonfederal repositories. This is the  
16      result of institutional practices for archeological  
17      expeditions and the statutory and regulatory  
18      requirements of the Antiquities Act and its  
19      successor authority.

20             Before I move on, I'd like to just pause and  
21      consider our understanding or an affirmation of our  
22      understanding of the intent of NAGPRA. And that is  
23      the disposition of Native American ancestors,  
24      funerary objects, objects so sacred and objects  
25      inherent to cultural identity, sacred objects and

1 objects of cultural patrimony. It's important to  
2 have affirmations and to remind us what the  
3 ultimate goal of the process is. And I'm going to  
4 repeat that a couple of times, because I'm going to  
5 walk through some of the complexities we deal with  
6 but also sort of kind of come back to why we're  
7 here and the work that we're doing.

8 So as I mentioned, the historical practices of  
9 archeological expeditions and collecting activities  
10 is a result of institutional practices and  
11 statutory and regulatory requirements of the  
12 Antiquities Act of 1906 and its successor  
13 authority, the Archaeological Resources Protection  
14 Act of 1979. Both statutes direct agencies to  
15 permit only qualified professionals affiliated with  
16 reputable institutions to conduct excavation and  
17 collection of archeological resources and that any  
18 collections be preserved in public museums.  
19 Collections from public lands were not placed in  
20 museums as a service contract with the Federal  
21 Government. Collections were not placed in museums  
22 as loans. Instead, most collections were placed in  
23 the museum facility of the researcher that  
24 conducted the work or another museum eager to have  
25 collections from that project, whereby access would

1 be available to the interested parties.

2 Researchers and museums also shared and exchanged  
3 artifacts to improve and enhance collections. This  
4 was a common practice for nearly a hundred years.

5 Federal regulations regarding how agencies  
6 should oversee and manage these collections were  
7 not issued until September of 1990, two months  
8 before NAGPRA was enacted by Congress. This rule,  
9 36 CFR 79 – federal regulations regarding how  
10 agencies should oversee and manage these  
11 collections were not issued until – as I said, I’m  
12 sorry. I’m trying something new, which was not to  
13 have paper and to do it digitally, and as you can  
14 tell, I think that I like paper more. So I’m  
15 stumbling on my own electronics. So I apologize if  
16 I stumble verbally.

17 As I mentioned, federal regulations regarding  
18 how agencies should oversee and manage collections  
19 were not issued until September 1990, two months  
20 before NAGPRA was enacted. This rule, 36 CFR 79,  
21 Curation of Federally Owned and Administered  
22 Archaeological Collections, requires that agencies  
23 be responsible for the long-term management and  
24 preservation of preexisting and new collections.  
25 Prior to promulgation of this rule and enactment of

1 NAGPRA in 1990, as long as collections were  
2 deposited in a public museum, the permit conditions  
3 were considered to have been met. There were no  
4 requirements or resources for the agency to track,  
5 monitor, oversee or otherwise coordinate with the  
6 museums regarding curation.

7 The history of permitting further complicates  
8 efforts to locate collections. The BLM did not  
9 have the authority to issue their own Antiquities  
10 Act or ARPA permits until 1984. The Office of the  
11 Secretary within the Interior Department issued  
12 permits for all Interior bureau offices from 1906  
13 through 1968. And from 1968 until 1984, permitting  
14 authority was assigned to the Departmental  
15 Consulting Archeologist in the National Park  
16 Service. So it wasn't until 1984 when our agency  
17 was delegated authority by the Secretary of  
18 Interior through Secretarial Order 1304 to issue  
19 permits for archeological activities on public  
20 lands. As such the BLM, like other agencies, DOI  
21 bureaus and offices, we do not have complete permit  
22 records, since these activities took place at a  
23 level above them in the Department or in the  
24 National Park Service. These records are now at  
25 the National Archives in College Park, Maryland,

1       which Annie mentioned.

2               This means that we do not have ready access to  
3       the history of work authorized over the last  
4       century on the public lands, and thus information  
5       on what activities occurred and what was collected.  
6       As a result of these permitting and collections  
7       management practices since 1906, today we are  
8       sorting through a myriad of scenarios for  
9       collections from the Bureau of Land Management and  
10      General Land Office lands in nonfederal  
11      institutions. These scenarios fall into three  
12      broad categories: collections that were permitted  
13      by the designated authority, Interior, Park Service  
14      or BLM, depending on the time, and are curated in  
15      the repository proposed in the permit. The second  
16      scenario or broad category, collections that were  
17      permitted but ultimately deposited in another  
18      institution due to prior museum practice of sharing  
19      objects or objects going to an institution where  
20      there was a particular interest by the research  
21      staff; a permitted researcher might move to another  
22      institution and take all or some of the collections  
23      with him, and as I mentioned earlier, museums  
24      transferring and exchanging collections among  
25      institutions. The third scenario or broad category

1 are collections for which no permit was issued.  
2 Examples include those collected and donated by –  
3 those collected by private individuals and donated  
4 to museums, items collected from public lands, and  
5 items collected by researchers but without the  
6 requisite authorization.

7 Interior policy and legal counsel direct that  
8 the BLM and other agencies are responsible for the  
9 collections from lands managed by the agency. The  
10 federal nexus is based on land management, not the  
11 existence of a permit. For instance, if a permit  
12 was – if a collection was made from federal land  
13 without a permit that does not sever the federal  
14 tie. Thus for the purposes of NAGPRA, BLM has  
15 control of any collections removed from General  
16 Land Office or Bureau of Land Management lands  
17 after 1906. These are considered to be federal  
18 collections, are in the control for the purposes of  
19 NAGPRA, and federal collections for the purposes of  
20 curation standards in the 36 CFR 79 regulations.

21 So key for determining the BLM nexus is land  
22 status and to further clarify that the agency  
23 managed the land at the time the collection was  
24 made. So subsequent transfers or conveyances of  
25 land generally does not transfer or convey NAGPRA

1 responsibilities. The reality is that many museums  
2 may hold BLM collections but are not aware of the  
3 federal connection. Others are aware. Others are  
4 unsure. And the BLM may have control and be aware  
5 of collections or may have control and unaware of  
6 the collection's existence.

7 So I want to return to our affirmation that  
8 the purpose of NAGPRA is to resolve the disposition  
9 of ancestors and cultural property. And addressing  
10 this goal requires collaboration and cooperation  
11 between the BLM and repositories holding  
12 collections. Some institutions have moved forward  
13 and documented these collections and partnered with  
14 us to complete the effort. Many of the 70 notices  
15 that the BLM has published for the more than 2,000  
16 sets of Native American human remains and nearly  
17 20,000 funerary objects are those for which the BLM  
18 has control and the museum possession for the  
19 purposes of NAGPRA. Other institutions have  
20 instead prioritized those collections for which  
21 they have full control and not those for which  
22 there is a federal nexus or if they are unsure if  
23 there is a federal nexus.

24 Increasingly a critical issue is understanding  
25 control, possession and physical custody. This

1 helps identify who is responsible for what activity  
2 under NAGPRA. The statute states that NAGPRA  
3 applies to collections presently in the possession  
4 or control of a federal agency or museum. The  
5 regulations offer further explanation, defining  
6 control and possession in 43 CFR 10.2, as having  
7 sufficient legal interest to lawfully treat the  
8 objects as part of its collection for the purposes  
9 of these regulations. The difference between  
10 control and possession being – with possession  
11 means also having physical custody.

12 As mentioned, BLM has control if from BLM or  
13 GLO land. We do not waiver or hesitate when the  
14 agency has control or likely has control, meaning  
15 from BLM land or most likely from BLM land when the  
16 exact origin is unknown. For the BLM to ensure  
17 compliance we must work with repositories holding  
18 collections, and those institutions control  
19 intellectual and physical access. As federal  
20 administrators, we are wholly reliant on the  
21 repository personnel to provide information and  
22 collections – to provide information about  
23 collections and physical access. Do these  
24 repositories have possession? That depends, that  
25 depends on their interpretation and understanding



1 of what possession means and what their  
2 interpretation of what their responsibilities are  
3 for collections in their care. There are differing  
4 approaches to this question, and thus some projects  
5 move forward collaboratively and other stall while  
6 responsibilities are sorted out.

7 How do we get past the "not it" game? A  
8 solution to this situation would be to clarify  
9 definitions of and roles and responsibilities for  
10 control, possession and physical custody in the  
11 regulations. The regulatory requirements for  
12 museums and federal agencies with possession and  
13 control are the same. These definitions should be  
14 clarified to define roles and responsibilities of  
15 museums with federal collections and particularly  
16 those that have collections as a result of permit  
17 stipulations and agreements and those that were  
18 collected without a permit.

19 Addressing expectations and understandings of  
20 roles and responsibilities would help enormously in  
21 overcoming the barriers to completing NAGPRA  
22 consultation and documentation for these  
23 collections, including the provision and sharing of  
24 information. So in order to assure documentation  
25 of Native American human remains, funerary objects,

1 sacred objects and objects of cultural patrimony,  
2 the BLM requires information from the institutions  
3 holding the collections. And as Annie shared,  
4 acquiring the necessary information can be  
5 difficult and sometimes provisioned upon payment  
6 for repository costs, time and materials. Hourly  
7 rates range from 60 to 90 dollars an hour.

8 The prior discussion about possession of  
9 physical custody and the responsibilities would  
10 help alleviate some of the challenges and the  
11 provision of necessary collections information. An  
12 additional solution would be a requirement that  
13 museums with possession or physical custody of  
14 federally controlled NAGPRA collections report them  
15 to the federal agency. Such a requirement may be  
16 articulated as part of amendments to the  
17 regulations contemplated by the National NAGPRA  
18 Program.

19 An interim step to this is DOI's effort to  
20 ensure that Interior bureaus and offices have full  
21 authorization to request information from  
22 repositories holding collections. The OMB  
23 information collection request that Madam DFO  
24 addressed this morning for the National NAGPRA  
25 Program does not cover provision of museum

1 collections information to federal agencies as part  
2 of agency efforts to comply. Rather, it addresses  
3 provision of information to the National Park  
4 Service for the National NAGPRA Program's  
5 responsibilities. So to address Interior  
6 collections information needs as a whole, not just  
7 NAGPRA, as Annie shared, on February 2nd of this  
8 year, the Department published a proposed new  
9 information collection for documenting, managing  
10 and preserving Department of Interior museum  
11 collections in nonfederal repositories. The  
12 comment period ends March 5th, or this Thursday.

13 It's a programmatic information collection  
14 covering requests from repositories covering a  
15 whole host of information needs from accession and  
16 catalogue records, spaces housing collections to  
17 ensure security and stability of collections, and  
18 broad input on the size and scope of the  
19 collections, NAGPRA collections, inventory and  
20 research and other uses. Resolution of clear  
21 direction and authority for the provision of  
22 information and reporting in federal collections is  
23 a solution to challenges and federal compliance.

24 As has been shared, in some instances,  
25 cooperation comes down to being able to pay to

1 play. Some cases ultimately any step forward in  
2 completing basic, mandatory documentation of NAGPRA  
3 collections requires service fees to the  
4 repository. With limited capacity and an interest  
5 in collaboration, leveraging resources and seeing  
6 shared responsibility, this has been a hard lesson  
7 for us to learn, and as Annie shared, the fees can  
8 be quite high.

9 The BLM does not have a line item in the  
10 budget for NAGPRA. Our cultural resource budget is  
11 modest with limited flexibility for funding  
12 projects. But we continue to be creative and  
13 opportunistic, requesting and directing funds to  
14 further our NAGPRA efforts. A key funding source  
15 for NAGPRA, the grants appropriated by Congress,  
16 are no longer an option for any project involving  
17 federal collections. Prior to the 2011 grant  
18 cycle, eligible projects included museum and tribal  
19 efforts to sort out, document and collaboratively  
20 consult on federal collections. The disallowance  
21 of grants for federally controlled collections is a  
22 policy decision. We would encourage the committee  
23 and the Park Service to revisit the grant  
24 guidelines. The BLM is not suggesting that this  
25 resource replace agency funding, rather to help

1 museums and tribes, in addition to the agencies,  
2 sort through collections to address questions of  
3 responsibility if such is necessary to move forward  
4 and resolve disposition leading to repatriation.

5 NAGPRA is about people and it takes people to  
6 get the work done, a willingness to act, and an  
7 earnest interest in cooperation. The work is  
8 complex, the work can be painful, the work can  
9 involve trying to piece together the actions of  
10 those from 20, 50 and 100 years ago. We may place  
11 21st century value systems on the actions of those  
12 of the early 20th century. Some expeditions were  
13 authorized and aboveboard. Other collections were  
14 made under more cloudy circumstances. Sometimes a  
15 lot of information is available about the project,  
16 and sometimes it is very limited. It's what  
17 happened. Our job is to take the available  
18 information and do the best we can to document,  
19 consult and move forward towards repatriation.

20 To conclude, I'd like to return to our  
21 affirmation, the purpose of NAGPRA is to resolve  
22 disposition, to repatriate, to return home Native  
23 American ancestors, funerary objects, and other  
24 cultural property. For federal collections in  
25 repositories, the BLM has been successful in

1 resolving many collections leading to published  
2 notices and repatriation to Indian tribes. But  
3 there remains more work as shared in our  
4 presentation today. Clarifying responsibilities is  
5 important, but in some cases this effort is  
6 overshadowing or taking the place of actually  
7 consulting with tribes and documenting the  
8 collections to facilitate repatriation. We need to  
9 get past the "not it" game, clarify roles and  
10 responsibilities. We need to ensure we have the  
11 foundation for open provision of information. We  
12 need to be able to address the pay-to-play scenario  
13 and continue to pursue funds and leverage  
14 resources, and ultimately we need a willingness to  
15 act. Thank you very much for your time this  
16 afternoon, and I think together we would value your  
17 questions and comments.

18 LINDALEE FARM: Thank you. Bryan?

19 BRYAN LAUSTEN: I just arrived about a week  
20 ago, so I'm gathering this all in and preparing my  
21 work schedule for the next four months.

22 LINDALEE FARM: I didn't mean to put you on the  
23 spot. I just wanted to give you an opportunity.

24 BRYAN LAUSTEN: That's okay. I appreciate  
25 that.

1 LINDALEE FARM: All right. Thank you.

2 Do we have any questions or comments from the  
3 committee? Armand.

4 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

5 ARMAND MINTHORN: A question for Carla for  
6 clarification. I stated earlier we were talking  
7 about civil penalties and the process and who's  
8 subject to civil penalties. Federal agencies are  
9 not subject to civil penalties, correct?

10 CARLA MATTIX: Correct.

11 ARMAND MINTHORN: So are federal agencies  
12 subject to any kind of consequences with  
13 noncompliance with NAGPRA?

14 CARLA MATTIX: Well, they're not subject to  
15 civil penalties and they are required to comply  
16 with the provisions of NAGPRA, but there are no  
17 civil penalties. So the only avenue is for  
18 entities to take federal agencies to court  
19 basically to comply at the end of the day.

20 ARMAND MINTHORN: Okay. Ann and Emily, could  
21 the committee get a copy of your report?

22 ANNIE PARDO: Yes, absolutely.

23 EMILY PALUS: Yes.

24 ARMAND MINTHORN: Thank you. A question for  
25 both of you, what is the current budget now with

1 Bureau of Indian Affairs and BLM for – what is your  
2 NAGPRA budget?

3 ANNIE PARDO: Mr. Minthorn, we don't currently  
4 have a NAGPRA budget. We don't have a line item.  
5 As you know, I read your report last November where  
6 you reference that. We – I also managed the museum  
7 program and we have money set aside for that. My  
8 priority in that is to fund NAGPRA work. As I  
9 discussed, I have applied for and been successful  
10 in securing funding through proposals from the  
11 Department. We also have carryover funds in the  
12 division that I oversee currently, and we've been  
13 funding a lot of NAGPRA work, pretty much  
14 exclusively NAGPRA work other than other museum  
15 collections work through any carryover funds.

16 EMILY PALUS: Within the Bureau of Land  
17 Management, we do not have a separate NAGPRA  
18 budget. There is no line item for NAGPRA  
19 activities. We have a general cultural resource  
20 management fund, which is appropriated by Congress  
21 and covers a suite of activities including  
22 inventory, monitoring, stabilization,  
23 interpretation of archeological resources, historic  
24 sites, sacred sites, on the public lands, as well  
25 as paleontological resources and facilitating a



1 structure that streamlines compliance with the  
2 National Historic Preservation Act.

3 Within that budget, which is 15 million and  
4 covers – that's nationally and covers all of the  
5 archeologists employed by the Bureau of Land  
6 Management and others, there is a small portion  
7 that is available for projects. From that limited  
8 project fund, we try to prioritize projects, museum  
9 collections accountability and NAGPRA projects that  
10 are ready to do, that are, as I mentioned, likely  
11 to be successful. In past years, that's averaged  
12 about 260,000 dollars. The sequester cut of 2013  
13 resulted in a big cut to what we have for project  
14 funding, so flexible funding. Most of our funding  
15 goes to labor and overhead. We have made several  
16 requests for increased funding. The 2016  
17 President's budget includes a proposed increase to  
18 the cultural program of two million dollars, a  
19 portion of that we would dedicate to furthering our  
20 NAGPRA compliance efforts.

21 I'll also say that, and this in part speaks a  
22 little to what you asked previously, the federal  
23 agencies are subject to oversight review, and the  
24 Government Accountability Office completed their  
25 audit of federal agency compliance with NAGPRA for

1        which both the Bureau of Indian Affairs and the  
2        Bureau of Land Management were subject to. And as  
3        part of that report, there was a recommendation for  
4        the agencies to provide a needs assessment to  
5        Congress on what it would take; tasks, schedule and  
6        resources. The Bureau of Land Management did  
7        submit to that, looking at a two million dollar  
8        increase per year, and that was tied to our 2012  
9        budget proposal, which was not enacted. So we will  
10       continue to work through the appropriation request  
11       channels. We will also look for other  
12       opportunities, such as the Department of Interior's  
13       museum fund. As mentioned, we try to be creative  
14       and opportunistic. And then also leverage  
15       resources with those partners that are ready and  
16       willing to be collaborative with us in sorting out  
17       the compliance needs and consultation – and  
18       facilitating the necessary consultation.

19        ARMAND MINTHORN: Well, Ann and Emily, I want  
20        to commend both of you for the work that you're  
21        doing. There's a lot of work that has been done,  
22        and there's a lot of work that still needs to be  
23        done. And it's very clear that the Bureau of  
24        Indian Affairs and BLM will not be in compliance  
25        with NAGPRA for a very long time, a very long time.

1 This will continue to be a concern in understanding  
2 that the Review Committee can offer to help with  
3 your effort. We can have our voices heard by  
4 people in Washington, DC. I think the needs  
5 assessment that you mentioned, Emily, is a good  
6 tool, and I would encourage the Bureau of Indian  
7 Affairs to do the same thing, if they could to  
8 that, to cite a needs assessment. That can truly  
9 begin and bring attention to the bureau's needs in  
10 complying with NAGPRA. But I would again commend  
11 you with a needs assessment. You know, that's a  
12 good tool and it will begin and bring attention to  
13 the Bureau of Land Management's needs in working  
14 with NAGPRA. But again, you know, these – the  
15 report that was given earlier culturally  
16 affiliated, BLM is listed on here, the Bureau of  
17 Indian Affairs is not. So could it be safely  
18 assumed that the Bureau of Indian Affairs' name  
19 could be included with the cultural affiliated  
20 report at some point?

21 ANNIE PARDO: Mr. Minthorn, no, it would not be  
22 – well, no. Let me address our process. As soon  
23 as we complete consultations, we have all the  
24 information that we need, we move immediately to  
25 drafting notices. In the case where another

1 repository has possession, I send a copy to the  
2 repository for their review, and I also send it to  
3 all the affiliated tribes before we send it over to  
4 National NAGPRA for publication, so they have an  
5 opportunity, a final opportunity to review. Again,  
6 I work closely with the tribes, with the THPOs, the  
7 cultural resources department directors, NAGPRA  
8 coordinators within tribes, to make sure we get  
9 these notices just right.

10 And if I may just address something else you  
11 said, that needs assessment that Emily referred to,  
12 that was actually submitted by the Department, five  
13 bureaus – BLM, BIA, Fish, Reclamation and Park  
14 Service – we all submitted our own needs assessment  
15 and timeline for completing the work. This was  
16 done in 2011, and National NAGPRA has kindly put  
17 that report up on their website. It's on the front  
18 page.

19 ARMAND MINTHORN: Okay. And then also the  
20 report that was given on culturally identifiable,  
21 is the BLM and BIA in this report too?

22 EMILY PALUS: While Melanie is looking, may I  
23 make a comment about the BLM's being on the  
24 culturally affiliated not published in notices,  
25 because that is something that is a great concern

1 of ours. And a lot of – I can't speak to all of  
2 the different situations on that list, but those  
3 individuals, the story is they were recovered from  
4 a law enforcement investigation from an individual  
5 who pled guilty to violating the Archaeological  
6 Resources Protection Act, theft of government  
7 property, theft of Indian property. We, as part of  
8 – so these were human remains that were acquired  
9 through a law enforcement investigation for which  
10 there is no provenience information. There is no  
11 information on where these ancestors were taken  
12 from. An inventory was submitted without going  
13 through our usual procedure within the agency and  
14 without due consultation, affiliating without any  
15 information and without full consultation. So we  
16 are in the process of trying to rectify an  
17 overzealous and well-intentioned effort but to take  
18 a step back and ensure that we are legal and that  
19 we are meeting the basic standards. So if I may,  
20 that is one that we hope to resolve and then be  
21 able to move forward.

22 While I said that, maybe Melanie – did you –

23 ARMAND MINTHORN: Are they on the list?

24 MELANIE O'BRIEN: No, neither the Bureau of  
25 Land Management nor the Bureau of Indian Affairs

1 shows up on the culturally unidentifiable inventory  
2 report.

3 ARMAND MINTHORN: Okay. Well, what's common  
4 here between BLM and BIA is lack of funds. That's  
5 what you both share in common, along with staff to  
6 work with NAGPRA. And one of the capacities, and I  
7 don't believe it has changed with the Review  
8 Committee, is we can express this concern to the  
9 Secretary. And we can certainly do that. But also  
10 to suggest that the Senate Committee on Indian  
11 Affairs, they hold hearings and these hearings are  
12 very useful because the hearings bring out  
13 information and reports to the rest of the  
14 Congressional people, and some of those people sit  
15 on some key committees. So the Senate Committee on  
16 Indian Affairs would be another option that could  
17 be considered as well, so that not only can the  
18 federal agencies report and bring out, but they can  
19 also get direction. And by all means, part of the  
20 duties of the committee is to facilitate, not only  
21 tribes and their needs and their concerns, but also  
22 working with the federal agencies that work with  
23 tribes. So that would be another option as well.

24 But I would really encourage the BLM and the  
25 BIA to come back to the committee again to report

1 and to update, because it's particularly concerning  
2 that there are repositories that both of you hold  
3 that you don't know what's in those repositories.  
4 That's what's concerning. And as long as those  
5 repositories go uninventoried, they're going to be  
6 at risk, whether they be human remains, sacred  
7 items, objects of cultural patrimony, they'll be at  
8 risk. But specifically, we want to take away or  
9 lessen the risk for the sacred human remains. And  
10 again, to express these undocumented repositories  
11 are a big concern are a big concern, a very big  
12 concern, for both BLM and BIA. So again, I would  
13 suggest and hope that the BLM and BIA will come  
14 back to the committee again at their next meeting  
15 and give a progress update. That's all.

16 LINDALEE FARM: Shannon.

17 SHANNON KELLER O'LOUGHLIN: Thank you both and  
18 thank you for coming here today and reporting. And  
19 I also commend you and the hard work you're doing,  
20 and I want to add to Armand's list of what you're  
21 lacking. And I'm also hearing that you're lacking  
22 force, and as I'm sitting here in my individual  
23 capacity as an attorney for Indian tribes and I  
24 wonder what the Federal Government's legal  
25 obligations are under the current laws to make sure

1       that its repositories are doing what they're  
2       supposed to do, whether there's been any violations  
3       of public trust by the Federal Government or those  
4       repositories, whether the Federal Government has a  
5       fiduciary responsibility to tribes and to the  
6       public to care for these collections.

7               So all these questions are running through my  
8       head and I'm wondering, you know, what power do you  
9       all have? What swords do you have to swing around  
10      at these repositories? It's just -- like I said, I  
11      have a lot of questions and I wish I knew the  
12      answers too. But so you see where I'm coming from,  
13      and as a tribal advocate, you know, my first  
14      instinct is to say, well, why -- you're the Federal  
15      Government. Assert your sovereignty against the  
16      bad actors in this and get some work done, and I  
17      know that doesn't -- that's not the extent of your  
18      problems but it could be at least one of your  
19      problems.

20             But again, at the same time, you know, thank  
21      you and I do hope to see you all again and see how  
22      this progresses through time. And this is  
23      something that the Review Committee has  
24      consistently, I think, been putting forward in its  
25      annual reports that the federal agencies also are



1        lacking money to comply with NAGPRA. And I'm  
2        beginning to think that our Congressional reports  
3        aren't getting much – aren't being listened to,  
4        aren't being acted on. And so again, I'm going to  
5        renew tomorrow and I'll say today that the Review  
6        Committee needs to take an active position in  
7        consulting with the Secretary, educating whoever we  
8        have the authority to educate about these issues,  
9        short of lobbying. So that's all. Thank you.

10        ANNIE PARDO: May I respond, Madam Chair?

11        LINDALEE FARM: Of course.

12        ANNIE PARDO: Okay. We don't have a sword. I  
13        wish we had a sword. I think that's part of the  
14        reason we're here, to let you know we have no  
15        sword. We have diplomacy. As far as statutory  
16        authority, we have NAGPRA. And I guess to go back  
17        to what Emily said with the "not it" analogy, a lot  
18        of times it comes down to, from the repository's  
19        perspective, we're as compliant as we need to be  
20        but these are your collections and you need to do  
21        whatever you need to do because you're not  
22        compliance. And it's also like you said, a chicken  
23        or egg thing, where is it, who does it? I want to  
24        do what I need to do, and I'm more than happy to go  
25        beyond what I need to do but I need to know what

1       they have. I need to know what records they have,  
2       what collections they have, and I don't have that  
3       information in most cases. In some cases we don't  
4       know where the collections are, if there are more,  
5       in fact.

6             In trying to push a little harder, if you  
7       will, the responses that I've gotten, all right,  
8       well, you pay us curation fees and we'll get a  
9       repository agreement and then we can do what you  
10      want us to do with your collection. We don't have  
11      — obviously we can't fund full NAGPRA compliance  
12      and all the work that we want to fund. We can't  
13      fund curation fees either. But the thing is, these  
14      repositories received permits to do the work to  
15      collect items. They have housed them for years.  
16      They have benefitted, I would argue, from them  
17      through making them available for research,  
18      publication, exhibitions. The federal agencies  
19      didn't profit. We don't need to profit. We don't  
20      seek to profit. But now to demand curation fees in  
21      exchange for doing what they should be doing  
22      anyway, especially under 36 CFR Part 79.

23             EMILY PALUS: Thank you. If I might add,  
24       because we don't have a sword, and part of us  
25       coming today and raising this particular issue was

1 to help raise visibility for some of the challenges  
2 and lack of clarity. We have the statute. We're  
3 recognizing where the agencies have control. But  
4 what's difficult to get across is when we have  
5 control but no physical custody, no information,  
6 nothing. And we're - like I said, there are many  
7 repositories that are great to work with so we're  
8 focusing on where we have challenges and barriers  
9 and where they - these collections were sought by  
10 the researchers associated with the institution.  
11 We didn't ask them to go collect. They asked the  
12 federal government for the authority to go and  
13 collect and they did. And they researched them,  
14 and students researched them. They've published.  
15 There have been a lot of educational and research  
16 benefits. So then we come before and say, but it's  
17 all on the federal agency because what does  
18 "possession" mean. You have the collection. You  
19 sought the collection. You were permitted to make  
20 the collection. You've held the collection for 80  
21 years. You've accessioned the collection. You've  
22 used the collection. But it's from federal land or  
23 Indian land, so the federal agency has control and  
24 therefore responsibilities under NAGPRA.

25 Are there other responsibilities? Some

1 museums will say yes, we have possession. You have  
2 control. We will work together. And others take a  
3 different interpretation and say it's federal. You  
4 pay us to do it or it won't get done. So I think  
5 that there is a funding issue which the GAO  
6 acknowledged. But then there's also understanding  
7 the authorities and the roles and responsibilities,  
8 and it's the "not it" or "pay to play" and that's  
9 why I keep coming back to why was NAGPRA enacted?  
10 Was it enacted to figure out who's responsible for  
11 what or was it enacted to return ancestors home?  
12 And it seems that in certain cases we're getting  
13 lost in a discussion of who's responsible for what  
14 and not moving forward, because we're figuring out  
15 control and possession and who is going to do what.  
16 And at the same time, these ancestors are there.  
17 And we have a NAGPRA process which if we follow it,  
18 we can move towards repatriation. But we're stuck  
19 back at who does what and how.

20 LINDALEE FARM: Dennis.

21 DENNIS O'ROURKE: Thank you for that report.  
22 If -- because there's a theme here of lack of  
23 funding and resources to carry things forward the  
24 way we'd like to see them, I'd like to get a little  
25 clarification. If I understood one of your

1        comments correctly, you asked the committee to  
2        address something about a change in policy with  
3        respect to grants. Can you elaborate on that? I'm  
4        not exactly sure what that means.

5            EMILY PALUS: Sure. Up until 2011, that grant  
6        cycle, prior to that – at least 2006 to 2010, the  
7        NAGPRA grant guidelines quoted the section of  
8        NAGPRA that the grants were designed – well, I  
9        don't want to paraphrase. I actually had it in my  
10       presentation and I cut it because I didn't want to  
11       just read to you from the law and the grant  
12       guidelines. But up until 2011, the grant  
13       guidelines did include allowance for proposals that  
14       involved – that for museums and tribes to apply to  
15       propose projects that did involve some issue with  
16       federal collections, and invited, and the phrase  
17       was, "collaborative consultation on the disposition  
18       of federal collections." And that was in – and  
19       there were some proposals from tribes, from  
20       museums, where projects did have – a portion of it  
21       included a federal collection. And then in 2011,  
22       the grant guidelines were changed.

23            I am aware that before then the staff advice  
24        was any project involving federal collections was  
25        not applicable for a NAGPRA grant. And I think

1       that come 2011, the broad guidelines were changed  
2       after a series of conversations with the staff over  
3       what the grant guidelines allowed, what the law  
4       stated and what the grant guidelines allowed as  
5       written and then they were changed.

6               So again, we're not advocating to diminish the  
7       capacity that museums and tribes received through  
8       that important funding source. But rather there  
9       are collections that are comingled. There are  
10      collections that tribes would like to go and visit,  
11      consult on. There may be a federal nexus. To  
12      reevaluate that decision to disallow any project  
13      that includes a nexus with a federal collection.

14             DENNIS O'ROURKE: Thank you.

15             LINDALEE FARM: Sonya.

16             SONYA ATALAY: I want to thank you for your  
17      work and for your report. When I first started  
18      learning about these repositories, I was really  
19      concerned about it. I was concerned when we heard  
20      about the Government Accountability Office's report  
21      about federal agencies and their lack of  
22      compliance. And I was concerned about the  
23      repositories. And I wanted to – I started asking  
24      questions every time you or museums came forward.  
25      And my colleagues on this committee did too. And

1        what we wanted to know was some of this  
2        disentangling like, who is it? What is going on  
3        here? And because of the work that you and others  
4        have done, I think we're starting to get a clear  
5        picture of what it is that's going on, and we  
6        didn't have that before. So thank you.

7                I still feel extremely frustrated. I'm not  
8        sure what the solutions are. But I know that these  
9        are large numbers of individuals that we're talking  
10       about. If we go back and just think back to our  
11       most recent meeting in November, we heard from  
12       Indiana University who was talking about their  
13       collections over 9,000-plus individuals, and I  
14       asked the question directly does that include the  
15       collections that you have in which you're acting as  
16       a repository for federal agencies, and they said  
17       no. So 9,000 plus the collections in which they're  
18       acting as repositories for federal agencies, and  
19       they don't have numbers for those collections. And  
20       that's just one that happened recently that I can  
21       remember well. And we've heard many examples. I'm  
22       sure you know them well.

23               So these are large numbers that we're talking  
24       about here, and it's extremely upsetting. I come  
25       from a university situation. We heard from my

1 university. Dr. Bob Paynter talked about our  
2 progress earlier. Yes, it requires money. It  
3 requires funding. It requires the administration  
4 to get behind these projects and to put money in to  
5 do the right thing and to follow the law. That has  
6 to be done. Universities are in the business of  
7 researching. And I agree with you, they have  
8 benefitted from having these collections in their  
9 possession. They're in the business of educating  
10 students, and students work directly with these  
11 collections. So this has to be done.

12 I just - I hear some of the solutions that  
13 you've proposed, and I want to thank you for those.  
14 I'll just reiterate what I heard as some of the  
15 solutions. You talked about clarifying definitions  
16 in the regulations. I think that's a solid thing  
17 that our committee could look into doing,  
18 requesting that there is clarification of  
19 definitions. You talked about requiring museums to  
20 report federal collections to the federal agency.  
21 That seems like such a straightforward thing. Just  
22 as they report to National NAGPRA what the  
23 collections are, reporting to federal agencies  
24 seems - I know that requires time and I know that  
25 requires funding. And our institution has done it.



1 Other institutions have done it. It can be done,  
2 and it needs to be done. You talked about giving  
3 federal agencies full authority to request  
4 information. That's another very solid thing that  
5 we could try to follow up on a proposed solution to  
6 some of this.

7 So I just want to again thank you, and request  
8 that you continue to come forward and share these  
9 kind of experiences, the barriers you're having,  
10 make these kind of recommendations so that we know  
11 about them and then we can consider as a committee  
12 what we can then do to act on the kind of things  
13 that we hear from you. And on the same side for  
14 museums, so that we can hear from these federal  
15 repositories, what are your barriers? Why aren't  
16 these things being done, and what can we do to help  
17 to make sure that this moves forward? Because  
18 these are large numbers of – even if it was one  
19 individual, every ancestor counts. So I don't want  
20 to say that it's just the numbers, but these are  
21 massive numbers and something has to be done. When  
22 we look at the numbers that we know about and then  
23 we consider the thousands that we don't, it's  
24 reprehensible and we have to, as a committee, and  
25 together work to make sure that we see an end to

1           this. Thank you.

2           LINDALEE FARM: Armand.

3           ARMAND MINTHORN: Just for some clarification,  
4           Annie and Emily, so to understand that both the  
5           Bureau of Indian Affairs and BLM, they are federal  
6           repositories.

7           EMILY PALUS: Well, we're largely addressing,  
8           they're nonfederal repositories.

9           ARMAND MINTHORN: Non.

10          EMILY PALUS: Non. The repositories that we're  
11          talking about for this particular issue that we  
12          zeroed in on for the purposes of the presentation  
13          today are those that are nonfederal but hold  
14          federal collections. For the Bureau of Land  
15          Management, within our agency, we only authorize  
16          three facilities across the nation that are bureau  
17          managed to hold collections. We do not, as a  
18          business practice within the BLM, manage museums or  
19          manage repositories. We have three exceptions: the  
20          Anasazi Heritage Center in Dolores, Colorado; the  
21          Billings Curation Center in Montana; and the  
22          National Historic Oregon Trail and Interpretative  
23          Center in Oregon. Those three facilities are  
24          authorized by the BLM to hold museum collections,  
25          and they hold collections from within their region,

1 from within their immediate vicinity. They do not  
2 hold collections from across the country and the  
3 vast majority of collections from BLM or GLO public  
4 lands are in nonfederal museums and universities  
5 and other institutions. So when we're – so that's  
6 what we're talking about today. Those three  
7 internal facilities have information. They have  
8 completed inventories. They are – were extremely  
9 active in NAGPRA during the initial efforts, and  
10 then as collections arise they deal with them as  
11 they should in a timely manner under future  
12 applicability.

13 ARMAND MINTHORN: Okay. Annie, the bureau has  
14 federal repositories, correct?

15 ANNIE PARDO: We do have federal repositories.  
16 We have collections – the BIA has collections at  
17 two of the repositories that Emily mentioned, both  
18 at the Anasazi Heritage Center and the Billings  
19 Curation Facility, but there's no NAGPRA there.  
20 And again my focus here has been on the nonfederal  
21 repositories, the museums, the universities,  
22 historical societies and so on.

23 ARMAND MINTHORN: Okay. Well, just to mention  
24 and to go along with what you were saying, looking  
25 forward to hearing reports on culturally

1       unidentifiable and culturally affiliated in the  
2       future, but it would be good too if we could hear  
3       from the museums and universities that have these  
4       repositories to get a sense of what they're doing  
5       with those collections and who has authority,  
6       etcetera, etcetera. But it would be good to get, I  
7       guess, a sense on some of those repositories.  
8       That's all.

9               LINDALEE FARM: Anyone else?

10              So thank you very much. I do have a quick  
11      question for the program. With respect to the  
12      proposed draft regulations, one of the issues  
13      brought up by both of our representatives here in  
14      giving the reports was that they're looking for  
15      some changes in the regs. Can someone just give me  
16      a quick update and a timetable real quick?

17              MELANIE O'BRIEN: Yes, quickly because the  
18      batteries in this microphone are dying. I'm sorry,  
19      you're asking for an update on the regulation –

20              LINDALEE FARM: What's the status on the update  
21      of the draft proposed regs that have been worked on  
22      for quite some time now?

23              MELANIE O'BRIEN: The update is that they are  
24      under review in the Department of the Interior.  
25      They are undergoing the Interior review. Yes,

1       they're still be drafted in the final Plain  
2       Language style. The program completed its draft -  
3       the program is working on its draft in Plain  
4       Language in accordance with that law. I probably  
5       should have let Carla answer.

6               LINDALEE FARM: So if one were to have a  
7       crystal ball, when can we hope to see these? We  
8       don't have a crystal ball?

9               MELANIE O'BRIEN: No.

10              SHANNON KELLER O'LOUGHLIN: How about one of  
11       those black eight balls? Fuzzy.

12              LINDALEE FARM: Okay. And I understand your  
13       frustration because you have no sword, you have no  
14       teeth, and you're hoping to get some in the new  
15       proposed draft regulations, and I imagine that  
16       you've made public comments or you've made comment  
17       through your respective agencies on what you would  
18       like to see. Is that correct?

19              ANNIE PARDO: I'm sorry, Madam Chair. Are you  
20       referring to the draft regulations?

21              LINDALEE FARM: Right.

22              ANNIE PARDO: We haven't seen them yet.

23              LINDALEE FARM: But previously, when they were  
24       asking for comments.

25              ANNIE PARDO: Yes, BIA did get an opportunity

1 to comment on prior drafts or prior amendments to  
2 the regulations. Let me say that.

3 LINDALEE FARM: All right. I know we're again  
4 behind schedule, so if we could - I want to thank  
5 you very much and I appreciate you coming back to  
6 us periodically and giving us updates. It is very  
7 helpful. It helps us to understand where you're  
8 coming from, what your challenges are, and also  
9 what your successes have been, and that's very  
10 important to us, as well as the rest of the  
11 community I'm sure. So thank you again, all three  
12 of you.

13 MELANIE O'BRIEN: Should we continue?

14 LINDALEE FARM: Yes, please.

15 MELANIE O'BRIEN: The next item on the agenda  
16 is a presentation from the Peabody Museum of  
17 Archaeology and Ethnology.

18 **PRESENTATION: PEABODY MUSEUM OF ARCHAEOLOGY AND**  
19 **ETHNOLOGY, HARVARD UNIVERSITY**

20 PATRICIA CAPONE: Thank you. We have a brief  
21 presentation, being attentive to your schedule.  
22 I'm Patricia Capone. I'm a museum curator at the  
23 Peabody Museum of Archaeology and Ethnology, and  
24 I'd also like to introduce my colleague Sandra  
25 Dong. Sondra is the NAGPRA coordinator.

1           A number of museum staff were interested in  
2 participating in the meeting because it's so close  
3 by. I want to acknowledge the University of  
4 Massachusetts. Thank you for hosting. I'm glad  
5 that so many of us could come, and I'm just going  
6 to introduce some of my colleagues who wanted to  
7 learn about the process; Michele Morgan, Olivia  
8 Herschensohn, Jane Rousseau, Katy Mollerud, and Zac  
9 Pelleriti.

10           LINDALEE FARM: Welcome.

11           PATRICIA CAPONE: Thank you. So thank you,  
12 committee, for the opportunity to present this  
13 update on the Peabody Museum's NAGPRA  
14 implementation. As you know, the Peabody Museum,  
15 Harvard University, has committed significant  
16 resources and attention over many years to  
17 implement NAGPRA and to cultivate the relationships  
18 necessary to this effort. The museum has partnered  
19 with Native American communities and other  
20 institutions across the United States toward mutual  
21 goals of education and research. Our museum  
22 considers the experience to be a privilege. The  
23 process has benefited each of our missions of  
24 education, research and developing relationships  
25 with Indigenous communities and scholars.

1           The Peabody Museum is responsible for NAGPRA  
2           implementation for one of the largest and broadest  
3           collections subject to the Act and consultations  
4           with Native American tribes and Native Hawaiian  
5           organizations take several forms: visits to the  
6           museum, correspondence, web consultation through  
7           the museum's collections database online, and  
8           arrangements for physical repatriations. The  
9           museum continues to utilize its collections website  
10          as a means of presenting collections for NAGPRA  
11          consultation. Over the past year, the Peabody  
12          welcomed six NAGPRA consultation visits in person  
13          and hundreds of other exchanges by phone or email  
14          with tribes across the country.

15          We continue to facilitate NAGPRA activities  
16          for federal agency controlled collections as well.  
17          The Peabody continues to refine policies and  
18          procedures for sensitive collections and to strive  
19          for improved approaches to expanding accessibility  
20          to Native American communities whether through  
21          NAGPRA or other means. Additionally, as a  
22          university museum, the Peabody responds to frequent  
23          informational inquiries from students or other  
24          interested parties.

25          We are pleased to share that new this spring,



1 a display on NAGPRA in part responding to these  
2 interests, will open within the North American  
3 Exhibit Hall. The display will complement the  
4 existing examples discussing specific  
5 repatriations, which are already in place in the  
6 hall and it will feature a future online component,  
7 and we'll be glad to send the committee information  
8 about that when that's up. With the museum's  
9 significant commitment to NAGPRA implementation,  
10 and along with the public awareness benefit,  
11 dedicating additional exhibit attention to the  
12 topic has been a museum priority.

13 At the Peabody Museum, we're grateful for the  
14 consultations of NAGPRA and collaborations beyond  
15 that have so broadly benefited the institution, and  
16 we look forward to new ways of understanding  
17 through the NAGPRA process. Thank you.

18 LINDALEE FARM: Thank you.

19 Any questions, comments? Sonya.

20 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

21 SONYA ATALAY: So thank you for the report.  
22 Just briefly, since you mentioned that you are  
23 acting as a repository for federal agencies and  
24 since we just did have this discussion about that  
25 and hoping to hear maybe from you just briefly

1       about some of your experiences with that and any  
2       kind of barriers or challenges that you face coming  
3       kind of from the other side acting as one of those  
4       repositories. If you could maybe speak to that or  
5       maybe next time you come forward give us some kind  
6       of an indication of that as well, I think that  
7       would be very helpful since we are all really  
8       concerned about this issue.

9           PATRICIA CAPONE: Yes, I can speak briefly now  
10       and also maybe come prepared with additional  
11       detail. In the past, we've worked with federal  
12       agencies to establish what might be under their  
13       control. Many of those have resulted in either  
14       repatriations or dispositions, and that's usually  
15       involved a process of a contract, like an agreement  
16       of what facilitation the museum can provide in  
17       order to support the federal agency's  
18       responsibilities under NAGPRA. We benefited  
19       yesterday from both representatives of BLM and BIA  
20       taking the opportunity while they were in the  
21       region to spend some time with us yesterday and  
22       examine some of the cases that we've been talking  
23       about with them and make some moves toward next  
24       steps. So grateful to them for taking their time  
25       while they're here to do that. It also helps us

1 clarify our understanding of roles and  
2 responsibilities.

3 SONYA ATALAY: Thank you.

4 LINDALEE FARM: Thank you.

5 PATRICIA CAPONE: Thank you.

6 LINDALEE FARM: thank you very much, and we are  
7 very happy that so many of you could be here today.  
8 And if you could just – and maybe this is just for  
9 the benefit of the Review Committee. Could you  
10 read those names off again, and when your name is  
11 called can you raise your hand or stand up so we  
12 can put the name to a face? Thank you.

13 PATRICIA CAPONE: Definitely. Thank you for  
14 asking, Michele Morgan, Olivia Herschensohn, Jane  
15 Rousseau, Katy Mollerud, and Zac Pelleriti.

16 LINDALEE FARM: Okay. Thank you, each of you,  
17 for being here today, and hopefully you'll be here  
18 tomorrow. It's always good to see the faces and to  
19 know who the people are, just as you can see us.  
20 So thank you for your interest and for your report.

21 Shannon.

22 SHANNON KELLER O'LOUGHLIN: I'm sorry I didn't,  
23 but it just hit me. And it hit me, you have bigger  
24 staff than the National NAGPRA Program, and so I  
25 guess what – you know, when we were talking about

1 funding and lack of funding, and what I would  
2 really be interested in to see what kind of  
3 resources, you know, if you're having so much  
4 success and you're not having – you're not in  
5 disputes and you're not having museums and others –  
6 I'm sorry, tribes and others bringing civil penalty  
7 actions or anything else against you and you're  
8 getting NAGPRA funding. I guess I would like to  
9 know more about Peabody and what its budget is like  
10 for NAGPRA, what it's budget is like for  
11 consultation, how much money does it get from the  
12 Federal Government to support it in comparison to  
13 so many who either do not know how to get the  
14 funding or who don't have the funding or even our  
15 Federal Government who is unable to – I mean, I  
16 guess what I'm seeing here is that maybe you are a  
17 star that should share more information about how  
18 you've been successful in NAGPRA if that is the  
19 case, because this is all I'm seeing. So I put  
20 that out, and I would like to hear more about how  
21 Harvard Peabody is so successful. And maybe not  
22 today –

23 PATRICIA CAPONE: Just briefly, thanks for your  
24 confidence.

25 SHANNON KELLER O'LOUGHLIN: – but as far as

1        what you want to provide, because you're here at  
2        every NAGPRA Review Committee meeting as well. So  
3        this might be some information you could share with  
4        us. Thanks.

5                PATRICIA CAPONE: I think one brief comment in  
6        response, and thanks for your confidence, is that  
7        NAGPRA activities are spread throughout the museum,  
8        integrated into many different departments. So you  
9        see a number of different departments represented  
10       here. And it's taken -- it's a priority kind of for  
11       the museum, from the museum leadership and the  
12       university leadership, and so I think integrating  
13       the activities of NAGPRA into the regular  
14       activities of multiple museum departments is  
15       something that in my opinion has benefited our  
16       ability to implement for those of us who are more  
17       focused on NAGPRA implementation as a major part of  
18       our role there, that others are involved too, as  
19       you can see today. So we're not necessarily all  
20       spending a hundred percent of our time on NAGPRA  
21       here, but we try to sort of spread it throughout  
22       museum activities in order to be most effective.

23               SHANNON KELLER O'LOUGHLIN: That was helpful.  
24       Thank you.

25               LINDALEE FARM: Thank you very much.

1 PATRICIA CAPONE: Thank you.

2 LINDALEE FARM: Okay. Madam DFO.

3 MELANIE O'BRIEN: The last item on the agenda  
4 for today is public comment. We did have one  
5 individual who wanted to make a public comment  
6 that's only available today, so if it's okay with  
7 you, we'll go forward with that. If there are  
8 others who cannot wait until tomorrow to make  
9 public comment, we can try to accommodate them  
10 today as well. We do have two opportunities for  
11 public comment tomorrow as well.

12 LINDALEE FARM: Okay. Why don't we go ahead  
13 and take the one individual who's only available  
14 today for public comment. Do we have any time  
15 restrictions for this room?

16 MELANIE O'BRIEN: We do not.

17 LINDALEE FARM: Okay. Why don't we move  
18 forward and we'll see how our time goes. I would  
19 like to go until 5:00, if that's all right with  
20 everyone, to go at least until 5:00. And I  
21 apologize for going over the time, but I won't  
22 waste any more time talking about that. Let's go  
23 ahead.

24 MELANIE O'BRIEN: Okay. So Aaron Miller.

25 PUBLIC COMMENT

**AARON MILLER**

AARON MILLER: I think this will be an interesting contrast with Harvard. My name is Aaron Miller. I represent the Mount Holyoke College Art Museum. Mount Holyoke College is a small liberal arts college that's about ten miles from here. And I guess today I'm just going to briefly talk about where we are in the NAGPRA process. Admittedly, about 25 years into the process, we're really just now getting going. I've recently been talking with some of the people here, really trying to figure out the best way to move forward.

The museum's collection of Native American or Hawaiian objects is approximately 700 objects. We do not have any human remains, but we do have things that are certainly NAGPRA sensitive. The way that we're progressing is really trying to start with contacting different groups that we know will be potentially interested in what we have. And I guess speaking to that, I had some real apprehension about actually reaching out to some – sort of some of the designated folks because how late we are actually doing this.

When I started working, I relatively quickly

1 became aware that the collection had not been dealt  
2 with in an appropriate way. The registrar who had  
3 been there for a number of years, when she came in  
4 she was under the impression that things had been  
5 more or less worked out. But I guess speaking to a  
6 small museum, until relatively recently, I think  
7 three years ago, I think there was a full-time  
8 staff of about three or four. Now we're closer to  
9 12 or 13. But I think the biggest challenge to  
10 coming into compliance has been staff time. So  
11 money can be related to that, but really it's been  
12 having someone who has been able to actually focus  
13 on this collection.

14 And my background is historical archeology, so  
15 I had a little familiarity with NAGPRA. But it's  
16 the sort of thing that I'm certainly learning as I  
17 go, and I'm really beginning to realize that even  
18 though we don't have human remains in the museum  
19 collection, because – you know, speaking about  
20 sacred objects or objects of cultural patrimony,  
21 there's a lot of kind of gray area there. And I'm  
22 realizing that it's not up to me to decide which  
23 objects are or not in that category. It's really  
24 up to the different affiliated groups to work with  
25 us and to help conform us along the way.



1           A little bit of background on our collection.  
2           We have two different museums. The Mount Holyoke  
3           College Art Museum was founded in the 1870s, but we  
4           have objects that came into the collection as the  
5           college or the seminary formed in the 1830s. Then  
6           we have a separate museum, which is called the  
7           Joseph Allen Skinner Museum, which one collector  
8           put together in the nineteen twenties and thirties.  
9           So we really have objects from across North America  
10          and the Hawaiian islands. And we have a mix of  
11          archeological materials, as well as clothing items  
12          and really everything in between.

13          So it's been relatively easy to look at the  
14          collections. We have unassociated grave objects.  
15          So there's no question that those are going to  
16          hopefully be claimed. But it's in all of these  
17          other things that realizing that there are so many  
18          different groups that have to be contacted, and  
19          we're certainly committed to that. I'm taking the  
20          lead on it, but this is just one small part of my  
21          job responsibilities. I'm not saying this is a  
22          small process, but I'm also – I'm the museum  
23          curator. I basically run the entire Skinner  
24          Museum, which is 6,000 objects. I work with the  
25          educators. I work with faculty.

1           So I think we share a lot with an institution  
2           like Harvard that we are a teaching museum, and I  
3           think there are a lot of opportunities to do some  
4           of the things that they're doing. But the  
5           challenge that I would say is really in the  
6           forefront is having the time to focus on it. So  
7           that's not an excuse but I think part of the reason  
8           why I was asked to talk about this is because I can  
9           offer the perspective of someone who is relatively  
10          new to the process from a relatively small museum  
11          with – it's a collection that's really focused on  
12          objects rather than remains. But I see a lot of  
13          the same challenges in the objects, maybe even more  
14          so, because there's so many things that it's just  
15          unclear whether someone will be interested in it or  
16          not, so it really requires that we reach out to all  
17          the people who could potentially be interested.

18           LINDALEE FARM: Okay. Any questions or  
19          comments? No.

20          **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

21           LINDALEE FARM: I have a quick question. Have  
22          you done your summaries?

23           AARON MILLER: We have the summaries sort of  
24          put into place, so they haven't been sent out yet.  
25          What I am realizing is that every summary sort of

1 needs to be catered toward the group that it's  
2 going to. I've only spoken to four or five  
3 individuals focusing on this area. Bob Paynter  
4 spoke to some of the complexities of the  
5 Connecticut River Valley, so we're taking the lead  
6 from some of the contacts that they've made. And  
7 different people that I've spoken to, some will  
8 want images, some will not, some will want it only  
9 by sort of email, some will want it both email and  
10 sort of in paper form. So we have not yet taken  
11 that step. Personally I feel like I need to reach  
12 out to each group before we sort of send the  
13 official document, just to make sure that people  
14 are getting what they want.

15 LINDALEE FARM: Okay. I would suggest that you  
16 take the opportunity, since there are other museum  
17 people here, to get some ideas and to talk with  
18 them. We've got half a dozen people sitting behind  
19 you who I think would be happy to chat with you a  
20 bit and get you headed in the right direction,  
21 because it's important to head in the right  
22 direction. So thank you for sharing with us, and  
23 perhaps we can hear from you again in the future to  
24 hear about the progress that you've made as you  
25 move along.

1 AARON MILLER: If I may?

2 LINDALEE FARM: Yes.

3 AARON MILLER: So I've definitely spoken to a  
4 lot of different museums, and I think one of the  
5 challenges that I've come across is you get very  
6 different answers depending on who you talk to.  
7 And I think because the fluidity of NAGPRA, there's  
8 not necessarily always one way to go, and I think  
9 that's going to be a challenge for us moving  
10 forward as well because it definitely - it has  
11 helped speaking to different people, but depending  
12 on the contact person, whether it's in another  
13 museum institution or within a tribe, it seems to  
14 be very different.

15 LINDALEE FARM: Okay. Thank you very much,  
16 Aaron, and if you have any questions or need  
17 technical assistance, you can always contact  
18 National NAGPRA.

19 AARON MILLER: I certainly will continue to do  
20 that.

21 LINDALEE FARM: Okay. Thank you.

22 Anyone else for this afternoon?

23 MELANIE O'BRIEN: We can go ahead and invite  
24 anyone who has not had a chance to approach me. I  
25 don't know if there's anybody else who would like

1 to come forward?

2 LINDALEE FARM: Does anybody want to come  
3 forward today? No. Oh, Ramona.

4 **RAMONA PETERS**

5 RAMONA PETERS: Sorry, I won't be here  
6 tomorrow, and I don't normally operate on rumor but  
7 I ask Dr. Capone if she would answer a question on  
8 record. I was told that DNA testing was being done  
9 on some of the remains at the Peabody Harvard  
10 Museum, so I ask if she would answer that question  
11 on the record. I believe it involved the Wabanaki  
12 Nation - Confederacy rather, Wabanaki. The  
13 question is, are there DNA testing being performed  
14 on human remains related to NAGPRA at the museum?

15 LINDALEE FARM: Counsel?

16 CARLA MATTIX: This is public comment.

17 LINDALEE FARM: This is public comment. I'm  
18 not inclined to force someone to come forward and  
19 to answer a question on record. I don't know that  
20 the Review Committee has the authority to do that.  
21 If Dr. Capone wants to make public comment, she  
22 can, but I don't think it falls within, and correct  
23 me if I'm wrong, counsel, our jurisdiction to pose  
24 a question like that to someone and ask them to  
25 respond on the record.

1 STEPHEN SIMPSON: That's correct.

2 CARLA MATTIX: That's correct.

3 RAMONA PETERS: So does that -- are you saying  
4 it's inappropriate? I'm sorry.

5 LINDALEE FARM: I'm saying we don't have  
6 authority to ask someone to make a statement on the  
7 record under these circumstances. If someone wants  
8 to voluntarily through public comment say  
9 something, that's one thing. It's not our  
10 obligation or within our authority to force someone  
11 to say something.

12 RAMONA PETERS: Okay.

13 LINDALEE FARM: Dr. Capone, did you want to say  
14 something during public comment?

15 PATRICIA CAPONE: No, but I'll be happy to have  
16 a conversation about the museum's activities. If  
17 there's anything NAGPRA-implementation related,  
18 also glad to talk about that.

19 LINDALEE FARM: Okay. So if the two of you  
20 would chat, I think that would be a step in the  
21 right direction and we can go from there.

22 Shannon.

23 SHANNON KELLER O'LOUGHLIN: If I may, I have a  
24 legal question, because if you wouldn't mind,  
25 Ramona, if I could just kind of turn your question

1       around and focus it more on what's required in  
2       NAGPRA. And that would be something that we could  
3       address. And is there -- I believe I know the  
4       answer to this, but is there any obligation under  
5       NAGPRA in which a museum would be required to do  
6       scientific research in order to facilitate a  
7       repatriation?

8               CARLA MATTIX: Well, a museum or federal agency  
9       has to have enough information under the statute to  
10      make a determination, to make the appropriate  
11      determinations that they need to make. So it's up  
12      to them to determine what level of information that  
13      is, but the statute and regs do not preclude  
14      testing.

15             SHANNON KELLER O'LOUGHLIN: Excuse me, but  
16      you've confused me more, because the way I read the  
17      statute, it says that the museum is supposed to  
18      make a determination based on the information  
19      that's in its possession at the current time.

20             CARLA MATTIX: It actually says that the  
21      statute will not be used as a basis for additional  
22      documentation.

23             SHANNON KELLER O'LOUGHLIN: Right.

24             CARLA MATTIX: So you can't say that NAGPRA  
25      requires -- is making a museum do this, but an

1           agency or museum still needs to have information  
2           while they're making a determination.

3           SHANNON KELLER O'LOUGHLIN: That's in their  
4           possession. I don't -- I mean, from what I  
5           understood from the statute and from its intent or  
6           from the drafters' intent that it wasn't supposed  
7           to be more of a burden on the museum and that that  
8           was written for the purpose of -- that the museum  
9           didn't have to do more scientific research, that  
10          they were required to make a determination based on  
11          what they already had in -- with consultation  
12          information.

13          CARLA MATTIX: Right. So some museums, if they  
14          feel like they may not have enough information and  
15          they will have to make a culturally unidentifiable  
16          or even a non-Native American determination if they  
17          don't feel they have enough information to say it's  
18          Native American or perhaps the culturally  
19          affiliated, they can -- yes, they don't have to do  
20          any more testing, that's correct, but their  
21          decision making process will stop at that point,  
22          and they won't be able to make the decision that  
23          perhaps it's Native American or culturally  
24          affiliated. So the Department's position has been  
25          that the statute does not preclude the -- I guess,



1 gathering the evidence that might be necessary to  
2 make a determination that the agency or the museum  
3 feels is necessary.

4 SHANNON KELLER O'LOUGHLIN: I'm extremely  
5 confused, because that's not how I read the  
6 statute.

7 CARLA MATTIX: And that's really -

8 SHANNON KELLER O'LOUGHLIN: And that also  
9 delays the purpose of NAGPRA. That also puts in  
10 the museum's hands more power and authority to  
11 stop, we don't have enough information and your  
12 consultation isn't enough to really validate  
13 affiliation or not, so we're just not going to  
14 repatriate. I mean, to me that is not - that is a  
15 read of the statute not as it was intended to  
16 facilitate repatriation. So this is -

17 CARLA MATTIX: Well, this issue has really come  
18 up in the context primarily of what's called  
19 "ancient remains," that category, where really -  
20 that's to my knowledge the area where DNA testing  
21 has occurred to try to come to some sort of  
22 determination under NAGPRA, such as with the  
23 Kennewick Man case. And the Department clearly had  
24 the interpretation at that time that DNA testing  
25 could be conducted to attempt to get to a

1       reasonable determination that the Kennewick Man  
2       remains were Native American. So the Department in  
3       that situation did conduct testing, or I guess the  
4       Corps of Engineers did, and that was part of the  
5       process to try to get to a reasonable determination  
6       for Native American. So that's just one example  
7       where we've implemented that interpretation.

8               SHANNON KELLER O'LOUGHLIN: Is that a written  
9       opinion from the Solicitor or the Department of  
10      Interior? Is it policy? I mean, what is -- where  
11      does that come from?

12             CARLA MATTIX: There is -- at one of the more --  
13      there has not been a real recent hearing before the  
14      Indian Affairs Committee, but I think it was before  
15      2008, because it was in the prior administration.  
16      There was on record, the Assistant Secretary for  
17      Fish and Wildlife and Parks, in his hearing  
18      testimony, did make that position. So you can  
19      probably look at that testimony and see that. I'm  
20      not familiar if we have any other written -- I'm not  
21      familiar with any other written guidance on that,  
22      because, like I said, it usually rarely comes up,  
23      the concept of DNA testing, except in the case of  
24      these ancient remains.

25             SHANNON KELLER O'LOUGHLIN: Well, in my

1 practice, I hear it as an excuse museums use to  
2 stop repatriation, and so I've always contended  
3 that that's not the correct interpretation. And so  
4 the fact, knowing that this is merely an executive  
5 agency pronouncement, it's not – it's a reading of  
6 the statute by an executive agency. Okay. Thank  
7 you. I hope everyone was listening to this.

8 LINDALEE FARM: All right. Is there anyone  
9 else? Yes. Do you want to come forward? Could  
10 you identify yourself?

11 **PAUL POULIOT**

12 PAUL POULIOT: My name is Paul Pouliot. I'm  
13 the (inaudible comment) of the Cowasuck Band of the  
14 Pennacook and Abenaki people. Our band considers  
15 ourselves part of the Wabanaki Confederation. When  
16 Ramona said, and I think you said "rumor," and that  
17 means it's unsubstantiated, but I know of no DNA  
18 database, ancient or otherwise, that would allow  
19 any museum to test DNA of any remains to try to  
20 find a cultural or a tribal affiliation in any  
21 capacity using DNA. So now I question what is  
22 Harvard doing with these remains? If they have  
23 definitive archeological site locus information,  
24 what would be the purpose of doing DNA at this  
25 point, if this is an ongoing thing that hasn't been

1 already been addressed much earlier? So I question  
2 what this DNA is about. We're not talking about  
3 the Kennewick Man. We're talking about something  
4 that's even more vague, and that's talking about  
5 the Wabanaki Confederation, which is made up of  
6 numerous tribes historically all through New  
7 England. So I'm trying to figure out what the  
8 purpose of this DNA would be, and where does it  
9 really fit in with NAGPRA? That would be my  
10 comment.

11 Another thing that I find troubling, and I've  
12 seen this come up, is tribal patrimony of items.  
13 I'm not quite sure where that all lies, because I  
14 think of NAGPRA with funeral goods and things found  
15 in the burial shaft, but now I see an expansion of  
16 this which could be widely interpreted to be other  
17 things. The Wabanaki Confederation, we have sacred  
18 things, but this cultural patrimony, I'm not quite  
19 sure what the definition of that is and how it fits  
20 in with NAGPRA. So these are - I'm representing a  
21 tribe that has filed for acknowledgement, but we're  
22 so far down the road that federal acknowledgement  
23 is probably never going to be seen in my generation  
24 or even the generation following if we follow the  
25 footsteps of the Wampanoag Confederation.

1           So I'm sitting here looking at this today and  
2           wondering what I'm passing on to the future  
3           generations if anything, and are we going to be  
4           like the Kennewick Man, like they're going to try  
5           to find a database for DNA that identifies who we  
6           are. And I'm thirteen generations from contact and  
7           documented all the way back to the 1600s, but that  
8           DNA is just a smorgasbord of information. What is  
9           the purpose of DNA testing on anything that goes  
10          back before 1600? I really don't know what it  
11          means, and I don't know why it's being done. So  
12          the question is what scientific evidence is being  
13          brought out by all of this? Is it somebody's  
14          fishing expedition trying to come up with a DNA  
15          database?

16          I mean, I really don't believe in the DNA  
17          process. It hasn't really proven, especially on  
18          tribes that had very early contact, I mean, we're a  
19          smorgasbord of DNA and I don't see any purpose in  
20          it. We're not an isolated community that has very  
21          definitive DNA database we could look at, so what  
22          is this all about? Is it just a delaying process  
23          to hold off from repatriating something that  
24          already has been identified came – and I'm  
25          interested in New Hampshire, by the way, which is

1       just north of here. That's what I'm interested in.  
2       I'm not interested in this smorgasbord of DNA and  
3       other things that are being kind of bandied around.

4               I didn't intend to speak to you, and I thank  
5       you, Madam Chair, for listening to me, and again I  
6       thank the University of Amherst here for having us  
7       here. Thank you.

8               LINDALEE FARM: Thank you for your comment.  
9       Anyone else have any comment? Yes.

10       **BONNIE NEWSOM**

11              BONNIE NEWSOM: Thank you. My name is Bonnie  
12       Newsom. I'm a member of Penobscot Nation. I'm  
13       here in this seat wearing that role. I've worked  
14       with the Wabanaki Intertribal Repatriation  
15       Committee for many years. We – this issue  
16       surprised me, because we put in a claim a few years  
17       ago for ancient remains from Maine to Harvard, and  
18       they denied our claim with no explanation as to why  
19       our evidence was not accepted as valid. We are not  
20       aware of any DNA testing that has gone on on those  
21       – on the remains that we have made claim to, and I  
22       don't know if it's a rumor, then so be it. But  
23       there needs to be a process whereby if a tribe has  
24       made a claim, denied or not, that we have some role  
25       in the work that gets done on those remains until

1 the issue is resolved as to who they're affiliated  
2 to. We're making the claim and if there is an  
3 institution that is taking it upon themselves to  
4 continue to do study, I think that's ethically  
5 wrong until we have an opportunity to present more  
6 information or clear up the reasons why we were  
7 denied those remains. So that's all I have. I  
8 appreciate the opportunity to speak. But it's -  
9 I'm sure it's not the only time that this has  
10 happened to people. So what is the status of those  
11 folks after the claim has been denied? I guess  
12 that's the bottom line. Thank you.

13 LINDALEE FARM: Thank you.

14 Anyone else? No.

15 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

16 STEVE TITLA: Madam Chair?

17 LINDALEE FARM: Yes, Steve.

18 STEVE TITLA: I think this young lady asked us  
19 a question. Should we answer her question somehow  
20 or defer to Melanie or counsel to sort of point her  
21 in the right direction? She said - I guess what  
22 she's saying is what do we do after we're denied a  
23 claim. What's the next step, is what she's saying.

24 CARLA MATTIX: I'd have to know exactly what -  
25 which part of the process they were in exactly to

1 really give you a clear idea of next steps.

2 STEVE TITLA: Maybe you can talk to her after  
3 the meeting?

4 CARLA MATTIX: Yes, we can certainly – I can  
5 certainly talk with her some more about what their  
6 options are.

7 LINDALEE FARM: We can always follow through.  
8 If people have questions like that, they should not  
9 hesitate to call National NAGPRA. To the extent  
10 that they can provide you with technical  
11 assistance, they will. To the extent that they can  
12 help you with your concerns, they will. To the  
13 extent that they are unable to do so or they tell  
14 you you need to consult with legal counsel, they'll  
15 probably tell you that as well. But they are here  
16 to help. And so much of it is fact driven, as to  
17 what the particular circumstances are to – and I'm  
18 a lawyer, so the fact that your claim was denied,  
19 why was your claim denied, there's a lot more to  
20 it. And so you can't just respond with an answer  
21 as to what's the next step or what's happening.  
22 And if you do have concerns, please contact  
23 National NAGPRA and they will help you, if they can  
24 help you, or they'll lead you into the right  
25 direction or point you somewhere so that you can



1 get assistance and can get clarity on some of these  
2 things.

3 I just want to – is there anyone else before  
4 we close out for the day, because I do want to give  
5 you the opportunity to speak, because this is very  
6 helpful for the committee. I think it's helpful  
7 for others in the audience to hear what is going on  
8 for those people who are practitioners and involved  
9 with this on an everyday or part of the day or part  
10 of your duties and responsibilities. Any other  
11 comments from the committee itself? No.

12 Okay. I just want to remind you that the  
13 public can participate in Review Committee meetings  
14 in three ways. You can have scheduled  
15 presentations, such as you heard from the BIA and  
16 the BLM, you can have written comments, and then  
17 you can speak in the open comment period. If you  
18 want to have a scheduled presentation, you need to  
19 let National NAGPRA know 30 days ahead of time so  
20 that we can set you up, give you hopefully what we  
21 feel is a sufficient amount of time to make your  
22 presentation.

23 And we'll accept written comments from any  
24 party. So if you have a written comment, go ahead  
25 and send it to National NAGPRA, and they will make

1       sure that we get it as part of the Review Committee  
2       materials, so please feel free to do that. And at  
3       this time, I would like to acknowledge receipt of  
4       written comments from the Indiana University,  
5       Bloomington, Glenn Black Lab of Archaeology, and  
6       that would have been in the materials that is  
7       posted on the website, so all of you can see what  
8       the written comments are. So be aware of that. If  
9       you're going to send us written comments, it's  
10      going to become public, and other people may  
11      comment upon your written comment and you may not  
12      be present to respond.

13           So anything else? We're 15 minutes ahead of  
14      schedule now. All right. Madam DFO?

15           MELANIE O'BRIEN: Yes, we can end early then.  
16      We'll go ahead and adjourn for the day. I'd like  
17      to remind everyone here that we will be starting  
18      tomorrow at 9:00 a.m. So we will start tomorrow  
19      earlier at 9:00 a.m. We also have again two  
20      opportunities for public comment tomorrow as well,  
21      if you're interested in making a comment at that  
22      time.

23           The only other notes I'll make are again,  
24      please don't leave any valuables in this room  
25      tonight. You need to take them with you. And if

1           you still need a parking pass, they are out on the  
2           table.

3                   LINDALEE FARM: Thank you, everyone. See you  
4           tomorrow morning at 9:00.

5                   MEETING RECESS

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