M E M O

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June 27, 1995

To: Rachel Craig
Jonathan Haas
Dan Monroe
Tessie Naranjo
Martin Sullivan
William Tallbull
Phillip Walker

From: Tim McKeown

Subject: Report to Congress 1993-1994

Enclosed is a draft of the 1993-1994 Report to Congress. Please look it over and get back to me with any changes. Pay particular attention to the summaries of the Phoenix, Rapid City, and Albany meetings which will need to be signed by Tessie.

Once approved by the committee, we will send copies of the report to Secretary Babbitt and members of the:

- Senate Indian Affairs Committee (McCain, Murkowski, Gorton, Domenici, Kassebaum, Nickles, Thomas, Hatch, Coverdell, Campbell, Inouye, Conrad, Reid, Simon, Akaka, Wellstone, Dorgan); and

- House Native American and Insular Affairs Subcommittee (Gallegly, Young, Gilchrest, Jones, Hastings, Metcalf, Longley, Faleomavaega, Kildee, Williams, Johnson, Romero-Barcelo, Underwood).

Broader distribution of a printed version will follow.

Recommendations of the Committee

1. The Committee recommends that Congress appropriate sufficient funds to enable the Secretary of the Interior, in consultation with the Review Committee, to complete or largely complete NAGPRA regulations by November 1996. Additionally, the Committee recommends that the Secretary of Interior direct all departments to expedite internal reviews of draft regulations and complete these reviews in a timely manner.

2. The Committee recommends that Congress clarify the meaning of "Indian tribe" within NAGPRA in order to permit Native American groups not presently recognized by the Department of Interior Bureau of Indian Affairs to repatriate their human remains, funerary objects, sacred objects, or objects of cultural patrimony. The Committee recommends that this be accomplished by having the Department of Interior distribute a list of all Indian tribes and Native American groups eligible to participate in NAGPRA to museums, universities, and Federal agencies. This list will be comprised of: (1) all Indian tribes currently recognized by the Bureau of Indian Affairs; (2) all extant Native American groups that have been recognized by the U.S. government through treaty negotiations (whether ratified by the Congress or not); and (3) all Native American groups recognized by city and state governments.

3. The Committee strongly recommends that Congress appropriate at least $10 million for FY96 to assist Indian tribes, Native Hawaiian organization, museums, and universities in fulfilling NAGPRA mandates. These appropriations are most needed now as Indian tribes, Native Hawaiian organizations, museums, and universities begin the long and expensive process of consultation required to repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony.

4. The Committee recommends that Congress take steps, through legislation or direction to the Secretary of the Smithsonian, to assure that the national museum complies with all NAGPRA provisions and requirements, as is required of all other Federal agencies, museums, and universities in the nation.

5. The Committee recommends that Congress consider legislation to protect Native American and Native Hawaiian graves located on state or private lands from grave robbing and other forms of destruction.

Overview

Passage of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) marked a watershed in a long and often troubled relationship between Native Americans and many of America's cultural, educational, and Federal agencies. The Act provides for the return of tens of thousands of Native American dead who have been disinterred from their graves and deposited—without permission of their relatives or Indian tribes—in museums, universities, and Federal agency repositories. The Act also provides a means for eligible Native American individuals, Indian tribes, and Native Hawaiian organizations to repatriate funerary objects, sacred objects, and objects of cultural patrimony acquired by museums, universities, and Federal agencies without the approval of individuals or tribes who had authority to alienate them. The Act also provided for greater protection of Native American and Native Hawaiian graves located on Federal or tribal lands and prohibited trade in Native American human remains.

Through the provisions of the Act, many, but not all, Native American people—lineal descendants, Federally recognized Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations—gained a means to remedy inadvertent and intentional injustices done them and their ancestors through the activities of the U.S. government and many museums and universities.

The rights provided by the Act are not, however, extended to all Native American people or Native American groups, since a large number of Native Americans (more than 1 million based on 1990 Census figures) do not belong to Federally recognized Indian tribes, Alaskan Native villages and corporations, or Native Hawaiian organizations. Exclusion of these people from participation in NAGPRA represents the greatest failing of the Act. The principal cause for exclusion of many Native American people from the full benefits of the Act is a very narrow definition of the term "Indian tribe" such that only Indian tribes recognized by the Bureau of Indian Affairs may fully participate in the rights conferred to lineal descendants, Indian tribes, and Native Hawaiian organizations by the Act.

Since its passage in November 1990, the Act has helped many Native American individuals, Indian tribes, and Native Hawaiian organizations repatriate several thousand human remains and funerary objects and a comparatively small but growing number of sacred objects and objects of cultural patrimony. These repatriations have helped restore a sense of spiritual and cultural integrity to participating Native American people. The Act has also created—through the dialogue that it requires—increased understanding and respect by museums, universities, and Federal agencies for Native American people and cultures.

The Act affects several hundred museums, universities, and Federal agencies. Through an intensive effort on the part of the National Park Service's Archeological Assistance Division, which administers the Act for the Secretary of the Interior, museums, universities, and Federal agencies holding Native American collections have been notified of their responsibilities for compliance under NAGPRA. Most museums, universities, and Federal agencies appear to have carried out the provisions of the Act in good faith.

Between the November 16, 1990, enactment of the statute and the end of 1994, 33 museums and 5 Federal agencies have filed 36 notices in the Federal Register regarding repatriations. These notices announced the impending repatriation of 1,899 sets of human remains, 72,563 associated funerary objects, 31,651 unassociated funerary objects, 55 sacred objects, and 4 objects of cultural patrimony. Not all of these human remains, funerary objects, sacred objects, or objects of cultural patrimony have been repatriated to date, nor is it possible to completely ascertain the total number of items that have been repatriated since some museums, universities, and Federal agencies have repatriated items without filing the required notices.

To date, only a small percentage of human remains and associated funerary objects have been repatriated. Inventories of human remains must be completed by museums, universities, and Federal agencies no later than November 16, 1995. Following distribution of these inventories to Indian tribes and Native Hawaiian organizations, increased repatriations of human remains and associated funerary objects may be expected.

To conclude, the Act generally is being implemented in

good faith by all parties. Some difficulties, identified below, need to be addressed and resolved to fully implement the intent or purpose of NAGPRA.

During 1992-94, the Review Committee heard oral testimony from 93 individuals, many of whom represented Indian tribes or are of Native American descent. A common thread ran through much of their testimony. Repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony has helped or will help tribes and individuals regain spiritual and cultural strength and integrity. Many Native Americans anticipate that repatriation will ultimately provide meaningful, long-term cultural and economic benefits to individuals of Native American descent and to Indian tribes and Native Hawaiian organizations.

Since the Act has been interpreted to apply only to lineal descendants, federally recognized Indian tribes, and Native Hawaiian organizations, and since there are many Indian tribes that, for a variety of reasons, are not Federally recognized, the Act has not provided full access to the rights accorded by NAGPRA to all people of Native American descent.

Specific Observations

Absence of Regulations: After more than four years, NAGPRA regulations, required by statute to be completed within one year, have still not been completed! Absence of regulations has caused confusion and unnecessary difficulty and expense among some of parties affected by the Act.

Several factors have contributed to delay in promulgating regulations. Congress did not appropriate funds to implement the Act until more than a year after it was enacted. The Secretary of Interior did not appoint members to the NAGPRA Review Committee until more than a year after the Act passed Congress. The Act was ambiguous in some important respects, therefore drafting regulations proved more complicated than it might otherwise have been. The Review Committee has met, on average, less than ten days each year due to financial and staff constraints within the Department of Interior. Nearly all parties affected by the Act have taken a strong interest in draft regulations. Thus there has been a strong demand to present testimony. Finally, Department of Interior internal review of the draft regulations covering a part of but not all of the Act has taken nearly eight months and is still not complete.

While the Department of Interior has issued three "guidance" memos to help clarify confusion, these memos do not have the force of law. The following examples illustrate difficulties caused by lack of regulations. These examples are not comprehensive nor do they indicate absence of good faith on the part of agencies or organizations mentioned.

The South Dakota State Archeological Research Center, the University of Iowa, the Bishop Museum, the Cherokee National Forest of the U.S. Forest Service, and the University of Alaska at Fairbanks have repatriated human remains, funerary objects, sacred objects, or objects of cultural patrimony prior to publication of the required notice in the Federal Register.

The West Virginia Division of Culture and History, the Virginia Department of Historic Resources, Murray State University, Ontario County (NY) Historical Society, and the Monroe County (NY) Coroner have repatriated human remains, funerary objects, sacred objects, or objects of cultural patrimony to Native American groups or individuals lacking status to make claims under the Act.

Some Indian tribes and Native Hawaiian organizations, such as the Hopi Tribe and the Office of Hawaiian Affairs, have, through apparent misunderstanding of the law, filed claims with museums, universities, and Federal agencies for return of all objects with which they are associated.

To avoid further confusion, mistakes, and unnecessary costs, it is vitally important that NAGPRA regulations be promulgated in a timely manner. The Committee recommends that Congress appropriate sufficient funds and that the Secretary of the Interior allocate sufficient funds to enable the Review Committee and the Department of Interior to complete or largely complete NAGPRA regulations by November 1996. Additionally, the Committee recommends that the Secretary of Interior direct all departments to expedite internal reviews of draft regulations and complete these reviews in a timely manner.

Exclusion of Non-Federally Recognized Tribes: All Indian tribes who are not recognized by the Bureau of Indian

Affairs are excluded from fully participating in NAGPRA. Though it is possible to identify human remains that are culturally affiliated with many of these tribes in museum, university, and Federal agency collections, the Department of Interior's interpretation of the meaning of "Indian tribe" within the NAGPRA statute—such that "Indian tribe" means only those Indian tribes recognized by the BIA—disenfranchises many Native American people from the repatriation process.

The definition of "Indian tribe" in the Act is the same as the definition of "Indian tribe" in the 1972 Indian Self Determination Act. The term "Indian tribe" in the Indian Self Determination Act is interpreted to refer only to Indian tribes recognized by the Bureau of Indian Affairs as eligible for the special programs and services provided by the U.S. government to Indians because of their status as Indians. Since the construction and language of "Indian tribe" is nearly the same in both the Indian Self Determination Act and NAGPRA, the Department of Interior has concluded that Congress intended to limit participation in NAGPRA only to Federally recognized Indian tribes.

The Committee does not believe that Congress intended to prevent Indian tribes whose ancestors' remains, funerary objects, sacred objects, or objects of cultural patrimony are in museums from repatriating these items simply because such tribes are not presently recognized by the Bureau of Indian Affairs.

Sixty tribes, formally recognized by the U.S. government, were terminated under provisions of various termination acts passed in the 1950s and 1960s. Terminated tribes can be restored only by an act of Congress. To date, 43 tribes have been restored. Most of the remaining 17 tribes are seeking restoration. Many other tribes, especially in California, were never recognized, notwithstanding treaties between these tribes and representatives of the U.S. government that were not honored or adopted by Congress.

The Committee has received ample testimony from representatives of Federally recognized tribes in support of eligibility of non-recognized tribes to participate in NAGPRA. We urge Congress to clarify this matter to assure that all tribes have the right to repatriate their human remains, funerary objects, sacred objects, or objects of cultural patrimony. The Committee recommends that Congress clarify the meaning of "Indian tribe" within NAGPRA in order to permit Native American groups not presently recognized by the Department of Interior Bureau of Indian Affairs to repatriate their human remains, funerary objects, sacred objects, or objects of cultural patrimony. The Committee recommends that this be accomplished by having the Department of Interior distribute a list of all Indian tribes and Native American groups eligible to participate in NAGPRA to museums, universities, and Federal agencies. This list will be comprised of: (1) all Indian tribes currently recognized by the Bureau of Indian Affairs; (2) all extant Native American groups that have been recognized by the U.S. government through treaty negotiations (whether ratified by the Congress or not); and (3) all Native American groups recognized by city and state governments.

Cost to Implement Nagpra: The Congressional Budget Office estimated in 1990 that implementation of the Act would cost $50 million over five years. In FY94, grant requests from tribes and museums to assist in implementing the Act totaled more than $23 million. Congress appropriated only $2.3 million in FY93 and $2.295 million in FY94 for this purpose.

When museums, universities, and Federal agencies complete inventories of human remains and associated funerary objects under their control in November 1995, the demand to conduct consultations between affected parties will increase dramatically. Neither Indian tribes nor museums are financially able to support all of these costs. In earlier decades, the Federal government passed laws that permitted removal of the Native American dead from their graves without permission of Indian tribes or lineal descendants. Absent a reasonable amount of Federal support, the Act will not be implemented adequately. Lack of funding by the U.S. government will result in a failure to make a reasonable and fair effort to help return Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony to individuals or groups who should rightfully have control over them. The Committee strongly recommends that Congress appropriate at least $10 million for FY96 to assist tribes and museums in fulfilling NAGPRA mandates. These appropriations are most needed now as tribes and museums begin the long

and expensive process of consultation required to repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony.

Exclusion of the Smithsonian Institution: When NAGPRA was enacted, the Smithsonian Institution was excluded from the Act. Members of the Senate Select Committee on Indian Affairs provided clear-cut assurances to national museum and tribal representatives, immediately prior to enactment of NAGPRA, that the Smithsonian would comply with all NAGPRA provisions and that a law requiring such compliance would be passed by the 102nd Congress. No law has been passed and the Smithsonian, the nation's museum, although making efforts in the right direction, is not complying with all NAGPRA provisions.

Smithsonian museums have repatriated less than 2,000 human remains to Native American individuals, tribes, or Native Hawaiian organizations since 1990. The Smithsonian has invested considerable sums of money preparing detailed inventories of its holdings of human remains, funerary objects, sacred objects, and objects of cultural patrimony and the Smithsonian's museums are presently consulting with several Indian tribes regarding repatriation. Nonetheless, the National Museum of Natural History, which has one of the nation's largest collections of Native American materials, has not completed a summary of its holdings and distributed it to Indian tribes. NAGPRA required all other museums, universities, and Federal agencies to complete summaries of their holdings and to distribute them to Indian tribes no later than November 16, 1993. As a consequence of failure of the Museum of Natural History to complete a summary of its holdings and distribute it to Indian tribes, hundreds of Indian tribes have no idea what materials are in this museum's collections. Thus, only Indian tribes that request specific information or Indian tribes that have knowledge of this museum's holdings are able to enter into dialogue.

The national museum community and the Native American community fully expect and strongly urge that the national museum comply with NAGPRA in spirit and letter. The Committee urges the 104th Congress to pass legislation requiring the Smithsonian to comply with NAGPRA or otherwise instruct the Secretary of the Smithsonian to assure compliance with NAGPRA.

Application of Nagpra to Private and State Lands: Although NAGPRA provides protection for Indian graves found on Federal and tribal lands, it does not provide similar protection for graves that may be found on private or state lands. The Review Committee has heard a substantial amount of testimony from representatives of Indian tribes and Native Hawaiian organizations regarding disturbance, destruction, deliberate excavation, or grave robbing of Native American graves on private or state lands. Some states have passed legislation to protect graves on non-Federal lands, but many states lack such legislation. Federal attention needs to be given to protect Native American and Native Hawaiian graves from grave robbing and other forms of destruction or disruption.

Conclusion

NAGPRA has, on the whole, been successful. It has helped alleviate the pain, suffering, and injustice Native American people have suffered as a result of having their ancestors' remains removed from their graves and located, without permission of relatives or tribes, in museums, universities, and Federal agencies. The process of implementing the Act has increased knowledge and understanding of Native American people and cultures within museums, universities, and federal agencies. This increased knowledge and understanding will eventually be shared with the public, thereby increasing their respect for and sensibility to the rights, values, and perspectives of the first Americans. Finally, the Act has helped Native American people and cultures regain a sense of integrity and dignity. It has helped renew or continue traditional Native American religions. And it may ultimately help remedy the corrosive and tragic effects involved in the clash of cultures and the loss of land, culture, and lifestyle Native Americans have endured. It is critically important that the benefits and rights accorded to Federally recognized tribes be extended to all tribes and that Congress appropriate sufficient funds to help implement this Act. The Committee respectfully submits this report to Congress with the full and unanimous support of its members.

CHARTER

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REVIEW COMMITTEE

1. The official designation of the committee is the Native American Graves Protection and Repatriation Review Committee.

2. The purpose of the Committee is, in an advisory capacity, to monitor and review the implementation of the inventory and identification processes and repatriation activities required under sections 5, 6, and 7 of Public Law 101-601.

3. In view of the objectives, scope and purposes of the Committee, it is expected to continue into the foreseeable future. The Committee shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the Committee has been completed.

4. The Committee reports to the Secretary, U. S. Department of the Interior, 18th & C Streets, N.W., Washington, D. C. 20240.

5. Support for the Committee is provided by the National Park Service, Archeological Assistance Division, U. S. Department of the Interior.

6. The duties of the Committee as set forth below are solely advisory. Specifically, the Committee shall be responsible for:

a. monitoring the inventory and identification process to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

b. reviewing and making findings relating to the identity or cultural affiliation of certain items, or the return of such items, upon the request of any affected party;

c. facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;

d. compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

e. consulting with Indian tribes, Native Hawaiian organizations and museums on matters pertaining to the work of the Committee affecting such tribes or organizations;

f. consulting with the Secretary in the development of regulations to carry out Public Law 101-601;

g. performing such other related functions as the Secretary may assign to the Committee;

h. making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated; and

i. submitting an annual report to Congress on the progress made and any barriers encountered in carrying out the Committee responsibilities during the year.

7. The estimated annual operating cost of the Committee is $119,000, which includes the cost of one-fourth person-year of staff support.

8. The Committee will meet approximately two times a year, although it may convene more often if there is an immediate need for consultation, advice, and review. All meetings of the Committee shall be subject to the provisions of the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988).

9. The Committee shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the Committee has been completed. The Committee is subject to rechartering every 2 years on the biennial anniversary of November 16, 1990, the date of enactment of Public Law 101-601, which established the Committee. The Committee shall take no action unless the filing requirements of sections 9 and 14 of the Federal Advisory Committee Act have been complied with. This charter will be for the period November 16, 1992 to November 16, 1994.

10. The Committee shall be composed of seven members appointed by the Secretary of the Interior as follows:

a. three members appointed from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders, with at least two of such persons being traditional Indian religious leaders;

b. three members appointed from nominations submitted by national museum organizations and scientific organizations; and

c. one member appointed from a list of persons developed and consented to by all members appointed pursuant to subparagraphs 10a. and 10b.

The Committee shall designate one member to be Chairperson. The Secretary may not appoint Federal officers or employees to the Committee. The Secretary shall establish such rules and regulations for the Committee as are necessary.

11. Terms of appointment shall be for 5 years, but all appointments shall terminate upon the termination of the Committee. Any vacancy on the Committee shall be filled in the same manner in which the original appointment was made within 90 days of the occurrence of such vacancy. If no successor is appointed prior to the expiration of a member's term, then the incumbent may continue to serve until the new appointment is made, provided that a charter under provisions of the Federal Advisory Committee Act is in effect.

12. Members of the Committee shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS-18 of the General Schedule for each day (including travel time) for which the member is actually engaged in Committee business. While away from their homes or regular places of business in the performance of services for the Board, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in government service are allowed such expenses in accordance with section 5703 of Title 5 of the United States Code.

13. The Departmental Consulting Archeologist, or in his absence a designee, will serve as the Designated Federal Officer as required by section 10 of the Federal Advisory Committee Act.

14. The Native American Graves Protection and Repatriation Review Committee was established by section 8 of Public Law 101-601, November 16, 1990.

Manuel Lujan Jr.

Secretary of the Interior

Date Charter Signed: NOV 16 1992

Date Charter Filed: NOV 19 1992

NATIVE AMERICAN GRAVES PROTECTION REVIEW COMMITTEE

PURPOSE: Monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 5, 6, and 7 of the American Indian Graves Protection and Repatriation Act.

AUTHORITY: Section 8 of Public Law 101-601, November 16, 1990.

TERMS: Five years.

MEMBERSHIP: Seven members.

MEMBER	TERM EXPIRES	NOMINATING SOURCE
Ms. Tessie Naranjo, Chair P. O. Box 1807 Española, New Mexico 87532 telephone: (505) 753-7326 fax: (505) 753-8988	March, 1997	Santa Clara Indian Pueblo
Ms. Rachel Craig Northwest Arctic Borough P.O. Box 1110 Kotzebue, Alaska 99752 telephone: (907) 442-2500 fax: (907) 442-2930	March, 1997	Treasures for Our Children Group Northwest Arctic Borough Fairbanks Native Association
Dr. Jonathan Haas Field Museum of Natural History Roosevelt Road at Lake Shore Drive Chicago, Illinois 60605 telephone: (312) 922-9410 fax: (312) 663-5397	August, 1997	Review Committee members
Mr. Dan L. Monroe Peabody & Essex Museum East India Square Salem, Massachusetts 01970 telephone: (508) 745-1876 fax: (508) 744-6776	March, 1997	American Association of Museums Museum Trustee Association

MEMBER	TERM EXPIRES	NOMINATING SOURCE
Dr. Martin E. Sullivan Heard Museum 22 E. Monte Vista Road Phoenix, Arizona 85004-1480 telephone: (602) 251-0227 fax: (602) 252-9757	March, 1997	American Association of Museums Museum Trustee Association
Mr. William Tallbull Dull Knife Memorial College 1 College Drive Lame Deer, Montana 59043 telephone: (406) 477-6215 fax: (406) 477-6219	March, 1997	Northern Cheyenne Tribe
Dr. Phillip L. Walker Department of Anthropology University of California Santa Barbara, California 93106 telephone: (805) 893-2236 fax: (805) 893-8707	March, 1997	Society for American Archaeology Association of American Universities American Anthropological Association

MINUTES
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REVIEW COMMITTEE
FOURTH MEETING: FEBRUARY 26 - 28, 1993
HONOLULU, OAHU, HAWAII

The fourth meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Chairperson Tessie Naranjo at 8:45 a.m., Friday, February 26, 1993, at the Atherton Halau, Bernice Pauahi Bishop Museum, Honolulu, Oahu, Hawaii. Saturday and Sunday, February 27 and 28, 1993, the Review Committee met at the Turtle Bay Hilton Hotel, Oahu, Hawaii. The following Review Committee members, staff, and others were in attendance:

Members of the Review Committee:

Ms. Tessie Naranjo, Chair
Ms. Rachel Craig
Dr. Jonathan Haas
Mr. Dan Monroe
Dr. Martin E. Sullivan
Mr. William Tallbull
Dr. Phillip L. Walker

National Park Service staff present:

Dr. Francis P. McManamon, Departmental Consulting Archeologist, Washington, D.C.
Dr. C. Timothy McKeown, NAGPRA Program Leader, Washington, D.C.
Mr. Hugh (Sam) Ball, Archeologist, Washington, D.C.
Ms. Mella Lane-Hamasaki, Pacific Area Office
Mr. Earl (Buddy) Neller, Kalaupapa National Historic Site
Dr. Patricia Parker, Coordinator for Tribal Preservation Programs, Washington, D.C.
Dr. Gary Somers, Pacific Area Office

The following were in attendance during some or all of the proceedings:

Ms. Melinida Allen, Bishop Museum
Ms. Kalaniaňa'ole 'Apuakehau, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Ms. Lisa Armstrong, Research Assistant, Bishop Museum
Mr. Edward Halealoha Ayau, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei and Historic Preservation Division
Mr. Manu Boyd, Cultural Specialist, Office of Hawaiian Affairs
Ms. Esther Iwalani Campbell, Ha Kekili
Ms. Hinano K. Campton, Daughters of the First People and Central Coast Indigenous Council of California
Dr. Sara Collins, Consulting Physical Anthropologist, Bishop Museum
Mr. David Cox, Board Member
Ms. Michelle Douglas, Graduate Student
Dr. Donald Duckworth, Bishop Museum
Ms. Deborah Dunn, Student

Ms. Kauwamakani Ellis, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Ms. Linda Fabri, University of California, Berkeley
Ms. Stephanie Lei Fitzpatrick, Mission House Museum
Ms. Ulunui Kanakaole Gormon, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Ms. Annie Griffin, State Historic Preservation Office
Dr. Bion Griffin, University of Hawaii
Mr. Kaiana Haili, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Ms. Toni Han, Cultural Resource Specialist, Anthropology, Bishop Museum
Ms. Dana Kananiokilohana Higa, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Ms. Susan Hirano, University of California, Berkeley
Ms. Lindas Hoe, Bishop Museum Conservation
Ms. Rebecca J. Hommon, US Navy
Dr. Robert J. Hommon, US Navy
Ms. Elaine Jourdane, Collections Manager, Bishop Museum
Ms. Rhonda Kaivai, Historical Researcher
Mr. Edward Kanahele, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Ms. Keala Kekina, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Mr. Glen Kila, Koa Mana
Ms. Nancy King, Bishop Museum
Ms. Lynn Lee, Office of Hawaiian Affairs
Mr. Puna Lerma, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Mr. Ahi Logan Kekuamanoha, a Senior Member of the Pilikana O Na Koolauloa
Mr. Bulla Logan, Pilikana O Na Koolauloa
Ms. Leimomi Mookini Lum (Alexis Carva), Mookini Foundation
Ms. Kealakekina Maikai
Mr. Alohawaina Makanani, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei and Ka Lahui Hawai'i and Protect Kahoolawe Ohana
Ms. Malia Makanani, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Ms. Adrienne Makanani, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Ms. Joan A. Marks, US Representative
Ms. Holly McEldowney, State Preservation Division
Mr. Rudy Leikaimana Mitchell, Waimea Falls Park
Ms. Gail M. Murakami, Bishop Museum
Mr. Nathan Napoka, Branch Chief for Culture and History, State Historic Preservation Office
Ms. Janet Ness, Bishop Museum
Ms. Leianuenue Niheu, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Ms. Ipo Nihipali, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Mr. Kūnani Nihipali, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Ms. Nohealani Nihipali, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Ms. Kathleen Oshiro, State Historic Preservation Officer
Ms. Lei Parker, private citizen
Ms. Pikake Pelikai, Office of Hawaiian Affairs
Ms. Wendy Reeve, Bishop Museum
Dr. Roger Rose, Bishop Museum
Ms. Laura C. Schuster, Kaloko Honokohau N.H.P.
Mr. Alika Silva, Koa Mana

Mr. H. Kaulana T. Smith, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Mr. Mike Smith, Assistant Chancellor at University of California, Berkeley
Ms. Melelani Spenceer, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Ms. Angela Steiner-Horton, Bishop Museum
Ms. Ululani Suiso, Mookini Ulkini Foundation
Mr. Keith B. Sunderlin, Private Citizen
Dr. Elizabeth Tatar, Bishop Museum
Ms. Kealohikina Tsukayama, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei
Ms. Debra Ward, Office of Hawaiian Affairs
Mr. George Wheels, US Marine Corps
Dr. Tim White, Professor of Anthropology, University of California, Berkeley
Mr. Alan Ziegler, Independent Zoological Consultant

Chairperson Tessie Naranjo thanked the Hawaiian people for inviting the Committee to meet in such a lovely place and called on Mr. Manu Boyd of the Office of Hawaiian Affairs to give an invocation. Mr. Boyd sang two *mele*, or welcoming chants, after which members of the Office of Hawaiian Affairs presented the Committee members with *leis* while more *mele* were sung. Chairperson Naranjo then asked Committee members and other officials at the table to introduce themselves.

Dr. McManamon thanked the Bishop Museum, the Office of Hawaiian Affairs, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, the P.A. Hearst Museum of Anthropology, and the Pacific Area Office of the National Park Service for their help in organizing and publicizing the meeting. Dr. McManamon noted that the meeting had been advertised in the *Federal Register* as well as in *Ka Wai Ola O OHA*, the monthly newspaper of the Office of Hawaiian Affairs, and was open to the public. He requested that all people who wished to make statements to the Committee sign up in advance.

Review of the Agenda

Chairperson Naranjo reviewed the meeting agenda. Three items dominated the agenda: 1) the formal hearing of the dispute between the P.A. Hearst Museum at the University of California, Berkeley and Hui Mālama I Nā Kūpuna 'O Hawai'i Nei; 2) an open discussion by members of the public concerning implementation of NAGPRA in Hawaii; and 3) review of a draft of the Committee's Report to Congress. In addition, the Bishop Museum had requested time to make a formal presentation to the Committee regarding their efforts to inventory Hawaiian human remains from various archeological excavations in the vicinity of Mokapu, Oahu.

Dispute Hearing

Dr. McManamon reviewed the history of the Committee and its role in the dispute resolution process. Chairperson Naranjo outlined the Committee's procedures for dealing with disputes. "Most importantly," she stressed, "we want for all of us to talk to each other." For this reason, representatives of the two organizations were asked to sit at the table with the Committee. The P.A. Hearst Museum was represented by Dr. Timothy White and Mr. Mike Smith. Hui Mālama I

Nā Kūpuna 'O Hawai'i Nei was represented by Mr. Kūnani Nihipali, Mr. Edward Ayau, Mr. Edward Kanahele, and Ms. Ulunui Kanakaole Gormon.

The two groups were allowed to make brief opening statements after which the Committee members asked questions. Dr. Sullivan stated he understood that neither party was opposed to repatriation in general, nor was there a question of the appropriateness of the organization requesting repatriation. Thus, he said, the dispute appeared to revolve around the determination of cultural affiliation. He asked each party to explain its plans for custody of the remains. Dr. White responded for the Hearst Museum explaining that the osteological collections at the museum are used for continuing education and research. The museum's collection is an important resource for researchers from around the world because it contains such a diverse and large number of skeletal remains from modern humans. Mr. Edward Kanahele responded that Hui Mālama I Nā Kūpuna 'O Hawai'i Nei intended to rebury the remains in order to return the bones to the earth and to right spiritual and moral wrongs. According to Mr. Kanahele, reburial strengthens the connection between present day people and the ancestors by allowing the spiritual power, the *mana*, of the ancestral bones to flow back to the earth.

Mr. Monroe questioned the Hearst representatives regarding their specific interest in the particular remains in question. Mr. Smith responded that the Hearst was concerned about certain ambiguities in the law and did not want to violate the museum's mission by deaccessioning materials held in the public trust. The museum felt that these particular skeletal remains were unidentifiable ethnically and, consequently, did not believe they should be repatriated to a Native Hawaiian organization. Dr. White stated that the remains were important as a part of the University's osteological collection. It was not so much that these specific remains could answer a particular research question, he continued, but rather that the collection is important as a whole. He emphasized the need to keep the collection because research tools are constantly improving and thus important questions might be answered at a later date. He added that absolutely no research had been performed on Native Hawaiian skeletal remains. All human remains in the museum's possession that had been identified as being culturally affiliated to Native Hawaiians had previously been repatriated. Mr. Ayau responded that Hui Mālama I Nā Kūpuna 'O Hawai'i Nei viewed their ancestors' remains not as osteological resources or archeological material but as people. He went on to question the right of a museum to collect someone's remains without the consent of their descendants.

Dr. Haas asked if there might be any spiritual consequences if non-Hawaiian remains were buried with Hawaiian ceremonies in a Hawaiian burial place. Mr. Kanahele explained the Hawaiian belief that the spiritual strength, or *mana*, in one's bones can be taken away by evil or negative thoughts. Thus, bones need to be protected so that the *mana* can flow back into the Earth. The Earth will then reciprocate and help the living people. "We see this spiritual force as something that benefits everyone." Mr. Ayau added, "even if these remains are not of our people, we would be paying them that equal respect."

Dr. McManamon clarified that there was nothing in the statute that prohibited scientific research involving Native American human remains except as an excuse to delay or refuse repatriation. He also explained that one of the important aspects of NAGPRA concerned the right of modern Indian tribes and Native Hawaiians to determine the future treatment of culturally affiliated remains.

Mr. Tallbull recounted his experience reburying the remains of a man who had lived 1500 years ago. He emphasized the communication he felt with the man's spirit and the connection "to the spirit of the Earth, to the spirit of plant life, and the spirit of animal life." He explained that the laws we have in this country do not always mention the spiritual connection.

Mr. Monroe thanked both sides for acting with diligence and integrity in supporting their firm convictions. He asked each party if they saw any way of resolving the conflict between their respective duties -- the museum's to preserve the integrity of the collection and insure repatriation to the correct group and the Hui Mālama I Nā Kūpuna 'O Hawai'i Nei's to rebury the bones of their ancestors. Mr. Ayau responded that NAGPRA "fails to recognize the legitimacy of spirituality." He related the feelings he and his wife received from the bones in question during a visit to the Hearst Museum. He stated that because the statute does not address spirituality directly, a conflict arises between science, with measurement standards, and spirituality, which must be felt.

Dr. Walker asked why the museum had been unable to reach a conclusion regarding the ethnicity of the skeletons in question. Dr. White related the history of the research which had been conducted by the museum. The records for the first set of remains stated they had come from the beach at Waimanalo, Oahu, in the 1800s. Dr. White agreed that there had been, and still are, Native Hawaiian burial grounds on Waimanalo but added that there are also non-Hawaiian cemeteries in the area. The added that the museum records were not specific as to where on Waimanalo Beach the remains had been found, or even if the remains had been buried. Without that contextual evidence he contended that the remains could have come from shipwreck victims, drowning victims, or forensic cases. He explained that the bones showed weathering, indicating exposure to the sun, and were thus probably not from a burial.

Dr. White continued that records for the second set of remains indicated only that they had come from the Hawaiian Islands. The curator who originally determined that the remains were Polynesian had no experience in skeletal biology and, according to Dr. White, was thus not a reliable source. The biological characteristics of both sets of remains were not sufficient "to provide definitive evidence of cultural affiliation."

Mr. Ayau expressed his belief that the Native Hawaiian organizations had provided evidence, including archeological and osteological reports, that proved it "is more probable than not that these are our ancestors." He added that the museums' records for the second set of remains contained a determination that they were "Polynesian." He felt the museum was attempting to hold the Committee to a higher, scientific standard of proof which is not necessary under NAGPRA. "The feelings that we had [in the presence of the bones at the museum] . . . that these are our people [and] that, to us, is the overriding evidence that they need to come home." Mr. Ayau concluded that repatriation would be a win-win situation because the museum would be following the provisions of the statute, and in doing so, protect the integrity of its collection, while the spiritual needs of the Native Hawaiians would be met.

Dr. Haas asked if the remains had been examined by Dr. Patrick Kirch, a Hawaiian archeological expert at the University of California at Berkeley. Dr. White responded that Dr. Kirch had examined the remains, but that he had not been requested to give the odds of finding remains that were anything other than Native Hawaiian on Waimanalo Beach in the early 1880s.

Mr. Monroe asked if Hui Mālama I Nā Kūpuna 'O Hawai'i Nei would permit destructive testing in order to determine the cultural affiliation of the remains. They replied no.

Mr. Ayau and Mr. Smith summarized the points of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei and the P.A. Hearst Museum at University of California at Berkeley, respectively.

Public Comment on the Dispute

The Committee then heard comments from the public concerning the dispute. Mr. Alan Ziegler, an independent zoological consultant, spoke about the difficulties discerning cultural relationships between human remains and contemporary people on Hawaii because of the mixture of different cultures, ancient and modern. He suggested the regulations currently being developed should provide a definite method of determining the cultural affiliation of human remains, including the possible use of destructive analysis. Mr. Ziegler approved of the purpose of the Review Committee to meet and talk out conflicts. He also pointed out that the regulations do not cover disposition of remains and suggested records be kept of exactly what happens to human remains after they are repatriated because if the remains are reburied secretly they may be disturbed in later years and know one will know what they are or how they got there. Mr. Ziegler also spoke against Hui Mālama I Nā Kūpuna 'O Hawai'i Nei's policy of secret reburial of all remains found in Hawaii. He felt this policy "suppresses information" that would be of value to Native Hawaiians. He did not want the evidence of Hawaiian cultural history destroyed for people of the future.

Ms. Lynn Lee of the Office of Hawaiian Affairs spoke on behalf of Richard Paglinawan, Administrator of the Office of Hawaiian Affairs, and Ms. Lydia Namahana Maioho, Chairman of Hawaiian Historic Preservation Council, in support of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei's request for the return of human remains from the Hearst Museum. She identified a central question around which the current dispute revolved: whether the remains were Hawaiian. In her opinion, a preponderance of the evidence -- the remains were found in a place of traditional Hawaiian burials and buried in a traditional Hawaiian manner -- supported the identification as Native Hawaiian. The museum, on the other hand, had not presented any facts to indicate that the bones were not Hawaiian. She believed the museum was "holding the remains hostage" while arguing over "the letter of the law."

Ms. Lei Parker spoke in Hawaiian and Mr. Boyd translated. Ms. Parker stated that the bones of the ancestors are precious to Hawaiians. They must be returned to the earth after death so that the *mana* will be "increased and inspired." The fact that the representatives of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei had felt the present of their ancestors in the human remains held at Berkeley obligated them to manage those remains. The museum would "spiritually enslave" the Hawaiian people if they continued to keep the bones.

Review Committee Discussion of the Dispute

After the public comment period the Review Committee discussed the dispute among themselves. Mr. Monroe stated everyone understood that no one can own human remains, "they can at best be in someone's stewardship." He concluded that the question before the Committee was "which is the most appropriate party to maintain such stewardship for the remains in question." It was clear to him

that both physical anthropological evidence and "evidence of spirituality" must be considered. He indicated that the Hearst Museum had asked the Committee to determine what constitutes a "preponderance of the evidence." Mr. Monroe responded by reiterating the points which had been made during the presentations: (1) the beach where the remains were found at Waimanalo was traditionally a Hawaiian burial ground; (2) the remains were found in 1887 and at that time the majority of dead buried at the beach would have been Native Hawaiians; and (3) no determination of cultural affiliation could be reached based on physical anthropological evidence. He concluded that in his opinion the preponderance of the evidence pointed to the conclusion that the Waimanalo remains are Native Hawaiian and he proposed a recommendation that the Hearst Museum return the remains to Hui Mālama I Nā Kūpuna 'O Hawai'i Nei.

Dr. Haas spoke concerning the second set of remains. He personally was not swayed one way or the other regarding the cultural affiliation of these human remains. However, he believed that the general consensus among the Committee was that these remains were Hawaiian and that Hawaiian remains should come back to Hawaii. Dr. Haas suggested that the Hearst Museum transfer the second set of remains to the Bishop Museum in Hawaii. Thus, these human remains, which everyone agreed were originally from Hawaii, would come back home. This solution would allow other ethnic groups living in Hawaii, such as members of the Chinese and Japanese communities, to have a voice in the decision about the disposition of these human remains. Dr. Sullivan agreed, although he indicated he would also support a recommendation to return the remains to Hui Mālama I Nā Kūpuna 'O Hawai'i Nei for reburial.

Mr. Tallbull stated that he would need to "go to the spirits ... for guidance on what he should do" before making his decision. "That's the only place I can turn to satisfy the spirits of this island," he said. Until that time, he reserved judgement.

Dr. Walker described the Committee's difficulty in putting aside their personal feelings in order to try to follow the intent of the statute. The Committee was working together "like a family" to work within both the letter and the spirit of the law. He agreed with Dr. Sullivan's previous statement that the preponderance of the evidence supported the contention that the Waimanalo remains are culturally affiliated with Native Hawaiians and, thus, should be repatriated. He also agreed with Dr. Haas's solution with regard to the second set of remains in that it encouraged the sort of communication between the scientific community and Native peoples intended by NAGPRA.

Chairperson Naranjo explained that her comments were rooted in the Pueblo philosophy of balance. She felt that both sets of human remains should be repatriated. She questioned why the museum would wish to keep fragments of human bone that it had agreed were of no scientific interest. She felt the second set of remains should be repatriated to remove the imbalance created when "any [human] remain has not been returned to their homeland." According to Ms. Naranjo, the return of these bone fragments would "give balance to the Hawaiian cosmology."

Mr. Monroe reminded the museum community as a whole that the consultation and repatriation process is an opportunity for them to "provide leadership in our nation for increasing our appreciation of cultural diversity, our appreciation of the richness of the human spirit and its manifestations." In the spirit of the law, he asked the Hearst Museum to give a little, and recognize that there is "a genuine and a deep-felt spiritual concern, for the return of those particular remains."

Ms. Craig began her recommendation by thanking the people of Hawaii for their hospitality. She then advised the representatives of the Hearst museum to look more closely at what they are doing and "work closely with the Native people and learn more ... of what's really important." She was particularly concerned with the effect continued curation of these remains might have on the "progress that a person makes in the spirit world." She explained that "there is really no rest for that spirit whose bones are not interred in the ground." She agreed that both sets of human remains should come back to Hawaii, although she left it to the Hearst Museum to decide whether the second set of remains should be transferred to the Bishop Museum or repatriated to the Hawaiian people.

Ms. Lei Parker spoke again from the audience. She apologized for her earlier comments which might have been taken by the Committee as insults. She asked the Committee to remember compassion even as they deal with people who lack compassion.

Discussion of Draft Findings

The Committee agreed to issue separate findings for each of the two sets of human remains under dispute. Mr. Monroe recommended that the findings clearly state the types of evidence which the Committee considered important for the determination of cultural affiliation: physical anthropological information and contextual information. Since the physical anthropological information was inconclusive with regard to the two sets of remains in question, the findings should clearly explain the contextual information upon which the Committee based its decisions.

Dr. Haas pointed out that the statute explicitly recognized a wide variety of types of evidence that could be considered in determining the cultural affiliation of human remains and cultural items, including "other expert opinion." He recommended the spiritual evidence that had been presented by Hui Mālama I Nā Kūpuna 'O Hawai'i Nei be explicitly mentioned as "other expert opinion."

Dr. McManamon distributed drafts of the two findings to the Committee members and asked that they review them carefully as several opinions had been expressed during the course of the hearing.

Regarding the finding on the second set of human remains, Dr. Haas offered an additional section that noted the Committee had taken into account the original curator's lack of physical anthropological qualifications. Mr. Monroe disagreed, saying that the museum had been inconsistent in evaluating qualifications. The curator who identified the second set of human remains as Polynesian was considered unqualified, yet identification of previously repatriated remains was based solely on the donor's statement of its ethnicity.

Dr. McManamon also cautioned the Committee about recommending repatriation of the second set of remains if they were not able to find the remains to be culturally affiliated to Native Hawaiians. Such a recommendation would, in effect, circumvent the language of the law. Dr. Sullivan responded that nothing in the law precluded a museum from voluntarily repatriating culturally unaffiliated remains. Dr. McManamon agreed, but commented that the Committee had spent a lot of time working on the proposed regulations which were about to be published. It would probably not be a good idea to ignore those regulations when making the first finding.

Dr. Haas expressed his concern that the findings might inadvertently convey the message to museums that spiritual evidence by itself was adequate to determine the cultural affiliation of human remains and cultural items. The Committee had agreed that the contextual and physical anthropological evidence was inconclusive for determining the cultural affiliation of the second set of remains; thus, the spiritual evidence could be seen as the deciding factor. "I think that a big part of the responsibility of this committee," Dr. Haas continued, "is to figure out how to make this legislation work. If we present this as our starting case, I think we are going to create tremendous discontent in [the museum] community." He was concerned that the dispute might end up in the California courts and would start the repatriation process off on an adversarial note.

Mr. Monroe agreed, stating it was imperative that the findings be explicit. "We're willing to make decisions on the basis of contextual evidence alone," he continued, "and I doubt if we would have any problem making decisions on the basis of osteological evidence alone, if it were clear. However, we're having a problem making decisions on the basis of spiritual evidence alone."

Dr. McManamon cautioned the Committee not to overstep its authority by recommending repatriation of culturally unaffiliated remains. If remains are unaffiliated, he explained, there is a possibility that they are not Native American at all. He pointed out that the draft finding for the second set of remains provided a compromise by suggesting the remains be transferred to a museum in Hawaii for future care.

Mr. Monroe suggested the Committee recommend, rather than making a finding, that the second set of remains be transferred to a Hawaiian museum. This approach would follow both the letter and the spirit of the law.

Dr. Walker suggested the Committee issue a finding which recommended that the second set of remains be transferred to the Bishop Museum, in Hawaii. The Bishop Museum, in consultation with Hui Mālama I Nā Kūpuna 'O Hawai'i Nei and the Office of Hawaiian Affairs, would be able to supply the anthropological and spiritual expertise necessary to eliminate the possibility of European ethnicity.

Dr. Haas responded that the broader issue was who should have a voice in determining what happens with remains where the contextual and osteological evidence is ambiguous, as it is with this case. He recognized the need to turn to spiritual leaders in such cases.

Mr. Monroe agreed that the issue before the Committee was one of stewardship. "We are seeking a resolution that enables us within the context of the law and in terms of precedent, to urge the museum to do the right thing. The right thing is to return [these remains] to Hawaii."

Dr. McManamon summarized his understanding of the Committee's decision: (1) the draft of the finding concerning the first set of remains should be finalized as amended; (2) the draft of the finding concerning the second set of remains should be redrafted to indicate that while some Committee members felt the evidence for Hawaiian cultural affiliation was inconclusive, all of the members agreed that these remains should be deaccessioned and transferred to a museum in Hawaii.

Presentation on the Bishop Museum's Inventory of Human Remains

Dr. Elizabeth Tatar, Chair of the Anthropology Department at the Bishop Museum, provided a general introduction to the museum's efforts to complete an inventory of the human remains in their possession. She then introduced some of the people involved in the project: Toni Han, Project Director; Elaine Jourdane, Co-Director; and Dr. Sara Collins, Consulting Physical Anthropologist. The project consists of three parts: (1) documentary research and verification for each set of human remains and associated objects; (2) inventory preparation; and (3) preparation of a summary of all archeological and physical anthropological research conducted on the collection along with a report relating the relevance of the research to "the understanding of Hawaiian history and health of the Native Hawaiian people, past, present, and future." The majority of the remains in the collection had been recovered from four major excavations at Mokapu on the island of Oahu. The project is supported by the US Navy and the Marine Corps and assistance has been provided by Dr. Rob Hommon, US Army archeologist with the US Marine Corps.

Ms. Toni Han provided a brief geological overview of the area and a summary of its history. Mr. Tallbull asked if the staff had consulted with local religious leaders to map the spiritual environment of the project area. Ms. Han responded that consultation had not been initiated, although the museum had met with representatives of Hui Mālama I Nā Kūpuna ʻO Hawaiʻi Nei and the Office of Hawaiian Affairs to discuss the project. Three areas of concern had been expressed at the meetings: (1) photography of the skeletal remains; (2) access to documents and reports related to human remains; and (3) the thoroughness of the inventory research. The museum staff felt photographs were necessary to document any human remains or cultural items that would be repatriated. However, Ms. Han explained, the photographs would remain in the Museum archives as negatives and they would not be published. The Museum is still assessing the question of document access. Ms. Han felt one of the benefits the project provided was "a sense of continuity in linking the past with the concerns of the present day Hawaiians, in terms of giving them a better feel of who these people are that are buried at Mokapu."

Ms. Lisa Armstrong, Project Research Assistant, reported the types of information collected during the course of the project including: osteology catalog, accession files, annual reports of the director, researcher data, past inventories, dug materials and photographs, informants' statements, etc. She also explained briefly about the data base used in the project.

Dr. Sara Collins, Consulting Physical Anthropologist for the project, explained her role in the project as ascertaining the completeness of remains for every accession; determining ethnicity of remains where possible; determining remains' age and sex; and, determining any pathologies. Much of her work was necessary to check the accuracy of the accession/catalog records and make sure the remains examined were the same as the remains described. Dr. Collins added that the Mokapu remains have provided most of what is known about Hawaiian skeletal biology and have been studied by many people.

Mr. Tallbull commented on the museums' need to know what they had and to know how to handle the powerful objects in their collections. "There have been times when my people were actually

afraid to go to the museum to see a collection of their items -- not knowing that this museum had medicine bundles stored in the basement, that's one of the no-no's at home is that you don't walk over the top of those . . . . That's the danger that we find in museums, when people have no idea of what they have."

Public Comment Regarding NAGPRA Implementation in Hawaii

The Committee specifically asked members of the public to comment on issues concerning the implementation of NAGPRA in Hawaii. Drs. Sullivan and Walker expressed their concern that the notification process for the Review Committee meeting had not reached all Hawaiian groups that might have legitimate claims under the statute. Mr. Earl Neller of the National Park Service replied that he thought most of the groups he was acquainted with, with the exception of the Hawaiian Studies Department at the University of Hawaii, had been notified. He added that in such situations it was always difficult to please all the different groups in Hawaii. Ms. Keala Kekina, a member of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, believed the attendance at the meeting was skewed to a particular minority since many people from the outer islands were not notified and thus did not attend.

Mr. Nathan Napoka of the State Historic Preservation Division agreed that notification was difficult because historically, Hawaiians have settled into diversified groups with decentralized governments. He identified Hui Mālama I Nā Kūpuna 'O Hawai'i Nei as the only Native Hawaiian group which has come forward on the national level to take responsibility for repatriating Native Hawaiian remains.

Dr. Walker asked Mr. Napoka whether, in his opinion, other groups would begin to speak up as significant sacred objects and objects of cultural patrimony were returned to the islands in the care of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei. Mr. Napoka recommended that the Committee ask someone with Hawaiian ethnographic expertise to advise them about repatriation of Hawaiian sacred objects and objects of cultural patrimony and also to inform them of traditional Hawaiian beliefs and dissenting Hawaiian viewpoints.

Dr. Sullivan asked members of the public to contribute their ideas concerning which Hawaiian organizations should be contacted with regard to Native Hawaiian human remains and cultural items. Mr. Napoka recommended that notifications be sent to the 55-member Burial Council established under the state burial law. He explained that the council is made up of commissioners who represent each geographic area of the islands. The commissioners are community based and, as such, are able to effectively solicit and disseminate information. He volunteered to provide the Committee with a mailing list of Burial Council members.

Mr. Ayau suggested placing notices in newspapers with statewide circulation as well as in the Office of Hawaiian Affairs' newspaper: *Ka Wai Ola O OHA*.

Ms. Kekina requested the notification of as many groups as possible, particularly the colleges and universities since it is easier for people on each island to contact their local colleges than to wait for information from other organizations. She also asked that Hui Mālama I Nā Kūpuna 'O Hawai'i

Nei and the Office of Hawaiian Affairs set up toll-free numbers so that people from the outer islands would not have to pay long-distance charges to get information.

Ms. Lynn Lee, Office of Hawaiian Affairs, agreed that notification of the Hawaiian Studies Departments at each State University and community college would be a good way to contact the many Native Hawaiians on the outer islands.

Mr. Kūnani Nihipali offered the services of *Hui Na'auao*, a community education program dealing with issues related to sovereignty and self-determination, as a means for notifying Native Hawaiian groups.

Mr. Earl Neller, National Park Service, defended archeologists against complaints that they "don't say prayers or have spiritual feelings." He remarked that the Bishop Museum should be considered as both a Hawaiian organization and as a community organization. Mr. Neller felt the scientific research conducted by the museum and other archeologists in the state should be considered as part of the Hawaiian effort to keep the world in balance.

Mr. Alohawaina Makanani, a member of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, spoke regarding sacred objects. Mr. Makanani wanted people to be able to get sacred objects repatriated or, at least, to get descriptive information relating to these objects so that they could be reproduced for family or personal use. He thought any individual or organization who had applied to a museum for permission to view or study a sacred Hawaiian object should be notified of its possible repatriation. In response to a question from Dr. McManamon, Mr. Ayau stated that Hui Mālama I Nā Kūpuna 'O Hawai'i Nei was primarily concerned with the return of their ancestors' bones.

Mr. Nihipali asked about the possibility of Federal funds to help finance education and the communication process between Hawaiian groups. Dr. Haas explained that he would be appearing before the Senate Appropriations Committee to speak in support of funding for grants to museums and Native American peoples to assist them in complying with the statute. He felt that much of the money allocated to museums should go towards ethnographic identification procedures while the money allocated to Native Americans, including Native Hawaiian organizations, would be targeted to fund visits to museums to identify sacred objects and objects of cultural patrimony.

Mr. Tallbull identified lack of money as the primary problem facing all Indian tribes and Native Hawaiian organizations. "We don't have the means to go to the museums [to] reconnect ourselves with some of the artifacts that have been taken." As an example, he described how the Northern Cheyenne have been trying to locate a mass grave dug by the Army that contained the remains of approximately 64 Cheyenne. The Army had not been helpful, so the tribe hired a researcher to review Army records. The tribe has since received information that the bodies were loaded on a train and sent by the Army to one medical school in Pennsylvania and another in Canada. "We're in a bad situation where, because of lack of money, we can't even go after those skulls [6 skulls which were located at the Peabody Museum and identified as originating with the mass grave in question] and bring them home."

Mr. Ayau requested clarification from the Committee regarding the issue of scientific studies of human remains during the inventory process. Chairperson Naranjo responded that the Santa Clara

Pueblo beliefs about bodies are different from what other people, including Hawaiin people, feel. "We're most interested in the spirit," she said, "and not interested in what contains a spirit." Other tribes feel differently. "We've got a multi-cultural situation here," she continued, "with over 800 tribes. Every tribe will have a different opinion on scientific studies."

Mr. Ayau insisted that any scientific study should be a last remedy, after assessing existing documentation and contextual information, and that it should only be done after consultation with the Native American people involved. Dr. Haas agreed that scientific analysis should be done after consultation but, he said from his experience, such analysis was often very helpful to both museums and tribes. He cited one example in which scientific analysis of the remains helped identify one individual from a larger group who was not culturally affiliated with the particular tribe that had asked for the repatriation of the remains. The tribe concluded repatriation of that one individual would be dangerous because they were not of the proper culture. The tribe did not want those remains back. Dr. Haas added that while the statute did not actually prohibit scientific examinations of human remains, he would certainly encourage the museum community to consult before conducting scientific analysis of Native American human remains.

Mr. Ayau described a similar case of consultation between Hui Mālama I Nā Kūpuna 'O Hawai'i Nei and the Peabody and Essex Museum. The museum had two human skulls, one of which was identified as Hawaiian and the other for which there was non-conclusive information. Both skulls were returned to Hawaii and stored at the Bishop Museum while Dr. Collins examined the second skull. She was also unable to conclusively confirm the ethnicity of the second skull so it was returned to the Peabody and Essex Museum. The Hawaiian skull was repatriated to Hui Mālama I Nā Kūpuna 'O Hawai'i Nei.

Dr. Collins commented on the benefits of scientific analysis of skeletal remains from the perspective of her work as physical anthropologist with the US Army Central Identification Lab. In the forensic cases she examined for the Army she relied upon three types of evidence: (1) biological evidence; (2) circumstantial evidence; and (3) material evidence. Biological evidence is the most conclusive type of evidence, but it was not always possible to examine the skeletal parts which provide the most clues. However, when poor biological evidence is combined with circumstantial and material evidence, it is often possible to reach a conclusion. She got a feeling of emotional satisfaction when an identification could be made and a family notified that a loved one was no longer "missing." She understood that repatriation of Native American human remains was an equally emotional undertaking. However, she also felt the need to do her job as well as she could and, while members of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei might find it "distasteful," biological evidence often proves to be the critical factor coming to a right decision.

Mr. Ayau spoke of the need for an amendment to Hawaii's Historic Preservation Act to integrate it with NAGPRA. Hawaii's Historic Preservation Act deals with the treatment of human remains that are currently in Hawaii, but does not deal with remains repatriated from outside the state. On the other hand, NAGPRA deals with repatriation of human remains but does not deal with their reinterment. The amendment to state law proposed by the Historic Preservation Division would require consultation with the appropriate island burial council before any repatriated remains are buried. This would help the Historic Preservation Division, which is responsible for keeping the State

inventory on burial sites, keep track of the reburial sites so that a reinterment will not be disturbed.

Mr. Tallbull talked about the discovery, in the Sweet Grass Hills area of northern Montana, of two abalone shell masks. After the discovery there had been a meeting of the Montana tribes to try and discover a connection between the masks and one or more modern tribes. All of the tribes have different burial and offering procedures, and one method of discerning a connection would have been to excavate the area where the masks were found and search for indications of how they had been laid out, but none of the tribes wanted to disturb the area further. His point being that even among themselves, Indian tribes have found it hard to come to a definitive conclusion as to how to attribute cultural affiliation.

Mr. Alika Silva and Mr. Glen Kila, members of *Koa Mana*, a group which takes care of the bones of the ancestors, or *iwi*, recommended an examination of the area surrounding the burial, as well as of the materials found with human remains, as means of determining ethnicity without analyzing the bones themselves. Mr. Kila explained that Hawaiian families from different areas have different customs with regard to burial. It is thus possible for a Hawaiian to tell the familial affiliation of remains by examining how it was buried. Mr. Kila reiterated that it made him uncomfortable, as a Hawaiian, to think of the scientific study of bones. The *iwi* are not just physical things, they are spiritual. He suggested that the regulations should make it explicit that Hawaiian customs take precedence over American customs and that scientific examination of Hawaiian bones should not be allowed.

Ms. Hinano Campton spoke of the need to listen to the ancestors and care for them.

Ms. Kauwamakani Ellis expressed her appreciation of Ms. Craig, Mr. Tallbull, and Chairperson Naranjo for sharing their feelings regarding spirits and ancestors. She also explained the process by which she and the other Hui Mālama I Nā Kūpuna 'O Hawai'i Nei representatives communicated with the *kupunas* at the Hearst Museum.

Mr. Bulla Logan of *Pilikana O Na Koolauloa* expressed his concerns that bones continue to be disturbed in spite of NAGPRA. He asked if there was some way to shut down beach development in Hawaii, as that is where all ancient Hawaiians were buried. Mr. Monroe explained that the Committee did not have the power to enforce the law; their role is purely advisory. He also explained that the law requires consultation with Native American groups upon the discovery of human remains. Mr. Logan stated he believed developers would hide any remains found during excavation, not notify Native Hawaiians, and continue to develop. Dr. Haas clarified that NAGPRA refers to human remains discovered on federal land or land held in trust by the US Government. It does not cover development which takes place on private land.

Mr. Ayau explained the process by which a private landowner in Hawaii would prepare to develop land. The permitting process is done on the county level and the State Historic Preservation Division reviews the requests. If the area in question is known for other burials or historic property, the Division can request a survey to determine what is on the property. In communities where burial records have been kept it is relatively easy to determine if graves are on the property. Archeologists may have to survey the property if the records have been lost. When remains are discovered, a determination of ethnicity must be made. If contextual evidence is sufficient to determine that the

remains are Hawaiian, the proper treatment of the remains is decided by the burial council from that particular island. The burial council decides if the burial should remain in place or be relocated. Any burials discovered after the survey fall under the control of the Department of Land and Natural Resources. Mr. Ayau admitted that the state law only works where the Division knows what is going on. Unreported discoveries can be concealed.

Mr. Tallbull suggested that tribal ordinances be developed concerning archeological and environmental protection so that the Native Hawaiians would not have to rely on state and Federal laws to uphold their concerns.

Mr. Alohawaina Makanani of *Protect Kahoolawe Ohana* said his organization had been working to address the problem of the protection of burials since the 1970s. They encouraged Native Hawaiians to train as amateur archeologists so that they would be able to work with museums and archeologists and provide a Native Hawaiian perspective on sacred objects and human remains. The burial councils have also identified "burial monitors," Native Hawaiians who have been trained in basic archeological skills and the handling of human remains so that they can work with survey archeologists as they uncovered remains and sacred objects. Mr. Makanani had found, when he worked on projects, that any discoveries which did not include bones were deemed insignificant and development continued. One of his main concerns centered on who should be entrusted to make the determination of what is sacred. Chairperson Naranjo responded that the Committee had devoted much of its time in previous meetings to exactly that question. "It is very important for us on the Committee," she said, "that those community people determine what is sacred."

Report to Congress

Dr. McManamon explained that the statute required the Committee to submit an annual report to the Congress on the progress made and any barriers encountered in implementing the statute during the previous year. A report covering the Committee's first year in existence had been drafted. The draft detailed the nomination procedures and responsibilities of the Committee and provided biographies of all the members, a discussion of staffing considerations, a brief review of the three meetings held to date, and the Chairperson's election. It also included a brief description of the various items that the Committee had worked on over the previous year, including the memorandum on summaries and inventories, the proposed regulations, the monitoring of summaries and inventories, and the current dispute. The Report also included a section entitled "Recommendations."
Dr. Sullivan wanted to make it clear to Congress that repatriation was occurring and that museums and Native American groups were consulting with one another. Mr. Monroe suggested not dealing with any issues related to statutory language at the present time. He also recommended that the report emphasize the need for funds to enable museums and Native American groups to implement the law. The Committee agreed to include Dr. Sullivan and Mr. Monroe's comments and approved the draft report.

Future Activities

The Committee discussed the status of the grants program authorized by the statute. Dr. Haas said he would be testifying before Congress on behalf of a consortium of organizations including the

American Association of Museums and the Native American Rights Fund. Mr. Monroe recommended that the Department of the Interior be strongly urged to request at least $10 million for the FY1994 budget for the grants program. Dr. Haas suggested that this request be tied to a reference to repatriation efforts to date and a clear statement of what will be done with the funding after it is received. The Committee agreed that each member should draft a letter outlining their recommendations to Congress with regard to funding.

Dr. McManamon proposed that the Committee next meet after the comment period for the proposed regulations ended and that the meeting be devoted to preparing recommendations, based on the comments received, for the final regulations. He also suggested the Committee meet next in Washington, D.C. to give the people in the Clinton administration a chance to meet the Committee members. The Committee agreed to tentatively plan for a meeting in May in Washington, D.C.

Dr. Haas suggested that meetings devoted to resolving any upcoming disputes be scheduled for a location near one or both of the disputants. This practice would send a message that the Committee takes the dispute process very seriously.

Chairperson Naranjo brought up the idea of developing training sessions for Native American communities so that they would be more informed on NAGPRA. Dr. Sullivan reported that the American Association of Museums was developing a variety of programs to try and train museum people in the area of collections management with respect to NAGPRA. He added that he would be meeting with museum and Native peoples from North America to draft a document on the ethics of museum practices with regard to Native objects and consultation with Native peoples.

Closing

Dr. McManamon, on behalf of the Park Service and the Department of the Interior, thanked the Review Committee members for their time and effort, especially when dealing with the hard issues such as those at this meeting, and he thanked the members of the public who participated throughout the meeting.

Mr. Tallbull expressed his appreciation to the people present for allowing him to come to this "powerful place" to meet with the people, and listen to their words. "One thing that we cannot forget," he said, "no matter where we go or how far we stray away. The elders are no longer going to be there. But each one of our children," he continued, "one by one, can go out and maintain [their] relationship. All the spirits are still there. They haven't gone anywhere. All you have done is been disconnected from them. Go back and reconnect yourself with it. You do that."

The meeting was closed at 10:03 a.m. on Sunday, February 28, 1993.

Approved:

Tessie Naranjo — September 22, 1993

Tessie Naranjo, Chair
Native American Graves Protection
and Repatriation Committee

Date

MINUTES
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REVIEW COMMITTEE
FIFTH MEETING: SEPTEMBER 20 - 22, 1993
WASHINGTON, D.C.

The fifth meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Ms. Tessie Naranjo at 8:30 a.m., Monday, September 20, 1993 at the Maritime Commission Hearing Room, 800 North Capitol Street, NW, Washington, DC The following Review Committee members, staff, and others were in attendance:

Members of the Review Committee:

Ms. Tessie Naranjo, Chair
Ms. Rachel Craig
Mr. Jonathan Haas
Mr. Dan Monroe
Mr. Martin E. Sullivan
Mr. William Tallbull
Mr. Phillip L. Walker

National Park Service staff present:

Mr. Francis P. McManamon, Departmental Consulting Archeologist, Washington, DC
Ms. Veletta Canouts, Data Preservation Team Leader, Washington, DC
Mr. C. Timothy McKeown, NAGPRA Program Leader, Washington, DC
Mr. Hugh (Sam) Ball, Archeologist, Washington, DC
Ms. Mandy Murphy, intern, Washington, DC
Ms. Sylvia Yu, intern, Washington, DC
Mr. Jerry Rogers, Associate Director for Cultural Resources, Washington, DC
Ms. Patricia Parker, Coordinator for Tribal Preservation Programs, Washington, DC

The following were in attendance during some or all of the proceedings:

Mr. Raymond Apodaca, Chairman of the Human and Religious Rights Committee for the National Congress of American Indians, El Paso, TX
Ms. Donna Augustine, Micmac Tribe, New Brunswick, Canada on behalf of the Aroostook Band of Micmacs, ME
Ms. Marcia Cronan, Special Agent, Division of Law Enforcement, Branch of Investigation, Fish & Wildlife Service, Washington, DC
Ms. Ernestine Ducheneaux, Ducheneaux, Taylor & Associates, Washington, DC
Ms. Karen Funk, attorney, Hobbs, Straus, Dean & Wilder, Washington, DC
Mr. Lars Hanslin, Solicitor's Office, Department of the Interior, Washington, DC
Ms. Suzan Shone Harjo, President of the Morning Star Institute, Washington, DC, and Chairwoman of the Program Planning Committee for the National Museum of the American Indian, Washington, DC
Mr. Scott Keep, Assistant Solicitor for Tribal Government and Alaska, Division of Indian Affairs, Solicitor's Office, Department of the Interior, Washington, DC

Ms. Naida Lefthand, delegate from the Confederated Salish and Kootenai Tribes of Pablo, MT
Mr. Tim Mentz, Sr., Tribal Council member, Standing Rock Sioux Tribe, Fort Yates, ND
Mr. Darrell Newell, Passamaquoddy Tribe, ME.
Ms. Deborah Osborne, Federal Energy Regulatory Commission, Washington, DC
Mr. Frank Shoemaker, Special Agent in Charge of Investigations, Fish & Wildlife Service, Washington, DC
Mr. Daniel Weiner, outside counsel for the American Museum of Natural History, New York, N.Y.
Mr. Frank E. Wozniak, NAGPRA Inventory Coordinator for the Southwestern Region, U.S. Forest Service, Albuquerque, NM
Ms. Pemina Yellow Bird, Three Affiliated Tribes, Fort Berthold Reservation, ND

Ms. Naranjo welcomed everyone to the meeting and asked that the Review Committee and National Park Service staff introduce themselves. Ms. Naranjo noted that the meeting was open to the public and had been announced in the *Federal Register*. After the introductions Mr. William Tallbull gave the invocation.

Mr. Jerry Rogers, National Park Service Associate Director for Cultural Resources, welcomed the Review Committee to their fifth meeting and gave a brief overview of the Committee's accomplishments since their first meeting in May, 1992. Mr. Rogers complimented the Committee on their integrity and thoughtfulness and asked that they continue their good work as the regulations are moved toward their final form.

Review of the Agenda

Mr. Francis McManamon welcomed the Review Committee and members of the public to the meeting and went on to thank the organizations hosting the reception being held that evening in honor of the Review Committee. These included the American Association of Museums, the Society for American Archeology, the Native American Rights Fund, the Association of American Universities, the Society for Historical Archeology, and the National Conference of State Historic Preservation Officers.

Mr. McManamon explained that the agenda was structured to allow in depth discussion of the written comments that had been received on the proposed regulations. He hoped the Committee would be able to produce a set of recommendations to the Secretary. He also suggested that the Committee could discuss the draft dispute resolution procedures, if time permitted.

Mr. McManamon then reported on the activities of the Archeological Assistance Division over the previous months, including drafting the proposed regulations, reviewing the comments thereon, revising the proposed regulations in response to the comments, preparing the Review Committee's 1992 Report to Congress, drafting grant information and applications, and disseminating information through speaking engagements or printed materials.

Review of Comments on Proposed Regulations

Mr. Timothy McKeown provided an introductory overview of the comments received on the proposed regulations. Eighty-two comments, representing 89 organizations or individuals, were received. The comments included letters representing 13 tribes, 10 other Indian organizations, 9 museums, 3 national scientific/museum organizations, 7 universities, 11 state agencies, 19 Federal agencies, and 17 other private individuals or organizations. Comments generally fell into four categories: 1) typographical/grammatical errors; 2) misunderstandings; 3) substantive disagreements with the regulatory text; and 4) substantive disagreements with the statutory text. Mr. McKeown indicated that all of the first type, and many of the second and third type comments, were used to modify the proposed text. The fourth type of comments were not dealt with.

Discussion of the Proposed Regulations

§10.1 Purpose and Applicability

No changes to this section were proposed.

§10.2 Definitions

"Federal Agency" [§10.2(a)(4)]. Mr. McKeown recommended that the word "stipulated" be changed to "specified." Mr. Monroe asked if a sentence might be added indicating that repatriation activities at the Smithsonian Institution, which is specifically excluded under NAGPRA, are mandated by the National Museum of the American Indian Act. Mr. McKeown agreed the information was important but explained that statements of an informational nature are best placed in the Preamble.

"Federal Agency Official" [§10.2(a)(5)]. Mr. McKeown proposed amending this definition to read "means an individual authorized by delegation or authority within a Federal agency to perform the duties relating to these regulations." The Committee agreed to the revision.

"Indian Tribe" [§10.2(a)(9)]. Mr. McKeown recommended that all explanatory text starting with the phrase "Groups that wish to determine if they qualify as Indian tribes..." be deleted from the regulations and inserted in the Preamble. Mr. Walker concurred, say that he found the explanatory material to be insulting to Native Americans.

Mr. Monroe requested a discussion of the definition of "Indian tribe" because he felt the original legislation did not intend to restrict the tribes involved to only those with Federal recognition. Mr. McKeown replied that the legislative history, as evidenced by the House and Senate reports, showed that the definition had been taken from other legislation. Mr. Monroe disagreed and said that he, as a member of the group who had advised Congress during the drafting of the legislation, had not intended to restrict tribal participation.

Ms. Naranjo stated that she found the current statutory definition troubling in that it excluded some Native American groups that should be legitimately considered. Mr. Haas and Mr. Walker agreed,

stipulating that the problem would be particularly acute in California where there were many such unrecognized groups.

Mr. Haas continued that much of the problem grew from the fact that NAGPRA requires museums and Federal agencies to proactively notify all Indian tribes that might be culturally affiliated with human remains or cultural items in their collections. In order to comply with the notification requirement, museums and Federal agencies must have a list of Indian tribes before consultation begins. What Mr. Haas referred to as the "first come, first served" repatriation policies of both the National Museum of the American Indian and the National Museum of Natural History made such a list less important to them.

Mr. McKeown indicated that the current listing of NAGPRA contacts for the 761 Federally recognized tribes had taken nearly a year to compile, largely due to administrative differences within the Bureau of Indian Affairs regarding Alaska villages and corporations. Mr. Haas questioned the feasibility of creating a more inclusive list in time for museums and Federal agencies to comply with the November 16, 1993 deadline for completing summaries of their collections. Mr. Walker agreed that a change of the list at such a late date could cause chaos among the museum community but, he agreed that the law was not intended to limit the tribes to those who were Federally recognized.

Mr. Monroe characterized the discussion as being between what was right and what was expedient. The spirit of the law would not be maintained if the regulations continued to exclude Indian people that had historically been excluded again and again. He said it was hard for him to accept the argument that because it took so long to get the first list from the Bureau of Indian Affairs, the Committee shouldn't recommend the right thing and expand the list. It was his understanding that the additional information would not be that hard to procure. He conceded that certain provisions might need to be added to the regulations to accommodate for a change at such a late date. In his opinion, the primary stumbling block was the Department of the Interior's concern about the precedent of such an action.

Ms. Naranjo agreed that the clause should be embracing rather than excluding and added that she had a particular problem with the BIA being responsible for determining whether someone was an Indian or not. Ms. Craig also voiced her concern with allowing the BIA to determine if a tribe was qualified. She stated that not having Federal recognition had not stopped Indians from being born or dying. Neither had it stopped other people from taking their bones.

Mr. Haas stated that one alternative would be to retain the present definition but, also add a statement encouraging museums and Federal agencies to consult with additional Native American groups. Mr. Tallbull agreed that such a compromise might work. Mr. Lars Hanslin concurred that such an admonition would be possible. Mr. Sullivan agreed, but cautioned that museums could not be expected to notify newly added groups by the November 16th deadline. The challenge, he thought, would be to craft appropriate language to broaden the definition while making it clear that the primary basis for inclusion needed to be one of cultural heritage. He felt that if the Secretary and the Solicitor's Office insisted on the narrow definition, the Committee should officially register its disagreement.

Mr. Hanslin responded by saying it would be perfectly appropriate for the Committee to recommend a broader definition. Mr. Haas challenged Mr. Hanslin's statement, recollecting that discussions of the issue at the Fort Lauderdale meeting had included a strong argument from the Solicitor for limiting the definition to the BIA interpretation. This information had subsequently been disseminated to the entire museum community. Mr. Haas considered such "wishy-washiness" at this late date extremely detrimental as the definition had been discussed *ad nauseam* at earlier meetings. Mr. Hanslin explained that the preliminary views of the Department of the Interior were that as a matter of law, not policy, the list should be limited. The real dilemma, according to Mr. Hanslin, stemmed from the fact that neither the statute nor the legislative history suggested a broader list. Regulations can only clarify Congressional intent, even if the Committee and the Secretary do not agree. Mr. Monroe asked if a letter from the Chairman of the Senate Select Committee might help alleviate the problem. Mr. Hanslin replied an individual Congressman's recollections cannot change the written legislative history, although such information might be useful to the Secretary. Mr. Monroe disagreed with Mr. Hanslin's interpretation of the legislative history which he found to be neutral regarding the definition of Indian tribe. Mr. Hanslin explained that legislative intent is determined first by looking at the language of the statute itself. Only if there is some ambiguity in the statute are the House and Senate Committee reports reviewed. Finally, if Congressional intent is still ambiguous, the initial bills, amendments and hearing record can be reviewed. Mr. Hanslin continued that the definition of Indian tribe in one of the earlier versions of the bill had referred to the definition in the Indian Self-Determination Act and the statute simply quoted that definition. The Indian Self-Determination Act definition has been interpreted by the Bureau of Indian Affairs to mean the tribes on their list. Further, Section 12 of NAGPRA states that the Act "reflects the unique relationship between the Federal government and Indian tribes . . ." Such a government-to-government relationship that extends only to those governments recognized by our the U.S. government.

Mr. Monroe raised his concern that the Department would follow its own agenda in redrafting the Final Regulations and would not take the Committee's recommendations into account. Mr. McManamon explained that the Department will redraft the regulations, taking the Committee's recommendations into account, and send the document to the Departmental Assistant Secretaries and the Solicitor for review and approval. The document will then go to the Secretary of the Interior for his review and signature. It was Mr. McManamon's understanding that the definition of Indian tribe, along with several other issues, would come under scrutiny. Mr. Monroe asked why. Mr. McManamon responded that it was his understanding that the recognition of a group by the Department of the Interior or the BIA brought a variety of benefits. Mr. Monroe asked if the Department of the Interior had one standard definition of Indian tribe. Mr. McManamon responded that he understood the Department did, but continued that he thought it might be possible to craft a broader definition for the purposes of NAGPRA. He advised the Committee to make a specific recommendation as to a broader definition so that it could be incorporated into the revised version of the proposed regulations or sent to the Secretary as an alternative. Mr. McManamon added that no one had really been happy with the definition of "Indian tribe" at the Fort Lauderdale meeting and so the Preamble of the proposed regulations had specifically asked for comments on the definition because some tribes not currently recognized by the BIA should be included and, on the other hand, there are also tribes or fringe groups where the question is less clear. Mr. McManamon saw the problem as how and where to draw the line.

Mr. Haas proposed an alternative interpretation of the statutory language which would include the BIA list as well as other groups who are able to demonstrate eligibility for the special programs and services provided by the U.S. because of their status as Indians. Mr. Haas particularly wanted to include those groups who were not recognized by the BIA, who did not want to be recognized by the BIA, but never-the-less, met all the other criteria. Mr. Hanslin interjected that Mr. Haas' expanded interpretation of the definition begged the question of who would be responsible for deciding whether a group was eligible or not. Mr. McManamon concurred that someone would have to be responsible for determining if a group was eligible and requested the members to comment on the palatability of erecting yet another process for recognizing Indian tribes. Mr. Monroe objected to Mr. McManamon's request, stating that he wanted to keep the discussion focused on the issue of participation first and figure out the process later. Ms. Craig, Ms. Naranjo, and Mr. Sullivan stated that they felt better about using the BIA list as a starting point with the possibility of additions.

Mr. Monroe asked if Mr. Haas' expanded interpretation would allow for terminated tribes to be included. Mr. Haas responded that Mr. Jack Trope, an attorney with the Association for American Indian Affairs, had recommended that terminated tribes not be automatically included, as the reasons for their terminations were complex and varied. Mr. Monroe asked if the BIA had a list of tribes under consideration to become recognized. Mr. McKeown replied that approximately 100 tribes were currently seeking recognition from the BIA. Mr. Monroe asked for copies of the list of tribes seeking recognition and those that had been terminated. The Committee then adjourned to provide the members with time to review the various lists.

Mr. Monroe made a statement when the Committee reconvened. He stated that the Committee shared "the concerns of those opposed to limiting the Act's applicability to only those tribes recognized by the Bureau of Indian Affairs" and was "unanimously and strongly opposed to a policy of exclusion." He continued that the Act "was not created to apply only to a specific group of Native Americans, it was created to apply to all Native Americans" and cautioned that by "limiting participation in NAGPRA, the fundamental goals and purposes of the Act will be substantively diminished." Mr. Monroe added that the Department of the Interior had elsewhere defined "Indian tribe" in several ways, including some definitions that formally included state-recognized tribes. He continued that a Federal court, in Abenaki Nation v. Hughs, had ruled that the NAGPRA definition of "Indian tribe" clearly included tribes other than those recognized by the BIA. Mr. Monroe concluded that the Committee "strongly and forcefully recommends a broad interpretation of the definition of "Indian tribe" within NAGPRA regulations."

Following Mr. Monroe's statement, Mr. Scott Keep, Assistant Solicitor for Tribal Government and Alaska within the Indian Affairs division of the Solicitor's Office, was invited to provide the Committee a brief history of the definition of "Indian tribe." He explained that in the early 1970s, many tribes were petitioning for recognition but, the Department did not have procedures in place to determine the merit of the petitions. At that time, the courts established that the Department might have obligations to a tribe even if the tribe was not officially "recognized." Consequently, the Department produced regulations (25 CFR Part 83) for determining if a group of Indians was indeed an Indian Tribe and a list was published, in the *Federal Register*, of all tribes which met the criteria. The combination of court cases and promulgation of regulations for recognizing tribes raised the question of encroachment on state jurisdiction because Indian tribes have certain privileges, immunities and responsibilities due to their status as Indians.

Mr. Monroe asked Mr. Keep to explain the Department's reservations regarding the Committee's desire to expand the NAGPRA definition of "Indian tribe." Mr. Keep considered it a matter of Congressional intent, explaining that Congress could have broadened the definition if they wanted to, as they had done in the Indian Arts and Crafts legislation. Since Congress used language from a statute where the term was narrowly defined, they must have been willing to accept the consequences. He added that the Committee might consider making a recommendation to Congress that the definition be changed.

Following Mr. Keep's presentation, Mr. Monroe stated that it appeared to him while the Committee's efforts to expand the definition of Indian tribe were well-intentioned, they were probably not wise. He went on to recommend that the Committee stick with the statutory language in the regulations and present a separate statement to the Secretary which argued that the definition should extend beyond Federally recognized tribes to tribal groups that are eligible for Federal services because of their status as Indians. He also recommended that the Committee ask the Department to compile a list of other tribes who receive funds from Federal agencies and that list, plus the BIA list, should be the list for the purposes of NAGPRA. Mr. Monroe felt that if the regulations were modified to include notification of additional tribes, technical assistance would have to be provided to museums or Federal agencies to resolve any confusion over a tribe's status. Mr. Hanslin replied that there was nothing in either the regulations or the statute which precluded a museum or Federal agency from contacting and consulting with tribes which were not Federally recognized, the only problem would occur when the time came to actually repatriate objects or remains.

Mr. McKeown asked for a clarification of the Committee's recommendation as it pertained to Alaska. The statutory language included Alaska Native villages as defined under the Alaska Native Claims Settlement Act. The proposed regulations read "any Alaskan Native village or corporation." Mr. Hanslin stated that the Department had agreed to the inclusion of the Alaska Native corporations in the proposed regulations even though they were not mentioned in the statute and, in his opinion, there was no reason to remove them. The Committee agreed that the definition of "Indian tribe" was to follow statutory language with the explicit addition of Alaska Native corporations.

Mr. Frank Wozniak, NAGPRA Inventory Coordinator for the Southwest Region, US Forest Service, asked Mr. Monroe, as a participant in the development of NAGPRA legislation, if they understood Congressional intent to be an inclusive definition of Indian tribe, why that understanding was not incorporated into the statute itself. Mr. Monroe replied that they had been so involved with trying to bring all the issues together and reach some sort of compromise that they lost track of what was right.

Ms. Naida Lefthand from the Confederated Salish and Kootenai Tribes of Pablo, Montana, voiced her concerns about changes in the definition of "Indian tribe." Ms. Lefthand shared with the Committee her family's dealings with the BIA's Acknowledgment Section and explained that people are unable to make the BIA's enrollment list even though they are Indians and know the language and the traditions. Ms. Lefthand wanted Indian people to decide who should be included under the definition of Indian tribe.

Ms. Suzan Harjo, President of the Morning Star Institute and Chairwoman of the Program Planning Committee for the National Museum of the American Indian, commented that the Committee had a responsibility to go beyond the arbitrary definition of "Indian tribe." She contended there are many

definitions of "Indian tribe" used by the U.S. government. She asserted the Department of the Interior currently deals with non-Federally recognized tribes, including those that are state-recognized, under the Indian Arts and Crafts Act Amendments of 1990 although, she admitted the Arts and Crafts Board list contained some questionable entities. Ms. Harjo also reported California was investigating the cases of tribes which had negotiated treaties that had never been ratified by the Senate.

In Ms. Harjo's opinion, the statutory requirement to deal with traditional religious leaders includes all religious leaders, whether belonging to a Federally recognized tribe or not. She asked the Committee to consider how many tribes would have been outside the current definition of "Indian tribe" if NAGPRA had been enacted in the 1970s. In closing, Ms. Harjo reiterated that the American Indian Religious Freedom Act was the important document to consider and stated she was speaking on behalf of the voiceless Indians and hoped the Committee would do well by them.

Mr. Raymond Apodaca, Chairman of the Human and Religious Rights Committee, National Congress of American Indians, agreed with the concerns voiced by Ms. Harjo and emphasized the necessity for expanding the definition of "Indian tribe" to cover viable continuing communities of Indians. Mr. Apodaca asked that traditional religions be interfered with as little as possible throughout the processes covered by the regulations. He explained, many Indian religions prohibit talking or writing about religious matters, including the naming of religious leaders. In addition, Mr. Apodaca cautioned that museums and Federal agencies need to be extremely careful to deal with the appropriate person, not just anyone who declares him/herself a spokesperson or religious leader. Ms. Harjo agreed that correct contact information must be provided to museums and Federal agencies.

Mr. Apodaca stated that although museums may be dealing with objects, Indians are dealing with their ancestors and with the means of communicating with the Creator. He continued that many tribes are faced with activities, such as dealing with the dead, they are not prepared to deal with. Mr. Apodaca added that although some comments put forth by members of the audience may have been offensive, they would not have been necessary if human beings were treated as human beings. He apologized for the comments but added they resulted from frustration with the system and the situation. Mr. Apodaca asked the Committee and the museum community to remember history and try to understand why the tribes feel the way they do.

Mr. Tim Mentz, Sr., Tribal Council member from the Standing Rock Sioux, Fort Yates, North Dakota, told the Committee that a majority of the people on his reservation did not want to be recognized by the BIA. Mr. Mentz asked the Committee to seriously consider every decision regarding the regulations because they affected every tribe in the U.S. He said the discussion was creating conflicts between tribes where none existed. Ms. Naranjo responded that although she was unable to shed her "puebloness", she tried very hard to represent all tribes in all her dealings as a Committee member.

"Native Hawaiians" [§10.2(a)(10)]. Mr. Monroe questioned the inclusion, throughout the regulations, of Native Hawaiians under the general category of Indian tribes. He felt it would be more appropriate, as Native Hawaiians were never organized as tribes, to add "and Native Hawaiian organization" wherever the regulations refer to "Indian tribes". Mr. Walker agreed and noted that subsuming Native Hawaiians into the definition of Indian tribe would deprive them of the flexibility afforded them by the broad statutory definition of Native Hawaiian. Mr. McKeown asked Ms. Craig

if Alaskan Natives liked being referred to as Indian tribes. Ms. Craig agreed with Mr. Monroe and Mr. Walker that Native Hawaiians should be noted separately from Indian tribes in the regulation's wording because NAGPRA specifically identified Native Hawaiians. She added, although so-called Eskimos do not appreciate being categorized as Indians and would rather be referred to by ethnic groupings such as Inupiat and Yupik, they have resigned themselves to being referred to as Indian tribes because national legislation has used that wording. Ms. Naranjo stated that groups of people should be referred to by names of their choosing. Mr. McKeown questioned the feasibility of replacing all references to "Indian tribes" with "Indian tribes, Native Alaskan villages and corporations and Native Hawaiian organizations" due to the confusion which may result from such verbiage. The Committee decided to leave the wording as written.

"Native Hawaiian Organization" [§10.2(a)(11)]. Mr. Monroe asked why this definition had not been changed in light of several recommendations in the comments. Mr. McKeown responded that several commentors had recommended inserting a requirement that Native Hawaiian organizations have a majority of Native Hawaiian members. He explained that the legislative history showed such a requirement was not intended by Congress, since an earlier House version of the bill had included such a provision but the final statute did not. Thus, Congress had considered the requirement and decided against including it in the definition.

"Indian Tribal Official" [§10.2(a)(12)]. Mr. McKeown proposed amending the definition to read "means the principle leader of an Indian tribe or the individual officially designated by the governing body of an Indian tribe or as otherwise provided by Tribal code, policy, or procedure as responsible for matters relating to these regulations." Mr. McManamon explained some tribes do not have codes or written documents which declare exactly who has authority to deal with certain issues. The important point of the change was that it left the decision making process to the tribe. Mr. Haas questioned how a museum official would know what procedure a particular tribe used and asked that the phrase "established tribal code, policy or procedure" be included to provide minimum additional guidance.

"Lineal Descendant" [§10.2(a)(14)]. Mr. McKeown recommended the definition be modified to include the possibility of tracing ancestry by "the common law system of descendance" as well as by means of a traditional kinship system. The Committee agreed.

"Human Remains" [§10.2(b)(1)]. Mr. Monroe brought up the feasibility of determining if portions of human remains were freely given. In his opinion, the regulations should not make such impossible demands. Mr. Sullivan reminded Mr. Monroe that the language came from Committee discussions at the Fort Lauderdale meeting. Mr. Monroe agreed but suggested the inclusion of modifying language. Mr. Hanslin suggested the phrase, "remains that may reasonably be determined to have been freely given". Mr. Walker and Mr. Sullivan approved of the wording because it gave tribes and the Committee a legal position to recommend punishment if a museum or agency attempted to evade the law.

"Associated Funerary Objects" [§10.2(b)(3)]. Mr. Monroe remarked on one comment concerning the addition of "or near" to the statutory definition. Mr. McManamon responded that the term had been added after discussion at a previous Committee meeting where it had been agreed that in some burial practices objects were not necessarily placed with a body but near it. Mr. Tallbull agreed and

explained that at the time of death the Cheyenne place a man's weapons and medicine bundles at some distance from his grave. The Committee concurred that the reasoning behind this addition was still sound.

"Sacred Objects" [§10.2(b)(5)]. Mr. Monroe questioned the addition of the word "current" to the statutory definition. The Committee decided to follow statutory language and remove the word.

Ms. Naranjo questioned inclusion of the phrase "or function in the continued observance or renewal of such ceremony" in the regulatory definition. She felt, and Mr. Walker agreed, that for an object to be considered sacred by a tribe, it should be needed for a religious ceremony, not used to reclaim their culture by reinvigorating the ceremonies. Mr. McKeown responded that the phrase was drawn from the House Committee report and continued that the report provided additional clarification of Congressional intent by stating that "the Committee recognizes that the practice of some ceremonies has been interrupted because of governmental coercion adverse societal conditions or the loss of certain objects through means beyond the control of the tribe at the time. It is the intent of the Committee to permit traditional Native American religious leaders to obtain objects as are needed for the renewal of ceremonies that are part of their religions." Mr. Tallbull agreed that in certain circumstances, such as the return of a medicine wheel or the reburial of a skeleton, renewal ceremonies were necessary. He also explained that some tribes hold annual ceremonies to renew their medicine bundles, replacing certain physical parts and reintroducing the bundle to the tribe's ritual system so that the system is in balance again. Mr. Monroe repeated he wanted to be clear on the Committee's opinion because some tribes felt it was appropriate to have an object repatriated in order to restore a ceremony which had been discontinued but some museums were concerned because such action could set a precedent for inappropriate repatriation claims. He explained that the concept of "renewal" had been a subject of deep contention during the drafting of the legislation and the word had been omitted from the statute for that reason. Mr. Monroe encouraged the use of language which allows repatriation of objects for renewal of practices which have clear historical precedent, even if they are not performed at the present time, because that was the intent of the law. Ms. Naranjo agreed.

Ms. Craig spoke about Alaskan religious beliefs in which the traditional religions and Christianity coexist. Sometimes the beliefs have been modified in order to fit into the majority's system. She wanted it made clear that "traditional religion" needed to be defined from the Native perspective so as not to impose conflicts. Mr. Tallbull agreed.

"Cultural Affiliation" [§10.2(c)]. Mr. Monroe proposed adding the following line to the definition: "Cultural affiliation may be reasonably concluded when the preponderance of geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion supports such a conclusion." The Committee concurred.

"Tribal Lands" [§10.2(d)(2)]. Mr. McKeown recommended that the definition be amended to delete the phrase "excluding privately owned lands", and adding "(iv) The regulations shall not apply to Tribal lands to the extent that any particular action authorized or required hereunder would result in a taking of property without compensation within the meaning of the Fifth Amendment of the United States Constitution." The Committee agreed to delete the phrase "excluding privately owned lands."

Mr. Monroe asked for an explanation of the section regarding the Fifth Amendment. Mr. Hanslin explained that statutory language covered "all lands which are within the exterior boundary of any Indian Reservation." This definition contradicted other statutory language which made clear that no takings were implied. The proposed regulations had excluded all privately owned lands within a reservation's exterior boundaries. However, Mr. Hanslin continued, one of the comments had argued that certain actions, such as the repatriation of human remains, would not result in a taking even if applied to private lands since there can be no property interest in human remains. The present draft had been changed to focus more narrowly on possible instances of Fifth Amendment takings such as the repatriation of individually owned sacred objects. Common law in many states would hold that sacred objects found on private land belong to the land owner. A taking would occur if the object had to be turned over to a tribe.

Mr. McManamon added that in reviewing the comments he had come to realize that there was a greater possibility for a taking to occur during property development. The proposed definition of "tribal lands" allowed a tribe to make all the decisions with regard to what happens to objects and human remains. A tribe could decide, on otherwise private land, that it did not want objects disturbed. The owner could then have an argument that there was a taking of his/her right to get the full benefit of the property. Mr. McManamon concluded the revised definition was an attempt to deal with this possible problem.

Mr. Monroe asked who would determine if a taking had occurred. Mr. Hanslin replied that the court would be responsible for making such a determination.

Mr. Monroe stated that one of the commentors argued that the statute clearly stated that tribal lands include all lands within the exterior boundary of Indian reservations and the inclusion should be maintained because landowners cannot own human remains. In addition, the Supreme Court had recognized tribal jurisdiction over non-Indians where their conduct effects the health and welfare of the tribe. Mr. Hanslin agreed that these arguments could be followed up to the point when a Fifth Amendment taking occurs. He explained that the proposed revision agreed with the stated arguments except in instances where tribal control over a site or the contents therein would constitute a taking.

Mr. McManamon asked for clarification from Mr. Hanslin regarding the status of lands held in trust by the United States that are outside the boundaries of an Indian reservation. According to the proposed regulations, would these lands be included as "tribal lands" under the concept of dependent Indian communities? Mr. Hanslin responded that such lands would probably be considered as Federal lands because the U.S. government owns them in trust for Indian tribes. Mr. McManamon pointed out that Indian tribes would have less control over lands held in trust if they are considered to be Federal lands.

"Possession" [§10.2(e)(5)]. Mr. McKeown proposed adding the following sentence: "Generally, a museum or Federal agency would not be considered to have possession of human remains or cultural items on loan from another individual, museum, or Federal agency."

"Control" [§10.2(e)(6)]. Mr. McKeown proposed adding the following sentence: "Generally, a museum or Federal agency that has loaned human remains or cultural items to another individual,

museum, or Federal agency is considered to retain control of those human remains or cultural items for purposes of these regulations."

Mr. Monroe read one comment which requested a return to statutory language for the definitions of "possession" and "control". Mr. Hanslin responded that the changes had amplified the statutory meaning. He continued that a literal reading of the original language would have forced museums and Federal agencies to repatriate objects that had been left in their possession instead of only the objects which they had a legal right to repatriate. The literal reading would have increased the problem of Fifth Amendment takings. Mr. Monroe replied that he was skeptical of Mr. Hanslin's interpretation when two other lawyers had a different reading of the problem and questioned whether Mr. Hanslin was working for the Committee or for the Department of the Interior. Mr. Hanslin and Mr. McManamon explained the Committee was free to take Mr. Hanslin's advice or not, at their discretion. Mr. Hanslin explained that the rewritten version of the regulations said, essentially, that museums must have sufficient legal interest in an object to be able to transfer the object. Congress had tried to address the problem through the definition of right of possession. The comment by Mr. Jack Trope and Mr. Walter Echo Hawk resolved the problem by saying a museum has possession unless it results in a taking of property. Mr. Hanslin felt the amended language stated the situation more clearly. Ms. Naranjo said she worried about Mr. Trope's comment because it implied museums had an "out" if they claimed not to possess objects. Mr. Hanslin responded that, in his opinion, the regulations did not provide an "out" for museums, the statute did.

Mr. McManamon asked the Committee for examples where museums have objects in their possession which they do not own. Mr. Sullivan responded that a museum may feel it does not have clear title to an object and would deny a repatriation request out of fear that someone with a greater interest would bring legal action. In addition, an object may have been donated with conditions which repatriation would break. The museum would need to evaluate the conditions before agreeing to repatriation. Mr. Sullivan said it did not seem to him that the regulatory language allowed museums to invent reasons for not complying in the way that Mr. Trope and Mr. Echo Hawk alleged. Mr. Monroe added that objects on long-term loan from private individuals or held in a museum's care but owned by a Federal agency are not owned by the museum. Mr. Monroe recounted a situation where a museum acted as a go-between when a tribe requested the repatriation of an object on loan to the museum. The Committee decided that the rephrasing did not present any new loopholes and agreed to retain it.

Mr. Wozniak asked for a definition of the word "repatriation" because its use in the statute implied the transfer of property rights. Mr. Monroe cautioned that NAGPRA should not be seen as a property rights issue but rather, as concerning people and the creation of a better relationship between Native Americans, museums and the scientific community. He felt that any attempt to define repatriation would limit the range of NAGPRA.

§10.3 Intentional Excavations

Mr. McKeown proposed that the following sentence be added immediately before the last sentence of §10.3(c)(2): "Written notification should be followed up by telephone contact if there is no response in 15 days." The Committee concurred.

Mr. Monroe asked for an explanation of when a planned activity would be subject to review under Section 106 of the National Historic Preservation Act as referred to in §10.3(c)(3). Mr. Hanslin replied that any action which is assisted by Federal money, or which requires a Federal permit, and has the ability to affect cultural resources, is subject to the provisions of Section 106. Thus, there would be a great deal of overlap between NAGPRA and Section 106 for Federal undertakings conducted on Federal or tribal lands.

Mr. McKeown recommended adding a sentence under §10.3(c)(4) to recommend that Indian tribes should take appropriate steps to: "(i) Ensure that the human remains and cultural items are excavated or removed in accordance with §10.3(b)(1), and . . ." The original phrase would be renumbered as §10.3(c)(4)(ii) and changed to read: "make certain that treatment and disposition of any human remains or cultural items excavated or discovered as a result of the planned activity are carried out in accordance with their ownership as described in §10.6." The Committee concurred.

§10.4 Inadvertent Discoveries

Mr. McKeown proposed changing the first sentence of §10.4(b) to: "Any person who knows or has reason to know that he or she has discovered human remains or cultural items on Federal or Tribal lands after November 16, 1990, must provide immediate telephone notification of the discovery, with written backup..." Mr. Hanslin explained that this change made it clear that the discoverer, as opposed to a bystander, has the responsibility to notify the appropriate authorities. Mr. McKeown explained that immediate telephone notification would provide a Federal land manager with the time necessary to identify the proper Indian tribal representatives prior to the receipt of formal, written notification and the beginning of the required 30-day consultation period.

Mr. Monroe referred to several comments that identified the one-working-day notification period required in §10.4(c) as being impractical. Mr. Sullivan reminded him of the recommended change in the previous section that required immediate telephone notification followed up by a letter, the receipt of which triggers the one-working-day deadline. Mr. Monroe asked what would happen if, after 30 days, there was no response. Mr. Hanslin replied that the statute only stops the excavation progress for 30 days so, if there was no response in 30 days, the excavation could continue. Mr. McManamon explained the finite period of inactivity was the reason the regulations had been structured to encourage proactive consultation and the development of a plan prior to excavation which could be followed in the case of a discovery. Mr. Hanslin added that in reality, the excavation probably would not resume in 30 days because other Federal laws could also apply. Ms. Craig reported that she had heard reports that construction companies might stop reporting discoveries because continued 30-day halts would cost them money. Mr. Ball said that, in his experience, companies often isolate a contested site and continue their work in other areas while the consultation process progresses.

Ms. Deborah Osborne, from the Federal Energy Regulatory Commission, asked how to proceed if, 30 days after an inadvertent discovery, no approved written plan of action is in place. Mr. McManamon agreed that this question had been raised by a number of commentors and promised to see if the section could be clarified.

Mr. Wozniak asked for guidelines to determine the "area of discovery", where project activity must be suspended, as stated in §10.4(c). In addition, Mr. Wozniak questioned the necessity for notifying

tribes when a discovery had been made anywhere on their aboriginal land claim as too broad a spread of cultural affiliation.

§10.5 Consultation

Mr. McKeown recommended inserting the following sentence before the last sentence in §10.5(b): "The notice shall propose a time and place for meetings or consultation to further consider the inadvertent discovery or intentional excavation, the Federal agency's proposed treatment of the human remains or cultural items that may be excavated, and the proposed disposition of any excavated human remains or cultural items." The Committee concurred.

Mr. McKeown proposed retitling §10.5(f) "Comprehensive agreements." Mr. McManamon explained that one of the statute's primary goals was improving relationships between Indian tribes and Federal agencies. In his eyes, comprehensive agreements were a way to bring people together and, hopefully, create more positive relationships through the continual discussions necessitated by such agreements. The regulations had not been drafted with the thought that Federal agencies would draw up *pro forma* documents and continue with business as usual. Mr. Walker and Ms. Naranjo asked that examples of agreements be included. Mr. McKeown reminded the Committee that Appendix E of the regulations had been reserved for such an example. Mr. McManamon described a hypothetical agreement which laid out the steps to follow and the individuals to contact when human remains or cultural items were discovered. In his view such an agreement could provide information to the Federal agency and to the tribe such that the Federal agency would know what to do and the tribe would be able to expect certain actions. Mr. Tallbull agreed that in such a situation the tribe would be able to monitor compliance with the plan.

Ms. Lefthand stated that face-to-face consultations were necessary because tribes had been hurt by Federal agencies whose idea of consultation was a letter. She asked how to trust someone you had never seen before. Ms. Naranjo agreed that face-to-face consultation was very important, especially for inspection of objects and repatriation requests. Initial contact, she felt, could be handled through telephone calls or letters but, as the process progresses, face-to-face meetings become imperative.

§10.6 Ownership

Mr. McKeown recommended amending the requirement for publication of general notices of the proposed disposition in a newspaper of general circulation to include provisions for publication "if applicable, in a newspaper of general circulation in the area(s) in which culturally affiliated Indian Tribes now reside." Such a provision would ensure that culturally affiliated Indian tribes were aware of inadvertent discoveries in their former territories. The Committee concurred.

Mr. Wozniak asked for clarification of what information would be published in a Notice of Intent to Repatriate. In addition, he questioned the propriety of requiring a notice of proposed repatriation to be published in a general circulation newspaper as such a notice would alert pothunters to forthcoming opportunities and call undue attention to the repatriated objects. He suggested directly contacting all tribes which had been consulted. Mr. McManamon responded that the published notice was intended to notify all lineal descendants who may or may not have been contacted previously and

it should announce an impending repatriation without mentioning reburial. Mr. Sullivan commented if the notice mentioned the discovery site that would give pothunters a location to search. Mr. McKeown added that the alternative would risk repatriation to the wrong people.

§10.8 Summaries

Mr. McKeown proposed changing the term "undertakings" in §10.8(a) to "actions." Mr. Walker asked for clarification, stating that the changed language did nothing but scare a non-lawyer. Mr. McManamon explained that the term "undertakings" had a specific meaning within the context of Section 106 of the National Historic Preservation Act. A less specific term was needed for the NAGPRA context. Mr. McManamon stated he was not entirely happy with the change as it begged the question of who decides if an activity falls under NAGPRA. He explained he had heard reports that some U.S. Army Corps of Engineers districts were applying the principles of NAGPRA to activities on non-Federal lands. It is a question the Department of the Interior will have to look at.

Mr. Sullivan requested clarification regarding the applicability of civil penalties to museums that did not complete summaries by the November 16, 1993 deadline stipulated in §10.8(c). Mr. McManamon stressed that the section of the regulations regarding civil penalties had been drafted and agreed that the Committee would need to address the issue of penalties at an upcoming meeting.

Mr. McKeown recommended the addition of the following sentence under §10.8(d)(2): "Consultation may be initiated with a letter, but should be followed up by telephone or face-to-face consultation." He also proposed including the following as the second sentence under §10.8(d)(3): "A copy of the summary shall also be provided to the Departmental Consulting Archeologist." The Committee concurred.

Mr. Haas was concerned with the feasibility of museums identifying traditional religious leaders for consultation. Ms. Naranjo indicated that some Pueblos did not want museums to contact religious leaders. Mr. Tallbull concurred, stating that the Northern Cheyenne have two governmental structures, the formally elected tribal officials and a traditional governmental of 44 chiefs. Some museums have consulted with traditional chiefs without notifying the tribal government. This has caused confusion. Mr. McManamon explained that current wording was designed to reflect the contentious nature of religious and political leadership in some tribes by allowing museums some latitude in how they identify traditional religious leaders. Mr. Haas suggested subsuming §10.8(d)(ii) and (iii) under §10.8(d)(iv) so that a museum's request for the names of traditional religious leaders, where appropriate, would be a part of its total request for recommendations on how the consultation process should be conducted.

Ms. Naranjo voiced her concern with the requirement in §10.8(e) to provide item-by-item lists to the Departmental Consulting Archeologist. She felt the primary relationship intended by the statute was between museums and Indian tribes. Ms. Naranjo also worried that sensitive information held by the Departmental Consulting Archeologist might get into the wrong hands through a Freedom of Information Act request. Mr. McManamon replied that the lists are necessary to allow the Committee to monitor the repatriation process as well as providing a central location for information which may be useful to other tribes and/or museums. Mr. McManamon added that the language could be changed to ensure that if sensitive information was included as part of the decision making process it

not become part of the public record. He suggested deleting §10.8(e)(1-8) and revising the next sentence to read: "The notice of intent to repatriate shall describe the unassociated funerary objects, sacred objects, or objects of cultural patrimony being claimed in sufficient detail so as to enable other individuals or Indian tribes to determine their interest in the claimed objects."

Mr. Haas inquired as to how long a museum should wait after the publication of a notice in the *Federal Register* before it proceeded to repatriate human remains or cultural items. Mr. McManamon explained that §10.10 contained the statement that repatriation could take place 30 days after the date the notification was published. Mr. Haas suggested that the information also be included at the end of §10.8(e). Mr. Monroe objected to the 30 day waiting period, stating that the statute was clear that nothing should prevent repatriation. He referred to the comment by Mr. Jack Trope and Mr. Walter Echohawk in which they argued that repatriation should occur immediately and not be delayed. Mr. Haas and Mr. Sullivan responded that failure to publish such a notice would be disastrous to the entire process. Mr. Haas explained that the Field Museum was currently involved in the repatriation of a sundance wheel to the Northern Arapaho. The museum's records indicated that the wheel originated on the Wind River Reservation, home of the Northern Arapaho. The museum consulted with the Arapaho Business Council, the Council of Ceremonial Elders from the Northern Arapaho, members of the Northern Arapaho Sun Dance Ceremony, members of the Northern Arapaho Tribal Council and a member of the Southern Arapaho Tribal Council. All of the consultants confirmed that the wheel should be repatriated. However, during the process of receiving approval for repatriation from the museum's Board of Trustees, members of the Arapaho community, a keeper of the sundance wheel, a chief of the Sun Dance Ceremony, and a keeper of the Southern Arapaho sundance wheel contacted the museum and urged them not to repatriate. An additional objection was raised by the Southern Arapaho following publication of the Notice of Intent to Repatriate in the *Federal Register*. Mr. Haas felt the 30 day waiting period had provided the Southern Arapaho community with the time necessary to discuss the situation and voice their objection.

Mr. Wozniak questioned the need to summarize archeological surface collections as it was probable that they would not contain sacred objects or objects of cultural patrimony. Mr. Monroe felt it would not be safe to assume, just because the materials were collected from the surface, that they were not sacred or objects of cultural patrimony. Mr. Haas counseled following the directives in §10.8 but to realize that museums would not be able to provide the same amount of detail for archeological collections as they could for ethnographic collections.

§10.9 Inventories

Mr. McKeown recommended replacing the term "undertaking" in §10.9(a) with "action." The Committee concurred.

Ms. Naranjo asked how long is a reasonable time for a museum to wait for a response. She explained that some Indian tribes do not respond to letters, in addition, some letters do not reach the appropriate person, so a follow-up telephone call might get a better response. But, she questioned how much more beyond a letter and a phone call would be reasonable to expect.

Mr. Monroe requested that the first line of §10.9(b)(2) be rewritten as follows: "Museum and Federal agency officials shall begin inventory consultation as early as possible, no later than the point in the

inventory process at which investigation into the cultural affiliation of human remains and associated funerary objects is being conducted." Mr. Monroe remarked that a number of responses concerned the definition of consultation and he felt that point needed some discussion and possibly the inclusion of minimum parameters. Mr. McManamon responded that he felt, from his work with other regulations, that the proposed regulations dealing with consultation during excavation were among the most detailed in trying to describe how to go about consulting. Mr. Monroe was concerned with the regulations dealing with consultation during the summary and inventory process. He wanted to add more detailed guidelines for museums and tribes to forestall museums writing a single letter and letting the process die. Ms. Craig said the small villages in Alaska would probably contact the larger Native corporations to find out what to do with a museum notification. She continued with a recommendation for museums to send copies of everything mailed to a village to the central Native corporation as well.

Mr. McManamon raised the possibility of requiring face-to-face consultation but both Mr. Monroe and Mr. Walker said that there would be times when a face-to-face consultation would not be possible and such a requirement would be a burden to both tribes and museums. Mr. Tallbull responded that a law may require consultation but the parties don't have to listen to one another. He said some Indians feel that Federal agencies simply "go through the motions" of consultation without any intention of considering the other party's side. This feeling has made some tribes reluctant to participate in consultations. Ms. Craig added that in some instances face-to-face consultation with elders would be the only means of identifying some sacred and burial objects. Mr. Monroe wanted to clarify that consultation was construed to mean a dialogue. Mr. McKeown proposed adding a sentence to read: "Consultation may be initiated with a letter, but should be followed up by telephone or face-to-face dialogue." The Committee agreed. Mr. Sullivan also suggested the inclusion, at the end of the regulations, of a sample consultation procedure. Mr. McManamon agreed that the Park Service would draft sample procedures for review by the Committee.

Ms. Naranjo referred to one of the comments that recommended the inventory of culturally unidentified human remains and cultural items identified in §10.9(d)(2) be publicized by tribal media. Mr. McManamon recommended against including such a requirement in the present section, as §10.11 had specifically been reserved to outline requirements for such items. Including a requirement in this section would unduly tie the Committee's hands when the time comes for their recommendations to the Secretary.

Mr. Wozniak asked what sort of electronic format, as stated in §10.9(e)(4), would be required for the transmittal of information to the Department of the Interior. Mr. Mcmanamon replied the language as written was rather strong and a change would be considered to allow for leeway.

Mr. Monroe recommended that "an extension" referred to in §10.9(f) be changed to "one extension" to make it clear that continued extensions would not be possible.

Mr. Wozniak voiced concern that §10.8 and §10.9 required Federal agencies to ensure all requirements were met for collections which originated on lands controlled by them. Mr. Wozniak pointed out that a large percentage of the materials were collected as a result of research initiated and carried out by the universities and museums which now hold the collections. Mr. Wozniak asked that shared responsibility for these collections be considered.

§10.10 Repatriation

Mr. Monroe objected to the requirement in §10.10(b)(2) that repatriation of human remains and associated funerary objects not occur until a Notice of Inventory Completion had been published in the *Federal Register*. In Mr. Monroe's opinion, that requirement was contrary to other provisions in the statute. He was concerned that museums and agencies would delay repatriating remains until they had completely finished and published all their inventories. Mr. McManamon replied that he felt §10.9 had made it clear that museums and agencies were encouraged to produce inventories on parts of their collections, especially on the parts where they had more information.

Ms. Naranjo raised objections to the exception for scientific study "commenced prior to receipt of a request for repatriation" in §10.10(c)(1). Mr. Sullivan noted that the particular statement was even stronger than the statutory language. Mr. McKeown added that the revision had been made based on discussion at the Fort Lauderdale meeting. Mr. Walker and Mr. Monroe agreed it was a tough standard. Mr. Haas asked if comments had been received regarding the section. Mr. McKeown replied that three commentors recommended deleting the section. Mr. Monroe and Ms. Naranjo recommended removing the phrase as there had been an objection to it in the comments.

Mr. Tallbull asked whether the benefit to Indians might be considered in defining whether a study was of "major benefit" to the United States. Numerous studies have been conducted on Federal and Indian lands and he didn't recall ever seeing the results made available to a reservation library. Mr. Haas suggested including a statement in the Preamble indicating that the Committee considered the "major benefit" standard to be a very high one. Mr. Tallbull also requested that the information gained from any scientific study be made available to Indians.

Ms. Osborne asked who would decide what constituted a scientific study of major benefit to the United States. Mr. McManamon responded that, at this point, there was no definition of "major scientific importance" and he felt such situations would be rare. He suggested consultation if an agency believed a study to be crucially important. If no agreement could be reached, the tribe and the agency could present the situation for dispute resolution.
Ms. Naranjo requested that the final phrase in §10.10(c)(2) be changed from "proper recipient" to "most appropriate recipient" to more closely reflect statutory language. Mr. Sullivan proposed changing the second line of the section to read: "In such circumstances, the museum or Federal agency may retain the human remains and cultural items..." The Committee concurred with both changes.

Mr. Haas cited several comments requesting the return to statutory language in §10.10(c)(3). Mr. Hanslin explained that the statutory language had been changed for legal considerations. The United States Claims Court referred to in the statute no longer exists and has been replaced by the Court of Federal Claims, a statutory court. But, the Supreme Court is the only court which can decide a taking and Congress cannot, by writing a law, decide that a statutory court has priority over the Supreme Court. Mr. Sullivan said the Committee simply wanted to make clear what a Fifth Amendment taking was. Mr. Hanslin agreed and suggested "as determined by the Supreme Court of

the United States." Mr. Daniel Weiner, outside counsel for the American Museum of Natural History, New York, N.Y., commented that the phrase might confuse people and make them think such a case would have to go to the Supreme Court. Mr. Hanslin responded with the phrase, "a court of appropriate jurisdiction upon application of established Federal case law."

Mr. Sullivan requested a separate section for the last sentence in the paragraph of §10.10(c)(3) because he felt it was a very important concept and had come directly from the statute. Mr. McKeown responded that the structure of the section would not fit if the sentence was made §10.10(c)(5), but that some other revision could be worked out emphasize the sentence.

Mr. McKeown proposed inclusion of a statement to be renumbered §10.10 (e) indicating that museum or Federal agency officials should inform the recipients of repatriations of any known past treatment of the objects that might represent a potential health hazard to persons handling the objects. The Committee concurred.

Mr. McKeown proposed including a statement under §10.10 (e) specifying the potential applicability of various endangered species legislation to the repatriation process. Mr. Monroe questioned the addition of such a blanket statement requiring compliance without understanding the affect on NAGPRA. He was concerned that the addition would create confusion and suggested the regulations provide either an in depth analysis of the Federal wildlife laws and their application to NAGPRA or simply state that such laws may be relevant to certain objects repatriated under NAGPRA. Mr. Walker agreed and specifically noted that objects repatriated to northwest coastal Indian tribes might be covered by the Marine Mammal Protection Act. Ms. Craig agreed and remarked that Native Alaskans also made objects from marine mammal parts.

Mr. Sullivan described the Heard Museum's interaction with the Fish and Wildlife Service. Delegates from the Crow Nation in Montana had identified a medicine hoop, containing eagle parts, as a sacred object and requested its return. The Heard Board of Trustees agreed to repatriate the medicine hoop but asked if the museum could be accused of trafficking in endangered species. The question was resolved with a phone call to the Fish and Wildlife Service.

Ms. Marcia Cronan and Mr. Frank Shoemaker, Investigative Special Agents for the U.S. Fish & Wildlife Service, were asked to address the Committee. Ms. Cronan explained that there were so many Federal wildlife statutes which may apply to Native American cultural objects, due to the inclusion of protected animal parts, that the easiest way for a museum to be sure they were in compliance would be to call a central contact person for the Fish & Wildlife Service and get the information. Mr. Monroe and Mr. Haas asked if the Service was prepared to deal with the thousands of questions they might receive from small museums and historical societies whose collections include marine mammal ivory or bone. Ms. Cronan replied it would be to a museum's advantage to ask the question of the Service rather than be in violation of the Act. Mr. Monroe asked if the Service had ever prosecuted a museum. Ms. Cronan replied that she could not think of a museum in the Eastern Region, where she works, which had deliberately violated a Fish & Wildlife statute. Mr. Monroe asked if Native Americans were exempted from some of the provisions in the Acts. Ms. Cronan agreed that in some circumstances they were.

Mr. Weiner asked what the per unit cost of permits would be. Ms. Cronan replied the Service needed to look into the charges but she expected something could be worked out where one fee would cover all repatriated objects. Ms. Pemina Yellow Bird, member of the Three Affiliated Tribes, Fort Berthold Reservation, North Dakota, commented that the objects involved were not black market objects, they were the belongings of the dead. She disagreed with "white man's laws" regulating Native American cultural objects and she did not feel native peoples should need permits to have their ancestors returned. Ms. Cronan replied that the issue of a tribe obtaining a permit for cultural objects may not occur but, she simply wanted to make it known that the Service was available to answer questions should any museum, agency, or tribe have one. Mr. Walker asked if Fish & Wildlife intended to issue blanket waivers covering all repatriated materials. Ms. Cronan did not know of any intent at the current time but she agreed it should be looked into. The Committee recommended that information concerning possible Fish & Wildlife statute violations be placed in the Preamble to notify museums and agencies of the potential for problems.

Mr. McKeown recommended inclusion of a statement under §10.10 (e) indicating that museum or Federal officials, at the request of an tribal official, could take steps to ensure that information of a particularly sensitive nature is not made available to the general public. The Committee concurred.

§10.14 Lineal Descent and Cultural Affiliation

Mr. McKeown recommended replacing the "must" in §10.14 (c)(2) with "may include, but is not limited to." The Committee concurred.

Mr. McKeown recommended inclusion of a statement under §10.14 (d) indicating that findings of cultural affiliation should be based upon an overall evaluation of the totality of circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of some gaps in the record. Mr. McKeown explained that the proposed language was verbatim from the House Report per the comments of Mr. Echo Hawk and Mr. Trope. The Committee concurred.

§10.15 Repatriation Limitations and Remedies

Ms. Naranjo questioned the use of the phrase "timely claim" in the second sentence of §10.15 (a). Mr. Hanslin reminded her that the Committee developed the phrase at the Fort Lauderdale meeting as a means of identifying an end of the repatriation process. He continued that it only applied in a situation where repatriation is scheduled and a dispute occurs. In such a situation the protesting party has at least 30 days after a Notice of Intent to Repatriate or a Notice of Inventory Completion is published in the *Federal Register* to complain.

Mr. Sullivan questioned the change in the third sentence in §10.15(a) from "may" to "shall" so that the resulting sentence read "If there is more than one claimant, the human remains and/or cultural items shall be held by the responsible museum . . ." Mr. Sullivan felt that the use of "may" left open the possibility of a third party holding the object during the dispute resolution. Mr. Haas asked if the choice of "may" left museums open to accusations of not paying attention to repatriation claims. After the Committee members discussed possible alternative phrasing it was decided to stay with the statutory language.

PUBLIC COMMENT

Mr. Frank Wozniak, NAGPRA Inventory Coordinator for the Southwestern Region of the U.S. Forest Service, asked a number of questions regarding specific points in the regulations. His comments have been included under the appropriate regulatory reference.

Ms. Naida Lefthand, Assistant Director of the Kootenai Culture Committee on the Flathead Reservation in Montana and delegate from the Confederated Salish Kootenai of Pablo, Montana, commended the Committee on the time and effort they had expended trying to formulate the regulations. Ms. Lefthand concluded by asking the Committee members to keep their minds and heart open and to remember that the legislation is important to Native peoples.

Ms. Pemina Yellow Bird, member of the Three Affiliated Tribes from Fort Berthold Reservation, North Dakota and member of the North Dakota Inter-Tribal Reinterment Committee, spoke on behalf of the tribal peoples of North Dakota. Ms. Yellow Bird stated the proposed regulations deleted or negated many of the protections and sanctions contained in NAGPRA's statutory language, specifically she pointed to the changes in the definition of "Indian tribe" and "tribal lands." In addition, she complained that the tribes of North Dakota had little opportunity for input and no influence over the drafting of the regulations. Ms. Yellow Bird asked why legal counsel representing native peoples had not been present, in the same capacity as the Solicitor's Office representative, at Committee meetings and during the drafting of the regulations to protect the interests of native peoples. Ms. Naranjo and Mr. Monroe explained that tribal lawyers had supplied input through their comments on the proposed regulations and other regulation drafts as well as through their presence at Committee meetings and, although the Committee was concerned about the lack of nNtive legal counsel, they never felt the Solicitor's Office was trying to hoodwink the Committee. Mr. McManamon explained the Solicitor Office answered legal questions for the Departmental Consulting Archeologist's office, the office responsible for assisting the Committee. He added, if the Committee felt it needed additional assistance, the Secretary could consider the request. Ms. Yellow Bird requested the comment period be extended to allow opportunity for all tribes to review the issues raised at the meeting. Ms. Yellow Bird reminded the Committee that it had a Congressional mandate to carry out the requirements set forth in NAGPRA and concluded her three days of remarks by asking that the Committee members open their minds and hearts to hear Indian representatives speaking about protection of the rights of the ancestors. Ms. Naranjo thanked Ms. Yellow Bird for her comments.

Ms. Donna Augustine, member of the Micmac Tribe of New Brunswick, Canada, member of the Task Force for Museums and First Peoples in Canada and a representative of the Micmac Nation in Aroostook County, Maine, felt native peoples had not been notified and were not aware of what was happening with NAGPRA legislation. Ms. Augustine added that native people need help to get their ancestors back and she regretted the necessity of continually asking other people to return the ancestors. Ms. Naranjo agreed wholeheartedly with the need to bring the ancestors back home.

Mr. Tim Mentz, Sr., member of the Tribal Council, Standing Rock Sioux Tribe, Fort Yates, North Dakota, cautioned Committee members that they were not acting from their hearts. Ms. Naranjo responded that her community of Santa Clara was a very small, very strong community with a deep

sense of spirituality and, although she was not a religious leader, she was very, very spiritual. In addition, she wanted to reassure Mr. Mentz and other members of the public, that spirituality was very important to all the Committee members. Ms. Craig agreed and stated she put "her heart and soul" into her work. Mr. Mentz asked which Committee members were traditional religious leaders. Mr. Tallbull responded that he had reburied many people, at great spiritual risk to himself.

Mr. Mentz felt a representative from the Solicitor's Office was unnecessary at Committee meetings because the members should search themselves for what they needed to do. And, Mr. Mentz continued, if a Solicitor's representative attended the meetings so should a Native American legal representative.

Mr. Mentz chastised the Committee members for attending a reception at which alcoholic drinks were served when the spirits of the ancestors had not yet been laid to rest and for delegating themselves the authority to interpret the statutory law to fit their own vested interests. Ms. Craig admonished Mr. Mentz for speaking harshly to elders. Mr. Mentz asked why NAGPRA was required to have guidelines and regulations when the statutory language was explicit on implementation. In addition, he did not feel the Committee had the authority to determine the outcome of the reserved sections in the regulations, he felt such a determination was up to the tribes.

Mr. Mentz concluded by requesting a meeting of the Committee at the United Tribes Educational Technical College in Bismarck, North Dakota so the Plains area of the country could be heard. Ms. Naranjo thanked Mr. Mentz for his comments and told him the Committee would consider his invitation to meet in North Dakota.

Mr. Daniel Weiner, outside counsel for the American Museum of Natural History, commented that the statute did not preclude museums from dealing with non-Federally recognized tribes. He added, the American Museum of Natural History had dealt, and would continue to deal, with tribes that are not "Federally recognized." Mr. Weiner continued that an expansion of the current definition of "Indian tribe" would cost tribes as well as museums. In response to incredulity expressed by members of the audience with regard to the possibility of tribal misrepresentations, Mr. Weiner shared with the Committee an instance of misrepresentation which occurred at the American Museum of Natural History.

Mr. Weiner concluded that museums are also watching the Committee's actions and are paying particular attention to any attempts to change statutory language. He explained the museum community holds objects in trust for all peoples and, although they fully intend to comply with the statute, they are worried that deviation from statutory language will result in litigation at the expense of cooperation. Mr. Monroe thanked Mr. Weiner for his comments.

Mr. Darrell Newell, representative of the Passamaquoddy Tribe from Maine, encouraged the members of the Committee to be true to the responsibility they had been given and follow through with the spirit of the law.

OTHER BUSINESS

Minutes of the February 26-28, 1993, Committee meeting in Honolulu, HI, were approved by the Committee and signed by Ms. Naranjo.

Mr. McManamon opened discussion on several issues related to implementation of the statute.

Final Regulations. Mr. McManamon proposed the Departmental Consulting Archeologist's office make changes to the revised proposed regulations as recommended by the Committee and begin the process of final Departmental approval. Mr. Haas agreed that it was time to move on to the other issues which needed the Committee's attention. Mr. Monroe did not feel the Committee had fully exercised its responsibility by reviewing each of the comments in depth. Ms. Naranjo agreed she needed to go home and digest what she had heard at the meeting. Mr. Haas asked if each Committee member could review the draft final regulations and forward their comments to the Chair so she could communicate the Committee's collective concerns to the Department. Mr. McManamon proposed that if the Departmental review process yielded any major change, the Committee might consider a special session in Washington to discuss the change with the relevant Departmental officials. He also indicated that republication of the regulations in the *Federal Register* as "proposed" might be necessary if major changes were contemplated by the Department. Mr. Monroe asked how long it might take for the Department to review the final regulations. Mr. McManamon and Mr. Hanslin responded that the process might take about six months.

Reserved Sections. Mr. McManamon outlined the process by which the previously reserved sections would be drafted, published as proposed regulations in the *Federal Register* and published as Final Regulations.

Grants. Mr. McManamon indicated that the administration's budget request for fiscal year 1994 included $2.75 million dollars for NAGPRA grants. He was not sure what figure would actually be appropriated by Congress but was hopeful that the decision would be made by October, 1993.

CLOSING

Mr. McManamon thanked the Committee members for the time and effort they put into this meeting. He thanked the members of the public for their comments, Mr. Hanslin for his time and advice, and Park Service staff for their assistance in planning and implementing the meeting.

Mr. Tallbull provided some closing words for the meeting. The meeting was adjourned by Ms. Naranjo at 5:15 p.m. on Wednesday, September 22, 1993.

Approved:

Tessie Naranjo — June 6, 1994

Tessie Naranjo, Chair
Native American Graves Protection
and Repatriation Committee

Date

DRAFT MINUTES
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE
SIXTH MEETING: JANUARY 23-25, 1994
PHOENIX, ARIZONA

The sixth meeting of the Native American Graves Protection and Repatriation Review Committee was called to order at 9:00 a.m., Sunday, January 23, 1994, by Ms. Tessie Naranjo, committee chair. The committee meeting was held at the Heard Museum, Phoenix, AZ. The following committee members, staff, and others were in attendance:

Members of the committee:

Ms. Rachel Craig
Mr. Jonathan Haas
Mr. Dan Monroe
Ms. Tessie Naranjo, chair
Mr. Martin Sullivan
Mr. William Tallbull
Mr. Philip Walker

National Park Service staff present:

Mr. Francis McManamon, Departmental Consulting Archeologist, Washington, D.C.
Mr. C. Timothy McKeown, NAGPRA Program Leader, Washington, D.C.
Mr. Hugh (Sam) Ball, Archeologist, Washington, D.C.

The following others were in attendance during some or all of the proceedings:

Mr. Cecil Anton, Gila River Indian Community, Sacaton, AZ
Ms. Donna Augustine, representing Aroostook Band of Micmac Indians, ME
Mr. Kevin Barlow, Micmac Tribe, Canada
Mr. Richard M. Begay, Navajo Nation, Window Rock, AZ
Ms. Jan Bell, Arizona State Museum, University of Arizona, Tucson, AZ
Mr. Elgin CrowsBreast, Three Affiliated Tribes, Newtown, ND
Mr. Fred Fest, Peabody Western, Flagstaff, AZ
Mr. Manson Garreaux, Eagle Butte, SD
Mr. David Gillio, US Forest Service, Albuquerque, NM
Mr. Cedric Goodhouse, Standing Rock Sioux Tribe, Fort Yates, ND
Mr. Terry Gray, Rosebud Sioux Tribe, SD
Ms. Sherry Hutt, Phoenix, AZ
Mr. Michael Jardreau, Lower Brule Sioux Tribe, Lower Brule, SD
Mr. Leigh Jenkins, Hopi Tribe, Kykotsmovi, AZ
Mr. Keith Kintigh, Arizona State University, Tempe, AZ
Mr. Sebastian LeBeau, Cheyenne River Sioux Tribe, SD
Ms. Shereen Lerner, Mesa Community College, Mesa, AZ
Mr. John Lewis, Intertribal Council of Arizona, Phoenix, AZ
Mr. Tom Lincoln, Bureau of Reclaimation, Phoenix, AZ

Mr. Owen Lindauer, Arizona State University, Phoenix, AZ
Mr. Paul Little, North Dakota Intertribal Reinterment Committee, Devil's Lake Sioux Tribe, ND
Mr. Ronald Little Owl, North Dakota Intertribal Reinterment Committee, Three Affiliated Tribes, ND
Ms. Gloria Lomahaftewa, Heard Museum, Phoenix, AZ
Mr. Ruben McCloskey, United Sioux Tribes, Pierre, SD
Mr. Tim Mentz, Sr., Standing Rock Sioux Tribe, Fort Yates, ND
Ms. Alida Montiel, Intertribal Council of Arizona, Phoenix, AZ
Mr. Jerry Nagel, Three Affiliated Tribes, ND
Ms. Oelomi Nagel, Three Affiliated Tribes, ND
Mr. Darrell Newell, Passamaquoddy Tribe, Princeton, ME
Mr. John Ravesloot, Gila River Indian Community, Sacaton, AZ
Mr. Rick Red Eagle, Phoenix, AZ
Mr. Charles Redman, Arizona State University, Tempe, AZ
Mr. Ken Sayers, North Dakota Intertribal Reinterment Committee, Turtle Mountain Band of Chippewa, ND
Mr. Clarence Sky, United Sioux Tribes, Pierre, SD
Mr. David Smith, Winnebago Tribe of Nebraska, Winnebago, NE
Ms. Yolanda Hart Stevens, Gila River Indian Community, AZ
Ms. Connie Stone, Bureau of Land Management, AZ
Mr. Gary Stumpf, Bureau of Land Management, AZ
Mr. Raymond Thompson, Arizona State Museum, University of Arizona, Tucson, AZ
Mr. Carey Vicenti, Jicarilla Apache Tribe, NM
Mr. Peter Welsh, Arizona State University, Tempe, AZ
Mr. Frank E. Wozniek, US Forest Service, Albuquerque, NM
Mr. Alfred Yazzie, Navajo Nation, AZ
Ms. Pemina Yellow Bird, North Dakota Intertribal Reinterment Committee, Three Affiliated Tribes, ND

The committee and National Park Service staff introduced themselves. Ms. Naranjo confirmed there was a quorum present. Mr. Francis P. McManamon advised the committee that notice of the meeting had been published in the *Federal Register* as required under the Administrative Procedures Act. Ms. Naranjo then asked Mr. William Tallbull to offer an invocation. Mr. Martin Sullivan introduced Mr. John Lewis of the Intertribal Council of Arizona and thanked him and his organization for cosponsoring the meeting with the Heard Museum.

Review of the Agenda

Mr. Mcmanamon reviewed the meeting agenda. Major items included: 1) election of a committee Chair for 1994: 2) review of implementation activities; 3) discussion of regulation sections previously reserved for civil penalties and sample draft inventory; 4) review of the committee's dispute resolution procedures; 5) discussion of regulation sections previously reserved for the disposition of culturally unidentifiable human remains in museum and Federal agency collections, disposition of

unclaimed human remains and cultural items excavated or discovered on Federal or tribal lands, and future applicability of statute.

Chair Election

Mr. Sullivan nominated Ms. Naranjo to serve as Chair for 1994. There was unanimous consent to retain Ms. Naranjo as committee Chair for 1994.

Implementation Update

Mr. Mcmanamon presented information regarding the current status of efforts to implement the statute. The statute required Federal agencies and museums that receive Federal funds to complete summaries of their collections that might contain unassociated funerary objects, sacred objects, and objects of cultural patrimony by November 16, 1993. These summaries were to be sent to culturally affiliated Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations, with copies to the Archeological Assistance Division (AAD). Mr. McManamon reported that AAD had thus far received copies of summaries from over 500 Federal agencies and museums, and provided the committee members with a listing of those institutions.

After reviewing the list of institutions that had sent copies of summaries to AAD, Mr. Walker expressed his concern that some Federal agencies and museums that he believed currently held unassociated funerary objects, sacred objects, and objects of cultural patrimony were not on the list. Mr. Haas was particularly concerned that very few university departments of anthropology had submitted summaries. Mr. Sullivan and Mr. Haas also noted that some Federal agencies appeared to be missing. Mr. McManamon explained that each Federal agency had developed its own approach to completing the summaries. Some, like the National Park Service and the Bureau of Reclamation, submitted one summary of its whole collection. Others, such as the Department of Energy, had delegated reporting responsibilities down to individual field offices. Mr. McKeown explained that some museums and Federal agencies may not have realized that they needed to send copies of their summaries to AAD. Mr. McManamon suggested that national museum organizations such as the American Association of Museums might be able to provide some assistance in identifying museums that have thus far not sent out summaries. Mr. Monroe suggested placing reminder notices in museum professional publications. Mr. Walker suggested asking Indian tribes to identify museums and Federal agencies that they believe have unassociated funerary objects, sacred objects, and objects of cultural patrimony but from which they have not received summaries. Mr. McManamon noted that many Indian tribes have yet to complete their review of all the summaries. Mr. Tallbull explained that the Northern Cheyenne Tribe is having difficulty reviewing all the summaries and setting priorities regarding follow up. Ms. Naranjo reported that some museums in New Mexico were concerned about making particularly sensitive information in their summaries part of the public record and had thus not submitted copies to AAD. Mr. McKeown said that many Indian tribe representatives had expressed interest in having access to the summary information and that AAD hoped to make available a computerized cross-reference of all Federal agencies and museum sending summaries and all Indian tribes receiving summaries. No summary text will appear in that database.

Mr. McManamon reported that Congress had appropriated $2.3 million for grants to assist museums and Indian tribes in implementing the statute. Grant guidelines have been prepared and distributed to all 759 Federally recognized Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations and to nearly 500 museums that had submitted copies of their summaries to the AAD. Federal agencies are not eligible for grants. Deadlines for grant applications are in March, 1994. Mr. McManamon stated that he expected grants administration to become an increasing work load for the AAD staff. Mr. McManamon also reported that AAD had recommended that the grant budget be increased to $10 million in FY 1995 but that the final determination within the administration had not been made.

Mr. McManamon reported that AAD's outreach activities were increasing. A separate NAGPRA module has been established as part of the National Archeological Data Base (NADB). This on-line system provides ready access to electronic copies of the statute, legislative history, proposed regulations, and Federal Register notices. Mr. McManamon also reported that data entry was continuing on a cross-listing of all summaries received by AAD, indicating the sending institution and the receiving Indian tribe, Alaska Native village or corporation, or Native Hawaiian organization. Mr. McManamon asked committee members and members of the public for information regarding other on-line networks related to museums and Indian issues so those networks can receive NADB access information.

Mr. McManamon reported that members of the AAD staff had been involved in training around the country. Staff members had participated in a variety of meetings of national Indian, museum, anthropological, and archeological organizations. Mr. McKeown is co-teaching a three day course on the statute through the University of Nevada-Reno. Ms. Naranjo stated that there was a great need for additional training for Indian communities. Ms. Craig agreed, stating that Alaska Native villages and corporations want to begin working on their summaries, but need training. Mr. Monroe stated that there was a great need for training within the museum community as well, citing smaller museums' unfamiliarity with the statute and procedures leading to specious claims being honored. Mr. McManamon said that the AAD is hoping to develop a more active and regular training program, but the office has very limited staff and resources to generate and deliver such a program.

Mr. McManamon reported that those changes to the final regulations recommended by the committee at its September, 1993, meeting in Washington had been made and that drafting of the preamble for the final regulations was ongoing. He then outlined the process that would be used within the Department of the Interior to review the final regulations prior to their publication in the Federal Register. Mr. Monroe asked for clarification of the purpose of the preamble. Mr. McKeown responded that the preamble is an indispensable part of the regulatory record in that it details the range of comments received on the proposed regulations and provides explanations for any changes made. Mr. Monroe and Mr. Walker requested that the committee be able to review the final regulations before they are sent to the Secretary. Mr. Monroe was concerned that the committee would not be aware of the final form and wording of the regulations and would not have the opportunity to voice on-going differences of language. Mr. McManamon assured the committee that he would inform them if the Departmental review resulted in any significant changes to the final regulations.

Mr. Monroe asked for the committee to discuss the interpretation of the definition of "Indian tribe" in the final regulations. An Indian tribe is defined in the statute as a group recognized as eligible for the special benefits and services provided by the United States to Indians because of their status as Indians. That definition has been interpreted in other statutes, particularly the American Indian Self Determination Act, to include only those entities recognized by the Bureau of Indian Affairs. The final NAGPRA regulations reiterate the statutory definition and stipulate that the Secretary of the Interior will promulgate a list of Indian tribes eligible under the statute. Mr. Monroe was concerned that the Secretary would simply use the BIA list, which he saw as problematic in light of the looser standards used in the statute to define a Native Hawaiian organization. Mr. McManamon explained some alternatives in broadening the current interpretation, including development of a list of Native American organizations recognized as eligible by any Federal agency. Mr. McManamon and Mr. McKeown will work with the Solicitor's Office to explore the viability of broader interpretations of the statutory definition. Mr. Tom Lincoln, an archeologist with the Bureau of Reclaimation, stressed the importance of interpreting the definition in a fashion that did not allow Federal agencies and museums to decide for themselves if a particular group had standing under the statute.

Mr. Tallbull asked for a clarification regarding protection afforded funerary objects found on private or state lands. He explained that the Northern Cheyenne people continually place funerary object at or near grave sites, and that just about anyone, if they wanted to, can take them. Mr. McManamon stated that funerary objects found on Federal or tribal lands could be protected under provisions of NAGPRA as well as the Archeological Resource Protection Act. Funerary objects found on private or state land might be covered by applicable state laws.

10.12 Civil Penalties

Mr. McManamon explained that the statute authorizes the Secretary of the Interior to assess civil penalties against any museum receiving Federal funds that fails to comply with provisions of the act. However, assessment of civil penalties under these provisions requires promulgation of regulations outlining procedures to ensure due process. The draft of these procedures provided to the committee was intended as a starting point for development of proposed regulation and, following a period of public comment, eventual promulgation of final regulations. Mr. McKeown explained that the format of the present draft was modeled on procedures used to assess civil penalties under the Archeological Resources Protection Act.

Mr. Monroe asked for clarification as to who had standing to bring failures to comply to the notice of the Secretary. Mr. McManamon responded that failures to comply could be reported to the Secretary by any party. Mr. Vicenti noted that in the assessment of civil penalties for non-compliance with the act, the Secretary served as an enforcement official who was able to take complaints from any person discovering an issue of noncompliance who would then serve as a witness for the inquiry. Ms. Hutt explained that the committee had an important role in recommending specific criteria for action on the part of the Secretary. She also questioned whether the committee should serve as a preliminary tribunal in the penalties process given its temporary nature. Ms. Naranjo and Mr. Vicenti concurred that the Secretary served as the enforcement official. Mr. Monroe asked whether the Secretary would evaluate each claim of failure to comply separately or could consider multiple claims against a single museum in the aggregate. Ms. Sherry Hutt, a Maricopa County judge and former United States

Assistant District Attorney, responded that the Secretary has considerable discretion in making assessments and that the Office of the Solicitor will play an important role in deciding how to present charges. Mr. McManamon explained that the director of the National Park Service will be acting for the Secretary of the Interior in actions filed under civil penalties. Mr. Walker questioned the process for reporting Park Service noncompliance. Mr. McManamon stated that the civil penalties section deals specifically with museums and institutions which are not Federal agencies. Other means exist to file complaints against Federal agencies.

Mr. Monroe recommended that due process considerations be addressed throughout the section. Mr. McKeown explained that the process of fact finding, determination of failure to comply, assessment of penalty, and appeal derived from the ARPA civil penalty procedures satisfies Constitutional due process requirements. Ms. Hutt added that adoption of the ARPA wording would also comply with administrative law processes encouraging negotiation to resolve the charge prior to institution of assessment procedures. She also recommended that specific criteria for evaluating claims be included in the regulations. Mr. Haas recommended that the regulations clearly state when complaints will be verified and exactly when penalties would be levied. Mr. Ken Sayers of the Turtle Mountain Chippewa asked the committee to recommend that language be included to allow statements in the procedures from an aggrieved party regarding the effects and damages suffered because of the museum's noncompliance. Mr. Monroe recommended that specific deadlines be included for the Secretary to respond to any party filing a statement of noncompliance. He also reiterated his recommendation that tribes be notified of proposed responses to non-compliance complaints and allowed opportunities to testify during the procedures. Mr. LeBeau commented that the procedures sounded to him like an attempt to allow museums to drag the process out. Mr. Monroe replied that the current draft was modeled after an already existing process. The procedures for assessing civil penalties must be fair and meet the due process criteria specified in the Constitution. Mr. Monroe stated that he wanted to ensure that both museums and Indian tribes will have direct access to civil penalty procedures once they are established.

Mr. McKeown presented additional text that specified that any Indian tribe or Native Hawaiian organization this is, or is likely to be, culturally affiliated human remains or cultural items in the possession or control of a museum may bring evidence of that museum's failure to comply with provisions of the statute to the attention of the Secretary. A second subsection specified the procedures to be followed by the Secretary when verifying the validity of a complaint of non-compliance. Mr. LeBeau spoke in support of insert Section B and C.

Mr. Monroe requested that additional language be included in the regulations specifying situations in which civil penalties may not be assessed, such as if a museum decided not to comply with the committee's recommendation following a dispute hearing. Mr. Vicenti advised against such an exclusion in the regulations, since a museum's refusal to follow the committee's recommendation might become an issue of noncompliance, with the recommendation becoming part of record.

Mr. Monroe recounted his understanding of the legislative history regarding penalty amounts, indicating that Congress intended the amount to be sufficient to motivate compliance. Mr. Walker concurred that penalty amounts should be sufficient to have a deterrent effect. Ms. Hutt reminded the committee that whatever system for calculating penalty amounts was used would have to be consistent with the statutory language. She also recommended that the regulations include a liquidated formula

for use by judges in determining penalty amounts so that everyone would be on notice about the possible costs of non-compliance.

Mr. McKeown read from section 9 (b) of the act that stipulated that penalty amounts be determined by taking into account: 1) the archeological, historical, or commercial value of the item involved; 2) the damages suffered, both economic and non economic, by an aggrieved party, and 3) the number of violations that have occurred. Mr. Sullivan suggested the committee look carefully at the language used in the Archeological Resources Protection Act regarding the calculation of penalties based upon the commercial value of the item involved. He felt that if such an approach was used in calculating penalties under NAGPRA the regulations should carefully avoid using language that would provide any credence to the values of collectors and auction houses. Ms. Hutt agreed with Mr. Sullivan's caution, but suggested that while such evaluations might be repugnant to many, the alternative would require development of guidelines to calculate the historical or cultural value of an object that would fit within an administrative law framework. Mr. Monroe objected to any determination of penalty amounts based on the cultural value or cost of damages to the aggrieved party. Mr. Little Owl objected to use of the economic value of human remains or cultural items in determining penalty amounts. Mr. Monroe objected to basing penalty amounts on the cost of completing a summary, inventory, or repatriation because of the difficulty in calculating those costs. Mr. Monroe suggested use of a system of daily fines during the period of non-compliance. He suggested that penalties should be based on a percentage, such as .05%, of the non-complying museum's annual budget, not to exceed $5,000. He then suggested that if, after exhausting its rights to appeal, the museum continues to be in non-compliance, an additional penalty of $100 per day be assessed until the museum complies with provisions of the act. Mr. McKeown indicated that the Solicitors Office had indicated that such a two phased penalty structure based on a percentage of the non-complying museum's annual budget an a flat daily penalty for continued non-compliance, would be workable. Mr. Haas suggested that the penalty rates should be increased for second and third failures to comply. Mr. Sullivan voiced his support for a system of daily fines and re-emphasized that the goal was to ensure compliance, not collect money. Mr. Sayers suggested a two phase penalty process with an initial penalty amount that could be mitigated if the museum complies within a set time frame. Continued failure to comply after the set time could result in additional daily penalties. Mr. Monroe, Mr. Walker, and Mr. Sullivan agreed that the two phase penalty system represented a good beginning to consideration of penalty calculation. Mr. Vicenti suggested that penalty amounts should also include costs incurred by the aggrieved party and by the court if collection by the court is required. Mr. Vicenti asked if double or triple damage costs might be an appropriate method of assessing penalties in cases where a museum had been charged with second or third violations. Ms. Hutt explained that any approach to determining penalty amounts would necessarily have to fall within the parameter specified in the Act. Double or triple damages would probably be considered to be punitive in nature and would not hold up if tested in court. Mr. Vicenti added that while the penalties must be significant, they cannot be severe. Mr. Vicenti suggested that a performance option could be used to mitigate punitive-appearing penalties. Ms. Hutt responded that such an option would be similar to a purge clause and would have to be researched. Mr. Gray recommended that museums found to be in non-compliance with the act be precluded from obtaining Federal funds for a period of ten years. Mr. Monroe stated that such a penalty mechanism had been considered by Congress but that the specific language had not been included in the act.

Ms. Hutt asked the committee to consider where any civil penalties that might be collection should go. Mr. Vicenti agreed that the regulations should specify the destination of the fines levied. Mr. Little Owl recommended that these monies be given to the aggrieved Indian tribe. Ms. Hutt said that all penalty monies collected under the Archeological Resources Protection Act cases on Indian lands go directly to that tribe, and that the United States Fish & Wildlife Service have been successful in making certain that collected monies go to the aggrieved parties instead of to the "black hole" of the United States Treasury. Mr. McKeown stated that the Solicitors Office had indicated that since, unlike ARPA, the destination of penalty monies was not specified in NAGPRA, these monies would have to be returned to the Treasury. Mr. Monroe questioned whether penalty amounts might be directed to some specific Federal account, such as NAGPRA grants.

Sample Inventory

Section 5 of the statute requires museums and Federal agencies to complete inventories of all human remains and associated funerary objects in their collections by November 16, 1995. The committee recommended at previous meetings that a sample inventory be developed to guide compliance with this requirement. A separate section was reserved in the proposed regulations to accommodate the sample inventory. Mr. McManamon opened discussion of the sample inventory by reiterating the statutory requirements and summarizing the committee's previous recommendations regarding completion of this document.

Mr. Monroe questioned whether completion of the inventory required consultation with the appropriated culturally affiliated Indian tribe. Mr. McManamon explained the regulations required consultation prior to completion of the inventory. Mr. McKeown explained that the inventory is required to be a very different document than the summary. Summaries did not have to be completed in consultation and were required only to summarize collections that might include unassociated funerary objects, sacred objects, and objects of cultural patrimony with which a particular Indian tribe was likely to culturally affiliated. The summary serves as an invitation to consult. The inventory is much more like an agreement, in that it requires museums and Federal agencies, after consultation, to identify the Indian tribe that is culturally affiliated with the human remains and associated funerary objects. Mr. Sullivan suggested that the result of consultation be listed separately in the sample inventory to reinforce its importance in the inventory process. Mr. Monroe concurred, and felt inclusion of a checklist of consultation procedures would insure greater compliance with the statute. Mr. Haas recommended that a separate column for information on the geographic affiliation of the human remains and associated funerary objects be included in the sample inventory. Mr. Sullivan, Ms. Craig, and Mr. Tallbull agreed, indicating that information on geographic affiliation is required by the statute and would be extremely helpful in determining the cultural affiliation of the human remains and associated funerary objects. Mr. McManamon agreed, and indicated that the sample inventory would revised accordingly.

Mr. Monroe asked whether the sample inventory shouldn't include all human remains with the museum or Federal agency's collection. Mr. McKeown responded that sample inventory was intended as a comprehensive guide for completion of the actual inventory. As such it attempted to synthesize a wide range of possible situations that might be faced by any particular museum or Federal agency. However, it was also greatly simplified and was not intended as a model of what an actual inventory

would look like. Mr. Haas recommended adding examples of culturally unidentifiable human remains in the sample inventory. Mr. Sullivan agreed, emphasizing the importance of have a complete listing of all human remains -- both culturally affiliated and culturally unidentifiable -- in museum and Federal agency collections.

Sample Agreement regarding Repatriation

Mr. McManamon explained that the sample agreement regarding repatriation was intended to reiterate the repatriation standards outlined in the statute and the proposed regulations. The committee had, at a previous meeting, recommended inclusion of a sample agreement as an appendix to the regulations, and a separate section had been reserved for that purpose. The draft sample agreement stipulated that the Indian tribe making the claim had standing to do so, that the objects being repatriated fit within the statutory categories, and that there was evidence of cultural affiliation between the objects and the particular Indian tribe. The document would also specify the date when ownership of the object was transferred from the museum or Federal agency to the Indian tribe.

Mr. Sullivan expressed his concern that the draft contained too much "legalese," and that the most important section is the one indicating that both parties have the authority to agree to and make the transfer. Mr. McManamon responded that the sample was drafted to supply clear guidance to those museums, Federal agencies, and Indian tribes that might not be clear as to the necessary steps. Ms. Craig supported the intent of the sample agreement. Mr. Haas suggested making it clear that repatriation might be to either a lineal descendant or a culturally affiliated Indian tribe. Mr. Sullivan suggested language to make it clear that either a Notice of Inventory Completion or a Notice of Intent to Repatriate might be published in the Federal Register depending on the type of cultural item being repatriated. Mr. Wozniak, Southwestern Region NAGPRA Coordinator for the United States Forest Service, expressed his support of the sample agreement to the committee, indicating that he thought it would be extremely useful in continuing proper implementation and compliance with the statute. Mr. Vicenti said he thought inserts regarding custodial provisions would be a great assistance to institutions and tribes in situations where the tribe would regain possession and agree to leave an object in the institution with certain conditions being met. He also thought that a paragraph on "conditions of transfer" would be useful in potentially hostile repatriations, and additionally, disclosures of conditions, storage/preservation, or any other needs of any objects going into tribal cultural institutions. Mr. Walker suggested that a transfer of ownership agreement be one document, and work up examples of other agreements available to the parties. Mr. Sullivan suggested including actual repatriation agreement, such as that between the Heard Museum and the Crow Nation. Mr. Walker concurred. Mr. Monroe suggest replacing the sample agreement with a listing of issues that museums, Federal agencies, and Indian tribes should consider during consultation. Mr. Sullivan suggested it might be more appropriate to include the list of issues and the examples as a memorandum and not in the regulations themselves. Mr. McManamon proposed removing the sample agreement from the regulation and -- after revising the text to include a list of critical issues and collecting actual examples that some more agreements between institutions and tribes be found, make revisions to the current sample -- issuing a memorandum to all museums, Federal agencies, and Indian tribes. Mr. Thompson expressed his support for this idea.

Agreement on Inadvertent Discoveries and Intentional Excavations

Mr. McManamon reviewed the draft Agreement on Inadvertent Discoveries and Intentional Excavation. The committee had recommended at a previous meeting that the regulations include a sample document outlining some of the issues that might be considered by Federal land managers and Indian tribe officials regarding inadvertent discoveries and intentional excavation on Federal or tribal lands. The draft document provided to the committee represented an initial attempt to formalize such a sample.

Ms. Naranjo and Mr. Sullivan suggested simplifying and rearranging some of the language used in the sample document.

Ms. Yellowbird provided a critique of the draft document. She objected strongly to the paragraph expressing the scientific value of human remains and cultural items and recommended it be deleted from the text. She was concerned about the inclusion of the statutory definitions in the text of the agreement. She emphasized that immediate notification of both the Federal agency official and the tribal official of an inadvertent discovery was paramount to the success of the process. She strongly supported the text in Article II (b) indicating a preference for in situ preservation of inadvertently discovered human remains and cultural items, although she recognized that excavation would be necessary in some cases. She supported inclusion of specific language in the agreement regarding the treatment, including analysis, of excavated or discovered human remains or cultural items, although she objected to inclusion of reference to the possibility of destructive analysis in the draft document. She requested specific language be included in the draft document that outlines the Federal agency's responsibility to consult with the appropriate Indian tribe prior to selection of an appropriate reinterment site. She questioned whether a report needed to be submitted following reinterment and, if such a report would be required, requested that the information contained in the report be kept confidential. Finally, Ms. Yellowbird submitted, for the committee's consideration, a memorandum of agreement between the North Dakota Intertribal Reinternment Committee and the Omaha District of the Corps of Engineers.

Mr. Wozniak expressed his concern about the required newspaper publication of notices detailing any impending disposition of excavated or discovered human remains or cultural items. He felt that these notices might be used by unscrupulous individuals to locate and loot reburial sites.

Mr. Jenkins spoke in support of the sample agreement, indicating that it reflected the efforts of the Hopi as well as the Apache, Zuni and Navajo to develop better working relations with the Federal agencies. He emphasized that each Indian tribe needs to determine its priories and develop agreements to reflect its needs. Mr. Jenkins indicated that the Hopi Tribe allowed scientific analysis of human remains and cultural items and saw this work as augmenting its own oral traditions.

Mr. Monroe suggested that the draft agreement should include several examples so that people could see that there is more than one way to approach such agreements. Mr. Sullivan and Ms. Craig agreed.

Mr. McManamon proposed removing the sample agreement from the regulations and distributing a separate memorandum, including several examples, to all Indian tribes, Alaska Native villages and corporations, Native Hawaiian organizations, and Federal agencies. The committee concurred.

Dispute Resolution Procedures

Ms. Hutt was asked to address how the committee might conduct dispute resolution proceedings. She stressed the importance of attempting to resolve disputes without having to resort to United States District Court. She recommended that the committee consider itself the primary forum for all parties to air their positions and emphasized the importance of coming to good, solid recommendations. Such an approach would have a major and pervasive impact on the smooth implementation of the act. Mr. CrowsBreast of the North Dakota Intertribal Reinternment committee asked what would happen if a member of the committee was affiliated with an institution coming before the committee. Mr. Monroe replied that such a situation would be represent a conflict of interest and the committee member would have to recuse themselves from the dispute proceedings. Ms. YellowBird asked if that procedure would be included in the regulations. Mr. Monroe assured her that conflicts of interested would be specifically addressed in the committee's dispute procedures.

Disposition of Culturally Unidentifiable and Unclaimed Human Remains

Mr. McManamon explained that the statute required the committee to make recommendations to the Secretary regarding the disposition of culturally unidentifiable human remains in museum or Federal agency collections and of unclaimed human remains excavated or discovered on Federal or tribal land. Sections 10.7 and 10.11 of the regulations have been reserved to address these issues.

Mr. Antone, Lieutenant Governor of the Gila River Indian Community and spokesperson for the Intertribal Council of Arizona, stated that the four Piman-O'odham communities in Southern Arizona have established a cooperative agreement to facilitate the reburial of human remains and cultural items. The geographically closest Indian tribe takes responsibility for the disposition of any human remains or cultural items that are excavated or discovered on Federal land. He stressed that it would be very improper for these communities to argue of the proper care and treatment of human remains and cultural items. Mr. Antone recommended that culturally unidentifiable human remains in museum or Federal agency collections and unclaimed human remains and cultural items excavated or discovered on Federal lands be given to the geographically closest Indian tribe.

Mr. Jenkins, Director of the Hopi Cultural Preservation Office, stated that he considered there to be no difference between the remains of someone's father, and human remains of individuals that lived 2,000 or 10,000 years ago. The Hopi Tribe considers the disturbance of any human remains to be desecration. He explained that over the past four years he has learned to fit his position into the jurisdictional and political arenas of the museum and academic communities. He explained that the Hopi Tribe was interested in the results of scientific and archeological investigations because they tend to support Hopi oral tradition. Mr. Jenkins concluded his statement by stressing that the best way for resolve issues related to the disposition of culturally unidentifiable and unclaimed human remains and

cultural items was for all parties to respect each other and to leave complicating political and jurisdictional issues behind.

Mr. Redman, chairman of the Department of Anthropology at Arizona State University, stressed the need for all human remains, both culturally affiliated and culturally unidentifiable, to be treated with respect. He stated that all parties need to do as much as possible to identify the cultural affiliation of human remains in museum and Federal agency collections. Disposition of culturally unidentifiable human remains should not be taken lightly. He reiterated that the scientific and academic community and Indian tribes need to work together to bring this issue to a clearer understanding. Mr. Redman urged the committee to act very carefully for the future in making decisions regarding these two reserved sections.

Mr. Kintigh, an archeologist with the Department of Anthropology at Arizona State University, suggested the committee's recommendations regarding disposition of culturally unidentifiable and unclaimed human remains and cultural items needed to strike a balance between the interests of Indian tribes and those of the scientific community. This is a very difficult issue with no readily identifiable solution. He described the construction and use of tribally-controlled mausoleums as one possible solution that would allow access to human remains and cultural items for scientific research with the consent of the appropriate Indian tribe. Funding for such facilities remains a major obstacle. He also discussed the establishment of tribal consortia as one solution to the question of establishing claims for culturally unidentifiable human remains.

Mr. Thompson, Director of the Arizona State Museum, identified the procedures and standards related to determinations of cultural affiliation as the primary issues to be resolved in dealing with culturally unidentifiable and unclaimed human remains and cultural items. He expressed his hope that the committee will provide explicit guidance in order to avoid inconsistencies in how the statute is being implemented. Mr. Thompson spoke in favor of cooperative efforts between museums, Federal agencies, and Indian tribes to develop more information to help resolve these questions. He was also in favor of tribal consortia claiming culturally unidentifiable human remains.

Public Comments

Mr. Tallbull explained events surrounding his attempts to repatriate the remains of the 94 Northern Cheyenne people killed at Fort Robinson, Nebraska. He explained that some remains have been repatriated to the community, but the location of the mass grave at Fort Robinson is still unknown. A man walking in the area though to contain the mass grave heard "kids playing and dogs barking, and he heard a drum." Mr. Tallbull said the records at the fort say nothing about the Cheyenne grave while the soldier's graves are cared for. He also stated that "bulldozers have been down there (where the grave may be) moving silt and stuff around the bottom of the valley. We still don't know where the grave is...".

Mr. Antone addressed the committee regarding the development of tribal consortia to facilitate repatriation and disposition of human remains and cultural items. He explained that the southern Arizona tribes have signed a cooperative agreement regarding the reburial of human remains and cultural items that might otherwise be listed as "culturally unidentifiable." Mr. LeBeau asked whether

Mr. Antone had experienced any difficulties from museums or Federal agencies that questioned the intertribal organization. Mr. Antone responded that they had thus far worked primarily with institutions in Arizona, but that none had questioned the tribes' authority to work together. Mr. Antone stated that he has seen evidence of a new sensitivity on the part of museum and Federal agency officials regarding Native American human remains and cultural items. He emphasized the need for museums and Federal agencies to work closely with Indian tribes to ensure that human remains and cultural items are repatriated to the correct Indian tribe.

Mr. Little Owl advised that Indian tribes had their own ways of identifying the cultural affiliation of human remains and cultural items. He recounted his experience at the Smithsonian Institution, of being brought in to identify remains in a spiritual way. He also explained the difficulty he had experienced in trying to identify reburial sites. Commenting on Mr. Jenkins and Mr. Antone's statements regarding their good working relationship with Federal agencies in Arizona, Mr. Little Owl explained that the history of animosity between Indian tribes and Federal agencies in the Dakotas makes Indian tribes very leery of the "western scientific community." He went on to note that each Indian tribe had to make up its own mind regarding the appropriateness of scientific analysis of human remains and cultural items.

Mr. Gray outlined the types of problems Indian tribes in the Dakotas were having with Federal agencies, particularly their assertion that sending summaries constitutes consultation.

Mr. CrowsBreast explained that for him repatriation comes down his responsibility to his family. He asked how someone would feel if it were his or her parents, spouse, or children sitting on a museum shelf.

Ms. Yellowbird expressed her concern that the proposed regulations were weakening the statute and pushing the tribes toward having to resolve disputes in court. She stated that she felt that the committee failed to adequately represent the interests of Indian tribes. She challenged the emphasis on consultation in the statute instead of the development of binding agreements. She advised Indian tribes to do their own research and historical reconstruction of what happened to human remains and cultural items to check records provided by museums and Federal agencies. She rejected use of arbitrary cut-off dates in determining cultural affiliation. She was particularly concerned regarding the disposition of "culturally unidentifiable human remains" and "unclaimed human remains and cultural items." She explained that the North Dakota Intertribal Reinterment Committee considered museums and Federal agencies to have only a custodial responsibility for human remains and cultural items and indicated that the North Dakota Intertribal Reinternment Committee would accept responsibility for the care of all culturally unidentifiable and unclaimed human remains.

Mr. Smith, representing the Winnebago Tribe of Nebraska, asked what could be done regarding human remains and cultural items in the possession of private collectors. Mr. McKeown responded that the statute does not apply to private collections, but that other legal means might be used to reclaim stolen property.

Mr. Wozniak recounted his experience in preparing summaries of the collections held by twelve National Forests in the Southwest Region, explaining that cultural affiliation was indicated whenever it could be determined.

Mr. Jenkins expressed his belief that the intent of the statute will be fulfilled if everyone's spirit to together.

Mr. Redman explained that while it had required a Federal law to force scientists to begin talking to Indian tribes, the statute has been instrumental in expanding the dialogue between the scientific and tribal communities. This dialogue will allow for far greater understanding, respect, and compassion among all Americans. He also spoke about the good relations some anthropologists and tribal people have had as an example of positive connections between western scientific and tribal communities.

Mr. LeBeau stated that his community was not going to be dictated to in the repatriation process. Indian tribes need to be consulted with regarding the study and repatriation of human remains and cultural items. The statute requires dialogue. He thanked the committee for allowing extensive public comment.

Mr. Mentz addressed the committee about the need for the mainstream scientific community to respect the tribal knowledge of the past and to also consider the statute's affect on the future of our children. All Native American human remains should be brought home to rest. Communities should be allowed to heal. His grandmother had told him that when she was little two white men had come around asking about burials. She had shown them where her relatives were buried. A few weeks later, she discovered that the graves had been opened and the bodies stolen. Mr. Mentz expressed his pain in remembering his grandmother's dying request for forgiveness for having shown the graves to those two men.

Mr. John Lewis explained that for Arizona tribes repatriation was helping to resolve many long-standing concerns regarding the validity and importance of tribal religions and thought.

Mr. Mike Granger, President of the United Sioux Tribes of South Dakota, addressed the committee. He spoke in support of the people from his area working on NAGPRA issues and the great importance of those activities for Sioux communities. He said that many people feel repatriating the things now contained in museums is part of regaining the wholeness of the communities.

Mr. Tallbull explained that museums and Federal agencies need to understand the emotional strains that repatriation is placing upon Indian tribes. Many of the sacred objects that were lost by Indian tribes long ago are now turning up on summaries. Indian tribes need to work though the conflicting feelings they have before preceding with repatriation of these objects.

Ms. Augustine, representative of the Aroostook Micmac in Maine, outlined some her repatriation experiences in Canada. Several years ago, during a ritual sweat bath, she had seen an image of a particular pipe. She drew a picture of the pipe on a piece of paper. She was later asked to participate in a national task force of Canadian museum officials and First Nations representatives. During one of the task force meetings, she showed the drawing to an Ojibwa man. He recognized the drawing as being of a midewiwin pipe for the Three Fires Council for which the Ojibwa elders had been searching for many years. Nearly two years later, Ms. Augustine was in the Royal Ontario Museum and was drawn to a particular drawer in the storage area. The pipe she had seen at the sweat was in the drawer. This experience showed her the spiritual aspects of repatriation. She apologized to the

committee for appearing to be argumentative, but asked them to remember that all she was trying to do was take her ancestors home and allow them to rest.

Mr. Newell explained that the Passamoquoddy Tribe of Maine rejects the preeminence of archeological information in determining the cultural affiliation of human remains and cultural items.

Mr. Sky outlined some of the difficulties involved is establishing communication between museums and tribal people. He used as an example a recent incident in which a young French woman who could speak the Lakota language was invited to reorganize the Native American collections of a museum in Pierre, South Dakota. Mr. Sky found it curious that a tribal member had never been asked to be involved in managing the collection.

Mr. Garreaux reminded the committee of the great responsibility that the statute put on their shoulders. He expressed his dismay that, while the statute was passed to benefit Indian people, their concerns were being largely dismissed. He chastised the committee for what he called emasculating the statute in the regulatory process. Lastly, he invited the committee to hold its next meeting in the Dakotas in order to allow tribal officials and traditional religious leaders to express their feelings regarding implementation of the law.

Mr. McCloskey, representative of the Eleven Sioux Tribes Treaty Council, spoke about that organization's work to preserve burial and sacred sites in the Black Hills. He explained that tribal officials and traditional religious leaders would like the committee to hold its next meeting in in the Dakotas so they could have a voice in implementation of the statute.

The meeting was closed at 4:10 p.m. on Saturday, January 25, 1994.

Approved:

_____ _____

Tessie Naranjo, Chair Date
Native American Graves Protection
and Repatriation Committee

DRAFT MINUTES
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REVIEW COMMITTEE
SEVENTH MEETING: MAY 12-14, 1994
RAPID CITY, SOUTH DAKOTA

The seventh meeting of the Native American Graves Protection and Repatriation Review Committee was called to order at 8:55am, Thursday, May 12, 1994 by Ms. Tessie Naranjo, committee chair. The committee meeting was held at the Rushmore Plaza Civic Center in Rapid City, SD. The following committee members, staff, and others were in attendance:

Members of the committee:

Ms. Rachel Craig
Mr. Jonathan Haas
Mr. Dan Monroe
Ms. Tessie Naranjo, chair
Mr. Martin Sullivan
Mr. William Tallbull
Mr. Philip Walker

National Park Service staff present:

Mr. Francis McManamon, Departmental Consulting Archeologist
Mr. Hugh (Sam) Ball, Archeologist

The following others were in attendance during some or all of the proceedings:

Ms. Geraldine Arcoren, Rosebud Sioux Tribe, SD
Ms. Donna Augustine, Aroostook Band of Micmac, ME
Mr. Dave Bald Eagle, Cheyenne River Sioux Tribe, SD
Ms. Barbara Ball, Reston, VA
Ms. Sandra Barnum, US Army Corps of Engineers, Omaha, NE
Mr. Everett Black Thunder, Flandreau, SD
Ms. Renee Boen, South Dakota Archaeological Research Center, Rapid City, SD
Ms. Alta Bruce, Turtle Mountain Band of Chippewa, ND
Mr. Thomas Bullhead, North Dakota Intertribal Reinternment Committee & Standing Rock Sioux Tribe, ND
Ms. Viola Burnette, Mission, SD
Mr. Michael Burney, Burney & Associates, Inc., Boulder, CO
Ms. JoAnn Conroy, Diverse Development, Custer, SD
Ms. Shirley Crane, Lower Brule Sioux Tribe, SD
Mr. Francis Cree, North Dakota Intertribal Reinternment Committee & Turtle Mountain Band of Chippewa, ND
Mr. Chuck Davis, Rapid City, SD
Mr. Frank Delasquale, Belcourt, ND
Mr. Victor Douville, Rosebud Sioux Tribe, SD
Mr. John Estes, Lower Brule Sioux Tribe, SD

Mr. Fremont Falli, Rosebud Sioux Tribe, SD
Ms. Jane Martin Lone Fight, North Dakota Intertribal Reinterment Committee & Turtle Mountain Band of Chippewa, ND
Mr. J. Fiske, South Dakota State Historical Society, Pierre, SD
Mr. Virgil Flute, Lower Brule Sioux Tribe, SD
Ms. Deanna Francis, Passamadquoddy Tribe, ME
Ms. Myra Giesen, Kansas-Nebraska Area Office, Bureau of Reclamation
Mr. George Goggleye, Leech Lake Band of Chippewa, MN
Mr. DeWayne Goodface, Lower Brule Sioux Tribe, SD
Mr. Cedric Goodhouse, Standing Rock Sioux Tribe, ND
Mr. Robert Gough, Public Defender, Rosebud Sioux Tribe, SD
Mr. Richard Grass, Rapid City, SD
Mr. Terry Gray, Rosebud Sioux Tribe, SD
Mr. James Haug, State Archeologist, Rapid City, SD
Mr. Raymond Houle, Dunseith, SD
Mr. George Ironshield, North Dakota Intertribal Reinternment Committee & Standing Rock Sioux, SD
Mr. Michael Jandreau, Chairman, Lower Brule Sioux Tribe, SD
Mr. Albert Jones, Flandreau Santee Sioux Tribe, SD
Mr. Gordon Jones, Jr., Flandreau Santee Sioux Tribe, SD
Mr. Scott Jones, Lower Brule Sioux Tribe, SD
Mr. William Kindle, Chairperson, Rosebud Sioux Tribe, SD
Mr. Gordon Kitte, Santee Sioux Tribe, NE
Ms. Rose Kluth, Leech Lake Band of Chippewa, MN
Ms. Marcella LeBeau, Cheyenne River Sioux Tribe, SD
Mr. Sebastian LeBeau, Cheyenne River Sioux Tribe, SD
Mr. Paul Little, North Dakota Intertribal Reinternement Committee & Devil's Lake Sioux Tribe, ND
Ms. Rosalie Little Thunder, Rapid City, SD
Mr. Roy Lone Wolf Martin, Turtle Island First Americans, Rapid City, SD
Mr. Rusty Lone Wolf Martin, Turtle Island First Americans, Rapid City, SD
Mr. Ruben McCloskey, United Sioux Tribes, Pierre, SD
Mr. Carl McKenzie, Rosebud Sioux Tribe, Rapid City, SD
Mr. Carson Murphy, BIA Aberdeen Area Office, Aberdeen, SD
Mr. Darrell Newell, Passamaquoddy Tribe, ME
Ms. Celane Not Help Him, Mni Sose, Oglala Sioux Tribe, SD
Ms. Marie Not Help Him, Mni Sose, Oglala Sioux Tribe, SD
Ms. Maggie Paul, Passamaquoddy Tribe, ME
Mr. Randy Ross, Rapid City, SD
Mr. Clarence Skye, United Sioux Tribes Development Corp., Pierre, SD
Mr. Terry Steinacher, Nebraska SHPO, Fort Robinson Museum, Crawford, NE
Mr. Ted Thin Elk, Mission, SD
Ms. Arlene Thompson, Cheyenne River Sioux Tribe, SD
Mr. Ben Thompson, Lower Brule Sioux Tribe, SD
Mr. Ray Uses the Knife, Minnecou Itazipco, Cheyenne River Sioux Tribe, SD
Mr. David Vader, Native American Coordinator, US Army Corp. of Engineers, Omaha, NE

Mr. Carey Vicenti, Jicarilla Apache Tribe, NM
Ms. Denise Vigue, Oneida Tribe of Wisconsin
Mr. Chris Wohl, Nez Perce Tribe, ID
Ms. Pemina Yellow Bird, North Dakota Intertribal Reinternment Committee & Three Affiliated Tribes, ND
Ms. Judy Youngbear, Three Affiliated Tribes, ND
Mr. Terry Zontek, Bureau of Reclamation, Billings, MT

The committee and staff introduced themselves, and Ms. Naranjo confirmed there was a quorum present. Mr. Francis Cree of the Turtle Mountain Band of Chippewa was invited to provide an invocation for the meeting. Mr. Michael Jandreau, chairman of the hosting Lower Brule Sioux Tribe, welcomed everyone and thanked them for coming.

Review of the Meeting Agenda

Mr. McManamon began the meeting by reviewing the committee's responsibilities under the act, including including monitoring implementation, providing recommendations on regulations, assisting in the resolution of disputes, and compiling a list and making recommendations regarding the disposition of culturally unidentifiable human remains in museum and Federal agency collections. He commented that he was pleased to see so many members of the public at the meeting and thanked Mr. Jandreau and the Lower Brule Tribe for their assistance in the preparations of the committee meeting. Mr. McManamon explained that the agenda had been arranged to provide the public with considerable amounts of time to address the committee. He closed by reminding everyone that the statute "presents everyone -- tribal people, scientists, and museum people -- with great opportunities and great challenges. I hope that it allows us to appreciate each other's perspective, knowledge, and through those, gain a more complete understanding of the past."

Implementation Update

Mr. McManamon briefed the committee on the status of efforts to implement the statute.

The statute requires museums and Federal agencies to provide copies of summaries of their collections that may include unassociated funerary objects, sacred objects, and objects of culturally patrimony to all culturally affiliated Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations by November 16, 1993. A supplemental guidance memorandum had also requested copies be sent to the National Park Service. Mr. McManamon provided a listing of the more than 600 institutions that had submitted copies of their summaries to the National Park Service.

After reviewing the list, Mr. Haas and Mr. Monroe commented that they felt there are many institutions which are not on the list, most notably universities and colleges, and smaller historical societies. Mr. Walker suggested that some colleges with small collections my be unaware of the statutory requirements. He was also concerned that some high schools may also have human remains and suggested the committee or the National Park Service begin communicating with secondary schools. Mr. Tallbull expressed his concern that Federal employees may have accumulated collections from federal lands for their private use. Mr. McManamon responded that Federal employees are prohibited from such activities. Mr. Haas asked if it might be possible to send form letters reminding

university departments of anthropology of the statutory requirements. Mr. Monroe suggested that the American Association of Museums would be willing to take an active role in getting word out regarding the statute, but thought that the summary list did include most of the major collections. Mr. Mcmanamon agreed to work with Ms. Naranjo in developing such a reminder letter. Mr. Sebastian LeBeau, NAGPRA Coordinator of the Cheyenne River Sioux Tribe, supported the idea of sending out a letter reminding anthropology departments of their responsibilities under the statute.

Ms. Myra Griesen of the Bureau of Reclamation inquired if a recent survey distributed by the National Park Service could be used to identify collections from Federal land that are currently being curated in non-Federal repositories. Mr. McManamon explained that the museum property survey was being conducted by another division of the National Park Service to identify all Federal collections that are currently in non-Federal repositories. Once completed, the survey would be useful in identifying each Federal agency's responsibilities regarding curation and repatriation.

Mr. McManamon reported that the NAGPRA module of the National Archeological Data Base (NADB) was currently operational. The data base, accessible through the Center for Applied Spacial Technologies at the University of Arkansas, provides online access to the statute, committee reports, proposed regulations, and all Federal Register notices. Mr. Walker and Mr. Haas requested that announcements of meetings and information regarding NADB also be provided to relevant bulletin boards on the internet. Mr. McManamon agreed.

Mr. McManamon reported that approximately $2.3 million was currently available as grants to assist Indian tribes and museums in implementing the statute. One hundred and six applications had been received from Indian tribes with 110 applications coming from museums. The total amount requested totaled over $23 million. Awards were expected to be announced July 1, 1995. Mr. Monroe asked Mr. McManamon to outline the criteria being used to evaluate the applications. Mr. McManamon explained that, given the limited amount of funding and the large demand, special consideration would be given to creative projects that exemplified that type of dialogue between museums and Indian tribes required by the statute. All applicants also needed to have completed their summaries and currently be in compliance with provisions of the statute. Mr. Walker asked if award amounts would be based on the amount requested or if smaller amounts would be awarded to partially fund more proposals. Mr. McManamon explained that while requested amounts would be reduced if the proposal included ineligible activities, such as consultation and repatriation with the Smithsonian (since that institution is explicitly exempted from provisions of the statute), the requested amounts would not be arbitrarily cut simply to increase the number of awards. Mr. Walker asked how the grant monies would be divided between museum and tribal awards. Mr. McManamon replied that while a final decision was yet to be made, he anticipated a 50-50 split between tribal and museum awards.

Mr. McManamon reviewed the steps that had been taken to develop and promulgate final regulations implementing the statute. The National Park Service had initially distributed a memorandum outlining the Department of the Interior's understanding of the requirements, effected parties, and necessary procedures. A draft of the memorandum had been circulated widely among national Native American, scientific, and museum organizations. The finalized memorandum had served as the basis for what became the proposed regulations. A working group of Federal agency officials was then convened to draft specific regulatory text. The committee received the result of the working group's efforts at their first meeting in May, 1992, and worked diligently to refine the text prior to their publication as a

proposed rule in the *Federal Register* on May 28, 1993. Eighty two written comments were received during the public comment period that, along with comments from the committee, will serve to revise the proposed regulations. The staff is currently writing the preamble addressing all comments received. Mr. McManamon explained that once the final regulations were drafted, the text would be transmitted to the Department of the Interior for internal review. He indicated that he and the staff would be briefing various Departmental officials regarding the final regulations and promised to immediately inform the committee if any problems arose during the review process.

Mr. McManamon reminded the committee that the final regulations would include a number of sections that had been reserved. Draft versions of two of those sections -- those dealing with civil penalties and the sample inventory -- were on the agenda for discussion. The comittee had also asked for public recommendations regarding two additional reserved sections -- those dealing with the disposition of unclaimed human remains and cultural items excavated or discovered on Federal or tribal land, and the disposition of culturally unidentifiable human remains in museum and Federal agency collections. Mr. McManamon explained that once developed, these sections would be published as proposed regulations for public comment.

Mr. McManamon also described some of the training activities in which he and the staff were involved. A number of workshops had been organized in conjunction with the annual meetings of Nnational Native American, scientific, and museum organizations. An intensive, three day course on implementing the statute had also been developed with the University of Nevada-Reno. Ms. Naranjo commented that Indian tribes in the Southwest were anxious to participate in training opportunities. Mr. Sullivan described a workshop organized by the Arizona Intertribal Council which included tribal, museum, and Federal agency representatives. He felt that consultation had been greatly facilitated by this opportunity to sit down with all the involved parties. Ms. Craig explained that at least three different types of training were required: one of the type currently being provided by the National Park Service directed at developing the skills needed to bring home each Indian tribes' ancestors; a second designed to assist elders in identifying sacred objects and objects of cultural patrimony; and a third on developing strategies for Indian tribe, museums, and Federal agencies to work together. Mr. Tallbull emphasized that special training was particularly needed for those traditional elders wary of working with written legal documents. Mr. Monroe suggested that training include both tribal and museum representatives to encourage dialogue.

Civil Penalties

Ms. Naranjo asked Mr. McManamon to provide the committee with an overview of the draft regulatory section dealing with civil penalties. Mr. McManamon explained that the statute authorizes the Secretary of the Interior to assess civil penalties against any museum receiving Federal funds that fails to comply with provisions of the act. However, assessment of civil penalties under these provisions requires promulgation of regulations outlining procedures to ensure due process. An earlier draft of this section had been discussed by the committee at their Pheonix meeting. The current draft reflected the recommendations of the committee at that time. The basis for both drafts was the procedures already established to ensure due process in civil penalties cases under provisions of the Archaeological Resources Protection Act. Mr. McManamon emphasized the importance of finalizing the civil penalty section to provide an effective way of dealing with cases of non-compliance. The draft consisted of 18 subsection, lettered (a) through (r), outlining what constitutes noncompliance

[subsection (a)], the processes for notification, assessment, hearing, and appeal [subsection (b) through (q)], and criteria for determining the penalty amount [subsection (r)].

Regarding the definition of what constitutes non-compliance, Mr. Vicenti suggested that the civil penalties should be directed at cases of gross neglect and willfull non-compliance. He cautioned the committee against writing regulations that attempt to meet every possible contingency, warning that "people can be quite devious in finding ways around the law." Mr. Sullivan stressed that any museum that failed to complete its summaries or inventories, did not respond to inquires from Indian tribes, or did not provide access to documentation should be considered to be in non-compliance. The trigger should be when the Indian tribe and the museum reach an impasse in the consultation process.

Mr. McManamon explained the process for notification, assessment, hearing, and appeal of any civil penalty. Any person may bring an allegation of non-compliance to the attention of the Secretary of the Interior by contacting the Director of the National Park Service. The Director will then assign staff to document the complaint and conduct an investigation. After an allegation has been substantiated, the Secretary will serve a notice of failure to comply upon the museum, with informational copies to all other effected parties. The museum will then have 45 days in which to respond -- either by paying the assessed penalty, filing a petition for relief, or beginning discussions with the Secretary.

Mr. Vicenti addressed the issue of into which fund collected fines should go. The suggestion of the committee had been for those fines to be put into the tribal grants fund. He reminded the committee that one canon of statutory construction holds ambiguous statutory language should be read in favor of the tribes in any law which applies to Indian tribes. Following this canon, Mr. Vicenti stated the regulations could be written to use penalty monies for the benefit of tribal NAGPRA activities. Mr. McManamon concurred with Mr. Vicenti's assessment and agreed to include the committee's recommendation to the civil penalties regulations. Mr. Monroe asked when the committee would know whether or not the language would be included. Mr. McManamon said the committee could put the language into the current draft, or wait until a definitive answer from the Solicitor's office on the matter and then be able to insert the destination for penalty monies.

Mr. McManamon explained that in the current draft civil penalty amounts were to be calculated as .05% of the non-complying museum's annual budget up to a maximum of $5,000, plus a daily penalty of $100 until compliance is achieved. The penalty amount is doubled for subsequent failures to comply by the same museum. The Secretary may take mitigating circumstances into consideration when determining the penalty amount. Mr. Sullivan endorsed the approach, explaining that he thought it imperative that the regulations avoid "awkward trap in the language of the law which talks about the commercial value of the objects. The remains of dead people shouldn't have any commercial value," he continued, "and we don't want the market value of sacred objects to be a part of the discussion." Ms. Naranjo asked the committee if the .05% penalty amount was still the number they wanted to recommend. Mr. Sullivan, Mr. Monroe, and Mr. Haas discussed whether or not the $5000 limit on the .05% penalty was too low. Mr. Monroe stated that although the purpose of the NAGPRA civil penalties was not "to generate huge fines, we want something that is enough to get people's attention." This amount is significant enough for an institution of any size to pay attention. Mr. Albert Jones, general counsel to the Flandreau Santee Sioux Tribe, expressed his concern these penalties would amount to a slap on the hand most museums. Mr. McManamon asked what amount Mr. Jones felt would be an adequate initial fine. Mr. Jones said a minimum of $50,000

would be "a threat enough to promote and efficient administration of the NAGPRA law by museums and institutions." Mr. Monroe calculated the current fine schedule using the $5,000 limit would amount to $36,000 per year for continuing non-compliance, not including attorney's fees. Mr. Monroe felt this amount would make institutions realize "it's just not viable to continue to be out of compliance." Mr. McManamon agreed, but suggested the committee consider the deterrent effect of a larger flat fee may have over the current draft penalty schedule. Mr. McManamon explained the ARPA criminal penalty, when the damage and destruction of an archeological site exceeds $500, the fine can run up to $20,000. Mr. McManamon said for subsequent violations the fines may not exceed $100,000. He stated that ARPA had problems with successful enforcement and difficulty obtaining those levels of fines due to the proofs necessary for the maximum fines, which have now been remedied through amendments to ARPA. Mr. Haas said "the Archeological Resource Protection Act, that is...meant to penalize someone for what they have done...I think what we're trying to accomplish is to get something done...try to figure out how to get them to do something." Mr. Monroe agreed that compliance was the goal of this section, and said in his opinion the current schedule would make continuing non-compliance very unattractive to institutions.

Mr. Vicenti suggested inserting the phrase "economic and non-economic damages may be determined by application of usual civil case damage principles" in the penalty amount subsection, explaining that the phrase would allow the Secretary to include tribal costs incurred during the penalty process in the assessment. Ms. Pemina Yellowbird of the North Dakota Intertribal Reinternment committee said she would like to see tribes bringing action able to recover their costs in all cases. Ms. YellowBird said she wanted to ensure this action would not be entirely discretionary. Mr. Vicenti reiterated the inclusion of this language would put three elements into the penalties process. Mr. Monroe stated the current penalty schedule would most likely encourage museums to abide by the dispute resolution function of the committee.

Mr. Vicenti suggested the committee consider an additional paragraph under the penalty amount subsection to facilitate the inclusion of economic and non-economic damages. The new paragraph allowed the Secretary to take into consideration: 1) civil case damage principles, including, but not limited to, an award of attorney's fees and expert witnesses; 2) the negative impact suffered by the aggrieved party or parties relative to the ability to bear such costs; 3) the extent to which the non-compliant museum has failed to make attempts to negotiate a settled, reasonable disposition of particular human remains or cultural items; 4) the importance of the items to the performance of traditional practices by the aggrieved party or parties; and 5) bad faith associated with the museum's noncompliance. Mr. Monroe said he would like to see a single option to replace both the negotiation (number 3) and bad faith options (number 5). Mr. Vicenti responded that he was trying to encourage negotiated settlements as the first option before litigation as part of the NAGPRA process to settle issues of noncompliance.

[Enter the part about what they actually decided].

Mr. Haas and Mr. Walker noted that the draft text specified that civil penalties could only be brought against museums, not against Federal agencies that failed to comply. Mr. McManamon explained the draft reflects the statutory language and the fact that there already are ample mechanisms to force Federal agencies to comply with the law. This particular statutory provision was to provide a way to force museums to do so as well. Mr. Sullivan asked if charges of Federal agency noncompliance

might be brought to the committee. Mr. McManamon thought that such an issue might come before the committee as a dispute. Mr. Haas suggested the committee provide guidance regarding the steps for reporting Federal agency non-compliance. Mr. Sullivan and Mr. Walker suggested that the preamble of the proposed civil penalty regulations might be used to explain these mechanisms. Mr. Monroe asked if the committee could make a finding in a dispute between an Indian tribe and a federal agency. Mr. Haas thought issuance of such a finding might be apropriate, and said a finding would be a "public notice" for beginning a federal non-compliance case.

Mr. Haas asked Mr. Vicenti to clarify the relationship between the provisions authorizing the assessment of civil penalties and those identifying the Federal Courts as the appropriate venue for litigation. Mr. Vicenti responded that either method was available to Indian tribes to ensure a museum's good faith compliance with the statute. However, he pointed that out that higher the potential civil penalty assessment, the more likely the parties are to turn to the courts. The statute was crafted to strike a balance between interests and to stand up to Constitutional tests.

Mr. Haas asked for clarification between the civil penalty provisions and the committee's dispute resolutions process. Mr. McManamon responded that a dispute brought before the committee might also involve acquisations of non-compliance. Mr. Walker recommended that the civil penalty section should make a clear distinction between a dispute and an acquisation of non-compliance. Mr. Monroe added that he wanted to ensure that "just because a museum fails to agree with the committee does not mean that it is out of compliance." Mr. McManamon agreed that there should be a clear destinction between a difference of opinion between parties and a failure to comply.

Sample Inventory

Ms. Naranjo asked Mr. McManamon to outline the status of the sample inventory. Mr. McManamon explained that the committee had recommended that such a document be prepared to help museums and Federal agencies prepare inventories for the November 16, 1995 deadline. The sample inventory includes two sections, one describing human remains and associated funerary objects that are culturally affiliated with a particular Indian tribe, and a second of culturally unidentifiable human remains. Appendix B of the regulations was reserved for the sample inventory. The committee had reviewed an earlier version at its meeting in Pheonix. The current draft includes the changes recommended at the earlier meeting.

Mr. Sullivan noted that the current draft incorporated the committee's earlier suggestions and better addressed "evidence from the tribal communities' perspective". He suggested that the names used in the examples -- Able, Baker, Charlie, Foxtrot -- be changes to ones with less of a military overtone. Ms. Naranjo concurred. Mr. Walker expressed his concern that no space was provided for multiple cultural affiliations. Mr. Walker also recommended that examples include citations for additional published information. Mr. Haas explained that the Field Museum includes citations to published materials for culturally unidentifiable human remains. Citations for culturally affiliated human remains and associated funerary objects are only included if the appropriate Indian tribe does not object. Mr. McManamon stated that he felt having a comprehensive bibliography was not point. If published site reports can assist in determining the cultural affiliation, they should be included. Mr.Walker concurred that citations could be particularly important for culturally unidentifiable human remains.

Mr. Monroe raised the issue of *Federal Register* notification. He also wondered if repatriation might take place without a full inventory. Mr. McManamon explained that the statute requires the completion of inventory and publication of a notice in the *Federal Register* to ensure that all potentially interested parties knew that the repatriation was scheduled to take place. The committee had recommended that the notice requirements be extended to include unassociated funerary objects, sacred objects, and objects of cultural patrimony. Mr. Monroe explained that he is in favor of the notice requirements because of the potential damage to Indian tribes if no notice is required. Ms. Yellow Bird outlined how the Memorandum of Understanding between the North Dakota Intertribal Reinterment Committee and the US Army Corps of Engineers office in Omaha, NE, included provisions for notification of any Indian tribe that might be culturally affiliated with human remains or cultural items. Each potentially culturally affiliated Indian tribe was notified by letter with an attached inventory and given an opportunity to become involved. Mr. Haas stated his understanding that the notification was intended to ensure that all culturally affiliated Indiant tribes know about planned repatriations before they take place.

Disposition of Culturally Unidentified or Unclaimed Human Remains

Ms. Naranjo asked Mr. McManamon to introduce the discussion regarding the disposition of culturally unidentifiable human remains in museum or Federal agency collections. Mr. McManamon explained that section 8 (c)(5) of the statute required the committee to compile "an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommend ... specific actions for developing a process for disposition of such remains." Section 10.11 of the regulations has been reserved for this process. Mr. McManamon explained that testimony had been solicited at several of the previous meeting on this topic and a number of individuals had been asked to make presentations to the committee at the present meeting.

Mr. Jim Haug, the South Dakota State Archeologist, explained the history of reburial in South Dakota. Discussions were initiated between state officials and the various Indian tribe representatives in the 1980s. The first repatriation was in 1986. He described how a state law and regulations were developed mandating the reburial of all human remains in the possession of the state. Another state law was later passed that established criminal penalties for excavating or destroying graves or human remains and provided procedures for their repatriation or reinterment. Mr. Haug noted that museums in the state have contacted with the South Dakota Archaeological Research Center (SDARC) for disposition of human remains under the state statute. The majority of the human remains being dealt with by SDARC are culturally unidentifiable. The mandatory reburial of culturally unidentifialbe human remains covered by the state law has been effective, according to Mr. Haug, because it "ensures that the individuals are removed from the public eye and are rendered inaccessible." He said the state's policy is to keep postmortem examination to a minimum, and where the identity or cultural affiliation is known, "little or no postmortem beyond the confirmation of the historical or archeological data is necessary." Mr. Haug noted that the state's policy does not allow for any new methods of research to take place. Mr. Sullivan asked about the relationship between the South Dakota statute and NAGPRA. Mr. Haug responded that while the state statute stipulates that state take responsibility for the reburial of culturally unidentifiable human remains in consultation with Indian tribes in the state, repatriation to those Indian tribes is also an option. Mr. Haas asked if the state

statute applies to private as well as state land. Mr. Haug replied that it applied to both private and state lands. Mr. McManamon asked if the state statute protects burials in situ. Mr. Haug responded that the state law makes it a felony to disturb a burial. Mr. Haug also emphasized the importance of the data gained from studying culturally unidentifiable human remains.

Mr. Haas responded that there are certain kinds of questions that can be addressed using information derived from human remains -- such as patterns of malnutrition, child and infant mortality, and changes once domesticated crops become utilized. He admitted that the scientific community has not been able to clearly articulate this information to the public at large and specifically to Indian communities. He did not feel such scientific value outweighs the sanctity of the remains. Mr. Sullivan asked Mr Haug how much scientific knowledge can be gained from culturally unidentifiable human remains. Mr. Haug responded that most culturally unidentifiable human remains are fragmentary and impossible to trace to present-day communities.

Mr. Tallbull commented on the difference in treatment between Indian and non-Indian human remains. He asked everyone to consider the situation of American servicemen's remains in Vietnam. Would the American people allow Vietnamese scientists five years to examine and study American remains?

Mr. Thomas Bullhead, of the North Dakota Intertribal Reinternment Committee, explained that one of the most difficult things for Indian people to do is to go in front of the non-Indians and attempt to talk about things that should not be discussed in public. He spoke about the disturbed human remains now in museum and Federal agency collections and how people were frightened of them and what they can do. He explained that tribal communities know that the resolution of repatriation issues is critical to curing the sicknesses afflicting them. He thanked Mr. George Iron Shield for providing guidance in dealing with these difficult issues.

Mr. William Tallbull explained that the Cheyenne tribe has lived in many different areas of the country, from the eastern seaboard into Northern Ontario and west through Montana. "On the way," he said, "many people have died. They must have buried them anywhere they were. Where the graves are, the spirits are there. Where the remains are, the spirits are there. There is a part of life that we have talked of very little, because most people don't understand what we're talking about. We talk about people coming home. When the people came home from the museum and are buried at home, they all go and visit every house. This is where the joy comes in. They are home. They they are here. They walk around through the village and become part of us again. That's all we are asking."

Mr. Carey Vicenti said that although he had many discussions with his own tribal leadership, medicine people, and clan leaders to develop ideas on how his people saw the issue, he had not heard anything from the scientific community justifying the importance of maintaining such collections. This lack of communication disturbed him because, without it, "we don't know what's at stake. As Indian people, we have no idea what it is scientists are trying to do with remains that are in their possession..." He stated that he did not think the scientific community had submitted overriding evidence that its wish to retain culturally unidentifiable human remains outweighs the rights of the closest decendents. He also requested the committee to remember that since NAGPRA is classified as "Indian law," any ambiguity must be interpreted to the benefit of the Indian tribes. He recommended a careful process in developing any regulatory section dealing with the disposition of culturally

unidentifiable human remains. Time should be taken to find "a better way." He emphasized that the committee's recommendations should reflect the equal protection and recognition of human rights afforded all U.S. citizens and promised to Indian tribes by treaty.

Mr. Robert Gough, attorney for the Rosebud Sioux Tribe, recommended that, in order to fulfil the United State's trust responsibility to Indian tribes, the regulations on the disposition of culturally unidentifiable human remains must "comply with the language of the remedial statute to be liberally construed to suppress (or remedy) the evil and advance provisions liberally construed in favor of Indians and interpreted to the benefit of the Indians. Courts have recognized a quasi-property right vested in the nearest relatives of the deceased rising out of the duty to bury the dead. It's the right that every mainstream American takes for granted. For Native American people, to assure that their dead remained buried requires a Federal statute." Following this principle of construction, Mr. Gough continued, "the closest decendents of even culturally unidentified remains are the present-day tribes who therefore have a responsibility to rebury these human remains." He stated this responsibility has always been reserved to the tribes, that "no treaty grants or surrenders to the United States the graves, the human remains, or grave goods of ancestors." Mr. Gough supported the inclusion of geographic association with aboriginal lands as a primary consideration for tribal notification and in making determinations of disposition for culturally unidentified human remains. Mr. Gough was concerned that focussing on establishing associations and cultural affiliations with present day tribes as a prerequisite for repatriation would ignore the spirit, intent, and equities of the law, and result in far fewer remains and objects being repatriated. Mr. Gough spoke in favor of consultations as part of the decision to repatriate culturally unidentified human remains. Mr. Gough said that numerous Indian tribes have gone on the record as accepting trust responsibilities for all culturally unidentified human remains, and that "while the degree of relationship of these tribes to the disinterred or unburied human remains may vary, they are of prior and superior right to that of Federal agencies, museum, or other institutions which presently holds these remains."

Mr. David Vader, Native American Coordinator for the Omaha District Corps of Engineers, outlined the Omaha District's process for consulting with the Indian tribes regarding final disposition of Native human remains excavated or discovered on Corps projects. He explained that the Omaha District has developed a memorandum of agreement (MOA) regarding excavations and discoveries on Corps lands. The MOA states that the Corps of Engineers does not own human remains and recognizes priority of reburial. Mr. Vader stated that under the MOA, agreements, human remains are returned to Indian tribes in the region or known to have historically occupied the region "unless there was overwhelming evidence that remains were non-Indian." The MOA specifically uses the aboriginal territory as decided in the U.S. Court of Claims to identify the proper recipients for Native American human remains. He sees the current consultation process as very complete and thorough. Mr. Vader concluded by saying that the Omaha District was committed to reburial and would like to continue with repatriations "as fast as we possibly can."

Mr. Carson Murdy, archeologist for the Aberdeen Office of the Bureau of Indian Affairs, explained the distinction between "acquisition of scientific knowledge" and "the application of scientific knowledge to practical problems." He explained that the application of scientific knowledge to any given practical problem occurs "when a certain scientist determines that there is a problem of some urgency to be solved... and applies a certain portion of that [data, analysis, and theory]...to come up with a satisfactory solution." Mr. Murdy stated that the study of archeological collections "is the

scientific process of building up a reservoir of data and knowledge on the human condition." He said he felt the real damage to tribal communities' heritage was being done through "geomorphological processes of wave action and the depredation of relic hunters." He pointed out that through analysis of recovered human remains of the Arikara, unusually high incidence of middle ear infections and disease were discovered in the population. The present-day Arikara community was surveyed, and the same high incidence was found, and "a concerted effort has been made to treat and help alleviate this problem in the modern population." Mr. Murdy said that although the methodology and technology to be able to closer affiliate partial human remains and culturally unaffiliated human remains is still under development, there may be a time when science can do that, and he supported maintaining those collections until such a process is available. Noting the difference between tribal communities' view of human remains and Mr. Murdy's reference to human remains as "pools of data," Mr. Monroe asked Mr. Murdy how one should go about reconciling and/or "advancing dialogue between those ways in which people understand, believe, feel, [and] perceive human remains?" Mr. Murdy responded that viewing human remains as data sets "is essential to the scientific process," but did not think this would be "an impasse to cooperation." Mr. Haas stated he did not think the scientific community had not sufficiently addressed the question of what may be lost under repatriation.

Correspondence from Hui Malama I 'Na Kupuna 'O Hawai'i Nei

Mr. Monroe summarized a request for guidance from Hui Malama I Na Kupuna 'O Hawai'i Nei, a nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues. Hui Malama asked the committee for guidance on whether a museum or Federal agency might undertake additional scientific studies of human remains once the cultural affiliation of those remains had been determined.

Mr. McManamon explained that the question was precipitated by a situation in Hawaii in which the United States Marine Corps excavated approximately 1,500 human remains and numerous associated funerary objects from the Mokapu Peninsula on Oahu. The human remains and associated funerary objects are being curated by a private museum. Hui Malama has made several requests that no studies outside those specifically required to comply with the statutory requirements be conducted. There seems to be general agreement between the Marine Corps, the curating museum, and Hui Malama that the human remains and associated funerary objects are Hawaiian.

Mr. Monroe stated that he thought that Hui Malama was asking the committee for a general opinion regarding the authorities for additional scientific study, and not a finding for a specific situation. Can a museum or Federal agency conduct additional scientific research on human remains once cultural affiliation has been determined? He explained that he could not see any justification for additional studies contrary to the explicit wishes of the culturally affiliated tribe or Native Hawaiian organization. The only exception that he could see would be if the study was of major benefit to the United States as authorized under section 7 (b) of the statute. Mr. Haas commented that the "major benefit" excemption only applied if the humam remains or cultural items were "indespensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States." Mr. Sullivan explained that it seemed clear to him that the statute offered no basis for further research if the cultural affiliations of the human remains and associated human remains could

be determined. The committee concurred. The committee declined to discuss whether any other statute might be used to authorize additional scientific research.

Future Activities

Mr. McManamon raised the issue of the committee's next meeting. Mr. Monroe suggested having the next meetings in the New York and the Pacific northwest. Ms. Francis and Ms. Vigue agreed that a meeting in the Northeast would be appropriate. Ms. Naranjo stated that the committee needs to go to as many different areas as possible in order to hear from as many tribal communities as possible. Mr. Haas asked Mr. McManamon if it would be possible to have two more meetings before the end of the calendar year. Mr. McManamon agreed to look into it. Mr. Monroe explained that two more meetings would allow the committee to hear discussion on an expanded tribal contact list for NAGPRA purposes. The committee agreed that the next meeting would take place in the Northeast in late August to early September. Mr. Haas stated that it was important to bring more voices before the committee. Mr. Monroe suggested that upcoming committee meetings include hearing testimony from representatives of both the tribal and scientific communities.

Mr. McManamon outlined the status of the various regulatory sections that had been previously reserved. The sections on civil penalties and the sample inventory would be published as proposed regulations for public review and comment as soon as possible. The committee would then be able to review the comments and a revised draft before final publication. Text for the remaining three reserved section -- dealing with the disposition of culturally unidentifiable human remians in museum and Federal agency collections; the disposition of unclaimed human remains and cultural items from Federal and tribal lands; and future applicability of the statute -- could be developed for the committee's review at an upcoming meeting. Ms. Naranjo recommended that discussion of the latter sections be put on the agenda for the next meeting.

Public Comment

Ms. Rose Kluth, archeologist for the Leech Lake Band of Chippewa, informed the committee that many of the summaries received by the tribe indicated that museums and Federal agencies were deciding what objects fit the categories of unassociated funerary objects, sacred objects, and objects of cultural patrimony. These summaries did not provide information on the whole collection. She thought that a number of museums and Federal agencies may have not sent summaries at all because they could not readily identify something that fit one of the categories. Ms. Kluth also disagreed with several of the presentations previously heard by the committee regarding the benefit to tribal communities of studies of human remains. She asked that the next draft of the regulations be sent to each tribal chair and NAGPRA representative, and that the comment period by longer than thirty days. Ms. Kluth also stated her support for increasing the amount of NAGPRA grant funding.

Mr. Thomas Bullhead talked about the magnitude of the repatriation effort and the importance of bringing relatives home. "We all come here in a good way," he said, refering the the presence of members of the North Dakota Intertribal Reinterment Committee at the committee's meeting, "and we want to leave in a good way." He spoke about the strength of the *cannupa*, the pipe, and his respect

for it. Finally, he explained the importance of the three songs -- the flag song, honor song, and veteran's song -- members of the North Dakota Intertribal Reinterment Committe had sung to honor the committee.

Mr. George Ironshield of the North Dakota Intertribal Reinternment Committee explained that through the *cannupa* everyone become relatives. For Lakota people, he explained, everything is sacred, "even little stones, pebbles, and rocks that people don't pay much attention to." He cautioned everyone against viewing NAGPRA grants as a bone thrown to hungry dogs.

Mr. Scott Jones, public relations officer of the Lower Brule Sioux Tribe, objected to competative grant process "pitting one tribe against another.

Mr. Sebastian LeBeau, Cultural Preservation Officer of the Cheyenne River Sioux Tribe, requested Mr. Haug cite examples of how "you can tell a Lakota skeleton from a Crow skeleton from an Apache skeleton. If the technology exists, bring it out." He stated that the Lakota people object to museums or Federal agencies retaining human remains waiting for "some great advance in genetics."

Mr. Terry Gray, NAGPRA representative of the Rosebud Sioux, pointed out that the 1992 amendments to the National Historic Preservation Act recognizes tribal values and authorizes tribes and Alaskan Native groups "to assume all or any part of functions of the State historic preservation officer with respect to tribal lands." He asked the committee to take into consideration the cultural resource management duties tribal governments are now assuming, and allow unidentified and unaffiliated human remains to be repatriated under cultural resource managerment responsibilities. Mr. Gray suggested that the committee include official presentations from tribal elders on the agenda to help understand the tribal views and better bridge the gap between the non-Indian and Indian point of view.

Mr. Paul Little, Cultural Heritage Director of the Devil's Lake Sioux Tribe, stated that tribal elders have ways of determining the cultural affiliation of culturally unidentifiable human remains. He explained the it comes as no surprise that there are graves in various places, "because our people traveled all over. We know who they are. There is no problem in us taking care of our people. They don't belong to you. They don't belong to us. But we are here to take care of them." Mr. Little said he was thankful for the committee listening and being educated about different ways.

Ms. Jane Martin-Lone Fight, of the Turtle Mountain Chippewa and the North Dakota Intertribal Reinternment Committee, spoke about her concerns that publishing inventories of human remains in the Federal Register was being used by Federal agencies as an excuse not to repatriate. Ms. Martin Lone Fight said that the Turtle Mountain Chippewa and the North Dakota Intertribal Reinterment Committee oppose the requirement. Mr. McManamon explained that section 5 (d)(3) of the statute requires publication of a notice in the *Federal Register*. The Archeological Assistance Division of the National Park Service regularly provised assistance to museums and Federal agencies in drafting and expediently publishing the notices. Ms. Martin-Lone Fight asked if a Federal agency was required to publish such a notice if it was working in good faith with the appropriate Indian tribes. Mr. McManamon explained that it is the statute itself that requires publication in the *Federal Register* notice. The notice is required to ensure that all parties that might be interested know the repatriation is about to take place.

Ms. Deanna Francis, representative of the Passamaquoddy Tribe, explained to the committee how her people are able to identify some remains. She talked about the remains of two individuals brought back from the Maine State Museum. Tribal representatives asked the two "identify yourselves. They did. One was an elderly woman. The other was a young woman who was very scared. We got the paperwork some days later from the museum. The young woman had an unhealed trauma in her chest...according to the archeological data, she had been killed." Ms. Francis stated "There are no unclaimed human remains. All human remains will be claimed."

Ms. Pemina Yellowbird of the North Dakota Intertribal Reinterment committee (NDIRC), explained that the tribal governments represented by the NDIRC would like to see a copy of the final regulations before they are published in the *Federal Register*. The NDIRC does not want a situation where tribes are "forced to live with a set of regulations that do not protect our interests, and do not adequately and even clearly reflect the intent, the letter, or the spirit of the law." Ms. Yellowbird said the regulations' preamble was problematic for the tribes because they have not seen the text or had the opportunity to comment on it. Ms. Yellowbird requested another public comment period and public hearings on the regulations before final regulations are published. Ms. Yellowbird said she does not think it right that very ancient remains be listed as culturally unidentifiable. She questioned the value to science of such culturally unidentifable human remains. "All these remains are our relatives," she said. "We will take care of them." Only archeologists benefit from keeping these human remains. Indian communities must bare the trauma and damage from this situation. Ms. Yellowbird explained that the strong emotions evident at the meeting came from the fact that these were their relatives being discussed. "I will not compromise my relatives by scientific study or being held in collections." Ms. Yellowbird read a draft proposal regarding the disposition of culturally unidentifiable human remains. She suggested that such remains should be repatriated by the consensus of the present-day Indian tribes from each region. The closest national park or other parcel of Federal land should provide four sites as potential locations for reinterment.

Ms. Naranjo spoke about the differences of tribal communities' wishes concerning reburial. While she understands the need for reburial, Ms. Naranjo pointed out that for the Pueblos, "we're most interested in the spirit of the remains, not necessarily the material portion of that remain...I would not want to see any Pueblo person be interred up in North Dakota or South Dakota area. I would rather have it stay where it's at rather than it being moved." Ms. Naranjo said a plan for culturally unaffiliated remains should be developed region by region. Ms. Naranjo stated she continues to see the regulatory language as being an impediment to understanding the regulations, especially for tribal people. She said what the committee has done "is to try to create situations so that we, as Indian communities, would be able to participate in the process." Ms. Naranjo explained that in her traditions, the world and what happens exists in balance, and she was not going to "close myself...to consideration of scientific analysis in some situations." She thanked all the speakers and said she would continue to balance all the statements the committee hears.

Mr. Francis Cree, a member of the North Dakota Intertribal Reinternment committee (NDIRC), stated that the focus was on the spirits and respect of [human] remains. He asked that the committee remember the great discrimination and continuing destruction of Native graves. Mr. Cree said he has been working on different kinds of claims with the U.S. government for 30 years, always with his hands tied behind his back. Mr. Cree stated the same thing was happening at the meeting. He said he wanted to bring this before the committee and thanked them for hearing him.

Mr. Raymond Uses the Knife, Cheyenne River council member and chairman of the CRST Cultural Affairs committee, addressed the committee on the subject of tribal human remains and objects in the possession of museums not receiving federal funds. He said he fears these objects will be sold on the international market because there is no way to bring such institutions in under NAGPRA compliance. Mr. Uses the Knife asked the committee how his tribe should handle institutions that claim they do not have to comply with NAGPRA. Mr. Sullivan suggested Mr. Uses the Knife contact the American Indian Ritual Repatriation Foundation in New York City. Mr. Uses the Knife thanked him, and said he was already talking with that organization. Mr. Uses the Knife explained that many personal items of the Minnicoujou Lakota killed at Wounded Knee were being found in many private institutions; and "the sincerity of my reason for being here is that those types of things that have [been] done in the past, the pain and the hurt that was inflicted upon the people still remain today...we still feel that pain and the horror that happened to us 103 years ago...anybody keeping things like that is totally, totally ridiculous."

Ms. Marcella LeBeau, Cheyenne River Sioux tribal council member, thanked the committee for coming to Rapid City. She also expressed concern over private institutions and non-tribal individuals possessing human remains and sacred things. Ms. LeBeau explained a little about the racism her community lived through, and why people were so distrustful. Ms. LeBeau said that she felt something good would come out of being there as a group, and thanked the committee for listening.

Mr. William Tallbull, Review committee member, spoke of his concerns in visiting museums and not knowing what was in the collections. He spoke of a visit of some elders to a museum one time; "...they didn't realize that the museum had human remains, medicine bundles in the basement. We were treading over human bodies, medicine bundles. A desecration that we did there, by treading over the top of them, caused an accident to happen outside immediately after the old folks left...As we all know as Indian people, whenever there's an accident, there's a reason for it...once with another load of people, a similar situation happened...when I went to a Chicago museum, I had to stop at the door and ask if it was safe to go in there...I was told by the curator that people came and did the blessings so that people wouldn't be going where they shouldn't go. This is how we view the museum, very careful....we have 45 medicine bundles that [are] close to home, that we cannot touch...somehow they were acquired, and they're in the basement, and we refuse to go over there. That's been some of the things that I have walked in on, not knowing what they have...I was visiting a museum where I ran across my grandfather's two medicine rattles. It was a very emotional time for me to find these. I don't know how the museum got ahold of them, but apparently it was grave robbery material...so, when it comes to acquiring things, from people, I'm wondering if there are stolen items...I'm wondering, if there could be something where the museum wouldn't be taking stolen property all the time, if there was something that would get information...from medicine bundles. Especially if we got a man bringing in a medicine bundle. You know that young man does not own the bundle, yet they go ahead and take it. I find that a problem." Mr. Tallbull stated he was

very concerned with especially the spiritual health of the people; "and, it makes me wonder why this country continues to deny us religious freedom. We've been denied our pursuit of spiritual health...the people that sit here and talk about scientific study...I don't thing they know anything about spiritual health."

Mr. Tim Mentz, Standing Rock Sioux Cultural committee member, spoke to the committee on his concerns regarding a deadline the Nebraska State Historical Society (NSHS) was attempting to impose on his tribe for submitting a claim to unprovenanced human remains and unassociated funerary objects which the Pawnee Tribe was requesting for repatriation. Mr. McManamon responded that such a deadline does not conform to the NAGPRA statute. Mr. Mentz agreed that this was his understanding as well, but the NSHS was still insisting that if no claim was made by a date, the tribe had waived the right to such a claim. Mr. Mentz requested the Park Service and the committee keep looking at the trust responsibility in administering NAGPRA.

Mr. Victor Douville, member of the Rosebud Sicangu Consultation committee, addressed the committee concerning the lack of direct input from the Rosebud Sioux Tribe in the passage of NAGPRA. He said that rumors going around say that what has already been drafted will become law, and that "the Secretary [of the Interior] will begin to assert his paternalism." Mr. Douville said that during the Review committee meeting, he has seen this is not the case, and agrees with the direction the committee is taking. He supported having the tribes be the ultimate authority in decisions about repatriation, rather than having the tribes be dictated to by Federal agencies and museums. Mr. Douville requested that more funds be made available to assist tribes for NAGPRA activities. Mr. Douville invited the committee to have a presentation made by his department to develop a better understanding of his people. He thanked the committee for the opportunity to speak.

Mr. George Goggleye, representative from the Leech Lake Chippewa, said he resented the "paternalistic attitude" of the scientific presentations on Culturally Unidentified human remains. He asked the committee to let tribal communities decide the issue their own way. Mr. Goggleye stated there had to be consultation with the tribes "because you don't know what a funeral object is to us." Mr. Goggleye thanked the committee for listening to him.

Ms. Donna Augustine, representative of the Micmac, said that although some in the scientific community may feel hurt or offended by the comments of the native people, she asked that they understand how hurt and offended the native people are that their ancestors are in collections. Ms. Augustine stated that there is a fundamental difference that the scientific community does not understand, and is also not appropriate to talk about in public. Ms. Augustine said that she did not know how the scientific community could disturb or handle tribal ancestors, that perhaps they don't know the harm they are doing. Ms. Augustine wanted the representatives of the scientific community to understand that these human remains, "they're not just remains, they're not bone to be studied, you're dealing with spirits as you touch those remains."

Mr. Carl McKenzie, Rosebud Sioux Tribe, asked the committee to consider closer consultation with the tribes and allowing them to translate the regulations into their own language before sending the regulations out as final.

Mr. Richard Grass expressed his frustration that tribal communities were having to go through this process, and that his people's rights were still being sacrificed "to cover up the fraud of the United States." Mr. Grass expressed his appreciation for the committee, and asked that his people be brought back for reburial.

Mr. Cedric Goodhouse, of the Standing Rock Sioux Tribe, commented that he was glad Mr. Murdy made his presentation, because Mr. Goodhouse felt those arguments reminded everyone why NAGPRA had to be enacted in the first place.

Mr. Sebastian LeBeau, NAGPRA representative of the Cheyenne River Sioux Tribe, thanked the committee for coming and listening to the concerns of people in the Plains area. Mr. LeBeau said the regulations should always favor the Indian perspective regarding repatriation, and the fines under civil penalties should go immediately to the aggrieved tribe. Mr. LeBeau emphasized that a Federal Register notice should "never, ever hinder or impede the repatriation process." Mr. LeBeau also requested that the need for NAGPRA compliance be made clear to universities and colleges, whether their collections were "historic" or "pre-contact."

Mr. Darrell Newell, representative of the Passamaquoddy Tribe, requested that culturally unidentified inventories also be sent to tribes in the region those remains came from. Mr. Newell was concerned that "inventories and summaries that we are receiving are incomplete or nonexistent based on predetermined...basis [of] exclusively scientific data and not other considerations..." Mr. Newell asked that the understanding of non-experts, everyday people who will be affected be taken into consideration during the writing of regulations.

Mr. Dave Bald Eagle, Cheyenne River Sioux, addressed the committee, and said he appreciated the beginning of the repatriations. Mr. Bald Eagle said he would continue speaking to people around the world about peace, unity, friendship, and better relationships in the world. Mr. Bald Eagle thanked the committee for coming and wished them all a safe journey home.

Mr. Everett Black Thunder, Sisseton-Wahpeton Sioux, commented to the committee that tribal people should have more input for the regulations, and he saw them now as very museum-friendly. Mr. Black Thunder supported Mr. Little's suggestion that tribal elders be invited to the committee meetings for educating the committee about the tribes in different regions.

Ms. Rachel Craig, Review committee member, addressed the meeting and said she appreciated hearing everyone's comments. She said that in her home area in Alaska, the land is known by who traveled in it, and place names are taken from the people buried there. Ms. Craig told the meeting, "it was my job to do a survey of these cemetery sites and historical places...I took the ancestors' names of those people who were buried there...so all of these people that are buried out in the country singly are known to us...whose family they are." Ms. Craig said she was so happy to hear the tribes in the Plains had as much concern for their ancestors and were willing to claim them all as her own community. She explained the difficulties she had faced in being chosen to represent diverse Native people in Alaska on the committee, and how the committee had to develop a base for their decisions. Ms. Craig thanked everyone for listening.

The meeting was closed at 5:25 p.m. on Saturday, May 14, 1994.

Approved:

Tessie Naranjo, Chair
Native American Graves Protection
and Repatriation Committee

Date

MINUTES
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REVIEW COMMITTEE
EIGHTH MEETING: NOVEMBER 17-19, 1994
ALBANY, NY

The eighth meeting of the Native American Graves Protection and Repatriation Review Committee was called to order at 8:30am, Thursday, November 17, 1994 by Ms. Rachel Craig. The committee meeting was held at the New York State Museum, Clark Auditorium in Albany, NY. The following committee members, staff, and others were in attendance:

Members of the committee:

Ms. Rachel Craig
Mr. Jonathan Haas
Mr. Dan Monroe
Ms. Tessie Naranjo, chair
Mr. William Tallbull
Mr. Philip Walker

National Park Service staff:

Mr. Francis McManamon, Departmental Consulting Archeologist
Mr. Tim McKeown, NAGPRA Program Leader
Ms. Mandy Murphy, Consultant
Ms. Jean Kelley, Consultant

The following others were in attendance during some or all of the proceedings:

Ms. Jodi Ackerman, Albany, NY
Ms. Lisa Anderson, New York State Museum, Albany, NY
Ms. Brenda Baker, New York State Museum, Albany, NY
Ms. Louise Basa, New York Archeological Council, Schenectady, NY
Mr. Robert Bonnichsen, Corvallis, Oregon
Mr. James Bradley, Robert S. Peabody Museum, Andover, MA
Ms. Jaymie Brauer, American Museum of Natural History, New York, NY
Ms. Tamara Bray, National Museum of Natural History, Smithsonian, Washington, D.C.
Mr. Bob Brown, Oneida Nation of Wisconsin
Ms. Silvie C. Brown, New York State Museum, Albany, NY
Mr. M.A. Bruce, Wynantskill, NY
Ms. Ellen Cesarski, State University of New York-Albany, NY
Mr. George Claxton, New York State Museum, Albany, NY
Ms. Rebecca Cole-Will, Abbe Museum, Bar Harbor, ME
Ms. J. Collamer, Collamer & Associates, East Nassau, NY
Mr. Steve Comer, Stockbridge-Munsee, Sand Lake, NY
Ms. Honee Conklin, Albany, NY
Ms. Jacky Corey-Smith, Rensselaer, NY

Mr. Ed Curtine, Skidmore College, Saratoga Springs, NY
Mr. Charles D'Arcangelis, State University of New York-New Paltz, NY
Ms. Nancy Davis, New York State Museum, Albany, NY
Mr. Dan DeMicco, Albany, NY
Mr. M. Ellsworth, Lake George, NY
Ms. Pam Fahey, Oneida Nation of New York
Mr. W. N. Finton, Shirgerlands, NY
Ms. Patricia Friedrich, Oneida Nation of Wisconsin
Mr. Dennis Funmaker, Ho-Chunk Nation, WI
Ms. Rebecca Goldstein, Albany, NY
Ms. Martha Graham, American Museum of Natural History, New York, NY
Mr. George Green, Mashpee Wampanoag Tribe, Mashpee, MA
Ms. Laura Green, New York State Museum, Albany, NY
Ms. Tamara Grybko, Boston Children's Museum, Boston, MA
Mr. Gregory Gust, Washington, D.C.
Mr. L. Hauptman, State University of New York-New Paltz, NY
Ms. Barbara Issacs, Peabody Museum, Havard University, Cambridge, MA
Mr. Pete Jemison, Seneca Nation, NY
Mr. Kervin Jonathan, Tonawanda Nation, NY
Ms. Rebecca Joseph, National Park Service, Boston, MA
Mr. George Kanertio, Mohawk Nation, NY
Ms. Andrea Lain, New York State Museum, Albany, NY
Mr. Bronco LeBeau, Cheyenne River Sioux Tribe, SD
Ms. Sharon LeRoy, Cayuga Nation, NY
Mr. S. Light, Brooklyn, NY
Ms. Anita Little, Mashpee Wampanoag Tribe, Mashpee, MA
Ms. Maria Liston, Adirondack Community College, Queensbury, NY
Mr. Michael J. Lukensgard, Oneida Nation of Wisconsin
Mr. Bud Mahoney, New York Assembly, Albany, NY
Mr. Emerson Martin, Selkirk, NY
Mr. Gary McCann, Muhheconneck Intertribal Committee, Quincy, MA
Ms. Joan Merriman, State University of New York-Binghampton, NY
Ms. Loretta Metoxen, Oneida Nation of Wisconsin
Mr. Phillip Minthorn, Jr., National Museum of Natural History-Smithsonian, Washington, D.C.
Ms. Kerry Nelson, Skidmore College, Saratoga Springs, New York
Mr. Nick Nicastro, Ithaca, New York
Mr. Doug Owsley, National Museum of Natural History-Smithsonian, Washington, D.C.
Mr. Brian Patterson, Oneida Nation of New York
Mr. Stuart Patterson, Tuscarora Nation, NY
Ms. Kelly Paxton, State University of New York-New Paltz, NY
Ms. Lydia Peirce-Doughty, New York State Museum, Troy, NY
Mr. Joseph R. Phillips, Maine State Museum, Augusta, ME
Mr. Irving Powless, Onondaga Nation, NY
Mr. Mark Pritchard, New York State Museum, Albany, NY
Ms. Carol Raemsch, State University of New York-Albany, NY

Ms. Sharon Reid, New York State Museum, Albany, NY
Ms. C. Rosenmeier, Robert S. Peabody Museum, Andover, MA
Ms. Barbara Ross, New York State Museum, Albany, NY
Mr. Allan Ryan, Harvard University, Cambridge, MA
Ms. Alyce Sadongei, National Museum of the American Indian-Smithsonian, Washington, D.C.
Ms. Geraldine Santoro, Statue of Liberty National Monument, National Park Service, New York, NY
Ms. Lorraine Saunders, Rochester Museum & Science Center, Rochester, NY
Ms. Nicole Scafidi, State University New York-New Paltz, NY
Mr. Alan L. Schneider, Portland, OR
Ms. Maggie Sebastian, New York State Museum, Albany, NY
Mr. S. Seney, New York State Museum, Albany, NY
Ms. Anne Stanaway, Boulder, CO
Mr. John Stubbs, Peabody Museum, Havard University, Cambridge, MA
Ms. Tamara Vasney, New York State Museum, Albany, NY
Mr. Carey Vicenti, Bureau of Indian Affairs, Washington, D.C.
Ms. Anne-Marie Victor-Howe, Peabody Museum, Harvard University, Cambridge, MA
Ms. Denise Vigue, Manager, Onedia Nation of Wisconsin
Mr. Emerson Webster, Tonawanda Nation, NY
Mr. Daniel H. Weiner, Hughes, Hubbard & Need, New York, NY
Ms. Beth Wellman, New York State Museum, Albany, NY
Mr. Frank Wozniak, US Forest Service, Albuquerque, NM
Mr. Ben Young, State University of New York-New Paltz, NY
Mr. Stephr Young, State University of New York-New Paltz, NY

Host's Welcome

The committee was welcomed to the New York State Museum by Ms. Carole Huxley, Deputy Commissioner for Education and Mr. Louis Levine, Assistant Director of the New York State Museum.

Review of Agenda

Mr. McManamon, Departmental Consulting Archeologist, went over the meeting agenda. Following a review of the status of current efforts to implement the Act, the committee would review several draft documents including the committee's 1993-1994 Report to Congress, a Sample Inventory for Human Remains and Associated Funerary Objects, and a listing of Native American groups currently petitioning for Federal recognition. The committee was also scheduled to hear presentations the disposition of culturally unidentified human remains and a request from the Peabody Museum at Phillips Academy in Andover, MA for the committee's recommendation regarding repatriation to a federally-unrecognized group. The United States Marine Corps, Hawaii has also asked for the committee's recommendations regarding a dispute between claimants for human remains from the Mokapu penninsula on Oahu.

Implementation Update

Mr. McManamon reported that over 15,000 notices had recently been sent to remind all medical schools, museums, and departments of anthropology at colleges and universities of the summary and inventory requirements of the Act. Mr. McManamon said some of the responses from smaller institutions indicate "there is not a very good understanding of the law." The Archeological Assistance Division has recieved copies of summaries from 630 museums and Federal agencies. Mr. Haas said he noticed many museums and universities still missing from the summaries list. Mr. Haas said he appreciated seeing the notation on the list of institutions that have sent in statements of no collections. Mr. McManamon suggested the committee let him know of institutions who ought to be on the summaries list, and in the meantime he would continue publishing announcements and distributing information about NAGPRA. Mr. Haas asked Mr. McKeown if he could provide a percentage of institutions currently in compliance. Mr. McKeown responded that there is currently no way to tell which of the 15,000 museums and universities actually recieved Federal funds and have Native American collections. Mr. Walker said he was concerned that there were small museums who "are just going to not do anything...and we'll never know about it." Mr. McManamon said that although informing everyone about the law is a slow process, most institutions will eventually get the information they need.

Mr. Haas asked if the committee could be provided with copies of the Notices of Inventory Completion and Notices of Intent to Repatriate a Cultural Object published in the *Federal Register*. Mr. Haas said that as part of the committee's monitoring responsibilities, he would like to see the level of activity and what material was being returned. Mr. McManamon said those copies would be provided in the committee's meeting binders in the future. Mr. Haas questioned the level of repatriation activity based on the low number of notices. Mr. McKeown explained that notices could cover a large number of human remains and objects, and he also expected the number of notices to increase dramatically during the next year.

Mr. McManamon announced that Congress had funded the NAGPRA grants at 2.3 million dollars for FY 1995, the same amount appropriated in FY 1994. Grant guidelines had already been distributed to all Indian tribes, Native Hawaiian organizations, and museums that submitted summaries. Application deadlines were in Feburary, 1995. He acknowledged the current level was not adequate to meet the needs of tribes and museums. Mr. McManamon called the committee's attention to the FY 1994 grant recipients. Mr. McKeown explained the process of the 1994 grant selection and the method the grant selection panel was chosen. Mr. Haas and Mr. Monroe asked if the selection panel could be chosen from people outside the federal government, like NSF, NEA, and NEH run their grant panels. Mr. McKeown said the Department Solicitor had told them their panel should be federal employees or they would have to go through another review committee set-up and selection process. Mr. Monroe asked if the grants selection panel could be set up under the authority of the review committee. Mr. Walker said the point was to make everyone feel the process is fair and "there aren't any inside favorites." Mr. McManamon said he would check on the feasibility of that option.

Mr. Walker asked if the grant funding could be in jeopardy with the new Congress. Mr. McManamon replied that there was talk of a recesion of some FY 1995 funds, but he had not heard of anyone specifically targeting NAGPRA grant monies. Mr. Walker asked when the 1995 grants would be allocated. Mr. McManamon responded that the 1995 grants should be distributed by July 1, 1995. Mr. Walker asked if some funds could be set aside to assist smaller tribes and institutions to develop their grant proposals. Ms. Craig suggested that joint proposals would be the best method of

getting NAGPRA funding to smaller tribes and museums. In Alaska, different villages are getting together and drawing up cooperative proposals. She thought perhaps smaller communities in the lower 48 states could look at those examples. Mr. McManamon agreed and said the proposals which include joint efforts on the part of several different Indian tribes and museums were very cooperative. Ms. Craig said that in her area, the information about NAGPRA grants was just beginning to reach the more isolated communities, and that may increase the need for funding even further. Mr. Walker said he had the same concerns for small museums and institutions, and asked if there wasn't some method to further simplify the grant process. Mr. McManamon stated that the office has simplified the process to the extent possible. He also said that the proposal guidelines encouraged applicants to call the NAGPRA staff for assistance in preparing their grants.

Mr. McManamon said Mr. McKeown had been doing "a tremendous amount of work on training" through a formal course offered by cooperative agreement with the University of Reno, Nevada; and also participating in a series of workshops, including ones partially funded through FY 1994 NAGPRA grants. Ms. Naranjo thanked Mr. McKeown for conducting those workshops around the country. Mr. Monroe added that the DCA was doing "an outstanding job explaining issues and helping people understand the course to take without having to bring issues before the committee."

Mr. McManamon told the committee that he and Mr. McKeown had several meetings with representatives of the Assistant Secretary's office, the Solicitor's Department, and other Interior bureaus; and the final regulations have been sent for final approval. Mr. McManamon outlined the few specific changes to the regulations in their final form.

Mr. McManamon reported that a draft of proposed regulations regarding civil penalties would be introduced for publication in the *Federal Register* once the final regulations were signed. Ms. Naranjo asked Mr. McKeown for a review of the subjects within the civil penalties section. Mr. McKeown reviewed the current draft civil penalties section for the committee.

Mr. McKeown reminded the committee there were three other reserved sections of the regulations: disposition of unclaimed human remains and cultural items recovered from Federal or tribal lands; disposition of culturally unidentifiable human remains in museum and Federal agency collections; and future applicability of the statute. The committee agreed to discuss these sections at a later meeting.

1993-1994 Report to Congress

Mr. McManamon reviewed the contents of the committee's draft Report to Congress for 1993-1994. Mr. McManamon said the draft contained a short text which documented the committee's activities during that time, followed by summaries of each of the committee's meetings, and findings issued by the committee on dispute hearings, and a section for the committee's recommendations to Congress. Mr. McManamon also noted the attachments of various documents issued by his office and the committee during 1993-1994: the memorandum of guidance for summaries, inventories, and notification; the proposed regulations; the list of institutions submitting summaries; the FY1994 grant guidelines; and a listing of Notices of Inventory Completion and Notices of Intent to Repatriate a Cultural Object published in the *Federal Register* during 1993-1994.

Mr. Walker was concerned that the report be very readable and asked how the committee could maximize the chances that the Congressional committees would "actually look at this and make use of it..." Mr. Haas agreed it was important to produce a document which would be very readable. Mr. McManamon agreed the document itself should be streamlined and to the point, but added that the appendices were important supporting information. Mr. McManamon suggested that perhaps the report and the appendices could be produced as two separate documents. Mr. McKeown said the initial text could be edited down and then have an executive summary. Mr. Haas agreed that would be an effective document.

Mr. Walker asked who was reading the 1992 report to Congress. Mr. McKeown said in addition to being included in each information packet sent out, the 1992 report was being requested by tribal representatives, museum representatives, Federal agencies, and staff members of several House and Senate committees. Mr. McManamon related that the 1992 report had been very useful during the 1993 Senate Indian Affairs Committee oversight hearings on implementation of the statute.

The committee members agreed that increased grants funding should be stressed in the report's recommendations. Mr. Haas recommended the committee include a vigorous recommendation for 10 million dollars per year. He thought this level would be appropriate for the next five years, and was in line with the importance of the issues of repatriation. Mr. Haas also recommended the members of the committee begin pushing their professional organizations and other advocacy groups to increase lobbying for the higher funding levels. Mr. McManamon reminded the committee that these recommendation would be for the FY1996 money.

Mr. Carey Vicenti, Bureau of Indian Affairs, suggested that the committee use its position to comment on how NAGPRA is effecting the maintenence of Indian cultures and religions. He recommended the committee let Congress know that its not all bliss out here. Mr. Haas agreed that the current draft does not indicate the disagreement or emotion surrounding the law. Mr. Vicenti said the committee may want to consider including language indicating the challenges faced by both tribal and museum communities in implementing this law.

Mr. Sebastian "Bronco" LeBeau, NAGPRA Coordinator for the Cheyenne River Sioux Tribe, supported including the challenges faced by Indian tribes and museums in the 1993-94 Report to Congress. Everyone has to talk about the problems we are having with it. His community has been having problems in consultation with institutions who have already decided what in the collections the tribe may conduct consultation on. Mr. LeBeau asked the committee to speak it's true feelings in the Report to Congress. "Give Congress a complete a picture of what people are doing." He recommended that the report be as long as needed to present the current situation.

Mr. J.R. Phillips, Director of the Maine State Museum, supported including a request for $50 million funding over the next five years in the 1993-94 Report to Congress. Mr. Phillips said the larger total was more likely to get some serious attention in Congress.

Mr. Dennis Funmaker asked the committee to be very vocal in its report to Congress about the need for more funding to accomplish the objectives of the statute.

Mr. George Abrams, New York University Museum Studies and the American Indian Association in New York City, said he hoped the Report to Congress would be persuasive enough for Congress to appropriate more funds for NAGPRA.

Mr. Monroe recommended the committee write the report to Congress and not use the draft. The Committee concurred. Mr. Monroe agreed to write the text of the report.

Sample Inventory

Mr. McManamon presented the committee with the latest draft of the Sample Inventory for Human Remains and Associated Funerary Objects which included the changes recommended by the committee at the Rapid City meeting. Mr. McManamon noted that cultural affiliation has been changed to be a specific line in each example, and the results of consultations are also a separate line.

Mr. Walker asked what the statutory requirements were for the inventory, and specifically what the language regarding existing documentation meant for the inventory production. Mr. McManamon responded that institutions should be checking through not only accession and catalog information, but also reports, field notes, or other records in the institution. The regulations provide for limited further examination for the express purpose of determining cultural affiliation.

Mr. Walker asked for clarification regarding human remains from an earlier single group were now represented by two or more Federally recognized Indian tribes. Mr. McKeown agreed the document could be changed to reflect that situation, and noted that several Indian tribes have entered into agreements to jointly repatriate those remains. Mr. McKeown said the draft had been produced to be generic, and therefore flexible when applied to different institutions.

Mr. Tallbull reminded the committee that many tribes today are the result of earlier peoples coming together, such as within the Cheyenne. "The tribe consists of two groups of people that came together, two different languages. Each group has a covenant...there has been a problem of bringing home items that belong to a certain group but somebody else got it within a tribe. It has a very demoralizing effect on the people. I don't think the museums should just hand it to the first group of people that comes along. Even within tribes, important information may not be relayed to the appropriate people." Ms. Naranjo stressed the importance of both tribes and museums exerting conscientious efforts in consultations and notifying the appropriate people.

Mr. Walker asked how notification of culturally affiliated tribes occurred. Mr. McKeown explained that when an institution sends in a notice to be published in the *Federal Register*, the DCA staff it over to check that all culturally affiliated Indian tribes and Native Hawaiian organizations have been contacted. Mr. Walker said the approach he would like to see "is to try to do everything that we can with the resources that we have to make sure that appropriate groups are notified." Mr. McKeown responded that consultation was the responsibility of the institution or Federal agency. Consultation must be done before the notice is published in the *Federal Register*. Although the NAGPRA program office does screen notices and may suggest tribes for further consultation, the institution must ultimately be the contact.

Ms. Naranjo asked Mr. Frank Wozniak for comments on cultural affiliations with multiple tribes from his perspective in the Southwest. Mr. Frank Wozniak, NAGPRA Coordinator for the Southwestern Region, U.S. Forest Service, explained many of the Pueblos have claims for the same areas, and the situation is further complicated by the Navajo Nation's proposal of cultural affiliation with prehistoric Pueblo materials within the boundaries of the Navajo Nation. Mr. Wozniak thought the best method of dealing with these potentially competing claims would be for the Pueblos to work through the All-Indian Pueblo Council, made up of the governors of all New Mexico's pueblos. Mr. Wozniak stated the cultural affiliation questions were extremely difficult, and invited guidance and direction from the committee in this area.

Mr. Walker disagreed with the inclusion of remains affiliated with federally unrecognized tribes as Culturally Unidentifiable. Mr. Haas agreed, but thought the publication requirements of culturally unidentified inventories may result in tribes coming forward with claims.

Mr. Walker asked if the sample inventory could be reworked to eliminate redundant information. Ms. Naranjo said her concern for tribal communities was that the document show exactly the information with each individual as the draft indicated. She said this was the specific type of information needed by Indian tribes, and she supported the draft inventory's structure. Mr. Walker supported a listing of information for each accession before the listing of each catalogue item. Mr. Haas suggested that for each tribe, there would be a cover sheet stating the common accession information, and then list specifically human remains and associated funerary objects with relevant documentary and consultation information. Ms. Naranjo agreed this would get the relevant information to the tribes. Mr. McKeown said the current draft was constructed to provide as many generic examples as possible for all institutions to use. The committee recommended that the suggested changes be incorporated. Mr. McManamon stated the sample inventory would be revised to have cultural affiliation clearly stated on one line, and also include an example of a situation where two present-day tribes are affiliation with human remains from a single earlier group.

Native American Group Contacts

Mr. McManamon summarized the draft memorandum as an issue which arose during review of draft final regulations. Mr. McManamon explained that there was interest within several Department of Interior bureaus in working with groups currently in the recognition process in the Bureau of Indian Affairs. Mr. McManamon said the draft memorandum would encourage museums and Federal agencies to consult with those groups, but restrict repatriation until those groups are recognized or until the issue is resolved by the Department of the Interior.

Ms. Naranjo said the draft was a beginning in allowing non-Federally recognized Native American groups into the process, but acknowledged that the law specifies that a tribe be Federally recognized to have standing for repatriation.

Mr. Haas asked if NAGPRA limits a museum's ability to repatriate collections to non-Indian groups or to groups outside the United States. Mr. McManamon explained that the NAGPRA statute only covers Native American human remains and cultural items, and the concern is ensuring they are repatriated to the correct community. A museum following an internal procedure for Native American

human remains which would not comply with NAGPRA would possibly be "at some legal, financial, moral, and ethical risk." He added that he thought it was possible to address these concerns within the framework of NAGPRA.

Ms. Craig suggested that institutions and museums work within their own policies to return "all human remains to their respective Indian groups. "Whether the U.S. Government has recognized them or not, they are here. They were born and they die." Ms. Craig asked that part of the Committee's recommendation state that the issue needs to be resolved "in whatever way that it works for those remains to get home to the people that they were taken from." Ms. Naranjo agreed, and added that she was frustrated because currently, although unrecognized tribes should be consulted, they are not included beyond the consultation process.

Mr. Haas noted that the draft memorandum states the BIA list determines which Indian tribes have standing under NAGPRA. That statement is contrary to the committee's decision to not use the BIA list. He stated that he did not want the NAGPRA process to be dependent on "that other bureaucracy" to determine which communities have standing. Mr. Walker asked if the separate tribes now incorporated into affiliated or confederated governments/reservations could somehow be enabled to act separately from the recognized government's authority. Mr. McManamon replied that the Secretary's solicitors have not given a final answer to that question. When they do, the committee will have stronger guidance on how to proceed.

Mr. Haas proposed, and the committee agreed to recommend the inclusion of the Mashpee Wampanoag on the DCA NAGPRA contact list. Mr. McManamon said he would work with the Solictor to see if the list can be expanded.

Mr. Monroe suggested that the committee allow non-Federally recognized Native American groups to request a decision when making a claim on human remains culturally affiliated with that group. Once the committee has issued a decision, it could also issue a finding that the non-recognized Native American group is an affected party under NAGPRA. Mr. Monroe then suggested that the committee could create a list of "affected parties" for distribution with the NAGPRA contact list. Mr. Walker and Ms. Craig supported the idea. Mr. Vicenti explained that this method of dealing with non-Federally recognized Native American groups would have to be approved in the Solicitor's office. He suggested that the idea should be considered. Mr. Haas asked the committee to also consider another alternative because the committee is charged with recommending specific actions for culturally unidentified human remains, it could recommend repatriation to non-Federally recognized Native American groups based on the information submitted with those inventories, and then add those groups to an "affected parties" list. Mr. McManamon said he would look into the feasibility of both proposals and report back to the committee.

Request for a Recommendation Regarding Culturally Unidentifiable Human Remains

Mr. James Bradley, Director of the Robert S. Peabody Museum of Archaeology at Phillips Academy, Andover, MA, requested the committee's recommendations regarding human remains held by the museum believed to be culturally affiliated with the Mashpee Wampanoag Tribe, a non-Federally recognized Native American group. Mr. Bradley spoke about the development of the Massachusetts

state repatriation process and the long involvement of the Mashpee Wampanoag community in repatriations within the state. He explained the reason the museum was asking for the committee's recommendation, "There is a clear claimant in this case, but because of the lack of Federal recognition we cannot proceed with the return of those remains without your permission." Mr. Bradley presented three lines of evidence demonstrating affiliation. The Titcut Site, from which the human remains were recovered, is a well-known site in Massachusetts. The site has considerable time depth with at least seven or eight millennia of human occupation. The burial was a ten to twelve-year old girl, with associated funerary objects that include both native and european made items dating from 1580-1610. Mr. Bradley said this burial compares very strongly with other known Wampanoag sites, such as Burr's Hill. "We feel that we can demonstrate a shared cultural relationship on the archeological evidence alone." The second line of evidence presented by Mr. Bradley used ethnohistoric accounts dating back to the early 17th century that clearly define traditional Wampanoag territory. A map presented by Mr. Bradley showed the burial site was clearly within Wampanoag territory. The third line of the evidence focused on the oral history of the Mashpee Wampanoag. The Mashpee consider themselves related to the earlier occupants of the Titcut Site.

Mr. Chuck Green, Vice President of the Mashpee Wampanoag, stated that the Mashpee have existed as a community since "...that area was designated as the last holding place for the Wampanoag people at the end of the King Philip Wars." Mr. Green also presented the Federally-recognized Gay Head Wampanoag Tribe's support of the Mashpee claim. Mother Bear, one of the Mashpee Wampanoag clan mothers, addressed the committee and requested their assistance in the repatriation and reburial of these Mashpee human remains.

Ms. Naranjo invited the committee members to discuss the museum's request. Mr. Tallbull supported the request for repatriation. Mr. Walker asked if the requirements of NAGPRA are met, mechanisms outside of NAGPRA can be used for repatriation. Mr. Green responded the Mashpee were approaching the issue in this fashion to be able to work within NAGPRA in the future. Mr. McManamon confirmed that non-Federally recognized Native American groups such as the Mashpee Wampanoag do not have standing to make claims under NAGPRA. Mr. McManamon stated these human remains currently were considered culturally unidentifiable, one function of the review committee was to make recommendations regarding the disposition of culturally unidentifiable human remains.

Mr. Monroe said all the processes had been followed in this situation, and recommended the remains be returned. Ms. Naranjo directed Mr. McManamon to draft a letter of finding for the Robert S. Peabody Museum and the Mashpee Wampanoag stating the committee's support of repatriation.

Disposition of Culturally Unidentifiable Human Remains to Non-Federally Recognized Native American Groups

Mr. McManamon presented the committee with a draft memorandum regarding the disposition of culturally unidentifiable human remains which are culturally affiliated with non-Federally recognized Native American groups. Mr. McManamon stated the draft document was drafted to provide an interim solution to similar situations between institutions and groups such as the Mashpee Wampanoag. Mr. Walker said the procedure had already been used and the committee should "extend

that opportunity to other groups in similar situations." Mr. Haas also suggested the memorandum allow non-Federally recognized Native American groups to bring requests to the committee. Mr. Monroe agreed. Ms. Naranjo said she was looking at the draft memorandum as "an interim kind of way to help us while we clear up the definition of Indian Tribe."

Mr. Haas was concerned that human remains which are culturally affiliated with a present-day Native American group were being classified as culturally unidentifiable simply because the community does not have Federal recognition. Mr. Walker and Mr. Monroe agreed. Mr. McManamon explained that there are different reasons that human remains or cultural items fall into the culturally unidentifiable category. The committee is authorized to make specific recommendations regarding the disposition of culturally unidentifiable human remains. Mr. Monroe explained he felt there was a "problem with the logic and a problem with the ethics" with the way culturally unidentifiable was being defined. Ms. Craig questioned how human remains "could not be culturally affiliated just because the government doesn't recognize that Indian tribe", and suggested that the memorandum be reworked.

Mr. Haas asked if the committee would agree to a memo simply stating Native American groups claiming cultural affiliation may petition for repatriation on a case-by-case basis. Mr. Monroe asked how an Indian tribe is determined eligible for special programs and services. Mr. McKeown explained that there are some groups having "some sort of relationship with the United States government" which are eligible for funds under the American Indian Self-Determination Act. Mr. McKeown said the Solitior's Office has advocated a government-to-government status for determining an Indian tribe's standing rather than a looser race-related standard, but that the committee's preference for a broader interpretation has been communicated to the Solicitor's office. Mr. McKeown stated the Solicitor's office had told him that "the determination of what "Indian Tribe" means is out of the committee's control and out of our control (the National Park Service)." He stated that if the final determination comes back that there is no latitude for granting standing to non-Federally recognized Native American groups. The draft memorandum before the committee would provide mechanisms within the law to accomplish the goals of repatriation.

Mr. Monroe suggested the committee formulate a procedure by which, on a case-by-case basis, there would be an opportunity to bring repatriation requests before the committee. Mr. Vicenti felt that a case-by-case procedure would become too cumbersome, and suggested a two-tiered approach--mandating notification and consultation with Federally recognized groups first, and if no claims to the materials are received, the institution would be free to give the human remains and cultural items to whatever group it thought was entitled to them. Mr. McKeown responded that this was essentially the procedure proposed in the draft memorandum. Mr. Monroe strongly disagreed with the inclusion of human remains affiliated with non-Federally recognized Native American groups in the culturally unidentifiable category. Mr. Haas supported using the current draft memorandum until "we hear from the Solicitors if we can use a larger list."

Mr. Vicenti and Mr. McKeown agreed the Mashpee decision would provide notice to museums that similar situations could be brought before the committee. The precedent could serve as policy without further action by the committee. Mr. McKeown asked the committee if they wanted the policy memorandum published in the Federal Register and the Federal Archeology Report to notify effected institutions and groups. Mr. Haas suggested also publishing in Aviso, the American Association of Museums newsletter and the Society for American Archeology newsletter as well. Mr. Monroe agreed

on those steps for the Mashpee decision, but wanted to get better answers before publishing findings on the issue of the inclusion of non-Federally recognized Native American groups on the NAGPRA contact list. Mr. Haas said the committee should also make and explicit, vigorous recommendation to the Secretary of the Interior that the committee does "not accept the BIA list as the list of groups that have standing under NAGPRA." Ms. Naranjo directed the DCA to "publicize our recommendations related to the [Mashpee] Wampanoag Tribe...to give notice to the museum community and to the Indian tribes that we are not being exclusive with regard to tribal participation in repatriation."

Disposition of Culturally Unidentifiable Human Remains

Mr. Douglas Owsley, forensic anthropologist at the National Museum of Natural History, Smithsonian Institution, presented his views to the committee on the disposition of culturally unidentifiable human remains. Mr. Owsley stated he felt that all human remains need to be treated with great care and respect. "My studies of the remains from long ago are conducted with a sincere belief that these bones can tell us much about what life was like. I think this information is relevant to us today." Mr. Owsley listed the kinds of information he feels can be gained from human remains and what that information tells him about life in the past. Mr. Owsley specified two categories of culturally unaffiliated human remains. The first category are those human remains lacking good "cultural context". Such human remains are often collected by nonprofessionals and donated to a museum. "This lack of cultural context reduces the value of these human remains to scientific research." Mr. Owsley said those remains should be reburied. The second category are "human remains that have good archeological provenance but are not clearly culturally affiliated with a present-day Indian tribe." Examples included Woodland and Archaic peoples of a thousand years ago. "Their relationship to the modern day is very difficult to unravel." Mr. Owsley felt that pre-contact people were very culturally different from Indian tribes in the historic period. "These remains should be carefully preserved so that they are available for study in the future." Such long-term curation should be done with input and sanction from contemporary Indian people. "Museums need to work with Indian tribes to obtain input and to find ways that would help make curation more tolerable." Mr. Owsley suggested the continued curation of these human remains "will prove beneficial to Native Americans." Mr. Owsley also cited the continuing developments in investigative techniques as a reason to maintain collections.

Mr. Sebastian LeBeau, Cheyenne River Sioux NAGPRA representative, responded that while Mr. Owsley and his profession stress scientific values, Indian people value the spiritual relationship presented by human remains. Mr. LeBeau disagreed with Mr. Owsley's statements that he respects Indian human remains, and pointed out in the National Museum of Natural History's labs, he had seen "people visiting over them, people talking over them, people laughing over them. You don't do that with people. That's what our ancestors are to us: people. I didn't see respect." Mr. LeBeau reiterated that the ancient human remains in institutions are the relatives of Indian people, who will settle issues of cultural determinations. Mr. Dennis Funmaker stated the proposed justifications for maintaining collections were unbelievable, and supported Mr. LeBeau's remarks.

Ms. Brenda Baker, bioarcheologist at the New York State Museum, presented a statement prepared by a group of physical anthropologists from New York State; including Carol Raemsch, Richard Wilkinson, Tamara Varney, Lisa Anderson, Maria Liston, and Lorraine Saunders. Ms. Baker stated,

"the primary issue concerning the disposition of culturally unidentifiable human remains, as with all excavated human remains, is not repatriation but the tension between reburial and continued access." Ms. Baker attached the same importance to culturally affiliated and culturally unidentifiable remains, and the group's statement did not distinguish between the two. Ms. Baker cited examples of specific research, such as the study of back problems and the relationship of arthritis & osterophosis with diet as having improved treatments for present-day sufferers: "Bio-anthropological research on human remains supports the provision of better social services and health practice in contemporary societies."

Ms. Baker and her colleagues supported maintaining all human remains in research collections, and cited extensive research...carried out on the remains of Euro-American populations, of poorhouse residents, family tombs, and the bioarcheology of African American groups" to show that Native populations were not the sole basis of research collections. Ms. Baker and her colleagues also supported curating human remains for training future anthropologists in the area of human osteology. "Any artificial model fails to provide the range of variation found in actual skeletons. We would not trust a surgeon trained exclusively through computer-generated programs, and we should not trust a skeletal biologist whose training was similarly artificial." Ms. Baker stated "it is not appropriate to rebury those remains for which we cannot decipher group membership. It is in no one's best interest to return culturally unidentifiable remains to any single group simply to remove them from museum collections. Even isolated burials, fragmentary skeletons and those that are unprovenienced can provide information on a region and about little-known time periods. It is only through careful attention to each and every individual that we can build a more complete picture of the past." Ms. Baker concluded her presentation by stating, "The study of all remains fosters understanding of all cultures. It is of major benefit to the United States to promote appreciation of cultural diversity for our future rather than promoting divisions and intolerance. The understanding we can all gain from cooperative efforts fosters mutual respect. We propose that repatriation with continued access would benefit all. We respectfully recommend to the review committee that repositories for culturally unidentified and unclaimed remains be created that would allow control by Native American groups while permitting continued access by anthropologists."

Ms. Naranjo noted that Mr. Owsley's and Ms. Baker's presentations made sense, but she also could not forget Mr. Tallbull's stories of human remains singing and laughing as they were being taken home. Mr. Haas asked if osteologists and physical anthropologists felt they could continue to justify their analysis "in the face of overt direct opposition by the descendants of those individuals to that analysis." Ms. Baker said she did not know.

Mr. Thomas Killion, Acting Director of the Repatriation Office in the National Museum of Natural History, Smithsonian Institution, supported the development of a process to facilitate the repatriation of culturally unidentified human remains.

Mr. Dean Snow, Professor of Anthropology at the University of New York State, Albany, limited his remarks to the problems presented by human remains "so old as to defy identification with any present-day Tribe." Mr. Snow noted that the length of time this would encompass will be different for different regions of the country. Mr. Snow suggested the following regulatory language: "In cases where because of their age, human remains cannot be reasonably affiliated with a lineal descendent, Indian Tribe or Native Hawaiian organization, the remains should be curated in perpetuity because they are indispensable for current and potential scientific study, the outcome of which would be of

major benefit to the United States. Such perpetual curation should be the responsibility of an approved repository, and carried out in a manner appropriate for human remains." Mr. Snow urged the committee to "adopt a policy that will ensure the curation of ancient culturally unidentifiable human remains."

Mr. Peter Jemison, NAGPRA Coordinator of the Seneca Nation, reminded the committee that the 1795 treaty between the Six Nations and the United States was supposed to ensure the protection and non-disturbance of the Six Nations' territory and people. Mr. Jemison explained his community's view was when people die, they have finished their work. Their rest should not be disturbed to tell the living anything more. NAGPRA was enacted specifically because the human rights of Indian communities regarding their dead have not been recognized. As the closest relatives of the culturally unidentifiable human remains, Indian people have the right and the responsibility to speak for those human remains.

A Dispute Regarding Human Remains from Mokapu, Hawaii

Mr. McManamon presented the committee with a letter from the US Marine Corps concerning multiple claims for human remains from KaneOhe Navel Air Station on the island of Oahu, Hawaii.

Mr. McKeown explained some of the background of the case to the committee, including the status of the lawsuit between Hui Malama I Na Kupuna 'O Hawai'i Nei (plaintiff) and the Secretary of the Navy and the Beatrice Pahai Bishop Museum (defendants). Mr. McKeown said the lawsuit "asked for suppression of certain portions of the inventory that had been conducted by the Bishop at the request of the Navy...the plaintiffs charged that [those studies] constituted 'new scientific research'. They also asked for the expeditious repatriation of the human remains from the Mokapu Peninsula to the plaintiffs which was Hui Malama I Na Kupuna 'O Hawai'i Nei.

On June 15th, 1994, 15 claimants met with representatives of the Marine Corps. The Marine Corps advised the claimants that it would request the involvement of the review committee to resolve the suit they were unable to come forward with a unified claim after 30 days. On July 29th, 1994, Major Ka'ainoni, Jr. sent a letter to Mr. McManamon asking for the assistance of the review committee. After consultation with the Chair of the committee, Mr. McManamon sent a response indicating the committee would consider the dispute. At that time, letters were sent to all 15 disputants as required by the review committee's dispute resolution procedures. These letters asked each disputent particular questions regarding the nature of the dispute. Four responses were recieved, representing 14 of the 15 claimants. One disputent did not respond."

Mr. McKeown said the Marine Corps would like the committee assistance to resolve two issues: 1) the interpretation of lineal descendant; and 2) what should museums or Federal agencies do when there are claims from groups claiming to be Native Hawaiian organizations not specifically mentioned in the statute. Mr. Haas asked Mr. McKeown to clarify the standards for identifying a Native Hawaiian organization. Mr. McKeown responded that the Native Hawaiian organization needs to show it "serves and represents the interests of Native Hawaiians, has a primary and stated purpose of services to Native Americans, and has an expertise in Native Hawaiian affairs." Mr. Monroe asked why the Marine Corps wanted answers for these issues. Mr. McKeown said that although the Marine

Corps would like to repatriate the Mokapu remains as soon as possible, there were fifteen claimants, some basing their claim on cultural affiliation and some as lineal descendants.

Mr. Haas asked if the committee was being asked to answer these questions "without information on at least four of these organizations." Mr. McKeown responded that the committee had all the available information provided by the claimants. Ms. Naranjo asked if all the claimants were asking for the committee's involvement. Mr. McKeown responded that only two organizations, Temple of Lono and the Princess Kamehameha Society had specifically asked for the committee to become involved.

Ms. Naranjo wondered whether the committee should consider this issue as a dispute. She asked the committee to consider sending the issue back and telling all parties to try to work things out among themselves. Ms. Naranjo said the committee should not be involved while the claimants are still holding discussions among themselves. Mr. Monroe noted the statute states very clearly that when there are competing claims, the institution involved waits until "the competing parties resolve their differences." "I know there are other issues surrounding this case in terms of the relationship between the various Native Hawaiian organizations and the Marine Corps, the Marine Corp's consultation process and the imposing of a 30-day period which is totally outside any statutory provisions. I see no compelling reason that they have to force this issue at this time." Mr. Monroe recommended the committee not review or act on the request of the Marine Corps, and further remind the Marine Corps that "there is no provision in the statute by which one could dictate to the disputing parties that they resolve their differences in 30 days." The committee agreed with his recommendation. Ms. Naranjo directed Mr. McManamon to prepare a letter stating the committee's decision to the Marine Corps and claimants.

Public Comment

Mr. Tallbull spoke about the similarities between the repatriation of Native American human remains the repatriation of American servicemen from Southeast Asia. He noted that one of the major concerns for Indian people was the spiritual environment, not merely the physical land or cultural resources, which he hoped to make a part of the cultural resource management and consultation processes for the land-managing federal agencies. Mr. Tallbull said he is very concerned about how to take care of the culturally unidentifable human remains. Scientists do not understand the spiritual aspect of disturbing human remains. "When we talk about the culturally unidentifable remains, I think about the history of my people. The earliest history of my people begins somewhere up along the Atlantic Seaboard. They then crossed over into Hudson Bay country, and then down into Minnesota country. They certainly must of left some things behind. Once the flesh eating animals became extinct, we went out on the prairie. We couldn't do that when these animals still existed. Once we were down south, there was a message that came to them that you go back north: there's going to be a great flood. All of the Tribes went back north. And somewhere there are remains of my people scattered up and down this continent."

Mr. Pete Jemison asked about the percentage of grants going to smaller tribes and institutions. Mr. McManamon explained the money had been awarded 50/50 to tribes and museums, and the size of the tribe or institution had not been a deciding factor. Mr. McKeown said that applications were evaluated on the basis of whether they were able to address large issues for small amounts of money.

There needed to be evidence of cooperation and collaboration with either museums or Indian tribes. Mr. Jemison commented that his view was that the smaller communities were the least likely to receive these funds because of their smaller budgets. He also requested that institutions be monitored to ensure their cooperation and working relationship with Indian tribes were active and going forward. Mr. Jemison read a memorandum to the committee from the Haudenosaunee Standing Committee on Burial Rules and Regulations (Standing Committee). The memorandum asked that the Haudenosaunee Standing Committee be added to the tribal contact list. Mr. Jemison explained that the Haudenosaunee, the traditional council of the Six Nations: the Cayuga Nation; the Onondaga Nation; the Tuscarora Nation; the Tonawanda Band of Seneca; the Seneca Nation; the Oneida Tribe of Wisconsin; and the Oneida Nation of New York was active and properly represented the interests of all the Six Nations, with the exception of the Oneida Nation of New York. Mr. Jemison expressed his dissatisfaction with the differing interpretations of the statute and "the cumbersome bureaucracy and procedures that have been created surrounding this process." Mr. Jemison suggested the committee consider aboriginal territory as a basis for tribes to claim culturally unidentifiable human remains. His community wants to ensure that when they bring home human remains, "we get all of the remains that belonged to that individual together to take them all back at the same time. We don't want to leave half of them someplace and take half of them home." Mr. Jemison asked for the cooperation of anthropologists and archeologists to ensure an individual is kept together.

Ms. Barbara Issacs, Curator of Anthropology at the Peabody Museum at Harvard, said the challenges presented by NAGPRA were not philosophical or territorial, but financial and personnel. She said the Peabody Museum began complying after the law passed in 1990, and it has spent about $530,000 for compliance so far. Compliance has been mad more difficult by the fact that the archeological collections, originally estimated as containing around 800,000, really has closer 8 million items. Ms. Issacs asked for a strong statement from the committee about the amount of funding needed for institutions to comply with the statute.

Mr. LeBeau asked that more consideration be given to tribes when funding grants. Mr. LeBeau said the tribes do not understand why large institutions with budget of over $10 million per year needed more money to complete inventories. He offered his tribe's assistance to museums for completing their inventories. He also announced that the seven Western Lakota nations, the Oglala Sioux Tribe, the Cheyenne River Sioux Tribe, the Standing Rock Sioux Tribe, the Rosebud Sioux Tribe, the Crow Creek Sioux Tribe, the Lower Brule Sioux Tribe, and the Devil's Lake Sioux Tribe are signing a cooperative agreement to work as one entity. He suggested museums also form cooperative agreements to advance the inventory work. Mr. LeBeau emphasized museums and institutions must complete their inventories in consultation with culturally affiliated Indian tribes. He requested museum and institutional representatives get in contact with tribal NAGPRA representatives. Mr. LeBeau requested allowances be made for tribal communities which never sought federal recognition, for treaty groups, and for terminated tribes. Mr. LeBeau asked the final versions of the regulations be distributed before being published, and said he was concerned "that you as a committee would approve of regulations you haven't read." Mr. LeBeau read a statement from the Rosebud Sioux Tribe expressing grave concern on the current language of the final regulations, and called for the regulations to be published as proposed once more for another comment period. Mr. LeBeau thanked the committee for their work.

Mr. Gary McCann, representative of the Muheconneuk Inter-Tribal Committee on Deer Island, Quincy, MA, addressed the committee on the difficulties his organization was facing in trying to protect burial grounds on Deer Island in Boston Harbor. Mr. McCann said NAGPRA does not address the concerns of his organization in protecting in situ burials from future disturbance. Mr. McCann also asked that the committee consider avenues for non-Federally recognized Native American groups to repatriate the remains of their ancestors. Mr. McCann also told the committee that the Massachusetts State Archeologist has not been cooperative in dealing with Indian tribes.

Mr. Phillips also suggested Indian tribes cooperate with museums in the areas of long-range planning regarding storage and care of repatriated items. Museums can assist with training and technical assistance for conservation issues.

Mr. Funmaker, Co-Director of the Ho-Chunk Historic Preservation Office, asked the committee to allow Indian tribes to comment on any recommendations concerning non-Federally recognized tribes being able to request human remains and cultural objects for repatriation.

Mr. George Abrams expressed the hope that NPS and the committee could, through "a careful reading of the legislation", come to some kind of an agreement between interpretation and procedures regarding the inventories and culturally unidentifable human remains. Mr. Abrams said he greatly appreciated Mr. Tallbull's points during the meeting. Mr. Abrams asked the committee to maintain the requirement that Indian tribes be Federally recognized to have standing under the statute.

Ms. Loretta Mitoxen, Vice Chairwoman of the Oneida Nation of Wisconsin, told of her involvement with a repatriation of the body of a young Camp Verde Apache man from Walter Reed U.S. Army Hospital. She was concerned that although the records for remains at Walter Reed are very good, they do not seem to be moving ahead with consulting or repatriating. Ms. Mitoxen explained the different communities of Oneida, although physically separate, still constitute one tribal nation. She informed the committee that the Oneida nation will accept culturally unidentifiable human remains from the northeastern United States for rebuiral on behalf of the Haudenosaunee.

Mr. Dan Weiner, outside counsel for the American Museum of Natural History (AMHS) in New York City, expressed his concern in dealing with non-Federally recognized Native American groups. He explained that the AMHS holds its collections in trust "for all peoples, not only of New York State, but of the entire country and the world. We are looking to the committee for guidance regarding collections which are affiliated with non-Federally recognized Native American groups." Mr. Weiner stated that museums have no authority to decide who is and is not an Indian tribe with standing under NAGPRA and a list is needed. He was also concerned that State Attorney Generals would be coming back to museums saying "gee, you hold these collections in trust for the entire people of your State, why did you go and give this away?" Mr. Weiner cautioned that absent clear guidance, museums may take repatriation requests to court in order to cover themselves from future liability. Mr. Weiner agreed with Mr. LeBeau's statement that affected parties need to see the changes to the regulations.

Ms. Leah Rosenmeier, Peabody Museum at Andover, asked the committee for clarifications of the notification procedures when notices are sent to the Federal Register. Ms. Rosenmeier asked about an institution's responsibilities if human remains had been repatriated before NAGPRA, and had been

pre-contact Pueblo claimed by one present-day Pueblo; now should they contact all the Pueblos and inform them about this repatriation? Ms. Rosenmeier said these questions also apply to present-day confederacies of tribes, and requested further guidance from the committee and the DCA in this matter.

Mr. Bob Brown, Condoled Chief of the Oneidas of Wisconsin, explained how the traditional form of Oneida government works, and how it now exists along side of the tribal council established under the Indian Reorganization Act.

Mr. Allan Ryan, attorney for Havard University and the Peabody Museum, suggested that there already was a procedure available for museums to repatriate to non-Federally recognized Native American groups--having the committee issue a finding. This method avoids the problem of the statutory definition of Indian tribe.

Mr. Jonathan Haas suggested that the committee's finding on the Mashpee repatriation be extended to the inclusion of the Mashpee community on the NAGPRA contact list. Mr. Haas acknowledge this would open up a big door. "I'm willing to open that door. I like the idea of State recognized groups."

Ms. Rachel Craig thanked Mr. Jemison for his presentation to the committee. She commented that fights between Native peoples and the mainstream society were now becoming "battles of the brains." "I was raised in the Inupiat Eskimo tradition, and my grandparents took special care to make sure that I knew the things that were important in our life. That was our relationships with people--how we got along with people and how we treat the people in this life. They shared that information with me. I feel an obligation to give back to them, to speak for them. Our grandmothers have told us the importance of the spirit world. The spirits of those people cannot rest and make their progress in the spirit world unless they know that those bones are put back in the earth where they belong. That is our teaching."

Mr. Phillip Minthorn, Jr., Assistant Curator of Anthropology at the Smithsonian Museum of Natural History, suggested the committee listen to the input of tribal traditional religious leaders concerning culturally unidentifiable human remains.

Mr. George Claxton, staff archeologist at the New York State Museum, commented that although spiritual information is very important, the scientific ways of knowing were also critical to understanding the world and the past. "We cannot shut ourselves off to knowledge simply because we fear the knowledge, simply because we are afraid of what we might find."

Ms. Tamara Varney, an osteologist with the New York State Museum, said she has found that there can be connections between her spiritual world and her professional world.

Ms. Maria Liston, physical anthropologist, said she has been professionally frustrated in trying to address both "the intellect and the spirit." For culturally unidentifiable remains, she said, "at this stage, we cannot make that identification. There are other scientific purposes and goals and benefits that can be met with these unidentifiable remains."

Mr. Irving Powless wanted everyone to know that he and his ancestors all ate corn, fish, beans, rabbits deer, beaver, and butternuts: "I made this statement before at a meeting of New York anthropologists and archeologists. And I'll make it again today: I eat corn , beans and squash, supplemented by deer, rabbit, turkey and fish. In the tradition of my ancestors I also continue to gather and eat butternuts. I tell you this, and I ask you to make a note, and to pass this note on to those who follow you in your profession so they will not have to dig up my bones to confirm that I eat corn, fish, and nust. We do not need or want our ancestors dug up to confirm this. They say that they have respect for our people, but we question their mehod and their ideas of respect. One thing is sure, and this may be an answer to your question, the bones that are dug up that are 1,000 years old are not the ancestors of those who study them. They do not belong to you. You are trying to put a label on them so that you can keep them to study. We, the people of today, say again, return our ancestors to us." Mr. Powless cited an example of the Rochester Museum wanting to keep Seneca ancestors "in case a machine was invented in the future that would answer questions that have not been asked yet. This is totally offensive to me. I cannot accept the idea of my ancestors being examined and stored on shelves for future use." Mr. Powless said archeologists and anthropologists do not have the same meaning when they speak of respect for human remains compared with the Indian meanings of respect.

Ms. Denise Vigue, Cultural Preservation Officer for the Oneida Tribe of Wisconsin, reminded the committee and the audience that the statute mandates the return of human remains. "There is no leeway. There is no scientific study in that. They are to be returned. That is what we must remember." Ms. Vigue also requested the committee seek the assistance of tribal traditional religious leaders for determining the disposition of culturally unidentified human remains. Ms Vigue said the tribes have the means of "identifying our own, and it isn't some mystical spiritual thing that we think we know. Give us equal rights under this law and leave it up to us."

Mr. Nick Nicastro, a graduate student in the Cornell University Archeology Department, asked "to what degree is science itself on trial in this issue?" Mr. Haas responded that science was not "on trial": "what we should be doing is providing advice to the people who will be making the decisions about what is going to happen with these remains. The people who are culturally affiliated with these remains are going to have the say as to what happens to them."

Mr. Frank Wozniak, NAGPRA Coordinator for the Southwestern Region of the US Forest Service, said he was concerned that the regulations were still not finalized. Although human remains had been removed from Federal lands on the pretext of advancing scientific knowledge, there had been no scientific analysis of them. "We are, to a degree, concerned and maybe even shocked with regard to this situation. We are a bit concerned with this whole question of the rationale of the advancement of knowledge." Mr. Wozniak reminded institutions holding Federal collections that the Federal agency maintains control and has the responsibility in making determinations of cultural affiliation.

Ms. Lynn Sullivan, Chair of the Anthropological Survey at the New York State Museum, extended her thanks to the staff of the New York State Museum for their work in setting up the meeting, facilities, and social events.