

**MINUTES**

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

**THIRTY-FOURTH MEETING**

**APRIL 19-20, 2007**

**SIDNEY R. YATES AUDITORIUM  
MAIN INTERIOR BUILDING  
WASHINGTON, DC**

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## **Background**

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., which was signed into law by President George Bush on November 16, 1990.

The Review Committee's charter states that –

“The duties of the Committee are solely advisory. Specifically, the Committee will be responsible for:

1. Monitoring and reviewing the implementation of the inventory and identification processes and repatriation activities required under sections 5, 6, and 7 of Public Law 101-601 to ensure a fair and objective consideration and assessment of all available relevant information and evidence;
2. Reviewing and making findings relating to the identity or cultural affiliation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, or the repatriation of such items, upon the request of any affected party;
3. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants, and Federal agencies or museums relating to the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, including convening the parties to the dispute, if deemed desirable;
4. 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 disposition of such remains;
5. Consulting with Indian tribes, Native Hawaiian organizations, and museums on matters pertaining to the work of the Committee affecting such tribes or organizations;
6. Consulting with the Secretary [of the Interior] in the development of regulations to carry out Public Law 101-601;
7. Performing such other related functions as the Secretary [of the Interior] may assign to the Committee;
8. Making recommendations, if appropriate, regarding future care of human remains, funerary objects, sacred objects, and objects of cultural patrimony which are to be repatriated; and
9. Submitting an annual report to Congress on the progress and any barriers encountered in carrying out the Committee responsibilities during the year.”

The Review Committee is organized and administered according to the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1994).

Review Committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations.

The Review Committee reports to the Secretary of the Interior. Under the Review Committee's charter, the Manager, National NAGPRA Program, National Park Service (NPS) or a designee serves as the Designated Federal Officer (DFO), who oversees the activities of the Review Committee and with whom the National Park Service provides administrative and staff support to the Review Committee on behalf of the Secretary of the Interior.

Additional information about the Review Committee – including the Review Committee's charter, membership, meeting protocol, and dispute procedures – is available at the National NAGPRA Website, <http://www.cr.nps.gov/history/nagpra/> (click on “Review Committee”).

Notice of this Review Committee meeting was published in the Federal Register on March 30, 2007 (Vol. 72, No. 61, page 15159).

## **The 34th Meeting of the Review Committee**

The 34th meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Ms. Rosita Worl at 8:49 a.m., Thursday, April 19, 2007, in the Sidney R. Yates Auditorium, Main Interior Building, Washington, DC.

Review Committee members –

Ms. Rosita Worl – Chair  
Ms. Donna Augustine  
Mr. Alan Goodman  
Mr. Willie Jones  
Mr. Colin Kippen  
Mr. Dan Monroe  
Mr. Vincas Steponaitis

Designated Federal Officer –

Mr. Timothy McKeown, Program Officer, National NAGPRA Program

National Park Service/Department of the Interior staff in attendance –

Mr. Carl Artman, Assistant Secretary for Indian Affairs, Department of the Interior  
Ms. Janet Matthews, Associate Director-Cultural Resources, National Park Service  
Ms. Sherry Hutt, Program Manager, National NAGPRA Program, National Park Service  
Ms. Robin Coates, Secretary, National NAGPRA Program, National Park Service  
Ms. Jaime Lavallee, Notice Coordinator, National NAGPRA Program, National Park Service  
Mr. David Tarler, Training and NAGPRA Compliance, National NAGPRA Program, National Park Service  
Mr. Bob Palmer, Civil Penalties Investigator, Division of Law Enforcement Security and Emergency Services, National Park Service  
Ms. Selina Cooper, Intern, National NAGPRA Program, National Park Service  
Mr. Andrew Kline, Intern, National NAGPRA Program, National Park Service  
Ms. Lesa Hagel, Contractor, National NAGPRA Program, National Park Service  
Ms. Carla Mattix, Division of Parks and Wildlife, Office of the Solicitor  
Mr. Toby Halvarson, Division of Indian Affairs, Office of the Solicitor

Persons in attendance during part or all of the meeting (names and affiliations as provided at the meeting by attendees) –

Ms. Jai Alterman, Smithsonian Institution, Washington, DC  
Ms. Risa Arbolino, Smithsonian Institution, National Museum of Natural History, Washington, DC  
Mr. Edward H. Ayau, Mahi Clan of Kohala, Hoolehua, HI  
Ms. Richard Basch, National Park Service, Lewis and Clark National Historical Park, Astoria, OR  
Mr. John Beaver, Smithsonian Institution, National Museum of the American Indian, Suitland, MD  
Ms. Jan Bernstein, Bernstein & Associates, Denver, CO  
Mr. Joe Big Medicine, Jr., Cheyenne-Arapaho Tribes of Oklahoma, Watonga, OK  
Mr. Bill Billeck, Smithsonian Institution, Washington, DC  
Mr. Bobby C. Billie, Independent Traditional Seminole Nation, FL  
Mr. James Bird, National Park Service, Washington, DC  
Ms. Sheree Bonaparte, Saint Regis Mohawk Tribe, Akwesasne, NY  
Ms. Cheri Botic, Smithsonian Institution, National Museum of Natural History, Washington, DC  
Mr. Joe Brennan, Field Museum, Chicago, IL  
Ms. Susan Bruning, Society for American Archaeology, Irving, TX  
Mr. Robert D. Campbell, Santee Sioux Nation, Niobrara, NE  
Ms. Mary Carroll, National Park Service, Denver, CO  
Mr. Greg Cleveland, Confederated Tribe and Band of the Yakama Nation, ER/WM, Toppenish, WA  
Ms. Jacqueline M. Cook, Confederated Tribes of the Colville Reservation, Nespelem, WA  
Mr. Jerry Cordova, Bureau of Land Management, Washington, DC  
Mr. Donald F. Craib, Craib Law Office, Alexandria, VA

Ms. Tonya Davis, Comanche Nation, Hobbs, Straus, Dean & Walker, Washington, DC  
Ms. Suzanne Day, Harvard University, Washington, DC  
Mr. Butch Denny, Santee Sioux Nation, Niobrara, NE  
Ms. Ann Elder, National Park Service, Dinosaur National Monument, Dinosaur, CO  
Ms. Maria Elena Frias, Washington, DC  
Ms. Caralyn Fama, Smithsonian Institution, National Museum of the American Indian, Washington, DC  
Ms. Carrie Feldman, Smithsonian Institution, National Museum of the American Indian, Washington, DC  
Ms. Mary French, American Museum of Natural History, New York, NY  
Ms. Christine Hardwick, Bureau of Land Management, Washington, DC  
Mr. Eric Hemenway, Little Traverse Bay Bands of Odawa Indians, Harbor Springs, ME  
Mr. R. Eric Hollinger, Smithsonian Institution, National Museum of Natural History, Washington, DC  
Mr. Jordan Jacobs, American Museum of Natural History, New York, NY  
Mr. Joseph T. Joaquin, Tohono O'odham Nation, Sells, AZ  
Mr. Greg Johnson, University of Colorado, Boulder, CO  
Mr. John F. C. Johnson, Chugach, Smithsonian Repatriation Committee, Anchorage, AK  
Ms. Jean Kelley, Morgan Angel & Associates, Washington, DC  
Mr. James W. Kendrick, National Park Service, El Morro National Monument, Grants, NM  
Ms. D. Bambi Kraus, National Association of Tribal Historic Preservation Officers, Washington, DC  
Ms. Frances Kraus, Kake, AK  
Mr. Arden Kucate, Pueblo of Zuni, Zuni, NM  
Ms. Christine Landrum, National Park Service, Denver, CO  
Mr. Robert Leno, Pueblo of Acoma, Acoma, NM  
Mr. David Lindsay, Society for American Archaeology, Washington, DC  
Ms. Dorothy Lippert, National Museum of Natural History, Washington, DC  
Mr. Kai Markell, Office of Hawaiian Affairs, Honolulu, HI  
Ms. Cyd Martin, National Park Service, Denver, CO  
Mr. James Mayotte, Bad River Band of Lake Superior Chippewa, Odanah, WI  
Ms. Jean McCoard, Tri-Regional Indian Organization, Lucasville, OH  
Mr. Jordan McCoard, Tri-Regional Indian Organization, Lucasville, OH  
Ms. Patricia McCoy, Installation Management Command, Arlington, VA  
Ms. Lissa McKee, California Department of Transportation, Oakland, CA  
Mr. Jerald Milanich (appearing telephonically), Florida Museum of Natural History, University of Florida, Gainesville, FL  
Ms. Dana Miller, Yakama Nation, Union Gap, WA  
Ms. Martina Minthorn, Comanche Nation, Lawton, OK  
Ms. Cynthia Murdock, Interested Public, Herndon, VA  
Ms. Nell Murphy, American Museum of Natural History, New York, NY  
Mr. Ed Lee Natay, National Park Service, Intermountain Region, Santa Fe, NM  
Ms. Angela Neller, Wanapum Heritage Center, Beverly, WA  
Ms. Rebecca Nelson, Utah Division of Indian Affairs, Salt Lake City, UT  
Ms. Kim Neutzling, Smithsonian Institution, National Museum of the American Indian, Washington, DC  
Ms. Emily Palus, Bureau of Land Management, Washington, DC  
Ms. Theresa Pasqual, Pueblo of Acoma, Acoma, NM  
Mr. Kirk Perry, Chickasaw Nation, Ada, OK  
Ms. Helen Robbins, Field Museum, Chicago, IL  
Ms. Molly Ross, Department of Interior, Solicitor's Office, Washington, DC  
Mr. Paul Rubenstein, HQUSACE, Washington, DC  
Mr. Dave Ruppert, National Park Service, Denver, CO  
Ms. Wechoni Schurz, Salt River Pima-Maricopa Indian Community, Scottsdale, AZ  
Ms. Lauren Sieg, Contractor, Springfield, VA  
Mr. Chuck Smythe, National Park Service, Northeast Region, Boston, MA  
Mr. Dean Suagee, Comanche Nation, Hobbs, Straus, Dean & Walker, Washington, DC  
Ms. Sarah Thompson, Lac du Flambeau Historic Preservation, Lac du Flambeau, WI  
Ms. Ruth Toahty, Comanche Nation, Lawton, OK  
Mr. Curtis Torivio, Pueblo of Acoma, Acoma, NM  
Mr. Ernest M. Vallo, Sr., Pueblo of Acoma, Acoma, NM

Mr. Will Waldron, U.S. Fish and Wildlife Service, Hadley, MA  
Ms. Deloris Walker, Smithsonian Institution, Washington, DC  
Ms. Sherry White, Mohican Nation, Bowler, WI  
Mr. Eric B. Wilson, Assistant Secretary of Indian Affairs Office, Washington, DC  
Ms. Lisa Worl, Juneau, AK  
Mr. Jesse Yorck, Office of Hawaiian Affairs, Honolulu, HI  
Mr. Fred York, National Park Service, Pacific West Region, Seattle, WA

### **Call to Order**

Committee Chair Rosita Worl called the Native American Graves Protection and Repatriation Review Committee to order. Mr. McKeown called the roll of members and confirmed that the Review Committee had quorum for the meeting. Mr. Bobby C. Billie offered an invocation the first day of the meeting. Ms. Augustine offered an invocation the second day of the meeting.

### **Welcome from the Assistant Secretary for Indian Affairs**

Mr. Carl Artman, Assistant Secretary for Indian Affairs, welcomed the members of the Review Committee. Mr. Artman stated that the Review Committee's work to draft recommendations on the promulgation of new regulations was absolutely critical to address affronts facing Indian Country. Mr. Artman described some of the activity in the National NAGPRA Program since the last Review Committee meeting. Mr. Alan Goodman was appointed to the Review Committee. Ms. Rosita Worl was reappointed to the Review Committee and continues to serve as Chair. The final rule on 43 CFR 10.13, future applicability, was published and will become effective April 20, 2007. In addition, several components of the program, including regulations development, proceeded in a consultative manner with the Assistant Secretary for Fish and Wildlife and Parks and the Assistant Secretary of Indian Affairs. In the past two years, the realignment of National NAGPRA as a separate omnibus compliance program was realized. The Review Committee's insistence on a public database for culturally unidentified Native American human remains fostered and expedited the identification and disposition of over 2,300 individuals since 2005. The Review Committee addressed the disposition of culturally unidentifiable human remains through rules and on a case-by-case basis. Mr. Artman expressed appreciation for the Review Committee's work in this area. Mr. Artman stated that the Review Committee brings life to NAGPRA and people across the country and across Indian nations owe a debt of gratitude and thanks for their work. Ms. Worl thanked Mr. Artman for his time and congratulated him on his recent appointment as Assistant Secretary for Indian Affairs. Mr. Artman offered the assistance of his office should the Review Committee need any help.

### **Comments and Review of the Agenda – Designated Federal Official**

Mr. McKeown announced that the meeting was a public meeting and a notice had been published in the Federal Register in accordance with Federal Advisory Committee Act (FACA) procedures. Mr. McKeown gave a brief review of the agenda. Ms. Hutt introduced the members of the National NAGPRA Program staff present at the meeting. Ms. Worl thanked the staff for providing the Review Committee binders in a timely manner. Ms. Worl extended a special welcome to Mr. Alan Goodman, newly appointed to the Review Committee. Ms. Hutt introduced the Park NAGPRA staff present at the meeting, and Ms. Worl recognized all other NPS employees present in the audience. Ms. Hutt recognized Ms. Cynthia Murdock and commended her work on the culturally unidentifiable database prior to her recent retirement from the NPS.

## **Report on the Implementation of NAGPRA for the First Half of FY2007: Collections, Excavations and Discoveries, Regulations, Technical Assistance, Program Operations**

### **Presentation of Report**

Ms. Hutt gave a brief review of the information contained in the National NAGPRA FY07 Midyear Report.

Regulations: Ms. Hutt stated that the final regulation for 43 CFR 10.13, future applicability, was published. The rule will set time limits for ongoing responsibilities to complete summaries and inventories for new collections, when a new Indian tribe is acknowledged by the BIA, or when a museum receives Federal funds for the first time. Ms. Hutt stated that the rule was important to keep museums apprised of their NAGPRA responsibilities, given the ongoing work on civil penalties.

Civil Penalties: Mr. David Tarler and Mr. Bob Palmer are in the second year of work on NAGPRA civil penalties, developing the protocols and bases for the investigations that they staff to the Assistant Secretary for Fish and Wildlife and Parks. During the first year, an infrastructure was developed for investigations. During the second year progress has been intentionally slow, with an emphasis on building expertise while developing the processes that will be used to eliminate the backlog of cases.

Grants: Applications for project grants were due March 1, 2007. This year, the National NAGPRA Program received slightly more museum grant requests and slightly fewer tribal grant requests than the previous year. The grants panel will meet in April 2007 to consider the proposals. The slight decrease in tribal grant applications shows the importance of increasing awareness through personal contacts and outreach presentations to Indian tribes.

Notices: Ms. Jaime Lavalley, notice coordinator, has considerably reduced the backlog of older notices, while working to keep pace with incoming notices. To date, the National NAGPRA Program received twice as many incoming notices in FY2007 compared to the same time in FY2006, which is evidence of considerable activity in this area.

Training: Ms. Hutt stated that training numbers are substantially up.

Interns: Ms. Hutt described current and future intern projects, designed to make data from the National NAGPRA Program available to the public in a meaningful way, aiding in consultation and increased identification and repatriations. Two interns, Mr. Andrew Kline and Ms. Selina Cooper, will be making presentations at the Review Committee meeting. The interns worked with the National NAGPRA Program through a cooperative arrangement with the National Center for Preservation Education. Mr. Kline's project "Who Are the CUI?" gives a statistical basis for individuals in the culturally unidentifiable database. Ms. Cooper's presentation identifies and describes positive repatriation stories. In summer 2007, an intern available through the Student Conservation Association Program will work with the National NAGPRA Program under the supervision of Mr. McKeown. The intern will audit information contained in inventories, notices, and the culturally unidentifiable database in a project titled "Are we done yet?" to help ensure that all individuals listed in inventories are represented in notices.

### **Review Committee Discussion**

Mr. Steponaitis asked for information on the amount of money requested in grants compared to the money appropriated for grants, which could be relevant for the report to Congress. Ms. Hutt stated that the total amount requested for grants was in excess of \$3 million and the amount appropriated by Congress was \$2.4 million, less Congressional holdbacks. Mr. Steponaitis asked for an additional comparison of money available for grants and the grants that the program would like to have funded after evaluation. Ms. Hutt stated that there are worthy grants that cannot be funded. In addition, Ms. Hutt stated that repeatedly submitting grants that are not funded can have a chilling effect on an Indian tribe or museum's desire to submit future grants. Ms. Wilkinson, grants coordinator, intends to personally contact Indian tribes and museums that submitted a grant that was not funded and then subsequently did not reapply. Ms. Hutt stated that a portion of the grants money is held back from project grants to fund repatriation grants. Repatriation grants can be up to \$15,000 and are noncompetitive. The repatriation grants are used to fund the direct costs of repatriation and are available throughout the entire year, to the extent that funds remain available.

Regarding the budget, Mr. Steponaitis asked about the \$500,000 difference between the \$2.4 million appropriated for grants and the \$1.9 million in total grant awards. Ms. Hutt stated that parent agencies typically use a small percentage of grant funds for administration costs. In addition, the budget has a \$176,000 allocation for grants administration, and the NPS adds \$350,000 out of its regular budget. Ms. Hutt stated that the National NAGPRA Program strives to reduce overhead costs in order to use those funds for grants.

Mr. Goodman stated that in FY07 the amount of grants funded was approximately half of the total amount requested, and asked if the total amount of grants funded and the comparable shortfall have been consistent. Ms. Hutt stated that in each year of the grant program the requests have exceeded the awards, and there has never been a year in which the amount available covered all requests.

Mr. Kippen asked for an update on the status of outstanding regulations. Ms. Hutt stated that 43 CFR 10.11, disposition of culturally unidentifiable human remains, is under review in the DOI prior to being published, and 43 CFR 10.7, disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony, is in the drafting stage. The National NAGPRA Program conducted consultation on 43 CFR 10.7 with Indian tribes and national museum and scientific organizations on April 18, 2007, the day preceding the Review Committee meeting. Mr. Kippen asked how long 43 CFR 10.11 has been pending publication within the DOI. Ms. Hutt stated it has been pending for two years. Mr. Kippen stated that the rule is very important and the Review Committee would like to see that it is published immediately.

#### **Review Committee Motion**

Mr. Kippen made a motion that the Review Committee strongly urge that the DOI publish 43 CFR 10.11, disposition of culturally unidentifiable human remains, immediately. Mr. Monroe seconded the motion. Mr. Steponaitis called the question. The motion was adopted by unanimous vote.

#### **Review Committee Discussion**

Ms. Worl stated that the Review Committee has included the need for more grant funds in every report to Congress since she was appointed, which should remain a high priority of the Review Committee. Ms. Worl stated that agencies across the country are experiencing budget cuts and she was concerned that the appropriated amount not exceed \$500,000 for administrative costs. Ms. Worl stated she would like to have the grant amount assessed to take inflation into consideration. Ms. Worl stated when NAGPRA was first enacted there were a lot of regional meetings where people talked about NAGPRA set up regional cooperatives agreements. Ms. Worl stated it might be worthy to consider once again implementing those regional approaches. In the National NAGPRA Report under the Review Committee section, Ms. Worl recommended including the year-to-date and cumulative number of disputes.

Mr. Steponaitis commended the National NAGPRA Office for the energy that they put into training and helping people implement NAGPRA. Mr. Steponaitis stated that he has received feedback that there is a sense within the museum community that the NAGPRA training gives short shrift to some of the issues that museums face, particularly issues having to do with determining cultural affiliation. Mr. Steponaitis stated it is important to have a sense of balance in how the National NAGPRA Program deals with tribal and museum issues, and encouraged the National NAGPRA Program to provide a forum for training feedback. Mr. Steponaitis stated that he would be happy to discuss this outside of the meeting, as this is an important issue that really gets to the heart of effective implementation of NAGPRA. Ms. Hutt stated that he appreciated Mr. Steponaitis's comments. Ms. Hutt stated that the National NAGPRA Program is sponsoring a panel on museum issues in NAGPRA at the upcoming American Association of Museums (AAM) meeting in Chicago. Prior to the AAM meeting, in partnership with the DePaul Law School, the National NAGPRA Program will give a full-day training geared toward museum issues in the implementation of NAGPRA and NAGPRA compliance. The course is open registration but is specifically targeted to serve the museum community and the museum lawyers' community. Ms. Hutt stated she agrees that focusing and spreading oneself out to all constituent groups is important and she would be happy to discuss this issue further with Mr. Steponaitis.

Mr. Steponaitis stated that he appreciates the sessions described by Ms. Hutt, but the issue he raised was with the

basic bread-and-butter training attended by tribal and museum representatives and the problems caused when people come away from the meeting with misimpressions about how NAGPRA is or should be implemented on the ground. The misimpressions may be inadvertent, but this puts museums in an awkward position because people come out of the training thinking they have heard one message but then face the reality of working with museums. Ms. Hutt stated they would be happy to review the training materials with Mr. Steponaitis. Ms. Worl stated that from a tribal perspective she is pleased with the training, and in her opinion the trainings are much more balanced than in the past. Ms. Worl stated that Mr. Steponaitis's suggestion to assess the training is good. Ms. Worl stated that good training on NAGPRA is important because she thinks a lot of people get mixed up on what they want NAGPRA to say and what NAGPRA actually says. Ms. Worl recommended that the Review Committee members could attend an upcoming NAGPRA training session and then discuss the balance and potential misinterpretations with specific examples at that time.

Mr. Jones stated that he has been on the Review Committee for several years, although he missed some meetings due to health problems. Mr. Jones stated that he is impressed with the growth of the Review Committee. Mr. Jones stated that consultation needs to be meaningful for all parties and described the challenges of doing consultation with people that do not have written laws but have unwritten laws going back thousands of years and beyond. Mr. Jones stated that the old value system still carries through and the perception from the traditional or Indigenous standpoint is completely different than the new written laws. Mr. Jones stated he was concerned about how to address meaningful consultation for a law that comes from oral tradition and trying to connect it to a law that comes from a written history with a completely different value system. Mr. Jones stated that he has had feelings that he could not communicate because they are not in the English language. Ms. Worl stated that consultation is the heart of NAGPRA and maybe the Review Committee could include consultation as an agenda item to develop general recommendations for good and meaningful consultation. In the interim, Ms. Worl stated that the National NAGPRA Program staff could begin to compile some consultation processes for the Review Committee to consider. Ms. Hutt stated it would be helpful if the Review Committee could determine the dates for the next two meetings, which would aid the National NAGPRA Program in planning consultation on 43 CFR 10.7. If 43 CFR 10.11 is published as a proposed rule, discussion of the rule could be included in the training which would encourage comments.

Ms. Augustine stated she agreed with Mr. Jones's comments. As a court interpreter for her Native Micmac language, Ms. Augustine stated it is very hard to interpret the English language into her language. NAGPRA is a spiritual law that deals with grave protection and the ancestors, which is like another language, a spiritual language that needs to be recognized. Ms. Augustine stated she does cultural sensitivity workshops and in dealing with people from different cultures, it is important to have an understanding of their culture. Ms. Augustine stated it was important to remember not just to follow the letter of the law but the essence and the intention of the law as well.

### **Request for a Recommendation for Disposition of Culturally Unidentifiable Human Remains in the Possession of the University of Florida**

Mr. McKeown stated that in their binders the Review Committee members had a letter dated February 1, 2007 from Mr. Milanich requesting to rebury culturally unidentifiable human remains from the Tathem Mound, Citrus County, Florida, an inventory and documentation of the human remains, and email communications from Mr. Steve Terry, NAGPRA and Section 6 representative from the Miccosukee Tribe, Mr. Pare Bowlegs, the Historic Preservation officer from the Seminole Nation of Oklahoma, and Mr. Willard Steele, Tribal Historic Preservation Officer for the Seminole Tribe of Florida.

#### **Presentation of Issue**

Mr. Jerald Milanich (appearing telephonically), curator, Florida Museum of Natural History, University of Florida, stated that the University of Florida was requesting a recommendation from the Review Committee to rebury the human remains excavated in the 1980s from Tathem Mound, Citrus County, Florida. When the site was excavated in the 1980s, the land was owned by the Boy Scout Council of South Florida. The University of Florida worked with the Boy Scout Council of South Florida and their Native American Advisory Committee to obtain permission, which was granted with a request that when the scientific study of the human remains was complete the human remains would be returned to the mound. While that work was ongoing, the Boy Scout Council of South Florida

sold the land to the State of Florida. The land is now under the control of the South Florida Water Management District and will be afforded protection forever as land in the State of Florida. The people buried in the mound are associated with an archaeological culture called Safety Harbor. Their language is unknown and there is little historical documentation, but the people in the mound probably were in direct contact with the de Soto expedition in the summer of 1539. The scientific study is complete and the people need to go back to where they came from in this mound.

#### **Review Committee Discussion**

Ms. Augustine asked who would be doing the reburial. Mr. Milanich stated that the details of the burial would be worked out with the Florida State Historic Preservation Officer, the Miccosukee Tribe and the Seminole peoples of Florida. In the past, the Miccosukee Tribe has taken the lead on behalf of the Seminole Tribe of Florida. Mr. Milanich stated that sometimes the Miccosukee Tribe has done the reburial and sometimes they have asked the University of Florida to do the reburial. Ms. Augustine asked if Mr. Milanich was Native American. Mr. Milanich stated he was not Native American and was of Russian descent. Ms. Augustine stated that on a personal level it would feel right if a Native American would do the reburial because they have a spiritual connection and sometimes a message might be brought through to the one doing the reburial. Ms. Augustine stated it does not matter if the Native person is from the same Indian tribe or whether they are federally recognized because in spirit it is the same language. Mr. Milanich stated that he was agreeable to do what Ms. Augustine requested and that it would be possible to have a Native person do the reburial. Mr. Milanich stated he will consult with the three federally recognized Indian tribes and the Independent Traditional Seminole Nation of Florida. Ms. Worl stated that the Review Committee has received letters of support for the reburial from the Seminole Tribe of Florida and the Miccosukee Tribe.

#### **Review Committee Motion**

Mr. Monroe made a motion that the Review Committee recommend reburial of the culturally unidentifiable human remains excavated from Citrus County, Florida. Mr. Steponaitis seconded the motion.

#### **Comment from the Independent Traditional Seminole Nation**

Mr. Shawn Mulford read a statement by Mr. Bobby C. Billie, Independent Traditional Seminole Nation, in opposition of the University of Florida request for recommendation for reburial of culturally unidentifiable human remains. Mr. Milanich, of the white culture, does not have the right and should not be allowed to handle the remains. The white culture may see these remains as culturally unidentifiable but Aboriginal Indigenous Seminole people know who they are. Aboriginal Indigenous people have been living in their own country since the beginning of Creation and are definitely related to these ancient Aboriginal Indigenous people. The Aboriginal Indigenous people know who they are since the beginning of Creation, and they are not a lost people. The Aboriginal Indigenous people are opposed to genetic study and testing, and believe everything should go back into the earth according to the Creator's way of life. Samples should not be held for future testing. The Independent Traditional Seminole Nation of Florida is the original council of the original Miccosukee Seminole Nation and still carries on what the Elders created. The people need to come together to renew the natural law of the Creator to protect the Ancestors and all creation and to heal the people.

#### **Review Committee Discussion**

Ms. Worl asked if Mr. Billie would be in favor of the recommendation if the reburial was done by Indigenous people. Mr. Billie stated that would be fine. Mr. Mulford stated that the Indigenous people object to a sample being kept for future testing. Ms. Worl asked Mr. Milanich for clarification. Mr. Milanich stated that a question continues in Florida about the exact relationships between the people known as the Seminole and Miccosukee today and the so-called Indigenous or Pre-Columbian tribes of Florida. Mr. Milanich stated that the Miccosukee Tribe is very interested in that information. Mr. Milanich stated that he would be willing to put a time period for analysis, like ten years. Although the technology is not available today it may be available in the future. Ms. Mattix stated that in the legal process under NAGPRA the full disposition would be to the federally recognized Indian tribes involved and any agreement after that about how the parties handle samples or anything else is beyond NAGPRA. Ms. Worl stated that the Review Committee could make a recommendation that the federally recognized Indian

tribes work in consultation with the Independent Traditional Seminole Nation of Florida to determine details of the reburial process including whether or not samples will be retained. Ms. Augustine stated for the record that she was in favor of the reburial of the whole person and not retaining any samples. Mr. Jones stated he agreed.

### **Review Committee Motion to Amend (Continued)**

Mr. Steponaitis made a friendly amendment to the previous motion that the details of the reburial process be worked out in consultation with all interested parties. Ms. Worl clarified that the parties would include the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Seminole Nation of Oklahoma, and the Independent Traditional Seminole Nation of Florida. Mr. Steponaitis called the question. The motion was adopted by unanimous vote.

Mr. McKeown asked if the Review Committee was recommending that the University of Florida may proceed with consultation with the affected Indian tribes and the Independent Seminole Nation and will be able to act based on that consultation without returning to the Review Committee. The Review Committee members agreed. Ms. Worl and Mr. McKeown thanked the parties for their participation.

The second day of the meeting, Mr. McKeown stated he drafted language for the Review Committee's recommendation and read it for the members' review. "The Review Committee considered your request at its April 19 and 20, 2007 meeting in Washington, DC. The Review Committee understands that you have previously sent the inventories of these culturally unidentifiable human remains to the Seminole Tribe of Florida, Miccosukee Tribe of Florida, and Seminole Nation of Oklahoma. The three Indian tribes have indicated their support for your proposal to rebury the human remains at the Tatham Mounds site. After careful consideration, the Review Committee concurred with your proposal to rebury the human remains at the Tatham Mounds site. The Review Committee recommends that you consult with the Seminole Tribe of Florida, the Miccosukee Tribe of Florida, the Seminole Tribe of Oklahoma, as well as the Independent Seminole Nation of Florida, regarding the place and manner of reburial, whether small samples of human remains may be retained by the museum and, if so, how these samples should be cared for while in your possession." Mr. Goodman suggested adding "how and how long" at the end. Ms. Augustine stated for the record that regarding the discussion the previous day she did not want to tell Indian tribes how to do reburials and agreed that it would be up to the Indian tribes. The Review Committee members agreed with the letter.

## **Civil Penalties**

### **Presentation of Issue**

Mr. David Tarler stated that since 2006 his duties within the National NAGPRA Program have included coordination of NAGPRA civil penalties. NAGPRA statute provides that any museum that fails to comply with the requirements of NAGPRA may be assessed a civil penalty by the Secretary of the Interior pursuant to procedures established through regulation at 43 CFR 10.12. The regulations provide that the Assistant Secretary for Fish and Wildlife and Parks may act on behalf of the Secretary. By order of the Secretary dated 2005, the responsibility for NAGPRA civil penalties was placed in the National NAGPRA Program under the Associate Director for Cultural Resources. Mr. Tarler and Mr. Palmer report to the Assistant Secretary for Fish and Wildlife and Parks with respect to NAGPRA civil penalties. The National NAGPRA Program has documents on their Website to guide the civil penalty process, including templates to allege that a museum has failed to comply with the requirements of NAGPRA. The eight specific types of failure to comply with the requirements of NAGPRA are set out in the regulations at 43 CFR 10.12 (b)(1). Other documents will soon be added to the Website, including examples of determinations that an allegation of a failure to comply has not been substantiated, Notices of Failure to Comply, Notices of Penalty Assessment, and a calculation guide for determining proposed penalties.

Mr. Bob Palmer stated that his presence is a result of a partnership between NPS Cultural Resources and the NPS Division of Law Enforcement Security and Emergency Services. In addition to the Assistant Secretary of Fish and Wildlife and Parks, Mr. Palmer's reporting responsibilities are with the chain of command of law enforcement within the NPS. Mr. Palmer stated that after Mr. Tarler receives an allegation, it is forwarded to Mr. Palmer to evaluate and conduct an investigation. At present a total of 98 allegations of failure to comply have been made against 36 institutions. In 2006, investigations were conducted on 13 allegations of failure to comply against 3

institutions; of those 2 were substantiated and 11 were found not to be substantiated. In the first half of 2007, investigations were conducted on six allegations of failure to comply against four institutions; of those three were substantiated and three were found not to be substantiated. Mr. Palmer stated he currently has a number of investigations in progress.

### **Review Committee Discussion**

Mr. Steponaitis stated with 5 of the 18 investigated cases being substantiated that he takes heart in the fact that most of the allegations have turned out not to be substantiated. Mr. Steponaitis stated it is very useful to have these investigations because cases in which allegations result from misunderstandings can be cleared up, lifting the burden from the museum as well as answering any questions from the other party. Mr. Steponaitis asked about the general nature of the allegations that have been substantiated. Mr. Palmer stated that a lot of the allegations have come from individuals who might be described as disgruntled former employees. Some allegations were that an institution had not done an inventory. In some cases, the evidence showed the allegation was not substantiated because the institution was holding the collection on behalf of a Federal entity, which did complete an inventory. In some instances where a group alleged they were direct lineal descendants, insufficient evidence was produced to meet the standard of proof required under NAGPRA regulations. Most allegations that have been substantiated involve institutions that have not submitted an inventory, ranging from leaving items off the inventory to not submitting an inventory. Mr. Tarler stated that of the substantiated allegations to date four were failure to complete an inventory in a timely manner and one was the transfer of a NAGPRA item in violation of the requirements of NAGPRA to a transferee who was not required to comply with NAGPRA and without providing an inventory. Mr. Steponaitis asked if in those cases of failure to submit an inventory if the institutions were given a chance to set that right. Mr. Palmer stated that his experience has been quite positive, that once the problem has been identified to the right people, the institutions often work quite diligently to come into compliance. Mr. Steponaitis stated he was gratified to hear that because in his experience most museums are trying in good faith to comply with NAGPRA and there are misunderstanding about NAGPRA, which gets back to the importance of the trainings and the work of the National NAGPRA Program. Mr. Tarler stated that there is an added incentive in the regulations with respect to civil penalties for museums who have failed to comply with the requirements of NAGPRA as one of the four criteria by which a civil penalty may be reduced is an agreement to mitigate the violation.

Mr. Kippen stated he agreed with Mr. Steponaitis that the accountability resulting from enforcement of the civil penalties provisions of NAGPRA help people understand that NAGPRA is a law that not only the Review Committee expects to be followed, but also Congress and the Administration expects to be followed. Mr. Kippen asked how many hours per week Mr. Palmer commits to civil penalty investigation. Mr. Palmer stated that under the partnership he described earlier, the Division of Law Enforcement and Emergency Services funds his work on civil penalties investigations at a rate of 10 hours per week. Mr. Kippen asked how long it would take Mr. Palmer to eliminate the current backlog of cases at his present rate of employment and resources and at what rate new cases are submitted. Mr. Palmer stated he would estimate it would take him four years at his present rate to eliminate the current backlog, not taking into account the average of seven new cases that are received each year. Mr. Palmer stated that as people become aware of the civil penalties investigation process more allegations may be made. Mr. Kippen stated one could speculate in the opposite direction that if the process was perceived as active and effective that there might be a reduction in the number of complaints as people realize they need to comply. Mr. Monroe asked what Mr. Palmer's other assignments entail. Mr. Palmer stated that he performs a variety of duties as a law enforcement ranger at Effigy Mounds Nation Monument, including field patrols, resource protection, park entrance fee collections, writing press releases, and interpretive duties.

Mr. Steponaitis asked for clarification on how allegations are counted, specifically against one institution. Mr. Tarler explained that at the most basic level a museum could fail to comply with each of the eight failures set forth in the regulations, which would mean eight separate violations, eight separate allegations, and eight separate investigations. Mr. Steponaitis asked if it would be less time-consuming to investigate five allegations against one institution than five allegations against five institutions. Mr. Tarler stated that determining whether the institution in question is a museum would need to be done once, but the facts relevant to each allegation will be distinct. Ms. Worl stated that perhaps more elaborate information could be included in future reports as the Review Committee is keenly interested in learning more about the civil penalties work.

Mr. Jones stated that he was made aware of a mask currently at a museum in Denver. After researching the issue, it

was determined that the mask was made by one of his relatives, but the mask cannot be returned as his relatives live over the border in Canada. Mr. Jones asked for the other Review Committee members' assistance in this matter. Ms. Worl suggested that Mr. Jones discuss the matter with Mr. McKeown. Mr. Jones stated that he would and then could discuss the issue with the Review Committee again at a future time.

Mr. Kippen stated that NAGPRA has trafficking provisions but he is not sure how trafficking violations are recorded, how many complaints are filed, how many cases are being investigated, whether the cases are being disposed of, and basic information on whether the provisions have any traction to prevent trafficking activities. Mr. Tarler stated that the Attorney General is responsible for prosecuting Federal crimes and each United States Attorney's Office would receive a case referral for prosecution once there has been a charge or evidence that tends to show that a particular person committed a violation of the criminal provisions of NAGPRA. The Federal Bureau of Investigation (FBI) has jurisdiction to investigate NAGPRA crimes. The National NAGPRA Program has received information on cases which led staff to believe an investigation was necessary in order to determine whether a criminal violation of NAGPRA occurred. In addition, the National NAGPRA Program has received allegations of failure to comply that might also be criminal violations of NAGPRA which were referred to the FBI Art Crime Team, headquartered in Washington, DC. Ms. Hutt stated that Mr. Tarler is the national expert on criminal trafficking of NAGPRA items, and he has compiled information on criminal trafficking which is available to investigators. Mr. Tarler and Mr. Palmer do training on criminal enforcement of NAGPRA and ARPA, the Archaeological Resources Protection Act. Mr. Kippen commended Mr. Tarler and Mr. Palmer on their work, and asked how serious does the FBI take the criminal trafficking provisions of NAGPRA. Mr. Tarler stated that in order to answer that question, statistics need to be compiled on how many allegations of criminal violations of NAGPRA the FBI receives per year, the types of allegations received (written or oral), the type of recordkeeping utilized, and whether there is a central place in the FBI that keeps those statistics. Once this information is obtained, then an analysis can be done. Mr. Tarler stated he is also interested in finding out this information as he refers allegations of criminal violation of NAGPRA to the FBI. Mr. Kippen stated that data outlined by Mr. Tarler is exactly the information that the Review Committee needs and should request, in order to begin to hold the FBI accountable for ensuring that the criminal trafficking laws are enforced. Mr. Palmer stated that the Division of Law Enforcement and Emergency Services does not have enforcement authority for the criminal provisions of NAGPRA outside of Federal lands or outside of the NPS. Mr. Palmer stated that in his experience speaking with FBI agents about potential cases involving NAGPRA trafficking, he has had to start at the very beginning with an explanation of what is NAGPRA.

Ms. Worl stated that this may fall outside of their domain but she has mentioned previously that 459 institutions report no collections that require a summary. Ms. Worl stated that her understanding is no follow-up confirmation was done with those museums. While not wanting to make allegations about 459 institutions, Ms. Worl stated that some institutions that reported no collections were found to have collections. Ms. Worl stated this is an area that requires attention, as some collections have appeared on eBay which were subsequently pulled. Ms. Worl stated she would like the National NAGPRA Program to consider this issue and suggested sample surveys of some of the museums. Mr. Palmer stated that some currently ongoing investigations are the result of tribal historians utilizing the collective knowledge of the Indian tribe about collections dating back 75 to 100 years, contacting an institution which had not completed a summary or inventory, and then eventually contacting the National NAGPRA Program.

Mr. Steponaitis asked if there was any way to hold Federal agencies accountable for compliance with NAGPRA. Mr. Steponaitis stated that in its last report to Congress, the Review Committee asked the General Accountability Office to look into this matter. Ms. Mattix stated that cooperative efforts and developing good relationships is the best method, as there are no civil penalty provisions or criminal penalty provisions in NAGPRA with respect to Federal agency compliance. The Administrative Procedures Act (APA) would perhaps apply when an agency does not comply with Federal law and does not have a reasonable justification. The APA contains provisions that allow an outside party to bring actions to bring Federal agencies into compliance with laws in general. Ms. Worl stated this is another recommendation for the Review Committee to consider.

### **Review Committee Motion**

Mr. Kippen made a motion that the Review Committee recommend that the Secretary of the Interior send a letter to the Attorney General to request basic information and data about their enforcement of the NAGPRA trafficking provisions and a letter to the FBI to obtain information on how many cases have been referred, how many cases

have been investigated, and how many cases have been disposed of since NAGPRA has been signed into law. Mr. Jones seconded the motion. The motion was adopted by unanimous vote.

## **Request for a Recommendation for Disposition of Culturally Unidentifiable Human Remains in the Possession of the Intermountain Region, National Park Service**

### **Presentation of Issue**

Mr. Dave Ruppert, NAGPRA Program Coordinator, Intermountain Region, National Park Service, thanked the Review Committee for agreeing to meet regarding their request for recommendation on disposition of nine culturally unidentifiable human remains in the possession of the Intermountain Region, NPS. Mr. Ruppert introduced the individuals at the presentation: Mr. Arden Kucate, Councilman from the Pueblo of Zuni; Mr. Curtis Torivio, Tribal Interpreter from the Pueblo of Acoma; Mr. Earnest Vallo, Sr., Councilman from the Pueblo of Acoma; Ms. Theresa Pasqual, Office of Cultural Preservation, Pueblo of Acoma; Mr. Robert Leno, Office of Cultural Preservation, Pueblo of Acoma; Ms. Christine Landrum, Intermountain Region, National Park Service; and Mr. Jim Kendrick, El Morro National Monument. Mr. Ruppert stated that El Morro National Monument has offered a place to rebury the human remains should the Review Committee recommend repatriation to the Pueblo of Acoma and the Pueblo of Zuni.

Mr. Ruppert stated that the Intermountain Region, NPS, has made the decision after extensive consultation to ask for the Review Committee's recommendation to repatriate nine culturally unidentifiable human remains in the possession of the Intermountain Region, NPS, to the Pueblo of Acoma and the Pueblo of Zuni, for eventual disposition and reburial at El Morro National Monument. The Review Committee members were provided with copies of all documentation and the transcripts of the extensive consultation meetings. The Intermountain Region will answer any of the Review Committee members' questions regarding the decision to make a request for recommendation, but out of respect would defer to the tribal members' perspectives on the requested disposition.

Ms. Theresa Pasqual, Director, Historic Preservation Office, Pueblo of Acoma, thanked the Review Committee for the opportunity to appear before the committee. Ms. Pasqual stated that the Pueblo of Acoma has worked extensively with the NPS in consultation regarding the collections of human remains housed at the Intermountain Regional Office. The Pueblo of Acoma has long held the stance that ancestral remains should not be allowed to rest in institutions but should be returned to Native peoples and allowed to rest in peace. Both the Pueblo of Acoma and the Pueblo of Zuni have a long historical and cultural connection to one another. The connection continues today and is evident in this co-claim. The Pueblo of Acoma respectfully asks that the Review Committee consider a favorable recommendation regarding this request.

Mr. Arden Kucate, Councilman, Pueblo of Zuni, stated it was an honor to come before the Review Committee. Mr. Kucate stated they were diligent in the Southwest in dealing with NAGPRA-related issues. The consultations that occurred in 2005 led to consensus among the 16 Indian tribes that were represented at the meeting and eventually to this group appearing before the Review Committee. Mr. Kucate stated that they have been working very diligently with the NPS to be clear on how they came to the determination of culturally unidentifiable human remains. Mr. Kucate stated they were requesting the Review Committee's support to proceed as agreed upon by all of the Indian tribes in consultation. Mr. Kucate stated they would continue to work together to make sure all ancestral remains are reinterred back to where they need to be. Mr. Kucate stated they hoped the Review Committee would support the recommendation and allow them to proceed.

Mr. Earnest Vallo, Sr., Councilman, Pueblo of Acoma, thanked the Review Committee for the opportunity and honor of appearing before the Review Committee. In 1997, the 19 Indian tribes chose 4 Indian tribes to do the repatriations. The four Indian tribes were the Pueblo of Acoma, the Zuni Tribe of the Zuni Reservation, the Pueblo of Zia, and the Hopi Tribe. Mr. Vallo, Sr., stated that they would like all ancestral people to go back into the ground where they belong. They are asking the Review Committee for support to go forward and do the reburial process. Mr. Vallo, Sr., stated they were thankful to have worked with the NPS. The NPS has always been supportive and they have had good, meaningful consultation.

## **Review Committee Discussion**

Mr. Steponaitis thanked the parties for their presentation and thorough information. Mr. Steponaitis asked if the forensic identification work was done on all of the human remains in question. Mr. Ruppert stated that all of the remains were analyzed by physical anthropologists or archaeologists to determine whether or not there were any indications that could be made with regard to affiliation. Most of the determinations were indeterminate. Regarding the three remains that came from the Northeast Region that were confiscated in an ARPA case concluded in 2001, the only determination that could be made was that they had associated funerary objects that were identified from the Southwest. It was decided to move those human remains to the Intermountain Region and treat them in a similar manner with the other human remains. Ms. Augustine commended the parties for working together.

## **Review Committee Motion**

Mr. Kippen made a motion that the Review Committee support the repatriation of the human remains and associated funerary objects of nine individuals in the custody of the National Park Service, Intermountain Region, to the Zuni Tribe of the Zuni Reservation in New Mexico and to the Pueblo of Acoma, New Mexico. Mr. Monroe seconded the motion. Mr. Jones called the question. The motion was adopted by unanimous vote.

Ms. Worl thanked the parties for their work and stated it was a pleasure to see all of the consultation that occurred between the parties.

## **Consultation on Regulations for the Disposition of Unclaimed Cultural Items (43 CFR 10.7)**

Mr. McKeown stated that in their binders the Review Committee members had documentation provided at the last round of consultations at the Albuquerque meeting. At that meeting, the National NAGPRA Program had consultation meetings with Indian tribes, national scientific and museum organizations, and the Review Committee. A list of questions was provided to sort of guide the discussion at that time, a copy of which was provided to the Review Committee members in addition to a copy of the notice for the current consultation with slightly different questions for recommendations. In 1995, the NAGPRA regulations were promulgated with a number of reserve sections. One of the reserve sections, 43 CFR 10.7, deals with the disposition of Native American cultural items excavated or discovered on Federal or tribal land after the implementation of the statute on November 16, 1990. This section does not deal with museum collections, but only those objects that come off of Federal or tribal land and which are unclaimed under the statute and regulations. Congress specifically directed the Secretary of the Interior to promulgate regulations on this section in consultation with the Review Committee, Indian tribes and Native Hawaiian organizations, and with representatives of national scientific and museum organizations. There is no draft of the section at this time. The National NAGPRA Program is trying to get a sense of where the various constituencies are on this issue and to see which other issues need to be explored in order to move forward with the draft.

Mr. McKeown read the two questions outlined in the Federal Register notice and for which the National NAGPRA Program is requesting recommendations from the Review Committee.

- (1) How should the regulations address distinctions between:
  - (a) human remains, funerary objects, sacred objects, or objects of cultural patrimony remaining in Federal care for which ownership or control is with a lineal descendant or an Indian tribe or Native Hawaiian organizations on whose lands the cultural items were discovered?
  - (b) human remains, funerary objects, sacred objects, or objects of cultural patrimony remaining in Federal care for which an Indian tribe or Native Hawaiian organization has stated a claim based on cultural affiliation, aboriginal land, or cultural relationship?
  - (c) human remains, funerary objects, sacred objects, or objects of cultural patrimony remaining in Federal care for which a non-federally recognized Indian group has stated a claim based on a relationship of shared group identity?
  - (d) ) human remains and associated funerary objects remaining in Federal care for which no claim has been made?
- (2) Do current regulations regarding the curation of federally owned and administered archaeological collections [36 CFR 79] adequately address the management, preservation, and use of human remains, funerary objects, sacred

objects, or objects of cultural patrimony remaining in Federal care?

Mr. McKeown stated that April 18, 2007, the day prior to the Review Committee meeting, the National NAGPRA Program conducted consultation on 43 CFR 10.7 with Indian tribes and national museum and scientific organizations. Many people came forward to comment and make recommendations. During the consultation, it was pointed out that on the collections side of the statute the Review Committee was charged with compiling a list of culturally unidentifiable human remains, which became the culturally unidentifiable database, but there is no parallel provision for unclaimed cultural items. In many cases the only ones that are aware of the existence of the remains are the Federal agency that discovered them and the Indian tribes they consulted. Several representatives suggested that making that information more widely available would help Indian tribes identify cultural items as being related to them.

Mr. Steponaitis stated that he agreed that there was general assent regarding the issue described by Mr. McKeown, as well as assent with respect to the categories that framed the questions presented in the notice. Mr. Steponaitis stated from what he heard, there seemed to be assent that the 36 CFR 79 regulations were an appropriate place, at least to start, in terms of looking at how these human remains might be cared for in cases where they are not claimed. Mr. McKeown stated that representatives of both Indian tribes and national museum and scientific organizations talked about the necessity of caring for Native American human remains with respect, with discussions about what that meant and how one would articulate that in the context of a regulation.

Ms. Worl asked what the next step would be in this process. Mr. McKeown stated that based on recommendations from the Review Committee, the DOI and NPS would draft what could be a proposed rule. The draft would be brought back for further consultation with the Review Committee and possibly Indian tribes and national museum and scientific organizations. Following that, the rule would go through the formal notice and comment rulemaking process. Ms. Hutt stated that the National NAGPRA Program would like to schedule one more informal dialogue session prior to the next Review Committee meeting before drafting the rule. Mr. Jones stated this law is very important and good consultation is needed to make sure that both sides understand the law. Mr. Jones stated that his Indian tribe has had problems with lack of communication and poor listening skills, in part because they were speaking and reading in a foreign language, not their own language. Mr. Jones stated it was important that enough time be taken so that all parties understand this issue when it is written as a rule. Ms. Augustine stated she has been working on repatriation issues since 1977 and has been a NAGPRA designate from the beginning. Ms. Augustine stated that not enough tribal people are aware of this issue and many that are aware cannot afford to travel to the meetings. Ms. Augustine stated this is a very important issue because in Native communities there are no unclaimed. If something is unclaimed it is because the people do not know about it, and there needs to be a way to get the information to the Indian tribes so they can make a claim. Ms. Augustine stated that this issue needs more time and more Indian tribes need to be consulted. Ms. Augustine stated an appropriate saying would be "No ancestor left behind."

Ms. Worl stated that the Review Committee would like to hold additional consultations, as well as open dialogue and discussions, with all of the different parties before beginning the work on drafting regulations. The Review Committee will identify the dates and location of the next meeting in order to set up the consultation and dialogue sessions well in advance. This will hopefully allow for greater participation, giving people a chance to plan for the meetings.

## **Who Are the CUI?**

### **Presentation**

Mr. Andrew Kline, student at the University of Mary Washington, stated it was an honor to be before the Review Committee. Mr. Kline stated he has been working with the National NAGPRA Program on a project to learn more about the culturally unidentifiable human remains (CUI) listed on the culturally unidentifiable database. The project focused on information contained in the database as of February 2, 2007. At that time, there were a total of 118,833 CUI listed in the database. Six states were the subject of the project, Florida, Alabama, Tennessee, Kentucky, Illinois, and Ohio. These states were chosen because each state had over 5,000 CUI with a comparably small number of identifiable human remains. In addition, the six states form a geographic swath from the Gulf of Mexico to the Ohio River Valley.

The report focused on six topics; provenance, date of excavation, number of associated funerary objects, the modality of excavation, burial size, and time period of which the individuals were believed to be alive.

1. Provenance: The study showed 21 percent of the CUI from the study group were being held outside of the state in which they were excavated. Alabama had the highest with 48 percent of the CUI being held outside of the state. In total, the CUI from the study group are being held in repositories in 36 states. Mr. Kline pointed out an interesting trend from the data that the culturally unidentifiable human remains tend to be held in states bordering the study group.
2. Date of excavation: The study shows three peaks in CUI discovered, in 1890, 1930, and 1960, with rapid declines after 1890 and 1930.
3. Number of associated funerary objects: Roughly 18,000 CUI, 35 percent, were not buried with any associated funerary objects. The remaining 65 percent, 34,366 CUI, were buried with at least one associated funerary object, and 5,066 of those CUI were found with over 2,000 associated funerary objects.
4. Modality of excavation: In the study group, 25,238 CUI were excavated by universities and 12,679 were excavated by other scientific means, either by a museum not associated with a university or a cultural resource management firm. These two modalities of excavation account for 71 percent of the total CUI on record for the study group.
5. Burial size: Mr. Kline stated that the trend in the study group showed the majority of the CUI were either found in groups of 1 to 10 or in groups in excess of 500.
6. Time period: The majority of the CUI were believed to have lived between 8000 BCE and 1400 CE, roughly using the terms of the Archaic Period to the Mississippian Period, with the Mississippian Period having the largest concentration.

### **Review Committee Discussion**

Mr. Steponaitis asked if Mr. Kline based the study on the database available on the National NAGPRA Website. Mr. Kline stated that he used both the Website and files at the National NAGPRA Office when he needed to clarify information. Ms. Augustine stated that at least for the state of Tennessee the high number of CUI could be because there are no federally recognized Indian tribes in the state, which could also be a trend. Ms. Worl asked what the next steps with this study are and how the information will be used. Ms. Hutt stated that Mr. Kline's project was the start of getting this data out to the public and is also an important first step in addressing assumptions regarding the CUI. Ultimately, this data can help make connections for future consultation and identification and can help identify opportunities for grants. Ms. Hutt stated that Mr. Kline accomplished a lot of analysis in a short period of time, and future analysis on this and other CUI information can answer additional questions in the future.

Ms. Worl stated that this project is a great start and commended Mr. Kline on his work. Ms. Worl recommended that the Review Committee members review the report as it can raise questions for future discussion, such as the relationship of CUI to federally and nonfederally recognized Indian tribes. Mr. Goodman commended Mr. Kline for this work, and stated that the study pointed out to him the benefit of considering information regarding large groups, rather than on an individual-to-individual basis. Mr. Kippen stated he found the work to be absolutely insightful as it debunked a couple of his assumptions regarding the CUI. Contrary to his assumptions, this study showed that the CUI were the result of organized, planned excavations with associated funerary objects, thus providing a number of clues to help in identification. Mr. Kippen suggested a demonstration project to determine the center of mass of the CUI, from which organizations, Indian tribes, and museums in that area could begin to consult through perhaps one grant to identify the CUI. Ms. Augustine stated the information could also be used to identify future meeting locations for the Review Committee. Ms. Worl commended the National NAGPRA Program for initiating and supporting this type of work.

### **Discussion of the Effectiveness of Dispute Resolution**

Mr. McKeown stated that in their binders the Review Committee members had an updated listing on the current status of past disputes. A total of 12 disputes have been considered by the Review Committee. Of those, four cases have had some resolution. In three resolved cases, the institution basically followed the Review Committee's advice and repatriated the human remains. In one case, a settlement was done outside of the process under court jurisdiction. In seven cases, the objects under dispute have remained with the institution that was involved in the

dispute. Ms. Worl stated she was interested in assessing the effectiveness of the dispute process. The Review Committee had previously discussed the possibility of a more formal process prior to disputes coming to the Review Committee and had discussed the idea of a demonstration grant to try to begin work on a process. Ms. Worl stated that the dispute process may not be totally effective but has had some successes. Mr. McKeown stated at a past meeting the dispute resolution procedures were revised to try to attempt to refer parties to a third-party neutrals or to try to work with them before disputes appear before the Review Committee. Mr. McKeown stated that since that time, there have been a number of issues that have come to his attention that could potentially have become disputes. With the revisions in the dispute resolution procedures, Mr. McKeown was able to talk with the parties and attempt to resolve issues before parties need to bring disputes to the Review Committee. While he does not have concrete numbers of such instances, Mr. McKeown stated the Review Committee currently does not have any outstanding disputes.

Ms. Worl stated she would like a further analysis of the dispute process, including a discussion on whether the Review Committee decides issues of fact or issues of process and procedure. Ms. Worl stated she would like to have an analysis of whether the issues in past disputes were determinations of fact or process. Mr. Steponaitis stated Ms. Worl's suggestion was excellent, and it will be good to review what has and has not worked in the past. Mr. Steponaitis stated he was encouraged by the information in the listing. Many of the easier issues are resolved before reaching the Review Committee, and the listing shows that the Review Committee has overall done a pretty good job of bringing the more difficult disputes to a resolution. Ms. Worl asked for an update with additional information on the disputes that are currently listed as "Still in control of the museum." Ms. Augustine stated that the status on the dispute between the Field Museum and the White Mountain Apache Tribe heard by the Review Committee at the Denver, CO meeting needs to be updated.

### **Discussion of the Committee's 2006 Report to Congress**

Ms. Worl stated that she asked Mr. Kippen, Mr. Steponaitis, and Mr. Goodman to work as a subcommittee on the 2006 report to Congress. The National NAGPRA Program provided factual information prior to the meeting, which was included in the draft report in the binders. Ms. Worl stated that the Review Committee could consider the recommendations raised earlier during the meeting, as well as reviewing the 2005 recommendations and discuss possible alternative strategies. Mr. Steponaitis stated that the barriers encountered and recommendations from the 2005 report remain the same and would be a good starting point for the 2006 report. Mr. Kippen stated the Review Committee could start by identifying any additional barriers. Mr. Kippen stated he hoped the Review Committee would continue to support recommending a change in the NAGPRA statute. Ms. Worl suggested finding ways to get action on the report, such as bringing the report to constituent organizations and the appropriate Congressional representatives. Mr. Monroe asked for a description of the process, and stated that Congress is inundated with materials so the squeaky wheels get attention. Mr. McKeown stated that in the past the report has been provided with a cover letter by someone in the DOI and sent generally to members of committees interested in the topic, such as the Senate Indian Affairs Committee and the House Resources Committee. Mr. Kippen asked if it would be possible for the Review Committee to issue a report by the following day and then have available members take the report to Congress immediately. Mr. McKeown stated he would have to consult with the General Law Division but his understanding was this is the Review Committee's report. Ms. Mattix agreed that she would want to discuss that with the Legislative Counsel's Office, which is separate from the Office of the Solicitor and deals with contacts on the Hill.

Mr. Steponaitis stated that the subcommittee has some proposed changes and additions to the draft 2006 report to Congress. From the 2005 report to Congress, none of the Barriers Encountered changed and none of the Recommendations were adopted, so many will remain in the 2006 report to Congress. Mr. Steponaitis stated that the subcommittee had no proposed changes to the Introduction, Review Committee Activities, and Progress Made sections in the draft 2006 report to Congress. Mr. Steponaitis explained the subcommittee's proposed changes to the draft 2006 report to Congress.

The proposed changes for the Barriers Encountered section include:

- The first paragraph under Barriers Encountered will remain the same, with the addition of one sentence following the sentence, "Also, the Review Committee continues to be concerned that annual shortfalls in overall program funding are made up at the expense of grant awards." The next sentence would read, "This

shortfall totaled some \$500,000 in Fiscal Year 2006.”

- The next paragraph would change to take into account the publication of final regulations for 43 CFR 10.13. In the first sentence, change the word “four” to “three.” The sentence would now read, “More than 15 years after NAGPRA’s passage, three key sections of the implementing regulations are still pending.” In the second sentence strike the section, “final rules on future applicability (43 CFR 10.13).”
- The next paragraph on Federal agency compliance remains the same, but following that paragraph, a new paragraph is proposed. “The committee is encouraged by the organized manner in which civil penalties investigations are proceeding since publication of the final rule on civil penalties (43 CFR 10.12). The committee is concerned, however, that there is a substantial backlog of cases in need of investigation, substantiation, and disposition, and that the present investigator is assigned at the rate of only ten hours per week. The committee believes that the present position should be increased to a full-time one, while not decreasing existing funding for enforcement of the Archaeological Resources Protection Act (ARPA).”

The proposed changes for the Recommendations section include:

- The date of the meeting was changed in the last sentence of the first paragraph, which now reads, “At its April 19-20, 2007 meeting, the Review Committee made the following recommendations.”
- Under Costs to Comply with NAGPRA, a new bullet will be added after the first bullet, which reads “At least \$5 million in grants to Indian tribes, Native Hawaiian organizations, and museums.” The second bullet would read, “An increase of \$1 million over the FY2007 appropriation for NAGPRA grant administration.” This would address the current shortfall in administration funds and increased administrations costs associated with the request for increased grant funds.
- The second bullet would become the third bullet and would be slightly modified to read, “The amounts requested by the administration that is targeted for each Federal agency’s compliance efforts,” striking the phrase “the National NAGPRA Program and.” The reason for the change is that there is now a specific request for the National NAGPRA Program and that does not need to be repeated.

Ms. Worl asked if the amount funded for grants has remained constant since the beginning of the grants program. Mr. McKeown stated that in FY1994 and FY1995 the total grant amount each year was \$2 million. Since FY1996 funding has remained level each year at \$2.3 million. Ms. Worl stated that wording should be added to the report to reflect the level funding. Mr. Kippen stated that could be added in the Barriers Encountered section following the sentence that reads, “The National NAGPRA Program administers a competitive grant program to assist in funding some of the activities.” Mr. Steponaitis suggested the following wording be added, “and the funding for this program has not increased since FY1996.”

The Review Committee members discussed possible wording changes to increase the effectiveness of the report. Mr. Monroe stated that rather than discussing shortfalls, the report should focus on the compelling reasons to increase the grant funds to try to assure the adequacy of the implementation of NAGPRA. Mr. Monroe suggested that the Review Committee ask for an increased amount that would fully fund the grants program, rather than separate amounts for grant awards and grant administration. In FY2006, a total of \$3.6 million was requested and a total of \$500,000 was used from the grants appropriation to partially fund the administration of the National NAGPRA Program. After discussion, the Review Committee agreed to change the first bullet under Costs to Comply with NAGPRA to read, “At least \$4.1 million in grants to Indian tribes, Native Hawaiian organizations, and museums.” The second bullet read by Mr. Steponaitis would be deleted.

Ms. Worl stated that earlier in the meeting the Review Committee discussed presenting the report to Congress to their constituent organizations and Indian tribes in the hope that they would advocate for the recommendations as set forth by the Review Committee. In addition, the Review Committee members would like to be able to visit their Congressional representatives to advance the report and request support. Ms. Worl asked Ms. Mattix if the Review Committee could take those actions. Ms. Mattix stated that she consulted with the Federal Advisory Committee Act (FACA) attorneys in the General Law Division of the Solicitor’s Office and the Review Committee members cannot go before members of Congress or their staff as a committee and represent views regarding the issues discussed as the Review Committee. The Review Committee is a FACA committee and, as such, reports to the Secretary of the Interior. There cannot be any perception of the Review Committee lobbying on behalf of the DOI before Congress. In addition, the Review Committee Charter states that the Review Committee members are special government employees subject to the ethical rules and obligations of the DOI, which include lobbying and other activities in that area. The Review Committee members can represent individual opinions on these matters to members of Congress

or other organizations.

Mr. Steponaitis asked about the process for finalizing the 2006 report to Congress. Mr. McKeown stated that following the meeting the National NAGPRA Program will review the report to make sure there are no factual inaccuracies, then a cover memo will be added and the report will be sent from the NPS to the DOI and then for distribution in Congress. Ms. Worl stated once the report is typed and review by the National NAGPRA Program, she would like to have it sent back to the Review Committee members for a final review and approval by the Chair, Mr. Steponaitis, and Mr. Kippen.

Mr. Kippen made a motion that the Review Committee requires that distribution of this report include each and every member of Congress. Mr. Steponaitis seconded the motion. Mr. Kippen stated that such distribution of the report would open avenues for discussion. Mr. Monroe stated that while he applauds the intent, he feels that a more effective method would be to distribute the report to various museums, Indian tribes, and other organizations, which could then use the reports in meetings with Congressional representatives. Due to the sheer volume of information that Congressional representatives receive daily, the Review Committee's report could be overlooked. Mr. Kippen asked about the distribution list of prior reports. Mr. McKeown stated that the 2005 Report to Congress was sent to members and staff of the Senate Indian Affairs Committee and the House Resources Committee. The 2006 Report to Congress can be posted on the National NAGPRA Program Website as soon as it is distributed to Congress. Mr. Kippen stated he would like to withdraw his motion. Ms. Worl stated that since there were no objections, as the Chair she would withdraw the motion.

Mr. Monroe suggested that the subcommittee work with the NAGPRA staff to draft a brief paragraph that justifies the request for increased funding, which would be important so other people are able to make a case for the increase in funds requested. Mr. Monroe stated that these points could include a reminder that the Act is incredibly important, the Act is human rights legislation, the Act is being implemented by a large number of Indian tribes, museums, Federal agencies and other organizations, and that implementation of the Act is important for several reasons, including the return of human remains. The Review Committee members agreed to add such language in both the Barriers Encountered section and the Recommendations section.

### **NAGPRA Success Stories**

Ms. Selina Cooper, student at the University of Maryland, stated she would be sharing NAGPRA success stories. Ms. Cooper reviewed the three different types of notices published in the Federal Register, Notices of Inventory Completion, Notices of Intent to Repatriate, and Notices of Intended Disposition. To date, 56 Notices of Intended Disposition have been published, 360 Notices of Intent to Repatriate have been published, and 961 Notices of Inventory Completion have been published. Ms. Cooper described several successful cases. In 2001, the Bureau of Reclamation, Eastern Colorado Office, published a Notice of Intended Disposition regarding the Northern Arapaho Tribe, the Northern Cheyenne Tribe, the Southern Cheyenne Tribe and the Southern Arapaho Tribe of Oklahoma. Human remains discovered during an archaeological survey in 1982 and human remains discovered in 2002 eroding from a cut bank were determined to be from the same individual. Following consultation and publication of the notice, the human remains were repatriated to the Indian tribes. In another case, in 2004 the Chugach National Forest submitted a Notice of Intended Disposition regarding the Chugach Alaska Corporation. In the 1930s, Frederica de Laguna removed human remains from Tzuxtvik, which were later curated at the University of Pennsylvania and then transferred to the Chugach Alaska Corporation in 1994 for reburial. On April 2, 2007, the Museum of Indian Arts and Culture, Laboratory of Anthropology, Museum of New Mexico, submitted a Notice of Inventory Completion regarding the Hopi Tribe of Arizona, the Pueblo of Acoma, the Pueblos of Isleta, the Pueblo of Jemez, the Pueblo of Sandia, the Pueblo of Santo Domingo, the Pueblo of Taos, Ysleta de Sur Pueblo, the Zuni Tribe of the Zuni Reservation, and the Piro-Manso-Tiwa, a nonfederally recognized Indian group. The notice demonstrates that new collections are being documented, even prior to the publication of final rule 43 CFR 10.13, Future applicability.

Ms. Cooper stated that the National NAGPRA Program is now doing a new project called the Grants Outreach Project, to assist museums and Federal agencies in executing successful grants proposals. Successfully executed grants proposals will be featured on the National NAGPRA Website. To date 523 NAGPRA grants have been awarded, with 345 grants totaling almost \$19 million being awarded to Indian tribes and Native Hawaiian organizations and 174 grants totaling almost \$9 million being awarded to museums. Ms. Cooper described a

documentation grant awarded to the Caddo Nation in 2004, used to create a book titled A Rediscovering of the Caddo Heritage. The purpose of the grant was to document a collection from the American Museum of Natural History purchased for \$200 from W. T. Scott in 1900. Ms. Cooper described another documentation grant awarded to the Wisconsin Historical Museum used to facilitate consultation of Native nations and tribes, as well as to host a workshop on pesticides residue contamination found on museum collections. The findings from the workshop were shared at the second session of Building Partnerships between Native American Nations and Museum, giving museum professionals the opportunity to hear about a successful NAGPRA consultation, issues of concern regarding pesticides, and ideas for more successful consultations.

Ms. Worl thanked Ms. Cooper for her presentation. Ms. Augustine asked for a written copy of the presentation. Ms. Worl suggested that the presentation be included as an appendix to the Review Committee's 2006 report to Congress. Ms. Cooper stated that the presentation would also be available on the National NAGPRA Website. Ms. Worl stated she wanted to remind people that when NAGPRA was first enacted that museums were fearful that Indian tribes and Native Hawaiian organizations were going to be loading up collections. From the report, 3,570 sacred objects, 281 objects of cultural patrimony, and 709 objects that are both sacred objects and objects of cultural patrimony have been repatriated. Through the repatriation process there has been a lot of success and building relationships between all of the interest groups.

### **Upcoming Meetings**

After discussion, the Review Committee members agreed to meet in the Tucson/Phoenix, AZ, area between October 11 and 16, 2007. The Review Committee agreed to meet in Wisconsin in spring 2008, and Mr. McKeown will coordinate the schedules of the Review Committee members to identify available dates.

### **Action Items**

The Review Committee and Mr. McKeown discussed outstanding action items for completion after the meeting.

- A letter from the DFO to Mr. Milanich regarding the request from the University of Florida for disposition of culturally unidentifiable human remains.
- A letter from the DFO to the NPS Intermountain Region regarding a request for disposition of culturally unidentifiable human remains.
- Regarding consultation on 43 CFR 10.7, the Review Committee recommended another round of consultation with Indian tribes, Native Hawaiian organizations, and national and scientific organizations prior to the next Review Committee meeting and then discussing the matter again at the meeting for recommendations from the Review Committee. Ms. Worl stated the Review Committee members also discussed scheduling an open session for dialogue prior to the meeting, with all Review Committee members encouraged to attend.
- Regarding the 2006 report to Congress, the subcommittee will finalize the draft text, which will be provided to the National NAGPRA Program for technical review. Any changes will be provided to the Chair for final review and approval. The report will then be conveyed to the National NAGPRA Program for distribution to Congress.
- A proposal by the Review Committee that the DOI take steps necessary to expeditiously promulgate 43 CFR 10.11, disposition of culturally unidentifiable human remains.
- The Review Committee made requests for additional information for the following issues:
  - Data on trafficking from the DOJ.
  - Data on the process and status of trafficking investigations from the FBI.
  - A more detailed report regarding the effectiveness of the Review Committee's dispute resolution procedures.
- A recommendation by the Review Committee that the funding be increased for the civil penalty investigator from 10 hours per week to a full-time position for at least 18 months, on the condition that funding not be taken from the present efforts to enforce the Archaeological Resources Protection Act.

Ms. Worl thanked Mr. McKeown for keeping a record of the outstanding items.

## **Public Comment**

### **Ms. Martina Minthorn, Ms. Ruth Toahty, Mr. Dean Suagee - Comanche Nation**

Ms. Ruth Toahty, NAGPRA Coordinator, Comanche Nation, thanked the Review Committee for the time to present their issue. Ms. Toahty stated she provided the Review Committee members with a booklet of information regarding the issue pertaining to Fort Sill Military Base in Lawton, OK. The Comanche Nation discovered burial sites dating back to 1871. Fort Sill Indian School, a boarding school, was established in 1871 and many people came to the area when their children went to the boarding school. At the same time, the military gave the Indian tribes blankets contaminated with smallpox, cholera, and typhoid fever, which took the lives of numerous people. The burials are located very close to the Mission Cemetery, which has 109 graves. Fort Sill Military Base started construction near the burial site. Although Fort Sill Military Base says they notified the Comanche about the construction, the Comanche Nation has no record of this. An Elder knew where the burial sites were located and had informed Fort Sill years earlier but nothing had been done. The Elder located the burial sites and the Comanche Nation worked with a lady from the Kaw Nation to do ground-penetrating radar (GPR) on the area. A total of 11 graves were located, including one underneath a road used during construction. The Comanche Nation informed Fort Sill Military Base of the burials and asked them to halt construction but they did not. At that time, Fort Sill said the Comanche Nation could finish the GPR work after construction was complete. The Comanche Nation notified the State Historic Preservation Officer (SHPO) who stated the SHPO does not get involved in NAGPRA issues. The Chairman of the Comanche Nation asked them to stop or an injunction would be filed and construction was finally stopped. Ms. Toahty stated the Comanche Nation submitted all of the data from the GPR to Fort Sill Military Base, along with a programmatic agreement to consult with the Comanche Nation if any discoveries are made. Ms. Toahty stated that Mr. Wheat, the Environmental Quality Control Officer, contacted her and said they did not like the programmatic agreement and were not going to sign it, and he then asked for the Elders to identify the sites so this would not happen again. When the construction work was done Fort Sill told Ms. Toahty that they could complete the GPR work. Ms. Toahty told them the damage was already done. Ms. Toahty stated they came to the Review Committee to ask for assistance. The Comanche just want to consult with Fort Sill to ask for their ancestors to be protected and respected.

Ms. Martina Minthorn, Program Coordinator, Comanche National Museum and Cultural Center, stated this all started in July of the previous year when the Comanche Nation was beginning to develop their NAGPRA program. An Elder, Mr. Ken Karty, came to them and told them of a burial site at the construction site. Since then Ms. Minthorn has had a lot of interviews with tribal members, including Elders from the Comanche Nation, the Kiowa Indian Tribe, and the Apache Tribe, regarding burials in the airfield. The Department of Transportation (DOT) got the Comanche Nation access to the construction site of Harper Construction out of San Diego, CA, and using older GPR equipment the Comanche Nation was able to identify, but not document, burial sites. The Comanche Nation hired Ms. Crystal Douglas of the Kaw Nation to do a GPR study. Ms. Douglas located 11 graves, including 1 in the road area, during the site visit but has not submitted a written report to date. The Comanche Nation was not able to stop traffic from driving over the gravesite in the road. Ms. Minthorn stated that the Comanche Nation filed an injunction to stop construction, but subsequently Ms. Minthorn saw landscaping work and took pictures. Ms. Minthorn said the project manager, Mr. Les Willager, became angry when he saw her taking pictures. Ms. Minthorn stated numerous tribal members reported a meeting where they were told that blanket remnants and human remains had been found but they were not to report these findings to the Native people. The tribal members immediately reported the information to the tribal chairman. The Comanche Nation called the Center for Disease Control, as well as the Kiowa Indian Tribe and the Apache Tribe. The following day the Indian tribes called a full council meeting of all tribal members, and they were very distressed. The Bureau of Indian Affairs (BIA) Southern Plains Region was invited to the meeting. The Indian tribes sought help from the BIA, the Bureau of Land Management, the Oklahoma Archaeological Society, and the State Historic Preservation Officer but received no help. The construction is complete but it could have been prevented. Ms. Minthorn stated that NAGPRA is supposed to be grave protection but there is no protection unless bones are found. Ms. Minthorn stated that if they can prove scientifically that the burials are there, they should be protected. Ms. Minthorn stated that the Fort Sill Military Base did not consult with the Indian tribes, even after Elders wrote letters and told them about the graves. The treatment of this issue showed that Fort Sill Military Base does not respect the history of the area or the Indian tribes.

Ms. Toahty stated that the Comanche Nation sent the GPR data to Mr. Larry Conyers, an archaeologist, and they are

awaiting his report on all of the data. Mr. Conyers reviewed part of the data and reported to Ms. Toahy that there was one intact grave. Ms. Minthorn stated that the gentleman from the Army who was very helpful in working with them was recently deployed. At a meeting January 25, 2007, the Comanche Tribe agreed to turn over the GPR data to a third party, the University of Colorado, and Fort Sill Military Base agreed to meet at the end of February but they have not been contacted. Ms. Minthorn stated that it took months for Fort Sill Military Base to review the programmatic agreement submitted by the Comanche Nation.

### **Review Committee Discussion**

Mr. Kippen asked Mr. McKeown if this issue was a potential dispute. Mr. McKeown stated that the issue is not a collection-based issue, which would be squarely within the jurisdiction of the Review Committee. The issue falls somewhat outside of that, but is an issue that is potentially within the overarching parts of NAGPRA. Under 43 CFR 10.3, intentional archaeological excavations, it says that the Federal agency must take reasonable steps to determine whether a planned activity may result in the excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The majority of the issue sounds like it would fall under Section 106 of the Historic Preservation Act or the National Environmental Policy Act (NEPA). Mr. Monroe asked if it would be appropriate for the Review Committee to recommend that the Secretary suggest that the Army at Fort Sill enter into some meaningful consultation on this issue. Ms. Mattix stated that for the DOI to insert itself into another Federal agency's NEPA process and activities, the DOI would have to fully understand what is happening. Ms. Mattix stated that the Review Committee has received a good picture of the issue from the Comanche Tribe, but this sounds like a rather complicated situation. The DOI would have to look at the whole situation before making a recommendation regarding consultation. Ms. Hutt stated from a programmatic aspect that when the National NAGPRA Program has meetings with other Federal agencies a question often posed is how does NAGPRA interface with Section 106 of the National Historic Preservation Act. The National NAGPRA Program has been discussing instituting dialogue with other Federal agencies who work on compliance to develop best practices protocols for these kinds of situations. Ms. Hutt stated this would not be a solution to this issue, but it would bring some public attention to the issue.

Mr. Steponaitis asked if any human remains were actually uncovered during construction. Ms. Minthorn stated the Comanche Tribe was not able to conduct an investigation and the document produced by Harper Construction stated there were no remains discovered. Ms. Toahy stated that the employees reported seeing a skull being used as a football and then tossed in the back of a truck. Ms. Minthorn stated that tribal members who went to the tribal chairman were fired. Ms. Toahy stated they were asked why don't they move the graves, but that would go against tribal beliefs plus would increase the risk of spreading disease.

Mr. Dean Suagee, Hobbs, Straus, Dean and Walker, stated he was counsel for the Comanche Tribe. Mr. Suagee stated this case is a breakdown of the Section 106 process. When it was brought to the attention of the Army, they did stop the activity and do an investigation, although the Comanche Tribe does not have a copy of the investigation. Mr. Suagee stated that the Comanche Nation has affidavits from tribal member employees who said they had seen human remains, but the Army states that when they did interviews the stories had changed. However, evidence from the ground-penetrating radar indicates the presence of graves, as does oral tradition and the presence of a National Register listed cemetery from the same historic period as the graves. Mr. Suagee stated that it seems the Army did not make a good faith effort to live up to the spirit of Section 106 process, even if they did comply with the letter of the law. The Comanche Nation is talking with the Advisory Council on Historic Preservation to try to figure out if they can help. Mr. Suagee asked if the combination of historical data, oral tradition, and ground-penetrating radar that suggests anomalies that may be unmarked graves is enough to constitute an inadvertent discovery whether or not skeletal materials are encountered. Ms. Mattix stated under Section 3 of the Act that deals with the provisions of inadvertent discovery and planned excavations that that does not constitute an inadvertent discovery; an actual visual discovery must be made. Mr. Jones stated he was very concerned about the issue and that it was very similar to a situation with his Indian tribe. Mr. Jones stressed how important it was that the Review Committee try to come up with a solution. Ms. Augustine agreed that something needs to be done. Ms. Minthorn stated that under the regulations the meaning of inadvertent discovery is the unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands. Mr. Suagee suggested that evidence from ground-penetrating radar, correlated with oral tradition and historical documentation about the presence of unmarked graves, could together constitute detection for purposes of an inadvertent discovery. Mr. Suagee stated that although Ms. Mattix stated there was no precedent

for such a finding, he hoped it would be considered.

Mr. Suagee stated the Comanche Nation had one other issue to discuss that might come before the Review Committee. An eagle feather headdress was obtained by the Fish and Wildlife Service in a sting operation in Philadelphia in 1999. The individual was arrested for possession of and trying to sell the eagle feathers. The Comanche Nation and the Mescalero Apache Tribe both sought to have the headdress repatriated as an object of cultural patrimony. The Comanche Nation and the Mescalero Apache Tribe reached an agreement between the two Indian tribes about sharing the custody of the headdress. In January 2007, the Fish and Wildlife Service gave the Comanche Tribe a draft report of their determinations in which their preliminary finding was that the headdress was not an object of cultural patrimony but that they were willing to return the headdress to the two Indian tribes according to the intertribal agreement. The Comanche Nation responded by saying that they were willing to take custody of the headdress in accordance with the agreement with the Mescalero Apache Tribe but for the record disagreed with the determination that it was not an object of cultural affiliation. The matter is unresolved and may come to the Review Committee in the future with a request for recommendation. Ms. Worl thanked Mr. Suagee for presenting the issue, and stated that the Review Committee would encourage the parties to try to resolve the issue.

### **Review Committee Motion**

Mr. Monroe stated on behalf of the Review Committee that they empathize with the frustration and very understandable and deep concerns regarding the situation at Fort Sill. Unfortunately, it is not within the Review Committee's purview to redefine statutory language with respect to what a discovery means. Mr. Monroe made a motion that the Review Committee compose and send a letter to the Historic Preservation Advisory Committee urging them to review and assess the situation at Fort Sill, OK, involving the potential need to protect a number of Native American gravesites located on Fort Sill. Ms. Augustine seconded the motion. Mr. Jones called the question. The motion was adopted by unanimous vote.

### **Mr. Kirk Perry - Chickasaw Nation**

Mr. Kirk Perry, Administrator, Chickasaw Nation, stated he was speaking on behalf of Governor Bill Anoatubby and Lieutenant Governor Jefferson Keel. Mr. Perry stated he was requesting a recommendation from the Review Committee about how the U.S. Government might lend support to the Chickasaw Nation's request for the return of human remains from the British Museum. The Review Committee members have information in their packets on the issue. Mr. Perry stated that the Chickasaw Nation has actively repatriated their ancestors and associated funerary objects for a number of years with Federal agencies, State agencies, private individuals, and private companies. The Chickasaw Nation has been working with the British Museum in London, England, which possesses certain human remains that are culturally affiliated with the Chickasaw. Recently, the British Government has changed laws that allow certain institutions to consider repatriation. For these purposes, the British Museum has developed guidelines for requests for return of human remains and a museum policy on human remains, copies of which were provided to the Review Committee. The British Museum established a Human Remains Advisory Panel, which is similar to the Native American Graves Protection and Repatriation Review Committee. The Chickasaw Nation has provided all documentation and has worked with the Human Remains Advisory Panel Chair, Mr. John Jackson, on their request. One of the requirements of British law is for a request to come from the national government. The Chickasaw Nation considered several options to try to obtain the support of the Federal government before deciding that the first step would be to present information to the Review Committee.

Ms. Worl asked if the Review Committee could have clarification as to whether they would be able to provide a letter of support from the Federal Government. Mr. McKeown introduced Mr. Eric Wilson, Program Analyst working for the Assistant Secretary for Indian Affairs in the DOI. Mr. Wilson stated he has initiated contact with Mr. Jackson at the British Museum, as well as the United Kingdom Desk Officer at the State Department, and at this point they are considering what a process might look like for this case and perhaps others in the future.

Ms. Augustine commended Mr. Perry for his work on international repatriation. Ms. Worl suggested that Mr. Perry speak with Mr. John Johnson from the Chugach area in Alaska and a member of Smithsonian Review Committee. Mr. Johnson has had a lot of success in international repatriation. Mr. Perry stated that he has met Mr. Johnson and thanked Ms. Worl. Mr. Perry stated the Chickasaw Nation was being cautious in the event that they or other Indian

tribes go through the process again. Mr. Kippen stated that the British law raises a question of sovereignty and whether federally recognized and unrecognized Indian tribes would go through different processes. Mr. Kippen commended the Chickasaw Nation for considering the implications of the law as it will affect both federally and nonfederally recognized Indian tribes. Ms. Worl thanked Mr. Perry for his presentation and wished the Chickasaw Nation good luck with their efforts.

**Ms. Jean McCoard**

Ms. Jean McCoard, Tri-Regional Indian Organization of Ohio, stated it was an honor to be with the Review Committee. Ms. McCoard stated that Mr. Billie raised an issue that may need to be addressed more carefully as it strikes at the heart of NAGPRA, and that is what is the definition of repatriation of human remains? Does it require the whole body or can parts of the body be retained? Ms. McCoard provided information packets to the Review Committee members. Ms. McCoard stated that comparing the map identifying states with no federally recognized Indian tribes with the numbers provided by Mr. Kline regarding culturally unidentifiable human remains will show a correspondence between the states with no federally recognized Indian tribes and the high numbers of culturally unidentifiable human remains that are in those states. The packet also includes a working paper on possible ways to bring these issues some clarification and to see that NAGPRA is fully followed in these states.

Ms. McCoard stated that she is speaking to the Review Committee today on a more personal level. In recent months, commitment to this law and its larger ramifications became much more personal for her and her family. In December 2006, their first grandson was born and he died. It fell to the grandparents to find a resting place, in a remote corner of Athens County, Ohio, an old cemetery that had grown up around an ancient mound. The mound was never excavated, saved ironically because a Civil War Veteran was interred on the top of the mound. It is a happy cemetery, watched over by the ancient ones. Ms. McCoard stated she shared this fact not for sympathy but from the profound sense that those lives, the very ancient ones and the very recent ones, are sacred and are all part of the sacred circle of time. It falls to the living to honor, care for, and protect them for all time. Ms. McCoard stated that is why she came, hoping to work together to continue the work that this law so nobly began.

**Mr. Bobby C. Billie**

Mr. Bobby C. Billie, Independent Traditional Seminole Nation, stated when he was a boy he learned knowledge of the creation, of the creation of humans, animals, wind, stars and clouds. A lot of things he did not understand as a boy he learned during his time. Mr. Billie stated much damage has been done to the Indigenous people of this country. They have human rights, religious rights, and to live the way God gave them. The Indigenous people have lived on this continent for thousands and thousands of years, generation to generation. It should not be like that if human rights law exists in this system. Mr. Billie stated the people call themselves American people, a gentle people, but there is no justice in the American system, only one side. Mr. Billie stated he is speaking for all the people that have passed on, the ones that do not have a voice. Many of those people suffered and died for them, but nobody speaks to what the American people have done, which cannot be forgotten. It is time for someone to speak. They need to go home, back to where they came from. It does not matter whether they are federally recognized or not federally recognized. Mr. Billie stated this has been going on for a long time and he does not know why. All of the spirits in the air, they carry disease. Once they are disturbed, they are disturbed from now until the end of the world. Mr. Billie stated that others need to learn respect as they do, respect for graves and ancestors and protection from people who want to dig up Indigenous people. It is not just human remains or artifacts. It is something that has been stolen that needs to go back.

Ms. Augustine stated that NAGPRA deals with federally recognized Indian tribes, but what about the nonfederally recognized groups and the ancestors that are in their territory. Many of the unclaimed are because there are groups that are not federally recognized. Federally recognized Indian tribes should be allowed to help nonfederally recognized groups. It is the Indian way. Ms. Augustine stated that her Indian tribe would be willing to help any group that needs assistance in this matter. Ms. Augustine stated that it must be very sad as nonfederally recognized groups in their own territory, their own land, to have no rights. The ancestors want to come home. When they lived and walked on this earth there was no such thing as recognized and nonrecognized.

**Mr. Edward Halealoha Ayau**

Mr. Edward Halealoha Ayau, Mahi Clan of Kohala, thanked the Review Committee for allowing him to speak out of turn for scheduling reasons. Mr. Ayau stated he had new information to present regarding the Kawaihae case and provided a copy of the document to the Review Committee members. The document was from the Commission of Boundaries and is significant in that it is the *kupuna*'s way of revealing himself. Mr. Ayau stated that following the removal of the items from Kawaihae cave, Ms. Maydean Mahi Bowman approached Hui Malama and stated that she believed it was her family's ancestor who was buried in the cave. Ms. Mahi Bowman showed Mr. Ayau a document by Mr. Russ Apple, an anthropologist who worked for the NPS. In the document, Mr. Apple identified who was living in Kawaihae at the time of John Young, an advisor of Kamehameha during the Historic Period. The document also identified the names of Mahi and Kaneahiku. Mr. Apple's document stated that Mahi was buried in the cliffs of Honokoa. When trying to confirm that information, Mr. Ayau found a document from the Commission of Boundaries in the state archives. After the Mahele Act was passed to create private ownership of land, the Commission of Boundaries was created to gather testimony from Hawaiians to identify who lived where for purposes of creating property boundaries. Mr. Ayau stated that the Commission of Boundaries document he presented to the Review Committee was the sworn testimony of the wife of Mahi, Kaneahiku, who gave personal history dating to the Historic Period. Mahi was *konoiki*, the highest-ranking chief below the ruling chief of that area. Mahi was in charge during the Historic Period, and Kaneahiku testified that when he died he was buried in the *pali*, the cliffs, of Honokoa. Mr. Ayau stated that based on the document, he believes that they have identified Chief Mahi as the individual who was buried in the canoe in Chamber B.

Mr. Ayau stated that Mrs. Mahi Bowman and her family submitted lineal descendent claims. Mr. Ayau provided this information to Ms. Kehau Abad, an expert in chiefly genealogies, who demonstrated through lineage that Mr. Ayau was a Mahi descendant. Mr. Ayau stated when the Review Committee was in Hawaii, people came to the microphone and said no one in Hui Malama was family to this chief, but they could not know that without knowing the genealogy of those in Hui Malama. Mr. Ayau stated he did not even know that lineage. Now that the *kupuna* is identified and his relatives are known, the next step is to organize a gathering of Mahi descendants to determine the appropriate treatment. Mr. Ayau stated he now knows why he felt so compelled to be very clear and very stringent on this case, because he is Mahi.

Mr. Ayau stated he had an additional issue to bring to the Review Committee, detailed in a second handout provided to the Review Committee members. In 1992, Hui Malama requested information on all human remains and burial objects from the island of Koho'olawe. In response, the Director of the Bishop Museum sent a letter that provided Hui Malama with the requested information but also stated that one burial bundle was missing. The Director states that should the Bishop Museum search for and find the bundle, the Bishop Museum would notify Hui Malama. Mr. Ayau stated that just prior to the Review Committee meeting, he did an online search for information on burial bundles of Koho'olawe and found 37 listings for "burial bundle" for the island of Koho'olawe under the Bishop Museum Ethnology Database. Mr. Ayau stated he hoped this was the same burial bundle and not another one, and asked about the Bishop Museum's reporting requirements for the bundle. Hui Malama considers the burial bundle to be funerary objects and does not know why the items were listed on the Bishop Museum Ethnology Database. Mr. McKeown stated that the final rule on future applicability went into effect on that day, April 20, 2007, and the Bishop Museum would have six months to amend their summary to include previously unreported items. Mr. Ayau stated it was a shock to find out about the items online rather than in writing and through consultation as stated in the letter from the Bishop Museum.

Mr. Ayau stated that he heard the presentation by Mr. Tarler and Mr. Palmer regarding civil penalties and was very encouraged. Hui Malama has two pending investigations, one involving the Bishop Museum and the Kawaihae case and one involving Hawaii Volcanoes National Park and the issue the Review Committee heard at their Honolulu, HI meeting. Both cases have been under review with the museum or Federal agency well over the 90-day time limit with no determinations being made. Mr. Ayau asked when does 90 days mean 90 days?

#### **Ms. Susan Bruning**

Ms. Susan Bruning, Society for American Archaeology, stated she was appearing on behalf of the Society for American Archaeology to comment on the development of regulations for unclaimed cultural items under Section 3(b) of the Act. Ms. Bruning stated she would like to commend Mr. Jones and the Review Committee members for comments about encouraging all parties to the process to listen and be open in communication. Ms. Bruning stated she hoped that communication among all parties continues to grow as they work to implement NAGPRA. The first

question posed by the National NAGPRA Program in the consultation request was to speak to various categories of unclaimed items under the Act. SAA sees three categories of cultural items that may be considered for Section 3(b) regulations. The first category is items for which no claim is required due to identified lineal descendants and Indian tribes and Native Hawaiian organizations from whose tribal land the cultural items are removed. Those parties have the right to control the disposition of certain cultural items without having to make a claim and should be able to work with the Federal repository in their own time and manner. The second category is when a claim is required to establish ownership through cultural affiliation, aboriginal land base or cultural relationship, following the specific limits in Section 3(a) on aboriginal land and cultural relationship. The third category is items or claims that are outside the ownership or control provisions of Section 3(a). For certain cultural items removed from Federal lands since NAGPRA's enactment ownership or control may not be established under Section 3 because no party meeting the requirements of Section 3(a) have been identified, for example, nonfederally recognized Indian groups. SAA acknowledges that there are many organized and long-standing Native American groups who for a variety of reasons remain nonfederally recognized or do not have final judgments relating to aboriginal land claims. However, NAGPRA is unequivocal in its requirements for groups to have standing to assert a claim under the law. Regarding unclaimed items, items not claimed by a party authorized to make a claim under Section 3(a) can qualify as unclaimed and be subject to regulation under Section 3(b). Items not subject to claims under Section 3(a) are not subject to Section 3(b) regulation; however, the status of those items can change at a later time if a party having ownership or control rights under Section 3(a) is identified.

The process of asserting a claim should be simple and low cost, providing parties with the ability to establish their rights and work with the repository under their own terms and circumstances. Items for which a rights holder is identified under Section 3 should be handled in a manner protective of those rights. Items without an identified Section 3 rights holder should also be cared for in a manner that protects the rights of others, including potential future claimants and the public interest in our shared cultural heritage which is consistent with the balance of interests acknowledged in NAGPRA. In response to the second question posed for consultation, SAA believes that the Federal curation regulations at 36 CFR 79 are appropriate as a structure for the management, preservation, and handling of human remains and cultural items in Federal care. The current structure can serve as a foundation upon which museums, Federal agencies, Indian tribes and organizations can work together to develop best practices consistent with professional standards and cultural interests of the groups involved. While in physical custody of a repository and irrespective of ownership status, human remains and cultural items should be curated according to Federal standards and in a manner that can accommodate appropriate handling and access. The curation regulations currently allow for the development and implementation of specific terms and conditions to accommodate the needs of Indian tribes with items of religious and cultural importance in Federal care, and a number of museums have had successful experiences working with Indian tribes in a collaborative manner. This is another area where ongoing dialogue can help all parties understand the issue and lead to the most effective and appropriate solutions.

### **Review Committee Discussion**

Ms. Worl thanked Ms. Bruning for her presentation. Ms. Augustine asked if she could have a copy of Ms. Bruning's presentation. Ms. Bruning stated she would provide a copy to Mr. McKeown for distribution. Mr. Steponaitis thanked Ms. Bruning for her presentation and stated he welcomed SAA's statement both at the Review Committee meeting and the consultation meeting. Mr. Steponaitis appreciated the comments about the importance of dialogue and the suggestion that existing successful arrangements between repositories and Indian tribes would be appropriate models for the treatment of cultural items in the care of Federal repositories.

### **Ms. Tonya Davis**

Ms. Tonya Davis, Hobbs, Straus, Dean and Walker, stated she was present to provide supplementary comments for the Comanche Nation on the issue of whether an inadvertent discovery of Native American human remains occurred at Fort Sill, OK, during the construction of a now complete housing project. If such a discovery occurred, then the inadvertent discovery provisions of NAGPRA should have resulted in the immediate cessation of the project, notice to the responsible Federal official, and appropriate consultation with the Comanche Nation. In the oral presentation, Comanche Nation representatives expressed the view that regardless of whether human remains were actually disturbed during the project, a combination of existing factors should be considered sufficient to constitute an inadvertent discovery of Native American human remains. These factors include data from ground-penetrating radar, oral history provided by Comanche Nation Elders, the nearby presence of a Comanche cemetery listed on the

National Register, and the historic event of widespread deaths in the Comanche Nation resulting from smallpox and cholera. Under 43 CFR 10.2(g)(4), the definition of inadvertent discovery includes the detection of human remains found under or on the surface of Federal lands. In response to this point the Review Committee asked its counsel for comment and counsel referred to the statutory language as requiring more than the suggested combination of factors, specifically that for an inadvertent discovery Native American human remains imbedded in the ground need to become exposed to view. Statutory language in Section 3(d) of NAGPRA says that the inadvertent discovery provisions of the statute apply to any person who knows or has reason to know that such person has discovered Native American cultural items on Federal or tribal lands. The Comanche Nation believes that the combination of factors that existed in this case should have amounted to reason to know that Native American graves had been discovered and that the inadvertent discovery procedures should have been triggered. The Comanche Nation appreciates the Review Committee's willingness to communicate its concerns regarding this matter to the Advisory Council on Historic Preservation. The issue can be seen as a post-review discovery subject to the provisions of the ACHP regulations set out in 36 CFR Section 800.13. The Comanche Nation believes it should also be considered an inadvertent discovery subject to the NAGPRA regulations. This incident is an example of one of the seams in the system of Federal laws intended to avoid inadvertent damage to unmarked Native American graves. The Comanche Nation would urge the Review Committee to explore ways to make the graves protection provisions of NAGPRA work to protect graves from disturbance rather than just carry out a process to try to make amends after graves are disturbed.

Ms. Worl thanked Ms. Davis for her comments and stated that as Ms. Davis noted the Review Committee did take action earlier in the meeting. Ms. Worl stated that the Review Committee was very concerned about this issue and recommended that counsel receive a copy of the statement for review and response.

### **Closing Comments**

Mr. Jones stated he was proud to be part of the Review Committee. Mr. Jones stated that an Elder once said that to soar like an eagle, you must have one wing as your thinking wing and one wing as your feeling wing, just like the Review Committee members as some are stronger in different areas. Mr. Jones stated he was happy to be able to use his strengths at communication while learning how to improve in other areas. Mr. Jones thanked everybody for being at the meeting. Mr. Steponaitis stated he was honored to be on the Review Committee and that he felt that there is a good feeling of mutual trust and respect on the Review Committee. Mr. Steponaitis thanked the National NAGPRA staff for their dedication and hard work and the audience members for attending and expressing their views. Mr. Steponaitis welcomed Mr. Goodman to the Review Committee and congratulated Ms. Worl for her reappointment to the Review Committee and continuation as Chair. Ms. Augustine suggested that the consultation dialogue before the next meeting be held in a circle. In her tradition, the circle means that no one is better or less than any other, all are equal in the eyes of the Creator. Ms. Augustine thanked everyone for attending the meeting and sang a song about balance in the way of the eagle as described by Mr. Jones.

Mr. Monroe stated he would like to echo the expressions of his colleagues and to thank the National NAGPRA staff and all those who attend and participate in the meetings. Mr. Goodman thanked the National NAGPRA Program staff and the audience and stated that being on the Review Committee is a tremendous honor and a great learning experience. Mr. Goodman stated that he appreciates Mr. Jones's and Ms. Augustine's comments and believes his strength is as a scientist. Mr. Goodman stated he is particularly interested in science that exposes problems that existed in the past in order to try to right them. Mr. Kippen thanked the Review Committee members for once again teaching him. Mr. Kippen stated that the Review Committee members are able to work together because of their respect for one another and their desire to make a difference. Mr. Kippen thanked the National NAGPRA staff for their commitment. Ms. Worl stated that people may have differences in world views, but she appreciates the generosity and graciousness of all the wonderful people who have supported this effort, especially the public.

Ms. Hutt stated on behalf of the staff that she would like to express sincere appreciation for the efforts of the Review Committee. NAGPRA is a very big program with a very small staff, and Ms. Hutt acknowledged the support and effort of Associate Director Janet Matthews and the staff of the National NAGPRA Program, Robin Coates, David Tarler, Bob Palmer, Tim McKeown, Michelle Wilkinson, Jaime Lavallee, Selina Cooper, Andrew Kline, and attorneys, Toby Halvarson and Carla Mattix. Ms. Hutt stated that there is so much energy in this work because of the importance of this program and what it stands for. Ms. Hutt stated that it was heartening when the

Review Committee meets and takes their work so seriously, which makes the work of the National NAGPRA staff worthwhile and invigorates the program.

**Meeting Adjournment**

The meeting adjourned at 11:43 a.m., on Friday, April 20, 2007.

Certified –

/s/ C. Timothy McKeown

August 13, 2007

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Mr. Timothy McKeown,  
Program Officer, National NAGPRA Program  
Designated Federal Officer, Native American Graves Protection  
and Repatriation Review Committee

\_\_\_\_\_  
Date

Approved on behalf of the Review Committee –

/s/ Rosita Worl

August 13, 2007

\_\_\_\_\_  
Ms. Rosita Worl  
Chair, Native American Graves Protection  
and Repatriation Review Committee

\_\_\_\_\_  
Date