

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

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

Members of the committee:

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

National Park Service staff present:

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

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

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

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

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

Review of the Agenda

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

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

Chair Election

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

Implementation Update

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

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

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

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

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

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

Mr. Monroe asked for the committee to discuss the interpretation of the definition of "Indian tribe" in the final regulations. An Indian tribe is defined in the statute as a group recognized as eligible for the

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

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

10.12 Civil Penalties

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

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

charges. Mr. McManamon explained that the director of the National Park Service will be acting for the Secretary of the Interior in actions filed under civil penalties. Mr. Walker questioned the process for reporting Park Service noncompliance. Mr. McManamon stated that the civil penalties section deals specifically with museums and institutions which are not Federal agencies. Other means exist to file complaints against Federal agencies.

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

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

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

Mr. Monroe recounted his understanding of the legislative history regarding penalty amounts, indicating that Congress intended the amount to be sufficient to motivate compliance. Mr. Walker concurred that penalty amounts should be sufficient to have a deterrent effect. Ms. Hutt reminded the committee that whatever system for calculating penalty amounts was used would have to be consistent with the statutory language. She also recommended that the regulations include a liquidated formula for use by judges in determining penalty amounts so that everyone would be on notice about the possible costs of non-compliance.

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

Ms. Hutt asked the committee to consider where any civil penalties that might be collection should go. Mr. Vicenti agreed that the regulations should specify the destination of the fines levied. Mr. Little Owl recommended that these monies be given to the aggrieved Indian tribe. Ms. Hutt said that all penalty monies collected under the Archeological Resources Protection Act cases on Indian lands go

directly to that tribe, and that the United States Fish & Wildlife Service have been successful in making certain that collected monies go to the aggrieved parties instead of to the "black hole" of the United States Treasury. Mr. McKeown stated that the Solicitors Office had indicated that since, unlike ARPA, the destination of penalty monies was not specified in NAGPRA, these monies would have to be returned to the Treasury. Mr. Monroe questioned whether penalty amounts might be directed to some specific Federal account, such as NAGPRA grants.

Sample Inventory

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

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

Mr. Monroe asked whether the sample inventory shouldn't include all human remains with the museum or Federal agency's collection. Mr. McKeown responded that sample inventory was intended as a comprehensive guide for completion of the actual inventory. As such it attempted to synthesize a wide range of possible situations that might be faced by any particular museum or Federal agency. However, it was also greatly simplified and was not intended as a model of what an actual inventory would look like. Mr. Haas recommended adding examples of culturally unidentifiable human remains in the sample inventory. Mr. Sullivan agreed, emphasizing the importance of having a complete listing of all human remains -- both culturally affiliated and culturally unidentifiable -- in museum and Federal agency collections.

Sample Agreement regarding Repatriation

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

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

Agreement on Inadvertent Discoveries and Intentional Excavations

Mr. McManamon reviewed the draft Agreement on Inadvertent Discoveries and Intentional Excavation. The committee had recommended at a previous meeting that the regulations include a sample document outlining some of the issues that might be considered by Federal land managers and Indian

tribe officials regarding inadvertent discoveries and intentional excavation on Federal or tribal lands. The draft document provided to the committee represented an initial attempt to formalize such a sample.

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

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

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

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

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

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

Dispute Resolution Procedures

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

Disposition of Culturally Unidentifiable and Unclaimed Human Remains

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

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

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

Mr. Redman, chairman of the Department of Anthropology at Arizona State University, stressed the need for all human remains, both culturally affiliated and culturally unidentifiable, to be treated with respect. He stated that all parties need to do as much as possible to identify the cultural affiliation of human remains in museum and Federal agency collections. Disposition of culturally unidentifiable human remains should not be taken lightly. He reiterated that the scientific and academic community

and Indian tribes need to work together to bring this issue to a clearer understanding. Mr. Redman urged the committee to act very carefully for the future in making decisions regarding these two reserved sections.

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

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

Public Comments

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

Mr. Antone addressed the committee regarding the development of tribal consortia to facilitate repatriation and disposition of human remains and cultural items. He explained that the southern Arizona tribes have signed a cooperative agreement regarding the reburial of human remains and cultural items that might otherwise be listed as "culturally unidentifiable." Mr. LeBeau asked whether Mr. Antone had experienced any difficulties from museums or Federal agencies that questioned the intertribal organization. Mr. Antone responded that they had thus far worked primarily with institutions in Arizona, but that none had questioned the tribes' authority to work together. Mr. Antone stated that he has seen evidence of a new sensitivity on the part of museum and Federal agency officials regarding Native American human remains and cultural items. He emphasized the need for museums and Federal agencies to work closely with Indian tribes to ensure that human remains and cultural items are repatriated to the correct Indian tribe.

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

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

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

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

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

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

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

Mr. Redman explained that while it had required a Federal law to force scientists to begin talking to Indian tribes, the statute has been instrumental in expanding the dialogue between the scientific and tribal communities. This dialogue will allow for far greater understanding, respect, and compassion

among all Americans. He also spoke about the good relations some anthropologists and tribal people have had as an example of positive connections between western scientific and tribal communities.

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

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

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

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

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

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

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

