

**MINUTES**

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

**THIRTY-THIRD MEETING**

**NOVEMBER 3 & 4, 2006**

**TABOR AUDITORIUM  
WESTIN TABOR CENTER  
DENVER, CO**

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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/nagpra/> (click on “Review Committee”).

Notice of this Review Committee meeting was published in the Federal Register on October 12, 2006 (Vol. 71, No. 197, page 60190-60191).

## **The 33rd Meeting of the Review Committee**

The 33rd meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Ms. Rosita Worl at 8:30 a.m., Friday, November 3, 2006, in the Tabor Auditorium, Westin Tabor Center, Denver, CO.

Review Committee members –

Ms. Rosita Worl – Chair  
Ms. Donna Augustine  
Mr. Garrick Bailey  
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 –

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  
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) –

Mr. Anthony A. Addison, Northern Arapaho Tribe, Ft. Washakie, WY  
Mr. Mike Addison, Lone Tree, CO  
Ms. Heather Ahlstrom, Colorado Historical Society, Denver, CO  
Ms. Jai Alterman, Smithsonian Institution, Washington, DC  
Ms. Bridget Ambler, Colorado Historical Society, Denver, CO  
Mr. Howard Antelope, Sr., Northern Arapaho Tribe, Ethete, WY  
Mr. Joe Antelope, Northern Arapaho Tribe, Ethete, WY  
Mr. Shane Anton, Salt River Pima-Maricopa Indian Community, Scottsdale, AZ  
Mr. Jason Arone, Alameda County Sheriff's Office, Oakland, CA  
Ms. Chelsea Ayers, Colorado University, Boulder, CO  
Ms. Margaret Baha-Walker, White Mountain Apache Tribe, AZ  
Mr. Arnold Beach, Sr., White Mountain Apache Tribal Council, AZ  
Ms. Andreta Beanett, White Mountain Apache, Whiteriver, AZ  
Mr. Bob Bear, Apache, Claypool, AZ  
Ms. Jan Bernstein, Bernstein & Associates, Denver, CO  
Mr. Riddie Bowers, Alameda County Sheriff's Office, Oakland, CA  
Mr. Joseph Brennan, Field Museum, Chicago, IL  
Ms. Lori Breslauer, Field Museum, Chicago, IL  
Ms. Susan Bruning, Society for American Archaeology, Southern Methodist University, Southlake, TX  
Ms. Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA  
Mr. Thomas Carr, Colorado Historical Society, Denver, CO  
Ms. Mary Carroll, National Park Service, Denver, CO  
Mr. Michael Catches Enemy, Oglala Sioux Tribe THPO/NAGPRA, Pine Ridge, SD  
Ms. Minette Church, Colorado Council of Professional Archaeologists, Colorado Springs, CO  
Mr. Christopher Coden, Yavapai-Apache Nation, Camp Verde, AZ  
Mr. Wayne Colelay, Jr., White Mountain Apache, Whiteriver, AZ  
Ms. Susan Collins, Colorado Historical Society, Denver, CO

Ms. Deborah Confer, University of Colorado Museum, Boulder, CO  
Mr. Wally Davis, Jr., Tonto Apache Tribe, Payson, AZ  
Mr. Levi G. DeHose, White Mountain Apache, Cibecue, AZ  
Mr. Dennis Ditmanson, National Park Service, Fort Union National Monument, Watrous, NM  
Ms. Julia Echernach, Colorado University, Highlands Ranch, CO  
Ms. Rose Estep Fosha, South Dakota State Historical Society, Rapid City, SD  
Ms. Doris Gilbert, San Carlos Apache Tribe, Elders Council, San Carlos, AZ  
Ms. Lynne Ginther, Arvada, CO  
Mr. Robert Goggles, Northern Arapaho Tribe, Arapaho, WY  
Ms. Martha Graham, Society for American Archaeology, TRC, Albuquerque, NM  
Ms. Vernelda Grant, San Carlos Apache Tribe, Tribal Archaeologist/NAGPRA Representative, San Carlos, AZ  
Ms. Dicle Gunaydin, student, Colorado University, Aurora, CO  
Ms. LaDonna Harris, Alameda County Sheriff's Office, Oakland, CA  
Mr. Kevin Hart, Alameda County Sheriff's Office, Oakland, CA  
Ms. Lynn Hartman, Ute Mountain Ute Tribe, Towaoc, CO  
Mr. Manuel Heart, Ute Mountain Ute Tribe, Towaoc, CO  
Ms. Maureen Hickey, California State, Claremont, CA  
Ms. Rozella Hines, Yavapai-Apache Nation, Clarkdale, AZ  
Mr. R. Eric Hollinger, Smithsonian Institution, National Museum of Natural History, Washington, DC  
Mr. Evan Hornsby, student, Colorado University, Denver, CO  
Mr. Ernest House, Jr., Colorado Commission of Indian Affairs, Denver, CO  
Ms. Deirdre E. Huff, Denver Museum of Natural Science, Denver, CO  
Mr. Jordan Jacobs, American Museum of Natural History, New York, NY  
Ms. Lynette James, Yavapai-Prescott Indian Tribe, Prescott, AZ  
Ms. Holly Jamison, Aurora, CO  
Mr. Greg Johnson, University of Colorado, Boulder, CO  
Mr. John F. C. Johnson, Chugach, Smithsonian Repatriation Committee, Anchorage, AK  
Ms. Susan Johnson, USDA Forest Service, Golden, CO  
Mr. Jonathan Kerby, University of Colorado, Boulder, CO  
Ms. Velma KILLSBACK, Oglala Sioux Tribe THPO/NAGPRA, Pine Ridge, SD  
Mr. Terry Knight, Ute Mountain Ute Tribe, Towaoc, CO  
Ms. Christina Kreps, University of Denver, Denver, CO  
Ms. Lina Kuhn, Student, Colorado University, Boulder, CO  
Ms. Modupe Labode, Colorado Historical Society, Denver, CO  
Ms. Christine Landman, National Park Service, Denver, CO  
Mr. Russell Leighty, American Museum of Natural History, New York, NY  
Mr. Ricardo Leonard, Salt River Pima-Maricopa Indian Community, Scottsdale, AZ  
Ms. Corrine Lindsey, CCA, Englewood, CO  
Ms. Kim Manajek, University of Denver, Denver, CO  
Mr. Kai Markell, Office of Hawaiian Affairs, Honolulu, HI  
Ms. Cyd Martin, National Park Service, Denver, CO  
Mr. Fred McGhee, Gulf Coast Indian Confederation, Austin, TX  
Mr. Mario Medina, Jicarilla Apache Nation/Xicano, Sugar City, CO  
Ms. Jess Milhausen, University of Colorado, Museum Studies Program, Boulder, CO  
Mr. Monte Mills, Southern Ute Indian Tribe, Ignacio, CO  
Ms. Mary Montgomery, Yavapai-Apache Nation, Camp Verde, AZ  
Ms. Nell Murphy, American Museum of Natural History, New York, NY  
Ms. Jennifer Nash, Colorado University, Boulder, CO  
Ms. Angela Neller, Wanapum Heritage Center, Ellensburg, WA  
Mr. Terry Nichols, National Park Service, Aztec, NM  
Ms. Margie Nowiek, E2M, Englewood, CO  
Ms. Linda Ogo, Yavapai-Prescott Tribe, Prescott, AZ  
Mr. Valentin Olivry, Colorado University, CO  
Mr. Floyd Osborne, Eastern Shoshone Tribe, Fort Washakie, WY  
Ms. Sarah Palmer, U.S. Institute for Environmental Conflict Resolution, Tucson, AZ  
Ms. Elisa Phelps, Colorado Historical Society, Denver, CO

Mr. Seth Pilsk, San Carlos Apache Tribe, San Carlos, AZ  
Ms. Katy Putsavage, Colorado University, Boulder, CO  
Mr. Gilbert Quintana, Jicarilla Apache/Chicano, Holman, NM  
Mr. Vincent E. Randall, Yavapai-Apache Nation, Camp Verde, AZ  
Ms. Christina Rasanen, Colorado University, Boulder, CO  
Mr. Ben Ridgley, Northern Arapaho Tribe, Riverton, WY  
Ms. Gail Ridgely, Northern Arapaho Tribe, Riverton, WY  
Mr. James Riding In, American Indian Studies, Arizona State University, Tempe, AZ  
Mr. Ramon Riley, White Mountain Apache Tribe, Fort Apache, AZ  
Ms. Helen Robbins, Field Museum, Chicago, IL  
Ms. Lenora Robertson, San Carlos Apache Tribe, Elders Council, San Carlos, AZ  
Mr. Taylor Rockaway, Student, Colorado University, Boulder, CO  
Ms. Brooke Rohde, University of Denver, Denver, CO  
Mr. Larry Running Turtle Salazar, Gulf Coast Indian Confederation, Corpus Christi, TX  
Mr. Dave Ruppert, National Park Service, Denver, CO  
Ms. Sree Savage, Longmont, CO  
Mr. Seth Schermerhorn, University of Colorado, Boulder, CO  
Mr. Sean Schultz, University of Colorado, Boulder, CO  
Ms. Maxine Seletstewa, Broomfield, CO  
Ms. Lauren Sieg, Springfield, VA  
Mr. Chuck Smythe, National Park Service, Northeast Region, Boston, MA  
Mr. George Starr, San Carlos/White Mountain Apache Tribe, San Carlos, AZ  
Mr. Steve Titla, San Carlos Apache Tribe, Globe, AZ  
Ms. Brenda Todd, National Park Service, Denver, CO  
Ms. Tara Travis, National Park Service, Canyon de Chelly, NM  
Mr. Wainwright Velarde, Jicarilla Apache Nation, Dulce, NM  
Mr. Bryan F. Vigil, Jicarilla Apache Nation, Dulce, NM  
Ms. Kelly Washington, Salt River Pima-Maricopa, Scottsdale, AZ  
Ms. Bea Wenkheimer, Arvada, CO  
Ms. Sherry White, Stockbridge-Munsee Community, Bowler, WI  
Ms. Karen Wilde Rogers, Aurora, CO  
Ms. Amy Wilkinson, Colorado University Museum, Boulder, CO  
Ms. Lorene Willis, Jicarilla Apache Nation, Dulce, NM  
Mr. Richard Wilshusen, Boulder, CO  
Mr. Matthew Wilson, National Park Service, Denver, COMs. Amber Wood  
Mr. Jesse Yorck, Office of Hawaiian Affairs, Honolulu, HI  
Mr. Fred York, National Park Service, Pacific West Region, Seattle, WA  
Ms. Margaret Zachow Wetherbee, Riverside Metropolitan Museum, Riverside, CA  
Ms. Donna Ziegler, Alameda County, Oakland, CA

### **Introduction/Welcome**

Mr. McKeown called the roll of members and confirmed that the Review Committee had quorum for the meeting. Ms. Worl welcomed Ms. Augustine to the Review Committee. Mr. Jones offered an invocation the first day of the meeting. Ms. Augustine offered an invocation the second day of the meeting.

### **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 the Federal Advisory Committee Act (FACA) procedures. Mr. McKeown gave a brief review of the agenda.

## **Consideration of a Dispute Between the White Mountain Apache Tribe and the Field Museum**

### **Review of Issue**

Ms. Worl gave a brief summary of the dispute between the White Mountain Apache Tribe and the Field Museum. In May 2002, the White Mountain Apache Tribe – on behalf of the Western Apache Working Group comprised of representatives of the White Mountain Apache Tribe, the San Carlos Apache Tribe, the Tonto Apache Tribe, and the Yavapai Apache Nation – submitted a claim to the Field Museum for 33 objects as sacred objects and objects of cultural patrimony. The Field Museum acknowledged that the Apache Tribe had the right to claim the 33 objects as sacred objects but disputed the claim that the objects were objects of cultural patrimony. The Field Museum asserted right of possession but offered to return the 33 objects to the Apache under the Field Museum's policy. The record indicates that the dispute hearing was preceded by a series of consultations between the White Mountain Apache Tribe and the Field Museum. Ms. Worl stated that the Review Committee will limit its discussion to the following two issues: one, whether the 33 objects are objects of cultural patrimony, and two, whether the Field Museum has right of possession to the 33 items.

### **White Mountain Apache Tribe Presentation**

Mr. Vincent Randall, White Mountain Apache Tribe, stated this issue should have been settled a long time ago. The objects in question have been termed sacred objects but that term is not part of the Apache language. Mr. Randall stated that the 33 objects are considered holy rather than sacred in the same way that the Ten Commandments are considered holy because they were written by God. The Field Museum offered to return the objects, however the Apache feel that the offer was not under the proper conditions that the objects deserve. The objects are of great importance and there are potential detrimental consequences. Mr. Randall stated that the tribe has many problems, which the Elders say are due to the way the non-Native world treats tribal people and their holy objects.

Mr. Randall stated they attended the meeting due to concerns about the reputations of the Apache experts. Greater society seems to depend on the written word and their experts and does not consider Apache experts. Mr. Randall stated that the Apache experts are taught continually from childhood and are the Apache equivalent of a Ph.D.

Mr. Randall stated there were Apache experts present at the meeting, some to offer testimony to the Review Committee and others to provide support. Mr. Randall stated that traditional laws need to be followed to treat the objects with the high respect they deserve. Mr. Randall stated that their testimony will prove that the objects are cultural patrimony and are owned by the whole group, not individually. The objects are given unto the group through the practitioners. The practitioners get direct instructions from the Almighty, whose Apache name means Ruler of Our Life. If the laws were followed and everybody treated each other with respect as human beings then there would not be a dispute. Mr. Randall thanked the Review Committee for the opportunity to speak and hoped that justice would be done.

Mr. Levi DeHose (interpreted by Mr. Randall), White Mountain Apache Tribe, stated that he was born in the community of Cibeqe on the Fort Apache Reservation. He was raised with and lived the traditional way of life, witnessing and participating in all ceremonies. Mr. DeHose stated that the people chosen for the God-given work of caring for the objects are taught the ceremonies and the concept that the objects are given unto them for the benefit of all people to provide healing and a harmonious way of life, not for the benefit of the individual person. Mr. DeHose stated that the objects, the so-called inorganic matter is not alive but the organic is usually given to life. The Almighty gave them three stones, red, blue, and white. With these stones, prayers are offered. The stones are shown onto the spiritual leaders directly from God and are living. When the stones are put into the drums, the drums will sounds without any person beating them.

Mr. Ramon Riley, White Mountain Apache Cultural Director, stated his mother's clan is the Road Runner Clan and his father's clan is the Eagle Clan. Mr. Riley gave his Apache name, which means Turquoise Crown Dancer Who Stands for Life, and stated he tells his spiritual name only when he is involved with ceremonies. He is a select group Crown Dancer trained by medicine people to care for holy objects. Mr. Riley stated he examined the 33 objects in his many consultation visits to the Field Museum. The objects were all used in ceremonies. The objects are alive and he could feel a powerful presence on them. In Apache law, once an object is used it should not have been sold. Mr. Riley stated he was hurt and disturbed by the mishandling of these holy objects, and he cannot imagine how his ancestors felt when they parted with the holy objects. Mr. Riley stated that his mother and other

Elders said that the government failed to do its job in the early 1900s, taking away the Apache way of life and leaving them without food. Mr. Riley stated that his ancestors had no choice but to part with the holy objects, and when they finally parted with the objects, they said don't hurt us, don't hurt my family, crying and screaming because they knew how serious it was. Mr. Riley stated the objects should come home safely to where they belong on the White Mountain Apache Reservation and not be on display or in storage.

Mr. Randall introduced Ms. Lenora Robertson and her father Mr. George Starr, traditional cultural authorities. Mr. Randall stated that when Mr. Grenville Goodwin did studies in the San Carlos area, two of his informants were Mr. John Rope and Mr. John Robertson. Mr. Starr was taught by Mr. John Rope and Mr. John Robertson.

Ms. Lenora Robertson (interpreted by Mr. Randall), White Mountain Apache, stated her father lives with her on the San Carlos Reservation. Ms. Robertson stated her father was born on June 3, 1914, and started dancing when he was seven. Mr. Starr was taught by Mr. John Robertson's son, Mr. Caswell Robertson. Ms. Robertson stated that when Mr. Starr was seven years old, there was a sickness over the people. Following a vision, Mr. Starr was part of a pilgrimage to the top of Mount Graham where they received a revelation. When they came off the mountain, they performed a dance using the holy objects given to them and the people were healed. From that time, Mr. Starr has been involved with the dancers and being educated. At age 93, Mr. Starr is sound and in good health. Mr. Randall asked what Mr. Starr says about the Crown Dancers and the holy items. Ms. Robertson stated that these objects are of the highest respect that can be given and that the objects come to see Mr. Starr because they are lonely and want to come home. Mr. Randall asked why the holy objects are important to Apaches. Ms. Robertson stated that in the Apache way of life the holy objects take care of the people, and if the objects are not respected then there are consequences to be paid. Because of the disrespectful treatment of some objects, the Apache way of life is not what it should be. The holy objects need to come home because they are intercessors to a good life for the Apache people.

Mr. Steve Titla, San Carlos Apache Tribe, stated that the Apache way is matrilineal. His mother's clan is called Where the Mountains Come Together and his father's clan is called Where the Mountains are Cut. Mr. Titla stated that the Apache claimed the 33 objects as cultural patrimony under NAGPRA years ago, but the Field Museum tried to put conditions and claims upon the objects. The Apache group has testified that the objects are cultural patrimony and belong with the Apache. The objects are alive because they were used in holy ceremonies in the past. The objects are central and of historical and ongoing traditional importance, as testified to by people currently involved in ceremonies, including Mr. Riley and Mr. Starr. The objects are of central importance to the Apache as they provide for the well-being and harmonious living of Apache people. The wrongful retention of the objects causes harm to the Apache people. From the beginning, the objects could not have been alienated, taken, appropriated, or conveyed by any Apache individual because the objects were provided to the Apache Tribe by holy beings. Like the Tlingit people who testified at the Juneau, AK, Review Committee meeting in May, these objects are central to their way of life, part of their culture and tradition. Mr. Titla stated that the Apache continue to request the objects back as objects of cultural patrimony with no conditions.

In closing, Mr. Randall stated that the Apache Tribe cannot accept the Field Museum's claim, nor can they agree to disagree. The Apache believe that the holy objects should be returned under cultural patrimony and be given the full respect they deserve. They also believe that the Field Museum should accept the fact that the holy objects were taken in an incorrect manner and belong to the Apache people, and that the Field Museum should respect the Apache traditional people as experts. Mr. Randall stated they have provided enough information, far more than in previous disputes.

### **Field Museum Presentation**

Mr. Joseph Brennan, Vice President and general counsel, Field Museum, thanked the Review Committee for the opportunity to speak, on behalf of Mr. John McCarter, President of the Field Museum, and the Field Museum Board of Directors. Mr. Brennan stated that following the earlier testimony of the Apache people, he was struck by how much the two parties agreed. The Field Museum agreed with Mr. Riley when he stated that the objects should not be on display or in storage but should be at home with the Apache Tribe. The Field Museum also agrees with Mr. Randall that the law exists and should and does mean something. The Field Museum takes its obligations under NAGPRA and its fiduciary obligations under Illinois law very seriously. The Field Museum believes in the

importance of the goals and intent of NAGPRA and is committed to participating in the NAGPRA process. Mr. Brennan provided the Review Committee members with a copy of the Field Museum's statement.

The Field Museum does not agree that this disagreement is a dispute under NAGPRA and believes that the case should not be considered by the Review Committee under the authority granted by NAGPRA. The most important reason for this position is that the Field Museum has already complied with the requirements of the Act. The Field Museum offered to repatriate the requested items to the Apache Tribe as sacred objects under NAGPRA without conditions more than two years earlier. Because the Act's statutory purpose of repatriation was met there is no contestable case, and because the overt purpose of the Review Committee is to resolve situations where repatriation is in doubt or dispute the current request of the White Mountain Apache Tribe is beyond the formal jurisdiction of the Review Committee. The White Mountain Apache Tribe is asking the Review Committee to issue an advisory finding on whether the requested objects are cultural patrimony and whether the Field Museum has right of possession. The White Mountain Apache Tribe is also asking the Review Committee to support its demand that the Field Museum apologize for the actions of the individual who purchased the objects. The facts do not support the claim that the objects were collected inappropriately. More importantly, NAGPRA was not designed to provide for reparations or to compel apologies. Finally, the Review Committee should not issue an advisory opinion that the objects constitute cultural patrimony or that the Field Museum does not have right of possession because such an opinion would materially contradict the balance of obligations built into the law, the consequence of which would be to make interactions between tribes and museums more difficult, much less collaborative, and more legalistic.

Mr. Brennan reviewed the objects' acquisition history. In 1901 and 1903, the Field Museum sent Mr. Charles Owen, an anthropologist, to the Southwest to purchase authentic ceremonial and otherwise culturally significant materials for the Field Museum's collection. Owen purchased a large and important collection of Apache materials, with full documentation and with the full knowledge of the Apache community. Mr. Brennan stated that there is no evidence that the objects were sold under duress, that the sales were coerced or forced by Mr. Owen or the Field Museum, that the sales were contested, or that any sellers were challenged or punished after the fact. The Field Museum has acknowledged that the time in question was during a time of extreme hardship for the Apache, but the Field Museum feels that their interactions with the Apache followed the mandates of the law. The hardships, although very real, were not created or abetted by Mr. Owen or the Field Museum. The position of the Field Museum is and has been that Mr. Owen's purchases were fully legal, which is the reason the Field Museum asserts it has right of possession under the Act. The Field Museum does not believe that its actions have been disrespectful, and they have carefully cared for the objects since acquisition. Out of the greatest respect and recognition of the importance of the objects, the Field Museum has offered repeatedly to waive right of possession and repatriate the objects to the White Mountain Apache Tribe.

Mr. Brennan stated formal consultation between the White Mountain Apache Tribe and the Field Museum began in 1993 when the museum provided the tribe with the NAGPRA-required summary of Apache cultural items in its collection. The consultation process included three visits by the White Mountain Apache Tribe, with funding provided by the Field Museum for one visit. After receiving the request, the Field Museum evaluated all available evidence, as well as the legal requirements of NAGPRA and the law's statutory definitions. On the basis of that information, the Field Museum concluded in good faith that the items qualified as sacred objects but not as cultural patrimony and further concluded that it had right of possession. The Field Museum first offered to repatriate the items to the White Mountain Apache Tribe on June 20, 2003, but the offer was rejected in large part due to the reversion language contained in the offer. On June 4, 2004, after extensive consultation, the Field Museum provided the White Mountain Apache Tribe with a revised draft receipt that removed that language and provided instead that the Field Museum would repatriate the objects in reliance solely on tribal policy that restricted the alienation of sacred objects. Significant changes in tribal administrative personnel took place, and thereafter the Field Museum did not receive any response on that draft. On August 29, 2005, the White Mountain Apache Tribe wrote to the Field Museum to refresh the dialogue. The White Mountain Apache Tribe called for museum acknowledgement of their roles in perpetrating past wrongs to Native Americans in their communities. The parties exchanged letters and Field Museum officials offered to go to Arizona to meet with Apache leaders to discuss the repatriation offer, but the offers were rejected. When the White Mountain Apache Tribe requested a dispute hearing before the Review Committee on April 18, 2006, the Field Museum sent a letter suggesting alternative dispute resolution, but the White Mountain Apache Tribe did not respond. Following the Juneau, AK Review Committee meeting, the Field Museum again committed to good faith resolution of the situation and asked for direction on the options discussed between the two parties while at the Review Committee meeting. At that time, the Field Museum

affirmed its offer to repatriate the objects as sacred objects under NAGPRA with no conditions. On June 20, 2006, the White Mountain Apache Tribe rejected that proposal. Throughout the process, the Field Museum has worked respectfully to address the White Mountain Apache Tribe's concerns, and the Field Museum believes it has rigorously followed both the spirit and letter of NAGPRA.

Mr. Brennan summarized the Field Museum's conclusion that the items were not cultural patrimony. Under NAGPRA a finding that an item is cultural patrimony requires that the tribe demonstrate that the items in question are of central importance to the tribe presently and at the time of alienation and that the items could not be owned or sold by an individual presently or at the time of alienation. While the question of whether the objects in question are of central importance to the tribe is unclear, there is clear and significant anthropological and circumstantial evidence that the objects could be individually owned and sold. The ethnographic evidence correlates well with the factual record. The Field Museum feels this case is notable and distinguishable from many cases because there is compelling and clear ethnographic evidence from the time period in writings by Mr. Grenville Goodwin, a noted anthropologist. Mr. Goodwin indicated in his writings that the Gaan objects were individually owned and alienable. The Apache assert that the items could not be sold. While the Field Museum respects the clear emotion involved, it believes the evidence is clearly limited to current assertions. The standards dictated by NAGPRA require that the tribes must submit objective evidence adequate to substantiate their claims and the standard of proof for cultural patrimony includes the requirement that tribes demonstrate the objects were considered inalienable at the time they left the possession of the tribe. While the Field Museum respects Mr. Keith Basso and his statements, it feels that the insights afforded by Mr. Goodwin are significantly more compelling. Mr. Basso himself described Mr. Goodwin as an anthropologist who knew Western Apache better than any other ethnographer who ever lived.

Mr. Brennan stated that NAGPRA was not intended to subordinate or overrule existing property law. The way the Act is written, negotiations regarding the issue of cultural patrimony under the Act are materially different than those related to sacred objects and that difference makes the application much harder. This is due to the fact that cultural patrimony refers to the significance of objects in the past, raising complex issues related to evidence, the demarcation of Federal and State jurisdiction, ex post facto principles, and state property law and ethics issues. Due to the legal complexities involved, the standard of proof for a request for repatriation on the basis of claim of cultural patrimony should be higher than that required for sacred objects. The Field Museum believes that clear and objective evidence is required to make a determination for both categories, as well as determinations of right of possession.

Mr. Brennan stated that on the surface the White Mountain Apache Tribe's request appears relatively simple, but it could have troubling implications over time. The Field Museum believes that the White Mountain Apache Tribe is really trying to erode the standards set forth in NAGPRA in order to materially change the balance of several critical tenants of property law that are incorporated into the Act. If the Review Committee issues a finding that these objects are cultural patrimony or that the Field Museum does not have right of possession on the facts presented today, that evaluation while advisory would support the erroneous contention that simple assertions of opinion and contemporary evidence of practices and beliefs happening today is enough to overcome clear and objective evidence from the time of collection. That type of determination would be contrary to the basic tenants of property law. The Field Museum believes that would undermine the overt structure, as well as the spirit, purpose, and intent of this law.

In conclusion, Mr. Brennan stated that the Field Museum believes very strongly that it is not necessary for the Review Committee to consider this situation as a dispute, to address whether these objects are cultural patrimony under NAGPRA, or to issue an advisory finding. This situation was resolved very respectfully more than two years ago and was verified in writing in June 2006. The Field Museum stands ready to repatriate the objects with no conditions as sacred objects, and has expressed their belief many times that the best place for the objects is with the Apache at their home. Mr. Brennan stated that it is critically important that the Review Committee support the validity of the principles of property law, including an affirmation of the standard of proof. To issue a determination to the contrary manufactures a conflict in the law, which will invariably escalate the legal character of consultations and negotiations between museums and tribes. If the administration of the Act becomes skewed in favor of one side or the other in the dialogues, the basis for any real collaborative action is jeopardized. On every level, the credibility of the process is called into question, and in fact, the Review Committee's role therein will be called into material question.

If the Review Committee assumes this situation as a dispute to be resolved under authority granted by NAGPRA, the Field Museum asks the Review Committee to formally and on the record make a determination as to the basis for the Review Committee's jurisdiction to do so. Second, if the Review Committee issues a decision on the issue of cultural patrimony, the Field Museum asks the Review Committee to do so formally and on the record and to provide detail and a summary of the basis for that action. And finally, if the Review Committee issues a decision on the issue of cultural patrimony, the Field Museum asks the Review Committee to provide a response on the record to the concerns raised about the impact that decision will inevitably have on the balance of laws and ethical obligations for the many laws that are implicated. As a final comment, Mr. Brennan stated that due to the unfortunate posture of the proceedings and the significance of the issues presented, the Field Museum regrets that it will have to abstain from further engagement in the proceedings related to the request submitted by the White Mountain Apache Tribe. The record is more than adequate and very clear. The Field Museum believes in the NAGPRA process and will be present for the duration of the meeting and will participate in and support other conversations that may happen over the course of the meeting.

### **Review Committee Discussion of Legal Issues/Discussion of Field Museum Presentation**

Ms. Worl stated that the Field Museum, represented by Mr. Brennan, indicated that they would abstain from further engagement with the Review Committee, particularly relating to questions and answers. Although the Field Museum did provide extensive material to the Review Committee on this case, it is apparent the Review Committee members did have a number of questions and deeply regret not being able to engage in a discussion. Ms. Worl reviewed the authority of the Review Committee from the regulations. Ms. Mattix reviewed the authority of the Review Committee from the statute, particularly 25 U.S.C. 3006(c)(4), which states that the Review Committee is responsible for facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items, including convening the parties to the dispute if deemed desirable. 25 U.S.C. 3006(c)(3) states that the Review Committee is responsible for upon the request of any affected party reviewing and making findings related to the identity or cultural affiliation of cultural items or the return of such items. Ms. Mattix stated that according to those two sections of the law, the issues before the Review Committee are well within the law and within the Review Committee's jurisdiction. Mr. Kippen asked if this issue was a dispute. Ms. Mattix stated that the term dispute was not defined in the law and the Review Committee needs to determine if the matters in this instance seem to be a dispute under their responsibilities. Mr. Kippen stated that this is clearly a factual dispute because the Field Museum and the White Mountain Apache Tribe disagree on whether the objects are cultural patrimony and whether the Field Museum has right of possession of the objects. Mr. Steponaitis stated that each side presented a thoroughly developed case and presented good arguments. Mr. Steponaitis asked which party had the burden of proof in this situation. Ms. Mattix stated she would get back to Mr. Steponaitis with an answer later in the meeting.

Ms. Worl asked for comments from the Review Committee members on the Field Museum's presentation. Mr. Bailey stated that the Field Museum was holding the Apache to a higher standard than they are themselves. Mr. Bailey stated he was speaking as a cultural anthropologist. Every society has a body of knowledge that is agreed upon and does not have to be written down. Many basic cultural facts exist within the collective knowledge of the individuals within a society and exist only within their knowledge, and this is particularly true for American Indian groups. Culture changes over time, but cultural facts are valid. Mr. Bailey stated that Mr. Goodwin stated these objects were the property of one man, giving property an ownership meaning. In many Native American societies property was authority, not ownership with the ability to transfer or alienate the objects. Mr. Bailey stated that in this situation the American or European model was imposed on the Apache and the Apache had to defend themselves within the context of a Western system. Mr. Bailey stated that even though it may not be technically contained in NAGPRA, the Review Committee has the ability to be fair.

Mr. Jones stated that the testimony that morning was about keeping the process within the scope of the law. Where he comes from there is one law, the direct law of the Creator. Talking about the law for tribes means something different. Mr. Jones stated that in dealing with different languages, there are a lot of terms that can be perceived with almost opposite meanings by tribal and nontribal people. Mr. Jones stated that he felt the tears of these people who have been waiting for years. He has similar issues to deal with, and in dealing with these issues he will consider how parties communicate and how nontribal laws are interpreted and incorporated into tribal law, the law of the Creator. Mr. Jones stated he wanted the Review Committee to put some thought into the process to make sure that the members set a precedent for easier communication in the future and creating a language for the laws

and for some of the words that have different perceived meanings. Mr. Jones stated he wanted the Review Committee members to try to perceive conflicts from both sides to create a common picture and promote fairness.

Mr. Steponaitis stated that like Mr. Brennan he was struck by the amount of agreement between the two parties. Rather than a dispute about repatriation, this dispute seems to be about issues of respect and precedent. Mr. Steponaitis stated he understands why it is important to the White Mountain Apache Tribe to have the objects defined correctly, and he also understands why the Field Museum is concerned about not setting precedents. Mr. Steponaitis also feels there is an issue of respect for the Field Museum too. Museums quite rightly feel that they do valuable work and try to act in good faith, and when that is questioned the museums can be hurt. Mr. Steponaitis stated he hoped the Review Committee members would lay out the basis for their decisions, so any precedents set by the decision would not badly affect either party. The Review Committee's opinion on this case may help prevent future disputes.

Ms. Augustine stated that most can understand the written English language but the other language is a bit different to understand. Dealing with NAGPRA, with ancestral remains, sacred objects, and objects of cultural patrimony, also means dealing with the spiritual. Ms. Augustine showed those present at the meeting her ceremonial pipe. She stated that it appears physically to be a piece of wood and a piece of rock. To her tribe, when those two things are brought together they represent the spirit, they request spiritual guidance and it is sacred. When the pipe is given, it is given to the person to carry, but not to own. It belongs to and is needed by the whole tribe, and being given the pipe means you have been awarded respect and deemed worthy by your people and the spirits themselves to carry the pipe. Ms. Augustine stated that the Native way is like a circle and the European way is like a square; it is very hard to put the circle into the square. When she speaks about the pipe that she carries, Ms. Augustine stated she is speaking for her people. Sitting on the Review Committee, Ms. Augustine stated that she has a spiritual responsibility first to the Creator and to the spirits of those who have gone before. Even if not everyone believes in that way, it is the Native belief. Ms. Augustine stated she explained this because she too could feel the pain of the people speaking earlier at the meeting and she knew it was also the ancestors speaking through them.

Ms. Mattix addressed Mr. Steponaitis's earlier question about burden of proof, specific to the White Mountain Apache Tribe/Field Museum dispute. Ms. Mattix stated that the Review Committee does not need to concern itself with burden of proof, which is a legal determination that normally comes up in litigation and is left to the courts to decide. The process outlined in NAGPRA ultimately leaves it to the museum or Federal agency, through a consultation process, to make a decision about the category of items and ultimately cultural affiliation. Ms. Mattix stated that in the standard of repatriation section under the right of possession, there is a requirement for the tribes to make an initial showing in the absence of any other contrary evidence that they have right of possession. Once tribes make that showing, then the burden shifts to the museum or Federal agency to show that they have right of possession. Mr. Monroe stated that then the museum has the responsibility to make the decision based on the preponderance of the evidence. Ms. Mattix agreed and stated that the preponderance of evidence standard prevails throughout NAGPRA; the statute does not set forth a higher standard of proof for different types of categories.

### **Review Committee Questions for the White Mountain Apache Tribe**

Mr. Bailey asked in what year was the battle at Cibique. Mr. Randall stated that was in 1888. Mr. Bailey asked when the last soldiers were stationed at Fort Apache. Mr. Riley stated the last soldiers left Fort Apache in 1922 when they were transferred to Fort Hoachuca. Mr. Bailey stated that the soldiers were still present at Fort Apache when the objects were sold, which was during a time of considerable duress for the Apache. Mr. Steponaitis asked if the people who sold the objects had the right to sell them and if they believed they had a right to sell them. Mr. Randall stated that the people were not allowed to sell the objects and knew they should not sell the objects, but it was a time of duress and the objects were sold in order for the people to survive. Mr. Steponaitis asked if the people who taught Mr. Starr and Mr. DeHose were alive at the time the items were sold. Mr. Titla stated that the teachers of Mr. Starr and Mr. DeHose were alive in 1901 and 1903, and added that the religious areas were of even more sacred nature back because there were not a lot of outside influences on Apache culture and society like today.

Mr. Steponaitis asked if there are recent cases of Gaan masks being sold and whether there are differences of opinion within the Apache community currently or at the time of the sale of the objects with regard to whether the individuals had the right to sell them. Mr. Randall stated that outside influences and different religions have corrupted the Apache way of life for some people. Replicas are made, but not with holy symbols. Some dances are

done as exhibitions and some people who consider themselves craftsmen do create these objects and sell them. Mr. Randall stated that at the time the objects were sold and today the belief was very vital for the traditional people, and the traditional people also pray for the other people that one day they may find the right road, the holy road again. Mr. Steponaitis stated that the Field Museum cited the fact that the sellers of the objects were not punished as evidence that the sale may not have been considered wrong at the time, and asked how such punishment would have been meted out and whether Mr. Owen would have known. Mr. Titla stated that the person who sold these objects would have been shunned from the spiritual ceremonial area, be shown disrespect, and would no longer be recognized as a medicine man or a person who respects the Apache way. Mr. Titla stated that the person who sold the items became sick and was ill for a long time. He was a spiritual leader and very distraught, as was his family. The seller did not want to sell the objects but was forced to sell them to survive. Mr. Randall stated that when somebody goes against their teachings, the consequences are not upon them but on what they hold dear. Even touching a holy object inappropriately can result in consequences, which can be physical and spiritual. Mr. Goodwin saw many things he should not have seen and he died at a young age. Mr. Randall stated that his people say that was the reason.

Mr. Bailey asked when the Court of Indian Offences was created at White Mountain, what the regulations concerning Apache behavior were, and how the Indian police were used on White Mountain during that period. Mr. Randall stated that the Apache representatives were discussing each question because although they come from four different reservations, they are a unified group of people and believe they are all related. The Apaches were put on the reservation under the Department of War, according to military journals, to concentrate the Apaches. Mr. Randall stated that was because the Apaches were in conflict with the Calvary. When the Apache were put on the reservation, their traditional lifeways of hunting and gathering were stopped and the people were given tag numbers for identification and control purposes. The Apaches were living under conditions of war.

Mr. Jones asked why the Apache would not accept the holy objects back as sacred objects but were requiring that they be defined as cultural patrimony. Mr. Randall read a prepared statement. While the Apache appreciates that the Field Museum's terms comply with the law, the Apache's terms that the objects are cultural patrimony and that the Field Museum does not have right of possession also comply with the law. Accepting the Field Museum's terms would be a humiliating compromise that tacitly acknowledges that the teachings of the Elders and culture are wrong, that the Elders and holy beings can be ignored, and that the Apache peoples' and Apache ancestors' understanding of their own culture is secondary to the deficient written record of white researchers. Just getting the objects back is not enough by traditional standards; they have to be returned in the right way and in the right circumstances or the Apache will disrespect and anger the holy beings that are in charge of them, which will hurt the Apache. The Apache are compelled to treat the objects correctly, which includes acknowledging and respecting their beliefs and traditions, fighting for those beliefs and traditions, and not compromising their values. Mr. Randall stated that Mr. Riley received a June 8, 2006 email from Mr. Brennan which states that the reason the Field Museum is not comfortable characterizing those items as cultural patrimony under the Act is because of the way the Act is written. The Field Museum believes there would be a serious negative implication of such a characterization on the Field Museum's actions. Mr. Randall stated that he believes the Field Museum is scared that if the objects are returned as cultural patrimony that under the World Court the Field Museum would have to face other countries from which they have taken artifacts.

Ms. Worl asked if different men dance with the head-coverings or only the man who made the head-coverings. Mr. Riley stated that five group dancers are selected from the sponsors and become the sacred Crown Dancers that the Creator gave the Apache in the beginning of time to heal the people, to live in harmony, and to teach the Apache about respect and medicinal plants. The dancers could be from different Apache reservations, and they each are knowledgeable about the dances and prayers. The dancers know how to handle the masks. The dancers dress in an area where they cannot be seen and after they are selected, nobody knows who they are because they turn into different deities, the holy beings. Ms. Worl asked who assumes custodianship and takes care of the holy objects after the death of the first custodian. Mr. Randall stated that after the objects are used the spiritual leader has the objects, prays over them, and then is shown the place where they are to be put away, which is where they retire. Mr. Kippen asked if at any time the Apache have given permission to sell these objects. Mr. Randall answered never. Ms. Augustine asked if regarding the sacred items, if they feel that there was an injustice done to the spirit of their ancestors that lived at that time. Mr. Riley answered yes, definitely. Ms. Augustine asked if the Apache feel that the Field Museum keeping the objects that the tribe terms cultural patrimony is an injustice done to a living people, a living tribe today. Mr. Riley answered yes. Mr. Randall stated that the Apaches formed a coalition

because the Elders asked that the objects be brought back. The Elders stated that because of the objects' location and their disrespectful treatment the Apache are suffering consequences, including alcohol problems, drug problems, and high suicide rates among children.

Mr. Monroe asked for further clarification about why the Apache people cannot accept the Field Museum's offer to repatriate the objects as sacred objects without conditions, and in effect eliminating the Field Museum's claims that they have a right to possess the objects and their claims that the objects are not objects of cultural patrimony. Mr. Randall stated that as Mr. Jones described earlier, traditional laws go back to the beginning of time but the Apache are still following the NAGPRA law. Mr. Randall reiterated his earlier statement in response to Mr. Jones's questions.

### **Review Committee Recommendations**

Mr. Bailey stated that two things factor into the cultural patrimony issue, cultural differences and linguistic differences. There is a difference in cultural interpretation in how the Apache and the Field Museum view this issue. One area that is difficult to research and understand is religion and religious concepts, due in part to culture and in part to language. Mr. Bailey stated he noticed what he would interpret as frustration for some of the Apaches in trying to explain these concepts. Until NAGPRA, the Apaches never discussed these things in English. These Apache ideas do not exist in English, so the Apache are forced to try to come up with English terms that best fit what they are discussing. Mr. Bailey stated he was interpreting Apache beliefs based on his understanding of the presentations both at the Denver, CO meeting and the Tulsa, OK meeting. Regarding why it is important to the Apache that the objects be classified as cultural patrimony instead of sacred objects, Mr. Bailey stated that the Apache call these objects holy things. In Western Christianity, sacred things are things that are symbolic of God, and holy things are things in which God is embodied. Mr. Bailey stated that in English, cultural patrimony means passing down from generation to generation, but the Apache interpretation of cultural patrimony is a continuous obligation between the Apache people and God. The masks are made, they are used in the rituals, God is embodied in the masks, and then the masks are placed away and not used again. The cultural patrimony is in the obligation to the masks, and Apache religious leaders have an obligation to maintain the respect for these objects. Every succeeding Apache generation has an obligation to see to their respect until they are gone completely. The Field Museum stated they have treated the objects with respect. Respect is a cultural construct, and varies from culture to culture. What might be respect in one culture may not be respect in another. The very fact that the objects have not been allowed to continue the natural progression from being made to performance to eventually returning as part of the natural earth is disrespectful. The existing Apache religious leaders have an obligation to see that the masks are treated with respect, and respect involves them going back to where they belong. These objects do not just belong to God, they are God. Mr. Bailey stated he agreed with the White Mountain Apache Tribe that the objects are cultural patrimony.

Regarding the issue of right of possession, Mr. Bailey asked, can you buy God? Although cultural beliefs can change over time, God was considered embodied in those masks in 1901 and 1903 just like they are today. That concept was so central in Apache beliefs that it has not changed. Mr. Bailey said the second consideration would be the situation at White Mountain at the time. White Mountain was an isolated community and the Apache reservations were militarily occupied. The military operated under a practice of strong control and punishment of the Apache. A major control mechanism was food rationing and withholding of rations. When Mr. Charles Owen came to the reservation, to the Apache he probably appeared to be identified with the government. Mr. Owen's offers to buy objects may have seemed like a government order to the Apache. The Apaches knew to follow government orders or be faced with punishment. Mr. Bailey stated he does not fault Mr. Owen, who probably viewed this as a voluntary request to the Apache. Why would the Apache sell something so sacred? Under certain circumstances, under extreme duress and stress, people will alienate anything, even if it violates their most sacred beliefs. Mr. Bailey stated he agrees with the White Mountain Apache Tribe when they say that these objects were sold under duress and that the Field Museum does not have right of possession. Mr. Bailey stated that in evaluating Mr. Goodwin's anthropological statements, it is important to remember that anthropologists often speak to marginalized members of a society, and it is important not to put your faith in a single study.

Mr. Kippen stated that a good day is a day when we learn something and he has learned a lot from being on the Review Committee. The Field Museum has asserted that the NAGPRA Review Committee need not bother itself with this case because it is not a dispute and if the Review Committee did render an advisory opinion in this case the

Review Committee would be exceeding its statutory authority. The Field Museum's assertion is based on their view that the primary purpose of the NAGPRA statute is to facilitate repatriation and the process by which items are returned is of no legal consequence. The Field Museum also asserts that since they are willing to repatriate the items, on terms which they set, that they have fully discharged their responsibilities under the law. Implicit in this view is the assumption that the White Mountain Apache Tribe should take what the Field Museum so generously offered and be satisfied with the fact that the objects are being returned to them after nearly a century of being in the museum. The matter would not be before the Review Committee if the White Mountain Apache Tribe felt the classification of these objects as sacred objects or whether the Field Museum has right of possession was of no significance. The matter would not be before the Review Committee if the White Mountain Apache Tribe was content to simply have the items returned on the terms that the Field Museum set. Mr. Kippen stated that it appears history was repeating itself. The Field Museum is forcing the White Mountain Apache Tribe to make a Sophie's choice that the tribe does not agree is consistent with the law. The White Mountain Apache Tribe does not agree with the position of the Field Museum and has disputed the characterization of the objects. Mr. Kippen stated that in his opinion that constitutes a legal dispute and as such is one which a party may request the assistance of the Review Committee to review. It is also a dispute which the Review Committee has the power to hear and resolve. The White Mountain Apache Tribe has requested and the Review Committee has agreed to hear this dispute.

Mr. Kippen stated that the objects fully meet the definition of cultural patrimony based on the statements and records presented by the White Mountain Apache Tribe, who testified to the importance of these objects to their cultural and religious life and the fact that they could not be alienated or given away by any person. The Field Museum places great reliance on the fact that the sale of these objects to Mr. Owen is an indication that the people who sold them were acting consistently with tribal norms and culture at the time. However, a societal norm is what it is, regardless of whether some individuals find themselves in a position of having to violate or disobey it. The facts of the case indicate that the White Mountain Apache Tribe was an occupied nation under the rule of the U.S. Army. The U.S. Army was responsible for the dire conditions facing the Apache. In communications with his principal, the Field Museum, Mr. Owen clearly demonstrated that he knew of the situation of the Apache and intended to take full advantage of these conditions to acquire this collection. It is not surprising that the Apache chose to sell the objects for the chance at prolonging the lives of themselves and their families. The record is replete with facts that indicate how hard and difficult this decision was for the tribal members involved.

Mr. Kippen stated that in considering whether the Field Museum has the right of possession for these objects, they must evaluate, first, whether the objects could have been alienated and, second, whether anyone voluntarily alienated them. As objects of cultural patrimony, Mr. Kippen stated that they could not have been alienated. Based on the record of the desperate and deplorable conditions surrounding the events, the knowledge of Agent Owen and his principal the Field Museum, and their plan to take splendid advantage of these dire circumstances, Mr. Kippen stated he finds that the objects were not voluntarily alienated. Mr. Kippen stated in his opinion the Field Museum does not have the right to possess these objects. Mr. Kippen recommended that the objects be repatriated to the White Mountain Apache Tribe as required under NAGPRA statute. Mr. Kippen stated that his opinion was advisory only and urged the parties to continue to communicate and to consider hiring a mediator who may be able to help them understand how to bridge this chasm that separates them.

Ms. Worl stated she is an anthropologist and one of her areas of study was traditional and customary law. Ms. Worl cited the definition of property in The Law of Primitive Man by E. Adamson Hoebel, "Property includes two essential aspects, the object itself including both tangible and intangible aspects, secondly, the web of social relations that define the relationships between the individuals and the object or the use and disposition of the object." American law separates religion and law and is based on individual rights. However, NAGPRA allows the consideration of supernatural elements in the determination of the centrality and ownership of objects, as well as communal ownership of objects. In this case, Ms. Worl stated that the Review Committee needs to consider both the web of spiritual relations that define the relationship between the Apache and the claimed objects and their use and the disposition of the objects subject to this claim and the dispute.

The Field Museum asserted that the White Mountain Apache Tribe provided no evidence that is documented, substantiated by historical documents, anthropological literature, or documented oral history. Mr. Bailey addressed this issue in his discussion. It is important to emphasize that NAGPRA allows for determinations to be made by a preponderance of evidence based on geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditions, historical, or other relevant information or expert opinion. Under NAGPRA, information

from both academic and traditional scholars is acceptable and essential. The Apache provided evidence based on anthropological data by Mr. Basso. Both the Apache and Mr. Basso offered countering information to that of Mr. Goodwin. The Apache offered linguistic interpretations of their cultural practices based on translations of salient Apache words and concepts into English and compelling accounts of oral traditions and teachings from present-day Elders who received their training from Apache Elders present in the early 1900s.

Ms. Worl reviewed the three requirements to substantiate a claim of cultural patrimony. The first, “ongoing historical, traditional, or cultural importance central to the Native American group or culture itself,” the Field Museum acknowledges that the objects are part of an ongoing historical tradition as the Apache still perform Gaan dances and use the same style of mask. However, the Field Museum asserts that the claimed objects themselves are not of central importance, and as evidence the Field Museum cites the following arguments: no controversy or confrontation occurred at the time of sale, the masks are not named or individually recognized, many masks are held in museums and private collections, and many masks are sold with no complaints. The Apache position on the issue of central importance is that the objects are needed to channel the supernatural spirits. The supernatural spirits are manifest and present during the ceremonies and serve to promote the general well-being and survival of the Apache, and their absence from the ceremonies and resting places has contributed to the disruption of relationships with the supernatural elements and are needed to restore relationships with the natural world. On the Field Museum’s claim that no controversy or confrontation occurred at the time of sale, Ms. Worl stated that she would surmise from the accounts of intense emotional reactions of the individuals who sold the objects to Mr. Owen together with the reported reactions of their spouses that the sale of the objects caused considerable turmoil. The Apache also testified that the sellers were shunned within the community and not allowed to practice further in ceremonies. On the Field Museum’s claim that the objects are not of central importance because they were not individually named, Ms. Worl cited the Apache report that recognizes the objects as specific spirits by name. On the Field Museum’s claim that the objects are not of central importance because masks are held in museum and private collections, Ms. Worl stated that while that statement is true, she would interpret it as a position that could be used to support the Apache claim; that museums held many sacred objects and objects of cultural patrimony was an argument used to advance the passage of NAGPRA. The Apache have embarked on a concerted effort to seek the repatriation of these types of objects held in museums. From her review, Ms. Worl noted that 10 museums have published Notices of Intent to Repatriate cultural items involving at least 37 Apache Gaan masks and headdresses. Finally, on the Field Museum claim that many masks are sold with no complaints, Ms. Worl cited reports and testimony that makes a distinction between Gaan objects being produced for ceremony and for sale, and that the objects manufactured for sale have not been used in a ceremonial context and lack key design elements. As far as the sale of ceremonial objects, violations to rules occur among all societies, and the Apache have reported accounts of supernatural sanctions to these violations.

The second element of cultural patrimony, “rather than property owned by a Native American individual, which therefore cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe,” the Field Museum’s major source of reference appears to be Mr. Goodwin’s report, “Except for land and food stores, property was individually owned, almost without exception.” Mr. Goodwin adds that ceremonial objects such as a set of Gaan masks were referred to as our holy things in the sense that ceremonially they benefited everyone in the locality, but he notes they were the property of one man. The Apache presented their views on ownership and also submitted a paper by Mr. Basso entitled “Ownership and Possession of Western Apache Gaan Head-Coverings,” dated April 2006. The Apache state that the claimed objects were not viewed as belonging to one person and that the only legitimate use and disposition of the objects was in ceremonies and when they were stored away. The Apache acknowledge that some ceremonial objects are the property of individuals and have not submitted repatriation claims for individual property. The Apache reviewed Mr. Goodwin’s work and concluded that his published works were less than complete but that his field notes offered better data, including recognition of the supernatural elements of the objects. During testimony at the meeting, the Apache suggested that Mr. Goodwin’s premature death was due to supernatural sanctions for some of his actions among the Apache. Ms. Worl stated that Mr. Basso has worked and studied among the Apache for 47 years and published extensively, and should be accepted as an academic authority. Mr. Basso reports that Gaan head-coverings are made and cared for by Apache individuals who can be said to possess them, but the objects are owned by the beings they represent, by the Gaan themselves. Mr. Basso maintains that this distinction has no precise equivalent in Anglo-American culture, which Mr. Basso offered as a possible reason it has not been reported by other anthropologists including Mr. Goodwin. The objects are owned by the power and are viewed as physical manifestations of that power. The man who made the objects and cared for the objects possesses them but

does not own them. In the minds of the Apache, he is now the custodian and agent of the Gaan by whom the head-covering have been appropriated. The Apache men who donned Gaan head-coverings and danced with them in ceremonies are ceremonially transformed and become Gaan themselves, and in this state they are the owners; multiple dancers who have the knowledge are allowed to dance in the Gaan objects. In English one might say that the objects are “his” or “hers” meaning the property of, but in Apache the objects are referred to as “*agoitsih*” meaning “he or she keeps it” and implying something similar to the English language notion of custodianship. Ms. Worl stated she was persuaded by the argument and evidence offered by the Apache and Mr. Basso that the claimed objects are owned by the Gaan and the Apache as a whole and move from individual property to communal property at the point when the objects became animated or infused with the metaphysical powers in the ceremonies.

The third element of cultural patrimony, “such objects shall not have been considered alienable by Native American groups at the time the object was separated from such group,” the Field Museum maintains that the claimed objects most likely were considered alienable by the Apache Tribe when Mr. Owen purchased them in 1901 and 1903 and maintain that the ethnographic literature reports that they were individually owned and alienable. The Apache maintain that the only proper use and disposition of the claimed objects is their use in ceremonies and their storage in a secure location away from human habitation. The most important duty of the custodian is to put the items away to ensure the perpetuation of the ceremonial process and no proper custodian would claim ownership or consequently sell the objects. Ms. Worl stated that the Apache have substantiated their claims of cultural patrimony and have provided evidence that the objects are central to their culture. In addition, the position of claims to Gaan objects as objects of cultural patrimony is consistent not only with an earlier finding by the NAGPRA Review Committee in 2002 but also with that of ten other museums who made the same determination and published Notices of Intent to Repatriate in the Federal Register.

Regarding right of possession, Mr. Owen did purchase the claimed objects. Mr. Owen purchased them from the custodian, who had no authority to alienate the objects. Mr. Owen did not obtain the objects with the voluntary consent of the Apache. Ms. Worl stated that from her review and analysis the Apache had presented evidence supporting communal ownership, which if standing alone before the introduction of evidence to the contrary, supports a finding that the Field Museum does not have the right of possession. As such, Ms. Worl stated it was her recommendation that the Field Museum should return the claimed objects.

Mr. Dan Monroe thanked the White Mountain Apache Tribe and the Field Museum for their testimony and extensive materials submitted to the Review Committee. Mr. Monroe thanked the Apache Elders who came to the meeting, at considerable hardship and trial. Mr. Monroe stated the case was unique in the sense that if there was a dispute, the dispute does not pertain to the repatriation but instead to the terms and conditions associated with the proposed repatriation. Mr. Monroe entered the following statements into the record.

First, recognize that NAGPRA is built on a foundation of dialogue and an exchange of information, values, and viewpoints. The dialogue, as we all know, is sometimes extraordinarily difficult and painful, troubling, complex, and often frustrating. Yet the law is based on the premise that such dialogue is central to the achievement of the purposes of this Act, to return Native American human remains and certain cultural items when and if certain conditions exist. The work of this committee depends in large measure on the ability to directly ask questions of parties to disputes or potential disputes and to collect and acquire information through open exchange. The members of this committee do not function as legislators. Though we are appointed from certain constituencies, once appointed we are here to represent the interests of all and to assure fair and equitable treatment under the law to all. That said, I'd like to enter into the record that as a member of the museum community and a leader in that community, I am deeply, deeply disturbed that the Field Museum has chosen to my knowledge to be the first party in NAGPRA's history to refuse to openly respond to questions and queries concerning an issue of vital importance to this committee [and] to a federally recognized tribe. And that for whatever reasons the Field Museum has chosen to so act, it's my fervent hope that no other museum in the future adopts a similar posture. To do so undermines in a very fundamental way the work of this committee, the process and dialogue that's an underpinning to this Act, and the good faith that is involved on all parties to reach fair and equitable decisions. By the same token, I want to thank the Apache representatives for their patience and for their willingness to uphold the process, even though so doing clearly caused them great pain and significant personal hardship.

Mr. Monroe then offered his views on the issue. First, does the Review Committee have jurisdiction in this matter and the authority to consider this matter as a dispute if it so chooses? Mr. Monroe stated the answer to both questions is yes

and referenced 25 U.S.C. 2006(c)(3)(B) and (4). The Apache has requested the Review Committee to make a finding in a matter that they consider to be a dispute. The statute does not define the meaning of dispute, and the Review Committee has the authority to decide what is and is not a dispute. Second, do the Field Museum's claims regarding the takings clause and fiduciary responsibilities of its board in the state of Illinois prevent the Review Committee from making findings in this matter if it so chooses? Without going into technical language, Mr. Monroe asserted that neither the takings clause nor the fiduciary responsibilities have a material impact on the ability of the Review Committee to make a finding. Third, are the objects in question objects of cultural patrimony as defined by the Act? If the Field Museum accepts that the objects in question are objects of cultural patrimony as defined by the Act, then it must accept that the objects could not be alienated by any single individual without the approval of the entire group. Recognition of the objects as objects of cultural patrimony would contradict the Field Museum's claim to right of possession, since there is no evidence that would indicate the Apache at any time as a group authorized alienation. The Field Museum claims that only the statements of a single anthropologist constitute "clear and objective evidence that the objects in question could be alienated by an individual," while the Apache claims to the contrary are "simple assertions of opinion that have only been recently formulated by Elders and others." The failings of anthropologists working in good faith to document cultural practices are widely known both inside and outside of the profession. Moreover, the Field Museum is essentially arguing that Apache Elders have only recently made up their claims regarding the inalienability of these objects by a single individual. In conclusion, based on all information provided by both parties, Mr. Monroe stated he believes the objects in question are objects of cultural patrimony. Fourth, does the Field Museum have right of possession? The Field Museum claim that the objects were purchased openly dismisses the Apache claim that such purchases were made under tremendous duress since the Field Museum had no responsibility for the duress. As testified, the Apache were under tremendous duress at the time and that fact alone is relevant, not who is responsible for the duress. The duress had a material and direct bearing on the decision to sell these objects. Mr. Monroe stated he does not support the Field Museum's claim to right of possession. Fifth, is there any ground within the context of NAGPRA for the Field Museum to apologize to the Apache for their past actions? Mr. Monroe stated the answer is no. Sixth, do the issues involved in this case constitute a dispute under NAGPRA and should the Review Committee consider them as a dispute? The Apache are a party to this matter and have requested the Review Committee to consider the matter as a dispute, thus the Review Committee is technically empowered to consider the matter as a dispute in accordance with statutory provisions. Furthermore, the Field Museum's positions regarding the status of these objects as objects of cultural patrimony and the Field Museum's claims to right of possession are positions not upheld by the evidence presented to the Review Committee. While repatriation is indeed the central purpose of the Act, there is nothing in the Act that limits the Review Committee's ability to make an advisory finding on issues related to the classification of objects as defined in the Act or to a museum's claims to right of possession.

In conclusion, Mr. Monroe stated he believes the objects are objects of cultural patrimony and that the Field Museum has not demonstrated right of possession. Mr. Monroe stated he sincerely hopes the Field Museum, as a result of these proceedings and the Review Committee's presumed findings, carefully considers and evaluates some of its presumptions and attitudes. Although the Field Museum withdrew reversionary clauses in this case, Mr. Monroe stated he hoped the Field Museum would search its conscience in continuing to offer tribes a Sophie's choice with respect to repatriation. In addition, Mr. Monroe stated he hoped the Field Museum would consider its underlying values and attitudes regarding some key aspects of NAGPRA and the repatriation process. To assert that only a single anthropologist provides statements of fact while the testimony of a tribe's Elders constitute mere matters of opinion and to assert that the Apache Elders involved in this case have essentially and purposely revised their religious convictions and beliefs historically in order to prevail in this matter reveals a hubris that contradicts the Field Museum's claims for respect of the NAGPRA process. Mr. Monroe stated he hoped the Field Museum would search its soul in an effort to determine if it cannot further extend its principles and practices as regards repatriation and the open exchange of dialogue in the future. Mr. Monroe again thanked both parties for the information, materials, testimony, and good faith they have brought to the process.

Mr. Steponaitis thanked the parties for coming to the meeting, presenting their materials, and answering questions. Mr. Steponaitis stated that the information received in advance of the meeting and that presented at the meeting really helped in this matter. Mr. Steponaitis stated that as an anthropologist he agreed with Mr. Bailey's very eloquent analysis of the difficulties of cross-cultural communication and understanding, which may lie at the base of some of the differences of opinion resulting in this case coming before the Review Committee. Mr. Steponaitis stated he believed both parties have acted honestly and in good faith and are trying to do the right thing. In fact, there are so many points of agreement Mr. Steponaitis stated he was surprised the matter was before the Review Committee, but as it is the Review Committee has an obligation to consider the issue. Mr. Steponaitis stated that, as his colleagues and legal counsel have explained, he agrees that the issue falls within the Review Committee's purview. Mr. Steponaitis stated that one of the

key issues was whether the individuals who sold the objects have the right to do so. Two competing lines of evidence on that issue were presented. First, the testimony of Mr. Goodwin, an outside expert present at the time in question, there was a possibility that he was wrong, and many plausible reasons were presented by Mr. Basso. Second, the testimony of the Apache, there is a possibility that the views that they are expressing as current today were different back in 1901 and 1903. Mr. Steponaitis stated that the testimony of the Apaches detailing the direct chain of transmission of knowledge from the Apache Elders who were there at the time and the Apache Elders present at the meeting really decreases the likelihood that anything was lost in transmission. Mr. Steponaitis stated that when taking that information into account, the preponderance of the evidence shifts to the position taken by the White Mountain Apache Tribe, which is that the individuals who sold these items did not have that right. Mr. Steponaitis stated that based on the preponderance of the evidence the objects in question are cultural patrimony as defined by NAGPRA.

With respect to the question of whether the Field Museum has right of possession, Mr. Steponaitis stated that if the objects were objects of cultural patrimony, the individuals who sold the objects did not alone have the right to convey these items. Mr. Steponaitis stated that based on the preponderance of the evidence the Field Museum does not have right of possession to these items. Mr. Steponaitis stated that he agreed with Ms. Worl's detailed analysis of the evidence and various other points at issue in this case. Mr. Steponaitis again thanked everyone for coming to the meeting and presenting the materials. Mr. Steponaitis stated that the parties in this dispute are so close and agree on so many things that everyone can move forward on the basis of that common ground and put these issues behind them in a way that will be satisfactory to everyone involved.

Ms. Augustine read a section of the Field Museum testimony, "If the Review Committee issues a finding that these items are cultural patrimony or that the museum does not have right of possession on the facts presented, an evaluation while advisory would support the erroneous contention that simple assertions of opinion and contemporary evidence of practices and beliefs is enough to overcome clear and objective evidence from the time of collection." Ms. Augustine stated she did not take on the role of Native American spiritual leader. This role was given to her by her people and her ancestors. She stated the above statement by the Field Museum offended her, because they are not simple assertions of opinion and contemporary evidence. When Native people talk about spiritual beliefs, these go back for generations. Their tradition is an oral-based tradition, and throughout history Native people have relied on spiritual assistance. Native people have a firm belief in the afterlife and believe that the ones who went before can come back and guide those today. In addition, Native people have a profound respect for their Elders, and Ms. Augustine stated she was humbled to be in the presence of the Elders at the meeting. Cultural patrimony means an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself. The Apache testified how important these ceremonial objects are to them as the living today, not only to the ancestors, and stated that they needed the objects to use in ceremonies right now. Ms. Augustine stated she understood when the Apache described what happens to these masks during the ceremonies, because as the spiritual caretaker of the pipe for her people, when the bowl and stem of the pipe come together it becomes a spirit. Ms. Augustine stated she does not want to be seen as a token on this Review Committee. Earlier Ms. Worl explained that sitting on the Review Committee honors both the academic and spiritual components, and Ms. Augustine stated she comes from the spiritual aspect. Ms. Augustine stated that without prior knowledge of this dispute, she had a dream that at first she did not know the meaning but now she can relate to the specifics of this case. In the dream, men came to her wearing masks and there was a small covered bridge. During the meeting a bridge was mentioned between the Field Museum and the White Mountain Apache Tribe, and another bridge could be a bridge between the present time and the ancestors' time. Ms. Augustine stated that the spirits of these masks came to her to request these ceremonial items for the Apache ceremonies today and that the spirit of those masks will not come alive again until they are put on and in proper ceremonial fashion brought back to life again.

Ms. Augustine read a quote from Senator Inouye, dated October 26, 1990, "In light of the important role that death and burial rites play in Native American cultures, it is all the more offensive that the civil rights of America's first citizens have been so flagrantly violated for the past century. Mr. President, the bill before us today is not about the validity of museums or the value of scientific inquiry. Rather, it is about human rights." Ms. Augustine stated this is a human right, human dignity, spiritual right, and spiritual dignity that the Apache Tribe does not need to prove in any written form what they will do with the ceremonial items or why they are of such valuable spiritual importance. On the issue of cultural patrimony, Ms. Augustine stated she agreed with the Apache that these objects are objects of cultural patrimony. Regarding right of possession, the Apache were in a time of duress when the objects were procured and it was not the right of the person to sell the item. Ms. Augustine stated that she agreed with her colleagues that right of possession belongs to the White Mountain Apache Tribe. Ms. Augustine stated that there was no way to require an apology, but to correct a spiritual hurt would be to give the objects back without condition to the rightful, true owners. In Native culture,

when something is given, something comes back. There will be so much gratitude on the other side, that your spirit will feel it. Ms. Augustine stated she has been in ceremonies with spiritual leaders from all over the world and she quoted the Dali Llama, "If we cannot do the most compassionate thing, at least let us do the right thing."

Mr. Willie Jones stated it was difficult for him to speak because he was so full of conflicting, but good, information. Mr. Jones thanked the Elders for their presentation, for all those who attended the meeting, and thanked the other Review Committee members for their words and research. Mr. Jones stated he sees the Review Committee as interpreters. He stated he is just starting to learn his language and learn who he is, and he is sometimes frustrated because he does not know either the English words or the Indian words to express how he feels. Regarding cultural affiliation, Mr. Jones stated that he compared it to a situation his tribe is facing at home and he can understand how the choices were made, even knowing the consequences of those choices. Mr. Jones supports the claim of cultural patrimony. Mr. Jones does not believe that the Field Museum had right of possession because at the time the objects were sold the Apache were living in unbearable conditions. Mr. Jones stated that his tribe has been dealing with the desecration of a huge gravesite and has spent six years trying to retrieve their ancestors. This has taught him that he thought he knew what a major issue was until this happened, nothing was as major as this. Then he started learning and volunteered to be on the Review Committee, to continue to learn and try to have an impact on some of the things that happened. Another thing that was alluded to today was that there is a bigger law and it is unwritten in Indian Country and expressed in different ways in different parts of Indian Country. Mr. Jones stated that the objects need to be returned to the White Mountain Apache Tribe as cultural patrimony and the Field Museum does not have right of possession. Mr. Jones stated he would like to see this as the start of a healing because there is a lot of hurt and pain out there, and the Review Committee is going to continue to keep finding it. Mr. Jones thanked the presenters for sharing with him, which made him stronger and he knows what he needs to fight for. The Native people have a lot of the answers, so there needs to be communication.

Ms. Worl stated that the Review Committee members have outlined a unanimous position as to whether the 33 objects claimed by the Apache Tribe are objects of cultural patrimony and whether the Field Museum has the right of possession, and have substantiated their position with their analyses.

### **Review Committee Motion**

Mr. Kippen made a motion that the Review Committee finds that the 33 objects which are the subject of this dispute are items of cultural patrimony and that the Field Museum does not have right of possession. Mr. Monroe seconded the motion. The motion was adopted by a unanimous vote.

The Review Committee appointed a subcommittee to develop written text for the finding. Ms. Worl stated she would like to include language in the finding that referenced the authority of the Review Committee to hear the dispute. Ms. Worl thanked the Review Committee and all involved parties for their great work.

As the finding was not completed by the close of the meeting, Mr. Kippen made a motion that the Chair be authorized to complete the finding subsequent to the meeting. Mr. Monroe seconded the motion. Mr. Kippen called the question. The motion was adopted by a unanimous vote.

## **Report on Implementation of NAGPRA for 2006; Collections, Excavations & Discoveries, Regulations, Technical Assistance, Program Operations**

### **Draft Report on Implementation of NAGPRA for 2006**

Ms. Hutt stated that the Review Committee members had a copy of the draft annual report in their binders. Ms. Hutt stated that any comments or edits by the Review Committee members would be welcome before the report was posted on the National NAGPRA Program Website.

Grants: Under the stewardship of Ms. Michelle Wilkinson, grants coordinator, the number of grants increased in 2006. The National NAGPRA Office received 57 documentation/consultation grant requests and 12 repatriation grant requests. The number of grants requested by Indian tribes increased significantly compared to museum grant requests. The grants review process was changed to allow for all grants prioritizing to be done by the grants panel, and not National NAGPRA staff. A second day of grants review was instituted this year to allow the grants panel to

review the grants budgets to look for areas that could be trimmed, thus ultimately allowing more grants to be awarded. Ms. Hutt explained that a portion of the grants money is held back each year to allow for repatriation grants. The unused 2005 repatriation grant money was given to the National Preservation Institute and used to fund training scholarships for 12 tribal representatives to attend National NAGPRA training.

Review Committee: The Review Committee had one telephonic and two live meetings in FY2006.

Regulations: Regulation 10.13, Future applicability, has cleared all review from the Solicitor's Office as a final rule and is now in the front office of the Department of the Interior (DOI). Publication of the final rule should be imminent. Regulation 10.11, Disposition of culturally unidentifiable human remains, is under review as a proposed rule in the Solicitor's Office, and while it is taking a long time, the vetting process is useful and will hopefully result in good comments. Regulation 10.7, Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony, is still in the drafting phase, and the Review Committee will see more progress on it in the next year.

Training: In FY2006, the National NAGPRA Program trained 1,189 participants in the NAGPRA training, and a list of trainings and attendance numbers is included in the draft report. Ms. Hutt stated that the National NAGPRA Program would appreciate any feedback from the Review Committee members regarding the training program.

Database: The database contains a new database of Royce maps (treaty maps), which are very helpful for those doing consultation and making decisions on cultural affiliation and repatriation decisions. Ms. Cynthia Murdock, database coordinator, was responsible for coordinating the project with the assistance of an intern.

Notices: In FY2006, the National NAGPRA Program published 100 notices, which was approximately the same as FY2005 but significantly more than FY2004. All notice work is done by Ms. Jaime Lavalley, notice coordinator, compared to three people in previous years. The National NAGPRA Program received 105 new notices in FY2006, which is approximately an 80 percent increase over the prior year and indicative of increased activity in the country on the part of museums and Federal agencies to consult with Indian tribes and reach determinations that result in published notices. Due to the efforts of Ms. Lavalley, pending notices have decreased by two-thirds since FY2004, from 300 down to 100.

Civil Penalties: A total of 13 allegations of failure to comply have been investigated, resulting in 11 findings of no failure to comply and 2 findings of failure to comply. For one finding of failure to comply, the 45-day response period has ended and the Assistant Secretary sent out the Notice of Penalty Assessment. In FY2006, Mr. Robert Palmer and Mr. David Tarler reviewed the backlog of files, established file controls, and created template letters for Notices of Failure to Comply and Notices of Penalty Assessment.

### **National NAGPRA Grants Report**

Ms. Hutt stated that Ms. Wilkinson, with the assistance of Ms. Murdock, compiled a report summarizing grants information for the National NAGPRA Program. Ms. Hutt described the map included on the first page of the report, which reflected information on grants since the beginning of the program. The horizontal lines reflect states in which museum grants have been awarded. Vertical lines reflect states in which tribal grants have been awarded. Crosshatched lines indicate states in which museum and tribal grants have been awarded. States with no markings indicate no grants awards. Mr. Steponaitis stated that his institution received a museum grant which was not reflected for North Carolina on the map. Ms. Hutt stated that all available information for the grants program was entered, but some early information was not available. Ms. Hutt stated that the National NAGPRA Program looks forward to filling in the gaps. Mr. Steponaitis stated that if there are gaps the information may not be reliable. Ms. Hutt stated each state on the map contains what appears to be an equation. The top number represents the number of human remains for which the provenance is that state. The human remains may or may not be in a repository in that state. The numbers on top of the line are those that have been culturally affiliated and the ones below the line are for human remains in the state that are culturally unidentifiable. Approximately 8,000 human remains have unknown provenance. Ms. Hutt stated that the colors of the states indicate the percentage of MNI, minimum number of individuals, that have been represented in notices. Considering all of this data together can help develop an overall look at the picture of repatriation. Ohio, Pennsylvania, West Virginia, Indiana, Kentucky, Tennessee, Alabama, and Florida have very few numbers of affiliated human remains, large numbers of unidentifiable human

remains, less than 10 percent of MNI have been reflected in notices, and no grants awarded in the last five years. That would be an area of the country that could be targeted in terms of giving support and assistance regarding grants. In contrast, Colorado, Arizona, New Mexico, Alaska, Washington, and Oregon have received grants, most human remains have been culturally affiliated, and more than 50 percent of the MNI are represented in notices.

The Review Committee asked for ideas on locating Indian tribes that would most need assistance with the grants program. The National NAGPRA Program has identified 107 tribes that have requested but not received a NAGPRA grant. Ms. Wilkinson is considering the 107 tribes and their location to devise a plan to reach out to them individually and as groups to offer assistance. Ms. Wilkinson will also consider the tribes' past proposals to help strengthen future applications. In addition, the National NAGPRA Program is developing a new grants pamphlet which will be distributed first to the 107 tribes that have applied for but not yet received grants. Mr. Bailey stated that in some states, like Oklahoma, many of the grants funds actually go to tribes outside of the state.

### **Federal Agency NAGPRA Compliance Report**

Ms. Hutt stated that the Federal Agency NAGPRA Compliance Report was compiled by Ms. Murdock and Ms. Lavallee. All data was verified from the source to ensure accurate reporting. Ms. Hutt explained the report layout. In addition to the raw numbers, a map was included showing land mass for each agency. The report helps provide a picture of the status of Federal agency compliance. For all Federal agencies, the total number of human remains is 28,411. Of those, roughly half have been culturally affiliated and published in notices and the other half was listed in the CUI database. In the aggregate, 1,642 sets of individuals have been culturally affiliated but not yet listed in a notice. So the answer to the Review Committee's question of how many human remains are in Federal agency possession and control is roughly 5 percent.

### **Disposition of Culturally Unidentifiable Human Remains in the Possession of Fort Union National Monument, CO**

#### **Fort Union National Monument Presentation**

Mr. Dennis Ditmanson, General Superintendent of Fort Union National Monument and Pecos National Historical Park, stated that Fort Union historically was active from 1851 to 1891, serving as the principle military installation in the American Southwest, as well as the economic and supply center for all military installations in that part of the country. The fort was authorized as a unit of the NPS in 1954 and established for operation in 1956. In 1958, during construction of one of the housing units at the fort, there was an inadvertent discovery of a burial site with four individuals. Several different noninvasive investigations of the human remains have been conducted with basically inconclusive results. With three different analyses, various ethnic attributes, including the possibility of non-Natives, have been identified but basically the human remains have been found to be culturally unidentifiable.

The NAGPRA process began in 1995 in a meeting in Oklahoma where disposition of the human remains was first discussed. Several other contacts and discussions were held over the years. In 2001, Fort Union National Monument applied for and received funding for a more formal NAGPRA process. Discussions continued and in 2005 another investigation of the remains was completed. In 2006, Fort Union National Monument held two separate consultation meetings. The first meeting was in Tucson, AZ, and 19 different tribal groups identified as having potential cultural affiliation were invited. At the meeting, there was a lengthy discussion about possible affiliation and/or disposition of the human remains and the decision was reached at that meeting that the Jicarilla Apache Nation and the Ute Mountain Ute Tribe would request repatriation of the human remains. In July, representatives of the two Indian tribes met at Fort Union National Monument, looked at the site where the human remains had been discovered, and identified a potential site for reburial of the human remains at the park. Fort Union National Monument is seeking a recommendation of the Review Committee in support of the repatriation of these human remains to the Jicarilla Apache Nation and the Ute Mountain Ute Tribe.

#### **Jicarilla Apache Nation Presentation**

Mr. Wainwright Velarde, Councilman for the Jicarilla Apache Nation, stated he wished all requests were this simple. He provided the Review Committee members with a map showing the Indian Claims settlement area for the Jicarilla Apache Nation. Mr. Velarde stated that his father worked on the Indian claims settlement for the tribe and Mr. Velarde had access to the records. Mr. Velarde explained that marriages occurred with people outside of the tribe and therefore some of the people still living in those areas are related to the Jicarilla Tribe. Members of the Jicarilla Apache Nation culture program have visited all of the places where the tribe has been and developed a Memorandum of Understanding (MOU) with the Forest Service, NPS, U.S. Army and others, to verify the Jicarilla Apache homelands. Mr. Velarde introduced Mr. Gilbert Quintana, consultant and contractor from Mora, NM, and Mr. Mario Medina, a Highlands University student, both of whom assisted with the burial site. Mr. Velarde stated he wanted the Review Committee to be aware of the Jicarilla Apache's homelands, which are on record with the U.S. Government and documented in the book Teepee Circles, by Mr. Nordhouse.

Mr. Terry Knight, NAGPRA representative and spiritual leader for the Ute Mountain Ute Tribe, stated the human remains found at Fort Union are within the Apache and Ute homelands. At the meeting in Santa Fe, NM, Mr. Tim Begay of the Navajo Nation suggested that the Ute Mountain Ute Tribe and Jicarilla Apache Nation do a joint repatriation and reinterment, and both tribes agreed. Although the human remains are culturally unidentified, according to his tribe's teaching, once you die you have to be buried. Since the human remains were originally buried as a group, they should be reburied as a group. Mr. Knight stated he has been involved in burials of non-Native people and would have no problem with this burial. In a spiritual sense, everyone is the same.

### **Review Committee Questions**

Ms. Worl stated that the Superintendent of Fort Union National Monument has requested a recommendation from the Review Committee to repatriate the human remains of four individuals and associated funerary objects to the Jicarilla Apache Nation and the Ute Mountain Ute Tribe. Ms. Worl opened the floor to questions from the Review Committee members. Mr. Jones asked if the repatriation would be at the original site and was told that it would be. Mr. Steponaitis stated that he was very impressed with the thoroughness of the consultation and documentation and appreciated the amount of work done by the parties. Mr. Steponaitis stated that this case differs significantly from others in the lower 48 in that the burials were fairly recent from the 1860s and there is a significant possibility that these people were not Native American. Mr. Steponaitis asked what legal course of action the park would take if the human remains were determined to be non-Native. Mr. Ditmanson stated that following three investigations of the human remains, only one set of human remains has not been identified as Native American or European Native American. Mr. Velarde made the point that there were perhaps non-Indian people who were considered tribal members, either through adoption or marriage, but that in life these four individuals were perceived of as a group and ought to stay together in death. Mr. Dave Ruppert, NPS, Denver office, stated that if human remains were determined to be non-Native American following reburial the human remains would be considered part of the NPS collection but would not fall under the authority of NAGPRA. Ms. Mattix stated that the NPS does have statutory deaccessioning authority for its museum collections if certain criteria are met. Mr. Steponaitis stated that in theory, non-Indian skeletal collections could be deaccessioned and reburied under those criteria. Mr. Steponaitis stated that he was not questioning that the parties made a reasonable decision in this case and accepts the argument that the people were buried as a group and should be treated as a group. Mr. Steponaitis stated that the parties answered his question about what the alternative treatment of these human remains might have been.

Mr. Bailey stated that the individuals were buried together and the fact that one or more may have been non-Native is irrelevant because historically many captives were considered part of the Indian tribe, both by tribal members and by themselves. Mr. Bailey stated that the human remains should be reburied as a group. Ms. Mattix stated that according to the Act, the definition of Native American means of or relating to a tribe, people, or culture that is Indigenous to the United States. Ms. Augustine stated that she has done reburials of non-Native individuals for museums that did not know what to do with the human remains, which were treated with the same proper respect and prayers as Native people. Ms. Augustine stated that morally this is the right thing to do, rather than have the human remains stay on a shelf in a museum. Mr. Velarde stated that in the Apache belief system, all people are considered the same with no distinction. Ms. Worl thanked the participants and stated that the Review Committee would consider and act on this matter the following day.

### **Review Committee Motion**

Mr. Steponaitis made a that the Review Committee recommends that Fort Union National Monument repatriate four sets of culturally unidentifiable human remains and 10 associated funerary objects to the Jicarilla Apache Nation and the Ute Mountain Ute Tribe. Mr. Monroe seconded the motion. The motion was adopted by unanimous vote.

## **Disposition of Culturally Unidentifiable Human Remains in the Possession of the Alameda County Coroner, CA**

### **Alameda County Coroner Presentation**

Mr. Riddie Bowers, Sergeant, Alameda County Sheriff's Office (participating telephonically), stated that the Alameda County Sheriff's Office was in possession of two skulls presumed to be of Native American heritage unearthed at a construction project in early 1960 and then subsequently stolen. In June 2005, the skulls were mailed to the University of California at Berkeley and were promptly turned over to the Alameda County Sheriff's Office. The Alameda County Sheriff's Office has been attempting to complete the repatriation process since that time. The Alameda County Sheriff's Office sought the direction of the Review Committee at the March 2006 teleconference meeting. The human remains are presumed to be Ohlone, which is not federally recognized. Based on the Review Committee's advice, the Alameda County Sheriff's Office sent letters to eight local tribal groups in order to seek consensus on repatriation. Some response from the groups was received, including a tribal member who was willing to accept the human remains for repatriation and another tribal group who was opposed to such an action. Based on a recommendation from Mr. McKeown, the Alameda County Sheriff's Office scheduled a face-to-face meeting to attempt dialogue with the groups and try to come to an agreement. Only one group chose to attend the meeting and that group was of the opinion that the human remains needed to be returned to the University of California at Berkeley so the university would be forced to deal with the repatriation.

The Alameda County Sheriff's Office believes it has done its best to comply with NAGPRA regulations but currently is at a standstill. The Alameda County Sheriff's Office would like a recommendation from the Review Committee to authorize a tribal descendant to receive the human remains, independent of consensus from the local groups, as consensus does not seem likely. Ms. Donna Ziegler, Alameda County Counsel's Office, stated that the University of California at Berkeley is not willing to accept return of the human remains, which eliminates the request of the tribal group that has asked for the human remains to be returned to the University of California at Berkeley. The gentleman who is willing to claim the human remains would then repatriate them to the broader community from which they were apparently discovered. Given their inability to obtain consensus, the Alameda County Sheriff's Office would like a recommendation and direction that would establish that they have engaged in a good faith effort to repatriate the human remains and that by turning them over to the tribal descendant their obligations under the Act have been fulfilled.

### **Review Committee Questions**

Mr. Kippen asked about the identity of the tribal member willing to accept the human remains. Mr. Bowers stated that his name was Mr. Andrew Galvin, a local representative of Ohlone Coastanoan descent in the Mission/San Jose area. Mr. Bailey asked who the skulls were stolen from. Mr. Bowers stated that the skulls were stolen from the construction site shortly after they were discovered as part of a larger find that included approximately 25 skeletal remains and a significant number of artifacts. Mr. Bailey asked where the other human remains and artifacts were today. Ms. Ziegler stated that the skulls were unearthed in 1960 as part of an Alameda County Flood District construction project, and the whereabouts of the remaining human remains and artifacts is unknown. The whereabouts of the stolen skulls was unknown for over 40 years until 2005 when they were mailed to the University of California at Berkeley with a copy of a newspaper article and a letter apologizing for them having been stolen and in someone's possession since that time. Mr. Bailey stated that the University of California at Berkeley was probably better equipped to deal with repatriation issues. Mr. Bowers agreed that originally the University of California at Berkeley had some responsibility to deal with the human remains, but that the human remains passed to the Alameda County Coroner's Office within a couple of days. Mr. Bowers stated that the Alameda County Coroner's Office does not consider returning the remains to the University of California at Berkeley to be an option and simply wants to move forward.

Mr. Steponaitis asked if Mr. Galvin, who has offered to receive the human remains, was acting on behalf of a tribe or as an individual. Mr. Bowers stated Mr. Galvin was on the Ohlone Tribe Consultation List provided by Ms. Debbie Treadway at the Native American Heritage Commission and Mr. Galvin has repatriated remains in the past. Mr. Steponaitis asked if the Ohlone/Coastanoan groups were federally recognized, state recognized, or unrecognized. Mr. Bowers stated that the Ohlone/Coastanoan tribal groups were not federally recognized but did not know if they were state recognized. Mr. Steponaitis asked what the standard procedure would have been if the human remains would have been identified as non-Native American. Mr. Bowers stated that the standard procedure for any indigent, unclaimed, or unidentified human remains is to go through the whole process with the state, including DNA. If the human remains are not identified, they are cremated and interred in a county community crypt.

Ms. Augustine asked if Mr. Galvin intends to rebury the remains. Mr. Bowers stated that Mr. Galvin has a burial ground on the site where his tribal group is located. Mr. McKeown stated that the California Indian Heritage Commission indicated that Mr. Galvin is designated as a most-likely descendant, a category used to identify individuals to monitor excavations or construction projects and to repatriate under state law. Mr. Galvin does have standing under state law but the Ohlone/Coastanoan are not federally recognized. Mr. Bailey asked if the Alameda County Coroner's Office falls under NAGPRA. Mr. McKeown stated that institutions that receive Federal funds and have possession or control of Native American cultural items are considered museums and fall under NAGPRA. The Alameda County Sheriff's Office receives Federal funds and is in possession of Native American cultural items, and therefore would be considered a museum under NAGPRA. Mr. Bailey asked if there was an adjudicated area for a tribe that would cover that area in Alameda County. Mr. McKeown stated that while the site is within an adjudicated area, the group was identified as The Indians of California, which was a list of individuals not a tribal entity. Mr. Bailey stated that a great deal of thanks is owed to the Alameda County Coroner's Office for going to such an extent to see that this is done properly.

Mr. McKeown asked if Mr. Bowers could introduce the people present on teleconference. Mr. Bowers introduced Lieutenant Jason Arone, Unit Commander of the Coroner's Office; Captain Kevin Hart, overseer of the Coroner's Office; Ms. LaDonna Harris, Division Commander; and Ms. Donna Ziegler, Alameda County Counsel. Mr. Kippen asked if the whereabouts of the artifacts found with the human remains was also unknown. Mr. Bowers stated that the whereabouts of the artifacts was also unknown. Ms. Ziegler stated that the Alameda County Sheriff's Office would like the Review Committee to consider a finding that there is no obligation to repatriate if no Federal tribe is identified and the Alameda County Sheriff's Department may dispose of the human remains pursuant to obligations under state law with no further impact of NAGPRA, or in the alternative that the Review Committee issue a finding that the Alameda County Sheriff's Office's efforts are sufficient and to the extent there was a determination that Mr. Galvin would be an appropriate place to turn over the remains that all obligations under NAGPRA have been met.

Mr. Halvarson asked, independent of NAGPRA, how the Alameda County Coroner's Office would deal with the two skulls under California state law. Mr. Bowers stated that if the human remains were determined to be Native American, the Native American Heritage Commission would step in and appoint someone like Mr. Galvin to act. Any human remains that were not determined to be Native American and could not be identified would be cremated and interred in the county cemetery. Mr. McKeown stated that at the March teleconference representatives of the California Indian Heritage Commission stated that the law regarding most likely descendants may not apply due to the date of discovery of the human remains. Mr. Bowers stated that he understood that the California Indian Heritage Commission did not have jurisdiction because the human remains were unearthed significantly before the establishment of the commission. Ms. Worl thanked the participants and stated that the Review Committee would consider and act on this matter the following day. The parties would be notified by Mr. McKeown.

### **Review Committee Recommendation**

Mr. Halvarson outlined the options available to the Review Committee in dealing with this request. The first option, to follow the recommendation of the Alameda County Sheriff's Department for disposition to a named individual under a provision of California law is actually not applicable. The law does not apply in this case because the human remains were excavated before the statute was enacted. The second option is that the human remains could be disposed of pursuant to standing procedures in the county. The standard procedure calls for cremation and burial in the county crypt, which is not an option as the human remains have been identified as

Native American. The third option would be to follow the Review Committee's original recommendation and require unanimous consent of all group that the Alameda County Coroner's Office has indicated might be an interested party with the human remains. Alameda County indicated by letter September 29, 2006 that they were unsuccessful in obtaining consensus on this repatriation, so this option would present a logistical challenge. The final option would entail soliciting the State's views and position as to how it would handle these sets of human remains under its state processes absent any Federal involvement. The state has a relationship with the Indigenous groups and would be in a better position to determine how to properly handle these human remains based on their government-to-government relationship. The Review Committee could adopt a recommendation where they acknowledge that the state process is likely the best course of action and essentially defer to that process. The Department of Interior would simultaneously request the views of the state as to how it would handle disposition of these human remains under state law. The Department of the Interior would independently review it and adopt it pursuant to its obligations under the Administrative Procedure Act, to ensure that whatever state process was in place does not disenfranchise someone who would have rights under Federal NAGPRA.

### **Review Committee Motion**

After discussion, Mr. Monroe made a motion to make the following recommendation, the Review Committee solicits the view of the state as to how the State of California would handle the disposition of the culturally unidentifiable human remains under its state laws and to offer its recommendation to the Secretary of the Interior for action. The Review Committee notes that this action should not set precedent for future cases. Mr. Kippen seconded the motion. Mr. Jones stated it was important that every attempt be made to reunite the human remains. Mr. McKeown stated the process may be faster if the Department of the Interior asked the State of California for the information, rather than the Review Committee. Mr. Monroe made a motion to amend the motion with the language as outlined by Mr. McKeown. No objections to the motion were noted. Mr. McKeown asked if the Review Committee would want to include language that this issue does not need to come back to the Review Committee. No objections to this proposal were noted. Mr. Kippen called for the question. The motion as amended was adopted by a unanimous vote.

## **Disposition of Culturally Unidentifiable Human Remains in the Possession of the Colorado Historical Society**

### **Presentation of Issue**

Mr. Manuel Heart, Chairman of the Ute Mountain Ute Tribe, thanked the Review Committee for the opportunity to speak and stated that he was speaking on behalf of the Ute Mountain Ute Tribe. Mr. Heart gave a traditional greeting. Mr. Heart stated that the consultation process for the protocol was in three different regions of Colorado (eastern, southwest, and western) and involved 47 Indian tribes. Of the 47, 27 attended consultation meetings and 33 have submitted letters of support. The Southern Ute Indian Tribe and the Ute Mountain Ute Tribe are the only two federally recognized tribes in the state of Colorado, although before state boundaries were established 47 tribes occupied the different areas of the state of Colorado. The Southern Ute Indian Tribe and the Ute Mountain Ute Tribe have a very good relationship, working on challenges facing the tribes including the issue of human remains found in Colorado. The first human remains were found in 1981. The Utes wanted to have a voice in the process, following NAGPRA but also creating a process within the state. Mr. Heart stated that the protocol was tribally driven and involved an extensive consultation process. The tribes are working to create protocol that meets or exceeds all Federal laws. Colorado is one of the fastest growing states in the Union. The tribes are working to reduce the turnaround time from discovery to repatriation, which has been shortened from 365 days to 75 days. The tribes who support this protocol limit study to affiliation only, so tribes in the appropriate region of the state can help and provide support to the Ute tribes, who will take the lead role. Mr. Heart stated that this protocol will set a benchmark that other tribes and other states will look to as a model.

Mr. Monte Mills, Director of the Legal Department for the Southern Ute Indian Tribe, stated he was asked by Chairman Clement Frost to appear as an official representative of the Southern Ute Indian Tribe.

Mr. Matthew Box, Vice Chairman of the Southern Ute Indian Tribe, stated he was honored to present comments on behalf of Chairman Frost and the Southern Ute Indian Tribe. Chairman Frost has been involved in the consultation process with tribes that migrated or stayed in Colorado, and it is Chairman Frost's and the tribe's priority to commit

to working with the tribes to return the ancestors to Mother Earth. The Southern Ute Indian Tribe asks for the support of other tribes in recognizing the importance and the accomplishment of shorting the process from over 300 days down to 75. Mr. Box personally thanked the people involved and committed to the process of developing the protocols and the Review Committee for time at the meeting to speak.

Mr. Terry Knight stated he has been involved in repatriation issues since 1978, working to return the ancestors to Mother Earth. NAGPRA has helped, but the tribes wanted to establish a protocol that would enable the state to handle the issue within their own jurisdiction and authority. The protocol that has been developed will enable the tribes to reinter the unidentified human remains within the three regions of Colorado. Mr. Knight stated that he was the ranking leader for all ceremonies for the Ute people, which may be because according to the relationships of his mother and father, Mr. Knight is related to someone within all seven bands of the Ute. Mr. Knight feels he can speak with some authority in working with this to get the human remains back into Mother Earth. Mr. Knight thanked the Review Committee for allowing the time and opportunity to discuss this issue.

Ms. Bridget Ambler, Curator of Material Culture at the Colorado Historical Society, stated she was responsible for NAGPRA oversight at the Colorado Historical Society. Ms. Ambler stated she was honored to be before the members of the Review Committee and among friends and colleagues. Ms. Ambler described the protocol project, funded through a National NAGPRA Grants to Museums grant. In 1997, Mr. Knight expressed concern to the Colorado Lieutenant Governor regarding the delay in repatriation for Native American remains and associated funerary objects removed from state and private lands in Colorado. Since that time, the Ute Mountain Ute Tribe and the Southern Ute Indian Tribe have been dedicated to developing a process to expedite such repatriations. The tribes explored legislative and administrative remedies to the issue, but ultimately partnered with the Colorado Historical Society and the Colorado Commission of Indian Affairs to identify a repatriation process that would work under both state law and NAGPRA. At the tribes' request, the Colorado Commission of Indian Affairs and the Colorado Historical Society prepared a NAGPRA grant application and the Colorado Historical Society agreed to administer the grant. Currently the Colorado Historical Society repatriates culturally identifiable Native American human remains and associated funerary objects from state and private lands according to NAGPRA Section 10.9 and 10.10. Since 1990, the Colorado Historical Society has repatriated 642 Native American individuals and 1,831 associated funerary objects. Since provisions for repatriating culturally unidentifiable human remains have yet to be promulgated, these groups look to the NAGPRA Review Committee's recommendations regarding the disposition of culturally unidentifiable human remains to develop a statewide process based on consultations among the Colorado Commission of Indian Affairs, the Colorado Historical Society, the Southern Ute Indian Tribe, the Ute Mountain Ute Tribe, and 45 other tribes with ancestral ties to Colorado. According to the draft NAGPRA Review Committee recommendations, tribes were consulted on a regional basis to develop the repatriation protocol being discussed at the meeting. Ms. Ambler thanked the Review Committee for allowing the parties to present the protocol.

Ms. Susan Collins, Colorado State Archaeologist and Deputy State Historic Preservation Officer, stated that this joint presentation is a culmination of a grant-supported project to implement NAGPRA in a manner that meets the expectation of tribes with an interest in Colorado. The protocol fulfills the goal to articulate procedures to follow when human remains and associated funerary objects inadvertently discovered on state and private lands come under the jurisdiction and control of the State Historical Society. As noted by Chairman Heart, two federally recognized Indian tribes and 45 additional tribes recognize a legacy in the state of Colorado. This project worked toward building intertribal collaboration in order to develop a protocol to present to the Review Committee for recommendations on disposition in accordance with Section 8(c)(5) of NAGPRA. The Office of the State Archaeologist and the Colorado Commission of Indian Affairs have a 25-year history of cooperative management of ancient burial discoveries. This relationship was formalized in state law in 1990, a few months before the passage of NAGPRA. Colorado state law stipulates consultation between the Office of the State Archaeologist and the Colorado Commission on Indian Affairs to determine how burial discoveries are managed, including in situ preservation if possible and controlled excavation when necessary. Basic scientific description and reinterment are both envisioned in state law. Since the procedures became codified in 1990, challenges have arisen regarding minimal communications with out-of-state tribes, the inability to reinter culturally unidentifiable human remains while achieving compliance with NAGPRA, and perceived delays due to reporting requirements. The negotiated protocol addresses these issues, updating procedures within the parameters of existing law. During the extensive consultations funded by the grant, many tribes expressed their preferences regarding consultation and collaboration. The protocol specifies certain changes, including improved notification of tribes at the time of burial discovery and

shortening the time frame for study. The parties agreed that there will be no destructive analysis on either human remains or associated funerary objects. No photographs will be taken or included in reports, a request that has been passed along to state-permitted archaeologists. Ms. Collins stated that as State Archaeologist she looks forward to implementing this protocol and continuing to earn the trust of all communities involved in this important work.

Mr. Earnest House, Jr., Executive Secretary for the Colorado Commission of Indian Affairs, stated he is also representing Lieutenant Governor Jane Norton, who was unable to attend the meeting and sends her regrets. The Colorado Commission of Indian Affairs was enacted by Colorado legislation in 1976 and is the official state liaison between the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe. The Colorado Commission of Indian Affairs works with the two tribes in many areas of state government and continues to maintain a close government-to-government relationship. The Colorado Commission of Indian Affairs has 11 statutory responsibilities mandated by Colorado statute in many areas that affect American Indian citizens in Colorado today. The Colorado Commission of Indian Affairs is present at the meeting as a partner with the Colorado Historical Society, the Southern Ute Indian Tribe, and the Ute Mountain Ute Tribe to coordinate intergovernmental dealings between tribal governments and the state, as well as cooperating with local, state and Federal governments in formulating and coordinating programs regarding Indian affairs. The Colorado Commission of Indian Affairs and the Colorado Historical Society entered into a Memorandum of Understanding in 1999 to petition a formal request of the National NAGPRA Review Committee for their approval of a process for reinterment of unidentified and culturally unaffiliated human remains and associated funerary objects. Since then, both agencies have worked side by side in providing further awareness to the public regarding the proper protocol upon discovering human remains in the state of Colorado. The Colorado Commission of Indian Affairs has served as an official host and state liaison position for the past three regional consultations that were held. In keeping with the Review Committee's recommendations, the state was divided into three regions (the Plains, the Southwest, and the Basin and Plateau), a map of which was provided to the Review Committee. Of the 47 tribes that were invited, 29 were able to send representatives to one or more of the consultations. NPS grant monies provided for travel and accommodation support for the representatives, as well as hiring a facilitator for each consultation. The Colorado Commission of Indian Affairs was involved throughout the protocol process in areas of notifying tribes of discoveries, being part of the decision-making process with the State Archaeologist and the Ute tribes, as well as working with the Ute tribes throughout the process. The Colorado Commission of Indian Affairs is honored to be a partner in this process. On behalf of Lieutenant Governor Jane Norton, the Colorado Commission of Indian Affairs and the State of Colorado, Mr. House, Jr., thanked the Review Committee for considering this process to address a much needed and sensitive issue in Colorado.

Ms. Heather Ahlstrom, NAGPRA Liaison for the Colorado Historical Society, thanked the Review Committee for the opportunity to speak and stated she was honored to present this protocol which is the culmination of the hard work of many people. Ms. Ahlstrom stated she joined the process very recently and was impressed by the dedication of all involved. She acknowledged her predecessor Mr. Richard Wilshusen, who began this process and organized the three regional consultations. The consultations were very productive and directly led to the development of the protocol, which fulfills two primary objectives of shortening the time frame for the repatriation of inadvertently discovered Native American human remains and associated funerary objects and makes possible the repatriation of culturally unidentifiable Native American human remains and associated funerary objects. Three ideas emerged as points of agreement among all tribal representatives: the first preference for any discovery of Native American human remains and associated funerary objects is to leave them in situ or reburial as close as possible, determinations of cultural affiliation for any disinterred remains and associated funerary objects will be nondestructive, and for any culturally unidentifiable Native American human remains and any associated funerary objects found on Colorado state and private lands, the Southern Ute Indian Tribe and Ute Mountain Ute Tribe shall be the lead tribes in all repatriations, transfers, and reburials. The protocol clarifies the responsibilities of the Colorado Commission of Indian Affairs, the Colorado Historical Society, and the Ute tribes for handling inadvertent discoveries. Under the protocol, the State Archaeologist, the Executive Secretary of the Colorado Commission of Indian Affairs, and representatives from the Ute tribes must develop by consensus a plan of action for human remains that cannot be left in situ. In addition, at the time of discovery, consulting Indian tribes within the region will be notified by the Colorado Commission of Indian Affairs. In letters of participation the consulting tribes have indicated for which region or regions they would like to be notified of discoveries. Prior to publication in the Federal Register the Colorado Historical Society will consult with Indian tribes according to their regional preferences. Tribes have also indicated their preferences regarding invitation to reburials, and the Colorado Historical Society has committed to contacting the consulting tribes annually to update their contact information.

Upon repatriation, the Ute tribes have agreed to act as the lead tribes for all repatriations and transfers of culturally unidentifiable remains and associated funerary objects and will invite consulting tribes who have expressed a preference to be invited.

Ms. Ahlstrom stated the Review Committee members have a copy of the protocol signed by Chairman Clement Frost of the Southern Ute Indian Tribe, Chairman Manual Heart of the Ute Mountain Ute Tribe, Ms. Jane Norton, Lieutenant Governor of the State of Colorado, and Ms. Georgianna Cuntiguglia, President, CEO, and State Historic Preservation Officer for the Colorado Historical Society. The following consulting Indian tribes submitted a letter of participation in support of the protocol: the Cheyenne and Arapaho Tribes of Oklahoma, the Comanche Nation of Oklahoma, the Crow Creek Sioux Tribe, the Crow Nation, the Fort Sill Apache Tribe, the Mescalero Apache Tribe, Nambe Pueblo, the Navajo Nation, Ohkay Owingeh or San Juan Pueblo, the Northern Arapaho Tribe of the Wind River Reservation, the Northern Cheyenne Tribe, the Oglala Sioux Tribe, the Paiute Indian Tribe of Utah, the Pawnee Nation of Oklahoma, Picuris Pueblo, the Pueblo of Cochiti, the Pueblo of Acoma, the Pueblo of Isleta, the Pueblo of Laguna, the Pueblo of Jemez, the Pueblo of Pojoaque, the Pueblo of Sandia, the Pueblo of Santa Ana, the Pueblo of Zia, the Rosebud Sioux Tribe, the Santa Clara Pueblo, the Shoshone Tribe Eastern Band, the Standing Rock Sioux Tribe, the Hopi Tribe, the Three Affiliated Tribes, the Ute Indian Tribe of the Uintah-Ouray Reservation, and the Ysleta del Sur Pueblo. Ms. Ahlstrom stated that one tribe expressed concerns regarding some provisions in the protocol, but subsequently the tribe submitted a letter of support. Ms. Ahlstrom acknowledged the speed in which the tribes responded in order to present the protocol to the Review Committee.

### **Review Committee Questions**

Mr. Jones stated that the number of tribes signing the protocol was awesome. Mr. Steponaitis asked for a summary of numbers in tribal consultation and letters of support. Ms. Ahlstrom stated that 47 tribes were invited to the consultation, including the two Ute tribes. Of the 47 tribes, 29 sent representatives to one or more consultation meetings and 33 sent letters of support. Mr. Steponaitis asked of the 14 tribes who have not submitted a letter of support, if any expressed objections. Ms. Ahlstrom stated that the tribes had a very short time period to submit the letter of support, and some tribes are in election season and experiencing changes in government. Ms. Ambler stated that there has been no written or verbal response from some of the tribes, either in invitation to the consultations or regarding the protocol. Mr. Steponaitis asked about CRS 24-80-401, legislation referenced in the protocol information. Ms. Collins stated that the statute handout provided to the Review Committee is actually two existing laws. 24-80-401 is a 1973 Act that created the Office of the State Archaeologist and the permit system, and attached to that is the 1990 Act, which defines unmarked human graves and the process to be followed in the state of Colorado. In case of conflict between the two, the 1990 Act shall control. Mr. Steponaitis asked if the protocol was consistent with or significantly different from the existing state law. Ms. Collins stated the protocol was consonant with state law. Mr. Steponaitis asked what would happen if the state process conflicts with either the proposed rule or final rule of 10.11, Disposition of culturally unidentifiable human remains. Mr. Knight stated that the tribal groups have tried everything to help deal with culturally unidentifiable human remains found on state and private lands, not covered by NAGPRA which covers Federal lands. So the protocol was developed. Mr. Mills stated that the protocol was reviewed for compliance with state law. If the Federal regulations are finalized that cause concern or issues, the tribes would be willing to revisit the issue because from the tribe's perspective the goal all along has been compliance with NAGPRA.

Mr. Steponaitis asked if the protocol would cover existing collections. Ms. Ambler stated that the protocol does not cover new collections. However, after the period of study allowed under the state permit has expired, culturally unidentifiable human remains and associated funerary objects are considered a new acquisition under Section 10.9 and 10.10 of the regulations and NAGPRA is then followed. Mr. Steponaitis stated that although he was glad to see that the protocol does contain forensic identification and analysis, the protocol does not seem to contain any wiggle room to allow for more extensive forensic analysis in cases where identification is important. Mr. Steponaitis stated one last observation that the absence of photographs is an issue. The photographs do not have to be public, but in the future having that information on hand may be helpful. Mr. Heart stated that to Native people photographs take from who they are, like taking a piece of your body, mind, or soul and putting it away in a different area. Regardless of how long ago a person passed away, they deserve respect in the traditional ways. Mr. Knight stated that although the human remains may be culturally unidentified, within the regional concept they are culturally affiliated. If they are identified to a regional level, there is no reason to do further analysis and the tribes agreed that they do not want that. Ms. Collins stated she appreciated Mr. Steponaitis's concerns and reiterated that the protocol culminates from tribal consultation and these were points of compromise to which all agreed.

Mr. Monroe asked, in the absence of Federal law, what if anything precludes the parties from moving forward with this protocol. Ms. Mattix stated that if NAGPRA or other Federal law does not speak directly to the protocol, then they can move forward. The problem is the complexity with the nexus between state and Federal law. According to the state's statutes, the state assumes possession or control of the items after they are inadvertently discovered and brought into the custody of the state, which transforms them into the Section 7 category of NAGPRA. Mr. McKeown stated that if an institution has culturally unidentifiable human remains in their possession or control, they are precluded from disposition, absent a determination from a court of competent jurisdiction or a recommendation from the Secretary of the Interior. These issues have been brought to the Review Committee as an advisory body to consider them initially, and ultimately recommendations come from the Secretary of the DOI. Ms. Mattix stated that only one section of the protocol appears to fall completely outside of NAGPRA, and that is the inclusion of associated funerary objects with inadvertently discovered human remains from private lands. Mr. Halvarson stated inconsistencies with future regulations would be considered by the Federal agency during the rulemaking period.

Ms. Worl asked if the 14 tribes that have not responded are federally recognized and asked whether the protocol would move forward with the 33 tribes that have submitted letters of support. Ms. Ambler stated that the protocol is written so that the parties can move forward if the Review Committee issues a recommendation. Ms. Worl stated she would not make decisions for federally recognized tribes. Mr. Bailey stated that Federal recognition was not as important as knowing whether any of the 14 tribes had an adjudicated area within the state of Colorado. Ms. Ambler stated that none of the 14 tribes had an adjudicated area within Colorado, and in addition, the protocol process is an open process that invites tribes to either change their consultation wishes or for additional tribes to join the protocol process in the future. Mr. Bailey stated that in trying to be as broad as possible to include all potentially interested tribes, groups may be included that really have no emotional ties to Colorado. Mr. Knight agreed and stated that some of the tribes on the list really just passed through Colorado briefly, and while the tribes may be concerned about the issue they have not responded to the protocol. Mr. Monroe asked how many communications were attempted with the 14 tribes. Ms. Ahlstrom stated that each tribe was invited to each of the three consultations. In soliciting the letters of support, certified mail was sent to the chairman of each of the 47 tribes, with copies sent by mail to the NAGPRA representative, faxes were sent to both the chairman and NAGPRA representative of each tribe, email was sent to all known email addresses, as well as phone calls. Mr. Bailey stated that if the tribes felt a compelling need to be part of the protocol process they would have responded. Mr. Bailey asked upon discovery what is the primary non-intrusive criteria for determining the age of skeletal remains. Ms. Collins stated that the primary method is archaeological, looking at the context of the discovery, in addition to relying on the coroner who made the initial site visit. Mr. Bailey stated that if he wanted to commit a murder in the state of Colorado, he would bury the skeleton with a few artifacts and hopefully they would be discovered 10 or 20 years in the future. Ms. Collins stated that Mr. Bailey just described her worst nightmare. Mr. Bailey stated he was just pointing out the importance of the initial investigation and the archaeologist's initial determination. Mr. Steponaitis asked for a list of the 14 tribes that have not responded. Ms. Ahlstrom stated that the Colorado Historical Society would compile the list and provide it to the Review Committee the following day.

Mr. Kippen asked if the parties are requesting the Review Committee to bless the protocol process with the hope that it would go to the Secretary and ultimately fill the potential gap that exists in NAGPRA law, specifically relating to Section 7, for human remains that were inadvertently discovered and come under the control of the state under state law. Mr. Knight stated that was precisely the issue. The tribes are trying to deal with a state issue and ultimately get the people back in the ground. Mr. McKeown stated that this issue is in some ways similar to the Alameda County issue, as human remains that come into the control of an institution that receives Federal funds. Because they are culturally unidentifiable, the institution is precluded from disposition. Mr. Jones asked who initiated the protocol and for a further description of how the NAGPRA grant funds were used. Mr. Heart stated that the protocol was tribally driven, in partnership with the Colorado Commission of Indian Affairs and the Colorado Historical Society. Ms. Ambler stated that the grants received from the National NAGPRA Grants Program were used almost exclusively to fund travel for the regional consultations for tribal delegates and some staff travel. In the past, the Colorado Historical Society received grant funds to fund the NAGPRA liaison staff position, but two years ago successfully petitioned the state legislature to fund a permanent staff position. Ms. Hutt stated that the Review Committee members had copies of the grant information in their binders. Ms. Worl thanked the Colorado delegation for being at the meeting and stated that other states and tribes could use the protocol as a model.

The second day of the meeting, Ms. Ambler and Ms. Ahlstrom provided the information requested by Mr. Steponaitis. Of the 47 Indian tribes that were invited to consultations, 29 were able to attend. Out of those 29, 23 have sent in a letter

of participation. Of the 47 tribes that were invited to consultations, 18 were not able to attend. Out of those 18, 10 have sent in letters of participation. Mr. Steponaitis stated he thought when he received a copy of the draft protocol ahead of the meeting that the Review Committee was being asked to comment, but when he received a copy of the final, signed protocol at the meeting he was unclear what the Review Committee was being asked to do. Ms. Ambler stated that the Review Committee was sent a copy of the draft protocol to give the members a chance to review the protocol ahead of the meeting. A copy of the final protocol, with all signatures to date, was provided at the meeting to give the Review Committee the most recent version for their consideration. Mr. Mills stated that at least from the Southern Ute Tribe's perspective this was the protocol that was developed through the consultation process. If the Review Committee had comments or improvements to the protocol, the Southern Ute Tribe would certainly consider and also probably notify the tribes that have been involved in the consultation. Mr. Steponaitis referenced the letter from the Pueblo of Laguna and stated that they supported one part of the protocol and by omission appear to not support the other parts. Ms. Ambler agreed that in the letter the Pueblo of Laguna did reference one part of the protocol and did not appear to reference the other provisions of the protocol. Mr. Bailey stated that the Kiowa Tribe attended a consultation, has an adjudicated area within Colorado, but did not submit a letter. Mr. Bailey stated that the Kiowa Tribe of Oklahoma, the Apache Tribe of Oklahoma, and the Jicarilla Apache Tribe need to be included due to having adjudicated lands in Colorado. Mr. Mills stated that from the Southern Ute Tribe's perspective the protocol was always envisioned as a way not to foreclose claims by Indian tribes who may want to be involved. The protocol process allows opportunity for tribal participation. Although the protocol has gone through consultation, it is a living document. Tribes can opt in and opt out, still submit letters of support or submit issues. Mr. Bailey stated it was important to protect the interests of Kiowa Tribe of Oklahoma, the Jicarilla Apache Tribe, and the Apache Tribe of Oklahoma. Ms. Ambler stated that according to the protocol of NAGPRA all 47 tribes would be consulted on a case-by-case basis.

Mr. Steponaitis stated that he had some concerns about the protocol, similar to Mr. Bailey's concerns to ensure all interested tribes are included fully in the process, specifically the Jicarilla Apache. Mr. Steponaitis stated he was also concerned about the protocol's lack of a provision to allow for unusual circumstances. Mr. Monroe stated that he appreciated Mr. Steponaitis's concerns but the protocol has provisions to ensure the involvement and consultation with the Jicarilla Apache and any other group that wishes to be involved. Mr. Monroe stated that, given the tremendous amount of effort and the large number of groups involved, he would endorse and support the request that the protocol go forward. Ms. Worl stated she was concerned about the 14 tribes that have not submitted a letter of support, and would like to approve the protocol contingent upon the approval of the 14 tribes. Mr. Bailey stated he did not think a response was necessary from the 11 tribes who did not have a significant historic presence in Colorado, but he did think a response was necessary from the Kiowa Tribe of Oklahoma, the Jicarilla Apache Tribe, and the Apache Tribe of Oklahoma, who did have a significant historic presence. Ms. Augustine stated that the amount of effort that the Colorado Historical Society and the Colorado Commission of Indian Affairs underwent to include all of the affected Indian tribes shows an enormous amount of respect. Mr. Monroe stated he agreed with Mr. Bailey's comments and would support the protocol with the inclusion of Mr. Bailey's suggestion regarding the three tribes.

Ms. Augustine stated she was concerned about the ancestors remaining out of the ground and suggested that when contacting the remaining tribes for a response to mention the ancestors and how they are waiting to be reburied they could be offered tobacco. Ms. Augustine described a site she went to in Tennessee after being called by the ancestors. When she arrived she found the people there in conflict, disagreeing over long-time hurts. Ms. Augustine stated she went to each one of them and invited them to an ancestors' feast, stating if they were really concerned about the ancestors they need to put aside past differences and come together just this once. At the end of the feast, they were all hugging and crying and it was a very positive outcome. Ms. Augustine stated that the protocol was a good model and commended those working together on this project. Ms. Augustine stated that the prophesy of the white buffalo was that when the white buffalo was born on Turtle Island, meaning North America, it would represent a time when the four races would come together to forgive each other and unite, which she sees happening.

### **Review Committee Action**

After discussion, the Review Committee developed the following language: The Review Committee offers its approval of the protocol as developed by the Colorado Historical Society, the Colorado Commission of Indian Affairs, and the 33 tribes for consultation and the disposition of culturally unidentifiable Native American human remains and associated funerary objects removed from the state and private lands in Colorado and that they continue

to communicate with the 11 tribes who have not responded to previous communications and obtain a response from the 3 groups which have a historical presence in Colorado, including the Kiowa Tribe of Oklahoma, the Jicarilla Apache Tribe, and the Apache Tribe of Oklahoma, and further that the protocols be developed to take into consideration those circumstances in which NAGPRA interests may occur, and that the Review Committee further recommends that the protocols include a mechanism to allow for deviation from standard procedures in unusual circumstances.

### **Review Committee Motion**

Following that discussion, Mr. Kippen moved that language as approved by the Review Committee as a formal motion. Mr. Monroe seconded the motion. Mr. Kippen called for the question. The motion was adopted by a unanimous vote.

Mr. McKeown stated that this would go as a letter from the Department of the Interior and would contain language similar to that in the Iowa issue on culturally unidentifiable human remains. The first provision would read, "We understand the analysis proposed in step 2(D)(2) of the process will meet the inventory requirements of 43 CFR 10.9. The second provision would read, "Secondly, we understand that the repatriation of Native American human remains and associated funerary objects to lineal descendants and culturally affiliated Indian tribes under step 3 of the protocol will be done in accordance with the repatriation procedures of 43 CFR 10.10 (b)." The proposed process is limited to Native American human remains and associated funerary objects coming in the possession or control of the state of Colorado, even if they come off of state land.

### **Discussion of the Concept of Compromise of Claim and Waiver of Right of Possession**

Mr. McKeown stated this discussion was requested by the Review Committee members at the Juneau, AK meeting. Included in the meeting binder was a spreadsheet showing the number of Federal Register notices that were published indicating either the use of the compromise of claim terminology or where the institution asserted right of possession and then waived that right. Following the spreadsheet are copies of all of the notices. The Review Committee also asked four questions, which were answered in an October 26, 2006 memorandum from Ms. Mattix.

Ms. Mattix stated that right of possession is defined at 25 U.S.C. 3001 as possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object, or object of cultural patrimony from a tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in Section 7(c), result in a Fifth Amendment taking by the United States as determined by the United States Claims Court pursuant to 28 U.S.C. 1491, in which event the right of possession shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects, which were excavated, exhumed or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization as deemed to give right of possession to those remains. Section 7, the standard of repatriation, states if a known lineal descendent or Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony pursuant to this Act and presents evidence which if standing alone before the introduction of evidence to the contrary would support a finding that the Federal agency or museum did not have right of possession then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects. Ms. Mattix stated that the final section of the Act that refers to right of possession is in the trafficking provision of the Act, which is not relevant to this discussion.

Ms. Mattix then addressed the four questions posed by the Review Committee at the Juneau, AK meeting.

1. Is it possible for a museum to have right of possession of a sacred object? Ms. Mattix stated the short answer to that question is yes. Sacred objects are defined as specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Inalienability is not an inherent element of the statutory definition of sacred objects, and therefore the Act does not preclude a museum from having right of possession of a sacred object.

2. Is it possible for a museum to have right of possession to an object of cultural patrimony? Ms. Mattix stated that again the short answer to that question is yes, however it is slightly more complicated than the sacred object situation. Cultural patrimony is defined as an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American and which therefore cannot be alienated, appropriated, or conveyed by any individual, regardless of whether or not the individual is a member of the tribe and such object shall have been considered inalienable by such Native American group at the time the object was separated from the group. The definition of right of possession suggests that original acquisition of an object of cultural patrimony with the voluntary consent of a group with authority to alienate such object would give right of possession to that object. Whether a group can be said to have the authority to alienate an object of cultural patrimony is not established by NAGPRA. The existence of such authority is likely to be determined under other applicable law, such as tribal, state, or Federal law.
3. Does the statute provide for the attachment of terms or conditions to the repatriation of cultural items, such as compromise of claim and that type of agreement? The Act provides lineal descendants and culturally affiliated Indian tribes and Native Hawaiian organizations with all the rights and attributes associated with property ownership or control of Native American cultural items repatriated pursuant to the provisions of the Act. However, the Act does not prohibit Federal agencies or museums from entering into any other agreement with the consent of the culturally affiliated tribe or organization as to the disposition of or control over items covered by the Act.
4. If the statute does allow for the terms and conditions, under what circumstances would the terms or conditions apply? Since the statute does not allow for terms and conditions, the question was moot.

Ms. Hutt stated that the National NAGPRA Program does not include any side agreements, such as reservation of rights, in the notice as those are outside of NAGPRA, nor does the program preclude museums and tribes from entering into such agreements. Mr. Steponaitis asked for an explanation of compromise of claim. Ms. Mattix stated compromise of claim was not defined in NAGPRA but the term has developed out of practice between museums and tribes; when a museum believes it has right of possession but does a repatriation subject to terms and conditions that recognize the claim but limit what the Indian tribe can do with the items afterwards. Mr. Halvarson stated it is similar to a settlement agreement. Mr. Steponaitis asked if compromise of claim implies a side agreement. Ms. Hutt stated that programmatically no notices are accepted with side language, and in addition repatriation grants request the submission of a letter that indicates control has passed from the museum to the tribe before the release of funds. Mr. Steponaitis asked if the programmatic policy was a change in policy as some notices in the spreadsheet contained a compromise of claim. Ms. Hutt stated she cannot speak to earlier grants, but repatriation grants are only funded upon receipt of the letter. Ms. Mattix stated that although the compromise of claim was mentioned in notices it was still outside of the NAGPRA process, and the National NAGPRA Program and the DOI did not bless the agreements. Mr. Halvarson stated that the government was not a party to these agreements and does not want to interject itself into the private dealings of individuals outside of the Federal government. Mr. Steponaitis stated that based on the current discussion, it would be useful information to include. Mr. Monroe stated that if a grant is involved the museum must demonstrate or affirm that they have transferred full control without any conditions attached. Mr. Monroe asked if a grant was not involved would language be included in the notice to indicate that there has been a full transfer of control. Ms. Hutt stated that the notice indicates cultural affiliation and the group with shared group identity, and establishes the rights of the group to obtain the item. There is a 30-day waiting period to accommodate completing claims. However, the National NAGPRA Program is done when the notice is published. The regulations and the law do not provide for any further Federal processes or oversight. Mr. Monroe stated that there is no requirement on the part of the parties to a repatriation agreement to accept restrictions or conditions on the transfer if they wish not to accept. Ms. Hutt stated that the law does not contemplate transfer with conditions so those agreements would be outside of the law.

### **Discussion of the Decision in Fallon Paiute-Shoshone Tribe V. U.S. Bureau of Land Management**

Mr. Toby Halvarson summarized the Fallon Paiute-Shoshone Tribe v. U.S. Bureau of Land Management (BLM) case. In the 1940s a burial containing human remains and artifacts was unearthed during an excavation on BLM land near Fallon, NV. The items were retained by the BLM. After the passage of NAGPRA in 1990, the BLM completed the summary and inventory process pursuant to the Act. The BLM determined that the human remains were Native American but could not reach a decision as to affiliation with a present-day Indian tribe. The Fallon Paiute-Shoshone Tribe approached the BLM in the 1990s to work out the affiliation question. The issue was referred to the Review Committee on two separate occasions, subsequent to which the Review Committee issued a recommendation. Shortly after that, the BLM

issued determinations. The Fallon Paiute-Shoshone Tribe was unhappy with BLM's actions and filed suit in the District Court of Nevada to review BLM's conduct in the case. Mr. Halvarson stated the case has been remanded to the BLM for further action and is still not complete, so certain details cannot be discussed.

On page 7 of the Court's decision, the Court outlines what is required when a court determines whether or not an agency's decision is final such that a court could review it. The two factors are, one, the action marks the consummation of the agency's decision-making process, and two, the agency action is taken as one by which the rights or obligations have been determined or from which legal consequences will flow. On page 9, the Court made the following finding. "Considering these facts, it must be said that BLM made a final determination in this case. This decision cannot be characterized as temporary or interlocutory in nature because all relevant evidence has been considered and every interested party has had a chance to present their arguments." Mr. Halvarson stated it was important to know when outside entities have a right to seek redress in the courts for actions by the agency. Absent a determination of finality, it is possible that aggrieved parties under NAGPRA would not get a chance to have their day in court. On page 19, the Court discusses the Review Committee, making a few determinations about the Review Committee's findings and whether or not they're binding, and in addition the Court found that nothing in the statute or the regulations surrounding the Review Committee required physical presence in order for the proceedings to be valid.

An important point on page 20 is that an adverse Review Committee determination does not in and of itself require an agency to revisit something. "The Court also finds no error in BLM's failure to reconsider its decision purely on the basis of an adverse ruling by the Review Committee. As noted, the Review Committee is an advisory board, although its decisions could be given substantial weight should a dispute reach the courts. There is, however, nothing in the statutes or regulations which compels a government agency to follow the directives of the Review Committee." And a little further, "It's important to note that the Court does not conclude that the Review Committee findings carry no weight or are insignificant in the overall scheme of NAGPRA. As it will be seen below in the Court's discussion, the Review Committee findings are indeed relevant when determining whether a government agency's determination of nonaffiliation is arbitrary or capricious under the APA. However, this value of the Review Committee's findings does not create an independent duty for government agencies to review or amend their filings merely because the Review Committee has disagreed with them." Mr. Halvarson stated that in the absence of new evidence being presented, a disagreement by the Review Committee does not require a Federal agency to reconsider.

On page 22, the Court talks about the actual error BLM made in this case and what BLM should have done in order to have a defensible determination. "In reviewing the post-Review Committee proceedings in this matter, the Court finds that BLM did not fairly and adequately consider the evidence provided by the tribe and the Review Committee's findings. When the matter was returned to BLM it responded by claiming that the committee's findings were merely advisory and not binding. While this statement is no doubt accurate, it avoids the fact that a repatriation request was pending, which necessitated a thorough review of the evidence including the basis for the Review Committee's findings." On page 23, "In this matter there is no cogent explanation why BLM chose to deny the repatriation request. There is no weighing of the competing evidence, nor is there an explanation why the tribe's evidence is not sufficient or the Review Committee's findings are not persuasive. While the Court can understand how the difficult procedural morass that this proceeding became could make it difficult for BLM to properly execute its administrative duties, this failure could not be excused. The committee reviewed all the materials before it, including BLM's submissions, and concluded that the remains were affiliated and should be repatriated to the tribe. The committee then forwarded all of this information to BLM for its consideration. It was then incumbent upon BLM to reconsider its view on affiliation based on the tribe's repatriation request, the findings of the Review Committee, and the evidence provided to BLM by the tribe. While the Court has held that the Review Committee findings are not binding on either the BLM or the Court, the relevant statutes do make those findings relevant and persuasive, necessitating their review upon a request for repatriation. Accordingly, the Court finds that BLM's decision not to repatriate the Spirit Cave Man remains is arbitrary and capricious and must be vacated under the APA." Mr. Halvarson stated that this case does a lot in terms of showing the value of the Review Committee's findings and the value of evidence produced in this type of setting in terms of administrative determinations.

Ms. Worl stated that although the Court made a determination that not all parties are required to be present for findings to be valid, the Review Committee Dispute Resolution Protocol encourages the parties to be present. The procedures are written to ensure that all parties are aware that a dispute will be heard. Ms. Worl stated that the law encourages consultation, which means full engagement of all parties.

## **Administrivia**

### **Chair Pro Tem**

Ms. Worl stated that the membership terms of Mr. Bailey and herself would expire at the end of November 2006. Ms. Worl stated she had been renominated to the Review Committee but the Review Committee needed to elect a chair pro tem in the event that at some point she is unable to serve as chair. Mr. McKeown stated that even after Ms. Worl's term expired, she could continue to serve on the Review Committee and as chair until such time the Secretary of the DOI makes a decision. If Ms. Worl was reappointed to the Review Committee, she could continue to serve as chair uninterrupted.

### **Review Committee Motion**

Mr. Monroe moved that Mr. Kippen serve as chair pro tem. Mr. Bailey seconded the motion. Mr. Monroe called for the question. The motion was adopted with six votes in favor of the motion with Mr. Kippen abstaining from the vote.

### **Upcoming Meetings**

Mr. McKeown stated that as requested by the Review Committee at the Juneau, AK meeting, the National NAGPRA Program attempted to arrange logistics for a Review Committee meeting in Chicago, IL to coincide with the May 2007 American Association of Museums meeting, but was unable to find accommodations at that time. Mr. McKeown suggested that the Review Committee consider holding one of the next two meetings in Washington, DC, both to take advantage of the upcoming changes in government officials with a new Director of the NPS, new Assistant Secretaries, new Secretary of the DOI, and a new Congress, as well as for financial considerations. Mr. McKeown asked if the Review Committee could also consider a second location for FY2007. Mr. McKeown stated that Ms. Hagel prepared a map citing the locations of all meetings to date, which was included as a reference in the Review Committee information.

Following discussion, the Review Committee members agreed to hold the spring 2007 meeting in Washington, DC, and the fall 2007 meeting in Phoenix, AZ. Ms. Worl noted that although money is tight, funds for the Review Committee to meet should not be an issue. The Review Committee has a responsibility and is legally and legislatively mandated to meet. Everything possible needs to be done to ensure that the Review Committee can continue to meet, to include looking for additional funds if necessary.

## **Public Comment**

Ms. Minette Church, President of the Colorado Council of Professional Archaeologists, stated she appreciated the opportunity to speak. The Colorado Council of Professional Archaeologists was not an official party to the protocol but wanted to thank the people who were parties. All interests were well-represented in the consultations and in the protocol. The Colorado Council of Professional Archaeologists supports the protocol, as well as the principle of dialogue. Ms. Bridget Ambler is the President-Elect for the following year and there is a standing position on the board for a Native American member on the Colorado Council of Professional Archaeologists. Mr. Terry Knight has also served on the board. Ms. Church stated that scholarship money was available through the Colorado Council of Professional Archaeologists for Native American high school students interested in doing a season of archaeological work at the Crow Canyon Archaeological Center.

Mr. Fred McGhee, archaeologist and member of the Gulf Coast Indian Confederation in Corpus Christi, TX, stated the Gulf Coast Indian Confederation initiated a NAGPRA complaint against the Texas Department of Transportation (TxDOT) and its archaeological contractor the University of Texas at San Antonio (UTSA) concerning nine sets of Native American human remains uncovered ten years ago and later along an area known as the Cayo del Oso in Corpus Christi, TX. The archaeological site's official designation is 41NU2. The first burial, a female carbon dated to approximately 800 BC, was uncovered in September 1996. The human remains have been stored at a number of places and are currently stored at the Texas Archaeological Research Laboratory in Austin, TX, and are listed as part of Texas Archaeological Research Laboratory's database of culturally unaffiliated human remains. Subsequent sets of human remains have been uncovered from the site over the past ten years, with the most recent find in 2005. The Gulf Coast Indian Confederation has attempted consultation with TxDOT numerous times and by letter in July 2005. In addition, in

the letter the Gulf Coast Indian Confederation explained that they were well known and established in the coastal bend region of Texas, their close proximity to the archaeological site made the group highly suited to deal with the final disposition of the human remains, that NAGPRA allows agencies and museums to consult with nonfederally recognized groups, and that TxDOT had not properly discharged their obligations under 43 CFR 10. TxDOT's response was to treat the Gulf Coast Indian Confederation's inquiries and requests as open letter requests. The current position of the Texas Attorney General's Office regarding NAGPRA is that state agencies are foreclosed from dealing with nonfederally recognized Indian groups. However, TxDOT acknowledged that it has not complied with NAGPRA and has initiated formal NAGPRA consultation with several federally recognized Indian tribes. Indian people face recurring difficulties in the state of Texas, including denial that they are Indian, attempts by agencies to question the Indian-ness of the groups or individuals involved, and rigid legalism by strictly following the letter of NAGPRA while violating its spirit.

The primary purpose in appearing before the Review Committee is to begin the process of educating Texas officials about the legal requirements outlined in NAGPRA. The Gulf Coast Indian Confederation is asking the Review Committee for the following: one, to compel TxDOT to publicly concede that it has chosen only to deal with federally recognized Indian tribes and this is not a Federal requirement; two, to exercise direct oversight over TxDOT's NAGPRA efforts in this case; and three, to fine TxDOT as punishment for its arrogant and condescending treatment of local Indian people. The Gulf Coast Indian Confederation hopes that a clear statement from the Review Committee to Texas officials about what NAGPRA does and does not contain and authorize will hopefully lead to a reconsideration of the Attorney General opinion that currently governs state policy and serve as a first step toward the goal of resolving these and other issues. Mr. McGhee stated that updates on this situation are contained on his Website, [www.flma.org/gcic.html](http://www.flma.org/gcic.html). Mr. McGhee thanked the Review Committee for the opportunity to speak.

Mr. Larry Running Turtle Salazar, Gulf Coast Indian Confederation, stated he is of Apache and Salagee descent. Native Americans in Texas were MIAs because in order to stay in Texas they had to cut their hair, take on a Hispanic surname, and learn the Mexican language, culture, and religion. If Native Americans admitted to their heritage, they were shot or sent to the POW camps, also called Indian reservations. The people in the state of Texas are tired of being in the closet and tired of having their ancestors mistreated. Mr. Running Turtle Salazar stated that they have come for justice.

Review Committee Discussion: Ms. Augustine stated she has heard many times of the need for Native Americans to hide their ancestry and understands their position. Mr. Running Turtle Salazar stated that his birth certificate lists him as a white man, which was very difficult for his mother. Ms. Augustine stated she admired their concern for their ancestral remains and that Native people recognize nonfederally recognized groups. Ms. Worl thanked the parties for their presentation and stated that the Review Committee would take a look at this issue.

Ms. Lorene Willis, Jicarilla Apache Nation, stated the Jicarilla Apache Nation wished to address the protocol presented by the Colorado Historical Society. The Jicarilla Apache Nation participated in the consultation process but did not present a letter of support. Ms. Willis stated that the map provided to the Review Committee shows the land claims made by the Jicarilla Apache Nation, which were not adjudicated due to the Jicarilla Apache relocation prior to the United States claiming New Mexico and Colorado. Ms. Willis stated that Mr. Bryan Vigil would address the Review Committee. Mr. Vigil is an officer on the Jicarilla Apache Nation Culture Committee, which has the responsibility to deal with NAGPRA issues, and is a ceremonial person. Ms. Willis stated that one concern the Jicarilla Apache Nation had with the protocol was that they were included in the Southwest consultation group and wanted to be included in the Plains consultation group. The Jicarilla Apache Nation feels the way the protocol are written that the Ute tribes will be the lead on unidentifiable human remains and the Jicarilla Apache Nation wanted to be part of that process. Ms. Willis stated that no disrespect for the Ute tribes or the process was meant. The Jicarilla Apache Nation was just stating their concerns and hoped the Review Committee would take them into consideration.

Mr. Bryan Vigil, Jicarilla Apache Nation, stated that the Jicarilla Apache Nation recently lost a number of Elders from the Elders Committee. Mr. Vigil stated that the Jicarilla Apache Nation does not discuss the people who are gone, but his uncle wanted the Review Committee to know. Mr. Vigil stated that he belongs to a clan called the Sand People, which originated in the San Luis Valley. Mr. Vigil described the Jicarilla Apache Nation's geographic origins and sacred sites, including sacred sites where the sacred Crown Dancers were put aside in order to protect them from getting in the wrong hands. Mr. Vigil stated that his teaching started at age 14, when his father showed him one of the sacred sites, and he is now age 55. There are interrelationships between the Ute and the Apache, and Mr. Vigil stated that he knows the Ute Bear Dance song. Mr. Vigil stated that a lot of tradition was given down to him. Instead of going off for higher education, Mr. Vigil stayed home to learn from his Elders while they are alive. The Elders kept the locations of sacred

sites to themselves so the white man would not use the information against them. Even though the traditional ways are fading away, the younger people are hanging on because that is the job of young traditional people. The Apache have been taking care of the land in the Southwest because they do not own the land; they care for the land for the ones that follow.

Ms. Patricia Capone, Associate Curator, Peabody Museum of Archaeology and Ethnology, Harvard University, thanked the Review Committee for the opportunity to offer an update on NAGPRA implementation. The Peabody Museum of Archaeology and Ethnology has one of the largest gatherings of material culture and human remains. Regarding consultations, the Peabody Museum was fortunate to have three visits since the last meeting and many other ongoing consultations, including approximately two to three dialogues per day with some involving remote consultations utilizing the Website to make collections more accessible to groups at a great distance. There are currently 16 active, password protected lists that are active online NAGPRA consultations. Regarding repatriations, the Peabody Museum had four physical repatriations over the past fiscal year involving Alaska, Massachusetts, New Mexico, and Oregon. Those physical repatriations returned 96 human remains and 174 funerary objects. Thus far, the Peabody Museum has repatriated over 2,700 human remains and over 3,600 funerary objects. Regarding grants, the Peabody Museum was pleased to write in support of applications by five different Indian tribes, three of which were funded, and looks forward to participating in those consultations. One application in collaboration with three other groups was not funded.

Ms. Capone stated that the Peabody Museum generally tracks information on NAGPRA implementation statistically, state by state. Lately the Peabody Museum has been reconsidering their tracking system to better note special circumstances. For example, a small number of objects might compel a great deal of discussion, and the time, resources, and thought that goes into those objects are not reflected in state-by-state numbers. The Peabody Museum has been experimenting with tracking time for consultations. This will help with planning and participation in the grants process and provide support to Indian tribes. Ms. Capone stated that the news that the regulations on culturally unidentifiable human remains were not imminent is kind of a good news/bad news situation. The good news is that more time will be available to fine tune the database and correct inaccuracies, for example, some information from the Peabody Museum's inventory is missing. The bad news is that the Peabody Museum responds consultations relating to culturally unidentifiable human remains with high frequency and had been hoping for a systematic process to provide guidance. A delay in the regulations could result in a large number of requests relating to culturally unidentifiable human remains being brought to the Review Committee or a delay in dealing with those cases. In conclusion, Ms. Capone stated that the Peabody Museum hopes to learn to be a better educational research institution through involvement in this process and has been working on educational projects that relate to implementing NAGPRA, including updates into the Native American exhibits that relate to NAGPRA and facilitating youth education among Native American groups that utilize the collections.

Mr. McKeown stated that the National NAGPRA Program has been working to publish the proposed regulations on culturally unidentifiable very soon and continue to work toward that goal. The comment earlier in the meeting was regarding when the final rule would go into effect, which will be some period of time after publication of the proposed regulations due to the necessity of dealing with public comments. Ms. Hutt stated that the new grant forms ask if applicants have previously received a NAGPRA grant and, if so, has a notice(s) been published. Ms. Hutt explained that the goal was to focus on the idea that projects are intended to further the process which results in notices. The goal is not to prejudice those projects that are time-consuming and subordinate those over the easier projects.

Mr. Gilbert Quintana, Jicarilla Apache Nation, stated he comes from the original homelands of his people, from a culture that is Jicarilla Apache and Chicano. Mr. Quintana stated that he has been involved with the Elders for many years and they are an oral-based traditional people. Mr. Quintana stated that his people come from many ways and walks of life and working with their people on oral-based history brought them closer together and into contact with the notion of culturally unidentifiable human remains at Fort Union National Monument. The survival stories of his people are interesting and show that the Jicarilla Apache are the diplomats of the Southwest, because of their feeling of bringing people back to them. The survival stories talk about those who lived side by side, married side by side, shared food side by side, shared seed with one another, and shared children with one another. This lifestyle continues today. With the individuals found at Fort Union, Mr. Quintana stated that they were from his people; they fought side by side and died side by side. Even though the psychology of oppression creates divisionism, winners and losers, and genocide, regardless of all of that, his people are one. They won many wars against conquerors on their lands and Mr. Quintana stated that they are a fine example of what exists out there today, that they can survive, they will survive, they can endure, and they will endure. The Jicarilla Nation is asking

that the Review Committee and the NPS continue to work to understand, that the cultural affiliation report at Fort Union National Monument be revisited, and that the stories of the Elders be studied to show that this was a people that were truly left behind in these homelands. In closing, Mr. Quintana stated that he believes that one day these stories will be reflected properly and there will be a better understanding of the Jicarilla Nation and the Jicarilla people, that they were truly ambassadors and diplomats of the Southwest.

Mr. Mario Medina, Jicarilla Apache Nation, stated he lives at Fort Union National Monument and is a volunteer at the park. Mr. Medina stated he previously worked as at the park as an interpreter and is still involved in interpreting as a volunteer. Mr. Medina stated he grew up moving around and living on four different rivers in Colorado. Mr. Medina stated that the people who lived in the area now called Colorado were connected with topography, land use, and the way they occupied those lands. Mr. Medina spoke of the difference between the words roam and wander and how that differs from seasonal migrants, those who figured out how not to contaminate a certain site, move on, and then come back four seasons later. The Jicarilla were seasonal migrants and in some cases still are. Earlier in the meeting the question was asked if the Apaches from Arizona were a military threat. Mr. Medina stated that he could not imagine how anybody who does not have field artillery could be a military threat to those who do. Fort Union had a relationship with significant events, especially in the year of 1864, very close to the time period that these four individuals were interred, the Navajo Long Walk, the Battle of Adobe Walls, and the Sand Creek Massacre. Fort Union was involved with local people, directly and indirectly. Mr. Medina stated that he lives in the area where the individuals were found. From the site where the people were found, you can hear the bugle calls. The information involved with the individuals is frightening because it shows that they just didn't pass away there, they just weren't interred there, that something happened to put them in that area. There's the issue with interment and where they were lying and the greater story that circled all of that. Like Mr. Jones, Mr. Medina believes that as interpreters their job, their duty, and their mission is to bring all of these things to life and then provide those who are listening with the stories so they can come to an understanding. As an interpreter it is important to reach out and gather and compare all of the oral histories to get a well-rounded view of what happened at the time. Mr. Medina thanked the Review Committee for the opportunity to speak.

### **Closing Remarks**

Mr. Steponaitis stated that as this may be Ms. Worl's and Mr. Bailey's last meeting, he wanted to say that he learned a great deal from both of them, that he always found them to be fair and knowledgeable, and that it has been an honor to serve on the Review Committee with them.

Ms. Augustine stated that it was an honor and a huge responsibility to serve on the Review Committee, but spiritually it is another step that she will take. She hoped to learn a lot from the process during the time she is on the Review Committee and that she can start to see that healing. Ms. Augustine stated that she has good hope in what is going to happen, and added that her work with the ancestors will continue until she takes her last breath.

Mr. Bailey thanked everyone and stated he enjoyed being on the Review Committee. Mr. Bailey stated he met a lot of wonderful people, both on the Review Committee and those who have participated at the meetings.

Mr. Kippen stated he would like to commend both Ms. Worl and Mr. Bailey. Mr. Kippen stated he learned a lot from both of them and from the other members of the Review Committee. The decisions presented by each Review Committee member were a testament to the idea that you can bring people from different places with different ways of looking and different understandings, and they can come together and present it in an understandable manner. Mr. Kippen stated he hoped there would be healing and that all of the good people who were involved, from the museums, the tribes, the government, can all work together in a way that heals and is the reason for which the NAGPRA law was originally created.

Mr. Monroe stated he would like to join in thanking Ms. Worl and Mr. Bailey for their tremendous leadership, commitment, hard work, and for bearing the responsibility of serving on the Review Committee so well. Mr. Monroe also thanked the other members of the Review Committee and all those who participated in the meeting, for their dedication, interest, and involvement in the process. Mr. Monroe thanked the staff for all of their work in support of NAGPRA and its implementation.

Mr. Jones stated that he wanted to add some comments to the participants in the protocol developed for the state of Colorado. Mr. Jones stated he wanted to praise all of the parties for their hard work and for creating a good model. On the issue of consultation, Mr. Jones stated he would like to add the word meaningful consultation. Mr. Jones stated that an Elder once told him that to soar like an eagle you have to have one wing your thinking wing and one wing your feeling wing and you have to be in balance. So consultation needs to be meaningful for everybody. Mr. Jones stated he enjoys working on the Review Committee. Mr. Jones stated that he had some medical problems and had to miss some Review Committee meetings. The desire to once again serve on the Review Committee inspired him to start to overcome those medical challenges. Mr. Jones thanked everybody and stated that he considered everyone to be part of a team.

Ms. Worl stated she would like to thank the Review Committee members for their patience as it may have seemed she was trying to hurry the proceedings or cut people off. The Review Committee has a lot of important business to do, and every Review Committee member has important things to say. Ms. Worl stated that they all serve on the Review Committee because they believe in NAGPRA and its process. Ms. Worl stated that when she first started to serve on the Review Committee she wanted to resign immediately. On a break, two old women approached her and told her she could not resign, she had work to do, and she was amazed that they knew. Ms. Worl stated she was taught in a very traditional way to serve, that her role was to serve her people. Her teachings came from her Elders and her mother. Although she was fortunate to attend one of the best schools in the country, Ms. Worl attributes her learning and knowledge to her traditional ways. As a leader of an institute, she tells children that they have to learn to integrate traditional knowledge with scientific and academic knowledge. NAGPRA and the people helping to implement NAGPRA are building a better world, a world that respects cultural diversity.

NAGPRA is the first legislation that says Native people can own objects as a group, not as a corporation but as a tribe. NAGPRA is also significant because it allows for the recognition of Native American religion, which hopefully one day will be integrated into all walks of life. NAGPRA is truly a good law and a successful collaboration between Native Americans and Americans, along with the Native American Museum in Washington, DC, which is a monument to the survival of the Native people. Ms. Worl stated that she tries to apologize to tribal members when it seems that the Review Committee is not respecting their beliefs, but it is the Review Committee members' job to implement the law. Each member tries to do that to the best of their abilities. Ms. Worl stated to her fellow members that despite occasional differences, never should a vote stand between friendships. This is a time for reflection and the past six years went quickly. Ms. Worl thanked the public for their participation; even those who do not speak help fortify the Review Committee members and staff. Ms. Worl thanked the National NAGPRA staff and stated she was pleased with the management of the program, with the tremendous changes and progress over the past several years.

Mr. McKeown thanked the Review Committee members for attending the meeting, dealing with such difficult issues, and coming to agreement from many different perspectives. Mr. McKeown thanked Mr. Steponaitis for getting out of field season to attend, Mr. Bailey for overcoming medical obstacles to attend the meeting, and Ms. Augustine who went from appointment to attending as a Review Committee member in less than one week. Mr. McKeown thanked the meeting hosts, the Colorado Historical Society, the Colorado Commission of Indian Affairs, the Denver Art Museum, the Ute Mountain Ute Tribe, the Southern Ute Tribe, the Western National Parks Association, the National Park Service Intermountain Regional Office, the Office of Indian Affairs and American Culture, and the National Park Service Park NAGPRA Program. Mr. McKeown thanked the participants at the meeting for attending, in particular those who have attended numerous times at great expense, the representatives of the White Mountain Apache Tribe and the Western Apache Working Group, the Field Museum, Fort Union National Monument including Superintendent Ditmanson, Sergeant Bowers from the Alameda County, and all the public speakers. Lastly, Mr. McKeown thanked his fellow staff members at the National NAGPRA Program, the Honorable Sherry Hutt, Ms. Jaime Lavallee, Mr. Toby Halvarson, Ms. Carla Mattix, Ms. Robin Coates and Ms. Lesa Hagel.

**Meeting Adjournment**

The meeting adjourned at 3:30 p.m., on Saturday, November 4, 2006.

Certified –

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

March 9, 2007  
Date

Approved on behalf of the Review Committee –

/s/ Rosita Worl  
Ms. Rosita Worl  
Chair, Native American Graves Protection  
and Repatriation Review Committee

March 9, 2007  
Date