

NATIVE AMERICAN GRAVES
PROTECTION AND
REPATRIATION ACT (NAGPRA)

=====

OVERSIGHT HEARING

before the

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

Wednesday, October 7, 2009

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OVERSIGHT HEARING ON ``NATIVE AMERICAN GRAVES PROTECTION AND
REPATRIATION ACT (NAGPRA)''

Wednesday, October 7, 2009

U.S. House of Representatives

Committee on Natural Resources

Washington, D.C.

The Committee met, pursuant to call, at 10:05 a.m. in Room 1324, Longworth House Office Building, Hon. Nick J. Rahall, II [Chairman of the Committee] presiding.

Present: Representatives Rahall, Hastings, Kildee, Bordallo, Heinrich, Baca, Smith and Brown.

STATEMENT OF THE HONORABLE NICK J. RAHALL, II, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF WEST VIRGINIA

The Chairman. The Committee on Natural Resources will come to order, please. This morning we meet to hear about the Administration's goals for the Native American Graves Protection and Repatriation Act, or NAGPRA, and to explore possible improvements to the implementation of the program. NAGPRA sets up a process for the identification and repatriation of certain human remains, funerary objects, sacred objects and objects of cultural patrimony of Indian tribes and Native Hawaiian organizations.

The human remains that are at issue are the ancestors of Native Americans, many of them warriors killed in battle. They deserve the same respect that we give to the human remains of our warriors of today. The Act directed museums and Federal agencies to complete an inventory of their culturally affiliated human remains and funerary objects and submit that inventory to NAGPRA by November of 1995 for publication in the Federal Register.

Almost 15 years later, the Administration is still publishing these inventories. Recently, the Makah Tribe and the National Association of Tribal Historic Preservation Officers conducted a study of the implementation of NAGPRA. Following a recommendation of their report, Senator Dorgan and I requested a GAO study on Federal agency compliance with NAGPRA, as well as how appropriated funds are being used. As this study is underway, we will not be looking into these issues today.

We will, however, be looking at the administration of the National NAGPRA Program by the National Park Service. This will include an examination of the data being collected, the systems in place, and the tools available to measure the success of the NAGPRA program. Based on the issues that I expect to come up today, we will need to ask ourselves if this program is receiving the attention that it deserves, and I hope today's hearing will serve as an impetus to improve the program.

With that, I do look forward to hearing about the Administration's goals for NAGPRA and how this Committee can help ensure the success of the program. Among those joining us this morning is Mr. Dan Wenk, the Deputy Director of the National Park Service. For the past several months, Mr. Wenk has been performing extra duty serving as Acting Director of the Park Service as well. So, I thank you for your service and I do look forward to your testimony, but before that, I will recognize the Ranking Member, the gentleman from Washington, Mr. Hastings.

[The prepared statement of Mr. Rahall follows:]

Statement of The Honorable Nick J. Rahall, II, Chairman,
Committee on Natural Resources

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Among those joining us this morning is Mr. Dan Wenk, Deputy Director, of the National Park Service. For the past several months, Mr. Wenk has been performing extra duty serving as the Acting Director of the Park Service. I thank you for your service and look forward to your testimony when we are ready to begin.

STATEMENT OF THE HONORABLE DOC HASTINGS, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF WASHINGTON

Mr. Hastings. Thank you, Mr. Chairman. Thank you for scheduling this hearing today. Periodic oversight of laws that fall within this Committee's jurisdiction, I think, is rarely a bad idea. When it comes to the Native American Graves Protection and Repatriation Act, it will be valuable, I think, for this Committee to hear how its implementation has occurred since its enactment in 1990. It is most important for museums and Federal agencies to repatriate human remains found on Federal or Indian lands in a respectful and dignified manner to the families or tribes to whom they are known to be related.

To do otherwise would offend the inherent dignity of both the departed and the living. There is not a lot of public attention paid to the day-to-day work of inventorying and repatriating human remains and cultural objects to families and tribes, notwithstanding how serious this work is. Ensuring the law is carried out appropriately and efficiently and with an eye on the application of sound science to identify remains and cultural objects correctly should be some of our chief goals.

So, Mr. Chairman, once again, thank you for scheduling this hearing. I look forward to hearing the testimony of the witnesses. I yield back.

The Chairman. Thank you, Doc.

Mr. Wenk, the Deputy Director of the National Park Service, we welcome you to our first panel and you have the stage all to yourself. We do have your prepared testimony. It will be made part of the record as if actually read, and you may proceed as you desire.

STATEMENT OF DAN WENK, DEPUTY DIRECTOR,
NATIONAL PARK SERVICE, WASHINGTON, D.C.

Mr. Wenk. Thank you, Mr. Chairman, for this opportunity to appear before this Committee to present the Department of the Interior's views on the implementation of the Native American Graves Protection and Repatriation Act, commonly known as NAGPRA. I will submit my full written statement for the record and summarize the Department's views in my oral remarks. The Department of the Interior has had responsibility for the administration of NAGPRA since the Act was passed in 1990.

In 2000, in order to better concentrate our efforts and serve the NAGPRA constituents, the National NAGPRA Program was separated from the National Park Service NAGPRA, and in 2004, both programs were separated from the National Park Service Archaeology Program. The National Park Service NAGPRA Program is located in Denver, near many tribes. The National Park Service NAGPRA Program works with and through the parks to consult with tribes, make decisions of cultural affiliation of human remains, and address claims to cultural items.

The National Park Service has published many notices of inventory completion for human remains and notices of intent to repatriate on claims for cultural items. Consultation is ongoing for pending notices and we anticipate publication of these notices in this fiscal year. The National NAGPRA Program is administered by the National Park Service but operates as an omnibus program to facilitate the notices of publication of all Federal agencies and museums.

The National NAGPRA Program maintains databases of the compliance documents submitted in the NAGPRA process, summaries, inventories and notices. It is the goal of the National NAGPRA Program to have all of those documents publicly accessible in databases by the end of this fiscal year. The National NAGPRA Program also provides staff support to the NAGPRA Review Committee and to the Assistant Secretary in the civil penalty process.

It also administers a grants program to fund projects of tribes and museums and provides training across the country for constituents. The NAGPRA Grants Program had a 100 percent increase in grant applications in FY 2009. In FY 2009, 200 notices were published, bringing to 800 the number of notices published since 2004, out of a total of 2,000 notices published since 1992. There is a minimal backlog of remaining notices where consultation is still ongoing.

If a tribe is concerned that a Federal agency or museum is not making a factual determination which is preventing repatriation, they may bring a dispute to the Review Committee. If there is a complaint about compliance regarding a museum, an allegation of a civil penalty may be sent to the NPS Director using the template provided in the National NAGPRA website. The complaint will be investigated by National NAGPRA.

These dispute resolution mechanisms are actively used by the tribes. The Native American Graves Protection and Repatriation Act established a fair process for resolving the repatriation of Native American human remains and collections and the claims of tribes to cultural items in control of the Federal agencies and museums. The Department of the Interior is pleased to administer NAGPRA programs in each of the Interior agencies and to support the work of the National NAGPRA Program.

Mr. Chairman, that concludes my statement. I would be pleased to answer any questions that you or other members of the Committee may have.

[The prepared statement of Mr. Wenk follows:]

Statement of Dan Wenk, Deputy Director, Operations,
National Park Service, U.S. Department of the Interior

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today to present the Department of the Interior's views on the implementation of the Native American Graves Protection and Repatriation Act.

The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), provides a process for determining the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.

The Department of the Interior and the several federal agencies and museums that have NAGPRA obligations take their responsibilities seriously. As a result of NAGPRA, thousands of Native American human remains, funerary objects, and other cultural items have been returned to tribes and Native Hawaiian organizations. Consultations between tribes, Native Hawaiian organizations, and federal agencies and museums, which occur as part of the NAGPRA process, result in better relations and have added to the body of knowledge of museum collections.

NAGPRA does not change ownership of items. Rather it asks the question of to whom do these items rightfully belong. Permits, granted by federal agencies for scientific study, confer access to human remains and cultural items for the accumulation of data, but do not transfer possession to the permittee.

Administration of NAGPRA

The Secretary of the Interior is responsible for implementing many of the provisions in NAGPRA under the statute. The Secretary must provide guidance to museums and federal agencies to assist them with their compliance requirements.

The National NAGPRA Program administered by the National Park Service conducts the following activities for the Secretary:

- publishing in the Federal Register inventory and repatriation notices for museums and federal agencies that indicate their decision to transfer control of remains or objects to tribes,
- creating and maintaining a database of Culturally

Unidentifiable Human Remains,

- making grants to assist museums, tribes, and Native Hawaiian organizations in consulting on the determination of cultural affiliation and identification of cultural items, and to provide funding for travel and ceremonies associated with bringing ancestors and items home,

- providing support to the Assistant Secretary for Fish, Wildlife and Parks for investigating civil penalty allegations and preparing assessments of penalties on museums that fail to comply with provisions of the Act,

- establishing and providing support to the Native American Graves Protection and Repatriation Review Committee, which resolves disputes and aids repatriation,

- providing technical assistance in those instances where there are excavations and discoveries of cultural items on federal and Indian lands,

- drafting, promulgating, and implementing regulations, and

- providing technical assistance through training, the web, and reports for the Review Committee, as well as supporting law enforcement investigations of illegal trafficking.

The National Park Service also has compliance obligations for parks, separate from the National NAGPRA Program.

Federal Agency and Museum NAGPRA Obligations

Federal agencies and Indian tribes have NAGPRA responsibilities for the prompt disposition of Native American human remains and cultural items excavated or removed after November 16, 1990, when NAGPRA was passed. Notice of the disposition of NAGPRA items to tribes or lineal descendants is posted in newspapers, with copies sent to the National NAGPRA Program. To date, federal agencies have reported 85 dispositions.

NAGPRA requires museums and federal agencies to prepare summaries

of their collections that may contain Native American unassociated funerary objects, sacred objects, and objects of cultural patrimony. They must also prepare item-by-item inventories of Native American human remains, with their associated funerary objects. The summaries provide notice to tribes and Native Hawaiian organizations of items of interest in a collection and invite consultation. There have been 1,551 summaries ¹ and 460 statements of no summary required ² submitted to the National NAGPRA Program. As a result of the summaries, 475 notices of intent to repatriate cultural items claimed by a tribe have been published accounting for 144,163 funerary objects, 4,301 sacred objects, 948 objects of cultural patrimony, an additional 822 objects that are both sacred and cultural patrimony and 292 undesignated items. Not all objects identified in a summary will meet a NAGPRA category or be subject to a claim.

\1\ A summary is a description of Native American ethnographic items in a collection. Item by item inventories list human remains and their associated funerary objects.

\2\ ``No summary required'' means a museum or federal agency has no Native American cultural items.

Inventories provide clear descriptions of the cultural affiliation of the Native American human remains of the museum or federal agency and are to be followed within six months with Federal Register publication of a Notice of Inventory Completion that establishes the rights of tribes and Native Hawaiian organizations to request repatriation. There have been 1,043 inventories submitted to the National NAGPRA Program and 1,287 notices of inventory completion published, accounting for 38,656 Native American human remains and one million funerary objects. ³

\3\ Large inventories may be reported in several different notices of inventory completion and be organized by a site or culture. Numerous notices may result from a single inventory.

Consultation

Consultation with tribes by museums and federal agencies is central to the NAGPRA process, whether the circumstances arise from collections or new discoveries. The National NAGPRA Program website includes maps of current tribal lands, treaty areas with tribes, and areas of tribal aboriginal occupancy. These maps assist museums and federal agencies in determining present-day tribes that may have an interest in items from an area, so that they may be included in consultation efforts. The Consultation Database lists names and addresses of tribal contacts that can also be used as a starting point for consultation.

At the end of the NAGPRA consultation process, the museum or federal agency has the non-delegable duty to make a decision on cultural affiliation and to acknowledge and act on claims for cultural items. A NAGPRA inventory is the product of consultation. Museums that submitted inventories in 1995, but did not initially do consultation, have often gone back to consult with tribes on segments of the collection and update inventory decisions. NAGPRA grants are awarded for this purpose. There were 71 grant requests received this year for a total of \$4.3 million in requests. The full \$1.85 million available was awarded in 37 grants. From 1994-2009, 619 NAGPRA grants were awarded to museums, tribes, and Native Hawaiian organizations, totaling over \$33 million.

Database of Culturally Unidentifiable Native American Human Remains (CUI)

Museums and federal agencies prepare two inventories under NAGPRA.

Those individual remains for whom cultural affiliation can be determined are listed on one inventory. If information is lacking to make a reasonable determination, the individual remains are listed on the inventory of culturally unidentifiable Native American human remains, the CUI inventory.

A public access database of CUI was launched in fall 2005 to assist in further consultation and identification. Currently there are the remains of 124,000 individuals listed on the database and 915,783 funerary objects associated with those remains. The number of CUI subsequently culturally identified, or transferred by a disposition to a requesting tribe, without cultural affiliation determination, is 8,136. Pending regulations will specify a process for disposition of CUI to tribes and Native Hawaiian organizations, without requiring requests for recommendations for disposition to be presented to the Review Committee which makes recommendations to the Secretary. Native Hawaiian organizations and federally recognized tribes can then take responsibility for care and reburial of the unidentified Native American remains removed from their graves.

We hope to launch soon a public access database of the culturally affiliated inventories, so that tribes and concerned parties can cross-reference the CUI and affiliated databases to assist in further identification of currently unidentifiable remains. Inventories can be amended at any time to reflect updated and more complete decisions. A Notice of Inventory Completion must be published in the Federal Register for all culturally affiliated human remains and associated funerary objects. A recent report from the National NAGPRA Program found the remains of over 1,000 individuals for whom cultural affiliation had been decided, but who were not in published notices.

Withdrawal of Notices

Compliance with the law requires publication of a notice in the Federal Register of a Notice of Inventory Completion and not merely submission to National NAGPRA of a draft document. Failure of a museum or federal agency to provide permission to publish a notice following completion of an inventory halts the repatriation process for the remains of the individuals listed in the inventory.

In spring 2004, there were over 300 drafts of notices submitted between 1996 and 2004 for which the museum or federal agency had not given the National NAGPRA Program permission to publish in the Federal Register. Beginning in 2005, the National NAGPRA Program sent letters to the originators asking that they move forward on abandoned drafts, even if they withdrew them to complete consultation. At this time, there are less than two dozen older drafts, and all are in active preparation for publication. New incoming notices are published within weeks of receipt. In FY 2008, the number of notices almost doubled from prior years to 180 and almost 200 notices have been published in FY 2009. The number of published notices is a reflection of the efforts of museums and federal agencies to consult with tribes and make decisions on cultural affiliation, repatriation of cultural items, and for disposition of the CUI. Abandoned drafts have been replaced with published notices.

Civil Penalties

NAGPRA allows for penalties to be assessed against museums that fail to comply with a number of aspects of the NAGPRA process. Regulations were promulgated in 1997 and, in 2006, the first NAGPRA civil penalties were pursued. To date 70 investigations have been completed and those museums found in violation have come into compliance.

Barriers to Implementation and Current Issues in NAGPRA

Curation: There are issues of access and use of Native American human remains and cultural items that remain in museum and federal agency collections. If the remains are determined to be CUI,

the federal agency or museum has determined that there is no federally recognized tribe or Native Hawaiian organization with which to consult on access or use.

Collections Audits: The National NAGPRA Program does not audit federal agency or museum collections to determine that all Native American human remains and cultural items are listed on inventories or summaries. The National NAGPRA Program does not have the authority to survey NAGPRA obligated entities to determine the number of human remains repatriated. Accounting for federal agency collections in non-federal repositories is an agency responsibility. A Government Accountability Office study of federal agency compliance is pending.

NAGPRA only applies to those human remains and cultural items that a museum or federal agency determines are Native American. The U.S. Court of Appeals for the Ninth Circuit Court, in 2004, ruled that for remains to be deemed Native American there must be a general finding that the remains have a significant relationship to a presently existing tribe, people, or culture. This ruling has created confusion for museums and federal agencies that must make a threshold determination of Native American for ancient remains.

This concludes my prepared remarks. I would be happy to answer any questions that you or other members of the Committee may have.

The Chairman. Thank you very much, and as I said in my opening statement, I certainly commend the double duty that you are performing these days and the tremendous work that you do on behalf of our Park Service, as well as all of the staff at the National Park Service. Let me ask you one question about the Administration's goals. What does the Administration hope to accomplish within the next year, and by the end of President Obama's first term, with respect to this NAGPRA program?

Mr. Wenk. We have a number of goals that we hope to accomplish, and I think we are well on our way to doing so. First of all, we are looking to publish some new regulations. One of the regulations that we are looking to publish very soon is the regulation regarding culturally unidentifiable objects and human remains. That should be published, we hope, within the next, literally, few days or few weeks. We are scheduled to have a briefing with OMB on that, or we are setting up a schedule to brief OMB on that regulation very quickly.

We are looking to complete on our website the inventory of Native American human remains for both the culturally affiliated and the culturally unidentifiable. We are working with the Native American tribes in terms of looking at the 300 notices that you have previously provided questions about. We have resolved, I believe, Mr. Chairman, about over 226 of those notices that were on hold at one time have now been published. We only have about 10 percent of them left that are currently in active negotiation between the tribes and the museums or field offices of agencies to look at the repatriation.

I think the biggest thing we are trying to do is we are trying to get to have a high level of transparency, that all of our databases are brought up to date, so that everyone has a full knowledge of what is out there and who controls what objects.

The Chairman. So, it appears that after 15 years of inaction, finally we are beginning to see some action on certain aspects of the program?

Mr. Wenk. I believe that the action, Mr. Chairman, really started--I will say that prior to about 2004 we were not as active as we could have or should have been, and I think since

2004 we have seen significant progress.

The Chairman. OK. Last week, the National Park Service informed the museums and Federal agencies that I had requested copies of withdrawn notices, but that notices which had been withdrawn because of a change in cultural affiliation would not be provided. The question is, who made the decision to not provide me with this information that I had requested in May, and what is the rationale for that decision? I ask because I really do want this information.

Mr. Wenk. I believe that we are going to give you an exact accounting of each one of those 300 notices. I checked this morning, Mr. Chairman, and I was informed that it is not yet-- the response, while it is awaiting signature, it has not yet been signed. I would say it should be to you in the next few days. Of those 300 notices, I will go back and say that 221 of them have been published. The remaining 79 of those notices, I could look at a matrix and go through them exactly, but a number of those will not be published because a determination has been--they have been taken care of in other notices.

They were, if you will, double-counted, in terms of one notice was, an object had already been taken care of in another notice, so they were taken off the list. The only ones that have not been accounted for are the ones that we still are in active negotiation or still there is active negotiation going on between the museum and the tribe to come to a determination on those pieces, but we believe those are going to be taken care of in a very short order, and we believe you will get a very direct response, Mr. Chairman.

The Chairman. So, you will provide me with those in which there was a change in cultural affiliation?

Mr. Wenk. I believe the answer is yes, we will.

The Chairman. Thank you. I appreciate it. In May '09, I requested copies of notices that had been withdrawn. Recently, the NPS staff informed a Review Committee and others that core functions had to cease as a result of this request. Do you think the NAGPRA office has sufficient staff if it is unable to comply with a four-month-old request without shutting down other operations?

Mr. Wenk. Mr. Chairman, I believe that the NAGPRA staff is providing as efficient service they can with the staffing that we have.

The Chairman. Is that sufficient staff?

Mr. Wenk. Yes, Mr. Chairman, I will say it is sufficient staff. Shutting down that work was something that I have had discussions with the staff subsequent to that happening. I believe that we have a very active constituency that looks at our information, and I believe we are going to take steps so that will not happen again. We have reduced the backlog. I think we are very well poised to be able, with the staff we have, to provide the responses and information that is requested by tribes, by museums, and in fact by Congress.

The Chairman. OK. Thank you.

The gentleman from Washington, Mr. Hastings.

Mr. Hastings. Thank you, Mr. Chairman. Mr. Wenk, you alluded to the CUI regulations that you hope to be, I guess, made public here very soon. There was some discussion on this two years ago in the last administration. Can you give me a sense of what these regulations are, if they differ from what they were two years ago?

Mr. Wenk. My sense is that the regulation is basically the same as that we have been trying to get out for the last two

years. I understand there was an administrative problem when we thought we were going to be able to publish them about nine months ago that we had to overcome, and we had to go back through some of the process, but my understanding is the regulation today is basically the same as it was when we were trying to get them out about nine months ago.

Mr. Hastings. OK. Well, I know that we had some questions on that a couple years ago. Is it possible that you could brief my staff on that prior to that--at least to where you are right now?

Mr. Wenk. We would be very happy to come up and brief your staff, yes.

Mr. Hastings. OK. Let us try to arrange that as quickly as possible if we could, OK?

Mr. Wenk. Yes.

Mr. Hastings. All right. Thank you.

Thank you, Mr. Chairman.

The Chairman. The gentleman from Michigan, the co-chair of the Native American Caucus in the Congress, Mr. Kildee.

STATEMENT OF THE HONORABLE DALE E. KILDEE, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF MICHIGAN

Mr. Kildee. Thank you very much, Mr. Chairman. I am very happy that we are having this hearing. It is very important that the Federal government carry out its responsibility, I think both legal and moral responsibility, to make sure these sites are respected and cared for, protected, and I think the Federal government can set an example also for other levels of government. The city of Flint is probably one of the most dire cities in America.

There are more people leaving each day. The city is about half the population it was 20 years ago. They are tearing more houses down than they are building it, and my nephew, who is familiar with my work down here on this bill and this legislation, was rebuilding one section of town and in demolishing, came across skeletal remains, and bingo, he set the land aside, stopped all demolition, all construction, and got hold of the Saginaw Chippewa Indians about 70 miles north of Flint. They came down and they identified these sites as Indian burial grounds with the various artifacts and everything that--the way of burial and everything.

And here again, because my nephew, who is the Treasurer of the county and has jurisdiction over that, stopped permanently that area of about 3 acres from any further construction, fenced it off, and the Saginaw Chippewa, as joint partners, will be taking care over that property until a final decision is made, but that final decision will have to be concurred in by the tribe, and I think that attitude which I think we intended to permeate this bill is one that you, I am sure, feel is an obligation upon your agency to make sure that not just the technical adherence to the law, but the spirit.

This law was written for a very important reason: respect for the first Americans. And so I want to work with you to make sure that in our oversight, we set a plan that will guarantee that respect. There are two things that are important. First of all is designation of these sites, and resources, and we have a responsibility in the Congress to make sure there are the resources for that. In the meantime, with whatever resources you have now, I commend you to do everything you can to make sure that the spirit in which this legislation, this mandate,

was passed, be carried out, and I look forward to working with you, and Mr. Chairman, I thank you for having this hearing.

The Chairman. Thank you, Mr. Kildee.

The gentlelady from Guam, Ms. Bordallo.

Ms. Bordallo. Thank you very much, Mr. Chairman. I have a question for Mr. Wenk, for the record. I wanted to ask if there have been any discussions at the Department of the Interior on the initiatives within the Native American Graves and Repatriation Act that considers the needs of the indigenous people of the territories, the U.S. territories.

Mr. Wenk. I have not personally been engaged in any discussions, and I am sorry that I can't--I have to believe that there has been, but I can't tell you that I have been personally, but I will provide information to you in terms of what discussions have been held.

Ms. Bordallo. Would there be anybody on your staff here that would have an answer?

Mr. Wenk. If I could ask Dr. Hunt.

[Pause.]

Mr. Wenk. OK. We have a jurisdictional issue. The statute does not include the territories.

Ms. Bordallo. The statute does not include----

Mr. Wenk. The statute does not include the territories.

Ms. Bordallo. Well, Mr. Chairman, I feel we should correct that in some way. The statute does not include the territories.

The Chairman. It is my understanding we have never merged the two, but certainly we will look at it because you raise a valid point.

Ms. Bordallo. Very good. Thank you, Mr. Chairman.

The Chairman. We have to look out for the territories.

Ms. Bordallo. I look forward to the inclusion of the territories.

The Chairman. The gentleman from New Mexico, Mr. Heinrich.

Mr. Heinrich. Thank you, Mr. Chairman.

Mr. Wenk, good to see you. I wanted to ask you a question that is a little outside of the scope of your testimony, but wanted to get your perspective. I was hoping you might be able to speak about any impact or role that NAGPRA has in protecting newly discovered gravesites and objects, not just collections that are already in museum or Federal agency collections, and what you think the National Park Service's role in protecting newly discovered ancestral remains might be.

Mr. Wenk. There are requirements, is my understanding, under NAGPRA that were described earlier by your colleague, that notices are required to be published, that just as described earlier, that there are steps that are taken to ensure that those new discoveries are dealt with in a very expeditious manner.

Mr. Heinrich. Thank you.

I will yield back the balance of my time, Chairman.

The Chairman. OK. Mr. Wenk, thank you very much for being with us today and working with us. We appreciate it.

Mr. Wenk. Thank you, Mr. Chairman.

The Chairman. Our next panel is composed of the following witnesses: The Honorable Brenda Shemayne Edwards, the Chairwoman of the Caddo Nation of Oklahoma, Binger Oklahoma, and she is accompanied by Bobby Gonzalez, the NAGPRA coordinator; Mr. Steve Titla, the General Counsel of the San Carlos Apache Tribe, San Carlos, Arizona, accompanied by Mr. Kevin Parsi, of Titla & Parsi; Ms. D. Bambi Kraus, the President, National Association of Tribal Historic Preservation

Officers, Washington, D.C.; Ms. Susan Bruning, the Chairwoman, the Repatriation Committee of the Society for American Archaeology, Southlake, Texas; and Mr. Colin Kippen, the former NAGPRA Review Committee member, Honolulu, Hawaii.

Ladies and gentlemen, we welcome you to the Committee this morning. I apologize if I had some mispronunciations in there. We do have your prepared testimonies. They will be made part of the record as if actually read, and you may proceed in the order in which I introduced you.

STATEMENT OF BRENDA SHEMAYME EDWARDS, CHAIRWOMAN, CADDO NATION
OF OKLAHOMA

Ms. Shemayme Edwards. Good morning. My name is Brenda Shemayme Edwards and I am the Chairwoman of the Caddo Nation of Oklahoma. I am here today to talk about funding issues we have with the Native American Graves Protection and Repatriation Act. The United States of America has a legal responsibility to its citizens and dependent Indian nations to ensure that its Federal laws are carried out. NAGPRA developed a systematic process in determining the rights of culturally affiliated----

The Chairman. Excuse me just a minute. Could you pull that mic a little closer and maybe make sure it is turned on?

Ms. Shemayme Edwards. Can you hear me?

The Chairman. Better, yes.

Ms. Shemayme Edwards. Is that better?

NAGPRA developed a systematic process in determining the rights of culturally affiliated descendants to certain Native American human remains and associated funerary objects, sacred objects and objects of cultural patrimony as defined by NAGPRA. However, little funding has been made available to tribal governments to fulfill basic consultations and repatriations with repositories which house these collections. The funding made available has been highly competitive through the NAGPRA Grant Program with the National Park Service.

NAGPRA funding levels have remained basically the same since its inception. For the past 15 years, around \$2 million per year have been made available. The funding is highly competitive with no basis in actual need. As such, a tribe with millions of dollars from casino revenue monies have the same chance of getting a grant as a tribe like us with no casino revenues and limited financial resources. In 1994, the NAGPRA Review Committee recommended that Congress set aside \$10 million for the first year of funding. However, only \$2.3 million was set aside.

In 2008, funding levels were at their lowest at 101.58 million. The Caddo Nation of Oklahoma was one of the first tribes to submit and receive NAGPRA funding from the National Park Service in 1994. Southwest Arkansas, northwest Louisiana, eastern Oklahoma and northeast Texas have long been considered the Caddo homeland. Throughout every one of these states, and spread from the East Coast to the West Coast, Caddo human remains and funerary items continue to be housed and stored on shelves.

Our NAGPRA office has worked tirelessly over the past 14 years to identify and repatriate human remains and funerary objects from across the United States. Just recently, we submitted a proposal to the Department of the Interior with some of the issues that we have faced. Currently, we know of over 130 different museums, universities and repositories that hold collections of either human remains or funerary objects,

along with unassociated funerary objects, sacred objects and objects of cultural patrimony.

The reality is, if we were to receive a NAGPRA grant each and every year, it would be at least 130 years before all of our human remains, associated funerary objects, unassociated funerary objects, sacred objects and objects of cultural objects could be repatriated. We have recently been made aware that a large number of NAGPRA pending draft notices to be published in the Federal Register were pulled without consultation. We would like to know who is responsible for pulling these notices and why they were pulled.

For well over a century, burials and cemeteries containing human remains and funerary objects, sacred objects and objects of cultural patrimony have been subjected to looting and collecting. Even today, there are numerous websites around on the internet that will buy, sell and trade Caddo funerary objects. There are also private museums that house and oftentimes buy, sell and trade Caddo funerary objects.

In 2001, 21 Caddo funerary vessels were stolen from the Texas Archaeological Research Laboratory at the University of Texas in Austin. A \$10,000 reward went out and the objects were eventually recovered. Five years later the University of Arkansas at Magnolia reported the theft of 26 Caddo funerary objects. These objects are being held at the university on behalf of Vicksburg District Corps of Engineers and were to be repatriated back to the Caddo Nation.

Federal investigations are ongoing, but these funerary objects have not been recovered. There are a number of new Caddo museums being proposed across the homelands of the Caddo. They receive their funding through a variety of means; through investors, universities, loans and local banks, donations and grants using the Caddo collections that they have as leverage. Many of the repositories where Caddo human remains and funerary objects are housed also continue to receive funding for research projects related to these collections to create educational tools for the general public, yet our own Caddo museum has only one small exhibit space, one full-time employee, and no support staff.

Last, it is sad for me to note that our ancestors continue to be regarded as merely natural resources instead of human beings. I am not aware of any other ethnical group who is subjected to this stereotype. I sincerely request that these important funding issues be addressed and corrected in such a way that the work that we have done in the past can continue on into the future. Repatriation is so very important for our people.

The act itself is a show of love and respect for our ancestors. Repatriation is also a way for our children to learn about where we came from and who we are as a unique culture. On behalf of the Caddo Nation membership, past and present, I thank you.

[The prepared statement of Chairwoman Edwards follows:]

Statement of The Honorable Brenda Shemayne Edwards, Chairwoman,
Caddo Nation of Oklahoma, Binger, Oklahoma

Good Morning. My name is Brenda Shemayne Edwards. I am the Chairwoman for the Caddo Nation of Oklahoma. I am here today to talk about funding issues we have with the Native American Graves Protection and Repatriation Act.

The United States of America has a legal responsibility to its

citizens and its dependent Indian nations to assure that its federal laws are carried out. NAGPRA developed a systematic process in determining the rights of culturally affiliated descendants to certain Native American human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony (as defined by NAGPRA). However, little funding has been made available to tribal governments to fulfill basic consultations and repatriations with repositories which house these collections. The funding made available has been highly competitive through the NAGPRA grants program with the National Park Service.

NAGPRA funding levels have remained basically the same since its inception. For the past 15 years, around 2 million dollars per year has been available. The funding is highly competitive with no basis in actual need. As such, a tribe with millions of dollars from casino revenue monies has the same chance of getting a grant as a tribe like us, with no casino revenue and limited financial resources. In 1994, the Native American Graves Protection and Repatriation Review Committee recommended that Congress set-aside 10 million dollars for the first year of funding. However, only 2.3 million was set-aside. In 2008 funding levels were at their lowest at under \$1.58 million.

The Caddo Nation of Oklahoma was one of the first tribes to submit and receive NAGPRA funding from the National Park Service in 1994. Southwest Arkansas, northwest Louisiana, eastern Oklahoma, and northeast Texas have long been considered the Caddo homeland. Throughout every one of these states and spread from the east coast to the west coast, Caddo human remains and funerary items continue to be housed and stored on shelves.

Our NAGPRA office has worked tirelessly over the past 14 years to identify and repatriate human remains and funerary objects from across the United States. Just recently we submitted a proposal to the Department of the Interior explaining some of the issues we have faced.

Currently, we know of over 130 different museums, universities, and repositories that hold collections of either human remains or funerary objects, along with unassociated funerary objects, sacred objects, and objects of cultural patrimony. The reality is if we were to receive a NAGPRA grant each and every year, it would be at least 130 years before all of our human remains, associated funerary objects, unassociated funerary objects, sacred objects and objects of cultural patrimony could be repatriated.

For well over a century, burials and cemeteries containing the human remains, associated funerary objects, unassociated funerary objects, sacred objects and objects of cultural patrimony have been subjected to looting and collecting. Even today, there are numerous websites found on the Internet that buy, sell, and trade Caddo funerary objects. There are also private museums that house (and oftentimes, buy, sell, and trade) Caddo funerary objects.

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We are in a conundrum. There are a number of new ``Caddo'' museums being proposed across the homelands of the Caddo. They receive their funding through a variety of means; investors, universities, loans with local banks, donations and grants using the Caddo collections they have as leverage. Many of the repositories where Caddo human remains and funerary objects are housed also continue to receive funding for

research projects related to these collections to create educational tools for the general public, yet our own museum has only one small exhibit space, one full-time employee, and no support staff.

Lastly, it is sad to note that our ancestors continue to be regarded as merely ``natural resources'' instead of human beings. I am not aware of any other ethnic group who is subjected to this stereotype. I sincerely request that these important funding issues be addressed and corrected in such a way that the work we have done in the past can continue on in to the future. Repatriation is important for our people. The act itself is a show of love and respect for our ancestors. Repatriation is also a way for our children to learn about where we came from and who we are as a unique culture. Thank you.

The Chairman. Thank you, Madam Chairwoman.
Mr. Titla?

STATEMENT OF STEVE TITLA, GENERAL COUNSEL,
SAN CARLOS APACHE TRIBE, SAN CARLOS, ARIZONA

Mr. Titla. Good morning, Chairman, members of the Committee. Thank you for having this hearing on implementation of the NAGPRA act. The Arizona Apache tribes work on repatriation matters jointly through the Western Apache NAGPRA Working Group. These tribes are the San Carlos Apache Tribe, White Mountain Apache Tribe, Tonto Apache Tribe, and Apaches of the Yavapai-Apache Nation. Since 1996, the Working Group has repatriated 302 sacred objects and objects of cultural patrimony from 20 institutions under NAGPRA, and another 38 objects from the Smithsonian.

We currently await the return of another 154 objects in pending claims. The objects that we claim are vitally important and alive, belonging to holy beings whose power infuses them. These objects must be properly returned and ritually cared for, or we suffer dire consequences in the Apache people. In the great majority of our claims, museums have embraced the spirit of NAGPRA and have worked with us in open and in good faith to repatriate these items in the most appropriate and expedient manner.

Most museums have acknowledged that they should never have held these objects in the first place. Traditional, responsible Apaches would never, now and in the past, willingly give up these items to a non-Apache for non-ritual use. Most of these objects were acquired, sometimes stolen, from Apache lands by museums at a time of extraordinary hardship, misery and injustice for Apache people. Some agents of museums took deliberate advantage of these conditions to get these items at the expense of Apaches.

We believe that NAGPRA is a form of civil rights legislation, enacted as an attempt to right these past wrongs. For Apaches, righting these wrongs includes healing the damage caused by the alienation of our powerful objects and the circumstances which compelled that alienation. While the repatriation of these objects alone goes a long way in righting these wrongs, it does not fully facilitate healing for the Apache people.

NAGPRA provides for further healing by allowing museums to state whether objects are sacred objects, objects of cultural patrimony, or a combination of these two. An acknowledgment that an item is an object of cultural patrimony is an admission that museums, at a minimum, have objects that are not

rightfully their property, or at the maximum, that they were at least a party to wrongdoing. Such an admission will help appease the holy beings who were wronged so many years ago, and provides a measure of peace of mind to the Apache people.

Currently, the Field Museum of Natural History in Chicago and the American Museum of Natural History in New York are attempting to remove the key element of justice from NAGPRA. These museums have among the largest collections of sensitive Apache items and had agents who took egregious advantage of Apaches in order to acquire highly sensitive objects near the turn of the last century. These museums are refusing to classify Apache items specifically as sacred objects and objects of cultural patrimony as claimed in the notices of intent to repatriate in the Federal Register, or even to meaningfully discuss the issue with us.

In addition, these museums refuse, as an alternative to classifying these objects, to admit to any wrongdoing in collecting the items or to apologize for their actions. They are legally justifying this position according to the current Park Service interpretation of NAGPRA. The Park Service allows museums to refer to items under notices of intent to repatriate as merely cultural items, as opposed to sacred objects and/or objects of cultural patrimony.

We believe that this is a highly narrow and prejudicial view, interpretation of the law. This interpretation demeans our powerful objects and the holy people to whom they belong, which we cannot allow. This interpretation removes any obligations from museums to explain their positions. Compounding the problem is the fact that the NAGPRA Review Committee can only make advisory findings and recommendations. While the Working Group has won twice before the Review Committee in formal disputes with museums, the museums chose not to follow the committee's recommendations.

This, coupled with current Park Service interpretations of NAGPRA, has denied Apaches the full measure of the justice that NAGPRA is capable of providing. Chairman, it looks like I am out of time, but you have my statement. Thank you.

[The prepared statement of Chairman Nosie follows:]

Statement submitted for the record by Chairman Wendsler Nosie, Sr.,
San Carlos Apache Tribe

The Arizona Apache Tribes work on repatriation matters jointly through the Western Apache NAGPRA Working Group (Working Group). These tribes are the San Carlos Apache Tribe, the White Mountain Apache Tribe, the Tonto Apache Tribe, and the Apaches of the Yavapai-Apache Nation.

Since 1996 the Working Group has repatriated 302 sacred objects and objects of cultural patrimony from 20 institutions under NAGPRA, and another 38 objects from the Smithsonian. We currently await the return of another 154 objects in pending claims.

The objects that we claim are vitally important and alive, belonging to Holy Beings whose power infuses them. These objects must be properly returned and ritually cared for, or we suffer dire consequences.

In the great majority of our claims, museums have embraced the spirit of NAGPRA, and have worked with us in open, good faith to repatriate these items in the most appropriate and expedient manner. Most museums have acknowledged that they should never have held these objects in the first place.

Traditional, responsible Apaches would never, now and in the past,

willingly give up these items to a non-Apache for non-ritual use. Most of these objects were acquired, sometimes stolen, from Apache lands by museums at a time of extraordinary hardship, misery, and injustice for Apache people. Some agents of museums took deliberate advantage of these conditions to get these items, at the expense of Apaches.

We believe that NAGPRA is civil rights legislation, enacted as an attempt to right these past wrongs. For Apaches, righting these wrongs includes healing the damage caused by the alienation of our powerful objects and the circumstances which compelled that alienation. While the repatriation of these objects alone goes a long way in righting these wrongs, it does not fully facilitate healing. NAGPRA provides for further healing by allowing museums, to state whether objects are sacred objects, objects of cultural patrimony, or combinations of these. An acknowledgement that an item is an object of cultural patrimony is an admission that museums, at a minimum, have objects that are not rightfully their property, or, at the maximum, that they were at least a party to wrongdoing. Such an admission helps appease the Holy Beings who were wronged so many years ago, and provides a measure of peace of mind to Apache communities.

Currently the Field Museum of Natural History in Chicago and the American Museum of Natural History in New York are attempting to remove this key element of justice from NAGPRA. These museums have among the largest collections of sensitive Apache items, and had agents who took egregious advantage of Apaches in order to acquire highly sensitive objects near the turn of the last century. These museums are refusing to classify Apache items specifically as sacred objects and objects of cultural patrimony, as claimed, in the Notices of Intent to Repatriate in the Federal Register, or even to meaningfully discuss the issue with us. In addition, these museums refuse--as an alternative to classifying these objects--to admit to any wrongdoing in collecting the items or to apologize for their actions. They are legally justified in this position according to the current Park Service interpretation of NAGPRA.

The Park Service allows museums to refer to items in their Notices of Intent to Repatriate as merely ``cultural items'', as opposed to ``sacred objects'' and/or ``objects of cultural patrimony''. We believe that this is a highly narrow and prejudiced interpretation of the law. This interpretation demeans our powerful objects and the Holy People to whom they belong, which we cannot allow. This interpretation removes any obligations from museums to explain their positions, while placing a burdensome onus of proof on tribes (often requiring tribes to reveal highly sensitive information publicly); as well as allowing museums to avoid any admission of wrongdoing.

Compounding this problem is the fact that the NAGPRA Review Committee can only make advisory findings and recommendations. While the Working Group has won twice before the Review Committee in formal disputes with museums, the museums chose not to follow the Committee's recommendations. This, coupled with current Park Service interpretations of NAGPRA, has denied Apaches the full measure of justice that NAGPRA is capable of providing.

Additionally the Park Service has told us that the Review Committee cannot make a finding regarding a completed repatriation, and so now we must choose between repatriating objects as quickly as possible (as required by traditional guidelines), or seeking a measure of justice from the Review Committee. We strongly disagree with this interpretation of the law, and deeply resent the pain and confusion that this compromising interpretation has caused.

These are not trivial matters to us, and we have recently made a request to the Secretary of the Interior to review these matters, and will be discussing these at the upcoming NCAI session. Our concerns could be resolved to a large degree by requiring museums to state

whether claimed items are sacred objects and/or objects of cultural patrimony, when so claimed, and by giving more teeth to Review Committee recommendations.

Of further concern is the increasing looting of archaeological artifacts from our reservations. Both Tribal members and outsiders are looting archaeological sites, our people driven by the shocking economic and social conditions within our community.

It is nearly impossible to combat this problem under current financial constraints. Even though our Reservation consists of 1.8 million acres of Federal trust land, our cultural and natural resources management is funded at one-fourth to one-seventh the levels for comparable land, issues, and activities on the National Forests immediately adjacent to the Reservation. This seriously challenges our ability to sustain the economic development necessary to prevent the problem in the first place, or to combat it in the second.

I very much hope that you look into these matters, and will be pleased to provide you with more information.

Thank you for time and attention.

The Chairman. Thank you.

Ms. Kraus?

STATEMENT OF D. BAMBI KRAUS, PRESIDENT, NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS, WASHINGTON, D.C.

Ms. Kraus. Mr. Chairman and members of the Committee, thank you for the opportunity today to present testimony on the Native American Graves Protection and Repatriation Act. I am representing the National Association of Tribal Historic Preservation Officers. We are the only national Indian organization of tribal government officials who are committed to preserving, rejuvenating and protecting Native cultures and practices throughout the United States.

NATHPO Chairman Reno Franklin is unable to be here today and he sends his regrets. Today's hearing is about America's living history, a uniquely American history, and how as Americans, we treat our dead, and how we treat the sacred cultural objects that play an important role in the living cultures of today. About 20 years ago, Native and non-Native people worked together to craft the legislation known as NAGPRA.

NATHPO acknowledges Congressman Mo Udall and Congressman George Miller of this Committee, along with Walter Echo-Hawk, Jack Trope and Jerry Flute, who, without their foresight and work, we wouldn't have had NAGPRA in the first place. And you know, the bottom line in terms of NAGPRA is it is a Federal law. It is Federal Indian law and it was created for the benefit of Indian tribes and Native Hawaiians. In a few weeks, the 19th anniversary of the signing of the Act will occur, and it is that span of 19 years that I would like to discuss today, and even though NATHPO is not a well-funded organization, we devoted a substantial amount of our meager resources over the past three years to evaluate how the Federal agencies are complying with the law.

It is out of a sense of duty and responsibility to both the living and the dead that we took on this task. We do it for Indian communities of today who are forgotten and neglected in the rural parts of Indian country, and we did it for our dead, for our ancestors who were never intended to be housed in Federal repositories and museums throughout the land, being

used for scientific testing at the whim of the latest theory.

A year ago, NATHPO released a national report on how Federal agencies are complying with the Act. We identified many challenges and barriers to success in Indian country. That report, done collaboratively by the Makah Tribe of Washington and NATHPO, was the first in-depth report of its kind, and we listed many recommendations on how to improve the process so that it serves its audience, Indian country, and this is a copy of the report.

Among the--I am calling it the Makah report. Among the Makah report's findings and recommendations for improvement are the following: provide adequate resources for Indian tribes, Native Hawaiian organizations and Federal agencies necessary to comply with the Act; improve both the quality and access to information in the NAGPRA process; develop and publish in the Federal Register a tribal consultation step-by-step process so that an open and transparent process is available to all; develop and offer appropriate training for Native people and Federal officials; improve the content and guidelines on using the Culturally Unidentifiable Native American Inventories Database.

So, that is just a short list of the recommendations we included in the report to improve the Act and how it is being implemented. I would like to comment specifically on the Culturally Unidentifiable Native American Inventories Database. In the legislative process that created NAGPRA, it was estimated that there were approximately 100,000 to 200,000 Native Americans who could be repatriated using this Act. It is with great sadness to report that after 19 years, two out of every three Native Americans of that estimated amount still have not been repatriated, and in fact, they are now listed as culturally unidentifiable, with little likelihood of being repatriated unless the system is improved.

Again, two out of three Native Americans, over 123,000 Native Americans are now listed as culturally unidentifiable and they remain languishing on museum shelves, and just to give you an idea of what 123,000 people, known to be Native Americans, but 123,000 people is roughly the size of Bellevue, Washington or New Haven, Connecticut or Topeka, Kansas. This indicates that there is much work to be done. NATHPO appreciates the Committee's time today to hear about this important act.

Since this hearing was announced and since NATHPO was listed as a witness, I have received numerous pleas from around the country, from Native people and tribal communities around the country, asking me to tell their story, asking NATHPO to tell their story and to tell someone about the struggle that they have in their own communities to try and implement this Act and to make it work for them and for their tribal communities.

The people who have the most at stake, Native people who know their dead, who know their sacred objects and the stories that go along with those objects, may not be here today to testify for themselves, and they may not be here in person, but I have been asked to relay their thanks to the Committee for your ability to talk about something that is so important on a very local level. I will be happy to answer any questions the Committee may have for me at a later time. Thank you very much.

[The prepared statement of Ms. Kraus follows:]

Historic Preservation Officers, on behalf of NATHPO Chairman Reno
Franklin

Good morning Mr. Chairman and members of the committee. Thank you for the opportunity to testify at this oversight hearing on the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq. NATHPO Chairman Reno Franklin sends his regrets as he is not able to be here in person, and thanks the committee for their time and attention to examining the status of a federal law that affects almost every Native person today.

Background

Today I am representing the National Association of Tribal Historic Preservation Officers (NATHPO). NATHPO is a national not-for-profit professional association of federally recognized Tribal government officials who are committed to preserving, rejuvenating, and supporting American Indian, Alaska Native, and Native Hawaiian cultures and practices. In 1998, the initial cohort of 12 officially recognized Tribal Historic Preservation Officers (THPOs) created NATHPO with the mission to preserve Native languages, arts, dances, music, oral traditions, and to support tribal museums, cultural centers, and libraries.

The number of Tribal Historic Preservation Officers (THPOs) continues to increase since they were first recognized in 1996 by the National Park Service, U.S. Department of the Interior. THPOs assume the role and responsibilities of the State Historic Preservation Officers on their respective Indian reservations and aboriginal lands from which their ancestors once lived and were laid to rest. In 2008, there are now 86 officially recognized THPOs and our organization's membership has increased commensurately. NATHPO's membership includes THPOs and tribal governments that support the mission and goals of our organization.

THPOs are not just tasked with complying with the National Historic Preservation Act, they are often also the ``NAGPRA representative'' for their tribe.

In addition to convening training workshops and national meetings, NATHPO has produced original research reports, including: ``Federal Agency Implementation of the Native American Graves Protection and Repatriation Act'' (2008); and ``Tribal Consultation: Best Practices in Historic Preservation'' (2005).

I am familiar with the issues in today's hearing based upon my work on repatriation issues while being employed at the National Association of Tribal Historic Preservation Officers, as well as prior professional employment at the National Indian Policy Center and the Smithsonian Institution's National Museum of Natural History. Bambi Kraus is my English name, Yatxaakw is my Tlingit name.

Why Was NAGPRA Created?

NAGPRA was enacted in response to accounts that span many generations over the significant portion of two centuries. These accounts document a spectrum of actions from harvesting human remains from the battlefield to disinterment of existing graves to the theft of Native American human remains, funerary objects given to the deceased at burial, sacred objects of different types, and objects of cultural patrimony that belong to the collective Native community.

Within a few years time, two public laws were enacted that forever changed how Native Americans are viewed today:

Public Law 101-601, the Native American Graves Protection and Repatriation Act (November 16, 1990).

Public Law 101-185, the National Museum of the American Indian Act (November 28, 1989; later amended in 1996 to include repatriation provisions) and

NAGPRA has been at times terrifically successful at the local

level. More often, it is exemplary of the experiences of many American Indians, Alaska Natives, and Native Hawaiians: though the Act was created for their benefit and to rectify a moral wrong, most Native people have been unable to realize the law's potential. They have been forced to immediately learn a western process and bureaucratic language and to do so at the most personal and profound of times--at the time they must identify their dead and the sacred objects and cultural patrimony that have been removed from their communities.

First In-Depth Review of How Federal Agencies are Implementing NAGPRA

In 2006, the National Park Service National NAGPRA Program awarded a grant to the Makah Tribe to assess how the Act has worked over that time and whether there remain significant barriers to the effective implementation of the Act; the Tribe worked closely with NATHPO in its research and production. The resultant report focuses on Federal agency participation in and compliance with the Act, including such overarching issues as completing notices of inventory, determining cultural affiliation, developing and implementing agency policies on tribal consultation, and resources to assist the agency meet its responsibilities under the Act.

The Makah-NATHPO Report, 'Federal Agency Implementation of the Native American Graves Protection and Repatriation Act,' was the result of a two-year research project and was released in August 2008. The report is the work of five researchers who conducted original research for this report, analyzed existing public information, and conducted two national surveys to determine how the Act is being implemented around the country and how Federal agencies and Native Americans are working together to achieve the goals that the U.S. Congress established for the Act. The report was peer-reviewed by 11 individuals representing Indian tribes and NAGPRA practitioners, academics who work in this field, and federal agency officials. We are confident in the research, conclusions and recommendations that are presented in the 2008 report.

This study was undertaken to prepare a substantive foundation for assessing Federal agency implementation of NAGPRA and where improvements might be made. The internal processes and effectiveness of the National Park Service (NPS) National NAGPRA Program or Park NAGPRA Program were not examined or evaluated. We are happy to report that several recommendations in the report have already been implemented or are underway in the year since the report was published.

In brief, the research team examined a national process of consultation and information sharing that has led to individual success stories at the local level. It is clear from the work that went into the report that in the almost 20-year history of the Act, it has enabled some measure of success in the efforts of Native people to secure the repatriation of Native American human remains and cultural objects, but much work remains.

Again, one of the main goals of the report was to identify where improvements might be made in the implementation of the Act and to present the information in terms of findings and recommendations. Attached to this written statement are the recommendations that were developed. For this morning's hearing, I will highlight and discuss just a few.

Report Recommendations

The report recommendations were presented in two categories: general themes and specific recommendations. Summarizing the General Theme recommendations with a brief description are as follows:

1. Knowledge of process and responsibilities: No full-time NAGPRA staff working at the Federal agency level; lacking a list of the NAGPRA contact person for each Federal agency; need and request for NAGPRA training

2. Access to Information: burden has been place on Native people

to determine where and if a Federal agency has Native American remains and cultural objects; withdrawal of pending Notices of Inventory Completion is a barrier and/or challenge to Native people; identification of human remains and cultural objects as ``culturally unidentifiable'' that places those classified remains and objects beyond the reach of Native people

3. Consultation: Federal agencies don't know with whom to consult and Native people are not always welcomed when they seek to have a Federal agency engage in consultation

4. Available Resources: Currently available resources fall far short of what is needed and Native governments and organizations are unable to maintain a robust NAGPRA program effort needed to assure protection of their cultural resources. Also, congressionally appropriated funds have NAGPRA grants to tribes and museums has decreased in the past five years.

5. Standards: What constitutes correct information and who sets the standards for a Notice of Inventory Completion; when has a Federal agency complied with the Act per the notification process; how much evidence is necessary for an accurate determination of cultural affiliation; when are the remains of an ancestor considered to be ``culturally unidentifiable;'' no publicly available standards on ``tribal consultation'' and ``cultural affiliation''

6. Training: develop and offer online training and online instructional materials; develop user-friendly databases

There are eight (8) specific recommendations as follows:

1. Statutory: amend the definitions section of the Act

2. Regulatory: Establish an inter-agency NAGPRA Implementation Council within the executive branch, possible the Office of Management and Budget, that would ensure and coordinate compliance, refer non-compliance and remedies for non-compliance with the Act, train federal officials, have a dispute resolution role, develop uniform NAGPRA consultation guidelines for all Federal agencies and publish in the Federal Register

3. Oversight and Enforcement:

a. issue and publish in the Federal Register the NAGPRA contacts and policies for each Federal agency;

b. create a public database that lists each Federal agency repository for curation purposes, including location and contact information;

c. demonstrate via publication in the Federal Register that consultation has occurred with an affected Native American/s; and

d. revise and improve the Culturally Unidentifiable Native American Inventories Database (CUNAID) including the following:

i. improve database search functions

ii. show documentation as to the pre-decisional consultation has occurred

iii. establish an open and transparent process for why human remains and cultural objects meet the ``compelling scientific interest'' category

iv. more frequent updates of the database

v. Native American input in developing new information to be included in the database

vi. Require additional information to be included in the database, such as description of study beyond counting and sorting, original location of burial site, full address of current location of human remains and objects; and title and detailed contact information of the office responsible for writing the database record

4. General NAGPRA Program: develop a reporting system that demonstrates success

5. NAGPR Review Committee: develop a database of disposition case that have come before the Committee; publicize upcoming publications of Notice of Inventory Completion and a list of notices that are awaiting publication

6. Memoranda of Agreement or Programmatic Agreements: develop a standard MOA or PA

7. Adequate Funding for the Implementation of NAGPRA: appropriate adequate funding for Indian tribes, Native Hawaiian organizations, and Federal agencies, including training opportunities, and the Inter-Agency Council and additional responsibilities for the NPS

8. Compliance Audits: request that the Government Accountability Office conduct an audit of Federal agency compliance with the Act; and the Inspector General of each Federal agency should investigate any non-compliance with the Act that his identified by the GAO audit.

There was one section, Future Areas of Research, which recommended the following:

1. Evaluate museum compliance with NAGPRA, similar to this Federal agency research

2. Evaluate the role of the Smithsonian Institution in the repatriation process

3. Evaluate the NPS National NAGPRA Program for efficiency, staffing levels and areas to improve

4. Examines how the unassociated funerary objects have been dealt with in the repatriation process

5. Examines how the Future Applicability (Sec. 10.13) provisions are being implemented

6. Examine the background process that led a Federal agency to determine whether human remains and associated funerary objects was to be entered into the CUNPID, including the process used in working with and notifying tribes of the remains and objects.

Are There Enough Resources?

One of the issues that was studied and discussed in the 2008 report was whether or not there were adequate resources to comply with the Act. We sought input from both Federal agency officials and from representatives of Indian tribes and Native Hawaiian organizations. Our work determined that over the past 19 years, the repatriation process has evolved to be a time consuming and expensive endeavor and even then, the repatriation process does not ensure that remains or cultural objects will be repatriated. Two possible solutions are (1) to infuse the program with much more federal support; and/or (2) to improve the process.

One of the major problems identified by the Makah-NATHPO study was the lack of Federal staff dedicated exclusively to carrying out compliance activities. The 2008 report recommend that additional appropriations be made to ensure that each agency has adequate staff. Related to this, was the lack of training for Federal staff who are assigned responsibility for NAGPRA implementation. We recommend that additional funds be appropriated to ensure that Federal officials receive adequate training and staffing levels, which they have identified as a need.

Since 1994, the U.S. Congress has appropriated funds for grants to museums and Indian tribes to carry out NAGPRA activities. Those funds have been inadequate to effectively address the mandates of the Act. Insufficient resources prevent Native Americans from maintaining robust NAGPRA programs and the needed effort to ensure protection and repatriation of a tribe's cultural resources. NAGPRA grants to tribes and museums--which are one of the only sources of funding for Native Americans in the field of cultural preservation--have decreased in the past five years. An assessment of grants made between 1994 and 2007 indicate that proportionately fewer of the funds appropriated for this purpose are actually being allocated for grants. We recommend an

increase in the amount appropriated for grants, and that Congress ensure that these funds are only used for grants and not for administrative activities. If additional funds are needed for administrative activities, there is a separate line item to which additional funds could be made available.

Are the Law and Regulations Adequate or is Work Needed?

NAGPRA directs Federal agencies and museums to consult with Native governments and Native cultural practitioners in determining the cultural affiliation of human remains and other cultural items. Prior to passage of the Act, House Report 101-877 defined the term ``consultation,' ' but the Department of the Interior decided not to include a definition when it promulgated regulations. As a result, there has been a great deal of confusion as to what exactly is required. The 2008 report recommended that the Department of the Interior revise the current regulations to define consultation consistent with the language in the House Report or, if the Department declines to do so expeditiously, the Congress amend the Act to include a specific definition of consultation.

NAGPRA directs each museum and Federal agency to complete an inventory of Native American human remains and associated funerary objects in their possession or control by 1995, with notification of cultural affiliation provided to the appropriate Indian tribe or Native Hawaiian organization by 1996. The Secretary of the Interior was directed to publish a copy of each notification in the Federal Register. Our research found that ten years later, a large number of these notices have still not been published and the human remains and associated funerary objects been not been listed on the culturally unidentifiable database, thus leaving them effectively hidden from the repatriation process. It is particularly disturbing that a number of these situations involve units of the National Park Service--the agency currently delegated by the Secretary of the Interior with the responsibility for implementing the Act. We recommend that, as for all federal programs, an open and transparent process needs to be instituted for the knowledge and use by all.

Culturally Unidentifiable Native American Inventories Database

NAGPRA directs the National NAGPR Review Committee to compile an inventory of culturally unidentifiable human remains that are in the possession or control of each museum or Federal agency. In 1990, the Congressional Budget Office estimated that the remains of about 100,000-200,000 Native American individuals were stored in the nation's museums and Federal repositories. The National NAGPRA Program has reported that as of March 31, 2009, museums and Federal agencies had published 1,220 notices of inventory completion accounting for the remains of 37,998 individuals and 985,788 associated funerary objects. To date, about 38,000 ancestors have been returned using the NAGPRA cultural affiliation process--which is roughly 19% of 200,000--or the repatriation at a rate of about one percent (1%) per year.

Our research for the 2008 report found that the current database does not accurately reflect the number of culturally unidentifiable human remains in the possession or control of Federal agencies. Further, the currently database does not provide adequate information about how to proceed if the database includes human remains of interest to an Indian tribe or Native Hawaiian organization. For example, there is currently no record of whether or not Native Americans have been contacted or consulted, there are no serial numbers or a way to determine which record is being referenced when seeking additional information, and there is no ``user guide' ' for how to use the database.

Based on our work for the 2008 report and in response to our members, NATHPO sponsored in August 2009 the first organized opportunity and open call for tribal representatives to come together

to review and discuss the important information contained in the database. We provided the attendees with a copy of the database and a template to use for requesting additional information, which is their right by law. This was just a start in working with this important database and we hope to continue this initiative. Attached is the one-page summary of this database and the workshop.

Conclusion

NATHPO has been working to overcome historic practices and behavior toward Native people. We support local tribal efforts for control of their respective histories and culture. We support a tribal agenda that goes beyond merely educating and reacting to situations that are many times beyond our control. Native Americans have many reasons to be proud of their work in seeking the return of their ancestors and cultural objects and we hope that the Committee will continue supporting these local efforts and will have more opportunities to visit Indian country and hear from Native people on this important Act.

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VIII. RECOMMENDATIONS [from the report, ``Federal Agency Implementation of the NAGPRA'']

A. General Themes

i. Knowledge of Process and Responsibilities

One of the prominent issues that emerges from the results of both Federal agency surveys and the surveys of Native governments and organizations is the need for more training so that Federal agency personnel are aware of their agency's responsibilities under the Act, museum personnel are aware of their museum's responsibilities under the Act, and Native governments and organizations are aware of their rights and responsibilities under the Act.

The survey results would suggest that within the Federal agencies, seldom is there a full-time employee whose principle assignment is to carry out the agency's responsibilities under the Act. More often, if there is an employee who is tasked with assuring that the agency is in compliance with the mandates of the Act, that person's first responsibility is to assure compliance with section 106 of the National Historic Preservation Act. A number of the Federal agencies responding to the survey indicated that the agency has a designated Federal historic preservation officer, who may or may not devote part of his or her time to NAGPRA duties. Several agency respondents reported that they were not certain who had NAGPRA responsibilities within their agency, and others placed the role of determining cultural affiliation in the hands of the National NAGPRA Program through the publication of Notices of Inventory Completion.

It is perhaps thus not surprising that Native government and Native organization respondents reported that they have experienced difficulty in finding anyone within a Federal agency that can tell them with whom they should be addressing NAGPRA-related issues. Some Native governments report that when they contact Federal agencies with the objective of gaining an understanding of how the repatriation process works within that agency, there is no one who can tell them what the repatriation process entails or how to go about initiating a request for repatriation.

ii. Access to Information

No less important is the commonly-reported fact that unless a tribal government or Native organization has been contacted directly by a Federal agency or museum, they do not know how they would learn that a Federal agency or museum may have the human remains of their

relatives, or associated funerary objects, sacred items or objects of cultural patrimony.

Some tribes report having had to resort to relying upon anecdotal evidence or reports that someone has seen something in a museum that looks like it would have been associated with that tribe's cultural and religious practices. Others have attempted to contact every Federal agency and every museum known to possess Native American collections. Such time-intensive, laborious and costly undertakings could have been rendered unnecessary if the policy and intent of the Act--namely to place the burden of reporting on those institutions that have possession of Native American collections--had been fully and effectively realized.

As referenced above, the Act does provide for a system of notification, but the integrity of the notification process is only as sound as the information that is provided to the Interior Department. The Act does not address how the Department would go about determining whether other Federal agencies or museums may have Native American collections for which inventories and/or summaries have not been submitted. In late 2007, several museums and National Park units withdrew many pending Notices of Inventory Completion that would have publicly announced the existence of culturally-affiliated Native American human remains and associated funerary objects, and thereby further frustrated the efforts of Native people to identify where human remains and cultural objects could be found.

In addition, it is well known that a common practice of agencies and museums is to err on the side of caution when the cultural affiliation of human remains or associated funerary objects cannot be definitively determined. In this context, caution is exercised by reporting that such remains or objects are culturally unaffiliated. While such caution is understandable, as discussed in Section III.C. of this report, the classification of remains or associated funerary objects as culturally-unidentifiable often has the effect of placing those remains or objects so classified beyond the reach of the Act's preference for repatriation of Native American human remains and associated funerary objects.

Native governments and organizations ask whether notice has been published in the Federal Register for all remains and associated funerary objects that have been reported as culturally unaffiliated, and apparently the answer is that they have not. Responses to tribal surveys as well as an in-depth analysis of the ``Culturally Unidentifiable Native American Inventories Pilot Database,' ' maintained by the National NAGPRA Program Office and set forth in Section III.C. of this report would indicate that the database is difficult to use and has limited research and cross referencing capabilities.

iii. Consultation

As outlined earlier, NAGPRA contemplates and indeed directs that Federal agencies and museums consult with Native governments and Native cultural practitioners in determining the cultural affiliation of human remains and other objects and items within their respective Native American collections. Federal agencies indicated that an element of their success in working with Native Americans in complying with the Act is that they know with whom to consult.

The Act's regulations also provide that consultation is to be carried out as part of the intentional excavation or inadvertent discovery of human remains or objects. Written plans of action must be the product of consultation, and when re-interments are to take place, consultation in how such re-interments or associated repatriations are to take place is also anticipated.

Despite these statutory and regulatory requirements, a review of both Federal agency and Native survey responses suggests that Federal agency personnel often don't know with whom they should be consulting,

and Native governments are not always welcomed when they seek to have a Federal agency or a museum engage in consultation. In fact, survey results indicate that there is substantial room for improvement in the area of consultation.

iv. Available Resources

Tribal survey results suggest that Native Americans place a high value on the capacity to repatriate the remains of their relatives, ancestors, sacred objects and objects of cultural patrimony, but that the resources which are currently available to effect these repatriations fall far short of what is needed. And while the Congress has appropriated funds to support the NAGPRA program, overall, those funds have also been inadequate to effectively address the mandates of the Act.

Insufficient resources also prevent Native governments and organizations from maintaining a robust NAGPRA program effort and retaining one or more people to assure protection of a tribe's cultural resources. NAGPRA grants to tribes and museums has decreased in the past five years, and an assessment of grants made between 1994 and 2007 indicates that proportionately fewer of the funds appropriated for this purpose are actually being allocated for grants (see Appendix C). Clearly, Federally-appropriated resources have been insufficient to address the needs of the repatriation process. It is unknown what the total need for NAGPRA training is at all levels and for both Federal agencies and Native people.

An examination of fiscal support at the Federal agency level may show parallel lack of support, both in terms of staff support and training for new and current staff tasked with the responsibility to comply with the Act.

v. Standards

Improving information sharing and establishing standards are important components of the repatriation process and the following remain unclear:

What constitutes correct information and who sets those standards;

What format is to be used for a Notice of Inventory Completion and when has a Federal agency or museum complied with the Act per the notification process;

How much evidence is necessary for an accurate determination of cultural affiliation;

When are the remains of an ancestor considered to be ``culturally unidentifiable.''

``Tribal consultation'' and ``cultural affiliation'' are not easily understood and agreed upon processes. There are also points in the process where exclusion from these two important steps prevents active engagement of an affected Indian tribe or Native Hawaiian organization. There are no publicly available standards on what constitutes meeting the requirement to consult with an affected Indian tribe or Native Hawaiian organization. Who sets these standards is also of concern.

vi. Training and Technology

Many of the challenges identified by the research, as well as other identified barriers to the effective implementation of the Act, could be addressed and possibly overcome through the provision of training for Federal agency, museum, and Native government and organization personnel.

Federal agency survey responses suggest that those Federal agency personnel who are charged with carrying out NAGPRA responsibilities are frequently new or reassigned, so that while there may have been some training on the Act for those initially tasked with implementing the agency's responsibilities, training has not been available to their successors. The same dynamic appears to be prevalent in Native communities, where the unmet need for training is further exacerbated

by the lack of resources to gain access to training opportunities.

However, with the widespread advent of technological tools, there are solutions that could be applied to address the need for more knowledge about the Act, to build the capacity for access to information, to facilitate consultation, and to enable expanded training opportunities.

For instance, funds expended on travel of Federal agency personnel to training sites might be reallocated to the development of on-line instructional materials that would be accessible either directly or made available in CD and DVD formats. The development and maintenance of user-friendly databases hold the potential to greatly expand the access by Native governments and organizations to inventory and summary information held by the Interior Department. Computer software programs that enable users with differing levels of security protection to have appropriate access to confidential or proprietary information foster both transparency and accountability.

Most Native groups do not have the means to travel to regional hubs to take advantage of training opportunities where such opportunities exist, nor do they have the means to travel to the Nation's capital to access data that is maintained in paper files. Federal agencies also lack the resources to send Federal agency personnel out to areas of Native America for the critical purpose of consultation that is required under the Act, or to send Federal agency personnel to training sessions that are held at considerable distances from their assigned duty stations.

Many of the recommendations from both Federal agencies and Native groups can be achieved by building on-line, secure data systems that are accessible to the relevant users and their needs for information. Recent developments in computer software programs afford different users access to information that is compatible with statutory and regulatory requirements, while ensuring the security of proprietary and confidential materials. In this manner, Federal funding can be employed to maximize cost-effectiveness as well as to achieve both transparency and accountability.

B. Specific Recommendations

In a climate in which the funding of Federal programs can be anticipated to fall short of what is needed to assure full compliance with statutory and regulatory requirements, creative and cost-effective alternatives must be identified.

1. Statutory

Amend the ``Definitions'' section of NAGPRA to clarify application to human remains so that ``Native American'' means of, or relating to, a tribe, people, or culture that is or was indigenous to any geographic area that is now located within the boundaries of the United States.

2. Regulatory

Establish an Inter-Agency NAGPRA Implementation Council within the Executive Branch (possibly the Office of Management and Budget) that would:

a. Assure Compliance within each Federal Agency

The Council should be vested with the authority to assure that each Federal agency with land management responsibilities or otherwise subject to the provisions of the Act is complying with the Act. The Council should identify instances in which creative approaches to compliance have proven to be effective for purposes of advising Federal agencies of useful models for compliance.

b. Coordinate Compliance across all Federal Agencies

The Council should also oversee coordination of Federal agency activity to assure compliance with the Act's requirements across Federal agencies. The Council should maintain a database of compliance with NAGPRA across all Federal agencies including information on the compliance record of each Federal agency.

c. Refer Non-Compliance and Remedies for Non-Compliance

The Council should establish a mechanism for the referral of complaints concerning a Federal agency's lack of compliance to the Inspector General of each Federal agency, and the Council should direct the National NAGPRA Program Office to publish relevant information on the referral process as well as information identifying the designated agent within each Federal agency with whom complaints should be filed in the Federal Register. The Council should also establish remedies for non-compliance with the statutory and regulatory requirements and the Council should direct the National NAGPRA Program Office to publish the remedies in the Federal Register.

d. Train

The Council, in coordination with the National NAGPRA Program within the National Park Service, should assure that all Federal agency personnel charged with responsibilities under the Act have the necessary training to effectively carry out their responsibilities under the Act.

e. Dispute Resolution Role

The Council should serve as a forum for the resolution of disputes amongst Federal agencies.

f. Uniform Consultation Guidelines

Following direct, meaningful and pre-decisional consultation with Indian tribes, Alaska Native villages and Native Hawaiian organizations, the Council should develop a set of uniform NAGPRA consultation guidelines for all Federal agencies. The Council should direct the National NAGPRA Program Office to publish the consultation guidelines in the Federal Register.

8. NAGPRA Regulations

The Council shall develop and maintain one set of regulatory language for all provisions of the Act.

3. Oversight and Enforcement of Statutory Requirements

a. Training

Establish a program to train Federal agency personnel who are assigned responsibility for NAGPRA implementation by each Federal agency including not only statutory and regulatory requirements but also requirements for pre-decisional consultation associated with cultural affiliation determinations and consultation associated with the publication of notices and with repatriation of cultural items as defined by the statute.

i. As part of the training effort, Native people with extensive NAGPRA experience in representing their tribes or Native Hawaiian organizations at NAGPRA and other cultural resource consultations, need to become a part of the National NAGPRA Program's training component. All official training held thus far (for Native people or for institutions) has been carried out by non-Native people, and while this training has provided some benefits, Native people report that there is still a significant need for education amongst Federal agency personnel when Native people seek to repatriate remains. High turnovers in NAGPRA-responsible staff at both the tribal and Federal levels also underscore the need for the permanent creation of a training team comprised of experienced Native NAGPRA representatives.

ii. In consultation with Indian tribes, Alaska Native villages, and Native Hawaiian organizations, the National NAGPRA Program Office should develop training modules that are accessible through the Internet, or which can be made available to Native groups in compact disc or DVD format.

b. Issue and Publish NAGPRA Contacts and Policies within each Federal Agency

A policy for the implementation of NAGPRA's statutory and regulatory requirements, including consultation requirements, should be promulgated by each Federal agency, and each Federal agency should

submit its policy to the National NAGPRA Program Office for publication in the Federal Register.

Create a database that would list each Federal agency repository, including its location and NAGPRA contact.

c. Demonstrate Consultation with Native Americans

The process that each agency proposes to follow for pre-decisional consultation associated with the determination of cultural affiliation of human remains and cultural items should be submitted to the National NAGPRA Program Office for publication in the Federal Register.

d. ``Culturally Unidentifiable Native American Inventories Pilot Database''

i. The ``Culturally Unidentifiable Native American Inventories Pilot Database'' should be revised to enable access to information across all Federal agencies so that an inquiry as to whether any agency has human remains or cultural items from a particular area can be pursued without having to search the records of each Federal agency.

ii. The National NAGPRA Program Office should require the submittal of information by Federal agencies documenting what pre-decisional consultation was undertaken to determine cultural affiliation of human remains and funerary objects listed in the database.

iii. The National NAGPRA Program Office should require the submittal of information by the Federal agencies documenting that human remains or associated funerary objects that the Federal agencies seek to retain for purposes of scientific study to ensure that the agency has met the statutory standard of proving that there is a ``compelling scientific interest'' in the retention of the remains or funerary objects that are identified in the database.

iv. The National NAGPRA Program Office should provide more frequent updates of the database, as well as other databases recommended in this report. The National NAGPRA Program Office should afford tribes and Native Hawaiian organizations an opportunity to provide input in developing new questions for the database.

v. The National NAGPRA Program Office should require the provision of uniform information to be contained in the database including: (1) a description of any study beyond counting, sorting, and original location of the burial of human remains or funerary objects, whether used to determine cultural affiliation or not, and whether or not the statute's standard regarding extra-legal study had been met and by whom; (2) the full address of the current location of the culturally-unidentifiable human remains and associated funerary objects; (3) the title and detailed contact information of the office responsible for writing the database records for each Federal agency; and (4) the title and detailed contact information for each individual who is ultimately responsible for NAGPRA compliance for each Agency.

4. General NAGPRA Program

a. Inventory of Repatriation Process Data

Under current practice, there is no reporting system in place by which Federal agencies, museums, Indian tribes or Native Hawaiian organizations can submit information about the actual repatriation of human remains, associated funerary objects, sacred objects, or objects of cultural patrimony. Accordingly, the Congress has no means of periodically assessing the effectiveness with which the Act's goals are being implemented.

i. Establish a process by which Federal agencies, museums, Indian tribes and Native Hawaiian organizations can submit electronic data to the National NAGPRA Program Office identifying the number of remains or objects that have been the subject of a completed repatriation.

ii. Develop an inventory of all repatriations that have been completed under the authority of the Act, and establish a database to house repatriation information. The National NAGPRA Program Office

should require signed statements from each Federal agency and institution that document the repatriation of human remains and cultural items. The inventory should also contain a record of the tribes or Native Hawaiian organizations that have received repatriated remains or cultural items under the authority of NAGPRA. Such a database should provide protection of proprietary information but should also enable access to the number of repatriations in each category (human remains, associated funerary objects, sacred objects, objects of cultural patrimony, unassociated funerary objects).

5. NAGPR Review Committee

a. The National NAGPRA Program Office, in consultation with the NAGPR Review Committee, should develop a database of all cases that have come before the Review Committee. Information in the database should identify which cases have been resolved, the manner in which they were resolved, and any outstanding cases that have yet to be resolved.

b. The National NAGPRA Program Office should maintain an updated list of any upcoming publications of Notices of Inventory Completion on its website, along with a list of Notices that are awaiting publication.

The National NAGPRA Program Office should maintain a database that contains information on the location of, as well as possession and control of, all Native American human remains, funerary objects, and other cultural items.

6. Memoranda of Agreement or Programmatic Agreements

The National NAGPRA Program Office, in consultation with Indian tribes, Alaska Native entities, Native Hawaiian organization, and Federal agencies, should develop a standard memorandum of agreement or a programmatic agreement that would provide for Native groups to assume stewardship of a site or human remains in the event of an inadvertent discovery of a Native burial on Federal lands. One example of a programmatic agreement is the 2004 Programmatic Agreement reached between 18 Missouri River Tribes, the Corps of Engineers, the National Trust for Historic Preservation, the Advisory Council on Historic Preservation, and the State Historic Preservation Officers for Montana, North Dakota and South Dakota and Nebraska.

7. Adequate Funding for the Implementation of NAGPRA

a. The Congress should appropriate adequate funding to assure the effective implementation of the Act at the tribal level. Many Native groups do not have the resources to secure training in repatriation under the Act, or the resources to carry out repatriation activities. In addition, many of the NAGPRA representatives at the tribal level are elderly, and the training of members of the younger generations is vital if the Act is to be effectively implemented in the future.

b. The Congress should also appropriate adequate funding to assure the effective implementation of the Act at the Federal level, including funding for the activities of the Inter-Agency Council and the additional responsibilities of the National NAGPRA Program Office recommended in this report.

8. Compliance Audits

a. The Congress should request that the Government Accountability Office (GAO) conduct an audit of Federal agency compliance with the statutory and regulatory requirements of NAGPRA for all relevant Federal agencies. Such an audit could include:

i. The mechanisms each Federal agency employs for assuring that all human remains and cultural items in the possession or control of the agency have been reported to the National NPS NAGPRA Program Office, and the effectiveness of such mechanisms;

ii. The means by which the National NPS NAGPRA Program Office determines that each Federal agency has fully complied with the

mandates of the NAGPRA statute and regulations;

iii. The identification of the Federal agency or program office within a Federal agency that is best equipped to provide information to the Congress on a regular basis of how many human remains and cultural items have been repatriated under the authority of the NAGPRA statute and regulations, as well as an assessment of the overall effectiveness with which the provisions of the Act have been implemented, as well as what barriers exist to the effective implementation of the Act;

iv. The identification of an entity within the Executive branch that has the authority or can be vested with the authority to oversee and assure the compliance of each Federal agency with the NAGPRA statute and regulations;

v. The identification of secure data system alternatives that would enhance public access to the data collected and maintained by the National NPS NAGPRA Program Office while still assuring the security and confidentiality of such data, including the identification of data system capacities to provide differing levels of access to confidential information;

vi. The identification of the most cost-efficient manner of providing training to Federal agency employees charged with assuring compliance with the NAGPRA statute and regulations;

vii. The identification of the most cost-efficient manner of providing training for Indian tribes, Alaska Native entities, and Native Hawaiian organizations on the NAGPRA statute and regulations; and

viii. The identification of a reporting system that would enable the oversight entity within the Executive branch referenced in subparagraph iv of this paragraph to refer potential enforcement actions for failure to comply with the NAGPRA statute to the relevant law enforcement agency or agencies.

b. The Inspector General of each Federal agency should investigate any non-compliance with the Act that is identified by the Government Accountability Office audit.

C. Future Areas of Research (not listed in priority order)

1. Evaluate museum compliance with NAGPRA, with the same goals as to how this research project was conducted.

2. Evaluate the role of the Smithsonian Institution, including the intersections of National Park Service NAGPRA and the law governing the Smithsonian's repatriation activities, and Federal agency collections that are now housed permanently or temporarily at the Smithsonian.

3. Evaluate the NPS National NAGPRA Program for efficiency, staffing levels, and areas to improve

4. Examine how unassociated funerary objects have been dealt with in the repatriation process. Research work on this project focused on cultural affiliation and associated funerary objects, and a thorough study of how objects became ``unassociated'' or if there is means to hasten research time to associating these objects would be of benefit to the local Native community.

5. Examine how the Future Applicability (Sec. 10.13) provisions are being implemented.

6. Examine the background process that led a Federal agency to determine whether human remains and associated funerary objects was to be entered into the ``Culturally Unidentifiable Native American Inventories Pilot Database,'' including the process used in working with and notifying tribes of the human remains and associated funerary objects.

Chairwoman Bruning?

STATEMENT OF SUSAN B. BRUNING, CHAIRWOMAN, REPATRIATION
COMMITTEE OF THE SOCIETY FOR AMERICAN ARCHAEOLOGY,
SOUTHLAKE, TEXAS

Ms. Bruning. Good morning. Thank you, Mr. Chairman. My name is Susan Bruning. I am Chair of the Repatriation Committee for the Society for American Archaeology, and thank you as well to the Ranking Member Hastings and to the rest of the Committee for welcoming us here today. NAGPRA has accomplished a great deal over the past 19 years. Extensive repatriation of human remains and other cultural items from both museum collections and from recent excavations has occurred, and it continues to occur through much effort and collaborative work among tribes, museums and Federal agencies.

NAGPRA has also led to innovative solutions for other disposition needs, and it has facilitated the forging of important and long-lasting relationships among the parties involved. The Society believes that these successes are due to the fact that NAGPRA and the processes it creates are founded upon a carefully crafted balance among Native Americans, museums and scientists who are involved, and that the parties achieving these successes share mutual respect for the varied interests at stake and for the law that underpins these activities.

The crux of NAGPRA is to enable Native American tribes to locate and determine appropriate resolutions for the future care and repose of ancestral human remains and important cultural items that have been removed from their places of origin. NAGPRA also facilitates opportunities to learn about the past, as tribal experts and scholars work together to investigate and understand relationships of shared group identity between the past and the present.

The way in which Congress chose to operationalize this search for a reasonably close cultural relationship is through the concept of cultural affiliation. Cultural affiliation is the foundation upon which this balance of interests rests. It provides a mechanism that enables the descendant communities to obtain control over the disposition of their ancestral remains and important cultural items, where a reasonably traceable relationship to an earlier group can be established.

Where such a relationship has not yet been established, the law enables the search for cultural affiliation to continue and it protects those items and information for the benefit of future generations. The Society has worked diligently to support a balanced and fair implementation of the Act with the explicit language and consistent with the legislative history, as well, of the law. In recent years, however, the Society has had and has expressed growing concern about imbalance in certain areas of the law's implementation.

For instance, in the proposed rule drafted by the national NAGPRA office relating to disposition options for culturally unidentifiable human remains, the proposed regulation suggests that quick and complete removal of human remains from curatorial institutions is more important than allowing time for the parties to continue working together to seek knowledge and understandings about relationships of shared group identity.

The Society supports processes that allow parties time and flexibility to work together without the pressure of arbitrary

deadlines as they develop knowledge about cultural connections and develop options for caring for human remains and cultural objects that have been removed from their places of origin. Issues such as the need to check for toxic contaminants that are present in some curated items highlights the need for tribes, museums and scientists to work together thoroughly and thoughtfully.

The best solutions are customized. They take time, they take resources, they take effort, and they take trust, and trust comes through relationship-building and ground-up collaboration among parties who work together to seek appropriate and well-informed solutions. The many productive relationships that have been established over nearly 20 years of joint effort among those with a diversity of interests is best served by ensuring that those implementing the law and any forthcoming changes to the law support the balance of interests that is built into NAGPRA.

Those seeking to carry out the purposes and the spirit of NAGPRA need to work together with transparency of purpose and without arbitrary deadlines in order to achieve sound and respectful solutions. On behalf of the Society for American Archaeology, thank you for the opportunity to appear here today. I would be happy to answer any questions.

[The prepared statement of Ms. Bruning follows:]

Statement of Susan B. Bruning, Chair, Committee on Repatriation,
Society for American Archaeology

Mr. Chairman, the Society for American Archaeology thanks you, Ranking Member Hastings, and the Committee on Natural Resources for the opportunity to testify on the Native American Graves Protection and Repatriation Act (NAGPRA).

The Society for American Archaeology is the leading organization of professional archaeologists in the United States. Since its founding in 1935, the Society has been dedicated to the research, interpretation, and protection of the archaeological heritage of the Americas. With more than 7,000 members, the Society represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. The Society has members in all 50 states, as well as many other nations around the world.

The Society's involvement with NAGPRA precedes the law's enactment. It consulted extensively with and testified before Senate and House Committees to build a coalition of scientific and museum organizations and Native American groups that strongly supported NAGPRA's enactment. Over the years, the Society has closely monitored the law's implementation and provided input to the Department of the Interior, the NAGPRA Review Committee, and Congressional oversight panels. The Society is committed to supporting effective and timely implementation of NAGPRA.

NAGPRA has accomplished a great deal over the past nineteen years. Extensive repatriation of human remains and other cultural items under NAGPRA, from both museum collections and recent excavations, has occurred and continues to occur through mutual agreements among tribes, museums, and Federal agencies. NAGPRA has resulted in many successful repatriations, has led to innovative solutions for other disposition needs, and has facilitated the forging of important and lasting relationships among tribal, museum, and scientific stakeholders.

The Society believes that these successes are due to the fact that NAGPRA and the processes it created are founded upon a carefully crafted balance among Native Americans, museums, and scientists. The compromises reflected in NAGPRA's provisions were reached through

extensive discussion among parties on all sides of the issue. Senator McCain's remarks on the day of the Senate's passage of NAGPRA make this clear:

The passage of this legislation marks the end of a long process for many Indian tribes and museums. The subject of repatriation is charged with high emotions in both the Native American community and the museum community. I believe this bill represents a true compromise.... In the end, each party had to give a little in order to strike a true balance and to resolve these very difficult and emotional issues. (Congressional Record, October 26, 1990, 17173).

Administration of the processes established by the statute is carried out by the National Park Service's (NPS) National NAGPRA Program, with guidance and recommendations from the NAGPRA Review Committee. Over the years, the Society has worked with NPS on NAGPRA issues by submitting comments on proposed rules, frequently appearing before the Review Committee, nominating persons to serve as scientific members of the Review Committee, and consulting with National NAGPRA staff.

The Society has worked diligently to support a balanced and fair implementation of the Act, consistent with the explicit language and the legislative history of the Act. In recent years, however, the Society has had, and has expressed, growing concerns about imbalance in certain areas of the law's implementation. The Society believes that it is critical that the actions and policies of the National NAGPRA office and the NAGPRA Review Committee reflect an increased effort to acknowledge and accommodate the diversity of interests at stake, particularly in light of the forthcoming actions by the Department of the Interior in addressing the issues of unclaimed cultural items and culturally unidentifiable human remains.

In 2007, during consultations with National NAGPRA and other parties regarding proposed regulations on unclaimed cultural items, the Society highlighted four key points:

1. Balance: NAGPRA presents a carefully constructed balance among the legitimate interests of diverse parties, including lineal descendants, Indian tribes and Native Hawaiian organizations, scientific and museum communities, and the public at large.
2. Human remains: Human remains should be treated with dignity and respect at all times.
3. Documentation: Cultural items should be documented in accordance with professional standards in order to contribute to the process of accurately identifying parties entitled to exercise rights under NAGPRA and as a responsibility to all Americans' interest in our nation's past.
4. Consistency with Law and Policy: NAGPRA regulations must be consistent with the statute and with other applicable law.

In the statute, the NAGPRA Review Committee was charged with ``recommending specific actions for developing a process for disposition'' of culturally unidentifiable human remains (25 U.S.C. 3006 (c)(5)). In its 1999 Draft Principles of Agreement Regarding the Disposition of Culturally Unidentifiable Human Remains, the NAGPRA Review Committee acknowledged that ``a fundamental tension exists within the statute between the legitimate and long denied need to return control over ancestral remains and funerary objects to Native people, and the legitimate public interest in the educational, historical and scientific information conveyed by those remains and objects.'' (64 Fed. Reg. 145 (July 29, 1999)).

In its 2008 comments on the proposed regulations regarding the disposition of culturally unidentifiable human remains (79 Fed. Reg. 58582 (October 16, 2007)), the Society highlighted four key points:

1. NAGPRA strikes a carefully crafted balance between the

legitimate interests of tribes to care for their ancestors and the legitimate interests of scientific and scholarly efforts to contribute to knowledge about the human past.

2. Cultural affiliation is the foundation upon which this balance of interests rests. It provides a mechanism that enables descendant communities to obtain control over the disposition of their ancestral remains and important cultural items where a reasonably traceable relationship to an earlier group may be established, it respects the interests of the larger public to learn about humanity's shared past, and where such relationship has not yet been demonstrated it preserves certain cultural items and information for the benefit of future generations.

3. The Society led the scientific community in developing the compromise that NAGPRA embodies and it has consistently supported the law's implementation in a manner consistent therewith.

4. NAGPRA has led to productive new relationships among tribes, museums, and archaeologists through much effort and relationship-building over the last 19 years.

The leading stewards of the NAGPRA process on the national level are the NAGPRA Review Committee and the National NAGPRA office. The Society supports their roles in carrying out the responsibilities enumerated in the Act (25 U.S.C. 3006 (c)). The law requires the Secretary of the Interior to appoint members to the Review Committee in a manner that supports the balance of interests at stake. The statute established its Review Committee in recognition that these were difficult issues requiring diverse perspectives. The National NAGPRA office, as the entity implementing the day-to-day activities of NAGPRA, has a responsibility of neutrality toward the diverse perspectives on NAGPRA, including those in the museum, educational, and scientific communities, as it carries out its duties.

Despite the safeguards built into the law, the Society believes there has been a serious erosion of the critical balance of interests represented in the law. For instance, in the proposed rule drafted by the National NAGPRA Office, the pivotal role of ``cultural affiliation'' as a cornerstone of the law is effectively discarded. The law requires ``cultural affiliation'' to be demonstrated by evidence before arriving at determinations about appropriate allocation of decision-making authority. All such evidence, whether provided by tribes, archaeologists, or other researchers, must be considered as parties work toward determinations of cultural affiliation. This process takes effort, it takes resources, and it takes time. These proposed regulations suggest that the quick and complete removal of human remains from curatorial institutions--a mandate that is neither explicit nor implicit in the Act--is more important than allowing time for parties to work together to seek knowledge and understandings about relationships of ``shared group identity''--the cornerstone of ``cultural affiliation''--and to develop options for caring for remains and cultural objects.

The Society encourages those overseeing the National NAGPRA office to use diligence in ensuring that all activities, including those relating to funding, enforcement, dispute resolution, and ``cultural affiliation,'' are conducted with utmost transparency and in a manner consistent with the statute and respectful of the balance embodied in the law and the diversity of stakeholder interests. Those vested with responsibility for implementing NAGPRA should seek to do so in a manner that is respectful of the diversity and importance of tribal concerns not only for appropriate treatment of their ancestral human remains and cultural items but also for the appropriate treatment of culturally unidentifiable human remains. This is of paramount importance. It is also critical that those same stewards of the NAGPRA process seek to carry out their responsibilities in a manner that is respectful of

scholarly research and appropriate scientific inquiry as tools that assist in determining ``cultural affiliation'' and in understanding aspects of the broader human past. A great many tribes, museums, agencies, and archaeologists have developed successful working relationships grounded in mutual respect and collaborative research, in their efforts to determine ``cultural affiliation'' and to craft solutions to NAGPRA issues and to larger issues relating to the management of cultural heritage.

As the leading professional society of archaeologists in the United States, the Society for American Archaeology will continue to support these goals. The many productive relationships that have been established over nearly twenty years of joint effort among those with a diversity of interests would be best served by ensuring that any forthcoming changes to the law support the balance of interests built into the law and the ability of all parties to work together toward sound and respectful solutions.

On behalf of the Society for American Archaeology, thank you for the opportunity to provide the Committee with its perspectives.

The Chairman. Thank you.

Mr. Kippen?

STATEMENT OF COLIN KIPPEN, FORMER NAGPRA REVIEW COMMITTEE
MEMBER, HONOLULU, HAWAII

Mr. Kippen. Aloha. Aloha, Chairman Rahall, Ranking Member Hastings, and other members of the House Resources Committee. Aloha also to your staff, to my fellow testifiers and those who are listening today to our words. I am Colin Kippen and I am testifying before the House Resources Committee as a private citizen. I served on the NAGPRA Committee for four years and I recently cycled off that committee.

I am the first and only Native Hawaiian ever to have served on that committee. I come before you today with three very simple messages to send. The first is that NAGPRA is an incredibly complex and technical piece of legislation that was constructed around a very simple human ideal; to respect the human rights of Native people to possess and care for the remains and cultural property of their ancestors. It was intended to change the status quo, the status quo of where human remains and cultural property belonging to Native people sat on museum shelves, sat in boxes, and basically were not in the possession and care of the people who own them.

This process is extremely complex and technical. It is a process that will not move forward unless there is capacity to change the status quo. In my comments that I have written, I have pointed out to you that I think that the place we need to begin these conversations is to ask what it is that the Native people need to be able to make this process work, because if the process doesn't work for them, then the harm continues unabated, and so, what I believe we need, which has been already mentioned to you on this Committee, is we need resources.

We need to build the capacity, but as we build that capacity, we need to be sure that the capacity that we build is aligned to the people that we are trying to serve, and in this case, the people that we are trying to serve are the Native people. I have, in my testimony, listed a series of things that are recommendations that I think can be done. I would expect that these changes would be done in such a way that they would

be aligned and of relevance to the people that we are trying to assist, that is, Native Americans.

Capacity also needs to be built for museums and Federal institutions, and there is now ongoing, to my understanding, a government accountability report that will address that. There is a second point that I would like to make, and that is this. We have yet to define what success looks like under this NAGPRA program, and if you have not defined success, then how is it you will know when you have arrived there? I believe that what we need is a clear metric of what success means, so that all will be able to judge their performance against it.

Once you have a clear metric, what then happens is that the agencies responsible for implementing NAGPRA will have a benchmark against which they will be measured, and when you, at your discretion, have oversight hearings, you will have a way to measure whether they are making progress. Presently, there is no metric. Presently, the system is one that is not working well. Finally, the third point I would like to make is an issue about the Review Committee.

The Review Committee has a number of responsibilities that range from fact-finding to what I consider policy recommendation making. That is a huge set of functions, and to my way of thinking, the NAGPRA Review Committee simply does not have the time or the resources to do the work to which it has been assigned. For example, at most of our meetings, when we show up for the meetings, we have binders that are this thick, double-sided, and we have two days to go through our agenda, and what this information primarily relates to are disputes or for requests regarding culturally unidentified human remains and cultural items.

This is fact-finding, this is very detailed, and it is very technical in nature. Because all of our time is consumed with doing that, we don't have time to do the other work, which is to see whether or not the system is working and how to assist the staff and how to set the kinds of priorities and plans that will allow us to manage this program in a better way. I thank you for the time, I thank you for the opportunity, and I thank you for listening.

[The prepared statement of Mr. Kippen follows:]

Statement of Colin Kippen, Former NAGPRA Review Committee Member,
Honolulu, Hawaii

Aloha Chairman Rahall and members of the House Resources Committee.

I am Colin Kippen and am testifying before the House Resources Committee as a private citizen.

I am a former member of the NAGPRA Review Committee, having recently completed a four-year term on that Committee as its 7th member--having been nominated for appointment by the unanimous recommendation of the scientific, museum, and Native religious members of the Review Committee and appointed by the Secretary of the Interior. I am the first Native Hawaiian to ever have been appointed to serve on this Committee. I was honored to serve at the last meeting as the Chair of the Committee after being unanimously selected by the members then present before my term expired. I am presently employed as the Executive Director of the Native Hawaiian Education Council in Hawaii, am a lawyer, former prosecutor, former tribal judge, and former Senior Counsel to the Senate Committee on Indian Affairs. The testimony and reflections I offer the Committee are my own, and I have come here today from Hawaii on my own accord and at my own expense to help in the important work you do.

The Native American Graves Protection and Repatriation Act is a statute intended to remedy a history of the desecration, taking, theft, wrongful possession, and trafficking in the human remains and cultural items of Natives as defined in the statute. It constitutes human rights and Indian legislation that was long overdue when Congress passed it in 1990, and when the President signed it on November 16th of that year. The pain, trauma, and anguish caused to present-day Native people by the actions which this statute was created to address can never be forgotten. It is the polestar that guides the process by which we must navigate our way through this statute and by which we must give meaning to the words and phrases chosen by the Congress.

My comments today are focused on some of the institutional and systemic issues I have observed while on the Review Committee. My view is definitely affected by my status as the 7th member of the Committee appointed as the consensus member. It is also affected by the fact that I am Native Hawaiian and that I have worked and lived in both Indian and Native Hawaiian communities. It is my hope that I will be able to paint a clear picture of what I have seen and what we can improve upon so that this law will be better implemented.

Do Native people have the capacity and knowledge to effectively participate in the NAGPRA process?

NAGPRA is an incredibly complex and technical piece of legislation that is constructed around a simple human ideal--respecting the human rights of Native people to possess and care for the remains and cultural property of their ancestors. The NAGPRA process--the laws, regulations, internal processes, and data systems--are full of minutiae and difficult to understand. After working with NAGPRA for years, I still struggle to find my way through the statute and regulations.

The NAGPRA process assumes Native people understand the law and regulations, know how to access, read, and search the on line NAGPRA data bases, know how to read and respond to the notices in the Federal register, know the consultation requirements and how to assure that proper consultation happens, and have the resources to travel around the country and call for the return of their ancestors or cultural items from museums and Federal agencies.

This is a false assumption, in part because the NAGPRA process we have created is antithetical and disrespectful to traditional native beliefs--and because we have not sufficiently given Natives access to the training and resources they need to effectively advocate for themselves, their ancestors, and their cultural items. We must invest heavily in training and building the capacity of Native people if we want to see the system work better. And, the training we provide must be in a cultural context they understand and delivered by trainers and teachers who are able to bridge the cultural divide between an extremely legalistic, hyper-technical, and foreign administrative process and their traditional cultures and beliefs.

I have seen time and again the trauma and pain displayed in the faces of those Native people who come forward to address the Review Committee about the return of their ancestors, and how the systems we have designed, the words we use, and the way we do things are hurtful to them. We can do a better job of reducing barriers to Native's participation in this process, in building bridges with them, and in translating and interpreting these rules so they are understood. We can do better, and we must.

What does success for NAGPRA look like, and why should we care?

A good deal of the work we did in the four years I was on the Review Committee had to do with resolving disputes and making factual determinations about culturally unidentified human remains or cultural items. The individual case material we were provided was voluminous, technical, and detailed. While this is important work, our focus on the details prevented us from seeing a bigger picture, so that we never got

to the really important work of understanding how to assess our progress to date, how to build a metric to track our results, and how to create systems of measurement to increase the traction of this law.

Over 124,000 human remains and over 915,000 cultural items are now classified as culturally unidentified. They represent 721 museums and Federal agencies. Is this what we would have predicted would have been our story of success 19 years after this law was passed?

NAGPRA was created to remedy the harm, degradation and disrespect to Native people as regards their human remains and cultural items and so we must ask Native people to tell us what their measure of success is under this law. We must ask them to help us create the metrics to track and measure our collective actions. We must ask them how these systems can be improved. And we must recast the Federal agency responsible for administering this Act to create systems, measures, and reports that are simple, clear, and understandable and that are tied to frequent and regular Congressional oversight. We must also engage other NAGPRA stakeholders in this metric setting process as well, so all are clear on what success under NAGPRA means. If what gets measured is what gets done, then we need to get busy creating the right measures to get us to our goal.

This has not happened to date for a number of reasons. The Review Committee is ill equipped to do this work given existing demands on their limited committee time and their expertise as subject matter experts rather than people experienced in creating and managing institutional change in a decentralized NAGPRA process potentially touching all museums, all Federal agencies, and all Native people. The Congress is a busy policy body that operates on a political triage system without a metric to gauge the success of this program on an ongoing and routine basis. The National NAGPRA program is consumed with implementing the present system which has evolved over time--and lacks the resources, authority, or clear policy focus to make the changes suggested.

I have hope though, that we can make the changes needed. I ask this Committee to send a clear message to the Administration that you expect a metric be created and used in a way that directly aligns with the reasons for which NAGPRA was created and which includes the views of the Native people for whom this statute was created. I also ask that this information immediately be collected and digested, so that improvements to the program may be made. I finally ask that this metric be used by the Congress to gauge how we are doing and whether or not we are getting closer to meeting the intent of this Act.

Does the Review Committee have the authority to accomplish its policy and fact finding responsibilities?

The NAGPRA Review committee was created to accomplish a number of functions that run the gamut from case-specific factual determinations to policy evaluations to consulting with the Secretary to create administrative regulations. The NAGPRA staff set the agenda and determine what issues will receive priority and occupy the Review Committee's attention. It has been my experience that the NAGPRA Staff has the ability to heed or ignore the actions of the Review Committee at its discretion, without clear a priori guidance being provided to the Review Committee as to the limits and scope of the Review Committee's discretion.

This is a waste of effort and is an example of the Committee having responsibilities without the authority to carry them out. An example is recommendations made by the Review Committee on January 8, 2008 with respect to 43 CFR 10.11 Disposition of Culturally Unidentified Human Remains and Associated Funerary Objects. A year and nine months later, the Review Committee is in the dark as to whether their unanimous recommendations will be acted upon.

Members of the Review Committee have also requested information

from NPS NAGPRA about issues that arise in the normal course of business without any clear guidance as to whether these requests for information will be honored. Almost two years ago I requested information about NPS National NAGPRA Program's plan to ``withdraw'' numerous notices of inventory completion that had been submitted for publication in the Federal Register by museums and Federal agencies but had been languishing unpublished in the NPS NAGPRA office for over a decade. If the national NAGPRA policy is to foster notice and awareness amongst Native people by publishing the notices received by the NPS NAGPRA program from museums and Federal agencies, then how is that purpose served by giving these museums and agencies the ability to now rescind these notices after all these years?

While the information requested would have helped me to better discharge my Review Committee duties of ``monitoring the inventory and identification process under sections 5 and 6 of this Act'', I am resigned to the fact that I will never know the details of NPS NAGPRA's decision. Had I been able to review and evaluate the information requested, I believe our Review Committee would have been able to discuss the matter and render a policy recommendation that could have clarified the administrative process as well as reassuring the public about the fidelity of NPS NAGPRA's compliance with both the letter and the spirit of NAGPRA.

Recommendations.

The thrust of my comments have been directed at creating a set of systemic changes which I believe would help us to move this program forward in a tangible and measurable way. I recommend as follows:

Training and Capacity Building.

Assess the barriers to Native participation in NAGPRA, report upon it, and formulate a plan to address it.

Increase the capacity of Natives to participate in NAGPRA by immediately increasing comprehensive NAGPRA training and increased funding opportunities.

Assure that all training provided is delivered in a culturally appropriate manner by trainers with a proven track record of being able to effectively teach in various Native communities.

Assess and evaluate the effectiveness of the training provided, report these results, and use them to reassess and redesign training and funding opportunities delivered.

Create a similar process to address similar issues for museums and Federal agencies and repeat the above process for them as well.

Schedule routine and frequent Congressional oversight hearings on this issue with the expectation that a set of clear metrics and data collected within those metrics will be presented by NPS National NAGPRA to the Congress. Use this metric to measure agency performance.

Fund these improvements.

Defining What Success Means Under NAGPRA.

Engage Natives in defining a clear and understandable metric of what success looks like under NAGPRA. Engage other stakeholders in the process, too.

Create a system of indicators and measures aligned with the purposes of NAGPRA to be used by NPS National NAGPRA.

Use these indicators (and the data collected thereunder) to define existing barriers to success, to measure agency performance, to capture best practices, and to make improvements in program administration.

Schedule routine and frequent Congressional oversight hearings on this issue with the expectation that a set of clear metrics and data collected within those metrics will be presented by NPS National NAGPRA to the Congress. Use this metric to measure agency

performance.

Fund these improvements.

Assess the role of the Review Committee in accomplishing the effective implementation of NAGPRA.

Clarify Review Committee authority vis-a-vis NPS National NAGPRA to receive data and have their recommendations implemented by NPS National NAGPRA.

Assess the Review Committee's ability to discharge each of its responsibilities under NAGPRA in terms of the Review Committee's access to clear and understandable information, its Committee expertise in addressing each of those items, and the resources (time, information, and funding) able to be brought to bear for each of these items.

Define metrics to measure and track Review Committee performance in accomplishing its goals and objectives.

Fund these improvements.

The Chairman. Thank all of you for your excellent testimony today. Let me begin my first question with Chairwoman Shemayne Edwards. What types of expenses are required in order to repatriate human remains and cultural objects?

Ms. Shemayne Edwards. I would like to be able to direct that to my NAGPRA coordinator. He can better give you information.

The Chairman. Sure. Please give us your name and title so we will have it for the record, please.

Mr. Gonzalez. My name is Bobby Gonzalez. I am the NAGPRA Coordinator for the Caddo Nation, Mr. Chairman. The history of the funding for the Caddo, there are two types of NAGPRA grants. One is considered a consultation/documentation grant and the larger of the rewards. Just a year ago, you know, we were able to receive a \$75,000 NAGPRA grant. They are up to 90,000 per year. The other is a repatriation grant up to 15,000, and it is specifically for going and getting collections from universities, museums or repositories, and it pays the costs for mileage, per diem and hotel, etc.

We have submitted a NAGPRA grant basically every year since the funding program and we have been very lucky to receive eight out of thirteen NAGPRA grants since the inception of NAGPRA. We have received several small repatriation grants to repatriate objects from Louisiana State University. However, the funding level, it takes around 130,000 a year to operate our office, and to answer your question, we have thousands of human remains on the shelves from the East Coast to the West Coast, and if you don't receive a NAGPRA grant, we still have the issues of dealing with repatriation every day, and so there lies a problem there.

The Chairman. Do the museums and Federal agencies consult with you on how the items are kept until repatriation can occur?

Mr. Gonzalez. Yes and no. There are museums, Federal agencies and universities that consult with us under the rules and regulations in the Act, and there are those that do not. A lot of the inventories and summaries, they do not consult on drafting those inventories and those summaries. They do not consult on the drafting of the publication of the notices of those inventories and summaries that are going to eventually be published in the Federal Register.

The Chairman. Do they allow you access to the cultural objects for cultural purposes?

Mr. Gonzalez. Yes and no. It depends on where you are at and who is asking and what state you are in. They do allow access, a lot of times they do not. They sometimes don't allow you access to the information that surrounds a collection. We have been told at some universities, if you want the information, go to the local library and get it.

The Chairman. Let me ask Mr. Titla a question. You indicate that the Park Service interpretation of NAGPRA allows museums to refuse to admit to any wrongdoing. Will you provide more detail on what the Park Service has told the Working Group? Do you have that?

Mr. Titla. Yeah, I think that what the Park Service wanted to do was just to call these items cultural items rather than sacred items or cultural patrimony. We believe, the Apache Tribe, that if they were to call them cultural patrimony, this would afford the items full respect and a full description of the items that they have, and I think that with cultural patrimony, according to the Apache people, there would be no individual ownership of these items that were taken from the Apache people long ago, in the 1800s.

A lot of them were taken in the late 1800s by the U.S. Cavalry or by missionaries or other people, agents of museums that came among the Apache people, and the items were taken or bought in some places by these people from medicine people or other people that conducted sacred ceremonies for the Apache people, and we feel that the items were not taken properly, and in order to give them their full respect and to help correct wrongdoing, we think that they should be identified as cultural patrimony or sacred items by the museums.

The Chairman. OK. I have a couple more questions for the others on the second round. Let me go to the gentleman from Washington, Mr. Hastings.

Mr. Hastings. Thank you, Mr. Chairman. I have a question for Ms. Bruning. You heard Director Wenk say that the regulation is forthcoming on cultural affiliation, be any time, and you reference that in your testimony. Can you give me your thoughts on what you know about those regulations that are forthcoming?

Ms. Bruning. I will certainly try. I believe SAA submitted about 40 pages of comments on the proposed regulation, so we have lots of thoughts. I think our overriding concern is with the apparent push to, almost a first come first served approach to resolving the status of culturally unidentifiable human remains, and to move toward quick removal out of repositories as opposed to careful efforts to ensure that all possibility of achieving cultural affiliation has been accomplished before a resolution comes to pass on those that truly are unidentifiable, as opposed to perhaps presently unidentified, and my understanding personally from some of my work with Southwestern tribes as well as certainly members of SAA is that there is a lot of ongoing collaboration and effort to continue to look into connections of group identity and to understand thoroughly how both time and space and other elements, tribal knowledge, scientific knowledge, historical knowledge, can come to play to make sure that we honor the current descendants and their opportunity to take care of their ancestors, and that time limits are not the reason why they fail to have that opportunity.

Mr. Hastings. Well, we look forward to those regulations and look forward to your response when you get a chance to see them.

Ms. Bruning. Certainly, we will be happy to give that.

Thank you.

Mr. Hastings. Thank you, Mr. Chairman.

The Chairman. The gentleman from New Mexico, Mr. Heinrich?

Mr. Heinrich. Thank you, Chairman. I wanted to ask Mr.

Kippen real quickly what the standard of proof is for cultural affiliation and who bears that burden?

Mr. Kippen. The burden of proof?

Mr. Heinrich. Yes.

Mr. Kippen. What I will tell you is that if I am going to give you that answer, I will have to look at my materials and give it to you, and I want to make a point here. The point I want to make is that this is extremely complicated. I never work in the NAGPRA field without consulting the rules, and I do this because my memory, the system does not make inherent sense to most people, and so I am going to, I think, demonstrate my ignorance before this Committee, as an attorney, as a former judge, and as a former staffer of the Senate Committee on Indian Affairs, because this is extremely complicated.

I never act--and I will look it up for you and I know I can give you the correct answer, but rather than do that in this situation, I am not going to, and the complexity of this law is a point that I want to emphasize. Because it is so complex, because it is so technical, it renders it almost impossible for the people who we want to serve, and the people that we want to serve in this case are the people who are harmed by the status quo, their difficulty in understanding this process is one of the huge issues that this Committee needs to address, and if I might just go on for a few seconds more--and the training that is offered and the way that we offer it, it needs to be aligned to the people we are trying to teach.

I have one example to offer, and it is probably not the best. There is an organization now that has recently been hired to do the training for the National NAGPRA Program. It is the National Preservation Institute. Earlier this year they announced a grant. With the Federal money, they were going to train the Natives. They issued a notice. The notice went out to Indian tribes and Alaska Natives. They excluded Native Hawaiians.

I called them a month later--well, actually, I called the staffer who is in charge of it for our national program. Approximately a month later, it was changed. If they don't know, then what does that say about our national training program? It raises questions in my mind, and I raise those questions to the Committee and to our staffers. Thank you for the question.

Mr. Heinrich. Thank you, Mr. Kippen.

Ms. Kraus, I wanted to ask you how common it is for multiple tribes to claim cultural affiliation with particular ancestral remains or sacred objects, and how NAGPRA, or how you handle claims that have multiple associations of cultural association.

Ms. Kraus. Well, let me state that in terms of the inventory process that you are talking about, the question you ask is so technical that only an expert NAGPRA person would actually know the answer to it, but the bottom line is that the tribes would have been consulted in the development of their notice of inventory completion that would have created cultural affiliation. So, it is not uncommon to have many tribes, in fact, our studies show that many tribes are willing to work together to repatriate human remains whether or not they are

affiliated or unidentifiable.

So, in answer to your question, it is common and you know, there are many opportunities to do so.

Mr. Heinrich. So in terms of trying to, if there are multiple associations with one object, say, in terms of trying to repatriate that to the appropriate place, how do you balance the interests of multiple tribes here or is that just through a consultation process with all of those players?

Ms. Kraus. Well, many--but again, this is really getting into the minutiae, which is one of the challenges for Native people to implement the Act, but in terms of an object, many times an object is specific to a family. That is how you are proving cultural affiliation, and so there are stories that go along with an object or cultural patrimony, so there are very specific ways of determining who and what possibly that was affiliated with in the first place.

Mr. Heinrich. OK.

Ms. Kraus. Do you want me to go on or is that----

Mr. Heinrich. No, that is fine. Thank you.

Mr. Chairman, I will yield back the balance of my time.

The Chairman. The gentleman from California, Mr. Baca, is recognized.

Mr. Baca. Thank you very much, Mr. Chairman.

Mr. Kippen, you stated today the Tribe needs resources. Can you help us understand and share with us the type of resources that are needed specifically?

Mr. Kippen. Yes, I think I can. Again, let us understand the status quo. The status quo is that this is an extremely decentralized problem that we are facing here. You have Natives from across the country. You have museums and Federal agencies that are in the possession and control of human remains and cultural items that are also across the country. I may be in Hawaii as a Native, and my remains may be in a museum in Florida, in Boston, you know, wherever, all across the country.

So, the problem that you are facing is how to figure out how to build a system where it all comes together, and so the question really is about capacity. How is it that we create a system that enables museums and Federal agencies to report in such a way, in an understandable way, in a clear way, that the message gets out to people across the country? Now, that is extremely difficult. I think what you really need is you need to improve the database that you now have online, and what I mean here, that it needs to not only be really high-tech, but it also has to be high-touch, in the sense that people understand it, in the sense that it is accessible, in the sense that you and your staff could go online right now and find out where remains are that you believe are in an institution across the country.

I challenge all of you to go onto that website and to figure out whether or not you could find, if you were a detective, whether you could find where those remains are, and so that is why I say this is a capacity problem. It is a technology problem, it is a training problem, and as Ms. Bruning said, it is about building relationships. If I might just one more, one more part of this conversation, you need to have a metric to measure whether or not the capacity that you are building is actually being built.

You need to have a metric to understand whether or not those relationships are being improved. You need to have a metric to measure whether or not that data system is working for the people who have to use it. Remember this. If we don't

change the status quo, the remains and the sacred items and the cultural items and the funerary objects and the items of cultural patrimony stay where they are. So, this is a question not only about funding, it is a question about coming up with a metric, it is a question about management, it is a question about building a better system, and it is a question about doing that now. Thank you.

Mr. Baca. If I may follow up, in reference to a metric that could be developed, you know, it is nice that you can develop a metric, but if you don't have bodies or people who sit on the committee, and this is a question for all of you, do you think there is adequate representation in terms of the committee that reviews in making these kind of decisions, from Native Americans? Any one of you?

Ms. Kraus. Because it is my nature to always try and help an answer, could you restate your question again, because I think--are you talking about the Review Committee?

Mr. Baca. Do you think there is adequate representation, or does there need to be additional bodies or people put on a commission review to make sure that you have the kind of individuals that represent Native Americans to make sure that when you deal with metrics, that somebody is sensitive, that it comes to funding or it comes to burial lands, it comes to anything else, is that you have a voice at the table? Do you have adequate voices at those tables right now?

Ms. Kraus. I will try and explain that I believe people are talking about the National NAGPRA Review Committee, and that is set by law, the membership, seven members. The staff of the Department of the Interior, which has been delegated to the National Park Service, do most of the work, and to answer part of the question is I believe that without any Native Americans working in the office, there are currently none, that is an inherent weakness in the program. As to the Review Committee--
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Mr. Baca. Could you repeat that again? There are how many?

Ms. Kraus. Zero.

Mr. Baca. How many? Zero.

Ms. Kraus. In the history of the Act, in the history of the implementation at the National Park Service, I believe there has only been one Native American who has worked there. They have a Canadian Indian right now, fabulous person, but it is Indian law. It was created for the benefit of Indian tribes and Native Hawaiian organizations.

Mr. Baca. Thank you. Anybody else want to attempt to answer that, or not? Or repeat the same thing, that you need representation?

Mr. Titla. Yes, Steve Titla from the San Carlos Apache for the Apache Working Group. We have been to four Review Committee hearings with the Review Committee, and I think that the Review Committee has done a good job, because they decided for us, because we were in the right. At any rate, I think that, as Mr. Colin Kippen indicated, he was a former committee member, and he said that two days before the hearing he would get a big binder of materials to go through and didn't get adequate time to really review the material and find out the issues involved, and I think that that talks about too few committee members.

What I would recommend is that there be more, perhaps double the committee members, and maybe have the committee members take care of regional issues. For example, we have Apache issues in Arizona and New Mexico, and perhaps you can have a regional committee member that will address that are

only, and then have other committee members that will address Hawaii, the southeast United States, northeast United States, northwest United States, because there are so many tribes, and Hawaii included, that all the issues are different among the tribes, so that if you can have experts from regional areas that will address those respective tribes, then I think that you can get more work done and these people on the committee can understand the specific issues that would be involved with them. Thank you.

Mr. Baca. Thank you very much. That is something for us to consider as far as regional areas for representation, to make sure that we have sensitive voices that will deal with the different perspectives. Let me ask this question of Chairwoman Brenda Shemayne Edwards. You mentioned the lack of funding and access to grants. Based on your experience, what type of training or outreach must be implemented to help tribes like the Caddo Nation of Oklahoma go through the NAGPRA process?

Ms. Shemayne Edwards. Thank you for your question, and again, I would like to direct it to my NAGPRA coordinator, who works with these every day, but if I might take a minute of your time while Bobby is getting up here, I would like to offer to the NAGPRA Review Committee to come out to our tribe in Caddo Nation of Oklahoma, to come out, and they can accompany us on a repatriation so they can see hands-on the extent of what Bobby and my other two employees go through on a daily basis, so that maybe they could better understand our process, because each tribe, repatriation varies, and you know, there are 37 tribes in Oklahoma alone, and each tribe has their own process, and I think it would be beneficial to the Review Committee to come out and actually have hands-on experience with a repatriation.

Mr. Baca. Thank you, Chairwoman.

Bobby?

Mr. Gonzalez. Sir, could you repeat the question?

Mr. Baca. Sure. Based on experience, what type of training or outreach must be implemented to help tribes like the Caddo Nation of Oklahoma go through the NAGPRA process?

Mr. Gonzalez. Sir, to be honest with you, to answer your question, I don't think you could have anyone show us the process because it is real tedious work. We have been at it for a long time. We actually know how to look at these inventories and summaries. To answer your question, a lot of the tribes, like the 37 tribes in Oklahoma that are Federally recognized, most of them don't receive Federal funds when it comes to NAGPRA grants, have ever repatriated remains, or even have an office.

They are still in the dark a lot on how this NAGPRA process works. As far as the inventories and the summaries and the consultation, you really need to sit down with tribes and go over what to look for in an inventory, what to look for in a summary, and how to tear that apart and actually look at the information that that institution or that university or that scientist is looking at that determines cultural affiliation, or how they came up with the definitions that fit the rules and the regulations.

So, it is real tedious. I am going to give you one example. We have a collection right now that we are documenting. The human remains are split up in institutions across the United States. Louisiana State University has human remains. Louisiana State Exhibit Museum has the associated funerary objects that were once with those individuals at a known site on the Red

River. However, the Smithsonian has skulls related to that same site, and also Northwestern State University in Natchitoches, Louisiana, has a baby burial and an eagle that is associated with that site.

So, we have the burden to put this back together so we as a tribe can re-bury our ancestors closest to where they come from, and that is a whole other issue. So, to answer your question, when you find the answer, I would like to know the answer to that. Training needs to happen in Indian country. Where we are at in Oklahoma, we hardly see the training, and a lot of the repatriation Review Committee meetings happen in Hawaii or Florida or some other location, and some tribes like us don't have the resources to travel and to get to listen to what is going on in the NAGPRA world. So, I hope that helps a little.

Mr. Baca. Well, I think you have answered it by saying that there is lack of training, there isn't the training that needs to be done, so that is an awareness on our part in terms of what needs to be done, and we can convey that, because you can't do anything on the process unless you have the training in order to implement that process, and you need the funding and you need the sensitivity too, as well, in terms of making sure that we have bodies or people there as we look at funding because we know that out of sight, out of mind, when it comes to Native Americans, on all issues.

Unless someone is, as I stated before, at the table and can address the issues that have been there from the past to current----

Mr. Gonzalez. Sir, if I may?

Mr. Baca. Yes.

Mr. Gonzalez. There are Natives across the U.S. and Native Hawaiians that are experts in this law, that can help provide the training and provide an avenue to help other tribes and institutions and museums and universities and Federal agencies on a better outcome and partnership and trust and relationship in getting this worked out.

Mr. Baca. Thank you. I yield back the balance of my time, since I have no time.

Mr. Gonzalez. Thank you.

The Chairman. Let me ask Ms. Kraus a question. The Makah Tribe study recommended that the National Park Service program develop a consultation policy. Why is this necessary?

Ms. Kraus. Well, thank you very much. Consultation is a bedrock of the Native American Graves Protection and Repatriation Act, and in our 11-plus years of work with how to implement tribal consultation, we have found that most people, most Federal agencies have a policy on the fact that they must do tribal consultation, but they don't have a protocol, a step-by-step process to follow in what it means to actually conduct tribal consultation.

So, in other words, I know that I have to consult with the National Park Service, but there is no policy that says, this is the process, a letter comes from this official at this rank, to the tribe, and these people of the tribe, and then we sit down and participate in discussions. There is no such step-by-step protocol. Without that, it is my belief that you really don't have tribal consultation. If you don't have an up-front process that you understand, both parties, both sides have agreed to, that this is how we are going to negotiate and talk with each other, and if one side holds all the cards and doesn't always say, this is how it is going to be done, this is

when it is finished, this is the ultimate result that we are shooting for, I don't believe it is an open and transparent process.

The Chairman. Thank you. What is your understanding of the current process for publishing a notice of inventory completion?

Ms. Kraus. Well, the law stated that by 1995, Federal agencies and museums had to consult with Indian tribes and Native Hawaiian organizations to do this first broad wave of cultural affiliation discussions. That is tribal consultation in action right there. And by May 16, 1996, they were to notify in writing all Indian tribes and Native Hawaiian organizations that they had determined these cultural affiliations.

A copy of that notice went to the National Park Service. The National Park Service is designated by law to publish the notice in the Federal Register, and I think just to point out, then this is where there is perhaps a weakness in the process, as there is no deadline for how long the Park Service can have one of these notices of inventory completion announcing cultural affiliation. There is no deadline on how long they have to publish it in the Federal Register.

In our earlier comments and discussion points, you have heard mention of a backlog or, you know, there are 300 notices waiting, 225, 79 notices. Those were all supposed to be submitted by May 15, 1996, to the National Park Service. In the Makah report, we included a letter of one of these notices and it states that the National Park Service, the Grand Canyon National Park had affiliated human remains to about 10 tribes in the Southwest.

They submitted that by law and they complied with the requirement to report it and they sent a copy to the National Park Service. The National Park Service had that pending notice of inventory completion for over 12 years when they decided to withdraw it in the year 2007, and I believe that 12 years is too long to have something waiting to be published in the Federal Register.

The Chairman. Thank you.

Ms. Bruning, your written testimony questions the transparency of the National NAGPRA office with respect to funding, enforcement and dispute resolution. Why do you think the National NAGPRA office is not transparent in these areas?

Ms. Bruning. I don't think it is a matter of intentional lack of transparency as much as it is the difficulty of having access to accurate and open information as the process currently stands. Part of that may be a funding issue to be able to have the ability to develop the website, make materials available. I think that certainly in the last five years as I have watched things unfold, there has been an increasing access and transparency to certain information, which has been wonderful, the databases for example.

I think some of our concern is about understanding how decisions are made, whether it is decisions about assessing nominations for the Review Committee and selection process or whether it is decisions about how grants are assessed and granted and funding is allocated among parties. So from some of our constituents, and we certainly are not here representing museums or tribes, and they are the ones that are more involved in, for example, the grant-making process, but in terms of archaeologists who are working with both museums and tribes trying to move forward on repatriation, there are concerns about understanding how the process unfolds, how they can best

proceed with accessing funding and information to address the repatriation concerns.

The Chairman. The Review Committee recommended that the National Park Service consider the Review Committee's recommendations made in 2000 for the proposed 10.11 regulations regarding the disposition of culturally unidentified human remains and associated funerary objects. Did your organization agree with the Review Committee's recommendation?

Ms. Bruning. It is my understanding that SAA has been supportive of those recommendations, and particularly the idea of regional solutions and working, rather than trying to come up with a single one-size-fits-all solution, my recollection is that the Review Committee advocated for more customized, careful, regional discussions to come up with proposed solutions, and certainly SAA would support that approach in preference to some of the structures we see in the most recently proposed regulations.

The Chairman. OK. Mr. Kippen, in your opinion, what do you think the state of the NAGPRA data is, and why is accurate data so important?

Mr. Kippen. My opinion is that the state of the data could be much improved. I also think that the accessibility to the data, the understandability of the data could be much improved, and the reason I think data is absolutely crucial is because we want as a best practice to make decisions based on data and information, and when we make decisions, we want to base those decisions upon accurate data and information. So, if you don't have accurate data, or if you don't have data, or if you can't access the data, then you really don't know what it is, how you are doing, and I think that is absolutely crucial.

It is crucial, I think, for this Committee, because you are sitting at 30,000 feet trying to look down and understand what it is you can do to make this work better. You have the staff at the National NAGPRA who are actually on the ground, but what we need is we need that intermediate piece where we have a set of clear goals, clear metrics which will help you to do your work and will help them as well, so that when they come and report to you on, I hope, a frequent basis, that when they do report, that you are able to see that they are making progress on these issues having to do with accessibility to information, on issues having to do with their knowledge and their capacity to work the process, on the museums and the Federal agencies' understanding of the process and how they are doing with respect to their collections and the items and the remains that they are holding.

So, the whole system is dependent upon data, and I think the way that you make it all work is to be clear at a higher level about what it is we are going to measure them against, because really, what gets measured is what gets done, so you need a measure. Now, I want to just add one thing. There is a measure that I know has been addressed. It was addressed by Mr. Wenk when he testified. It was also addressed by some of the people on this Committee, on this panel, and that was, and I will tell you what it is, the metric was the number of inventories in the backlog. That was a metric.

High number of--big backlog before. Now we have a little backlog. Well, there are a number of strategies that one could implement to take the backlog from a big backlog to a little backlog. I am not really clear what that strategy was, but I do know that notices were sent back. Notices were sent back and not published by the National NAGPRA office, and in my opinion,

that is not a strategy that works for me. I would say that if you are going to be sending back notices to be able to reduce your backlog, there needs to be an inquiry into that, and I think, and I will assume that that was what your office has been attempting to do, to understand how we went from big backlog to little backlog and what was the process by which we got there.

I will say that some of the members, myself, I did ask questions about this over two years ago because under the law, 5, 6 and 7, this Committee is supposed to oversee that whole process, and again, without data and information, how do you make a good decision? So, it is clear--data is absolutely the touchstone. It is the polestar. It is the star that we need to be driving toward all the time so that we can make the best decisions.

The Chairman. Thank you.

The gentleman from Washington?

Mr. Hastings. I just want to thank the witnesses here. I found this kind of a fascinating discussion, so I want to thank all of you for being here. Thank you very much, and Mr. Chairman, thank you for having a hearing on this. As I mentioned in my opening statement, it is rarely a bad idea to review those areas where we are responsible, so I thank you for that.

The Chairman. No further business? Any concluding comments by the witnesses? I will give you that opportunity. Yes, ma'am? Ms. Kraus.

Ms. Kraus. Well, I would like to, again, NATHPO works with tribes around the country and we don't have a lot of wealthy tribes that are members and, you know, in terms of thinking about today's hearing and, you know, why do they care so much about this Act, you know, how can they be part of it, how can they take advantage of this, because it is for their benefit. They have a lot of personal reasons for wanting to repatriate items. This is a repatriated item I am wearing today. I wore it on purpose, and you have no idea how important this is for me to wear, no idea how important it is for some little old lady in Kake, Alaska, to know that I am wearing this today.

And so, in terms of this Act and how it has become such a technical, lengthy process, and how Native people were forced to just go from zero to 60 and accelerate it to the point where we knew the process, we could learn it and we will make it work for us, thank goodness some tribes were able to make the process work for them. Unfortunately, I think a lot of tribes aren't able to make it work for them. They are the small tribes, the tribes that don't have capacity.

I think Caddo Nation has made a pretty compelling case that they just don't have the staff, they don't have a casino, economic development in Indian country is incredible unemployment that continues to be ignored, 50 percent unemployment, 80 percent unemployment. So, how does NAGPRA work for those who can't afford a person to do NAGPRA? You know, we have now watched--tribes have to hire lawyers to get some of their items back, to get some of their human remains back.

Not every tribe can afford to hire a lawyer to do this. So, I guess my plea is that the Act is working for some tribes, but unless you have access to a lot of resources, this is just not really serving the audience that it was intended, and so I appreciate all your help that you can do on this Act. Thank you very much.

The Chairman. Beautiful comments. You couldn't have

described our goal better.

Any further comments from the panel? Anybody? Yes, sir.

Mr. Kippen. I would just like to again say that I think the issues that face the implementation of this Act are systemic and that you need to have a systemic approach to how you are going to address them, and to the extent that we are clear in what those benchmarks are, what those measures are, what those metrics are, I think that we could improve it, and I think it will greatly improve your ability as an oversight committee to get the kinds of answers you need to be able to make the Act better.

The other thing I want to say is I want to be absolutely clear that I think part of the objective in my coming today is to send a message to the Administration that they need to put some time and some energy and some resources into helping create these systemic improvements and these metrics, so that at the end of the day, you will, and all of us will be able to make sure that this Act is moving forward. Thank you for your time and for listening.

The Chairman. Thank you. Again, thank the witnesses for being with us today. No further business, the Committee stands adjourned.

[Whereupon, at 11:35 a.m., the Committee was adjourned.

[A statement submitted for the record by Mr. Edward Halealoha Ayau, Executive Director, Hui Malama I Na Kupuna O Hawai`i Nei, follows:]

Statement submitted for the record by Edward Halealoha Ayau,
Executive Director, Hui Malama I Na Kupuna O Hawai`i Nei

Aloha no e Mr. Chairman and members of this committee. I am the Executive Director of Hui Malama I Na Kupuna O Hawai`i Nei, a Native Hawaiian Organization specifically identified in the Native American Graves Protection and Repatriation Act ('`NAGPRA'') as having expertise in burial matters and authorized to conduct repatriation of ancestral Hawaiian remains, their funerary objects, sacred objects and cultural patrimony. Pursuant to NAGPRA, we have conducted extensive repatriations with U.S. museums and federal agencies, state agencies, private individuals, and with foreign museums pursuant to our international human right and responsibility to care for our kupuna or ancestors (see Attachment A).

In addition, we have appeared before the NAGPRA Review Committee on several occasions to resolve issues arising under this law, applied for and received NAGPRA grants to conduct repatriation and to document information from museums, and have filed failure to comply allegations against museums who we believed are in violation of NAGPRA. We have provided testimony several times on NAGPRA and again provide the following observations and recommendations in the hopes that a most important law and its implementation can be further strengthened.

The following are several issues and concerns that we wish to raise for the Committee's understanding of some of the challenges we continue to face 19 years after the enactment of NAGPRA:

1. The National NAGPRA Program must improve its ability to update the Native American Consultation Database in a timely fashion and not treat requests for such as complaints.

On May 4, 2009, we emailed the National NAGPRA Program requesting to update our contact information on the Native American Consultation Database (NACD) and were assured they would do so (Attachment B). We

learned that we had been left out of a NAGPRA repatriation as a result of Oregon State University (OSU) relying on the outdated information to attempt to contact us and conduct consultation. When we failed to respond, OSU proceeded without us. We learned of the pending repatriation effort from the Office of Hawaiian Affairs and later confirmed with Dr. David McMurray at OSU that the letter had been sent to the organization address as provided on the NACD. We again urged the National NAGPRA Program to update our information (Attachment C) and further requested that the contact information for all Native Hawaiian organizations be updated as the information for the Hawai'i Island Burial Council, Maui/Lana'i Islands Burial Council, Molokai Island Burial Council, O'ahu Island Burial Council and Kaua'i/Ni'ihau Islands Burial Council were also incorrect (Attachment D).

We have tried over the past 5 months to have the information updated. However, for reasons unknown to us, it has not happened. If you check the NACD right now, you will see the name of Kunani Nihipali and a Kailua address (Attachment E). This information has been outdated since November 2004. We were unaware of this since on November 7, 2004 we informed federal agencies, museums we were actively consulting and the National NAGPRA Program of a change in our leadership and contact information.

Most troubling throughout this effort has been the communication with National NAGPRA to update our contact information. After the OSU incident, the U.S. Air Force in Hawai'i relied on the same outdated information to attempt to send us important information. Of course, we did not receive it. After we learned of this breakdown, we again urged the National NAGPRA Program to update our information (Attachment F). The address used by the Air Force was the exact one on the NACD database. However, the National NAGPRA Program did not believe the problem was caused by the NACD even though that is the only place where this outdated contact information exists publicly (Attachment G). We are also advised to contact the BIA to be included in their database which we did only to find out their database is only for federally-recognized Indian tribes (Attachment H).

When we attempted to clarify our intentions (and not 'complain' as interpreted by the National NAGPRA Program), we were instructed to contact the Office of Hawaiian Relations (OHR) to get on their list of Hawaiian organizations which we did (Attachment I). The National NAGPRA Program has since added a link to the OHR web page. However, when we checked recently, our contact information was no longer on the OHR database either (Attachment J).

The end result is if you are a museum or federal agency attempting to contact our organization and you go to the NACD, you will obtain erroneous contact information for Hui Malama I Na Kupuna O Hawai'i Nei. If you happen to notice the 6-point font reference to the OHR website and link to their database, you won't find any contact information for us either. We requested National NAGPRA to again update our information (Attachment K).

We have taken the time to explain in detail how much time and effort it has taken to update our contact information with the end result being that erroneous information is still contained on the primary federal database for consultation and that for all we know we are not being consulted on other relevant matters to NAGPRA for reasons beyond our control.

The inability to update the NACD in a timely fashion has undermined our ability to conduct consultation and repatriation of our ancestor's remains in one instance and failed to provide us with timely information in a consultation involving a federal agency in another. Moreover, the discourse over the clarification of these issues seems to indicate a deeper problem with National NAGPRA (see Attachment L) and our organization.

We recommend efforts be undertaken to improve the ability and manner by which the NACD is able to be updated with real time information otherwise its use undermines the very purpose for which it was created. We also do not believe that merely linking to another website necessarily guarantees that accurate contact information will be provided for Native Hawaiian Organizations especially when misleading information continues to be found on the primary database for contact information and the linked database experiences problems. At this point it may be best that the NACD delete our contact information entirely as it would be better not to have any information than to have misleading information.

2. The National NAGPRA Program needs to increase its capabilities to investigation failure to comply allegations.

By letter dated March 2, 2004, Hui Malama I Na Kupuna O Hawai'i Nei filed allegations of failure to comply with NAGPRA against the Bernice Pauahi Bishop Museum asking the National Park Service to, ``initiate proceedings against the Bishop Museum, as provided in 43 CFR Sec. 10.12 for failing to comply with the requirements of NAGPRA, specifically, for refusing to repatriate human remains and funerary objects to a culturally affiliated Native Hawaiian organization. We assert that Dr. Brown's refusal to repatriate constitutes an instance in which the Secretary of the Interior is authorized to assess a civil penalty.''

Over the next four and a half years, we emailed and telephoned several requests for updates urging National NAGPRA to investigate.

Six months before the 5-year statute of limitations period was about to expire, we received a copy of a letter from the NPS Assistant Secretary for Fish and Wildlife and Parks to the Director of the Bernice Pauahi Bishop Museum substantiating 3 violations of NAGPRA involving human remains (Attachment M) and a second letter with the same date substantiating 2 violations of NAGPRA involving the unassociated funerary objects (see Attachment N).

Although we are pleased with the outcome, the amount of time it took to complete indicates a need for additional investigators or as was recommended in the testimony of April 20, 1999 by Dr. Sherry Hutt before the Senate Indian Affairs Committee conducting a NAGPRA oversight hearing, the funding by congress of a federal prosecutor ``to evaluate and pursue sanctions for violations of the act under the civil penalties provision (25 USC 3007).''

Hui Malama I Na Kupuna O Hawai'i Nei has since filed 3 additional failure to comply complaints against museums with several allegations in preparation. We are concerned that with the increase in workload and the availability of a single investigator for the entire National NAGPRA Program, the potential for failing to meet the 5 year SOL period is increased. Congress needs to act to fund additional investigators to assist the National NAGPRA Program to effectively address failure to comply allegations. Without this important function, there is no meaningful way to monitor museum compliance and even if successful, the amount of time involved further exacerbates the difficulty and pain associated with correcting historic wrongs against native people and their cultural property which NAGPRA was intended to lawfully and efficiently address.

3. Diversion of NAGPRA grant appropriations by the National NAGPRA Program from grant awards undermines tribal and Hawaiian organization's ability to conduct important work under the law.

Our review of the 2007 Makah/NATHPO Report indicated that a substantial amount of federal appropriates earmarked for the NAGPRA Grant Program was not utilized for that purpose and instead diverted for other uses (Attachment O). We would like to go on record as stating that we find this practice to be troublesome especially, since a proposal we submitted to update a NAGPRA cultural items database for use by Native Hawaiian families and organizations was denied funding by

the National NAGPRA Program. The purpose of the database was to provide a single source for cultural items identified by museums and federal agencies that have the potential for repatriation under NAGPRA. We intended this database as a tool to assist our Hawaiian community in identifying the types of cultural items, how they were acquired, when and by whom, and the museums that families and organizations can contact to pursue any relevant claims. We believe such a project is worthy of federal appropriations and that similar projects should be the only use for such federal appropriations.

4. Congress should inquire about the information placed on the Culturally Unidentifiable Native American Inventories Database for Native Hawaiians

Attached please find a print out of the Culturally Unidentifiable Native American Inventories Database for Hawai`i (Attachment P). Notably, it lists Oregon State University as an institution when human remains representing a minimum of 5 individuals for whom cultural affiliation is unknown. The notes from the database were recently removed. This is the same institution that Hui Malama I Na Kupuna O Hawai`i Nei was not able to consult with due to the notification problems explained under # 1 above. We were not aware that there are 5 individuals whose ethnicity is unknown, nor do we have any idea why this information is on this particular database and why explanatory information that was on it previously was removed.

5. Congress should investigate the practice of withdrawing notices by museums and the extent such practice is facilitated by the National NAGPRA Program to the extent that the end result is a failure to comply with NAGPRA by the museum for which it may be assessed civil penalties by the Secretary of the Interior

This concern is by far the most serious and in our opinion warrants an investigation into the practice for the reason stated in our heading. In 2004, we were sent copies of 7 letters (all dated Dec 13 2004) from the Manager of the National NAGPRA Program to the Director of the Bernice Pauahi Bishop Museum acknowledging the museum's request to withdraw from publication in the Federal Register the following (Attachment Q):

notice of intent to repatriate 86 unassociated funerary objects from the Kona District, Island of Hawai`i (N0741);

notice of intent to repatriate 2 unassociated funerary objects from the Puna District, Island of Hawai`i (N0742);

notice of intent to repatriate 5 unassociated funerary objects from the Kohala District, Island of Hawai`i (N0739);

notice of intent to repatriate 43 unassociated funerary objects from Honomalino, Waipi`o Valley, and Kahala, Island of Hawai`i (N0264);

notice of intent to repatriate 16 unassociated funerary objects from the Hamakua District, Island of Hawai`i (N0736);

notice of intent to repatriate 110 unassociated funerary objects from the Island of Kaua`i (N0688);

notice of intent to repatriate 230 unassociated funerary objects from Waimea, Kahala cemetery, Wailupe Valley, Niu, Kuli`ou`ou, La`ie, Kane`ohe, Island of O`ahu (N0262);

We were shocked and contacted the National NAGPRA Program to request information clarifying these matters (Attachment R). However, we did not receive a response. We then wrote the Bernice Pauahi Bishop Museum (letter dated February 8 2005) requesting an explanation for the withdrawal of the seven notices of intent to repatriate a total of 492 moepu or unassociated funerary objects (Attachment S). The Bishop Museum responded by letter dated February 15, 2005 (Attachment T). Hui Malama I Na Kupuna O Hawai`i Nei responded stating the following (Attachment U):

``Could I please be sent a listing of each of the seven notices,

and which unassociated funerary objects the particular notice referred to, and the status of each in terms of the organization consulted with, their respective positions, and the issues the Bishop Museum sees as being outstanding for each particular set of moepu covered by the notice.

``I think the NAGPRA process would be much more smoother had the Bishop Museum provided this explanation to Native Hawaiian organizations, waited for responses as part of the consultation process, then decided whether to withdraw the notices or which ones to proceed with given that consultation that has already taken place. At least that way, interested Native Hawaiian organizations would have been consulted and apprised of the process the museum was deciding to take (and its concerns), rather than us finding out through the backhanded way of being copied on a confirmation letter. Don't you think? Please advise.''

To date the Bishop Museum has not provided any such response and therefore is not conducting any consultation on these repatriation matters. It is important to point out that some of these unassociated funerary objects are related to burial sites for which the human remains and funerary objects have been repatriated and reburied, e.g. the reference to Kahala Cemetery on O`ahu, where all of the ancestral remains and their funerary possessions were reburied in 2005. This is disturbing if we have to re-open reburial sites to include funerary objects that we were not informed of in the first instance.

In addition, the National NAGPRA Program did nothing when the Bernice Pauahi Bishop Museum declared a year long moratorium on NAGPRA compliance during which time they withdrew 7 notices of intent to repatriate cultural items. Can a museum unilaterally opt out of NAGPRA compliance? The Bernice Pauahi Bishop Museum did under the directorship of Dr. William Brown. The museum only completed one repatriation during that time, refused to repatriate human remains and unassociated funerary objects from Molokai (for which allegations of failure to comply was lodged against the museum and for which the NPS determined the museum to be in violation of NAGPRA on 5 counts), overturned a decision to repatriate items of cultural patrimony (Kalaina Wawae which are sandstone slabs with human footprints and boot marks carved into them from the island of Molokai, and reversed a completed repatriation (Kawaihae Cave Complex).

Furthermore, as recently as June 2008, the Bernice Pauahi Bishop Museum withdrew a notice for 3 sets of human remains with shared group identity to Hui Malama I Na Kupuna O Hawai`i Nei, Hawai`i Island Burial Council and the Office of Hawaiian Affairs (Attachment V). Hui Malama I Na Kupuna O Hawai`i Nei, Hawai`i Island Burial Council and the Office of Hawaiian Affairs all submitted blanket repatriation requests to Bishop Museum in the past for human remains and funerary objects from the island of Hawai`i and conducted the repatriation of all known Hawaiian remains and funerary objects from this island. This is especially troubling since NAGPRA provides a deadline of November 16, 1996 to inventory all Native Hawaiian human remains and to repatriate them upon request and Bishop Museum did not inventory these remains until now which means they are in violation of NAGPRA.

The fact that the National NAGPRA Program facilitated the notice withdrawal (without prior consultation by the Bishop Museum with Native Hawaiian organizations including our organization) and by implication, facilitated the violation for which they (National NAGPRA Program) would be responsible for investigating when a failure to comply with NAGPRA allegation is lodged against Bishop Museum, is most troubling of all. How can this be? Such practice begs the question of who is responsible for assuring compliance when the NPS is content to allow museums to determine whether it should comply or not. The Bishop Museum has not conducted any consultation nor even notified Hui Malama I Na

Kupuna O Hawai`i Nei of this particular repatriation. We found out about it be being copied once again on the letter confirming/acknowledging the withdrawal. This is especially disturbing since we are 19 years into NAGPRA implementation and we seem to be regressing instead of progressing toward repatriation and reburial.

By letter dated April 14 2009, Malama I Na Kupuna O Hawai`i Nei requested a list of all NAGPRA inventories submitted to the National NAGPRA Program by the Bishop Museum (Attachment W). To date we have not received any response. We were able to develop a table listing withdrawn notices by the Bishop Museum dated June 19, 2009 (Attachment X). We understand this practice/problem exists on a national scale and urge Congress to investigate whether this practice is consistent with NAGPRA. For our organizations, it represents a regression in the repatriation process, has undermine consultation and efforts to complete repatriation. We believe these practices cause a museum to fail to comply with NAGPRA.

Conclusion

Mahalo (thank you) for the opportunity to comment on current NAGPRA implementation and to recommend steps that Congress can take to strengthen the process and improve the overall manner in which native people can repatriate and rebury their ancestral remains, funerary possessions, sacred objects and cultural patrimony. If there are any questions, please have your staff contact me at 622 Wainaku Ave, Hilo, HI 96720, by calling 808.646.9015 or by email at Halealoha@wave.hicv.net.

[NOTE: Attachments have been retained in the Committee's official files.]