

**UNITED STATES SENATE  
COMMITTEE ON INDIAN AFFAIRS**

**OVERSIGHT HEARING ON  
THE NATIVE AMERICAN GRAVES PROTECTION  
AND REPATRIATION ACT**

**Washington D.C.  
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**Statement of:  
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**On Behalf of  
The Estate of Tasunke Witko  
and  
The Rosebud Sioux Tribe NAGPRA Committee**

**Good morning. My name is Robert Gough and I have the privilege of being the attorney for the Estate of Tasunke Witko, or Crazy Horse, the great Lakota leader. I also serve as a member of the Rosebud Sioux Tribe's NAGPRA committee. It is indeed an honor to appear again before this distinguished committee on behalf of both the Estate of Crazy Horse and the Rosebud Sioux Tribe.**

**A little over one year ago, I appeared before this committee to address a matter of particular and ongoing concern for the Estate of Crazy Horse, the Rosebud Sioux Tribe, and the entire Lakota Nation, with regard to a lack of compliance with, and enforcement of, the notification procedures established under the Native American Graves Protection and Repatriation Act ("NAGPRA"). The implication of the precedent set in this matter is of concern for all Native American people expecting fair, consistent and timely administration of NAGPRA by the National Parks Service. This is a matter involving:**

- A respected, private institution of higher learning, namely, Washington College of Chestertown, Maryland;**
- A buckskin shirt, fringed with human hair, believed to have belonged to Crazy Horse;**
- A lack of compliance by Washington College with either the spirit or the letter of the NAGPRA; and**
- A continued lack of enforcement of the threshold provisions or the civil penalty provisions of the Native American Graves Protection and Repatriation Act by the U.S. National Park Service for blatant non-compliance.**

**Sadly, I must report that in the intervening year, we have seen little more from the National Parks Service than a renewed promise to look into the matter.**

**As you are no doubt aware, the National Park Service published an interim rule in the Federal Register to establish procedures for assessing civil penalties on January 13, 1997. At that time the Secretary of the Interior decided it was not in the public interest to delay the effective date to accommodate notice and comment procedures because such a delay would likely result in further loss or inability to remedy losses which had already occurred.**

**Beyond a single, initial inquiry made by the National Parks Service after continued correspondence on the part of the Estate and the Rosebud Sioux Tribe, I am not aware of any subsequent contact between the National Parks Service and Washington College -- to my knowledge there has been no follow-up or determination as to the applicability of NAGPRA to Washington College. However, I can tell you, as attorney for both aggrieved parties, that National Parks Service has had no contact with either the Estate of Tasunke Witko or the Rosebud Sioux Tribe NAGPRA committee in this matter.**

**Unfortunately, I am also aware that the estate of Tasunke Witko is not alone in its**

**frustration with the lack of action or inconsistent action by the National Parks Service. I understand that at least one other museum has failed to complete summaries of its collection, and then subsequently sold items from its collection. The Tlingit people in the Pacific northwest are still waiting for National Parks Service to respond. We have no idea how many collections in smaller institutions who may be subject to NAGRPA have improperly disposed of small, but culturally significant collections through the lack of initial compliance.**

**It also appears that other museums have repatriated human remains to non-Federally recognized groups without doing the required notices. The Cherokee and Chickasaw people are still waiting for National Parks Service to respond. In the only case that I know of where the NPS has responded, a museum loaned funerary objects to a Native Hawaiian organization, and has received numerous letters from NPS officials. Coincidentally, the NPS has items from the same burial site in its collection. While I am not aware of any direct conflict of interest in the Crazy Horse shirt matter, with regard to the National Parks Service, their inaction has allowed Washington College to flaunt the compliance provisions of NAGPRA in their own financial self interest.**

**The Estate and the Lakota People, and other Native Peoples have suffered the continuing losses due to delays and inaction by the National Parks Service reference in the Secretary's concern noted above.**

## **INITIAL COMPLIANCE IS A CRITICALLY IMPORTANT THRESHOLD ISSUE**

**The NAGPRA was initially designed:**

- to provide a procedure within which the rights of ownership of Indian, Alaska Native, and Native Hawaiian ("Native American") human remains and artifacts, including funerary objects, religious artifacts, and objects of cultural patrimony, found on Federal or tribal lands could be clarified;**
- to establish criminal penalties for the sale, purchase, or transport of Native American human remains or cultural artifacts without a legal right of possession;**
- to direct federal agencies and museums receiving federal assistance to identify the geographic and tribal origins of human or cultural artifacts in their collections, and to require the return of the remains or artifacts to the appropriate tribe or Native American organization upon request;**
- to establish a Department of Interior advisory committee to review the identification and repatriation processes for Native American human remains and cultural artifacts held by federal agencies and federally assisted museums; and, finally,**
- to establish civil penalties for museums failing to comply with requirements of**

this act.

During the congressional hearing on the proposed NAGPRA legislation held May 14, 1990, distinguished members of this committee recognized the important human rights issues at stake in the legislation:

Senator McCain noted that NAGPRA outlined "a process that provides the dignity and respect that our Nation's first citizens deserve".

And, Senator Conrad noted that as proposed, NAGPRA provided a cross-cultural "lesson in etiquette, in manners, about how people treat each other. If you read this report, it is almost a rule book on how you treat others with respect."

However, for these goals of dignity and respect to be realized, compliance with the threshold provisions of the act must be ensured. Our concern today raises the crucial question of initial compliance by federally funded institutions in submitting the initial summaries or inventories required under the law. Institutional compliance with the initial disclosure notifications must be ensured so that interested Native American tribes and descendants can participate in the federally outlined process and review those objects and artifacts held by museums and other such institutions. Museums simply can not unilaterally pre-determine that particular objects or artifacts fall outside the specific NAGPRA categories and thus exempt themselves from compliance with the process. Yet, this is exactly what the National Parks Service has allowed to occur in this case.

The mandatory language of Section 10.8 (a) of the act is abundantly clear:

(E)ach museum that has possession or control over collections which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony must complete a summary of these collections based upon available information held by the museum. Federal agencies are responsible for ensuring that these requirements are met for all collections from their lands or generated by their actions whether the collections are held by the Federal agency or by a non-Federal institution.

No proper determination of the applicability of the categorical provisions of the act can occur without institutional compliance with the threshold notice provisions.

This is a critical procedural concern, for without institutional compliance in providing the required summaries and inventories, Native participation and federal regulation are pre-empted and the entire process is rendered ineffective. Without initial compliance, based either upon the good faith cooperation of the subject institution, or upon the diligent enforcement by the federal agency charged with carrying out the requirements of this law, all subsequent provisions of this balanced and diligently crafted act are rendered hollow.

It appears from the record -- which has now been on file with the National Park

**Service since 1996 -- that, for the past 60 years, Washington College has held a collection of Native American artifacts, including a shirt said to be trimmed with “human scalp” and purported to have belonged to the famed Lakota leader, Crazy Horse. The Estate and Tribe made repeated attempts to examine the objects and artifacts in this collection and related documentary evidence as to its provenance. Washington College knowingly ignored these requests and proceeded to sell the bulk of this collection, including the shirt, through Sotheby's Auction House in New York City on May 21, 1996, without having filed either a summary or inventory of their collection, as required under NAGPRA.**

**Apparently, Washington College unilaterally decided, based upon “expert advice” and a written, legal opinion, that it did not need to comply with the requirements of federal law. Incredibly, the College presumed on its own and without the benefit of input from known and interest Native parties, that the objects and artifacts in its Native American collection were not subject to the requirements of the act. Having unilaterally and erroneously opted out of any compliance requirements, the College then apparently concluded that it was free to sell these objects and artifacts to the highest bidder.**

**Again, the Estate of Crazy Horse and the Rosebud Sioux Tribe asks this distinguished committee:**

**Where in the law are federally funded institutions possessing items which may be subject to the Native American Graves Protection and Repatriation Act, allowed to presume that federal law does not apply to them?**

**Where in the law are such institutions excused or exempted from filing the appropriate summaries or inventories of their collections mandated under NAGPRA based upon their own -- hardly disinterested -- determination that such objects and artifacts in their collections are not subject to the act?**

**Where in the law are the Secretary of the Department of the Interior and the National Parks Service excused from their statutory duties and trustee responsibilities to protect the legal interests of Native American peoples from the actions of institutions that blatantly profit from purposefully ignoring the law?**

**Finally, we understand that the National Parks Service has been undergoing restructuring, reorganization and reassignment over the past year. Judging by the ongoing lack of results in this matter, the National Park Service is still sadly no more effective than the law it refuses to enforce. Will this committee do everything in its power to relocate the enforcement provisions of NAGPRA to an agency that will execute these sacred duties and responsibilities seriously and consistently in accordance with its statutory and federal Indian trust responsibility?**

## **WASHINGTON COLLEGE AND THE CRAZY HORSE SHIRT**

**We have noted that Washington College would appear to be an institution of higher learning, pursuant to 45 CFR Section 10.2(3). And further, pursuant to 45 CFR Section 10.2(3), we understand that Washington College, like most such institutions, has received federal funds after November 16, 1990. It no doubt continues to benefit from such federal education support.**

**Since long before the passage of the NAGPRA, this College, name for the first President of the United States, has had possession or control over a collection, called the "Albee Collection", which contains Native American objects and artifacts which may be subject to the act, pursuant to 45 CFR 10.8(a), namely, unassociated funerary objects, sacred objects, or objects of cultural patrimony, or pursuant to 45 CFR 10.9, human remains and associated funerary objects. Washington College failed to comply with the timely filing of either a summary or inventory, as required by the law.**

**Further, such failure resulted in the sale of the Albee Collection without proper notice to the Tribe or Estate, who are parties known to Washington College as having an affiliation, association and interest in the collection. This sale materially damaged the Tribe and the Estate through the loss of any opportunity to examine, investigate, research or potentially repatriate such items.**

**The matter of particular concern to us today is the critical need for action by the United States National Park Service in enforcing the civil provisions of NAGPRA. To date, we are not aware of any enforcement proceedings initiated under the civil penalty provisions of the act. We seek a determination that Washington College has failed to comply with NAGPRA, and that such failure has ultimately resulted in the College's sale, and subsequent disposal, of the Albee Collection.**

**We have requested that the Secretary of the Department of the Interior and the National Park Service make an official determination of non-compliance and assess the appropriate civil penalties, pursuant to 45 CFR Section 10.12, to hold Washington College accountable for its failure to provide a summary and/or inventory by November 16, 1995 or any time thereafter, prior to its sale of the Albee Collection on May 21, 1996.**

**We first brought this matter to the attention of the National Park Service in writing on June 4, 1996, and have followed-up with letters to the Secretary of the Department of the Interior on June 11, 1997 and a then again on June 25, 1998, with copies to our congressional delegation, by way of personally appearing before the NAGPRA Review Committee at their meeting convened on December 10, 1998, in Santa Fe, New Mexico and at the Senate Oversight Hearing on The Native American Graves Protection and Repatriation Act held in Washington, DC on April 20, 1999. In addition, through lawyers with the law firm of Greenberg Traurig, LLP, the Estate has corresponded with the National Park Service on this matter as recently as March 24, 2000.**

## BACKGROUND INFORMATION

While there are many issues involved in this case, I would again like include for the committee's information, a statement prepared by Ms. Amanda Burt, a paralegal with Rudnick, Wolfe, Epstien, and Zeidman, of Washington D.C., who provided some background information in this matter to the NAGPRA Review Committee in Santa Fe, on December 10, 1998.

*From Ms. Amanda Burt's December 10<sup>th</sup> presentation:*

*Good afternoon. I would first like to thank the Review Committee for the opportunity to express our concerns in this forum. Specifically, we are here to address the question of Washington College's compliance with the procedural provisions of NAGPRA, as well as the National Park Service's intended course of action in this matter.*

*For the record, my name is Amanda Burt. I am currently a paralegal with the law firm of Rudnick, Wolfe, Epstien & Zeidman in Washington, D.C. I am also a 1993 graduate of Washington College.*

*Most people in this room are probably not familiar with Washington College. As I am well-acquainted with Washington College, I thought it would be helpful to provide some background information about the school. It is located in Chestertown, on Maryland's Eastern Shore and is a private liberal arts institution of approximately 1,000 students. For its part, Chestertown is a small, quiet community comprised of Chesapeake Bay watermen, farmers, retirees, and, for nine months out of the year, college students. Chestertown is not the kind of place that immediately comes to mind as being a "flashpoint" for Native American issues. And yet, this is absolutely crucial to understanding why this case is so important – especially where future instances of non-compliance with NAGPRA are concerned.*

*For approximately 60 years, Washington College possessed the Albee Collection, a sizable assemblage of Native American artifacts, most notably of which included a beaded and fringed shirt attributed to legendary Lakota warrior, Crazy Horse, in addition to a headdress said to have belonged to Chief Red Cloud. Interestingly, the placard next to the Crazy Horse shirt proclaimed that it was "trimmed with human scalp."*

*The Albee Collection would likely have gone unnoticed were it not for a visit to the college in 1992 by the Cheyenne poet, Lance Henson. Henson, who had been invited to the College to read from his poetry, literally stumbled across the Albee Collection -- housed in two shabby trophy cases in an obscure corner of Washington College's library. I have provided photographs for your reference. Aware of NAGPRA, Henson raised the question of the College's rightful ownership of the collection.*

*At the time, I was working for the student newspaper, The Washington College Elm. I wrote a story about Henson's "discovery" and his concern, especially in light of the recently enacted federal repatriation law, that the artifacts should be returned to the appropriate tribes. Since that time, I*

*have been working together with members of the Crazy Horse family and the Estate to obtain more information about the shirt.*

*Sadly, the Albee Collection – including the Crazy Horse shirt – were sold at Sotheby's in May, 1996, due, in large measure, to Washington College's failure to comply with the requirements of NAGPRA. Although attributed in the auction preview catalogue to an "Important Plateau Man," the shirt sold for a price tag of over \$200,000 – more than ten times what similar shirts are worth, in dollars.*

*Today, the question of Washington College's compliance with NAGPRA still remains unanswered. The National Park Service's failure to make a determination in this matter sends the unfortunate message that other institutions like Washington College do not have to comply with the law because they will not be held accountable for their actions, or lack thereof. [End of Ms. Burt's statement]*

Thus, for approximately the past 60 years, Washington College has had in its possession various objects and artifacts, including a so-called "scalp shirt" believed to have been owned and worn by Crazy Horse, i.e. Tasunke Witko. They also held a double-train eagle feather headdress attributed to Red Cloud, along with numerous other items from the estate of Captain Albee.

## **EFFORTS TO OBTAIN COMPLIANCE**

On November 7, 1995 and again on May 12, 1996, on behalf of the Estate of Tasunke Witko and the Rosebud Sioux Tribe NAGPRA Committee, I contacted Washington College to obtain more information about the Albee Collection, including the Crazy Horse shirt and was directed to Mr. Alexander "Sandy" Jones, Chairman of the Washington College Legal Affairs Committee. I informed Mr. Jones that I represented the Estate of Tasunke Witko and the Rosebud Sioux Tribe NAGPRA Committee. I advised him that certain objects and artifacts in the Albee collection may be subject to NAGPRA. I provided him with a copy of the repatriation act, with what I believed to be the relevant sections marked and highlighted. We made no formal request for repatriation at that time, and sought only to examine the objects, artifacts and any documentation of its provenance.

My initial request to view the objects and artifacts was denied on the grounds that the shirt was not presently on campus, as it was undergoing appraisal and conservation at an undisclosed location. My follow-up request was denied because the collection had been sold at auction in New York City. It would appear that sometime after being apprised of the appraisal and potential market value of the collection, Washington College decided to profit from its sale rather than comply with the procedural requirements of NAGPRA. This decision of Washington College, made with full knowledge of Native interest in the collection, is shameful and unworthy of the name of its "founding father."

Since that time, Washington College has unilaterally taken the position that it had no duty to comply with the requirements of NAGPRA. The College's position is apparently based upon three grounds:

- That Washington College is not a museum.
- That the objects and artifacts in its possession did not fall within the objects covered by NAGPRA, pursuant to 43 CFR 10.2(d).
- That Washington College held good title to the Albee Collection.

The claim that Washington College is not a museum, and therefore, not subject to compliance with the requirements of NAGPRA, is purely a question of semantics. While Washington College may not be a museum in the generally accepted meaning of that word, Washington College is not relieved from its obligation to comply with applicable federal law or the specific definition of museum provided under NAGPRA.

In his June 8, 1998, letter to Dr. Francis P. McManamon, of this Committee, in his capacity as Director of the Archeological and Ethnology Program of the National Park Service, Mr. John Toll, President of Washington College, states initially that:

“Although we are not required to respond to your inquiry, we hope that our response will refute the allegations made by Mr. Gough and will foreclose the need for further action.”

President Toll provides no reason, nor offers any grounds upon which to base his belief that Washington College is not required to respond. However, on several occasions in the past, Washington College has claimed that it is not a museum.

It is of interest to note that in the Sotheby's sale catalogue of Tuesday, May 21, 1996, a photograph of lot item # 172 described as "A Small Plains Dance Ornament" from the "Albee Collection" is shown with an apparently well-worn label tag proclaiming: "Washington College Museum."

In any case, Section 10.2 (3) defines the term "museum" as follows:

*Museum* means any institution or State or local government agency (including any institution of higher learning) that has possession of, or control over, human remains, funerary objects, sacred objects, or objects of cultural patrimony and receives Federal funds.

We contend that Washington College is included in any applicable definition of the term "museum" under NAGPRA.

In his response to Dr. McManamon, with regard to the National Park Service inquiry as to whether Washington College has completed a summary or an inventory under 10.8 or 10.9, President Toll admitted that Washington College

had done neither. Further, Washington College denied refusing to have repatriated any “Native American items” in violation of 43 CFR 10.10, and denied that it had sold any “Native American items” in violation of 43 CFR 10.12(b)(i). As grounds for these denials, President Toll expressed Washington College's position as follows:

“(I)t has consistently been the position of Washington College that the Native American items in its possession did not fall within the categories of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony within the meanings outlined by 43 CFR 10.2(d).”

This has been the consistent position of the College. The Jones' 1995 letter to Dr. Krupat concluded with the remark that:

“It (Washington College) should then seek expert advice to the Board concerning the condition and value of the Indian artifacts and its responsibility, if any, under the Native American Graves and Repatriation Act of 1990, as amended, and its regulations. Armed with this information the Board will make a determination of its proper course of action.”

The critical nature of initial compliance concerns is underscored by the Estates recently failed attempt to regain the shirt or damages for the sale of the shirt through litigation. The Estate brought a claim for unlawful conversion of the shirt in Federal Court in Maryland. Because of Washington College's own statement of ownership of the Shirt, the case was barred by the statute of limitations. As a result, Washington College's own self-serving statement of Legal possession prevented the Estate from pursuing its rights to the Shirt.

Our concern today is precisely with this kind of self-interested self-exclusion -- clearly practiced by Washington College -- from the requirements of NAGPRA. Institutions cannot be allowed to by-pass or ignore Native input in a determination of NAGPRA applicability. Without compliance prior to any sale of objects or artifacts, there is no way of assessing the validity of Washington College's claims under the NAGPRA regulations.

Again, Section 10.8 (a) provides that:

(E)ach museum that has possession or control over collections which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony must complete a summary of these collections based upon available information held by the museum. Federal agencies are responsible for ensuring that these requirements are met for all collections from their lands or generated by their actions whether the collections are held by the Federal agency or by a non-Federal institution.

Washington College's non-compliance and sale of its collection, without notice to identified interested parties, effectively prevented any fair and open determination of what may or may not satisfy the NAGPRA categorical

requirements. The position of Washington College only satisfied its own self-interest and financial gain. The prospect of an institution evading its legal duty and financially profiting from the sale of human remains or sacred objects or objects of cultural patrimony is reprehensible and unlawful.

The collection remained in the possession of Washington College throughout most of the century. The placard in the College's display case provides all the basic information needed to complete a summary under 10.8(c). This is not a case of lack of information or lack of adequate funding necessary to complete the required summary. Further, Washington College can not and does not claim ignorance of the existence of the Native American Graves Protection and Repatriation Act, or of its the requirements, amendments or regulations. Consequently, Washington College cannot be allowed, in its own self-interest, to claim a presumed exemption from its responsibility to comply with those requirements and regulations of the Native American Graves Protection and Repatriation Act.

## **CONCLUSION**

**Mr. Chairman and distinguished members of the Senate Indian Affairs Committee:**

**Unfortunately, another year has passed since the Estate of Crazy Horse and the Rosebud Sioux Tribe last brought this crucial matter of lack of enforcement of the legal protections and rights accorded to Native Americans under the Native American Graves Protection and Repatriation Act to your attention.**

**Under the hard-fought and carefully balanced provisions of NAGRPA, the rights of museums and Native Americans, and the governmental responsibilities of the National Park Service are clearly spelled out. However, when the Secretary of the Department of the Interior and National Parks Service officials fail to faithfully, timely, diligently or consistently perform their statutory duties or live up to their responsibilities to protect the rights of all parties under the Act, only those museums and other institutions that would circumvent the law for their own self-interest and monetary profit are protected.**

**Sadly, in this case, five years have now passed since the National Parks Service was first requested to meet its responsibilities under NAGRPA with respect to this Washington College matter. These requests have come through telephone calls, letters, public statements presented to the NAGRPA review committee, and congressional testimony.**

**In five years, the National Parks Service apparently cannot even determine whether the threshold requirements of NAGRPA are met by an institution that has placed objects the auction block which were publicly touted as associated with the slain leader Crazy Horse and with other respected Lakota leaders, which are deemed sacred and part of the Lakota cultural patrimony, and which fetched extraordinarily higher prices because of that association.**

**Again, as I understand it, since we met last year, the National Parks Service has been undergoing restructuring, reorganization and reassignment over the past year. Judging by the results in this matter, the National Park Service is still no more effective than the law it refuses to enforce.**

**As we observed one year ago, the past and present position of Washington College essentially stands for the following proposition:**

**That any institution which acknowledges receipt of federal funds and which has Native American objects and artifacts in its possession may unilaterally choose whether it wishes to comply with or opt out of the threshold summary or inventory requirements of the NAGPRA, based upon its particular self-interest, privately obtained expert advice, undisclosed legal opinions, or other financial determinations made at the sole discretion of that institution's board of directors. This unilateral determination may be made without input from any other of the Native American parties who may have legal interests under NAGPRA.**

**It is precisely this prospect – that is, leaving the question of whether an institution has a duty to comply with federal law up to that institution's own self-interested discretion – that we find setting a most troubling precedent. Allowed to stand, this precedent effectively and completely pre-empts any tribal participation in the NAGPRA process. Also, if we may judge by the inaction of the National Parks Service, it appears to foreclose any possibility of federal regulation under the NAGPRA. By allowing this precedent to go unaddressed, the National Parks Service has effectively rescinded this Act of Congress.**

**In short matter has come to stand for the proposition: If you purposefully ignore the law out of private self-interest, the law can not and will not be applied to you. This is a powerful message, endorsed by the inaction of National Parks Service.**

**In closing, we have sought the assistance of the NAGPRA Review Committee in moving the Secretary of the Department of the Interior and the National Park Service to make a determination regarding Washington College's admitted non-compliance with the procedural provisions of NAGPRA. Further, we have asked that the Secretary and the National Park Service to assess appropriate civil penalties against Washington College for its failure to complete a summary and/or inventory by November 16, 1995, or any time prior to its sale of the Albee Collection on May 21, 1996, and for that subsequent sale.**

**Again, we have not brought this matter before you for resolution of these issues on the merits of the case. Details of this case have been included here only to represent the level of administrative information that has been available to the National Parks Service for over five years. We have been and remain completely willing to proceed through appropriate administrative channels. We seek only effective compliance with, and diligent enforcement of, the federal protections provided under the law; but those channels have been effectively blocked by the unexplained inaction of those statutorily charged with administrating the law.**

**We bring this matter again to the attention of this oversight committee in the hope of remedying this problem of initial threshold compliance and the lack of administrative action in the face of non-compliance. One year ago, we suggested that a technical amendment to require that no sale of any objects or artifacts which may be subject to the provisions of NAGPRA can occur without a written certification of compliance with the summary and inventory provisions of NAGPRA from the National Park Service, as applicable federal agency. This would provide notice and assurance to the various auction houses and other venues trafficking in Native American objects and artifacts that their participation in the sale of such items would not aid, abet or promote willful non-compliance with the NAGPRA. I am not aware of any legislative actions taken in this regard.**

**To date, there have been no enforcement actions taken under the civil penalty provisions of the present act. This should not be taken as an indication that there are no problems with institutional compliance. Lack of enforcement in such cases as this means that institutions holding objects and artifacts of significant cultural import can effectively evade the balanced legal protections envisioned for all parties under NAGPRA.**

**Rather, this lack of enforcement may be evidence that the National Park Service is ill-equipped or ill-disposed to properly carrying out the threshold provisions and enforcement functions under the Native American Graves Protection and Repatriation Act. The failure of the National Park Service to adequately respond in accordance with the express provisions of the act further compounds the evasion and denigration of this all too necessary federal legislation.**

**Neither the Secretary of the Department of the Interior or the National Parks Service are excused from faithfully and consistently carrying out their statutory duties and trustee responsibilities to protect the legal interests of Native American peoples from the actions of our American cultural institutions that blatantly profit from purposefully ignoring the law. If the National Park Service is going to ignore its statutory duties and responsibilities under the law, then a more appropriate federal agency, perhaps located within the Department of Justice, civil or human rights divisions, should be charged with upholding federal law. Judging by the ongoing lack of results in this matter, the restructured, reorganized and reassigned National Park Service is still no more effective in the protection of Native American Rights, than is the law it refuses to enforce in any consistent or expedited manner.**

**Again, we ask this committee do everything in your power to relocate the enforcement provisions of NAGPRA into an agency, perhaps located within the Department of Justice, that will execute these sacred duties and responsibilities to Native Americans seriously, consistently and in a timely fashion.**

**On behalf of the Estate of Tasunke Witko and the Rosebud Sioux Tribe NAGPRA Committee, I offer you my appreciation for the opportunity to again bring this issue before the Senate Indian Affairs committee.**

**Respectfully submitted this 25<sup>th</sup> day of July, 2000.**

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