

United States Senate Committee on Indian Affairs
Testimony of Martin E. Sullivan
Member and former Chairman
Native American Graves Protection and Repatriation Review Committee
July 25, 2000

My name is Martin E. Sullivan. I am presently chief executive officer of Historic St. Mary's City, the museum of history and archaeology at the site of Maryland's first colonial capital. Formerly I was director of the Heard Museum in Phoenix, Arizona, from 1990-1999.

I've served for the past eight years as a member of the Review Committee overseeing implementation of the Native American Graves Protection and Repatriation Act (NAGPRA). My first five-year appointment to the NAGPRA Review Committee came through nomination by the American Association of Museums. Together with another original member, Tessie Naranjo, I was named by Secretary Babbitt to an additional three-year term that expires this year, and I served as chairman for the past year. I have personally participated in a large number of repatriations of Native American and Native Hawaiian human remains, sacred objects, and objects of cultural patrimony.

It is a particular honor to offer these remarks to the distinguished members of the Senate Committee on Indian Affairs. Your leadership in enacting NAGPRA and your continuing concern for its proper implementation have been indispensable sources of guidance and support to all those who support its goals, as I do.

I wish to comment on five specific topics:

- a serious concern among many tribes and museums that the National Park Service has failed to act expeditiously to reduce backlogs in the processing of NAGPRA business, especially publication in the Federal Register of notices of intent to repatriate;
- a related concern that the recent reorganization of NAGPRA staff seems to have increased, not diminished, the problem of conflict of interest between the Park Service's internal operations and its national oversight responsibilities for NAGPRA compliance;
- the need for the Department of the Interior to take action soon on regulations regarding disposition of unclaimed remains and so-called "culturally unidentifiable" human remains;
- the disturbingly uneven levels of compliance with NAGPRA by Federal agencies, including units of the Interior Department, the Department of Defense, and the Agriculture Department; and
- the continuing need for more adequate funding of the national grant program, enabling tribes and museums to research and carry out repatriations.

The Review Committee's formal recommendations on these and related issues are outlined in the

attached document signed by all of our members on April 4, 2000, when the Committee met in Juneau, Alaska. (Attachment 1)

- As to the first concern about backlogs in processing repatriation actions, the Committee calls to your attention a memo dated June 2, 2000, from Mr. John Robbins, Assistant Director of the National Park Service for Cultural Resources Stewardship and Partnership. (Attachment 2)

He indicated that as of that date there was a backlog of 236 notices for Federal Register publication, of which the Park Service designated 38 as “priority.” What this means is that, in at least 236 instances, repatriations were unable to be completed in a timely manner despite agreement between the claimant tribes and the museums or federal agencies involved.

At its hearing last spring, your Committee heard testimony about the backlog that existed then, and about the National Park Service’s stated intention to solve the problem. Unfortunately, the problem continues to grow. NPS took nearly nine months to accomplish an internal restructuring of its NAGPRA unit, and only recently has it begun to hire additional contractual staff to clear up the accumulated backlog of notices. The Review Committee realizes that this is a daunting administrative task, and we have expressed our commendation for the hard work of Dr. Frank McManamon, Dr. Timothy McKeown, and their National Park Service staff colleagues who were charged with implementing the law nationally.

However, it seems to me and my colleagues on the Review Committee that *the spirit of urgency and national priority that once characterized NAGPRA in its early years is being seriously compromised by this growing stack of unprocessed repatriation actions*. We respectfully urge the Senate Committee on Indian Affairs to consider the consequences of the backlog.

- The Review Committee’s second concern is also related to National Park Service oversight. In 1999 members of the Committee met with senior officials of the Department of the Interior to voice our concern about the conflict of interest we foresaw between NPS’s national oversight of NAGPRA compliance standards and its own internal compliance obligations at the level of individual parks and regions.

A specific case that demonstrates this serious problem of conflict of interest is a dispute heard by the Review Committee in 1999 between the Hopi Tribe and Chaco Culture National Historical Park.

In a letter dated January 10, 2000, the Review Committee made advisory findings and recommendations urging Chaco Culture Park to withdraw its published Notice of Inventory Completion on human remains because the Committee believed unanimously that the consultation process and the determination of cultural affiliation made by the Park is not consistent with the standards anticipated in the NAGPRA legislation. We reached this conclusion only after lengthy careful review of materials submitted by both parties to the dispute.

On February 18, 2000, I received a letter to the Review Committee from Ms. Karen P. Wade, director of the Intermountain Region of the National Park Service, explicitly rejecting the Review Committee's proposed recommendations for re-evaluation of cultural affiliation. This is the first instance in which a party to a NAGPRA dispute has declined to accept the Review Committee's findings.

Essentially, the Intermountain Region of NPS chose to make an independent interpretation of the law's requirements. The NAGPRA national oversight office, also administered within the National Park Service, has either not provided internal policy advice to the Region director or has acquiesced in her position.

Thus, the Hopi Tribe and other Pueblo tribes who support the Hopi claim in this dispute now have no alternative but to take the dispute to Federal court, an obviously expensive and drawn-out process. I well recall that, when NAGPRA was being debated ten years ago, the Senate and the House of Representatives hoped to minimize litigation by setting up the dispute resolution mechanism under the purview of the Review Committee. Now a unit of the National Park Service itself is taking a stand that makes litigation the only remaining option.

As noted in item 3 of our attached Recommendations of April 4, 2000, the Review Committee continues to believe that implementation of NAGPRA would be strengthened, and the possibility of conflict of interest minimized, by placing the national oversight office within the Secretariat of the Department of Interior rather than retaining it in the National Park Service. This view is also held by a number of Indian tribes and Native Hawaiian organizations that have communicated their concerns to you.

We on the Review Committee were disappointed in the partial NPS reorganization that occurred earlier this year. NAGPRA administrative responsibilities were divided among several managers. General NAGPRA compliance, including policy guidance to the tribes, museums, and Federal agencies, has been assigned to the Assistant Director for Cultural Resources Stewardship and Partnerships in the National Park Service, a manager with no prior experience or expertise in the complexities of NAGPRA.

Some of us gave this arrangement the benefit of the doubt, but as time passes it is becoming clear that the new structure is, to say the least, not an improvement. Senior NPS program officers who do have extensive experience and who have earned the confidence of the field have been shifted out of this critical area of responsibility only to be replaced by consultants with minimal experience. I know that most if not all of my colleagues on the Review Committee agree that this is not the solution we expected, and it certainly does not deal with the pressing need for well-informed, objective guidance to the field.

- As to our third concern, the legislation specifically charged the Review Committee with "compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum, and recommending specific actions for developing a process for disposition of such remains."

For nearly five years, the Review Committee received testimony from interested individuals, tribes, and organizations at meetings held in all parts of the United States, including Hawaii and Alaska. We carefully reviewed several hundred written comments on drafts of the proposed standards for disposition. We heard from scores of Native American people who urged respect for the remains of the dead and for the claims of their descendants.

At its last meeting in Juneau, Alaska, the Review Committee completed a final draft of its recommendations, which have now been forwarded to the Secretary of the Interior. Our recommendations acknowledge that very ancient remains such as the so-called Kennewick Man and the Spirit Cave ancestor do pose difficult questions about cultural affiliation that need to be resolved on a case by case basis in consultation with the tribes that occupy or formerly occupied the lands where such remains are found.

However, we on the Committee believe strongly that most designations of remains as “culturally unidentifiable” stem from much more common situations such as the possibility of multiple potential claimants, or the absence of Federal recognition by an otherwise qualified tribal claimant. *We believe it is essential to encourage actions that reduce the number of truly unidentifiable remains to an absolute minimum.*

Thus, the Review Committee endorses the creation of regional coalitions of tribes to act collectively in making claims for Native American remains from their regions, as well as agreements among Federally recognized tribes that support the repatriation claims of non-Federally recognized tribes in order to enable otherwise legitimate claimants to participate in the process.

As I indicated, the recommendations of the Review Committee are now in the hands of the Department of the Interior. Two actions are now urgently required. The Interior Department needs to allocate staff resources to compile the national inventory of so-called unidentifiable remains, based on records submitted by museums and federal agencies, and to distribute that national inventory to all Indian tribes and Native Hawaiian organizations with standing under NAGPRA. Secondly, the Secretary must promulgate regulations (43 CFR 10.11) that enable all affected parties to move ahead in resolving the disposition of unidentifiable remains. We urge the Senate Committee on Indian Affairs to communicate the urgency of these actions to the Secretary.

We are equally anxious to see progress on the promulgation by the Secretary of regulations (43 CFR 10.7) on the disposition of unclaimed human remains from intentional archaeological excavations or inadvertent discoveries. No draft text has yet been made available to the Review Committee or to other interested parties for review and comment.

- The Review Committee’s fourth concern is the growing body of evidence that a number of Federal land management agencies within the Departments of Interior, Defense, and Agriculture are not allocating adequate resources or internal management priority to NAGPRA compliance.

Since 1997 it has become increasingly apparent to the Review Committee that some agencies or regional management units of agencies are far behind the timetable set forth in the law in compiling inventories of their collections, consulting with tribes, and implementing disposition of existing collections or consultation processes for new discoveries. Most agencies have been forthcoming in their submission of data, but they report an inability to move faster in complying with the law's requirements. One agency indicated that its existing level of resources will not enable it to complete inventories until as long as twenty years from now!

Museums and universities whose primary funding does not come from the Federal government have, by and large, succeeded in finding the resources to meet the timetable set forth in the law. Only six such institutions out of many hundreds are not yet in compliance, and all six appear to be making progress under administrative forbearance from the Interior Department. *It is dismaying that Federal agencies are, in some cases, so far behind their non-Federal counterparts, and we strongly hope that each agency will request adequate budget appropriations to accelerate their compliance efforts.*

- The last topic of this testimony is the continuing need for an increase in funding for the NAGPRA grant program to enable Indian tribes, Native Hawaiian organizations, and museums to conduct research and consultation. The Committee urges that at least \$5 million be available annually for this purpose, doubling the currently available amount.

We noted that \$2,472,000 was made available by the Interior Department for such grants in FY 2000, and \$2,496,000 in FY 1999. The Review Committee was pleased to learn that two-thirds of each year's funding has gone to Indian tribes and Native Hawaiian organizations. *We expect that, far from diminishing, the need for NAGPRA grants will grow as more information about collections becomes available to Indian tribes and Native Hawaiian organizations.*

However, we are concerned at what appears to be an unexpected internal reallocation of grant funds into administrative costs. In FY 2000, for example, an analysis provided to us by NPS reports that only \$2,252,000 of the \$2,472,000 intended for grants was actually encumbered for that purpose, and that the remaining \$220,000 was used for grants administration on top of an additional \$169,000 already budgeted for grants administration. A similar practice was apparently followed in FY 1999, when \$160,000 in grant funds were added to the already-existing administrative line. I know that the charges for publication of notices in the Federal Register have gone up as the amount of business has increased, but I do wonder if it is considered appropriate to transfer money earmarked for grants into an administrative line item.

Distinguished members of the Committee, in conclusion I wish to offer some brief personal remarks about what has happened since the passage of NAGPRA in November of 1990, ten years ago. At that time it was described by many as a long-overdue human rights initiative. After ten years of personal experience, I emphatically agree.

NAGPRA does not provide perfect answers to every issue it addresses. The concerns I have described today are evidence that improvements are needed, perhaps even requiring amendment of the legislation. However, NAGPRA has in my opinion done what its framers in the United States Congress hoped for. It has provided a balanced, deliberate, and consistent process for documenting sensitive collections and discoveries, mandating appropriate consultation, and facilitating repatriations and reburials. In the big picture, the law works.

Contrary to the fears of many of my museum colleagues a decade ago, NAGPRA has not led to a hasty, highly politicized “raiding” of important research collections. If anything, it has become clear that the questions surrounding repatriation are at least as challenging for Indian tribes and Native Hawaiian organizations as they are for curators and museum directors. The burden of accepting responsibility for proper care and repose of long-separated dead relatives and powerful spiritual objects is an immense one for Native people, and this somber business will not be finished for a long time.

I salute the courage and persistence of those in Native communities who regularly sacrifice their time and privacy, and even their personal financial resources, to carry on the work of repatriation. For those of us whose careers are in museums, I must add that NAGPRA has radically redefined the ethical standards and practices of our profession, perhaps an unanticipated outcome but one that has made museum workers wiser and better stewards of this nation’s cultural patrimony.

Those of us, just a dozen people in total, who have served on the NAGPRA Review Committee agree that we have traveled together on a most remarkable journey during this past decade. We’ve engaged in inter-cultural encounters that have sometimes been painful but profoundly moving. We’ve discovered new dimensions of tolerance, patience, and mutual respect. I will always appreciate the honor of participating in this experience, and I thank this committee and your colleagues in both houses of the Congress.

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