

**MINUTES**

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

**THIRTY-EIGHTH MEETING**

**OCTOBER 11-12, 2008**

## TABLE OF CONTENTS

<b>The 38th Meeting of the Review Committee</b>	<b>6</b>
<b>Introduction/Welcome</b>	<b>8</b>
<b>Review of Agenda</b>	<b>8</b>
<b>Dispute: Onondaga Nation and the New York State Museum</b>	<b>8</b>
Background Information	8
Presentation: Onondaga Nation	8
Presentation: New York State Museum	10
Review Committee Questions	11
<b>Presentation: Hawaii Volcanoes National Park</b>	<b>13</b>
Presentation	13
Review Committee Discussion	13
<b>Request for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of the Fort Vancouver National Historic Site, WA</b>	<b>14</b>
Presentation	14
Review Committee Questions	14
Review Committee Motion	15
<b>Two Requests for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of the Arizona State Museum</b>	<b>15</b>
First Request – Presentation	15
First Request - Review Committee Comments	16
First Request – Review Committee Motion	16
Second Request – Presentation	16
Second Request – Review Committee Motion	17
<b>Public Comment – Ms. Robin Wilson</b>	<b>17</b>
<b>Comment – Ms. Rosita Worl</b>	<b>17</b>
<b>Public Comment – Mr. James Riding In</b>	<b>17</b>
<b>Public Comment – Mr. Lalo Franco</b>	<b>19</b>
<b>Public Comment – Ms. Jan Bernstein</b>	<b>19</b>
<b>Request for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of the Detroit Institute of Arts, MI</b>	<b>19</b>
Presentation	19
Review Committee Motion	20
<b>Request for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of the Kalamazoo Valley Museum, MI</b>	<b>20</b>
Presentation	20
Review Committee Motion	21
<b>Comment – Mr. Vincas Steponaitis</b>	<b>21</b>
<b>Request for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of the Cranbrook Institute of Science, Bloomfield Hills, MI</b>	<b>22</b>

<b>Presentation</b>	<b>22</b>
<b>Review Committee Questions</b>	<b>22</b>
<b>Review Committee Motion</b>	<b>23</b>
<b>Upcoming Meetings</b>	<b>23</b>
<b>Public Comment – Anthony Garcia</b>	<b>23</b>
<b>National NAGPRA Program Manager’s End-of-Year Report on the Implementation of NAGPRA (FY2008)</b>	<b>25</b>
<b>Presentation</b>	<b>25</b>
<b>Review Committee Comments</b>	<b>26</b>
<b>Review Committee Motion</b>	<b>27</b>
<b>National NAGPRA Program Notice Coordinator’s Report on Federal Register Notices</b>	<b>27</b>
<b>Presentation</b>	<b>27</b>
<b>Review Committee Comments</b>	<b>27</b>
<b>National NAGPRA Program Law Enforcement Investigator’s Report on NAGPRA Civil Enforcement</b>	<b>28</b>
<b>Presentation</b>	<b>28</b>
<b>Review Committee Comments</b>	<b>30</b>
<b>Legal Counsel’s Report on the Jurisdiction of the National Park Service to Investigate Possible Criminal Violations of NAGPRA Beyond the Boundaries of NPS-Managed Lands and on the Various Means by which NPS Could Obtain Nationwide Jurisdiction</b>	<b>30</b>
<b>Presentation</b>	<b>30</b>
<b>Review Committee Comments</b>	<b>31</b>
<b>Review Committee Motion</b>	<b>31</b>
<b>Clarification of Motion</b>	<b>31</b>
<b>Deliberation on the Dispute Between the Onondaga Nation and the New York State Museum</b>	<b>31</b>
<b>Review Committee Discussion</b>	<b>31</b>
<b>Review Committee Motion</b>	<b>32</b>
<b>Upcoming Meetings</b>	<b>33</b>
<b>Review Committee Motion</b>	<b>33</b>
<b>Discussion of Nominations for the Seventh Member of the Review Committee</b>	<b>34</b>
<b>Review Committee Motion</b>	<b>34</b>
<b>Discussion of a Proposed General Accountability Office (GAO) Report</b>	<b>34</b>
<b>Review Committee Motion</b>	<b>34</b>
<b>Public Comment – Ms. Sandra Dong</b>	<b>34</b>
<b>Public Comment – Ms. Shannon Keller O’Loughlin</b>	<b>34</b>
<b>Closing Comments</b>	<b>35</b>
<b>Public Comment – Mr. Lalo Franco</b>	<b>36</b>
<b>Public Comment – Mr. Jim Brown</b>	<b>36</b>
<b>Public Comment – Group</b>	<b>37</b>
<b>Ms. Amy Lonetree</b>	<b>37</b>
<b>Mr. John Daehnke</b>	<b>37</b>
<b>Ms. Joanne Barker</b>	<b>37</b>

<b>Mr. Clayton Dumont</b>	<b>38</b>
<b>Review Committee Discussion</b>	<b>38</b>
<b>Closing Comments</b>	<b>38</b>
<b>Closing Prayer</b>	<b>38</b>
<b>Meeting Adjournment</b>	<b>39</b>
<b>Appendix A</b>	<b>40</b>

## Background

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., which was signed into law by President George Bush on November 16, 1990.

Pursuant to 25 U.S.C. 3006 (c) and (h), the Review Committee is responsible for –

1. Designating one of the members of the committee as chairman;
2. Monitoring the inventory and identification process conducted under sections 5 and 6 to ensure a fair, objective consideration and assessment of all available relevant information and evidence;
3. Upon the request of any affected party, reviewing and making findings related to-
  - A. The identity or cultural affiliation of cultural items, or
  - B. The return of such items;
4. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;
5. 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;
6. Consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;
7. Consulting with the Secretary in the development of regulations to carry out this Act;
8. Performing such other related functions as the Secretary -may assign to the committee;
9. Making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated; and
10. Submitting an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

The Review Committee is organized and administered according to the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1994).

Review Committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations.

The Review Committee reports to the Secretary of the Interior. Under the Review Committee's charter, the Manager, National NAGPRA Program, National Park Service (NPS) or a designee serves as the Designated Federal Officer (DFO), who oversees the activities of the Review Committee and with whom the National Park Service provides administrative and staff support to the Review Committee on behalf of the Secretary of the Interior.

Additional information about the Review Committee – including the Review Committee's charter, membership, meeting protocol, and dispute procedures – is available at the National NAGPRA Website, <http://www.cr.nps.gov/nagpra/> (click on "Review Committee").

Notice of this Review Committee meeting was published in the Federal Register on July 14, 2008 (Vol. 73, No. 135, page 40373).

## **The 38th Meeting of the Review Committee**

The 38th meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Ms. Rosita Worl at 8:43 a.m., Saturday, October 11, 2008.

Review Committee members –

Ms. Rosita Worl – Chair  
Ms. Donna Augustine  
Mr. Alan Goodman  
Mr. Colin Kippen  
Mr. Dan Monroe  
Mr. Vincas Steponaitis

Designated Federal Officer –

Mr. David Tarler, Training and Civil Enforcement Coordinator, National NAGPRA Program

National Park Service/Department of the Interior staff in attendance –

Ms. Sherry Hutt, Program Manager, National NAGPRA Program, National Park Service  
Ms. Jaime Lavallee, Notice Coordinator, National NAGPRA Program, National Park Service  
Ms. Robin Coates, Secretary, National NAGPRA Program, National Park Service  
Ms. Lesa Koscielski, Contractor, National NAGPRA Program, National Park Service  
Ms. Carla Mattix, Division of Parks and Wildlife, Office of the Solicitor  
Mr. Stephen Simpson, Division of Indian Affairs, Office of the Solicitor

Persons in attendance during part or all of the meeting (names and affiliations as provided by attendees).

Mr. Manuel P. Alanis, Santa Rosa Rancheria, Lemoore, CA  
Ms. Trini Alanis, Santa Rosa Rancheria, Lemoore, CA  
Ms. Lisa Anderson, New York State Museum, Cultural Education Center, Albany, NY  
Mr. Shane Anton, Salt River Pima-Maricopa Indian Community, Scottsdale, AZ  
Ms. Christine Aquino, San Diego State University, San Diego, CA  
Ms. Keola Awong, Hawaii Volcanoes National Park, Hawaii National Park, HI  
Ms. Sara Bagheri, Cowlitz Tribe, Longview, WA  
Ms. Joanne Barker, Delaware Tribe, San Francisco State, San Francisco, CA  
Ms. Jan Bernstein, Bernstein and Associates, Denver, CO  
Ms. Lela Buck, Wanapum, Beverly, WA  
Mr. Dave Burlingame, Cowlitz Tribe, Longview, WA  
Ms. Gail Brown, Clearlake Oaks, CA  
Mr. Jim Brown Eagle, Robinson Rancheria, Nice, CA  
Ms. Constance Callahan, Hualapai Nation, Peach Springs, AZ  
Ms. Julie Carpenter, Osage Nation Historic Preservation, Pawhuska, OK  
Ms. Mary Carroll, National Park Service, Denver, CO  
Ms. Rebecca Carruthers, California State Parks, Sacramento, CA  
Ms. Mary Ellen Clerkin, New York State Education Department, NY  
Mr. Jon Daehnke, Stanford University, Santa Cruz, CA  
Ms. Sandra Dong, Peabody Museum of Archaeology and Ethnology, Cambridge, MA  
Ms. Penelope Drooker, New York State Museum, Albany, NY  
Mr. Clayton Dumont, San Francisco State University, Department of Sociology, San Francisco, CA  
Ms. Cyndi Eischen, San Diego Museum of Man, San Diego, CA  
Mr. Larry Felton, California State Parks, West Sacramento, CA  
Mr. Jeff Fentress, San Francisco State University, San Francisco, CA  
Mr. Lalo Franco, Santa Rosa Tachi Yokut Tribe, Lemoore, CA  
Mr. Anthony Garcia, Hearst Museum of Anthropology, University of California at Berkeley, CA  
Ms. Angela D. Garcia-Lewis, Salt River Pima-Maricopa Indian Community, Scottsdale, AZ  
Ms. Sheila Goff, Colorado Historical Society, Denver, CO  
O. G. Gonzales, Santa Rosa Rancheria, Lemoore, CA  
Mr. Ray Gonzales, Santa Rosa Rancheria, Lemoore, CA

Mr. Joseph Heath, Onondaga Nation, Syracuse, NY  
Mr. Eric Hemenway, Little Traverse Bay Bands of Odawa Indians, Harbor Springs, MI  
Ms. Paulette Hennem, California State Parks, Sacramento, CA  
Ms. Dawn Hubbs, Hualapai, Peach Springs, AZ  
Ms. Andrea Hunter, Smithsonian Repatriation Review Committee, Osage Nation, Pawhuska, OK  
Ms. Loretta Jackson-Kelly, Hualapai Nation, Peach Springs, AZ  
Mr. Joseph Joaquin, Tohono O'odham Nation, Sells, AZ  
Mr. Greg Johnson, University of Colorado, Boulder, CO  
Mr. John F. C. Johnson, Chugach Alaska Corporation, Anchorage, AK  
Ms. Melany L. Johnson, Susanville Indian Rancheria, Susanville, CA  
Mr. William Johnson, Saginaw Chippewa Indian Tribe of Michigan, Pleasant, MI  
Mr. Jim Jones, Jr., Minnesota Indian Affairs Council, Bemidji, MN  
Mr. Roger Kelly, Foothill College, Los Altos Hills, CA  
Ms. Shannon Keller O'Loughlin, Onondaga Nation, Syracuse, NY  
Ms. Rebecca Landes, University of California, Office of the President, Santa Cruz, CA  
Ms. Theresa Langford, National Park Service Fort Vancouver, Vancouver, WA  
Ms. Mary Esther Lee, Public Museum, Grand Rapids, MI  
Mr. Barnaby Lewis, Gila River Indian Community, Sacaton, AZ  
Mr. Jarrod K. Lewis, Gila River Indian Community, Coolidge, AZ  
Ms. Amy Lonetree, Ho-Chunk Nation, UC Santa Cruz, Santa Cruz, CA  
Ms. Kari Mans, Southwest Museum, Los Angeles, CA  
Mr. Brad Marshall, University of California at Berkeley, CA  
Ms. Cyd Martin, National Park Service, Flagstaff, AZ  
Arion Mayes, San Diego State University, San Diego, CA  
Mr. John McClelland, Arizona State Museum, Tucson, AZ  
Ms. Paula Metzner, Kalamazoo Valley Museum, Kalamazoo, MI  
Mr. Sean Milanovich, Aqua Caliente Band of Cahuilla Indians, Palm Springs, CA  
Mr. Darryn A. Miles, Gila River Indian Community, Coolidge, AZ  
Ms. Kelly R. Minas, Channel Islands National Park, Ventura, CA  
Ms. Nell Murphy, American Museum of Natural History, New York, NY  
Ms. Carla Myers, American Association of Museums, Washington, DC  
Ms. Angela Neller, Wanapum Heritage Center, Ellensburg, WA  
Mr. Pete Palma, Minnesota Indian Affairs Council, St. Paul, MN  
Ms. Lucille Park, San Diego Unified School District, San Diego, CA  
Mr. David Penny, Detroit Institute of Arts, Detroit, MI  
Mr. Doug Pippin, SUNY Oswego, Department of Anthropology, Syracuse, NY  
Ms. Lee Rains Clauss, Rio Hondo & San Bernardino Valley College, San Diego, CA  
Ms. Lucille Richard, Ninisaan Organization  
Mr. James Riding In, Arizona State University, Tempe, AZ  
Ms. Helen Robbins, Field Museum, Chicago, IL  
Mr. Jack Rossen, Ithaca College, Anthropology Department, Ithaca, NY  
Ms. Lenda Ryan, SUNY Oswego, Syracuse, NY  
Ms. Alice Sahnme, Tohono O'odham Nation, Sells, AZ  
Ms. Susan Savage, University of Denver, Museum of Anthropology, Denver, CO  
Mr. Seth Schermerhorn, Arizona State University, Tempe, AZ  
Ms. Morrigan Shaw, Tlingit, Los Angeles, CA  
Mr. Nick Sottile, SUNY Oswego, Washingtonville, NY  
Mr. Michael Stafford, Cranbrook Institute of Science, Bloomfield Hills, MI  
Ms. Wendy Teeter, University of California Los Angeles, Fowler Museum, Los Angeles, CA  
Ms. Brenda Todd, National Park Service, Denver, CO  
Ms. Karen Vigneault, Kumeyaay, San Diego, CA  
Ms. Robin Wilson, University of California at San Diego, CA  
Mr. Frank Wozniak, USDA Forest Service, Albuquerque, NM  
Mr. Fred York, National Park Service, Pacific West Region, Seattle, WA

## **Introduction/Welcome**

Ms. Worl called the meeting to order. Mr. Lalo Franco offered an invocation and Mr. Jim Brown sang the Blessing Song the first day of the meeting. Ms. Worl thanked the California Indians for their hospitality. Mr. Joseph Joaquin offered an invocation the second day of the meeting.

Ms. Worl welcomed Mr. Tarler into the position of Designated Federal Official (DFO) for the Review Committee. Ms. Worl stated that Mr. McKeown, the previous DFO, was reassigned within the National NAGPRA Program. Ms. Worl stated she would like to recognize Mr. McKeown's significant contributions in the development and implementation of NAGPRA.

Mr. Tarler called the roll of members and confirmed that the Review Committee had quorum for the meeting. Mr. Tarler introduced the National NAGPRA Program staff members present at the meeting.

## **Review of Agenda**

Ms. Worl gave a brief review of the meeting agenda.

## **Dispute: Onondaga Nation and the New York State Museum**

### **Background Information**

Mr. Tarler stated the issue involved whether Native American human remains found at the Engelbert Site, Nichols, Tioga County, NY, in the possession and under the control of the New York State Museum, were more likely than not culturally affiliated with the Onondaga Nation. The Onondaga Nation presented information to the New York State Museum that they believe showed more likely than not that the Native American human remains in question were culturally affiliated with the Onondaga Nation. The New York State Museum takes the position that the Native American human remains were culturally affiliated with no potential claimants with standing to make the claim.

### **Presentation: Onondaga Nation**

Mr. Joseph Heath, general counsel for the Onondaga Nation, extended greetings from the Onondagas, the Haudenosaunee, and their chiefs, clan mothers, and people. Mr. Heath stated that representatives from the Onondaga Nation were unable to attend the Review Committee meeting due to their ceremonial season. Mr. Heath thanked the Review Committee for hearing this dispute. Mr. Heath stated that the Haudenosaunee Confederacy was formed from five nations (the Mohawk, Oneida, Onondaga, Cayuga, and Seneca) hundreds of years ago on the shores of Onondaga Lake, and later came to include the Tuscarora Nation and many other nations. The Onondaga Nation was the central fire-keeper for the Haudenosaunee Confederacy and an Indian nation with standing to bring this claim under NAGPRA regulations. Haudenosaunee roughly translates into "people of the Long House," which refers to the territory of these nations, as well as their original way of living in extended houses shared by many families. Although often referred to as the Iroquois, the Haudenosaunee reject that name.

Mr. Heath showed a picture of the Haudenosaunee Tree of Peace, which depicts a legend in which the Peacemaker taught the Haudenosaunee people to bury their weapons of war underneath the Tree of Peace and that the four white roots of peace ran in every direction from the tree. Their confederate form of government has been recognized as a foundation for U.S. democracy by Congress. Mr. Heath showed a map detailing the aboriginal territory of the Haudenosaunee, which included the Engelbert Site, in Nichols, NY. The Engelbert Site was excavated in 1967 during an interstate highway construction project, and a burial site of approximately 180 sets of ancestors was discovered. The Haudenosaunee Standing Committee on Repatriation and Human Remains was formed to coordinate matters of repatriation and to work with museums. Mr. Heath read the Haudenosaunee statement on human remains, which speaks to the sacredness of their ancestral human remains, associated burial objects, and the actual soil in which they rest.

Ms. Shannon Keller O'Loughlin, counsel for the Onondaga Nation, member of Choctaw Nation of Oklahoma, stated that NAGPRA provides a triangular framework to tell a story through the inventory, consultation, and affiliation



process. Ms. Keller O'Loughlin stated that the purpose of the inventory as stated in the regulations at 10.9 (a) was to facilitate repatriation and establish affiliation. Ms. Keller O'Loughlin stated that the New York State Museum stated in their inventory that the purpose of the inventory was to provide a description of the collection that was unidentifiable under Section 8 (c)(5) of NAGPRA, and therefore started this story wrong.

Ms. Keller O'Loughlin stated that regarding consultation, the second part of the story, the New York State Museum was unable to show how they consulted with the Onondaga Nation regarding the Engelbert Site prior to finishing their 1998 inventory. Ms. Keller O'Loughlin stated that after consultation with other Indian nations, none of the Indian nations indicated they had been consulted regarding the Engelbert Site. Ms. Keller O'Loughlin stated that the Onondaga Nation received overwhelming support from Indian nations regarding affiliation and repatriation of the human remains from the Engelbert Site, and provided a list to the Review Committee of the Indian nations that had given written and verbal support.

Regarding affiliation, Ms. Keller O'Loughlin described the facts that were undisputed by the parties: the Engelbert Site was Native American; the Onondaga Nation was an Indian tribe with standing under NAGPRA; the New York State Museum broke the Engelbert Site down into two segments, Late Woodland and Susquehannock, which the Onondaga Nation does not use but does not have a problem with for the museum's use; the Engelbert Site was of Iroquois occupation; the Susquehannock were subsumed into the Haudenosaunee; the Susquehannock were Iroquoian speakers and their dialect was most closely related to the Onondaga; and the material culture of the Onondaga Nation and the Susquehannock were the same.

Ms. Keller O'Loughlin stated that the Onondaga Nation had various forms of evidence to support their affiliation with the Susquehannock as follows. Geographic evidence shows that the Engelbert Site lies within the aboriginal territory of the Onondaga Nation. The 17<sup>th</sup> Century map provided by the New York State Museum to refute the Onondaga Nation's geographic claim was made subsequent to the Engelbert Site and therefore was not relevant. The oral history of the Onondaga Nation, supported by historians, was that the Susquehannock were affiliated with the Haudenosaunee and Onondaga. Whether or not by conquest, the Susquehannock were amalgamated into the Haudenosaunee and the Onondaga. The shared Long House tradition and material culture provide further evidence in support of affiliation between the Susquehannock and Onondaga Nation. The New York State Museum refutes that evidence by saying that other nations had the same culture. Ms. Keller O'Loughlin stated that other nations did have the same material culture; they were the nations of the Haudenosaunee Confederacy of which the Susquehannock were a part. Ms. Keller O'Loughlin stated that while some Susquehannock did move to Delaware, others stayed with the Haudenosaunee and the Engelbert Site was located in the aboriginal lands of the Onondaga Nation, not in Delaware. Ms. Keller O'Loughlin stated that kinship evidence also supports affiliation between the Susquehannock and the Haudenosaunee.

Ms. Keller O'Loughlin stated that regarding affiliation with the Late Woodland or Owasco segment of the Engelbert Site, the New York State Museum stated they have no evidence regarding a connection with the Late Woodland and the Onondaga Nation or any group and that no amount of consultation would provide that evidence, and the fact that a group of Susquehannock moved to Delaware and were later extinguished and that there are no federally recognized Susquehannock at the present time means there were no Susquehannock people who merged with the Onondaga Nation in the past. Ms. Keller O'Loughlin stated that the New York State Museum changed their story from their original inventory in which they claim the Owasco were connected to the Susquehannock, and since the Susquehannock were not affiliated then neither were the Owasco. Ms. Keller O'Loughlin stated that the New York State Museum discontinued use of the term Owasco, stated that the Late Woodland human remains were too old to determine affiliation, and there was no evidence of affiliation with the Onondaga. Ms. Keller O'Loughlin stated that the origin of the Iroquoian group in New York at 900 AD was widely accepted, and expert opinions and other museums have affiliated Late Woodland sites with Haudenosaunee nations.

Mr. Heath stated that 180 sets of ancestral human remains were excavated at the Engelbert Site 41 years ago. Almost all of the human remains date to the Late Woodland period, 1000 to 1300 AD, with approximately 15 sets of human remains that were Susquehannock. Mr. Heath stated that one of the ways that the New York State Museum denies the cultural affiliation between the Haudenosaunee and the Susquehannock was by saying that if a nation was conquered then they were not culturally affiliated. Mr. Heath described a court case from 1999 where the State of New York joined with the Haudenosaunee in a signed statement that said the Erie Indians were defeated and adopted into the Haudenosaunee in the 17<sup>th</sup> Century, which was approximately the same time period that the Susquehannock

were defeated and brought into the Haudenosaunee Confederacy. Mr. Heath stated that as important as this dispute was, it was also a symptom of a much larger cultural problem with the New York State Museum. Mr. Heath stated the New York State Museum's 1995 inventory guidelines established a hierarchy of evidence in which age was the primary factor and did not include consultation prior to the finalization of the inventories. Mr. Heath stated the New York State Museum has approximately 880 sets of ancestors in its possession that were considered unaffiliated, even though some sites listed in the inventory were clearly within Onondaga County, and the inventory contains 29 sites with 253 human remains and 752 associated funerary objects for which the New York State Museum has never consulted the Onondaga Nation. Mr. Heath stated that the New York State Museum should hold advanced NAGPRA training and cultural sensitivity training and develop a written consultation policy.

Mr. Jack Rossen (appearing telephonically), Chair of the anthropology department at Ithaca College, NY, stated he has been actively excavating and analyzing Owasco materials over the last 40 years. Mr. Rossen stated he was on the dissertation committee for the April Beisaw dissertation and was therefore familiar with the Engelbert Site. The early interpretation of the site was that there was an Onondaga village and a much later Susquehannock cemetery and the two were not connected or related. Mr. Rossen stated that Ms. Beisaw indicated that she clearly connected the Onondaga village and cemetery and showed that between four to ten Susquehannock burials occurred much later. Mr. Rossen stated that in his opinion approximately 170 of the 180 sets of human remains were clearly Onondaga in affiliation; the remaining burials, approximately ten, were Susquehannock and subject to the discussion of whether the Susquehannock were affiliated with the Onondaga Nation.

#### **Presentation: New York State Museum**

Ms. Mary Ellen Clerkin (appearing telephonically), assistant counsel for the New York State Education Department, stated that the New York State Museum was committed to working on an appropriate and fair plan to transfer the Engelbert remains to the Native American people. The New York State Museum reviewed the evidence, conducted research, and will continue to consider new information. The New York State Museum cannot state that the human remains from the Engelbert Site were culturally affiliated with any particular recognized Indian tribe by a preponderance of the evidence. Ms. Clerkin stated that the New York State Museum identified a number of Indian tribes that have a potential relationship with the area and started the consultation process to try to arrive at a plan of disposition, with the hope of appearing again before the Review Committee with a request for disposition at some point in the future. In response to Mr. Heath's comments regarding the lawsuit, Ms. Clerkin stated that the lawsuit involved a different geographic area of the state and did not involve the New York State Museum or the New York State Education Department.

Ms. Lisa Anderson, New York State Museum, summarized a written statement provided to the Review Committee. After reviewing the available evidence – including geographic, kinship, biological, archaeological, linguistic, folklore, oral tradition, and historical evidence – the New York State Museum found that the Engelbert people had ties with many nations, including the Onondaga Nation, as well as other Haudenosaunee Nations and Algonquin-speaking groups. The New York State Museum was unable to trace a shared group identity with any present-day group. The New York State Museum agreed that Engelbert Site was a Native American site used by many different groups for over 5,000 years, at least twice as a place of burial. The first time was for an extended period of time from approximately 1000 to 1350 AD, and the second was for a brief time by the Susquehannock people in the 1500s. The New York State Museum found no evidence that the two groups were related; although the Susquehannock were a historically known nation, after years of warfare, disease, and displacement they no longer exist as a distinct cultural entity.

Ms. Anderson stated the Engelbert Site was located at the northernmost extent of the Susquehannock peoples' territory, and Susquehannock presence at the Engelbert Site was also represented by archaeological evidence in the form of pottery that utilized a type of shell tempering characteristic of Susquehannock pottery. The pottery was similar in form and decoration to Cayuga, Seneca and Munsee pottery. Evidence of Susquehannock interaction with other groups includes evidence of trade goods at Susquehannock burial sites and the presence of Susquehannock pottery pieces at Onondaga, Delaware, and Oneida sites. Ms. Anderson stated that although the Susquehannock Nation does not exist today, historical evidence and Haudenosaunee oral tradition shows that Susquehannock individuals joined a number of groups in the 17<sup>th</sup> Century, making it difficult to identify a single group with which all or most Susquehannock people merged. Linguistic, anthropological, and kinship evidence shows similarities between the Susquehannock and many different groups. Given the complex history of interaction, movement, conquest, adoption, and assimilation of the Susquehannock people, the New York State Museum does not believe

there was sufficient evidence to establish an affiliation with any one group or groups, but does believe there was a relationship with many groups.

Regarding the human remains from the earlier occupation, Ms. Anderson stated that 1000 to 1350 AD was a period of time in which people across a broad area of New York, western New England, Pennsylvania, and even Virginia practiced very similar lifestyles living in horticultural hamlets, growing corn and squash, hunting, fishing, and gathering. Their material culture was very similar and included pottery that was indistinguishable from one site to the next. The pottery did not contain the shell tempering of later Susquehannock pottery nor the type of decorations found on pottery at later Iroquoian sites. The Engelbert Site was different from other sites in the area; it was the largest known site of the time period and occurred on a prominent location with no indication of a nearby settlement. Ms. Anderson stated that the New York State Museum believed the later people from the Engelbert Site were almost certainly Susquehannock, a once independent nation subsumed by the Haudenosaunee, Delaware, and other nations through warfare and displacement. The earlier people of the Engelbert Site were still unknown and the New York State Museum has not been able to find sufficient evidence to affiliate them with a federally recognized group. The New York State Museum believed the most reasonable solution would be to seek a recommendation for disposition with all groups that have a connection to the Engelbert people, including the Onondaga Nation, and started this consultation process.

Ms. Penelope Drooker, New York State Museum, stated she would respond to statements made during the discussion. This dispute was brought to the New York State Museum by the Onondaga Nation and not the Haudenosaunee Confederacy; all responses from the New York State Museum have been addressed to the Onondaga Nation. Ms. Drooker acknowledged that some of the information presented by the New York State Museum changed over the years as further discussions and evidence were considered. Ms. Drooker stated that information from the Onondaga Nation also changed over time; for example, the Onondaga Nation submitted a map with updated information on aboriginal territory boundaries. Ms. Drooker stated that the New York State Museum consulted with the Onondaga Nation regarding the Engelbert Site on three occasions, twice in 1995 and once in 2003. The New York State Museum hopes to reach an equitable solution to this dispute in a spirit of good will. The New York State Museum has repatriated human remains to the Haudenosaunee Confederacy in the past and looked forward to working in good spirit with the Haudenosaunee Confederacy and other nations. Ms. Drooker stated that while Mr. Rossen stated he believes the Iroquois Confederacy was established as early as 900 AD, other archaeologists, Mr. Robert Kuhn and Ms. Martha Sempowski, have placed it at closer to 1600 AD, so discussion and review of evidence continues on that issue. Ms. Drooker stated that the New York State Museum did not find any new information in the dissertation by Ms. Beisaw and it was their understanding that Ms. Beisaw did not examine the grave goods or human remains from the Engelbert Site. Ms. Drooker stated that the New York State Museum would agree with Ms. Keller O'Loughlin's idea of a tree-like relationship and believed that the relationships of those people from the Engelbert Site were so wide and intertwined that it was not possible to affiliate the human remains with any one nation or existing group. The New York State Museum believed that the human remains from the Late Woodland period of the Engelbert Site probably had affiliations or relationships with many groups and would like to work toward a good disposition of these human remains with any group that would like to be included in the conversations.

### **Review Committee Questions**

Mr. Monroe summarized the position of the New York State Museum in that the cultural history and archaeology associated with the Engelbert Site were complex and therefore it was not possible to determine cultural affiliation with the Onondaga Nation, even though the New York State Museum recognized many common cultural ties between the Susquehannock people and the Onondaga Nation. Mr. Monroe asked the New York State Museum what level of evidence would be sufficient to determine cultural affiliation. Ms. Drooker stated that a determination would need to be made by a preponderance of the evidence, at least 50 percent; however, in this case the New York State Museum felt that there was far less than 50 percent of the evidence that pointed to the Onondaga Nation as a single group to which these human remains were most closely identified.

Mr. Steponaitis asked for clarification of Mr. Rossen's statement regarding the limited work over the past 40 years on the Owasco culture. Mr. Steponaitis stated that Owasco had been intensely debated over the last 40 years, as was the issue of when the Iroquois Confederacy was formed. Mr. Rossen stated that there was work on museum collections but very few new excavations of Owasco sites other than his work, which produced new materials for consideration. Mr. Steponaitis stated he was aware of several excavations in the past 40 years, and in addition the

reanalysis of old information can provide as much or more information than new excavations. Mr. Rossen stated he agreed with Mr. Steponaitis's statement regarding reanalysis of old information, and added that there was a huge amount of new information in the Beisaw dissertation about the Engelbert Site, following her reanalysis of the site, that the New York State Museum chose not to consider. Ms. Drooker stated the New York State Museum agreed that the Beisaw dissertation contained a lot of new and useful information, but none that the New York State Museum cited in their statement. Mr. Steponaitis stated he felt all parties to this dispute were acting in good faith. Mr. Steponaitis stated that when NAGPRA was being developed, Congress decided against an age-limit determination for identification of cultural items in favor of case-by-case consideration. Mr. Steponaitis asked each party about making across-the-board determinations regarding affiliation. Mr. Steponaitis asked the Onondaga Nation whether they could reach a determination based solely on location in their aboriginal territory and asked the New York State Museum whether they could reach a determination based solely on age. Ms. Keller O'Loughlin stated that concerning the Engelbert Site, the Onondaga Nation's position was that the site was in Onondaga aboriginal territory and was culturally affiliated, but stated she could not answer that question generally. Mr. Heath stated that the New York State Museum, using their 1995 guideline, determined the Native American human remains from the Engelbert Site to be culturally unidentifiable based solely on their age. Ms. Drooker stated that other information would be considered, such as geographical location, and the case made by the Onondaga Nation would be much stronger if the Engelbert Site had been found in a location that was close to the historically known Onondaga villages, rather than a distant location. Ms. Drooker stated that it was not the current position of the New York State Museum that there was an arbitrary date beyond which cultural affiliation could never be established. Ms. Anderson agreed.

Mr. Monroe asked if in 1995 the New York State Museum used a specific date by which to determine whether or not cultural items were culturally identifiable. Ms. Anderson stated that the museum did use a cutoff date, but the purpose was to organize their inventory and not to exclude evidence. Mr. Monroe asked if the majority of human remains in the collection of the New York State Museum remain categorized as culturally unidentifiable as a result of that guideline. Ms. Anderson stated that they did, but the museum would consider any new evidence to help identify affiliation. Ms. Drooker stated that the old guideline did not influence the current dispute, and the New York State Museum considered all evidence.

Mr. Goodman asked for clarification of the sources of evidence by the following types: evidence against cultural continuity, inconclusive evidence, or evidence of cultural continuity with a number of groups. Ms. Anderson stated that there were types of evidence that the museum did not have, such as linguistic, kinship, and biological, and other evidence that argues against affiliation, such as archaeological and geographical. Ms. Drooker stated the information requested by Mr. Goodman was contained in the New York State Museum's written statement. Ms. Keller O'Loughlin stated that while there was no biological or linguistic evidence, there was geographical evidence based on oral tradition and common knowledge of the Haudenosaunee territory through time with historians recognizing that geography. The geographical evidence supports Onondaga Nation affiliation, rather than multi-group affiliation. Mr. Rossen stated that the main archaeological evidence was the artifacts associated with the materials recently reanalyzed in the Beisaw dissertation, and one of the conclusions in the Beisaw dissertation was that there was a fairly clear Haudenosaunee artifactual assemblage in the burials, based on reanalyzing the materials. In addition, the artifacts do not show a lot of variation but were clearly associated either with the Late Woodland burial or the Susquehannock burial.

Mr. Kippen asked whether the 1995 policy had ever been formally rescinded and whether the analysis of this case was consistent with the policy. Ms. Drooker stated that the guidelines were never formally rescinded. The guidelines were used to set up the initial inventory, but were no longer in use. Ms. Anderson stated that the New York State Museum did a complete reassessment of the evidence in this case, including the new evidence submitted by the Onondaga Nation. Mr. Kippen asked Mr. Heath for his understanding of the policy and its impact on the process. Mr. Heath stated that the policy was the reason for the dispute, this was the first time the museum spoke of any retraction of the 1995 policy, and that if the museum was truly interested in readdressing the policy the Onondaga Nation would be pleased to consult with the museum and help develop a new policy. Ms. Keller O'Loughlin stated that if the New York State Museum had truly rescinded their policy, the Onondaga Nation would have received requests for consultation for sites that were listed as unidentifiable but were clearly Onondaga sites. Ms. Drooker stated she would like to reiterate that these were guidelines not a policy, they were used to establish the inventory and had not been used since that time. Mr. Monroe asked if the museum had gone back to the inventory to reconsider evidence that might support cultural affiliation. Ms. Drooker stated that the museum has focused their

time on sites for which there was an active claim. Ms. Anderson stated that when the New York State Museum implemented its guidelines for the inventory it requested additional information to help make decisions but received no additional information.

Mr. Kippen stated that the 1995 guideline created a presumption and he was trying to determine what the presumption meant in terms of the decision-making process for the New York State Museum. Ms. Drooker stated she would like to reiterate that their minds are not made up and they continue to seek additional information and evidence as they have from the beginning. Ms. Augustine asked about the recent consultation efforts of the New York State Museum. Ms. Anderson stated that in addition to the Haudenosaunee Nations, they contacted the Delaware Nation and the Stockbridge-Munsee. Ms. Keller O'Loughlin stated that those nations and others have provided written and verbal support of the Onondaga Nation's affiliation and repatriation. Ms. Worl asked that a written record of the support be provided to the Review Committee members and New York State Museum staff. Ms. Worl asked for clarification from Mr. Rossen on the affiliation of the human remains from the Engelbert Site. Mr. Rossen stated that in his professional opinion the majority of the human remains have associated pottery that appears to be Onondaga, and while the Beisaw dissertation clearly separated the burials into the two time periods the conclusions did not specifically use the term Haudenosaunee. Mr. Monroe asked whether the New York State Museum would change its position now that they know there are no competing claims and other nations have provided written or verbal support of the Onondaga Nation's affiliation and repatriation. Ms. Drooker stated that they were glad to see this moving forward and look forward to seeing the statements of support and consulting with their colleagues at the museum.

The discussion was continued to the second day of the meeting.

## **Presentation: Hawaii Volcanoes National Park**

### **Presentation**

Ms. Cindy Orlando, Superintendent of Hawaii Volcanoes National Park, stated she was happy to be present at the meeting to summarize the consultation and repatriation progress relative to five items in the collection of Hawaii Volcanoes National Park originating from Forbes Cave in Kawaihae and subject to NAGPRA. The Review Committee received an abbreviated version of the chronology, and at past meetings some members have heard this issue. In May 2006, after careful consideration of multiple lines of evidence, Hawaii Volcanoes National Park determined that the appropriate NAGPRA category for the items was unassociated funerary objects. Subsequently, Hawaii Volcanoes National Park received seven lineal descent claims for the items, however none provided sufficient evidence to specifically associate the name of one known individual with the funerary objects from Forbes Cave. In May 2007, Hawaii Volcanoes National Park made the decision to reject all seven claims made on the basis of lineal descent.

Hawaii Volcanoes National Park then received 14 claims for the five objects based on cultural affiliation. Each claimant met the definition of Native Hawaiian organization under the law and therefore each was entitled to claim and receive the items. Since Hawaii Volcanoes National Park cannot make a determination of which claimant was the most appropriate, Hawaii Volcanoes National Park will retain the five objects until all 14 claimants mutually agree upon a resolution or the dispute is otherwise resolved in accordance with the provisions of NAGPRA.

Ms. Orlando stated that Hawaii Volcanoes National Park encouraged the claimants to meet to discuss the matter and offered to assist in facilitating such a meeting. Ms. Orlando stated she would like to acknowledge Ms. Keola Awong, Mr. Fred York, Ms. Cyd Martin and Ms. Mary Carroll, who were each present at the meeting, for their efforts, and the Review Committee and others for their patience in considering this issue over the past four years.

### **Review Committee Discussion**

Mr. Kippen thanked the presenters for the information and asked what Hawaii Volcanoes National Park had done or could do to facilitate a meeting of the claimants. Ms. Orlando stated while Hawaii Volcanoes National Park received no formal responses to the determination, they received informal requests from the claimants to host and help facilitate a meeting of the 14 claimants. Hawaii Volcanoes National Park would be happy to help facilitate any kind of gathering the claimants would chose to hold, recognizing that the role of Hawaii Volcanoes National Park under NAGPRA was met. Ms. Worl stated she was glad to hear of this progress, and stated that at past meeting she suggested taking action to deal with the complicated situation in Hawaii, such as NAGPRA grants or legislative

solutions. Ms. Hutt stated that any claimant listed in a Notice of Intent to Repatriate could submit a grant request. Mr. York stated that Hawaii Volcanoes National Park would work in consultation with the claimants to draft a Notice of Intent to Repatriate.

## **Request for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of the Fort Vancouver National Historic Site, WA**

### **Presentation**

Ms. Theresa Langford, curator at Fort Vancouver National Historic Site, introduced Mr. Dave Burlingame from the Cowlitz Tribe, Ms. Sara Bagheri representing the Vancouver Intertribal Consortium, and Mr. Fred York who was the NPS Northwest Region anthropologist. Ms. Langford stated Fort Vancouver was the headquarters for the British fur trading operations in the West and controlled an area roughly equivalent to British Columbia, Washington, Oregon, Idaho, and western Montana. As a powerful trading post, Fort Vancouver attracted representatives of many different tribes whose homelands spanned the North American continent. Most of the post's historic demographic information came from Catholic and Anglican church records and employee records of the Hudson's Bay Company, the British company that ran the fort. Those sources suggest at least 30 to 35 different tribes were represented by the employees and their families at the post. The Fort Vancouver National Historic Site was before the Review Committee to request disposition of culturally unidentifiable human remains representing a minimum number of 11 individuals.

Ms. Langford stated that the first group consisted of nine individuals that came into the museum collection in the 1960s, with no original records. Sometime after that point the individuals were reburied within the park at the superintendent's command, with a lot of other artifacts. In the 1970s, the human remains were re-excavated by archaeologists who later reported they were displaced by the construction of Interstate 5 through Vancouver. If the information of displacement due to Interstate 5 was correct, Ms. Langford stated they believe the remains were removed from an Army cemetery where they were buried after an initial burial in the Fort Vancouver cemetery run by the St. James Mission. The St. James Mission had 208 burials over a 30-year period, many of whom were American Indians associated with the fort and its workers, dating from the early 1830s to the late 1850s, with no associated funerary objects. In the 1980s, Ms. Ann Bennett, a physical anthropologist, determined that the human remains were Native American.

The second group consisted of two individuals, with no associated funerary objects, found during excavations in 1977 associated with the upgrade of Highway 14 on the Fort Vancouver National Historic Site's southern boundary, a community surrounding Fort Vancouver where the employees and their families lived. Ms. Susan Colby, an osteoarchaeologist, determined that the human remains were Native American but was unable to determine or estimate an age.

Ms. Langford stated that the Cowlitz Tribe applied for and received a NAGPRA grant, and Ms. Sara Bagheri was hired to facilitate the Vancouver Intertribal Consortium, to which every Indian tribe historically associated with Fort Vancouver was invited. Regarding the disposition of these human remains, Fort Vancouver National Historic Site consulted with the 35 Indian tribes from the consortium list, plus any Indian tribes that practiced head flattening as some of the individuals showed that trait. Each consortium meeting was also attended by a NPS representative, usually Ms. Langford. A plan was drafted and submitted to the NPS and approved by the superintendent. Ms. Langford stated there were currently 14 Indian tribes who had signed the agreement and one Indian tribe (the Muckleshoot Tribe) that supports the project and would send the signatory page. Ms. Langford read a letter of support from Superintendent Tracy Fortmann, who was unable to attend the meeting for health reasons.

Ms. Sara Bagheri, representing the Vancouver Intertribal Consortium, stated she did not have a prepared statement but was available for questions. Mr. Fred York stated his role was to assist Fort Vancouver National Historic Site in working with the Indian tribes and the tribal consortium.

### **Review Committee Questions**

Mr. Steponaitis stated this was the first request for disposition using the new form developed upon request of the Review Committee at the De Pere, WI meeting, and commended the National NAGPRA staff for its development. Mr. Steponaitis recommended refining the form to encourage submitting parties to include specific information or

summaries of forensic studies rather than just a statement that the studies had been done. Mr. Steponaitis stated the request from Fort Vancouver National Historic Site was very reasonable and had his support. Mr. Goodman asked for clarification of the nature of the forensic evidence. Ms. Langford stated that for the first group of nine individuals the main evidence was cranial deformation or other bone structural characteristics, and for the second group of two individuals the main evidence was dental characteristics. Mr. Goodman recommended including the nature of the types of evidence with Mr. Steponaitis's recommendation.

#### **Review Committee Motion**

Mr. Steponaitis made a motion to approve the request for disposition of Native American human remains from Fort Vancouver National Historic Site, representing a minimum number of 11 individuals. Mr. Goodman seconded the motion. The motion was adopted unanimously.

### **Two Requests for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of the Arizona State Museum**

#### **First Request – Presentation**

Mr. John McClelland, NAGPRA coordinator for the Arizona State Museum, stated the human remains from the first request were donated to the Arizona State Museum in June 2007 from a private citizen. The human remains consisted of the partially mummified remains of the left arm of an infant. The donor believed the human remains had been found by a man who was a contractor or an architect in the Tucson area. There were no associated funerary objects. Mr. McClelland stated that based on condition the human remains were thought to be Native American. An osteological examination was inconclusive, but in Arizona mummified human remains were found exclusively in dry cave contexts in well documented prehistoric Native American cultural context. Although the human remains were determined to be culturally unidentifiable, the geographical location raised the possibility of a cultural relationship with the four southern Indian tribes of Arizona; the Ak Chin Indian Community, the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, and the Tohono O'odham Nation.

Mr. McClelland described the Arizona State law, separate from NAGPRA, to deal with human remains discovered on state and private land. The state law requires consultation with Indian tribes for discoveries on geographic areas indicated by each individual Indian tribe. In addition, the Arizona State Museum compiles a list of all human remains that come into the museum each year and distributes that annual notice to a list of 33 Indian tribes in the state of Arizona, surrounding states, and one organization representing the early Hispanic settlers of the Tucson area. In response to the annual notice and the fact that the human remains from this request were identified as possibly coming from the Tucson area, the Tohono O'odham Nation submitted a request for repatriation of the human remains. Mr. McClelland stated that the Arizona State Museum distributed a memorandum to a list of 23 tribes in the state of Arizona which detailed information regarding the circumstances of discovery, a description of the human remains, an assessment of ancestry and antiquity, and a statement of the museum's intent to request the Review Committee's recommendation regarding the proposed disposition to the Tohono O'odham Nation. The Arizona State Museum requested the support or viewpoints of the Indian tribes. In response, the Arizona State Museum received letters of support from the Quechan Indian Tribe, the Ak Chin Indian Community, the Gila River Indian Community, and the Salt River Pima-Maricopa Indian Community. The Arizona State Museum received no communications in opposition. Therefore, the Arizona State Museum requested the Review Committee's recommendation on this matter.

Mr. Joe Joaquin, Cultural Resource Specialist with the Tohono O'odham Nation, greeted the Review Committee. Mr. Joaquin stated the Tohono O'odham Nation requested disposition of the human remains because the Tucson area was part of their ancestral lands. Mr. Joaquin stated that while reburial was not the way of the Tohono O'odham Nation, they would like to see human remains reburied in their original place. When that cannot be done the nation has a burial ground with the next reburial ceremony in November 2008. Mr. Joaquin stated the Tohono O'odham Nation had a good relationship with the Arizona State Museum, with the state law, and others in the archaeological field around Tucson, and they have explained how the nation deals with these situations.

### **First Request - Review Committee Comments**

Ms. Augustine stated she also participates in a yearly reburial ceremony and just completed one the week before the meeting. Ms. Augustine stated she understood the feeling of putting the ancestors back in the earth to set their spirits free.

### **First Request – Review Committee Motion**

Mr. Steponaitis made a motion to approve the request for disposition of Native American human remains representing a minimum number of one individual from the Arizona State Museum to the Tohono O’odham Nation. Mr. Monroe seconded the motion. The motion was adopted unanimously.

### **Second Request – Presentation**

Mr. McClelland stated that the second request was a bit more complicated due to its historical background. In 1973, under unknown circumstances, human remains representing a minimum number of four individuals were discovered in a cave somewhere northwest of St. John’s Church, within the boundaries of the Gila River Indian Reservation in Maricopa County, AZ. The discovery was probably reported to tribal police and then turned over to the FBI. The FBI sent the human remains to the Maricopa County Medical Examiner’s Office, who then sent them to forensic anthropologist Walter Birkby at the University of Arizona. The specific site of the discovery was unknown. In 1974 the FBI authorized release of the human remains to the Gila River Indian tribal police, but for unknown reasons the transfer did not occur. The human remains consisted of partial burned and unburned bone fragments from a minimum of four individuals, including one infant, one child, and two adults. One small textile fragment was found in association with the human remains but no other associated artifacts were present and no lineal descendants were identified. The osteological examination determined the human remains were likely Native American, based on cranial traits, dental traits, and the pattern of dental wear.

Mr. McClelland stated the human remains were determined to be culturally unidentifiable largely due to the undocumented burial context. It was not clear how the human remains came to be in the cave, whether this was an intentional internment, and whether the human remains were buried. The burning was a charring that could have come from a naturally caused fire or a campfire. The textile fragment appears to be machine made with a very fine weave, which might suggest a date to the Historic period. The geographic location of the discovery suggests that the human remains were likely or possibly culturally related to the Gila River Indian Community, but also could have been related to the Ak Chin Indian Community, the Salt River Pima-Maricopa Indian Community, or the Tohono O’odham Nation. If this discovery happened today, NAGPRA regulations would stipulate that the Indian tribe on whose land the human remains were found would receive them, in lieu of having evidence of lineal descendants.

Mr. McClelland stated that the Arizona State Museum reported this collection to the Gila River Indian Community, and Mr. Barnaby Lewis indicated that they were interested in receiving the human remains. The Arizona State Museum solicited comment from a broad listing of 21 Indian tribes and included all information regarding the circumstances of discovery, a description of the human remains, an assessment of ancestry, and a statement regarding likely cultural relationship. In response, the Arizona State Museum received two written letters of support, from the Ak Chin Indian Community and the Salt River Pima-Maricopa Indian Community, and one indication of verbal support from Mr. Joaquin of the Tohono O’odham Nation. The Arizona State Museum did not receive any communications in opposition of the proposed disposition. In addition, the Arizona State Museum received a letter of support from the Bureau of Indian Affairs, which was probably the federal agency considered to be in control due to the discovery location.

Mr. Barnaby Lewis, Cultural Resource Specialist for the Gila River Indian Community, stated that the ancestral lands of his tribe have an archaeological record of occupation from 12000 BC to 1450 AD. Mr. Lewis stated the first written records of his tribe, at that time the Akimel O’odham, and its ancestral lands began after the Spanish contact in 1694. Mr. Lewis stated they have a shared group identity with the Salt River Pima-Maricopa Indian Community, the Ak Chin Indian Community, and Tohono O’odham Nation. Mr. Lewis stated that in oral tradition and in the archaeological record, their ancestors have a history of burials in caves. In recent years, the Gila River Indian Community has repatriated historic human remains that were removed from caves in different mountains within community lands. In 1854 the United States purchased the land south of the Gila River from Mexico in the Gadsden Purchase. Mr. Lewis stated their community was established in 1859 through Executive Order and had grown over the years through seven Executive Orders to 372,000 acres. Mr. Lewis stated that the Akimel O’odham and the Piipaash, a Native American group originally from along the Colorado River, formed a confederation in the



1800s and still live together as that confederation at Gila River Indian Community. The Piipaash have always cremated their dead, but the O'odham people have an early history, although not today, of burials in caves. Mr. Lewis stated they know these four individuals that came from this cave were their ancestors.

### **Second Request – Review Committee Motion**

Mr. Steponaitis made a motion to approve the request for disposition of Native American human remains representing a minimum number of four individuals from the Arizona State Museum to the Gila River Indian Community. Ms. Augustine seconded the motion. The motion was adopted unanimously.

Mr. Goodman stated that this request contained the appropriate level of documentation and could be used as a guideline for future presentations.

### **Public Comment – Ms. Robin Wilson**

Ms. Worl introduced Ms. Robin Wilson and Ms. Morgan Shaw, both of whom were Tlingit from Alaska. Ms. Robin Wilson stated she was from the *Dakl'aweidi* Tribal House of Klukwan, and her father was Mr. Ray Wilson from the *Kiks.ádi* people of Sitka. Ms. Wilson stated from her observation at the meeting NAGPRA has set the table and tribal communities need to bring the food. Ms. Wilson explained one effort planned to help the tribal communities, a teach-in at the University of California at San Diego with the assistance of Ms. Hutt. The teach-in would facilitate understanding at the university level and increase cultural competency in order to create better relationships with the tribal communities and the university system. Ms. Wilson thanked the Review Committee for their work and expressed her appreciation for the level of difficulty involved in hearing disputes.

### **Comment – Ms. Rosita Worl**

Ms. Worl stated that the National NAGPRA Program held a NAGPRA training prior to the Review Committee meeting, and stated that any recommendations for improvement to the training from the participants would be appreciated. Ms. Worl stated that she would like to share the very good news of the recent repatriation and reinterment of a 10,000-year-old ancestor from Prince of Wales Island to the Tlingit in Klawock and Craig, AK. The ancestor was named Shuká Kaa, which translates “Man Ahead of Us.” The tribes agreed to DNA testing because of their cultural belief in the concept of *Haa Shagoon*, being connected to their ancestors and having an obligation to their future generations. Ms. Worl stated that scientific documentation and dating through DNA showed the ancestor dated to 10,300 years ago and additional information about the ancestor's lifestyle proves that he was a Native American. The same DNA was also present in the Chumash Tribe, as well as elsewhere in the Americas. Ms. Worl stated this information affirms their belief that they have been in Southeast Alaska since time immemorial.

### **Public Comment – Mr. James Riding In**

Mr. James Riding In stated he has been attending the Review Committee meetings for a long time and has been referred to as a URP, universal repatriation proponent. Mr. Riding In asked about the Makah report presented to the Review Committee at past meetings, whether the Review Committee plans to advocate any of the recommendations included in the report; one recommendation being an investigation by the General Accountability Office (GAO). Ms. Worl stated that in addition to the presentations at the meetings, the Review Committee members have reviewed the report and note that there was some additional work that needs to be done by the National NAGPRA Office. Ms. Worl stated some of the recommendations from the report were the same recommendations included in past Review Committee reports to Congress, including the need for additional funding and addressing the notice backlog, which had been done. Ms. Hutt stated the Review Committee included a recommendation for a GAO study in a number of its reports to Congress.

Mr. Riding In stated there were some disparaging comments made about the report by people at the National NAGPRA Office, and he hoped that staff would refrain from such comments. The authors of this report took it very seriously and the report contains very important information that should be taken seriously by the National NAGPRA

Program, the Review Committee, Indian nations, federal agencies, and museums. Since NAGPRA was passed over 18 years ago, only 30 percent of human remains in institutions across the nation have been culturally affiliated. This indicates a problem with the process. Mr. Riding In stated when the draft regulations were put forth he did not hear a strong voice on the Review Committee advocating for Indian interests and stated he hoped in the future the Review Committee had members who were strong Indian advocates.

Ms. Augustine stated she read the report. Due to the amount of work, heart and spirit in this report, Ms. Augustine stated the report needs serious consideration. Mr. Steponaitis stated the report does have value and could be used to begin an open discussion in which both the strengths and weaknesses of the report content and recommendations were considered. This discussion would be a valuable way to discuss the status of NAGPRA implementation, what has and what should happen. Mr. Steponaitis stated that one of the most valuable things NAGPRA has done was create a dialogue where Native people, tribes, and Native Hawaiian organizations and the museum community come together to work through the process. While the Review Committee hears the more difficult cases, Mr. Steponaitis stated that he feels the day-to-day implementation of NAGPRA was going well. NAGPRA deals with very difficult, emotional, sensitive issues that involve many stakeholders, and the fact that not all NAGPRA issues have been solved is not a measure of the failure of the law. NAGPRA was legislation designed to address the rights of Native people and recognize the value of cultural heritage to all people. NAGPRA was written with a sense of balance in mind, as demonstrated by the makeup of the members of the Review Committee; three members nominated by scientific and museum organizations, three members nominated by Indian tribes and Native Hawaiian organizations, and one member nominated by the first six nominees. As shown in the legislative history of NAGPRA, Congress did not pass bills that stipulated universal repatriation. Mr. Steponaitis stated he felt Congress intended NAGPRA to be a situation where people would come together and decide issues on a case-by-case basis with a process for everyone to follow, a process in which there was mutual respect for all.

Mr. Riding In asked about the status of the regulations on culturally unidentifiable human remains, 43 CFR 10.11. Ms. Hutt stated that the Review Committee entered their comments at the January 8, 2008 teleconference meeting and the public comment period closed on January 14, 2008. All of the comments were considered and consisted of approximately 100 separate submissions amounting to 900 individual comments. A team of five people considered the comments and developed another set of regulations for consideration by the Assistant Secretary for Fish and Wildlife and Parks. The team consisted of Ms. Hutt, Ms. Mattix, Mr. Simpson, Mr. McKeown, and contractor Ms. Patricia Zell. Ms. Hutt stated that when she approached the Assistant Secretary with the Review Committee's request from the January teleconference for an additional comment period, the Assistant Secretary asked for an up-to-date set of regulations taking all comments into account. Ms. Hutt stated that there was a meeting with the Assistant Secretary's staff on this issue scheduled for October 15, 2008. The process continues to evolve and requires a lot of legal work, and Ms. Hutt stated she would like to commend Ms. Mattix and Mr. Simpson for their efforts on these regulations. The comments regarding the regulations brought forward problematic issues as well as legal issues. Ms. Hutt stated the final product would be an evolved set of regulations with a preamble that answers many legal questions.

Mr. Kippen stated the Review Committee has been on record as supporting a GAO audit, which was crucial in order to evaluate the program in an honest, fair, and dispassionate manner. A GAO audit can help gain legislative attention which may result in increasing and improving the program. Mr. Kippen stated the reality was that the Makah study did not have the weight of the federal government or Congress behind it, the study had limited funding of \$75,000, and people or organizations were not required to respond to requests for information. Mr. Kippen stated he would like the National NAGPRA staff to understand that the GAO study was really the way to build the most powerful program by helping to identify the program's successes, what can be improved, and how improvements can be made. Mr. Kippen stated the work done on the Makah study would be the floor for beginning to ask questions. Mr. Kippen stated the Makah study identified uneven execution of NAGPRA by federal agencies, which was somewhat expected as NAGPRA was an unfunded mandate for federal agencies. Mr. Kippen stated he understood the authors of the Makah study did the best they could with their limitations, and it was very important that they stay involved to assist in this process. Mr. Riding In stated the report was definitely a starting point, done to the best of the ability of those involved, and a copy of the report was available at [www.nathpo.org](http://www.nathpo.org). Mr. Riding In stated he did not want to give the impression that he was not supportive of the Review Committee, which deals with a lot of hard issues and generally does a good job, but he does feel like the issue of culturally unidentifiable was still like a 10,000-pound gorilla in the middle of the room and needs to move forward.

Mr. Monroe stated he would like to second the comments of the other members and would like to add that even though the Review Committee members were nominated by different communities – scientific, museum, and tribal – once appointed, the Review Committee functions as a group the best it can to carry out the requirements of NAGPRA in a fair and equitable manner with as much impetus as possible. The frustrations with respect to federal agency compliance and the regulation process for culturally unidentifiable human remains were shared by all and were in fact issues that the Review Committee does not control, other than to provide comments and recommendations. Mr. Monroe stated, with respect to the report, that in order to improve it is important to continue to work together and to understand that the Review Committee members function as a group to try to move this law forward and to accomplish the aims for which it was created.

### **Public Comment – Mr. Lalo Franco**

Mr. Lalo Franco, Tachi Yokut Tribe, Santa Rosa Rancheria, thanked the National NAGPRA Program for the training and stated he was pleased to see tribal and museum representatives at the training. Mr. Franco stated Santa Rosa Rancheria had seven active NAGPRA claims from a number of museums, including the National Museum of the American Indian, Southwest Museum, and the University of California at Berkeley, and had worked with federal agencies, including the Forest Service, NPS and Bureau of Land Management. Mr. Franco stated the NAGPRA training was one way tribal representatives can learn the NAGPRA process. Many tribal people were frustrated at the process, the deep emotions, and history of this issue. The tremendous wounds left from being unable to stop the digging of ancestors' graves were still healing, and the National NAGPRA Program has helped move the people in that direction. Mr. Franco stated that tribal people need to continue to make a better effort, to move further and try to find more solutions. Mr. Franco stated many tribal people feel that there has not been meaningful consultation with museums in years, so meaningful, documented consultation would be very important. Mr. Franco thanked the National NAGPRA Program for their technical assistance.

### **Public Comment – Ms. Jan Bernstein**

Ms. Jan Bernstein, Bernstein and Associates, asked the Review Committee how much evidence would be enough to determine that culturally unidentifiable human remains were Native American. Mr. Steponaitis stated he felt the standard of evidence would not be very high but there would have to be some credible line of evidence other than an assertion or a priori belief. The evidence could be any type – for example, forensic, contextual or artifactual – as long as some credible piece of evidence suggested that the human remains were likely Native American.

### **Request for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of the Detroit Institute of Arts, MI**

#### **Presentation**

Mr. David Penney, Vice-President of Exhibitions and Collection Strategies and Curator of Native American Art at the Detroit Institute of Arts, stated the Detroit Institute of Arts was a large civic art museum organized in the 1880s, which currently features collections of art from throughout the world but has a history of collecting that resulted in a variety of different kinds of objects in the museum that sometimes escaped curatorial attention. Mr. Penney stated that sometime in the 1980s he became aware of a large wooden chest filled with human bones that had never been accessioned, and was told by the curator at the time that the box had been in the museum under the care of the previous curator, Mr. Francis Robinson, who served the museum from 1939 to 1972. Accompanying the box was a small handwritten note in Mr. Robinson's handwriting that said, "N. A. human bones Mich," which was understood to mean Michigan. The human remains were included in the inventory submitted to the National NAGPRA Program in the early 1990s and the Detroit Institute of Arts had been in consultation with NAGPRA representatives from Michigan over the past 10 years regarding the disposition of the human remains. Physical anthropologist David Barondess from Wayne State University examined the bones in the summer of 2008 and determined that the 145 fragments of human bone represented a minimum of 10 individuals; 8 adults and 2 subadults. Mr. Barondess determined that the human remains were consistent with remains of Native Americans through dental traits and markings consistent with Native American burials of the Michigan area, such as disarticulation practices and the

presence of copper. Mr. Penney stated that the Detroit Institute of Arts believed the evidence showed by preponderance that the human remains were most likely collected from a burial site somewhere in the vicinity of Detroit, were brought to the museum sometime between 1939 and 1950, and therefore would be subject to the disposition process.

Mr. Eric Hemenway, research assistant for the Little Traverse Bay Bands of Odawa Indians, thanked the Review Committee for hearing this disposition and the National NAGPRA Program for their assistance. The Little Traverse Bay Bands of Odawa Indians in conjunction with the Sault Ste. Marie Tribe of Chippewa Indians, the Bay Mills Indian Community, the Keweenaw Bay Indian Community, the Lac Vieux Desert Chippewa Tribe, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little River Band of Ottawa Indians, the Saginaw Chippewa Indian Tribe, and the Pokagon Band of Potawatomi Indians request a recommendation for disposition of human remains in the possession of the Detroit Institute of Arts, Detroit, MI. Mr. Hemenway prepared a small historical report of tribal history in Michigan which describes the Indian tribes with the strongest historical presence in Michigan. These were the Odawa, the Ojibwe, and the Potawatomi, collectively known as the Anishnaabek. In April 2008, Mr. Hemenway contacted Mr. Penney concerning a small collection of human remains, accession number X1989.2633-19660, and through consultation began the process to bring the request before the Review Committee. Mr. Hemenway described the evidence they believe showed by a preponderance of the evidence that the human remains were of Anishnaabek ancestry. One, the predominant tribes of Michigan during historic and prehistoric times were the Odawa, Ojibwe, and Potawatomi. The Review Committee members had copies of support letters from the tribes of Michigan. Indian tribes with a historic, but not current, presence in Michigan were contacted for support. Written or verbal consent was submitted by both the Sac and Fox and the Wyandot Nation. Scientific work was done to prove that the human remains were Native American.

#### **Review Committee Motion**

Mr. Steponaitis stated, in light of the earlier question by Ms. Bernstein, that while the evidence in this case was not overwhelming, it was sufficient to show that the human remains were Native American. Mr. Monroe made a motion to approve the request for disposition of Native American human remains representing a minimum number of ten individuals from the Detroit Institute of Arts to the Little Traverse Bay Bands of Odawa Indians in conjunction with the Sault Ste. Marie Tribe of Chippewa Indians, the Bay Mills Indian Community, the Keweenaw Bay Indian Community, the Lac Vieux Desert Chippewa Tribe, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little River Band of Ottawa Indians, the Saginaw Chippewa Indian Tribe, and the Pokagon Band of Potawatomi Indians. Mr. Steponaitis seconded the motion. The motion was adopted unanimously.

### **Request for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of the Kalamazoo Valley Museum, MI**

#### **Presentation**

Ms. Paula Metzner (appearing telephonically), Kalamazoo Valley Museum, stated the Kalamazoo Valley Museum had five skulls in its possession since at least the early 1950s. Two of the skulls were from another state. The three remaining skulls, from the state of Michigan, were examined by two anthropologists from Western Michigan University who agreed the human remains were consistent with Native American material. One skull was collected from southeast Michigan by an amateur collector as a surface find with a lot of Native American materials, including arrowheads. The other skulls show Native American traits, two of the three had labels that said "mound builder," and the third had remnants of what was believed to be the same label. Ms. Metzner stated the Kalamazoo Valley Museum was confident that those human remains were Native American and would be happy to repatriate.

Mr. Eric Hemenway stated the Little Traverse Bay Bands of Odawa Indians in conjunction with the Sault Ste. Marie Tribe of Chippewa Indians, the Bay Mills Indian Community, the Keweenaw Bay Indian Community, the Lac Vieux Desert Chippewa Tribe, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little River Band of Ottawa Indians, the Saginaw Chippewa Indian Tribe, and the Pokagon Band of Potawatomi Indians request a recommendation for disposition of human remains in the possession of the Kalamazoo Valley Museum in Kalamazoo, Michigan. Mr. Hemenway stated that, as with the previous disposition request, a short historical report was prepared. Mr. Hemenway contacted the Kalamazoo Valley Museum in August 2007 concerning their collection of Native American human remains, which he located using the culturally unidentifiable human remains database on

the National NAGPRA Website. The original inventory listed six different sets of human remains, all skulls, from within Michigan. Mr. Hemenway used this information to begin contacting other tribes for support of this disposition. As there was little information regarding the human remains, the human remains were examined by Ms. Janet Gardner and Mr. Robert Anemone of Western Michigan University. Forensic analysis determined that of the original six skulls, three had enough evidence to prove they were Native American; 51.945, 70.284.1, and 70.284.3A. Mr. Hemenway stated that the available information, though limited, and the results of the forensic analysis show that these human remains were the ancestors of the tribes in Michigan today.

### **Review Committee Motion**

Ms. Augustine made a motion to approve the request for disposition of Native American human remains representing a minimum number of three individuals from the Kalamazoo Valley Museum, Kalamazoo, MI, to the Little Traverse Bay Bands of Odawa Indians in conjunction with the Sault Ste. Marie Tribe of Chippewa Indians, the Bay Mills Indian Community, the Keweenaw Bay Indian Community, the Lac Vieux Desert Chippewa Tribe, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little River Band of Ottawa Indians, the Saginaw Chippewa Indian Tribe, and the Pokagon Band of Potawatomi Indians. Mr. Goodman seconded the motion. The motion was adopted unanimously.

### **Comment – Mr. Vincas Steponaitis**

Mr. Steponaitis stated NAGPRA training has been a very important issue to him because training was critical to NAGPRA implementation to ensure people understand what the law entails. In addition, training was a wonderful way to point people from the tribal and museum communities in the right direction to work together. Mr. Steponaitis stated one of the most important things that NAGPRA brings about, and one of the keys to its continued and future success, was a productive dialogue between Native and museum communities. Mr. Steponaitis stated he would like to raise some issues that were critical for effective training and to bring good results and dialogue. The first was a balance in the training that makes everyone in attendance feel that their interests and issues were being addressed. The second was adequately addressing the very difficult issue of cultural affiliation, including the different types of evidence and methods of evaluating the evidence. The third was to develop training by drawing on the expertise of people from museum and tribal communities who have experience with good NAGPRA outcomes.

Ms. Hutt described the efforts in which the National NAGPRA Program has and will continue to respond to Mr. Steponaitis's comments. Ms. Hutt stated there was a list of all trainings by the National NAGPRA Program in the annual report. What the report does not include was a list of who spoke at the trainings. The training for the Western Museum's Association for the American Association of Museums was sponsored by the National NAGPRA Program but the panel speakers were predominantly museum representatives with experience in NAGPRA. The trainings that are held prior to the Review Committee meetings were structured differently to provide for a morning session to give the basics of the process and an afternoon session where a panel of National NAGPRA counsel and staff address the specific questions and situations of the training attendees. Ms. Hutt stated that Mr. Steponaitis's suggestion to bring experienced people into the training process was very valid and described a project underway in the National NAGPRA Office to develop a 12-segment video program on NAGPRA. The video was being developed by Ms. Maggie Spivey, a graduate of the Harvard Archaeology Program, under the supervision of Mr. Tarler. The video will feature people who have dealt with the various aspects of NAGPRA, providing different perspectives and examples of NAGPRA implementation. Ms. Hutt stated she appreciated Mr. Steponaitis's comments and interest in the training program. Ms. Worl stated it would be helpful if the Review Committee could review the video before it becomes final.

Mr. Kippen stated he was Hawaiian, and Hawaiians have a lot of issues that were particularly difficult to deal with under NAGPRA. Although he cannot say that Hawaiians have been successful under NAGPRA, Mr. Kippen stated he was hopeful about the ability to focus on points of agreement, the things that work for everyone as human beings. As Mr. Monroe stated, the Review Committee members drop their designations as they join the committee and become human beings trying to make this law work, trying to work through difficult issues. Mr. Kippen stated that sometimes focusing on success makes it appear that there were no issues to be addressed, when really considering success should open perspectives and opportunities that previously could not be seen. Mr. Kippen stated he supported the video project described by Ms. Hutt which would help provide a broader perspective for all working on NAGPRA.

## **Request for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of the Cranbrook Institute of Science, Bloomfield Hills, MI**

### **Presentation**

Mr. Michael Stafford (appearing telephonically), Director of the Cranbrook Institute of Science, Bloomfield Hills, MI (Cranbrook), stated Cranbrook was established in 1936 and is a public natural and history museum that has been supportive of Native peoples on a global scale since its inception. Cranbrook has a collection of human remains accrued as part of its holdings since the 1930s. Cranbrook was requesting disposition of approximately 60 individuals to the Little Traverse Bay Bands of Odawa Indians. This request was supported by many other regional Indian tribes. Cranbrook considers itself to be the caretakers of these human remains. The human remains have never been on display and were burials disturbed in the context of construction or urbanization, not derived from archaeological contexts, and were thus considered unaffiliated. Mr. Stafford stated Mr. Hemenway was a pleasure to work with and this issue was a very appropriate example of how Native tribes and a museum can work together in partnership.

Mr. Eric Hemenway stated the Little Traverse Bay Bands of Odawa Indians in conjunction with the Sault Ste. Marie Tribe of Chippewa Indians, the Bay Mills Indian Community, the Keweenaw Bay Indian Community, the Lac Vieux Desert Chippewa Tribe, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little River Band of Ottawa Indians, the Saginaw Chippewa Indian Tribe, and the Pokagon Band of Potawatomi Indians request a recommendation for disposition of human remains in the possession of Cranbrook. Support letters from the Wyandotte Nation of Oklahoma and the Sac and Fox Nation of Oklahoma were included in this disposition. Mr. Hemenway contacted Cranbrook in April 2007 concerning their collection of culturally unidentifiable human remains from Michigan. After meeting in November 2007, Mr. Stafford contacted Mr. Hemenway in April 2008 to confirm that Cranbrook would like to move forward on the disposition. The disposition request totals 60 individuals from the Detroit area. The majority of the human remains came into the possession of Cranbrook by inadvertent finds during construction in the 1900s. Forensic analysis was conducted by Mr. Russell Nelson, research scientist at the Museum of Anthropology, University of Michigan. Mr. Nelson's work shows a high probability that the human remains were Native American and a copy of his report was submitted to the Review Committee. The geographic locations in southeastern Michigan were documented. No European goods were found associated with the human remains. A small collection of associated funerary objects were found with the human remains which were indicative of an Indigenous population.

Mr. Hemenway gave a brief review of tribal history in the Detroit area. In addition to the Odawa, Ojibwe, and Potawatomi, there was a large and early presence of the Huron, or Wyandotte Nation, and the Sac and Fox. Mr. Hemenway contacted the NAGPRA representatives of both tribes and received written letters of support for the disposition from each tribe. The provenience of the human remains from Michigan was clear. Given the diverse background in Detroit, efforts were made to garner support from Indians tribes with historical presence. Lack of European trade goods with the human remains, the manner in which the human remains were found, and the forensic analysis prove the human remains to be Native American. Mr. Hemenway stated that all of these factors show the possibility was high that the human remains in the possession of Cranbrook were the ancestors of the modern-day Indian tribes in Michigan.

### **Review Committee Questions**

Mr. Goodman stated that this disposition contains a lot of accession numbers and asked for clarification or additional information because of the frequent use of the terms possible and probable. Mr. Goodman stated that one accession contains the wording, mandible number 5 may be European. Mr. Hemenway stated he was relying on Mr. Nelson's report that concluded that it was highly probable the human remains were Native American. Mr. Stafford stated that from an institutional standpoint if the Review Committee would be more comfortable with a second analysis, Cranbrook would be more than willing to fund it. Mr. Stafford stated that, drawing from the tradition of Cranbrook in terms of only accepting human remains, all parties involved felt strongly were of Native American origin when they first came to Cranbrook. Mr. Steponaitis stated he understood Mr. Goodman's concern, and because of the circumstances and collection practices of the institution he was comfortable with the request. Mr. Kippen asked for

clarification of which collection circumstances led to the conclusion that the human remains were Native American. Mr. Stafford stated that in most cases the human remains came to Cranbrook either from law enforcement agencies when discovered through construction or from contractors themselves. Oftentimes the director of the museum at the time, Mr. Robert Hatt, would have gone out to the field. Some references in the materials refer to burials as being flexed group burials from areas where there are also known Stone Age sites in Michigan. Mr. Stafford stated that in his opinion, Mr. Hatt was a very detailed, thorough archaeologist and anthropologist. Mr. Stafford stated that while he wished Cranbrook's records were more complete, there did seem to be an overwhelming preponderance of the evidence that the human remains were more likely than not Native American. Mr. Steponaitis stated that it made a difference to him that Cranbrook had the expertise at the time to make these kinds of forensic judgments. Mr. Kippen asked if Mr. Hatt would have collected non-Indian human remains. Mr. Stafford stated Mr. Hatt would not have collected non-Indian human remains.

### **Review Committee Motion**

Mr. Monroe made a motion to approve the request for disposition of Native American human remains representing a minimum number of ten individuals from the Cranbrook Institute of Science, Bloomfield Hills, MI, to the Little Traverse Bay Bands of Odawa Indians in conjunction with the Sault Ste. Marie Tribe of Chippewa Indians, the Bay Mills Indian Community, the Keweenaw Bay Indian Community, the Lac Vieux Desert Chippewa Tribe, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little River Band of Ottawa Indians, the Saginaw Chippewa Indian Tribe, and the Pokagon Band of Potawatomi Indians. Mr. Goodman seconded the motion. The motion was adopted unanimously.

### **Upcoming Meetings**

Ms. Hutt stated that the next Review Committee meeting would be May 23 and 24, 2009 in Seattle, WA, with training on May 22, 2009. Details and a draft agenda would be available on the National NAGPRA Website. Ms. Hutt stated the hotel was the Red Lion on 5th in Seattle, WA, which was located close to a number of conveniences. Ms. Hutt stated that when looking for a location a number of tribal venues were considered and were very helpful. However location was a key factor in the decision to hold the meeting in Seattle, WA.

Ms. Hutt stated that a map detailing the location of past meetings was behind tab 17 of the binder, for the Review Committee's discussion of the fall 2009 meeting. Ms. Hutt asked the Review Committee to consider selecting dates for the fall meeting closer to the end of October or the beginning of November, as many meeting details cannot be finalized until after the start of the new fiscal year on October 1.

Ms. Worl stated at the last meeting the Review Committee considered holding the fall 2009 meeting in the Northeast, possibly in Bangor, ME, or Albany, NY. Ms. Hutt stated that the Mashantucket Pequot offered assistance in hosting a site in Providence, RI. Mr. Kippen stated they should consider locations based on the greatest need in terms of Indian tribes, museums, and people. Ms. Worl stated that would require review of NAGPRA collections, inventories, culturally unidentifiable human remains, and other information. Since that review had not been done, Ms. Worl stated different criteria to consider would be locations with the most Indian tribes.

The discussion was continued to the second day of the meeting.

### **Public Comment – Anthony Garcia**

Mr. Anthony Garcia, Repatriation Coordinator of the Hearst Museum of Anthropology, University of California Berkeley, stated he was happy to be able to update the Review Committee. Mr. Garcia stated the museum has been in a transition period of reorganization. New programs were created to actively bring tribes to the museum. A new education program was developed with a Native American staff member. A tribal liaison, also Native American, works with Indian tribes in the field. The University of California at Berkeley has a very large collection and as a result deals with a large number of Indian tribes and groups. The University of California at Berkeley made a very strong attempt to complete their inventory in 2000 but was still in the process of submitting rewrites to the National NAGPRA Program in order to satisfy publication requirements. Due to the vast collections, Mr. Garcia stated he

understood how difficult the task would be for the tribal people. Mr. Garcia stated the University of California at Berkeley now has a committee which needs to approve all repatriation requests, and members include two Native American faculty, three anthropology staff members, and three outside faculty members, to create a balance. Mr. Garcia stated they were working to develop training for tribes to help understand the NAGPRA process, and added that by attending the National NAGPRA Program training, he learned the importance of consultation and developing a consultation policy. Mr. Garcia stated he plans to have a complete consultation policy by the middle of the following year.

The University of California at Berkeley was dealing with four active claims and beginning the process with a number of other groups. Mr. Garcia stated the University of California at Berkeley has a very large collection of items that were under the control of federal agencies, and many of the federal agencies were requesting the University of California at Berkeley do repatriations for them. This has created a very frustrating situation for the University of California at Berkeley, as well as Indian tribes ready to repatriate when a federal agency would not take any action on objects under their control. Ms. Hutt stated that the National NAGPRA Program offered technical assistance to the University of California at Berkeley and provided full-day training for the faculty senate at the university's request back in the 1990s. Ms. Hutt stated the National NAGPRA Program was ready to provide references of other museums who have encountered similar situations or to provide ongoing technical assistance at any time upon request of the University of California at Berkeley.

Mr. Garcia stated that they were making efforts to meet with tribes whenever possible, at the campus or by traveling to the tribes, which was limited due to budget constraints. The University of California at Berkeley hosted several statewide meetings where the director, deputy director and Mr. Garcia went to encourage tribes to discuss any repatriation issues. The greatest issue was the lack of understanding and knowledge about NAGPRA. Part of the problem may be due to personnel turnover in tribes, but the result was increased frustration with the process. The University of California at Berkeley has had 21 successful repatriations. Mr. Garcia stated that the University of California at Berkeley was doing all it could to make resources available for tribes to conduct their research, and the research materials were now in a much better format than before, including an online database for some of the collections.

Mr. Kippen asked what percentage of the University of California at Berkeley's collection was under federal control and what the process would be for disposition. Mr. Garcia stated he did not have an exact figure but it was a large number. Regarding disposition, in the absence of written agreements for many of the collections, Mr. Garcia stated the role of the University of California at Berkeley was a place for the federal agencies to store and safeguard the federal agency collections. Mr. Steponaitis thanked Mr. Garcia for his report and stated it seemed progress was being made. Mr. Steponaitis stated he heard two concerns raised by Mr. Garcia regarding federal agency compliance, where federal agencies were ignoring their collections and where federal agencies were not taking their responsibility seriously. Unfortunately this occasionally results in federal agencies who will try to deal with the situation quickly by returning the remains to the one who asks first or asks loudest. Mr. Steponaitis stated that these were two more reasons why the GAO study was so important.

Mr. Monroe stated he was delighted to hear of the progress at the University of California at Berkeley. Mr. Monroe asked for clarification of Ms. Hutt's offer of technical assistance. Ms. Hutt stated that she has discussed the situation with Mr. Garcia, and the National NAGPRA Program could help the University of California at Berkeley develop a plan. To consider the enormity of the collection and its problems would be overwhelming, and the National NAGPRA Program would help break the process into manageable pieces and develop a strategy to approach each of those pieces. In addition, other large museums have faced similar situations and their expertise could be considered. The National NAGPRA Program would be willing to send a staff member to the University of California at Berkeley to evaluate the collection and the situation in order to develop an action plan, which was a process that was started in the 1990s with the consultation visit by Mr. McKeown and Ms. Hutt. Ms. Worl stated there were a number of museums with similar problems and suggested developing videoconference training open to all museums and federal agencies. Ms. Hutt stated that at the Phoenix, AZ meeting, the National NAGPRA Program held private sessions for museums to discuss the grant program. During the course of those sessions, different museums discussed their challenges, plans of action, and grant requests. Ms. Hutt stated that a couple of those museums followed through on those discussions and were recipients of grants, happily averting some frustrating circumstances. Ms. Hutt stated that while certain situations call for individualized attention, Ms. Worl's suggestion was something the National NAGPRA Program intends to do in the upcoming year.



Ms. Worl stated that there have been a number of references to lack of institutional capacity among Indian tribes and the priority of NAGPRA and repatriation. Ms. Worl stated that there were 200 tribes in Alaska, and many of them were facing tremendous financial difficulties and were concentrating on meeting basic needs. Even when the priority of dealing with NAGPRA lessens, the desire to deal with repatriation was always there. Ms. Worl stated that raising the grant amount would help address the increased costs due to inflation. Ms. Worl stated she wanted to speak to the status of Indian Country Today, which faces the same financial crisis as seen at the national level. Ms. Worl thanked Mr. Garcia for his report.

## **National NAGPRA Program Manager's End-of-Year Report on the Implementation of NAGPRA (FY2008)**

### **Presentation**

Ms. Hutt stated the Review Committee members had a copy of the report behind tab 9 of the binders and a one-page tear sheet was available for the audience members at the registration table. Ms. Hutt gave a brief summary of the report.

**Review Committee:** For the past four years, the Review Committee has met two to three times each year, in person or telephonically. Ms. Hutt stated that two reports were still in progress and would be forwarded to the Review Committee members when completed. First, a breakdown of decisions of the Review Committee by concept and a similar summary of the results of disputes heard by the Review Committee, either decisions or requests for additional information. Ms. Hutt stated that Mr. Tarler developed the culturally unidentifiable disposition matrix which was posted on the National NAGPRA Website the first of August 2008 and would be available for the entire period leading up to the next meeting. Ms. Hutt stated the staff would ensure that the Review Committee members' recommendations regarding an opportunity for appendices and a summary of technical information were clearly outlined in the online form.

**Regulations:** Ms. Hutt stated that Mr. McKeown was the regulations coordinator for the National NAGPRA Program. Over the past four years, the program has published a proposed and final rule on future applicability, which has resulted in stacks of amended summaries and inventories submitted by museums and federal agencies in order to meet compliance of the rule. In addition, technical corrections were published to the regulations. Section 10.7 regulations were pending and up for discussion by the Review Committee at the next meeting. Section 10.11 regulations were under discussion at the Department level with a status meeting scheduled for Wednesday, October 15, 2008. Ms. Hutt stated she hoped to have a substantive update on Section 10.11 for the Review Committee at the next meeting.

**Civil Penalties:** Ms. Hutt stated that the regulations for Section 10.12, civil penalties, were promulgated in 1997, finalized in 2003, and investigations began in 2006. In order for the civil penalties regulations to take effect, a Secretarial Order was done and was incorporated in the DOI departmental manual in 2007. Since its inception, Mr. Tarler and Mr. Palmer have exceeded all expectations in the number of investigations presented to the Assistant Secretary.

**Notices:** Ms. Hutt stated that Ms. Lavalley has worked extremely hard to address the backlog pile of aging notices, which numbered over 300 four years ago, in addition to her work on recent notices which continue to arrive at a steady rate. In FY2008, Ms. Lavalley published 180 notices, which far exceeded all publication expectations. Ms. Hutt stated that the publication of notices was a bellwether of activity in museums and federal agencies across the United States. Notice publication establishes the rights of Indian tribes to request their ancestors and to perfect their claim of cultural items. Ms. Lavalley was recognized for her efforts by the Director with an Exceptional Service Award. Ms. Hutt stated she wanted to emphasize that the National NAGPRA Program has not and will not withdraw published notices. A notice belongs to the museum or federal agency that submits the notice and the National NAGPRA Program is the functionary to get the notice to the Federal Register in a complete form.

**Grants:** Ms. Hutt stated that Ms. Sangita Chari took the position of Grants Coordinator with the National NAGPRA Program on January 7, 2008. Ms. Chari reviewed and revised the grants applications for FY2009. Ms. Chari

reviewed outstanding grants and worked with recipients to fully utilize their funds. Ms. Chari established a six-month progress report system to help ensure grant recipients achieve successful conclusions. Ms. Hutt stated that the National NAGPRA Program followed through on the Review Committee's recommendation; for FY2009 the maximum project grant amount would be \$90,000, an increase from the previous amount of \$75,000. In FY2008, the National NAGPRA Program received 29 grant requests from Indian tribes and 12 grant requests from museums, and awarded 23 grants to Indian tribes and 8 grants to museums. Ms. Chari intends to employ a number of methods to increase outreach by holding in-person, telephonic and video trainings, as well as tracking other grant-giving institutions to be aware of general trends in grant requests.

Database/IT: Ms. Hutt stated that during the last four years the National NAGPRA Program moved from an unstable to a stable IT program, with increased reporting and research capabilities. The new Database Coordinator Mariah Soriano has worked with contractors to complete the programming and upgrades to the new system which will allow National NAGPRA Program staff to efficiently produce reports and track data. As this work is completed, the reports provided to the Review Committee will reflect the improvements in the updated system. Ms. Chari was reviewing the Website to ensure that the material was up-to-date, functional and easy to understand. Ms. Chari was the impetus for the training format update utilized at the De Pere, WI training and the training prior to the current meeting.

Training/Outreach: Ms. Hutt stated that the entire National NAGPRA Program staff responds to technical inquiries, which numbered 2,000 in FY2008. Inquiries were received from Congress, the Library of Congress, the public and NAGPRA constituents. Ms. Hutt stated that the number of individuals attending the National NAGPRA Program trainings has steadily increased: 300 in FY2003; 600 in FY2004; 900 in FY2005; 1,200 in FY2006; 1,900 in FY2007, plus the video training; and 1,200 in 2008. The National NAGPRA Program has a number of partnerships, for example, with law enforcement agencies to provide technical information on NAGPRA and ARPA and with the American University Washington College of Law Library to develop a state burial law database. Mr. Tarler and Mr. Palmer hold law enforcement trainings across the country.

Ms. Hutt stated that a handbook, *Using ARPA Civil Penalties*, was published by the NPS during the past year in partnership with the US Forest Service, authored by Ms. Elise Foster, an attorney with the Department of Agriculture in Ogden, Utah. In addition, the NPS was reprinting *Field Procedures for Investigating Violations of the Archeological Resources Protection Act (ARPA)*. This spiral-bound pocket notebook, originally published by the Bureau of Indian Affairs, can easily be referenced in the field by law-enforcement agents. Ms. Hutt stated that she was working with Mr. Tarler in conjunction with US/ICOMOS on a project to hold a conference in 2010 on resource protection and building capacity in federal agencies and law enforcement. The impetus for the conference was to meet a requirement in the Historic Preservation Act that the Secretary develop a report on the means of addressing those issues.

This year-end report was longer and more detailed than previous reports. Ms. Hutt stated that for FY2008, the amount expended on grants was less than the total available funds, and the grants panel recommended that unused funds be used to build capacity in Indian tribes and museums in order to develop more successful grants. The budget clearly detailed how those funds were being used; such as development of the NAGPRA training video.

### **Review Committee Comments**

Mr. Steponaitis stated that he received a copy of the report just before the meeting began the first day and wanted to apologize that he did not have a chance to fully review the report. Mr. Steponaitis stated that it was important to receive materials in advance of the meeting in order to fully review and prepare for discussion. Ms. Hutt stated that given the timing of the meeting, which occurred shortly after the start of the fiscal year, the report was prepared and provided to the Review Committee as soon as possible. Mr. Steponaitis stated he did not mean to lay blame, only to try to find a solution to the problem of receiving information just prior to the meeting. Mr. Steponaitis stated that receiving a full second binder with updated material, rather than loose pages that could be incorporated into the initial binder, was an additional frustration as members sometimes make notes in their initial binders. Ms. Hutt stated that if the Review Committee would set a policy for receipt of information from parties to disposition requests or disputes, the National NAGPRA Office would enforce those policies.

Mr. Steponaitis asked for clarification that if, as Ms. Hutt stated, notices belong to the submitting institution why some draft notices were not published upon being submitted by the institution. Ms. Hutt explained that the role of

the National NAGPRA Program, and specifically Ms. Lavallee as notice coordinator, was to ensure the notices meet the technical requirements of the Federal Register and of the NAGPRA regulations. Once the draft notice meets those requirements the draft notice was sent back to the institution for approval to be published in the Federal Register. In some cases, the institution's approval was delayed, for example, waiting for a meeting of a Board of Directors, and Ms. Lavallee follows through on those situations. Ms. Hutt stated that the real issue to determine whether federal agencies and museums are in compliance would be to compare how many individuals were in an institution's inventory compared to how many were in published notices, which should be a one hundred percent match. The focus of the National NAGPRA Program should be to facilitate understanding and to encourage federal agencies and museums with large collections to consult and try to move toward disposition. Mr. Steponaitis stated he has heard frustration from institutions that submit draft notices ready for publication and the draft notices were not published. Ms. Hutt stated she was not aware of any such situation. Ms. Lavallee does not second guess the decisions expressed in notices but does check the draft notices for accuracy against the institution's inventories and for technical errors. Ms. Hutt stated she would like to know if museums feel the National NAGPRA Program was a bottleneck for the publication of notices. Ms. Lavallee stated she reviews draft notices to ensure technical accuracy; for example, to ensure that draft notices do not include the disposition of culturally unidentifiable human remains without going before the Review Committee or human remains removed from federal lands after 1990. Ms. Lavallee stated she also works to ensure that institutions were aware that Notices of Inventory Completion do not need a claim before moving forward.

Ms. Worl asked that the National NAGPRA Program let the Review Committee members know when to best schedule the fall meeting to allow for sufficient preparation time after the beginning of the new fiscal year, and stated that the Review Committee would prefer to receive one binder and add updates.

Ms. Augustine stated she would like to again stress the importance of holding discussions on important issues face to face rather than by teleconference, such as the teleconference in January 2008 regarding regulations. Ms. Worl stated that was the consensus of the Review Committee, that teleconference meetings would be held only for informational purposes. Ms. Hutt stated that originally consideration of 43 CFR 10.7 was to be included on this meeting's agenda. That discussion was postponed in order to give Ms. Koscielski time to prepare an executive summary for reference by the Review Committee.

#### **Review Committee Motion**

Mr. Steponaitis made a motion that all materials related to a dispute or disposition request be received by the National NAGPRA Office one month prior to the meeting. Mr. Monroe seconded the motion. The Review Committee agreed that the exceptions would be if an agreement was reached in a dispute or for additional letters of support and verbal agreements to disposition requests. The motion was adopted unanimously.

### **National NAGPRA Program Notice Coordinator's Report on Federal Register Notices**

#### **Presentation**

Ms. Lavallee stated that a notice update was on page 5 and 6 of the year-end report. In FY2008, 180 notices were published. A total of 131 Notices of Inventory Completion were published, of which 5 were notices for disposition of culturally unidentifiable human remains. 49 Notices of Intent to Repatriate were published, accounting for 7,962 unassociated funerary objects, 173 sacred objects, 78 objects of cultural patrimony, and 33 objects that were both sacred objects and objects of cultural patrimony. This number was down because some institutions were now using a lot count instead of individual bead count. In FY2008, the National NAGPRA Program received 146 notices, the highest number since FY2000. In the program's publication history, there have been a total of 1,147 Notices of Inventory Completion, accounting for over 36,000 individuals; 425 Notices of Intent to Repatriate, accounting for 137,000 unassociated funerary objects, 3,700 sacred objects, 381 objects of cultural patrimony, and 806 objects that were both sacred objects and objects of cultural patrimony. Ms. Lavallee stated that 18 notices were published in the first 9 days of FY2009, with 5 more scheduled to be published by the end of October. In addition, approximately seven new notices were received, putting the program on track with FY2008 for receipt and publication of notices.

#### **Review Committee Comments**

Mr. Steponaitis congratulated Ms. Lavallee for her award and commended her efforts on notice publication. Mr. Steponaitis stated from a review of Ms. Lavallee's notice summary it appeared that notice receipt and

publication rates show a fairly consistent trend through the years. Mr. Steponaitis stated that it appeared that the notice backlog was a natural consequence of the National NAGPRA Program's receipt of a very large number of inventories at the initial deadlines, determining a priority list based upon active claims, and now being at the end of the backlog cycle through this consistent pattern of publication.

## **National NAGPRA Program Law Enforcement Investigator's Report on NAGPRA Civil Enforcement**

### **Presentation**

**(A full transcript of Bob Palmer's presentation to the Review Committee follows. The slides accompanying this presentation appear in Appendix A of these minutes.)**

*(Slide 1)* Good morning, Madam Chair, members of the public, and esteemed members of the Review Committee. Having recently completed another year on the government's calendar, I am before you once again to discuss the progress made in the area of civil penalty implementation. As Madam Chair and the Committee would be aware, the civil penalties rule, which can be found at 43 C.F.R. 10.12, was published as an interim rule in 1997 and as a final rule in 2003. In May 2005, through a Secretarial Order, the Secretary of the Interior gave the National NAGPRA Program the responsibility of providing staff support to the Secretary's designee on civil penalties, the Assistant Secretary for Fish and Wildlife and Parks. Since the beginning of FY 2006, I have been assigned on a part-time basis to carry out investigations under the Act.

As the civil penalties investigator, a point that I would like to make for the record is that I am not employed by the National NAGPRA program, nor is any of my salary paid for out of National NAGPRA funds. Instead, the component of my time, and hence my salary, that is dedicated to NAGPRA Civil Penalty investigations comes from the operational budget of the National Park Service, and is a result of a partnership that exists between the National NAGPRA Program, the National Park Service's Law Enforcement, Security, and Emergency Services office in Washington DC, and Effigy Mounds National Monument. To this end I would like to recognize these three parties. Without the willingness of the National NAGPRA program to be flexible in what times an investigator is available, without the willingness of the Law Enforcement, Security, and Emergency Services branch to pay the bill, and without the willingness of my supervisor, Superintendent Phyllis Ewing of Effigy Mounds National Monument, to permit me to do this outside-the-park work, I would not be sitting here before you.

So now having stated who is paying the bill, I would now like to discuss the results of those expenditures. As the Committee will recall, the NAGPRA regulations set forth eight ways that a museum might fail to comply with the Act or its regulations, and they are *(Slide 2)*:

1. Sale or transfer of NAGPRA items contrary to NAGPRA.
2. Failure to complete a summary.
3. Failure to complete an inventory.
4. Failure to notify tribes within 6 months after completion of the inventory.
5. Refusal to repatriate.
6. Repatriation prior to publishing a notice in the Federal Register.
7. Failure to consult with tribes and/or lineal descendants.
8. Failure to inform recipients that items have been treated with pesticides.

*(Slide 3)* During the past year, 23 new counts, which were made against 5 museums, were received. By the end of the fiscal year, 19 of these new counts, involving 3 museums, have been investigated and findings made. *(Slide 4)* In terms of overall investigations completed during the past year, 39 allegations of failure to comply, made against 7 museums, were investigated. The investigations yielded determinations of failure to comply on 8 counts, involving 3 museums, and determinations that the allegation was unsubstantiated on 31 counts. Of the unsubstantiated

counts, 2 counts, alleged against 1 museum, were found to be unsubstantiated because the deadline for compliance had not yet passed. *(Slide 5)* Of the counts substantiated, 1 count was for failure to complete a summary, 6 counts were for failing to repatriate, and 1 count was for failing to consult.

Concerning Penalty Assessments, *(Slide 6)* a museum receiving a notice of failure to comply has 45 days to take specific action, as set forth in the NAGPRA regulations, before a penalty assessment may be issued. To date, 4 notices of penalty assessment, involving 4 museums, have been drafted by the civil penalty team, and the notices have been issued by the Assistant Secretary. Altogether, the 4 notices assessed penalties in the amount of \$12,670. As of the end of FY 2008, \$6,250 in penalties has been paid by 2 of the museums. The 45-day notice period has not yet run for payment of the \$6,420 assessed against the other 2 museums. Moving forward into the New Year, a priority for the civil penalty team will be the finalization and issuance of the outstanding penalty assessment letters.

*(Slide 7)* Since the NAGPRA civil penalties investigative function has now been operational for three years, I believe that we are now in a position to take a step back and gain some perspective on the work done so far. A place to start on this brief retrospective look is the number of allegations made under the Act to date. Since 1996, there have been a grand total of 130 allegations of failure to comply with the requirements of NAGPRA made against 42 museums. Of these allegations *(Slide 8)*:

1. Sale or transfer of NAGPRA items contrary to NAGPRA – 19
2. Failure to complete a summary – 10
3. Failure to complete an inventory – 32
4. Failure to notify tribes within 6 months after completion of the inventory – 9
5. Refusal to repatriate – 26
6. Repatriation prior to publishing a notice in the Federal Register – 5
7. Failure to consult with tribes and/or lineal descendants – 28
8. Failure to inform recipients that items have been treated with pesticides – 1

When we started doing investigations in 2006, we inherited a fairly significant backlog *(Slide 9)* of cases. As the slide shows, there were 90 different allegations that had been made against 27 museums prior to 2006. Over the past three years, we have successfully removed 10 museums and 38 counts from this list, while concurrently working on new allegations that have been received. At present, we have 52 allegations made against 17 museums remaining to be investigated in the pre-2006 backlog.

When looking at the bigger picture, that is, including allegations that have been received before and after 2006 *(Slide 10)* a total of 70 allegations of failure to comply, made against 18 museums have been investigated and disposed of. These investigations have yielded a determination of failure to comply on 17 counts, involving 11 museums. *(Slide 11)* The 17 substantiated counts of failure to comply were comprised of 1 count of sale or transfer of NAGPRA cultural items contrary to NAGPRA; 1 count of failure to complete a summary; 6 counts of failure to complete an inventory; 6 counts of refusal to repatriate; and 3 counts of failure to consult with tribes.

So how do these numbers look in terms of counts investigated and counts substantiated. *(Slide 12)* There has been over the three-year period an increase each year in the number of counts found to be substantiated and also an increase in the number of counts found to be unsubstantiated. In terms of what types of counts have been investigated and findings *(Slide 13)*, this slide shows the results. As demonstrated by the slide, some areas have significantly more allegations made, while others have very few.

So to conclude, what can we say about our efforts to date? Again, I think it would depend on which set of accounting standards you would choose to employ. If you look at the data in terms of the number of allegations substantiated vs. the number unsubstantiated, the findings are 53 unsubstantiated as opposed to 17 substantiated. This translates to approximately 32 percent of all

counts being substantiated.

On the other hand (*Slide 14*) if your accounting standards of choice are to look at the number of museums that a finding of failure to comply has been made against, you can come to a different set of conclusions. By this accounting standard, 61 percent (11 Museums) of all museums investigated have been found to have failed to comply, and 39 percent have been found not to have failed to comply. If you choose to include museums investigated in which deadlines had not yet passed along with those museums in which a finding of failure to comply has been found, that number raises to 78 percent (14 Museums) and the number of unsubstantiated findings declines to 22 percent respectively.

In conclusion, progress on civil penalty investigations continues, and the meaning of the numbers is in the eyes of the beholder. (*Slide 15*) I thank you for the opportunity to speak to you today. I would be happy to field in any questions that you may have.

#### **Review Committee Comments**

Mr. Kippen thanked Mr. Palmer for his presentation and recommended that the presentation be included verbatim in the minutes to allow the Review Committee and others the opportunity to review this information. Mr. Steponaitis stated he would also like to see the information in a handout form. Mr. Monroe asked for information on the annual operating budget size for the museums against which allegations have been submitted and determinations made. Ms. Hutt stated that the National NAGPRA Program would provide such information to the Review Committee. Mr. Steponaitis stated that this presentation was very good, with a balanced presentation of information and trends. Mr. Steponaitis stated that he appreciated the different ways Mr. Palmer interpreted the data, and that he took comfort in the fact that a relatively small number of museums have been found to be out of compliance, out of the relatively large number of museums subject to NAGPRA. Mr. Steponaitis stated that this confirms his general sense that on the whole NAGPRA was working, the kinds of dialogues intended by Congress were taking place between museums and Native groups, and notices were being published.

### **Legal Counsel's Report on the Jurisdiction of the National Park Service to Investigate Possible Criminal Violations of NAGPRA Beyond the Boundaries of NPS-Managed Lands and on the Various Means by which NPS Could Obtain Nationwide Jurisdiction**

#### **Presentation**

Ms. Mattix stated that at the De Pere, WI meeting, the State of New Mexico presented a protocol through which the State of New Mexico proposed to handle culturally unidentifiable human remains. The Review Committee asked for a legal review of the interface between the New Mexico reburial statute and NAGPRA, whether there was conflict between the two or if the two could mesh. Ms. Mattix gave the Review Committee a memo from the Solicitor's Office detailing the issue. In summary, the New Mexico reburial statute does have a few areas that conflict with NAGPRA but their proposal for a process to handle culturally unidentifiable human remains could work with NAGPRA. Ms. Mattix stated the proposed regulations, which do not appear to be finalized, need to indicate that the NAGPRA process must be complied with initially for items that come from state or private lands with the assumption that those come into the possession or control of the State of New Mexico and therefore trigger the Section 7 collection provisions of NAGPRA. If there is cultural affiliation for the items, they will go through the NAGPRA process. If they are deemed culturally unidentifiable, then the New Mexico protocol will take effect.

Ms. Mattix stated that at the Phoenix, AZ meeting the Federal Bureau of Investigation (FBI) gave a presentation on the criminal penalty provisions of NAGPRA, located at 18 USC 1170, and how those provisions were enforced. The criminal penalty provisions of NAGPRA prohibit the use for profit of Native American human remains and the trafficking of NAGPRA-protected cultural items obtained in violation of NAGPRA. The FBI, which falls within the DOJ, has jurisdiction to investigate offenses within the US. The Review Committee asked for a legal review of whether the NPS criminal investigators could do some of those investigations given the resource issues and other constraints on the FBI. The initial answer was generally no. The NPS has law enforcement jurisdiction for areas within the National Park system for offenses that arise out of areas within the National Park system. Given this limitation, the next question was what could be done to develop some sort of cooperation between the NPS and FBI.

In the past, the NPS has developed cross-deputization agreements with local law enforcement, which cover, for instance, traffic violations that cross park boundaries. Ms. Mattix stated she included an example of a Memorandum of Understanding (MOU) that involves the Indian Arts and Crafts Act; initially the FBI has general jurisdiction to investigate these issues but through this agreement NPS and other DOI law enforcement agencies may investigate violations of the Act if requested to do so by the FBI. Another way to expand criminal investigation of NAGPRA would be to get Congressional legislation giving nationwide jurisdictional authority to other agency law enforcement.

#### **Review Committee Comments**

Mr. Kippen thanked Ms. Mattix for her report. Mr. Kippen stated that following the presentation by the FBI it was clear that the FBI pursues major crimes, such as multimillion-dollar art fraud, and the issues under NAGPRA for all intents and purposes do not even appear on the FBI's radar. In addition, the FBI does not appear to track the investigations in an efficient manner. The Review Committee previously discussed the need to more thoroughly track investigations. Mr. Kippen thanked Ms. Mattix for bringing a good example to the Review Committee of a collaborative, cooperative way to work through the problem. Mr. Kippen asked Mr. Palmer if he had reviewed the MOU between the FBI and the NPS regarding the Indian Arts and Crafts Act. Mr. Palmer stated that he did review the MOU, which took effect August 13, 2007, and stated that he was aware that NPS law enforcement officers were involved in investigations of Indian Arts and Crafts Act violations as a result of the MOU.

#### **Review Committee Motion**

Mr. Kippen made a motion to pursue, through staff, drafting a MOU between the DOI and FBI. Ms. Augustine seconded the motion. Mr. Palmer asked for clarification if the MOU was specifically for NAGPRA. Mr. Kippen stated it was. The motion was adopted unanimously.

Mr. Kippen asked for a description of the process. Ms. Mattix stated that after receiving direction from her client, the National NAGPRA Program, the Solicitor's Office would work with their General Law Division, the division that initially drafted the MOU regarding the Indian Arts and Crafts Act, and their contact with the FBI to draft and process the MOU. Ms. Hutt stated that she had conversations with Ms. Meridith Stanton, the Director of the Indian Arts and Crafts Board, to sort of tie all this together and include the law enforcement training on cultural resource crimes to include the Indian Arts and Crafts Act, NAGPRA and ARPA. Ms. Hutt stated the Review Committee would receive an update on this issue at the next meeting.

#### **Clarification of Motion**

Mr. Kippen stated he would like to clarify the motion made by the Review Committee earlier that day regarding a MOU between the FBI and DOI to include ARPA, as well as NAGPRA, crimes.

### **Deliberation on the Dispute Between the Onondaga Nation and the New York State Museum**

#### **Review Committee Discussion**

Mr. Steponaitis asked for clarification of which groups were identified as interested parties to the dispute and notified regarding the meeting, as a number of Indian tribes with potential involvement were discussed during the initial presentations. Mr. Tarler stated that the party that requested the dispute was the Onondaga Nation and the party with which they were in dispute was the New York State Museum. The New York State Museum takes the position that no parties were culturally affiliated. Mr. Steponaitis stated he remembered discussions at past meeting with National NAGPRA Program staff that the list of interested parties should be construed broadly to make sure that no one was excluded. Ms. Mattix stated when a party requests a dispute, the party is asked to provide a written statement that identifies other interested parties. The National NAGPRA Program does not independently identify interested parties, but would include any identified interested parties on correspondence and updates. For this dispute, no interested parties were identified. Ms. Worl stated that the Federal Register notice announcing the dispute was another way for parties with potential interest to receive information.

Mr. Monroe thanked the representatives of the Onondaga Nation and the New York State Museum for their work in presenting their positions regarding the disposition of the Engelbert Site human remains. Mr. Monroe stated that the 1995 guideline established by the New York State Museum to determine cultural affiliation of Native American

human remains was in contravention to NAGPRA because it used time depth as a sole or primary criterion for determining cultural affiliation for a significant number of Native American human remains. NAGPRA clearly requires that multiple, not singular, factors be used to determine cultural affiliation based on a preponderance of available evidence, the types of which were clearly stated in the Statute. While the archaeological evidence regarding the Engelbert Site was fairly complex and several studies of the site conflict with each other depending on data sets and interpretation, the latest archaeological studies and latest estimates of the age of the Haudenosaunee Confederacy support the claim that the Engelbert Site was culturally affiliated with the Onondaga and the Haudenosaunee. Mr. Monroe stated that while the New York State Museum recognizes cultural and other forms of evidence that link the human remains at the Engelbert Site with the Onondaga Nation and the Haudenosaunee, the museum denies that the evidence was sufficient to establish cultural affiliation and argues that the human remains could have been culturally affiliated with several other federally recognized Indian tribes. The New York State Museum expressed a willingness to repatriate to a proposed consortium of Indian tribes that may have cultural affiliation, and the Onondaga Nation presented verbal evidence that several of these Indian tribes support repatriation of the Engelbert human remains to the Onondaga. The New York State Museum argued that in its judgment the available evidence does not reach the level of a preponderance of evidence to support cultural affiliation, but did not clearly identify the criterion used to reach this conclusion. Mr. Monroe stated that the New York State Museum's initial failure to adhere to the requirements of NAGPRA by using time depth alone cast a shadow over its subsequent deliberations regarding cultural affiliation of the Engelbert remains. Further, the failure to renounce its previous guidelines for determining cultural affiliation as flawed further strengthens the perception, if not the reality, of the museum's judgment regarding cultural affiliation of the Engelbert human remains.

#### **Review Committee Motion**

Mr. Monroe made a motion that the Review Committee find based on a preponderance of the evidence that there was a relationship of shared group identity between the Onondaga Nation and the Haudenosaunee Confederacy and the Engelbert Site human remains and that given this relationship the New York State Museum should expeditiously repatriate the Engelbert site human remains to the Onondaga Nation. Mr. Monroe made a further motion that the Review Committee request that the New York State Museum reevaluate its assessments regarding cultural affiliation for Native American human remains in its possession based on a preponderance of all available evidence rather than on time depth alone. Mr. Kippen seconded the motion.

Mr. Steponaitis asked for clarification of the burden of proof in this dispute. Ms. Mattix stated that the initial burden of proof was on the museum to make a decision regarding cultural affiliation. Following the New York State Museum's determination that the human remains were not culturally affiliated, the burden shifted to the Onondaga Nation to prove by a preponderance of the evidence that they were culturally affiliated with the human remains. Mr. Steponaitis stated he believed the parties to this dispute were acting in good faith. Mr. Steponaitis stated the issues in this dispute were very contentious with evidence that was not clear. Mr. Steponaitis stated that cultural affiliation was not the same thing as cultural relationship and cannot be demonstrated by cultural relationship alone. Mr. Steponaitis stated that the Statute established an evidentiary process for determining cultural affiliation under which all evidence must be evaluated, and stated that evaluating some types of evidence such as oral tradition can be very difficult. Mr. Steponaitis stated that in this case it was not clear to him that there was cultural affiliation, particularly given the fact that the burden of proof was on the Onondaga Nation rather than on the New York State Museum. In reading the materials, Mr. Steponaitis stated he had the sense that this issue was moving toward a conclusion through discussions among Indian tribes and the New York State Museum. Mr. Steponaitis stated his recommendation would be to encourage the process of coming to a resolution and he was not sure that passing the proposed motion was the best way to do that.

Mr. Goodman stated that he viewed oral history as a form of evidence, with strengths and weaknesses, which needs to be weighed in an equal way with all other forms of evidence. Mr. Goodman thanked Mr. Monroe for his overview and motions. Mr. Monroe stated that he agreed that the archaeological evidence was complicated, that a significant amount of evidence appears to conflict with one position or the other depending on data and interpretation, but the preponderance of the totality of the evidence led to his opinion that there was cultural affiliation between the Onondaga Nation and the Engelbert Site human remains.

Ms. Worl stated that she was persuaded by all of the evidence that there was a preponderance of the evidence to support this cultural affiliation. Ms. Worl stated she accepted Dr. Rossen's report in which he noted that 170 of the human remains were clearly Onondaga in his opinion. Ms. Worl stated she considered the various types of evidence



presented in making her decision.

Mr. Kippen thanked the parties for their testimony and prepared information. Mr. Kippen stated that after applying the standard of a preponderance of evidence he would find in favor of Mr. Monroe's motion based on the totality of the evidence. Mr. Kippen stated he referenced the definition of cultural affiliation, considered the different types of evidence, and noted the types of information which were not contested by the two parties.

Ms. Augustine stated that she agreed with Mr. Monroe's motion that the preponderance of evidence had been met. Ms. Augustine stated that oral tradition was tied into the cultural and spiritual component. Many tribes came forward and said there was a shared group identity and that they supported the repatriation to the Onondaga Nation. Mr. Goodman stated he agreed that the preponderance of evidence shows that the Late Woodland horizon was culturally affiliated, but he was not quite ready to make a determination on the Susquehannock horizon.

Mr. Steponaitis stated he would like to clarify that he considers both oral tradition and archaeological evidence equally, and that he was trying to describe the difficulty of evaluating oral tradition due to its spiritual dimension. Mr. Steponaitis stated that with respect to the archaeological evidence a lot of reference was made to evidence that was not available to the Review Committee for review. Mr. Monroe stated he was trying to point out that there was additional archaeological information that the museum, for whatever reasons, decided had no relevance, and stated the Review Committee did not review any of the studies in depth. Mr. Monroe stated it was not his intent to privilege one over another.

Mr. Monroe restated his first motion that the Review Committee find that based on the preponderance of the evidence there was a shared group identity between the Onondaga and Haudenosaunee Confederacy and the Engelbert remains and given this relationship the New York State Museum should expeditiously repatriate the Engelbert remains to the Onondaga. Mr. Kippen called the question. The motion passed with five votes in favor and one vote against (Mr. Steponaitis).

Mr. Monroe restated his second motion that the Review Committee request that the New York State Museum reevaluate its assessments regarding cultural affiliation for Native American human remains in its possession based on a preponderance of all available evidence rather than on time depth alone. Mr. Kippen seconded the motion. Mr. Steponaitis stated he was concerned that the motion contained an implicit accusation against the New York State Museum. Mr. Monroe stated he was not imputing lack of good faith, but that the method by which the New York State Museum made cultural affiliation determinations when following the 1995 guidelines did not take into account all of the factors required by the Statute to make a cultural affiliation decision. Mr. Steponaitis stated that the last phrase carried the implication that time depth alone was the basis on which the New York State Museum based all of its determinations.

Mr. Monroe read an amended version of the motion: the Review Committee requests that the New York State Museum reevaluate its assessments regarding cultural affiliation for Native American human remains in its possession based on a preponderance of all available evidence. Ms. Worl stated that with no objections the motion would read as amended. Mr. Monroe stated the motion could be made more precise by adding a phrase at the end "as laid out in statutory requirements." Ms. Mattix clarified that the first motion goes to the issue in the dispute as framed by the DFO and the Chair, and the second motion would be along the lines of a recommendation, as it was not an issue brought specifically for the dispute. Mr. Kippen stated he supported the recommendation as a way to focus the parties on the language of the Statute. Mr. Goodman stated the recommendation was close to one of the proposed solutions recommended by Mr. Joseph Heath. Mr. Goodman stated that he believed that the New York State Museum was operating in good faith, but he would like to see actual evidence that the question of cultural affiliation of at least some of the hitherto culturally unidentified human remains had been reconsidered, as there was no evidence of subsequent analyses following the initial determination under the 1995 guidelines. Mr. Kippen called the question. The motion was unanimously adopted.

## **Upcoming Meetings**

### **Review Committee Motion**

Mr. Goodman made a motion that the Review Committee meet in Fort Lauderdale, FL no earlier than the last week

of October. Mr. Kippen seconded the motion. The motion was unanimously adopted. Mr. Goodman recommended that the spring 2010 meeting be held in the Northeast. The Review Committee agreed to consider the last Friday and Saturday of October 2009 for the meeting.

### **Discussion of Nominations for the Seventh Member of the Review Committee**

Ms. Worl stated that Mr. Kippen had been nominated by the other six members of the Review Committee to the position of the seventh member and that his term would expire in August 2009.

#### **Review Committee Motion**

Mr. Steponaitis made a motion that the Review Committee place Mr. Kippen's name on the list of persons being developed and consented to by all the Review Committee members from which the Secretary will appoint the seventh member for the term beginning in August 2009. The motion was unanimously adopted, with Mr. Kippen abstaining from the vote.

### **Discussion of a Proposed General Accountability Office (GAO) Report**

Mr. Kippen stated that a General Accountability Office report could gain attention from Congress and other entities favorable to the National NAGPRA Program. Mr. Kippen stated he would like the Review Committee to strongly support the idea that Congress request a GAO study to gather data and information about federal agency compliance with NAGPRA. Ms. Worl stated that she had received a copy of a news announcement from Indian Country Today that Senator Dorgan and Senator Murkowski both noted for the record that they support a GAO study to assess federal compliance. Ms. Worl stated she would like to include the other concerns of the Review Committee in their recommendation.

#### **Review Committee Motion**

Mr. Monroe made a motion that the Review Committee send a letter regarding support of the GAO study, with the assistance of the DFO, which would include all of the issues discussed by the Review Committee. Mr. Goodman seconded the motion. The Review Committee discussed forming a subcommittee to pursue the GAO study and to make recommendations about key issues. Ms. Worl and Mr. Kippen agreed to work on the subcommittee. Ms. Worl stated she met with Senator Dorgan and his staff in her personal capacity as a representative from Sealaska Corporation to make this request to his office. Mr. Kippen stated that the GAO would develop the study and ask the National NAGPRA Program for information. Ms. Hutt stated that the National NAGPRA Program would fully cooperate in this process.

### **Public Comment – Ms. Sandra Dong**

Ms. Sandra Dong, Peabody Museum at Harvard University, thanked the Review Committee for the opportunity to provide a brief update on the Peabody Museum's implementation of NAGPRA. In the past year, the Peabody Museum published 6 Federal Register notices to enable the repatriation of 19 individual human remains, 22 associated funerary objects, and 43 unassociated funerary objects. To date, the Peabody Museum completed physical repatriation of 2,845 individual human remains, 3,789 funerary objects, and 76 other cultural items; 56 individuals and 102 funerary objects were repatriated in the past year. The Peabody Museum continues to utilize its online collection website to consult with Native American tribes on NAGPRA. The website had 24 password-protected custom lists, which represent approximately two-thirds of the Peabody Museum's active ongoing consultation across the country. Ms. Dong stated she would be happy to speak with anyone interested in viewing collections online and to create custom web-lists. Ms. Worl thanked Ms. Dong for her presentation and the Peabody Museum for consistently attending Review Committee meetings.

### **Public Comment – Ms. Shannon Keller O'Loughlin**

Ms. Keller O'Loughlin stated she was from the Choctaw Nation of Oklahoma but was present at the meeting as counsel for the Onondaga Nation. Ms. Keller O'Loughlin stated she wanted to speak to the Review Committee regarding the Onondaga Nation's experience with museums in the past year, and explained that she worked as contract counsel and provided legal support to Mr. Tony Gonyea, the Onondaga Nation's National Historic Preservation Act representative and NAGPRA representative, in addition to addressing other legal issues of the Onondaga Nation. Ms. Keller O'Loughlin stated that Mr. Gonyea became frustrated trying to work with museums on repatriation issues and asked her to contact museums to open communications in the consultation process. The Onondaga Nation does not accept federal funds, nor does it apply for NAGPRA grants, but the Onondaga Nation does recommend museums apply for NAGPRA grants to support repatriation, and the Peabody Museum recently received funding to assist with the repatriation of 54 human remains.

In addition to human remains and associated funerary objects, the Onondaga Nation looks for specific sacred and cultural patrimony items, such as medicine faces, turtle rattles, nose snakes, and wampum. The Onondaga Nation holds the position of Central Fire for the Haudenosaunee Confederacy and has been given the directive to repatriate items labeled as Iroquois on behalf of the confederacy. Ms. Keller O'Loughlin stated that despite being the Wampum Keeper for the Haudenosaunee Confederacy and the continued ceremonial use of wampum, they still have difficulty with repatriation. Ms. Keller O'Loughlin stated that once the Onondaga Nation has the necessary information and a decision made to seek repatriation, a written request is submitted to the museum, with a citation to 43 CFR 10.10 that requires repatriation to be completed within 90 days. Ms. Keller O'Loughlin stated that a number of museums do not seem to understand or follow this requirement and submit questions and requests for information, which were sometimes offensive to the Onondaga Nation. Another issue was museums that delayed decisions due to scheduling delays with boards of directors. Ms. Keller O'Loughlin stated she was before the Review Committee in the hope of engendering discussion and to recognize the frustration on both sides of the table. Ms. Keller O'Loughlin thanked the Review Committee for the opportunity to speak and for their findings and recommendations for the Onondaga Nation regarding the Engelbert Site human remains. Ms. Keller O'Loughlin stated the Haudenosaunee Confederacy would be extending a written invitation to hold a Review Committee meeting at the Central Fire of the Haudenosaunee Confederacy.

Ms. Augustine stated she understands the frustrations. Cultural sensitivity training might be beneficial in easing the frustration on both sides and might serve as a bridge between different cultures. Ms. Worl stated that the National NAGPRA Program was working to identify questions and issues that were raised consistently and address those, possibly on the National NAGPRA Website. Ms. Mattix stated that the 90-day requirement was from 43 CFR 10.10 and requires that repatriation must take place within 90 days of receipt of a written request for repatriation that satisfies the requirements of 43 CFR 10.10 (a)(1) from a culturally affiliated Indian tribe or Native Hawaiian organization provided that the repatriation may not occur until at least 30 days after publication of the Notice of Intent to Repatriate in the Federal Register. Ms. Mattix stated that there was confusion about this provision, but that it does seem that the 90 days would start when a museum or federal agency decides that the request satisfies the criteria. Mr. Monroe stated that the regulations also require that the consultation requirements listed in 43 CFR 10.10 (a) have been met, which would be more than a letter requesting repatriation; however, the process normally involves consultation to determine cultural affiliation and whether the objects in question meet the definitions in the statute for sacred object or object of cultural patrimony. Ms. Mattix stated that at the training they learned of the need for additional consideration of this provision, perhaps with additional response requirements to acknowledge a written request even if a determination of cultural affiliation has not yet been made. Mr. Monroe stated that this provision was definitely an area that needed clarification.

### **Closing Comments**

Ms. Hutt stated that as some Review Committee members and the public may have to leave early, she would like to take the opportunity on behalf of the National NAGPRA Program to thank the Review Committee members for their time, work and dedication, because without the input, guidance, and time given by the Review Committee members the process would not work. Ms. Hutt stated she would like to recognize Ms. Robin Coates from the National NAGPRA Program for her efforts.

Ms. Hutt stated that in the last two years she recruited heavily in Indian country to fill staff positions of the National NAGPRA Program. The National NAGPRA Program has staff from the archaeology and museum fields. While the

National NAGPRA Program has contractors and interns who were Native American, there were no full-time Native American federal employees. For the position of Program Manager for the National NAGPRA Program, which position Ms. Hutt accepted on a full-time basis, no Native Americans applied. Ms. Hutt stated she hoped people would consider the field and the National NAGPRA Office when positions open in the future in order to have a good representation of applicants from throughout the NAGPRA constituency. Ms. Hutt stated that the newest National NAGPRA Program staff were very talented individuals, but she hoped that future position openings would have many applicants.

Ms. Worl thanked the National NAGPRA staff for their efforts, Mr. Tarler for his first meeting as DFO, Mr. Palmer, and Ms. Mattix and Mr. Simpson for their efforts.

### **Public Comment – Mr. Lalo Franco**

Mr. Lalo Franco, Cultural Historical Director and NAGPRA Coordinator for the Tachi Yokut Tribe, thanked the Review Committee for the opportunity to speak and for all of their good work. Mr. Franco stated he would like to describe the large problems of NAGPRA faced by Native people. Mr. Franco stated that when dealing with the University of California at Berkeley, they have faced a huge problem with lack of consultation. In 2003 they received a letter from the University of California at Berkeley stating the university had 137 sets of human remains that were published in a Notice of Inventory Completion and would be available for repatriation. Mr. Franco stated that they knew the university had more than 137 of their ancestors but faced a long, frustrating struggle before they received copies of all inventories relevant to their ancestral remains. When they received the information, Mr. Franco stated there were 2,300 human remains that were classified as culturally unidentifiable without any consultation with the tribes. The university records show that they contacted the Santa Rosa Rancheria, but there was no information on when or with whom. The inventory states that some of the human remains came from locations where there were currently no federally recognized groups, yet the maps available to identify groups geographically show recognized groups that the university could have consulted.

Mr. Franco described one effort where a claim was made for cultural affiliation based on information in the inventory. Mr. Franco stated they had already repatriated human remains from the same site from a different institution. However, after receiving the claim the University of California at Berkeley stated they could not make a determination of cultural affiliation because they could not be sure of the age of the human remains, nor could they be certain the human remains were even from a burial because they were found on the surface, and in fact the human remains did not come from the site listed in the inventory but from another site. Mr. Franco stated he spoke with the chancellor and presented evidence of the problems at the University of California at Berkeley. Mr. Franco stated they were in a holding pattern in dealing with the University of California waiting to see if the new committee will be effective. Mr. Franco stated that the frustration level for tribes in California dealing with the University of California at Berkeley was very high, and many of the actions of the university have been hurtful and insulting to tribal people. Mr. Franco encouraged the National NAGPRA Program to require proof of consultation because once an inventory has been accepted with culturally unidentifiable human remains then the burden of proof shifts to the tribes.

### **Public Comment – Mr. Jim Brown**

Mr. Jim Brown, member of the Elem Southeastern Pomo Tribe and NAGPRA Coordinator for the Robinson Rancheria, stated his tribe has a 12,000 year documented history in Lake Country. Mr. Brown stated he wanted to speak about the Elem Southeastern Pomo Tribe's frustration with the University of California at Berkeley. Mr. Brown stated they have been trying to repatriate regalia necessary for ceremonies from the University of California at Berkeley, who claims right of possession due to a purchase receipt. Mr. Brown stated that the university also had possession of an 8-foot foot drum, but now claim that they cannot locate it. Mr. Brown stated he was going to create a documentary detailing all of the regalia that was taken. Mr. Brown stated work on these issues would be easier if consortiums of tribes could apply for grants and work together. Mr. Brown stated he has worked with the University of California at Berkeley for 25 years and had become very frustrated. After attending the meeting he was more enthusiastic because he knows that NAGPRA can work, and he will spread this news at home and at ceremonies.

Ms. Hutt stated that grant applications can be made by consortiums with one tribe taking the lead, and in fact the grants panel liked to see groups working together. Large projects could be broken down into multi-parts to be developed over a longer period of time.

### **Public Comment – Group**

#### **Ms. Amy Lonetree**

Ms. Amy Lonetree, citizen of the Ho-Chunk Nation of Wisconsin and Assistant Professor of American Studies at the University of California Santa Cruz, stated that, based on her research and involvement with California Native communities and Indigenous people across the United States, NAGPRA was not working. Ms. Lonetree stated that she was a graduate of the University of California at Berkeley, as well as having worked with Native people, and the campus was determined to retain their collections and had designated approximately 90 percent of the human remains in its collection as culturally unidentifiable. Ms. Lonetree stated she witnessed wonderful work being done by Native leaders and museum professionals at the training and Review Committee meeting, but wanted to emphasize that there were campuses and other places in the United States that were not interested in resolving this issue. Ms. Lonetree stated she wrote a letter representing the NAGPRA coalition in California regarding the culturally unidentifiable regulations, and was saddened at the January teleconference because it seemed that this issue was once again being pushed to the back burner. For many places like the University of California at Berkeley, if this was not required by law it would not happen. Indian tribes have done an amazing job against insurmountable odds and great hostility. Ms. Lonetree stated she wanted to say for the record that while there are people who were interested in working cooperatively, there were definitely people who were not. In her opinion, NAGPRA was not working and new regulations need to be developed so Indian tribes can repatriate their ancestors.

#### **Mr. John Daehnke**

Mr. John Daehnke, archaeologist and anthropologist, graduate of University of California at Berkeley and fellow at Stanford University, stated he would like to speak directly to the issue of the proposed regulations on culturally unidentifiable human remains and the treatment of those human remains that have been classified as culturally unidentifiable. One of the problems was that for some institutions the designation of ancestral remains as culturally unidentifiable was being treated as an end point to the process, although the Review Committee has discussed that the designation was temporary and new information could change the designation. The human remains designated as culturally unidentifiable need to be treated with dignity and should not be available for research or as teaching collections. Mr. Daehnke stated he had information that some institutions, such as the University of California at Berkeley, were using the culturally unidentifiable human remains as teaching collections. Mr. Daehnke stated this issue needs to be addressed in the proposed regulations.

#### **Ms. Joanne Barker**

Ms. Joanne Barker, member of the Delaware Tribe of Indians and faculty at San Francisco State University, thanked the Review Committee for their hard work. Ms. Barker stated this was the second Review Committee meeting and first training she attended and found both to be very useful. Ms. Barker stated she had two main comments. The first comment was exasperation with the way both the NAGPRA statute and regulations have been used to avoid the legal requirements for repatriation. The second comment was frustration at how holes in the legislation, particularly regarding unrecognized Indian groups and people, were allowing the violation of the ethical and legal principles on which NAGPRA was based, and the process relied too much on formal letters of complaint or noncompliance to be submitted before oversight was done. Ms. Barker described two situations at San Francisco State University that illustrate those issues. In one instance involving hundreds of individuals excavated from private lands, due to the site location and dealing with a nonrecognized group, consultation was not conducted nor was NAGPRA followed. A faculty member of the university used campus resources and student labor to conduct research. The university was scandalized by what they considered to be a breach of unwritten university policy, and were working with the Native groups to develop a written policy. Ms. Barker summarized the second situation in that from the 1930s through the year 2000, the anthropology department of San Francisco State University accepted human remains and cultural items from private contractors, the majority of which had little or no documentation. Over 300 boxes had been found that had not gone through any inventory process, and the university was asking to do NAGPRA inventories while at the same time claiming that the contents of the 300 boxes were from private collections and did not fall under NAGPRA. Ms. Barker stated she was very frustrated with what was not working in NAGPRA, and the issues needed to be openly discussed.

### **Mr. Clayton Dumont**

Mr. Clayton Dumont, member of Klamath Tribe and Professor of Sociology at San Francisco State University, stated the training was the third training he had attended and he very much appreciated the emphasis on consultation. Mr. Dumont stated he wanted to comment on the issue of federally unrecognized groups. Mr. Dumont stated the federally recognized groups in California felt it was their responsibility to ensure that the unrecognized groups were consulted and dealt with in a respectful manner with regard to their ancestors. Mr. Dumont stated he was a member of a tribe whose federal status was terminated from 1961 to 1987 and he knew firsthand how degrading, disrespectful, insulting, and hurtful it was to be told by the United States that they were not Native people. California communities without federal recognition were Indian people and both the people and their ancestors needed to be treated with respect. Mr. Dumont urged that provisions that dealt with federally unrecognized groups remain in the proposed regulations for culturally unidentifiable human remains. Mr. Dumont stated his final comment was concern that he has about the published writings and public statements of members of the scientific community, which seem to be an attempt to re-narrate NAGPRA. Mr. Dumont stated that he does not consider NAGPRA to be compromise legislation; NAGPRA was human rights legislation with the law and language designed for Native people. Mr. Dumont stated one publication by a past president of the SAA goes so far as to say that NAGPRA was not about repatriation, and other statements from well-known, reputable members of the scientific community who claim more research was being done as a result of NAGPRA than prior to the passage of NAGPRA. Mr. Dumont stated that in California people were using science to create the inventories and then deciding who to consult.

### **Review Committee Discussion**

Ms. Hutt stated that in its letter proposing a GAO study, the Review Committee might wish to include consideration of how many inventories appear to be the result of consultation or not. Mr. Kippen thanked Ms. Lonetree, Mr. Daehnke, Ms. Barker, and Mr. Dumont. Mr. Kippen summarized the comments: NAGPRA was not working well, particularly in certain circumstances in California; there was a great need to have a process to protect, care for, and respect culturally unidentifiable human remains; Ms. Barker emphasized the importance of the implementation process; and Mr. Dumont emphasized the importance of addressing the needs of federally unrecognized groups in the NAGPRA process. Mr. Kippen stated the Review Committee was aware of the history of the Klamath Tribe, and he would be interested in receiving more information regarding the publications discussed by Mr. Dumont. Ms. Hutt stated the National NAGPRA Program could assemble information for the Review Committee with a notice on the Website inviting voluntary submission of publications. Ms. Augustine stated clearly there was a problem with an institution that had such a large collection of human remains, and stated that her tribe and others were willing to work with nonfederally recognized groups for repatriation claims.

### **Closing Comments**

Mr. Kippen thanked the public for attending the meeting, the Review Committee members for their insights, and the National NAGPRA Program staff for their work. Mr. Steponaitis stated he would like to add his thanks to the Review Committee members, National NAGPRA Program staff and members of the public. Mr. Goodman stated he would like to thank the Review Committee members, National NAGPRA Program staff, and especially the members of the public from whom he has learned a great deal.

### **Closing Prayer**

Ms. Augustine stated her spirit name was Thunderbird Turtle Woman, and she was Micmac from the East Coast of Wabanaki Tribes of Maine. Ms. Augustine stated she brought tobacco that she would hold while giving thanks for the spirits of the ancestors and all the ancestors. Ms. Augustine stated she would, with the tobacco, say a prayer for all ancestors and specifically the ones from California from the University of California at Berkeley. Ms. Augustine asked that someone take the tobacco and sprinkle it someplace close to those ancestors. Ms. Augustine sang a Native song and offered a Native American prayer.

**Meeting Adjournment**

The meeting was adjourned at 2:15 p.m., Sunday, October 12, 2008.

Certified –

\_\_\_\_\_  
Mr. David Tarler,  
Program Officer, National NAGPRA Program  
Designated Federal Officer, Native American Graves Protection  
and Repatriation Review Committee

\_\_\_\_\_  
Date

Approved on behalf of the Review Committee –

\_\_\_\_\_  
Mr. Dan Monroe  
Chair, Native American Graves Protection  
and Repatriation Review Committee

\_\_\_\_\_  
Date

# NAGPRA Civil Penalties

## The FY 2008 Status Report

Bob Palmer  
Civil Penalties Investigator  
bob\_palmer@nps.gov

1



## Eight ways that a museum might fail to comply with the Act or its regulations

- 1) Sale or transfer of NAGPRA items contrary to NAGPRA.
- 2) Failure to complete a summary.
- 3) Failure to complete an inventory.
- 4) Failure to notify tribes within 6 months after completion of the inventory.
- 5) Refusal to repatriate.
- 6) Repatriation prior to publishing a notice in the Federal Register.
- 7) Failure to consult with tribes and/or lineal descendants.
- 8) Failure to inform recipients that items have been treated with pesticides.

## Allegations Received/Investigated - 2008

### **New Allegations Received:**

23 new counts

5 museums

### **New Allegations Investigated with Findings Made:**

19 of the new counts

3 museums

3

## Investigations - 2008

**7 museums were investigated**

**39 allegations of failure to comply were investigated**

3 museums failed to comply

8 separate counts substantiated

31 counts unsubstantiated

Of the unsubstantiated counts, 2 counts, alleged against 1 museum, were found to be unsubstantiated because the deadline for compliance had not yet passed (future applicability).

4

## Failure to Comply Allegations Substantiated by Violation Type

Violation Type	FY 2008
1 Transfer	0
2 No Summary	1
3 No Inventory	0
4 Not Notify	0
5 Not Repatriate	6
6 No Notice	0
7 Not Consult	1
8 Pesticides	0

5

## Penalty Assessments

- To date, 4 notices of penalty assessment have been issued to 4 museums
- Penalties assessed = \$12,670
- Penalties have been paid by 2 museums (\$6,250)
- The 45-day notice period has not yet run for payment of \$6,420 assessed against the other 2 museums.

6

## Allegations of Failure to Comply: A Snapshot of the Raw Numbers

Through FY 2008, 130 allegations of failure to comply with the requirements of NAGPRA have been made against 42 museums.

Year	Total Counts
1996	Alleged
1997	7
1998	10
1999	2
2000	4
2001	4
2002	25
2003	11
2004	16
2005	10
2006	3
2007	14
2008	23

7

# Allegations of Failure to Comply: By Allegation Type

**Abbreviated Definitions of Failure to Comply**

- 1) Sale or transfer of NAGPRA items contrary to NAGPRA.
- 2) Failure to complete a summary.
- 3) Failure to complete an inventory.
- 4) Failure to notify tribes within 6 months after completion of the inventory.
- 5) Refusal to repatriate.
- 6) Repatriation prior to publishing a notice in the Federal Register.
- 7) Failure to consult with tribes and/or lineal descendants.
- 8) Failure to inform recipients that items have been treated with pesticides.

FY	1	2	3	4	5	6	7	8
1996					1			
1997			3				4	
1998	1		7				2	
1999	1	1						
2000	1		1		1		1	
2001		2	1	1				
2002	3	4	3	3	6	3	3	
2003		1	1	1	6		2	
2004	1		6		5		4	
2005	3		2		1		4	
2006			3					
2007	2		1	2	3	1	5	
2008	7	2	4	2	3	1	3	1
<b>Tota</b>	<b>19</b>	<b>10</b>	<b>32</b>	<b>9</b>	<b>26</b>	<b>5</b>	<b>28</b>	<b>1</b>

## Backlog Cases (Pre 2006)

<b>Disposition of Backlog Cases</b>	<b>Number of Museums</b>	<b>Number of Counts</b>
Cases on Books - October 1, 2005	27	90
Backlog Cases Disposed of - 2006	-2	-12
Backlog Cases Disposed of - 2007	-4	-6
Backlog Cases Disposed of - 2008	-4	-20
<b>Current Backlog of Old (pre 2006) Cases:</b>	<b>17</b>	<b>52</b>

9



## Allegations Received, Cleared and Outstanding

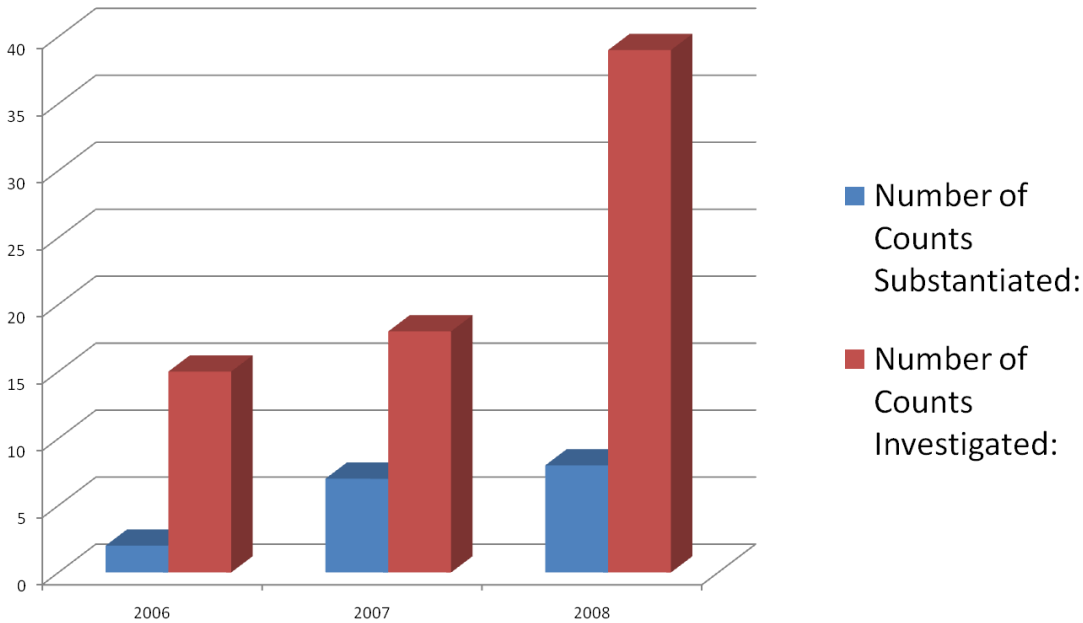
Date Allegations Received	Number of Museums	Number of Counts Alleged	
Prior to 2006	27	90	
2006	3	3	
2007	7	14	
2008	5	23	
	42	130	
Matters Disposed of			
Prior to 2006	0	0	* Some museums investigated have had other allegations made against them that are still pending investigation.
2006	-3	-13	
2007	-8	-18	
2008	-7	-39	
<b>Current Matters Outstanding:</b>	<b>26*</b>	<b>60</b>	

## Failure to Comply Allegations Substantiated by Violation Type

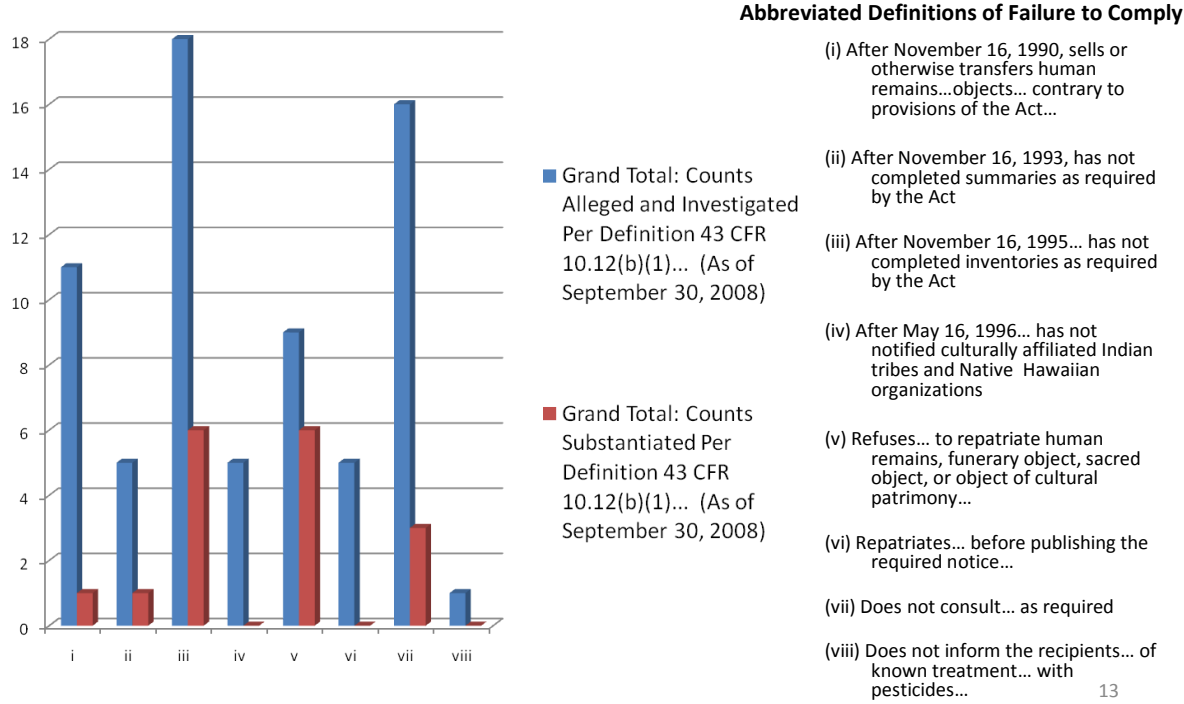
Violation Type	Total
1 Transfer	1
2 No Summary	1
3 No Inventory	6
4 Not Notify	0
5 Not Repatriate	6
6 No Notice	0
7 Not Consult	3
8 Pesticides	0

11

# Counts Investigated & Counts Substantiated



## Failure to Comply Counts Investigated Counts Alleged vs. Counts Substantiated (As of September 30, 2008)



## Investigated Museums (By Percentage)

**Total Number of Museums Investigated: 18**

Percentage of Museums Investigated that Have Failed to Comply: 61% (11 Museums)

Percentage of Museums Investigated that deadlines had not yet passed and / or had failed to comply : 78% (14 Museums)\*

Percentage of Museums Investigated that no Allegations are Substantiated at the time of the investigation: 39% (7 Museums)

\* In this group, some museums are counted twice due to a later allegation of non-compliance relating to a previously non-ripe allegation.



# National Park Service Law Enforcement, Security and Emergency Services

Thank You

Bob Palmer

Civil Penalties Investigator

[bob\\_palmer@nps.gov](mailto:bob_palmer@nps.gov)

15