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RECENT DEVELOPMENTS

TRIBAL LEADERS ATTEND HISTORIC NATIONAL REPATRIATION SUMMIT, OKLAHOMA CITY, JUNE 8-9, 2000

Scarlet Wootton*

"We all have ancestors remains that are sitting somewhere in boxes on shelves, somewhere, warehoused. We all want to see them returned."¹

Chickasaw Nation Lt. Gov. Jefferson Keel's statements reflect the general consensus of tribal participants at the Native American National Repatriation Summit (the Summit), held in Oklahoma City, Oklahoma, on June 8-9, 2000. The Chickasaw and Choctaw Indian Nations hosted the Summit. The Summit was the first of its kind in that it was the first national summit wholly coordinated by Native Americans for the sole purpose of addressing Native American Graves Protection and Repatriation Act (NAGPRA) issues.²

"The passage of NAGPRA reflected a compromise between the scientific communities' interests and Native Americans' religious and spiritual concerns for the reburial of ancestral remains," explained Martin Sullivan of the NAGPRA Review Committee (the Review Committee).³

Guidelines for the repatriation of human remains, funerary objects, sacred objects, and cultural patrimony objects are outlined by NAGPRA.⁴ According to NAGPRA, when remains or objects are found on federal lands, or if they are held or controlled by federal agencies or museums, tribes that are culturally affiliated with those remains or objects may have them returned to the tribe.⁵ Museums and universities must notify affiliated federally recognized tribes of any remains or burial artifacts in their collections by submitting a detailed inventory to the tribe.⁶ Cultural affiliation means that

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1. Interview with Jefferson Keel, Lieutenant Governor, Chickasaw Nation, in Ada, Okla. (Oct. 16, 2000) [hereinafter Keel Interview].

2. Pub. L. No. 101-601, 1045 Stat. 3048 (codified at 18 U.S.C. § 1170 (1994) and 25 U.S.C. §§ 3001-3013 (1994)). NAGPRA became law on November 23, 1990. See Renee M. Kosslak, *The Native American Graves Protection and Repatriation Act: The Death Knell for Scientific Study?*, 24 AM. INDIAN L. REV. 130 (1999-2000).

3. Telephone Interview with Dr. Martin E. Sullivan, NAGPRA Review Committee Member (Nov. 22, 2000) [hereinafter Sullivan Interview].

4. 25 U.S.C. §§ 3001-3013 (1994).

5. *Id.* § 3005(a). "Federal lands" means any land other than tribal lands which are controlled or owned by the United States. *Id.* § 3001(5). "Federal agency" means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution. *Id.* § 3001(4).

6. *Id.* § 3003.

"there is a relationship of shared group identity which can be reasonably be traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group."⁷ However, the burden shifts to the tribes to prove rightful ownership through cultural affiliation.⁸ If the Tribe fails to prove affiliation, the agency or museum retains control.⁹

When there is no demonstration of affiliation, the remains are deemed "culturally unidentifiable." There is no formal protocol on how to handle "culturally unidentifiable" remains. A key concern prompting the Summit was the repatriation of these "culturally unidentifiable" remains.¹⁰ The Summit provided a forum for the formulation of a protocol for claiming unidentifiable remains.

The objective of the Summit was to establish a national coalition and formulate a draft resolution that represents a united Native American position on repatriation.¹¹ Over 250 tribal members from across the Nation in addition to a number of federal agency representatives attended the historic Summit. During a day-long "Coalition Building" Session Tribal leaders exchanged ideas and information concerning repatriation issues. Ultimately, an in-depth discussion ensued concerning common challenges Tribal leaders face in addressing repatriation and methods to overcoming those barriers.¹²

Some members from the Review Committee attended the Summit.¹³ The Review Committee monitors and reviews the implementation of the inventory and identification processes of repatriation activities.¹⁴ One of the primary responsibilities of the Review Committee is to make recommendations regarding specific actions for developing a process for the repatriation of "culturally unidentifiable" remains that are in the possession and control of federal entities.¹⁵ The Review Committee proposed a series of recommendations concerning "regionalization" as a viable method for addressing "culturally unidentifiable" remains issues at the Committees' Spring

7. 25 U.S.C. § 3001(2) (1994).

8. *Id.* § 3002(a).

9. *Id.* § 3002(b).

10. Keel Interview, *supra* note 1. All American Indian remains are included in NAGPRA, because the Act does not specifically define human remains. Kosslak, *supra* note 2, at 139.

11. *Resolution of Native American Repatriation Summit* (visited Mar. 6, 2001) <<http://www.chickasaw.net/repatriation/resolution.htm>> [hereinafter *Resolution*].

12. Keel Interview, *supra* note 1.

13. 25 U.S.C. § 3006 (1994). NAGPRA directs the Secretary of the Interior to establish and appoint an advisory committee composed of seven members nominated by Indian tribes, Native Hawaiian organizations, museum, and scientific organizations. *Id.*

14. *Id.* § 3006(a).

15. *Id.* § 3006(c)(5).

Bi-Annual Conference in Juneau, Alaska on April 2-4, 2000.¹⁶ These recommendations provided a substantial basis for Summit discussions.¹⁷

The Review Committee's recommendations are published in the Federal Register.¹⁸ The Committee recognized that historical and cultural factors affecting the disposition of "culturally unidentifiable" remains differ across the Nation. The Committee noted: "Issues in the Southeast where most Indian tribes were forcibly removed during the nineteenth century, are very different from those in the Southwest where many Indian tribes remain on their ancestral lands. Similarly, issues in the Northeast and California, differ significantly from those in the Great Plains."¹⁹ As a result, the Review Committee concluded that regional solutions should be developed to accommodate regional circumstances.²⁰

The Review Committee outlined a five-step process for regionalization. First, tribes must define regions to develop the "most appropriate solutions" for repatriation of "culturally unidentifiable" remains.²¹ Second, within each region, tribes, federal agencies, and museums would work together to develop an implementation plan.²² Third, regional consultation meetings would remain open to other interested parties.²³ Fourth, the tribes, agencies, and museums would then formulate disposition agreements.²⁴ Fifth, as an alternative, the Review Committee could hear any disposition disputes that could not be agreed upon at these regional consultation meetings.²⁵

"The answer is regionalization as reflected in the recommendations of the National Review Committee. Indian tribes must build coalitions to successfully conduct repatriation of culturally unidentifiable Native American remains. The Summit was an ideal place to begin and strengthen such coalitions," stated Lawrence Hart, Review Committee member.²⁶

Small, regional coalitions are already in existence in several areas of the country. For example, a group of five tribes in the Northwest laid claim to the remains of the Kennewick Man, a 9000-year-old skeleton discovered in Washington State in July 1996.²⁷ Also, the Intertribal Council of the Five

16. Sullivan Interview, *supra* note 3.

17. Keel Interview, *supra* note 1.

18. Recommendations Regarding the Disposition of Culturally Unidentifiable Native American Human Remains, 65 Fed. Reg. 36,462 (June 8, 2000) (to be codified at 43 C.F.R. 10.11).

19. *Id.* at 36,462(D)(2)(a).

20. *Id.*

21. *Id.* at 36,462(D)(2)(b)(i).

22. *Id.*

23. *Id.* at 36,462(D)(2)(b)(iii).

24. *Id.* at 36,462(D)(2)(b)(iv).

25. *Id.* at 36,462(D)(2)(b)(v).

26. Telephone Interview with Lawrence H. Hart, National Review Committee Member (Nov. 3, 2000).

27. *Tribes Win Ancient Bones Battle*, BBC News Online, Sept. 26, 2000 (visited Sept. 26,

Civilized Tribes (Council) has a repatriation committee that meets quarterly to discuss repatriation issues within the Council's region.²⁸

"The problem is that these regional coalitions often act individually rather than as a "national" coalition," Lt. Gov. Keel explained. Keel acknowledged that tribes have inherent, differing philosophies and cultures concerning burial practices and rituals. However, Keel pointed out, "Repatriation is a topic that most Native American leaders can agree on, more than anything else, they agree, we need to rebury our ancestors. What we are striving to do is bring some unity to the process in terms of presenting a voice to Congress and to the federal government on how to decide how these items ought to be treated and repatriated."²⁹

"I feel it is important that American Indian tribes learn the benefit of working together within tribal coalitions to form a more powerful force without losing their identity as separate tribes. Coalitions offer tribes the opportunity to unite for a common goal and to create geographic and social forces with real power to promote change," stated Joe Watkins, Ph.D. Agency Archeologist at Anadarko Bureau of Indian Affairs.³⁰

The draft resolution further expands the Committee's recommendations by proposing a national coalition composed of regional coalitions to be utilized for the repatriation of these remains.³¹ Each major geographic region of the country would have a committee of tribal representatives. This committee would represent the interests of the tribes as a whole. The coalitions would make disposition decisions concerning "culturally unidentifiable" remains internally. In addition, the draft resolution calls for tribal-run regional repositories to hold unidentifiable remains and artifacts, while the coalition makes the decision. Regional review teams would continue to work with federal and state agencies, in addition to the museum community. The teams would serve a direct role in the regional repatriation process and submit recommendations to the Review Committee.³²

"Regional coalitions would especially be helpful in cases more than one tribe files an affiliation claim. It's important for tribes to come together and claim these remains jointly. The development of more regional coalitions will help speed the repatriation process of culturally unidentifiable remains," Sullivan emphasized.³³

2000) <http://news.bbc.co.uk/1/hi/english/world/americas/newsid_942000/942299.stm>

28. Interview with Stephanie Seeley, Historic Preservation Officer, Chickasaw Nation, in Ada, Okla. (Sept. 28, 2000).

29. Keel Interview, *supra* note 1.

30. Joe Watkins, Remarks at the "Coalition Building" Session of the Summit (June 8, 2000) (transcript available at the Chickasaw Nation Office of Heritage Preservation).

31. See the draft resolution *infra* app.

32. Keel Interview, *supra* note 1.

33. Sullivan Interview, *supra* note 3.

Thus, a national tribal coalition composed of these regional teams would help oversee repatriation and help speed the return of ancestral remains and artifacts. "A national coalition will operate as a common thread to unite all Indian tribes across the nation," explained Keel.

The draft resolution is a reflection of the dialogue that occurred between a diversity of tribal leaders and represents the "common voice" of the tribes. Essentially, the draft resolution is a set of proposals agreed upon by Summit tribal participants for future refinement and direction of NAGPRA implementation. The draft resolution advocates for a change in the philosophy of the federal government by allowing tribal leaders to have a greater voice in the decision-making processes of NAGPRA through the utilization of regional tribal panels.³⁴

The draft resolution remains open to further discussion. Tribal leaders and interested parties are encouraged to review and comment on the resolution online by visiting the Chickasaw nation homepage at <<http://www.chickasaw.net>> (click on the "Repatriation" link). The objective is to incorporate the comments into a final version for submission to the Secretary of the Interior Gale Norton and congressional members. The Chickasaw and Choctaw Nations are sponsoring a second National Summit in June 2001 in Oklahoma City in order to finalize the draft resolution and further elaboration on coalition building.³⁵

Chickasaw Nation Governor Bill Anoatubby reflects an optimistic view and termed the Summit a success.³⁶

Lt. Gov. Keel added, "This is a start in getting tribal leaders to come together and show that tribes can work together. We have a common belief in protecting our sovereignty, customs, traditions, and beliefs, which reaches far beyond plain economical development, health care, or congressional funding."³⁷

34. Keel Interview, *supra* note 1.

35. Interview with Kirk Perry, Administrator of Heritage Preservation, Chickasaw Nation, in Ada, Okla. (Sept. 28, 2000).

36. Interview of Bill Anoatubby, Chickasaw Nation Governor, by Dusk Monetathchi, *Chickasaw Times* Staff Writer, in Ada, Okla. (June 9, 2000).

37. Keel Interview, *supra* note 1.

APPENDIX

Native American Repatriation Summit
Oklahoma City, Oklahoma
June 9, 2000

We, the undersigned leaders and representatives of Native American Tribes have determined to unite and form a national inter-tribal coalition. The purposes of this coalition will be to:

Assist in the disposition of claims to all of the so-called "unaffiliated" American Indian remains, objects and artifacts, and to protect our ancestors by assisting tribes in reclaiming and re-interring their remains; and,

Use this national inter-tribal coalition to act as one voice, and one spirit, with the goal of safe guarding and insuring that the protections offered to Native American tribes and individuals by NAGPRA and other federal laws are preserved; and,

Use this national inter-tribal coalition to assist in amending or changing those provisions of NAGPRA or other federal laws which undermine and delay the repatriation process; and,

Facilitate government-to-government relations between federal agencies, museums, universities and tribal governments as directed in appropriate laws and executive orders with matters concerning repatriation.

WHEREAS, the coalition agrees that as we are the protectors and guardians of our ancestors and our children, we shall continue to unite until we achieve the changes that are necessary and all of our ancestors are returned for proper reburial. Together we are strong; we unite to speak with one voice and we shall be heard; and,

WHEREAS, the coalition supports the recommendations of the NAGPRA review committee regarding the development of regional consultation meetings regarding repatriations, and removal of the NAGPRA program from the National Park Service and transfer of responsibility for the NAGPRA program to the Secretariat of the US Department of the Interior; and,

WHEREAS, the coalition opposes any type of scientific testing or other studies on American Indian human remains for the purpose of determining cultural affiliation; and,

WHEREAS, the coalition agrees to assist in locating and designating a tribal facility or a regional tribal repository for the temporary management of the human remains or culturally sensitive materials until a reasonable determination of cultural affiliation can be established by tribal representatives, for the purpose of repatriation; and,

WHEREAS, the coalition agrees to continue to strive to educate the interested public regarding Native American spiritual beliefs of the Indigenous

Peoples of the United States, and will strive to maintain tribal customs and traditions in the most sensitive of issues; and,

WHEREAS, the coalition agrees that by working together and maintaining our relationships within the sacred cycle of life, we may resolve the spiritual disturbances within our Native American communities.

NOW THEREFORE BE IT RESOLVED, that the undersigned tribal leaders hereby call upon the Secretary of the United States Department of the Interior to transfer authority for the NAGPRA programs from the National Park Service to the Department of the Interior; and,

BE IT FURTHER RESOLVED, that the determination of cultural affiliation of Native American human remains, artifacts, funerary objects and objects of cultural patrimony shall be made in consultation with Native American tribal governments, Alaskan Native Communities and/or Native Hawaiian Organizations.

Formulated and agreed to this the 9th day of June, 2000 at Oklahoma City, Oklahoma.

Signed:

Governor Bill Anoatubby, Chickasaw, P.O. Box 1548, Ada, Okla. 74820

Lieutenant Governor Jefferson Keel, Chickasaw, P.O. Box 1548, Ada, Okla. 74820

