

Mr. FALCOMAVAEGA. Thank you, Dr. Sullivan.

The impression I get, gentlemen, is an entirely different perspective from the previous panel, in terms of the treatment of Indian remains over the past years, both dealing with museums as well as Federal agencies. There seems to be a total disagreement here. But let me just ask my first question of Dr. Kintigh.

You suggest in your statement that there ought not be any limitations placed on the scientific studies conducted on these remains. I think Chairman Udall's bill suggests that, but for a 5-year period. Are you suggesting that we not have a limitation on the amount of time that it ought to take to conduct scientific studies on some of these remains, if there really is a valid claim to such a study?

Mr. KINTIGH. Mr. Chairman, I don't believe that I testified to that. I certainly did not intend to. I believe that where there's a legitimate claim for return, that claim should be enforceable. I think the provision in H.R. 5237 for a short period of study and then return within 90 days is entirely reasonable, but I certainly do not believe there should be any sort of indefinite restriction that would allow scientific study to go on forever.

Mr. FALCOMAVAEGA. You agree then that even a 90-day study period would be sufficient before the artifacts or remains could be returned?

Mr. KINTIGH. I think what H.R. 5237 says is that if there's a study that is indispensable for the United States, that within 90 days after completion of that study the remains should be returned. I have no objection to the way the bill is written in that regard whatever.

Mr. FALCOMAVAEGA. Dr. Thompson, you stated that the bill should reflect some kind of a balanced approach and I didn't quite understand what you meant by that. I think that's what the attempts have always been, to give this a balanced approach. Are there some areas that you consider unbalanced in terms of the provisions stated in these bills?

Mr. THOMPSON. No, Mr. Chairman. I think the problem that we perceive is that a balance is permitted but not encouraged in the language of the legislation. The problem that museums have, as has already been mentioned here today by several speakers, is that we are already burdened with a variety of legal and ethical considerations and we must balance those off with the concerns and needs of the Indian community.

I think ultimately the problem goes back to Mr. Sullivan's statement, that these are ethical issues and it is very difficult to legislate ethical issues. I believe the record of recent years, as he has indicated, will show that museums have attempted to deal with these issues in this balanced manner that I have suggested, rather than trying to take a rigid, legalistic view of these matters.

Mr. FALCOMAVAEGA. Aside from the legalistic approach, which I don't find inviting as far as this issue is concerned, but taking into consideration the ethical, and I would say even the religious aspects—and I believe even in our Christian ethic we all can agree with the fact that any human remains ought to be given their sacred or proper respects—by doing so, what really grates me is to see 19,000 Indian remains hanging there in the Smithsonian Institution in cardboard boxes. To me, that is the most immoral act

that our Government has ever taken, showing total disrespect for human remains.

Now, I was told it is sorely needed because they need to do scientific studies. Suppose a remain has been there for 100 years; how many more years does it need to be there? That's my question. Maybe you gentlemen from the scientific community can help us with that.

I've had a hard time with one of the leaders of the Smithsonian Institution to justify to me—those remains have been there for over 100 years for scientific studies, and I gather they're in cardboard boxes. They're not even being studied any more. I'm going to propose legislation that we ought to allocate Federal lands to bury every Indian remain that is found in a museum where there's no need for it.

[Applause.]

I am sure the Christian ethic does hit us in this very ethical issue. What can we do? I would invite you gentlemen to offer suggestions to this effect. I don't think it's a very difficult act to get the remains and give them a proper burial, a proper disposition of the remains. Is it true in your museum, Mr. Sullivan? How many remains do you have?

Mr. SULLIVAN. The Heard Museum is not an institution that has ever collected human remains. When I was up in the New York State Museum, we faced that problem. We had about 400 individuals represented in the human remains collection. A certain smaller percentage of those remains were people who were non-Indian and whose remains came to us through accidental finds, some State Police discoveries and so forth. A larger percentage were, in fact, Indian. Over the course of years, as in many other institutions, there was very little effort made to systematically conduct research. On the other hand, the research that has been undertaken in recent years has proven to be of some great value to all parties.

The issue that H.R. 5237 addresses is consent, and consent is an appropriate standard. One of the difficulties, though, as Dr. Thompson has mentioned, is determining who has the right to speak for remains. In some cases it's very clear. There are institutions that have promised affiliated tribes in the past that they would, in fact, rebury remains after they've been excavated, and failed to do so. I think there we have failed ourselves, as ethical institutions, if we haven't taken those actions.

But if there has been consent, as there was recently when the Zuni people of New Mexico determined that the right disposition for human remains that were in the custody of the New Mexico State Museum was to leave them there in custody, that it was in accordance with their religious principles, then their right of self-determination has been exercised.

They are very tough issues, as I think the committee is well aware, sir, and we do need a national standard. I think we also have to recognize that there are different voices within the Native American community and that our challenge is to be sure that we are in touch with everybody, that we fully disclose what has been collected and held by museums, and that we are serious about the discussions about future disposition.

Mr. FALCOMAVAEGA. We've just had two cultural leaders from the Native American community, Mr. Lefthand and Mr. Haney, testify before the committee, and it seems as though they're speaking Chinese and you're speaking English. The question is, how can you ever bring the two groups together. The problem here is that I don't think we have that understanding of what the Native Americans are saying about how sacred it is when dealing with the human remains of their people.

In the same way I would say it's very sacred for me to go visit the mausoleum of George Washington and Thomas Jefferson and some of the great leaders of our country. I mean, they're held in the same reverence as would the Native Americans. Do you think maybe the Christian ethic should be beyond any ethical determination at all? All they're asking for is just the remains of their dead to be buried and given a proper burial and that's it.

Do we really need to do more? What scientific studies are we really doing for the Native Americans? What good is it giving us—that they migrated from Alaska to the Bering Strait, or here to Central America? I don't know. I'm just trying to reflect on what you're saying. They are ethical issues, but I just wanted to know if you might have some answers to this.

Do you feel the legislation that's being proposed is not strong enough, not specific enough? Do we need to make it more specific?

The problem I have with more specific is that, the more specific we get, the more rigid any piece of legislation gets. On the other hand, if you make it broad enough, you tend to make it flexible so that you're able to adjust accordingly. I just wanted your points of view about these two extremes. I think there is one point of view saying that you need to be a little more specific about the proposed bills, but my fear is that, when you do become more specific, you tend to limit the ability to be more flexible. Now, I may be wrong on that, but I would love to hear your views on that. Dr. Thompson.

Mr. THOMPSON. Mr. Chairman, we certainly recognize that there have been inappropriate practices on the part of museums in the past. All we can do is regret them at this time and reflect upon what is happening today and the intentions of museums with respect to the future. I think there is a good deal of convergence between the desires of the Indian community and the scientific and museum community, even though the extremes of positions get expressed in circumstances like this.

I can only reflect, for example, on the experience of my own institution. Our first effort at repatriation took place in 1933, involving human remains. We have in more recent years been involved in three fully completed and mutually satisfactory exchanges of human remains and cultural materials with Indian communities in Arizona and New Mexico. We are currently negotiating with another Indian community, which has resulted in consultation with 18 other Indian communities, to help determine what is the most appropriate way of responding to the Indians' needs. It's a very, very complex issue and one in which it's very difficult for us, as non-Indians, to try to make a decision.

Clearly, no legislation is ever going to make that decision for us, but it can help to set the standards by which those decisions can be

made, mutually and cooperatively, by the museum and the Indian community.

We have probably 3,000 human remains in the Arizona State Museum. These have all been fully studied, so that we are not waiting a hundred years to do something with those materials. We are in negotiations, in a proactive manner, as the Museum of New Mexico is in our neighboring State, to notify Indian communities of these materials and solicit their consent and their desires as to what should be done with these things.

So I think one of the problems we have in these discussions is that there obviously are egregious practices in the past that we would all like to have go away. We can't do anything about that. But we can certainly take responsible action today, under the leadership of this committee and this kind of legislation, to respond to these needs in a successful manner.

Thank you very much.

Dr. Kintigh.

MR. KINTIGH. I would like to reinforce what Dr. Thompson said, that while many of these collections were made 100 years or more ago, studies on those collections continue today. They have hundreds of scholarly visitors coming to do continual studies, and that's true, to my knowledge, of all the major institutions that have collections of human remains. So it is not something that's static and they're just sitting there.

Now, that is not to assert that those scientific values supersede the traditional values. I don't think any of us here are saying that they do. What we're saying is that I think, in general, H.R. 5237 provides an appropriate framework where we can get together with Native American people who have some relationship to the remains, and the scholars who have an interest in those remains, and discuss those things.

We would argue, the Society of American Archeology, that, in fact, the bill sets up a proper framework where that determination can be made of affiliation, that the decision over the control of those remains should be made by the Indian groups themselves. We believe, and would like the opportunity to convince some of the Native groups, that those remains do have a great deal to tell them about their heritage. Many of the groups we have dealt with—we sit down with specific groups and talk about specific sets of remains—are interested in the kinds of things that can be learned from those remains, even though they may insist—and we would agree—that those remains should ultimately be returned to them for reburial.

MR. FALCOMVAEGA. Dr. Sullivan.

MR. SULLIVAN. Well, I think where there is a broad area of agreement is that nobody wants a double standard. One of the fundamental principles of ethics is you treat every person in the same consistent way. There has been a double standard. By far, the preponderance of human remains that museums have acquired over the years have been Native American in origin. There is a lot of very important scientific research that has been done recently on non-Native American human remains, done in medical schools, at universities, and in museums, that has shed an immense amount of light on issues such as the origins and effects of disease in popula-

tions, the impact of different sorts of diets. That's done in a respectful way. In fact, scientific knowledge that has come out of it has been immensely important.

What has been offensive is the reality that the Native American remains have been not only greater in numbers but treated as if inferior in status. I think where the scientific community has come to a strong consensus is that no double standard should ever be applied again; that where return is sought for repose, that has to go forward, but that there is value to scientific research and to the kind of education that can come out of it for the future.

Mr. FALCOMAVAEGA. You mentioned double standards. I mentioned specifically about anthropology because several years ago a young scientist by the name of Margaret Mead came to our islands and conducted a sociological, anthropological and cultural study of our people. Of course, this was to enhance her theory that her professor had about cultural determinism. Many years later another doctor came by, name of Derrick Freeman, and said these people are the most violent people he's ever experienced or lived with. On the other hand, Margaret Mead was saying we were just passive little natives, sitting under coconut trees strumming our ukuleles, lazy, haphazard people that just don't seem to have any sense of direction.

So here in the scientific community you've got two scientific theories, and my people are put right in the middle as victims, saying this is what you are and who you are. What really made it worse as an insult to our people was she wanted to go to the most primitive of all the islands, which happens to be the most historical and the most important in our history. This is the problem I have in my mind in terms of how well the scientific community can also provide for the needs of given cultures, the people and the studies.

You mentioned about double standards. I think we have already given the Indian people enough double standards, double talk, double everything. I don't think they're asking for any more scientific studies or the remains of their people. I think they're just simply asking to keep them in peace and rest, so that perhaps they won't linger so much with all the problems they're faced with now, and maybe this is the reason why our own country is lingering, having some very serious problems. Some kupunas tell me that.

The problem is that our Christian ethic doesn't believe that. They're superstitious natives who don't know what they're talking about. I don't know. I don't have the answers.

Dr. Sullivan, you mentioned that we don't have enough findings in the proposed bills, and you suggest that we ought to have a couple more statements in reference to self-determination and human rights—

Mr. SULLIVAN. There is a Senate bill, S. 1980, which Senator McCain introduced, which has been revised recently. It kind of sets out why these sorts of actions make sense.

I think what is as important as the outcome is that the legislative intent be clear. It just seemed to me sensible that we recognize there are human rights and self-determination issues as well as values of public education that can be advanced in this way.

Mr. FALCOMAVAEGA. Could we also put maybe Christian ethics involvement, about the sacredness of the human body? I believe it

was the Savior who said that your bodies are like temples of God, and when you desecrate the body, you're desecrating a temple. I don't know if that's what the Good Book says. I may be reading the wrong Bible or something. I'm still a pagan, I guess. [Laughter.]

I don't know where I am. I'm trying to define myself where I am, on the one side being Christian and on the other side sometimes I wonder if I might not be better off in being a pagan or a heathen in some of the things I'm learning about Christianity.

At any rate, gentlemen, thank you very much. The record is open if you have anything you want to offer more specifically to help us. We really will appreciate it.

The next witness to testify is Mr. James Reid, the vice president of the Antique Tribal Art Dealers Association, accompanied by Miss Diana Lopez of Sotheby's, Inc. Mr. Reid, without objection, your statement will be made fully a part of the record. And if Miss Lopez has a statement, it also will be included in the record.

Please proceed.

STATEMENT OF JAMES REID, VICE PRESIDENT OF THE ANTIQUE TRIBAL ART DEALERS ASSOCIATION ACCOMPANIED BY DIANA LOPEZ, ESQ., SOTHEBY'S, INC.

Mr. REID. Mr. Chairman and members of the committee, my name is James Reid. I am vice president of the Antique Tribal Art Dealers Association. Accompanying me today is Diana Lopez, who represents Sotheby's, Inc., which supports our position on the measures before the committee today.

I have a lengthy prepared statement. I will summarize those remarks for you.

Our membership includes many of the leading dealers in the field and it is increasingly looked upon as setting the ethical standards for the industry as a whole. We indirectly represent the interests of tens of thousands of serious collectors of tribal art and have in common many of the concerns of museums around the world.

Like most of our organization's members, our customers' interest in tribal arts is neither casual nor motivated entirely by materialistic or acquisitive concerns. We share a serious interest and respect for the tribal cultures that produced these magnificent works, from both an academic and an aesthetic standpoint, and we believe that our appreciation of these cultures is greatly enhanced through living with the objects that we collect. It is on behalf of this larger constituency that we address you.

While the bill before the committee corrects several of the excesses of the Senate version, and while we fully support reasonable efforts to assure Native American cultural integrity, it contains several provisions with which we must take issue. I will attempt to briefly present our view in general of the issues that relate to this bill.

The appeal of the antique and the exotic is a near universal phenomenon. Through objects, ancient peoples speak across centuries of important lifestyles and aesthetics. The collection and conservation of important objects of antique art is a pursuit that channels man's natural sense of curiosity and acquisitiveness to a high pur-