

Chairman, my good friend from Arizona. Before I leave, I would like to ask a few questions of you.

Mr. Philip Thompson. Certainly, Senator.

The CHAIRMAN. It is obvious from your testimony that we will have some difficulty defining sacred and cultural patrimony. You cited examples like the Onondaga wampum belt, and no one disagrees with that. But your associates are concerned about how far this will extend.

As you suggested, my staff is ready to sit with you and with the Indian leaders to come up with workable definitions of cultural patrimony and the word sacred. I hope you can make yourself available for that, sir.

Mr. Philip Thompson. Mr. Chairman, I would certainly be delighted to do that. I think that is a very positive step and one that would help out.

I can not believe that if the two groups were together trying to do something that would be of obvious benefit to both sides that we could not come up with something.

The CHAIRMAN. Thank you, sir.

Senator McCain. [assuming chair]. Welcome, Mr. Kintigh. Please proceed.

STATEMENT OF DR. KEITH KINTIGH, PROFESSOR, DEPARTMENT OF ANTHROPOLOGY, ARIZONA STATE UNIVERSITY, ON BEHALF OF THE SOCIETY FOR AMERICAN ARCHEOLOGY

Dr. KINTIGH. Mr. Chairman, the Society for American Archeology is grateful for this opportunity to express our general support for the draft substitute of S. 1980 and to raise a few concerns. I will summarize my prepared statement but ask that the complete statement be inserted into the record. I would also like to offer for the record a statement by Lynne Goldstein and Mike Moratto, other members of the Heard Panel.

The Society for American Archeology is a scholarly and professional organization composed of professional and avocational archaeologists committed to the scientific investigation, interpretation, and preservation of the archeological heritage of the United States. I note that the Archeological Institute of America and the Society of Professional Archaeologists also support the position of the Society for American Archeology.

We are not here to defend the status quo. In addition to the changes proposed in this bill, Native American concerns must be incorporated into archeological research and Native Americans should more often benefit from the knowledge gained from scholarly research. That said, let me proceed to talk about the bill.

Although the current draft of S. 1980 still needs revision, it can be an important vehicle for the appropriate repatriation of human remains and objects, the enhancement of Native American access to and knowledge about their heritage, and the protection from looting of Native American cemeteries. We are grateful to Senators Inouye and McCain and to the committee staff for moving so far toward a positive and workable bill.

I will first mention what this legislation would accomplish. Repatriation, of course, is the central goal.

Anthropologists are painfully aware of the fact that repatriation may result in a loss of information about the past. However, we recognize that where a modern group has a reasonably clear cultural affiliation with human remains or objects, that group's desire to control its own material heritage should take precedence over the broader scientific and public interests.

S. 1980 deals effectively with these cases. It requires a finding of cultural affiliation within the context of a case by case consideration of repatriation requests by specific Native American groups. Through its definitions, particularly that of cultural affiliation, the bill properly accepts the responsibility to ensure that human remains or objects are returned to the appropriate groups.

The committee should know that repatriation does not occur only when it is legally mandated. In the absence of legal requirements, good faith negotiation among Native Americans, archaeologists, and museum professionals frequently result in decisions to repatriate human remains and objects.

Next, we strongly support the inventory and identification of human remains and objects in museum collections and we support the notification of groups with which the remains or objects may be affiliated. It will not only provide Native American groups with the information necessary to prepare repatriation requests, but it will make available to them a tremendous amount of information about their heritage. However, we hope that the committee recognizes the immensity of this costly task that is mandated by the legislation and that the Congress will be prepared to appropriate the necessary funds.

The section dealing with the ownership of human remains and artifacts has the potential to become an invaluable tool for halting the looting of Native American graves. For decades, the Society has worked to stop the looting of Native American sites. One of our current initiatives, "Save the Past for the Future," has this as its goal.

Despite strong Federal and State laws, the antiquities market continues to stimulate widespread looting, particularly on private lands. The provisions of this bill should be clarified to outlaw any unauthorized excavation of Native American graves, no matter where it occurs.

Through the ownership and sale provisions of the bill, we see the opportunity to attack the market for human remains and funerary objects, as Mr. Echo-Hawk has remarked. Elimination of the market for these items by prohibiting their sale or purchase would do far more to protect Native American human remains than all other provisions of this bill and all other antiquities legislation combined.

In an attachment to this testimony, we have detailed specific concerns and suggestions. One has to do with the excavation of Native American human remains and objects.

The bill flatly prohibits the disturbance of Native American human remains and objects without consent of the heirs and culturally affiliated groups. While we are sympathetic with the intent, as it stands, we see this section as unworkable. It would stall construction projects nationwide, resulting in what we can only imagine would be unpleasant political consequences for all of us.

It needs to be changed to account for the diverse situations to which it applies, recognizing that nearly all Native American graves now excavated by archaeologists are moved because of imminent destruction due to development. The section must allow for unavoidable disturbance and for situation in which it is not possible to determine cultural affiliation prior to the excavation.

However, as soon as cultural affiliation can be determined, the concerns of Native Americans about the treatment and disposition of the remains or objects should be incorporated into the decision-making process.

Notwithstanding any other law, this bill removes Native American human remains and objects from the definition of "archaeological resource," except where penalties for unauthorized disturbance are imposed. While this sounds innocent enough, and we appreciate Mr. Echo-Hawk's concerns, we fear that the unintended effect might be to exclude Native American human remains and objects from Federal protection against Federally-authorized destruction. We need to move carefully here.

On definitional matters, the meaning assigned to the term "legal title" has great importance for the sections dealing with the sale of remains and objects and for the section concerning repatriation. However, we simply do not understand how this term would be applied and believe that it should be defined. A stringent standard of legal title, which we would support, will both increase the effectiveness of the section prohibiting the sale of artifacts and will facilitate the repatriation process for Native American groups.

Finally, because S. 1980 has the responsibility to ensure that when remains or objects are repatriated they are returned to the appropriate groups, we are pleased that it does not, at present, attempt to deal with the unaffiliated remains.

In conclusion, the Society for American Archeology sees many strengths in this legislation. We generally support the inventory and repatriation provisions, and urge strengthening of the sections prohibiting the sale of Native American human remains and objects and outlawing the looting of Native American sites. We are grateful to the authors of this bill for taking this courageous stand against the pillage of Native American heritage. We pledge to work with you to stop this destruction.

On behalf of the Society for American Archeology I thank you for this opportunity to testify on this important legislation, and we stand ready to work with the committee or any other parties on it.

[Prepared statement of Dr. Kintigh appears in appendix.]

Senator McCAIN. Thank you very much.

Ms. Tatar.

STATEMENT OF ELIZABETH TATAR, CHAIRPERSON, ANTHROPOLOGY DEPARTMENT, BISHOP MUSEUM, HONOLULU, HI

Ms. TATAR. Thank you. I apologize for the condition of my voice. I have laryngitis and am recovering from a cold.

Senator McCAIN. That's all right.

Ms. TATAR. Thank you very much for the opportunity to testify on this draft proposal. I should say that although it was I who prepared this statement, it was done so in close consultation and

agreement with Dr. W. Donald Duckworth, the President and Director of Bishop Museum in Honolulu, Hawaii.

As a staff member of the museum's Anthropology Department for the past 13 years, of which only 5 months has been as Chair, I am most familiar with the problems and concerns of the Native Hawaiian community as they relate to the museum's collections.

Bishop Museum has always strived in its more than 100-year history to maintain a good working relationship with the Native Hawaiian community and actively continues to seek ways to improve these relationships.

The museum was, in fact, established in honor of a Native Hawaiian chief, Bernice Pauahi Bishop, as a repository for Hawaiian and Pacific cultural and natural history. The museum as a whole regards the founding collections—as well as the Hawaiian materials they themselves collect, preserve, and study—as held in trust for the Native Hawaiian community. Indeed, Native Hawaiian materials make up the great majority of our collections.

We therefore support the intent of this act, as it generally reaffirms the unquestionable responsibility of museums to the communities they serve, both as repositories of the communities' cultural patrimony and as recipients of their support, and as it specifically gives Native Hawaiians control over the collection, study, and display of the most culturally-sensitive material in museum collections: the skeletal remains of their ancestors and sacred objects.

Repatriation is not new to Bishop Museum. Human remains, as well as items of cultural patrimony, have been repatriated upon request for several years to both Native Hawaiians and Pacific Islanders. For example, some 375 Hawaiian burials have been released for reburial, and some 250 are in the process of being released. The museum is comfortable with the process guiding these releases. This process is coordinated by the Hawaii State Historic Preservation Office in ways that ensure that the reinterment plans meet all legal and regulatory requirements and are agreeable to all concerned.

Until recently, analysis was usually conducted on the skeletal remains to be reburied. Analysis on the collections of human remains from now on will be carried out only with the agreement of the appropriate Hawaiian organizations, if at all, a procedure guided by recently-passed Hawaii State legislation. In the near future the museum will be proposing the establishment of a special panel of representatives from the appropriate Native Hawaiian organizations to control access to the skeletal collections and to particularly sensitive and sacred objects.

The museum has served and continues to serve as a State and Federal repository for human remains excavated and discovered by both museum and non-museum staff. These collections of remains are not owned by the museum; rather, they were placed in the museum on temporary loan. Of the approximately 2,590 Hawaiian human burials in the museum collections, 1,230 belong to the United States Federal Government. These were removed from lands owned by the military branches and the National Park Service.

Conducting and maintaining collection inventories are basic museum responsibilities. Inventories of culturally sensitive materi-

als are particularly important to have. We do not view the inventories mandated by the proposed legislation as causing undue hardship. We realize that community access to all the museum collections must be maintained, requiring that additional personnel be hired to provide the best available identification of human remains, funerary objects, and sacred objects. We note with pleasure that the act will provide the funds to do so. Indeed, we would welcome the opportunity to improve and increase the information in our existing collection inventories and catalogs to better serve the needs of the Native Hawaiian community which, in turn, will benefit the scientific community.

Although the language of the legislation, particularly in its description of the responsibilities of the Review Committee, may be construed by some to promote adversity rather than cooperation and mutual assistance in the process of repatriation, we do not believe it will result in the removal of all Hawaiian collections from Bishop Museum, nor do we view it as being necessarily detrimental to the scientific community. On the contrary, students of Native American collections in museums stand to learn a great deal more by being actively involved with Native Americans from the very start of their research projects. In the case of Bishop Museum, the legislation would formalize what already has been practiced, thereby ensuring greater and more meaningful involvement of the Native Hawaiian community in the museum's future.

Thank you.

[Prepared statement of Ms. Tatar appears in appendix.]

Senator McCAIN. Thank you very much.

Thank all of you for being here.

Ms. Tatar, earlier we heard from Mr. Myron Thompson regarding a potential amendment for funding a survey for Native Hawaiians' remains and objects. What are your views on that proposal?

Ms. TATAR. I would heartily support that. There are a great deal of Hawaiian materials in Europe.

Senator McCAIN. Your testimony discusses the successful track record that the Bishop Museum has with repatriation of Native Hawaiian remains. Has that been expensive?

Ms. TATAR. Yes; I suppose it has been. I don't know exactly how much it has cost us.

Senator McCAIN. Perhaps you could supply us, for the record, some of the expenses involved that the museum has incurred in carrying out this process. We would appreciate it.

Ms. TATAR. I would be happy to.

[Information to be supplied appears in appendix.]

Senator McCAIN. Thank you.

Mr. Thompson, thank you for being here. How has the Museum of Northern Arizona, under your leadership, worked cooperatively with some of the Arizona tribes?

Mr. Philip Thompson. Senator, primarily our work with them has been prospective work, no. 1, where we have, as a result of our activities, developed some protocols for work that we might do in the future. As an example, the museum did a major excavation on Apache land at the White Mountain Apache Reservation. We came across many human remains and many funerary goods. We had a

90-day period to examine them, and then they were turned over to the tribe for interment.

The museum itself also has significant numbers of sacred and ceremonial objects that belong to Native Americans. However, we hold none of these for the museum. These are all objects that the Native American community has come to us and asked us to hold for them. Essentially, our role has been to hold them in a confidential nature, and also to provide opportunities for any sacred care, such as feeding of the collections, that might be required. Essentially it has just been an open dialog about whatever the problems have been, Senator.

Senator McCAIN. So if this legislation were passed, it would have minimal impact on the way your museum does business?

Mr. Philip Thompson. It would have minimal impact, Senator, assuming that funding was there for the inventory. Then it would. Without funding for an inventory, we would have tremendously significant and detrimental impact upon the museum. But procedurally, it would not be materially different than what we are already doing.

Senator McCAIN. Can you supply us, for the record, a cost estimate of what you think it would cost?

Mr. Philip Thompson. The one that I can provide, not having any of my own, is the one that Dr. Ray Thompson from Arizona State Museum has provided. I think his estimate is somewhere in the order of \$500 to \$600 for investigation of physical remains. It could be less or more than that on particular items of generally-called cultural patrimony, depending upon the circumstances.

Senator McCAIN. Thank you.

Dr. Kintigh, it has been suggested that this legislation would result in a proliferation of litigation. Do you agree with that view?

Dr. KINTIGH. I do not. My own experience, which has been primarily in the Southwest, has been that we do have very good working relationships with many groups. I think that Mr. Thompson's experience is reflected by many other Arizona museums where there is a good working relationship. I do not think there will be a flood of requests, at least to Southwestern museums, requesting things because I think that museums in many cases have been responsive to those requests.

Senator McCAIN. In your testimony you express concern regarding the term "Native American sacred object." How would you propose to narrow the definition in order to define what is sacred to a Native American group?

Dr. KINTIGH. I don't believe that I have a terribly well thought-out suggestion. My suggestion that I proposed would be to delete the second part of the definition. The first part of the definition states that the object should be devoted to a Native American ceremony. The second part said something to the effect, "or is used in that ceremony." I think that to the extent that the first part of the definition conveys the importance to that ceremony, it is important.

The "or is used in," in my mind, introduces a great indeterminacy. Lots of artifacts could be used in the performance of a ceremony that aren't in any way essential to it. They are just coincidental to that. It raises the question to a museum, which is trying to do a

good faith inventory, to say, "Well, could this have been a sacred object?"

I think in many specific cases we can agree about what those sacred objects are. I think it's a very difficult proposition to define them.

Senator McCAIN. Mr. Thompson's view, I believe, is that it is up to the tribe to determine that. Do you disagree with that?

Is that right, Mr. Thompson? Is that your view?

Mr. Philip Thompson. I think, Senator, that the answer to that from my perspective is that it is predominantly right. I would certainly like the opportunity, and assume that others in the museum community would as well, to sit down with them in a cooperative effort, but in absence of an absolute in this matter, I think we have to be guided by the sense of the Native Americans.

Mr. KINTIGH. It's my understanding of many Native American cultures that there is not as well-defined a distinction between sacred and profane, between the public and the sacred, as there is in contemporary western American society. Therefore I think it is important, probably, to have a definition of some sort to provide some guidance. I think the fear that in extreme cases somebody could say, "Well, gee, almost anything has some sacred character." So I think it would be useful to put some limits on that sacredness, to provide some general Congressional intent on what that means, because I think there is a potential for abuse, although I don't see it happening very often.

Senator McCAIN. Thank you. Thank you all for being here, and we appreciate your testimony. Thanks a lot.

Now we will hear from Suzan Harjo, Jerry Flute, and Clarence Ching. I understand that Clarence Ching may be accompanied by Linda Delaney and Lydia Mai'oho.

Mr. FLUTE. Mr. Chairman, with your permission I would like to have Dr. Emery Johnson assist me here.

Senator McCAIN. That's fine. We're always glad to have Dr. Johnson with us.

Mr. FLUTE. Thank you.

STATEMENT OF JERRY FLUTE, ASSOCIATION OF AMERICAN INDIAN AFFAIRS, NEW YORK CITY, NY, ACCOMPANIED BY DR. EMERY JOHNSON

Mr. FLUTE. Mr. Chairman, my name Jerry Flute. I am a member of the Sisseton-Wahpeton Sioux Tribe of South Dakota, and am also the Assistant Director for the Association of American Indian Affairs, which is a national, nonprofit organization, 65 years old, that came into existence to help tribes protect their sovereignty, land rights, and human rights throughout this country.

Before I begin a summary of my testimony I would like to make several references back to questions that you raised earlier to Mr. Rogers of the Park Service regarding the proposed policy coming out of Interior that would include the handling and repatriation of human remains in their possession.

I attended one of the meetings, probably one of the most recent, which was held about 5 or 6 weeks ago here in Washington. It is true that there were several tribal people at that meeting who