

# NMNH REPATRIATION POLICY STATEMENT

## GUIDELINES FOR REPATRIATION, NATIONAL MUSEUM OF NATURAL HISTORY, SMITHSONIAN INSTITUTION

*Amended 1997*

by Gillian Flynn and Thomas Killion

### I. INTRODUCTION

The National Museum of Natural History (NMNH) recognizes the right of Native peoples to the return of human remains and objects specified in the National Museum of the American Indian Act (NMAI). The Repatriation Office was established to implement the statutory requirements of the NMAI Act, as amended. The Repatriation Office was established to implement the statutory requirements of the NMAI Act. This law and its amendment assert the right of Native American and Native Hawaiian peoples to determine the disposition of culturally affiliated<sup>1</sup> human remains, funerary objects, sacred objects, and objects of cultural patrimony now in the collections of the Smithsonian Institution. Repatriation at the NMNH is intended to be a collaborative process, in which both staff and Native peoples become involved in determining the future of human remains and cultural objects.

One of the primary tasks of the Repatriation Office at the NMNH is to inventory and assess the cultural origins of collections potentially affiliated with contemporary Native American and Hawaiian peoples in the United States. Another of its principle functions is to respond to requests for information and/or requests for the return of human remains, funerary objects, sacred objects, and objects of cultural patrimony affiliated with Native groups.

The repatriation program at the NMNH looks toward the future and the possibility that this process will begin to generate a greater level of understanding and respect for the traditions and cultural heritage of Native Americans at the national level. This understanding can only come by incorporating contemporary Native perspectives into the interpretation and presentation of Native people's past and present cultural realities at NMNH. Cooperative endeavors to address Native rights and concerns established during the repatriation process hold the promise of strengthening the Native voice at the National Museum of Natural History, an institution historically committed to understanding and interpreting Native cultures of the Americas and the world.

### II. THE NATIONAL MUSEUM OF THE AMERICAN INDIAN ACT AND ITS AMENDMENT

The NMAI Act, 20 U.S.C. Section 80q, (PL 101-185), passed in 1989, mandated that the Smithsonian Institution inventory, document and, if requested, repatriate culturally affiliated human remains and funerary objects to federally recognized Native American tribes. No deadline for was given for Native groups to make a claim. The 1989 NMAI Act did not address the disposition of sacred objects and objects of cultural patrimony but was amended in 1996 to include those objects.

The NMAI Act amendment (PL 104-278) addresses repatriation issues not previously addressed in the original NMAI Act. It establishes deadlines for the distribution of summaries and inventories of Smithsonian collections to tribes. It requires summaries of unassociated funerary objects, sacred objects and objects of cultural patrimony to be completed and submitted to Native American groups by December 31, 1996. Inventories for human remains and associated funerary objects are to be completed and submitted to Native groups by June 1, 1998. Definitions used by the NMNH for these remains and objects follow the language of NAGPRA, 25 U.S.C. Section 3001 (PL 101-601), passed in 1990, and are discussed in more detail below (see: Section VI. Items Potentially Subject To Repatriation). The amendment also adds two Native American traditional religious leaders to the Repatriation Review Committee.

### III. IMPLEMENTATION OF THE SUMMARY AND INVENTORY PROCESSES

In accordance with the law, the NMNH is producing summaries of unassociated funerary objects, sacred objects, and objects of cultural patrimony and inventories of human remains and associated funerary objects and is reporting its findings to culturally affiliated Native groups. Native American and Hawaiian groups will receive information on the type and number of human remains and objects currently held by the NMNH.

#### *Summaries of Ethnographic Collections*

The NMNH completed the summary of its ethnographic collections and submitted them to Native groups in February 1997. These summaries should enable Native groups to begin the identification of culturally-affiliated objects present in the collections. Because of the difficulty in identifying what objects may be funerary, sacred or patrimonial, the summaries included all Native American objects in the ethnographic collections that are known to be held by the NMNH. No attempt was made to determine what objects were funerary, sacred, or patrimonial. Such determinations will be developed in a collaborative manner with tribes. In addition to listings of all objects potentially affiliated with Native groups, the summaries of ethnographic collections include descriptions of the acquisition history of the objects based on the available accession and catalog records. Additional reports were developed of objects for which the cultural affiliation information is unclear and these lists were presented to all tribes.

#### *Inventories of Physical Anthropology and Archeology Collections*

The NMNH is required to produce inventories of human remains and objects in its collections and submit them to tribes by June 1, 1998. Inventory reports will be based on geographic location and will be distributed to tribes who currently reside in or once had traditional territories in those geographic locations. Because of the difficulty in identifying what objects may be funerary, sacred or patrimonial, the inventories will include all Native American human remains and objects in the collections that are known to be held by the NMNH. No attempt will be made to verify cultural affiliation. The reports will be a starting point for consultations on collections. It is during the consultation process that a comprehensive review of all accession information will be undertaken. Verification of cultural affiliation of the human remains and objects and determinations about the funerary, sacred or patrimonial nature of objects will be developed in a collaborative manner with tribes.

### IV. INITIATING A CONSULTATION

Communication and collaboration with Native groups is the foundation of the repatriation process at the NMNH. Upon receiving summaries of ethnographic collections or inventories of physical anthropology and archeology collections, Native groups are asked to review the lists and use them to either identify human remains and objects of concern or initiate consultations with the Repatriation Office for the purpose of identifying culturally affiliated remains and objects.

The requesting party may have access to collection documentation at any time during the repatriation process. In addition, Native groups may conduct independent research. Collaborative arrangements with the Repatriation Office for the purpose of gathering information are encouraged. Such collaborative efforts may include work with Native community scholars and traditional experts, internships, and other types of informal research arrangements. Resources and support for such arrangements are not part of the regular operating budget of the Repatriation Office, but the Repatriation Review committee (see Section X) will, to the extent possible, assist in supporting tribal visits.

Repatriation Office staff can provide Native American representatives with access to the collections, associated photographs and museum records and offer instruction on the use of museum resources. The policy of the Repatriation Office is to make information on the origin and identify of requested objects available to the requesting group as early in the repatriation process as possible.

Native groups are invited to make appointments to view the collections in the care of the NMNH. As has long been the practice at the NMNH, suggestions from Native groups regarding the display and care of collections are welcome. Decisions about implementing such suggestions will be made on a case by case basis. Telephone inquiries and appointments for visits to the museum can be made by calling the Repatriation Office. In order to ensure that a Repatriation Office staff member will be available, appointments for visits should be made at least two weeks in advance. Requests can be sent to:

Repatriation Office, MRC 138  
Department of Anthropology  
National Museum of Natural History  
10th and Constitution Ave., NW  
Washington, DC 20560  
(202) 357-1899

## V. INITIATING A REPATRIATION REQUEST

Upon receiving information about the NMNH's collections, a Native American group may wish to make a request for repatriation. This process officially begins with a letter to the Repatriation Office at the address above requesting the return of specific remains or objects subject to repatriation under the law. Parties making requests for repatriation are asked to identify themselves and the basis of their claim (see Section VI: Who May Make A Request), to indicate the geographical extent of their claim, and to specify the types of material they are interested in receiving more information about, i.e., human remains, funerary objects, sacred objects, or objects of cultural patrimony. Upon receipt of a written request from a lineal descendant or a recognized group's leaders, the individual's and/or group's standing as a qualified requesting party is reviewed.<sup>2</sup> If the party is qualified, a case file is established and a joint effort is initiated to investigate the claim.

The Repatriation Office staff person assigned to a particular repatriation case is the contact person for the Native group that initiated the claim. He or she is responsible for the documentation of the human remains or objects in question, the distribution of the case report resulting from this process, and the handling of the arrangements for the actual return.

The request process results in the production of a report which provides an assessment of the cultural affiliation of the collections involved, summarizes all relevant details concerning the requested material, and recommends a course of action for the Secretary to follow in light of the legislative mandate. Documentation to determine the cultural affiliation of remains or objects considers biological, geographical, historical (both written and oral), genealogical, archeological, linguistic, folkloric, ethnological, and archival information, expert opinion, or any other relevant sources of information. The report is reviewed within the NMNH and submitted to the Secretary of the Smithsonian through the General Counsel and Provost for final approval. After the institutional review is completed, the report is sent to members and representatives of culturally affiliated groups. The case report represents the NMNH's official response to a group's repatriation request.

## VI. WHO MAY MAKE A REQUEST

Requests for the repatriation of Native American human remains and cultural objects may be made by: (i) lineal descendants of named individuals; (ii) federally recognized Native American tribes; (iii) federally recognized Native Alaskan villages; (iv) Native Hawaiian organizations; and in certain cases, (v) state recognized Native American tribes.

### *Descendants of Named Individuals*

The closest living descendants of named individuals whose remains are currently held by the NMNH may make a request for the return of those remains. An accurate family genealogy must be provided.

### *Federally Recognized Native American Tribes*

A federally recognized Native American tribe is defined as any tribe, band, nation, organized group or community of Native Americans, including Native Alaskan village, or regional or village corporation (as defined in the Alaskan Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to them because of their status as Native Americans.

### *Native Hawaiian Organizations*

A Native Hawaiian organization is any organization which serves and represents the interests of Native Hawaiians, has a primary and stated purpose to provide services to Native Hawaiians, and has expertise in Native Hawaiian affairs. This definition shall include the State of Hawaii Office of Hawaiian Affairs and the Hui Malama I Na Kapuna O Hawai'i Nei.

### *State Recognized Native American Tribes*

Requests from state recognized tribes will be reviewed on a case by case basis.

## VII. ITEMS POTENTIALLY SUBJECT TO REPATRIATION AT THE NMNH

The categories of materials that a requesting group may claim are: (i) human remains of known individuals; (ii) culturally affiliated human remains; (iii) associated and unassociated funerary objects; (iv) sacred objects; (v) objects of cultural patrimony; and (vi) objects transferred to or acquired by the NMNH illegally or under circumstances that render invalid the Museum's claim to them. See also Section VIII: Criteria For Repatriation.

### *Named Individuals*

The NMNH shall repatriate, upon request, any human remains of known identity to the closest living descendant of the named individual. The repatriation of named individuals to living descendants is an ongoing policy at the NMNH established prior to the enactment of the NMAI Act and requests for the return of named individuals are given the highest priority.

### *Culturally Affiliated Human Remains*

The NMNH shall repatriate, upon request, human remains that have been identified as being culturally affiliated with a particular Native American group or Native Hawaiian organization.

### *Associated and Unassociated Funerary Objects*

The NMNH shall repatriate, upon request, any funerary object that, as part of a death rite or ceremony of a culture, is reasonably believed to have been intentionally placed with an individual of known affiliation at the time of death or later, to the living descendants of a named individual, or to the culturally affiliated Native American group of Native Hawaiian organization.

*Associated funerary object* shall mean a funerary object removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe where the NMNH has in its collection the human remains with which the funerary object was originally placed or knows the location of the associated human remains based on NMNH accession records.

*Unassociated funerary object* shall mean a funerary object removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe where the NMNH does not have in its collection the human remains with which the funerary object was originally placed, nor does the museum know their location.

### *Sacred Objects*

The NMNH shall repatriate, upon request, any specific ceremonial object that is needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.

### *Objects of Cultural Patrimony*

The NMNH shall repatriate, upon request, cultural objects that have an on-going historical, traditional, or cultural importance central to the culturally affiliated Native American group. Such objects, by definition, cannot be alienated, appropriated or conveyed by any individual, regardless of whether or not that individual was a member of a Native American tribe or Native Hawaiian organization. Such objects shall have been considered inalienable by the Native American group at the time the objects were separated from the group.

### *Objects Acquired Illegally*

In accordance with long-standing Smithsonian policy<sup>3</sup>, the NMNH may repatriate, upon request, any materials acquired by or transferred to the NMNH illegally or under circumstances that render invalid the Museum's claim to them. Each request for materials so acquired will take into account all relevant evidence submitted by a requesting party. It will also take into account information about acquisition that the NMNH has available in its accession records.

## VIII. CRITERIA FOR REPATRIATION

In order for human remains and cultural objects to be repatriated, the requested material must fall into one of the categories of Section VII: Items Potentially Subject to Repatriation at the NMNH. The requesting group must be culturally affiliated with the human remains and objects being requested. With regard to unassociated funerary objects, sacred objects and objects of cultural patrimony, the requesting party may also be required to present evidence that the NMNH does not have right of possession to the material.

### *Cultural Affiliation*

For the repatriation to occur, a relationship must exist between a claimant and the requested material. This

relationship can be lineal descent or cultural affiliation. In many cases, the evidence of affiliation may be indicated by collections records which can contain information on cultural affiliation. Affiliation can also be established through the documentation process. The requesting party may also provide evidence of cultural affiliation based upon biological, geographical, historical (both written and oral), genealogical, archaeological, linguistic, folkloric, ethnological and archival information, expert opinion, or any other relevant information. It must be shown by a preponderance of evidence that the materials requested are culturally affiliated with the requesting party.

#### *Right of Possession<sup>4</sup>*

The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from a Native group with the voluntary consent of an individual or group that had the authority to alienate the object at the time it was acquired gives the right of possession of that object to the NMNH. If a culturally affiliated group seeking repatriation of an unassociated funerary object, sacred object or object of cultural patrimony presents evidence which, standing alone before the introduction of evidence to the contrary, would support a finding that the NMNH did not have right of possession of the object, the NMNH shall return such object unless it can prove that it has right of possession. If the museum and the claimants should disagree over whether their respective burdens have been proven, the Repatriation Review Committee may be called upon to facilitate the resolution of the dispute.

### **IX. MULTIPLE OR COMPETING REQUESTS**

The NMNH often receives multiple or competing requests for the return of culturally affiliated remains or objects. Responsibility for the actual transfer and final disposition of remains and materials often presents a challenge to communities, requiring difficult and sometimes protracted negotiations within and between groups to arrive at a consensus regarding such disposition. It is NMNH policy to encourage all affiliated or potentially affiliated groups to reach a mutually acceptable solution and to propose a unified position to the museum. The NMNH will consult with all claimants but will not interfere with the internal political or religious affairs of Native groups nor compel a solution. If requesting parties fail to reach a resolution, the Repatriation Review Committee can be asked to review the case.

### **X. REPATRIATION REVIEW COMMITTEE**

The Repatriation Review Committee was established under the NMAI Act. Committee members were selected from nominations from Native groups, museums, and the academic community. Five committee members were appointed in March 1990 with five year terms which were renewed in 1995 by the Secretary of the Smithsonian. An additional two members will be appointed in 1997 to expand committee membership to include two traditional Native American religious leaders. The committee was established to monitor and review the inventory, identification, and return of human remains, funerary objects, sacred objects, and objects of cultural patrimony. The committee's purposes is to ensure that fair and objective consideration and assessment of all relevant evidence with respect to inventory and identification has been made by the Smithsonian. They may, upon request of any affected party, review any findings relating to the origin or the return of human remains and cultural objects. They may also assist the Secretary of the Smithsonian in facilitating the resolution of any dispute between groups or between a group and the Institution with regard to the disposition of collections that may arise.

The Chairman of the Review Committee, Professor Russell Thornton, can be reached at the following address:

Department of Anthropology  
University of California, Los Angeles  
Los Angeles, CA 90024  
(310) 825-7080

### **XI. NOTIFICATION**

The Repatriation Office makes every attempt to ensure that all parties with a potential interest in the collections under consideration are aware of the NMNH's intent to repatriate. Once the recommendations for a return have been agreed upon, a notification must be placed in local newspapers, tribal newsletters, and other news media having effective distribution and a one month waiting period must take place to allow any interested parties to contact the museum. The notification process is designed to ensure that all other parties with a potential interest in

the return are informed of the pending action and have an opportunity to obtain further information or consult with the NMNH prior to the repatriation of the collection. The goal of the Repatriation Office is to ensure a broad dissemination of the information and to initiate arrangements for a return only after a consensus has been reached within the group about the manner of the return and the representatives to be involved.

## XII. ARRANGEMENTS FOR RETURNS

Once an agreement has been reached by the requesting party and the NMNH regarding the disposition of the human remains or objects, arrangements may be made for a return. These arrangement shall include a mutually convenient date for the return.

Within the limits of available funds, the Repatriation Review Committee will cover the costs of bringing two representative of the group the NMNH to prepare the remains and objects in question for repatriation. This coverage would generally include transportation, hotel accommodations, and meals for two days of round trip travel and a day visit to the museum. All arrangements for NMNH sponsored travel must be made by the NMNH or expenses cannot be covered.

## XIII. INTERNATIONAL REQUESTS

The scope of current repatriation laws (NMAI, as amended and NAGPRA) is restricted to Native groups residing in the United States and its territories. Efforts are made to coordinate requests for returns from groups in Canada and Mexico whose membership occupies both sides of the international border, with their United States counterparts. Repatriation decisions for groups other than these must await international agreements, unless the materials in question are found to have been acquired illegally or under circumstances which render the NMNH's claim of title invalid.

## XIV. ALTERNATIVES TO REPATRIATION

In addition repatriation of culturally affiliated human remains and objects, Native American groups may wish to examine alternatives to repatriation or reburial. Native groups may wish to allow human remains or objects to be retained by the NMNH under the existing policies of access and curation, or may wish to consider museum retention with tribal input on care and preservation.

Native groups may determine that it is in their best interest to delay a request for the repatriation of remains or objects. Any decision by a tribe or Native group not to make a repatriation request at the present time in no way precludes the possibility of making a request for a return at a future date.

Prepared by:  
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Repatriation Office, Department of Anthropology, NMNH

Approved by: Office of the Provost  
Smithsonian Institution  
September 8, 1997

### NOTES:

1. Because the NMAI Act does not define cultural affiliation, it is NMNH policy to use the definition provided in Native American Graves Protection and Repatriation Act (NAGPRA). NAGPRA defines cultural affiliation as a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

2. Standing, for these purposes, means that the party requesting the materials falls within the categories of persons or groups eligible under the NMAI Act to file a repatriation claim. In addition, if a claimant is acting on behalf of a tribe, there must also be proof that such person has the authority to represent the tribe. If there is doubt about a party's standing, the NMNH may request additional written documentation to clarify the relationship of the requesting party to the materials in question.

3. The Smithsonian Institution Policy on Museum Acquisition was adopted by the Smithsonian Institution Board of Regents in 1973.

4. Because NMAIA does not define "right of possession," it is the NMNH policy to use the definition from NAGPRA. Under NAGPRA, "right of possession" is defined as possession obtained with the voluntary consent of an individual or group that had the authority of alienation.

## THE REPATRIATION PROCESS AT THE NATIONAL MUSEUM OF NATURAL HISTORY

1. Communication and collaboration is the foundation of the repatriation process at the NMNH. The process is initiated when a federally or state recognized tribe establishes contact with the NMNH Repatriation Office by letter, phone call, or personal visit to express an interest in the Museum's holdings. The initial inquiry may be a general request for information about the Museum's holdings pertaining to a particular tribe or may focus on specific items subject to repatriation under the law.

2. The Native group's request for information will be directed to the senior staff person in the Repatriation Office handling requests from their region. This individual becomes the group's main point of contact within the Museum.

3. The senior staff person will provide a preliminary computer inventory of the Museum holdings from the region specified by the tribe or identified in the records as affiliated with that tribe. At the NMNH, the collections pertaining to Native cultures are under the care of the Department of Anthropology. Within Anthropology, the collections are maintained in three separate divisions: Ethnology, Archaeology, and Physical Anthropology. While the majority of items in Ethnology have an ascribed cultural affiliation, those in Archaeology and Physical Anthropology typically do not. To be as comprehensive as possible in reporting, the records for collections in the latter two divisions are searched by geographic criteria specified by the tribe rather than by group name(s).

4. A tribe or group may respond to the inventory information presented by making a formal written request for the return of specific human remains or cultural items. Requests for the repatriation of items subject to return under the law may be made by family descendants of named individuals, federally recognized Native American tribes, federally recognized Native Alaskan villages, Native Hawaiian organizations, or state recognized Native American tribes.

5. Upon receipt of a formal request for repatriation, the senior staff person initiates the more detailed documentation work that is undertaken to establish or verify the cultural affiliation or origins of the items in question. This involves assembling all relevant information that bears on the question of cultural affiliation, which may include biological, geographical, historical (both written and oral), genealogical, archaeological, linguistic, folkloric, ethnological, archival, and any other relevant sources of information.

6. The Repatriation Office invites the Native group to collaborate in the documentation effort and contribute the results of their own independent or community-based research. Repatriation Office staff can provide Native American representatives with access to collections and museum records, and basic instruction in the use of museum resources.

7. After all the available information has been assembled, a comprehensive report is prepared by the senior staff person for the Secretary of the Smithsonian Institution. The facts of the case are reviewed and recommendations are made regarding the repatriation status of the items in question. The completed report is reviewed within the NMNH before being submitted to the Secretary for action.

8. When the case report is approved by the Secretary, it is forwarded to the requesting tribe and any other parties with a declared or potential interest in the case. The case report represents the NMNH's official response to the tribe's request.

9. If a decision to repatriate is made, the tribe then works with their principal contact person at the Museum to make arrangements for the return and work out the details of the transfer. A waiting period of one month must precede the agreed upon repatriation date to allow all concerned parties sufficient time to review the plans for return. The NMNH makes every effort to accommodate any special requirements of the tribe with respect to preparations and packing for return. The NMNH may cover the travel costs of up to two tribal representatives who may wish to come to the Museum to assist in the preparation of the collections for return.

10. As per the guidelines of the NMAI Act, the Smithsonian has established an independent, external Repatriation Review Committee (RRC) to monitor and review the inventory and documentation process at the Museum. This committee consists of five individuals, three of whom were nominated by the Native community. At the request of any affected party, the RRC may review the findings of a particular case or decision made by the Museum. The Committee may also be called upon by the Secretary to assist in the resolution of any disputes that may arise. Any tribe wishing to appeal a final decision made by the NMNH may contact the Chairman of the Repatriation Review Committee.

11. Native groups and organizations may determine that it is in their best interest to delay a request for the repatriation of remains or objects. Any decision by a tribe to refrain from making a repatriation request at the present time in no way precludes the possibility of submitting a repatriation request at a future date.

*Appendix I.*

## NMNH REPATRIATION REVIEW COMMITTEE

*(Updated Sept. 4, 1996)*

### THE SMITHSONIAN INSTITUTION'S NATIVE AMERICAN REPATRIATION REVIEW COMMITTEE

The Native American Repatriation Review Committee was established under the National Museum of the American Indian Act (Public Law 101-185). The Committee consists of five members, four of whom were appointed from nominations submitted by Native groups.<sup>1</sup> The Committee members were appointed in March of 1990 by the Secretary of the Smithsonian. The Committee was established to monitor and review the inventory, identification, and return of human remains and funerary objects. The Committee's responsibilities were later expanded to include sacred objects, and objects of cultural patrimony. The duties of the Committee are advisory. Specifically, the Committee's purpose is to ensure that fair and objective consideration and assessment of all relevant evidence with respect to inventory and identification has been made by the Repatriation Office of the National Museum of Natural History (NMNH). Upon the request of any affected party, the Committee may review any findings relating to the origin or the return of human remains and cultural objects. The Committee may also assist the Secretary of the Smithsonian in facilitating the resolution of any dispute that may arise with respect to the return of such remains or objects. Thus, if any Native American group or Native Hawaiian organization finds that a decision of the NMNH Repatriation Office regarding a specific request is unacceptable, the group or organization may request the Committee to review the matter and make an independent recommendation to the Secretary of the Smithsonian.

The Review Committee meets at least twice annually to monitor and review the progress of the Repatriation Office at the National Museum of Natural History. It may meet on other occasions to consider specific issues. The Committee may also monitor NMNH informational meetings, make presentations at workshops, and attend repatriation ceremonies.

The Chairman of the Repatriation Review Committee is Russell Thornton, Professor of Anthropology at UCLA. His address is:

Professor Russell Thornton  
Department of Anthropology  
341 Haines Hall, Box 951553  
University of California  
Los Angeles, CA 90025-1553  
Phone: (310) 825-7080  
FAX: (310) 206-7833

The other members of the Review Committee are Roger Anyon, Cultural Resources Consultant; Lynne Goldstein, Professor, Michigan State University; Andrea Hunter (Committee Vice-Chair), Assistant Professor, Northern Arizona University; Christy Turner II, Professor, Arizona State University. A brief biographical sketch of each of the five members of the Committee follows.

#### ROGER ANYON

Roger Anyon has twenty five years experience in archaeology, cultural resources, and historic preservation in Europe and North America. His MA is from the University of New Mexico. From 1985 through 1996, he lived and worked at the Pueblo of Zuni in New Mexico where he was Director of the Zuni Archaeology Program and the Zuni Heritage and Historic Preservation Office. Anyon was also instrumental in implementing the Zuni Museum Project during this period, as well as being heavily involved in the repatriation activities of the Zuni Tribe, in particular the highly successful campaign for the repatriation of Zuni War Gods. From 1992 to 1995, Anyon served as a member of the Society for American Archaeology Executive Board, and from 1990 to 1992, as Chair of the Society for American Archaeology Task Force to Develop Better Relations between Archaeologists and Native Americans. In addition to his publications on archaeology, Anyon has authored numerous papers on the protection of cultural resources, repatriation and Native American/archaeologist relations. He is presently a cultural resources consultant based in Tuscon, Arizona.

#### LYNNE GOLDSTEIN

Lynne Goldstein is Professor and Chair of the Department of Anthropology at Michigan State University. From 1975 until Fall 1996, she taught at the University of Wisconsin-Milwaukee. She received her Ph.D. in 1976 from

Northwestern University and her research interests include Eastern U.S. archaeology, mortuary analysis, settlement patterning, quantitative analysis, and public policy-related issues. She has published papers and monographs in all of these areas, with the majority of her publications concentrating on the Late Woodland and Mississippian periods of Wisconsin and Illinois. Her recent field work has focused on the Aztalan site in Wisconsin, as well as the distinctive Effigy Mound culture. From 1990 through 1992, she directed a mortuary project in California: excavations of the historic Russian cemetery at Fort Ross. Some professional activities include: Editor of *American Antiquity* (1996–1999); Secretary of the Society for American Archaeology (1987–1991); Chair of the Society for American Archaeology's Task Force on Repatriation (1990–1995); Board of Curators of the State Historical Society of Wisconsin (1988–1996); Panel for a National Dialogue on Museum/Native American Relationships (Heard Museum, 1989–90); and Wisconsin's Burial Sites Preservation Board (1987–present). Goldstein has been active in public education, including a weekly radio broadcast on Wisconsin Public Radio, and two popular books, *Prehistoric Indians of Wisconsin* and *A Guide to Common Prehistoric Projectile Points in Wisconsin*.

#### ANDREA A. HUNTER

Andrea Hunter is half Osage and grew up on the Osage Reservation located in north central Oklahoma. She received a B.A. in Anthropology from the University of Colorado-Boulder, and an M.A. and Ph.D. in Anthropology from the University of Missouri-Columbia. Hunter is currently an Assistant Professor in the Department of Anthropology and the Director of the Laboratory of Paleoethnobotany at Northern Arizona University, Flagstaff. Although relocated in the Southwest, her archaeological and paleoethnobotanical research emphasis has focused on the Osage Tribe in Missouri. Hunter is currently preparing an edited volume on the Osage at the time of European contact. While at the University of Missouri, she was instrumental in organizing a symposium on repatriation that brought together Osage tribal members, archaeologists, physical anthropologists, and Native American lawyers to publicly discuss the issue.

#### RUSSELL THORNTON

Russell Thornton is Professor of Anthropology at UCLA. He has taught previously at the University of Pennsylvania, the University of Minnesota and the University of California-Berkeley. He received his Ph.D. in sociology from Florida State University in 1968 and has done post-doctoral work at Harvard University and the University of Southern California. From 1979–84, he held a Research Scientist Career Development Award from the National Institute of Mental Health. Born and raised in Oklahoma, Russell Thornton is a registered member of the Cherokee Nation of Oklahoma. His honors include a Chancellor's Distinguished Professorship at the University of California-Berkeley, and a Chancellor's Distinguished Lecture at the University of California-Irvine. He has published five books and over 50 articles and book chapters. His published articles have appeared in the *American Sociological Review*, *Anthropology Journal of Sociology*, *American Anthropologist*, *Current Anthropology*, *American Journal of Physical Anthropology*, *Ethnology*, *Ethnohistory*, *Ethnicity*, *Administrative Science Quarterly*, and *American Indian Quarterly*. His books include *We Shall Live Again* (Cambridge University Press, 1986); *American Indian Holocaust and Survival* (University of Oklahoma Press, 1987); and *The Cherokees: A Population History* (University of Nebraska Press, 1990).

#### CHRISTY G. TURNER II

Christy Turner has been a Regents' Professor in the Department of Anthropology at Arizona State University since 1992. He received his Ph.D. in Anthropology in 1967 from the University of Wisconsin-Madison. He was Assistant and Associate Dean at the Arizona State University Graduate College from , Australia, Polynesia, Alaska, Southwest U.S., North and South America. He has reported in more than 150 articles and books dealing mainly with the peopling of the Americas and the Pacific Basin, dental anthropology, Southwest rock art, origin of anatomically modern humans, and taphonomy of Anasazi cannibalism.

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1. Under the NMAI amendment (PL 104-278) Repatriation Review Committee membership is currently being expanded to include two traditional Indian religious leaders. The selection process should be completed in late 1997.

# *Appendix J.* REVIEW COMMITTEE PROCEDURES

## CHARTER AND RULES OF OPERATION NATIVE AMERICAN REPATRIATION REVIEW COMMITTEE SMITHSONIAN INSTITUTION (*Updated 2003*)

The official designation of the Committee is the Native American Repatriation Review Committee, hereinafter referred to as the "Committee."

The Committee is composed of seven (7) members appointed by the Secretary of the Smithsonian in accordance with the provisions of the National Museum of the American Indian Act (Public Law 101-185) and its amendment (P.L.104-278). The purpose of the Committee is to serve in an advisory capacity to the Secretary in matters concerning the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony.

This document sets out the charter and rules of operation of this committee. The document is organized into seven sections:

- I. Term of Committee Activity and Duties of Committee Members
- II. Conflict of Interest Guidelines
- III. Reimbursement of the Committee
- IV. Meetings of the Committee
- V. Functions of the Committee
- VI. Rules of Evidence
- VII. Amendments to the Charter and Rules of Operation

### *I. Term of Committee Activity and Duties of Committee Members*

As of January 1, 2003, the term of appointment for Committee members shall be four (4) years, with the option of one term renewal, but all appointments shall terminate upon the termination of the Committee. Any vacancy on the Committee shall be filled in the same manner as the original appointment. The term of appointment for officers shall be one (1) year, renewable annually. Members and officers serve at the pleasure of the Secretary and may be dismissed prior to the expiration of their terms.

Given its objectives, scope, and purposes, as specified by the National Museum of the American Indian Act, the Committee is expected to continue into the foreseeable future, for the life of the repatriation process. The Committee shall cease to exist 120 days from the day the Secretary of the Smithsonian Institution certifies, in a report submitted to Congress, that the work of the Committee has been completed. The Committee reports to the Secretary, Smithsonian Institution, Washington, D. C. 20560, through the Director, National Museum of Natural History (NMNH). The Secretary's "designee", where indicated, is the Director of the NMNH.

The Committee serves as an independent advisory body. The Committee's findings are solely advisory, and, in disputed cases, the final, binding decision is made by the Secretary after reviewing all the evidence and the recommendations of the Committee. The Committee does not have supervisory responsibilities for Smithsonian staff or activities, nor does it speak for the Institution. No Committee member is authorized to speak on behalf of the Smithsonian Institution and/or the Repatriation Review Committee without the prior approval of the Smithsonian Secretary's "designee" and/or all the members of the Repatriation Review Committee.

### COMMITTEE CHAIR

The Committee Chair will be elected annually, at the fall meeting and by a simple majority vote of Committee members. The responsibilities of the Chair include:

1. Presiding at Committee meetings.
2. Scheduling of regular and special Committee meetings, in cooperation with the Smithsonian.
3. Setting the agenda of Committee meetings, in cooperation with the Smithsonian.

4. Overseeing the preparation and review of the minutes of the Committee's meetings, in cooperation with the Smithsonian.
5. Overseeing the Committee's expenditures, in cooperation with the Smithsonian.
6. Transmitting Committee reports, annual or other, decisions on disputed cases, and Committee decisions in the review of findings.
7. Acting as liaison and spokesperson for the Committee in its relations with the Secretary of the Smithsonian Institution, the Director of the National Museum of Natural History, the Smithsonian Institution's repatriation offices, Committee support personnel, Native American groups, consultants and other outside groups and individuals.
8. Performing other duties as assigned by the Secretary of the Smithsonian or the Secretary's designee.

#### COMMITTEE VICE CHAIR

The Committee Vice-Chair will be elected annually, at the fall meeting, by a simple majority vote of Committee members. In absence of the Chair, or in the event of the Chair's death or incapacitation, the Vice-Chair shall automatically become Chair until a successor is elected.

#### VOTING PROCEDURES

Unless otherwise stated a simple majority vote is required for approval of an action or choice by the Committee. All Committee members have voting rights, except as limited in Section II.

Committee members may vote in any one of three ways:

1. Vote for
2. Vote against
3. Abstention

During the actual voting procedure, a member may not explain his/her vote. A member may move to reconsider a vote; such a reconsideration requires majority approval. The Committee will designate a non-Committee member as the teller of the vote. The teller must consult with the Committee in all questions regarding voting procedures. The regular method of voting on an action or choice is by show of hands.

Voting by written ballot is used whenever a secret vote is requested by any Committee member. The teller will distribute, collect, and count the ballots, and report the vote to the Chair. One other Committee member participates in counting the ballots. The result is then announced by the Chair and entered into the minutes.

In certain instances with the consent of the majority of the Committee, voting may be done by mail ballot or may be conducted by phone.

#### YEARLY REPORTS

As part of its activities, the Committee will submit yearly written reports to the Secretary of the Smithsonian Institution through the Secretary's designee. The reports will summarize Committee activities during the year, including a statement of cases considered by the Committee and their disposition, and any other matter it wishes to bring to the attention of the Secretary. The report shall be submitted not later than three months after the end of the fiscal year.

#### II. *Conflict of Interest*

The Committee expects its members to hold themselves to the highest ethical standards. Although the members of the Committee were selected for their expertise and position, there are circumstances in which a Committee member may appear to have a conflict of interest. In such circumstances, the Committee member shall not participate in the discussion or vote on the specific case. It is the responsibility of each Committee member to examine each claim for potential conflict of interest and, should such a conflict arise or be suspected, to declare the potential conflict. Circumstances that may precipitate a conflict of interest include resolution of disputes or requests for review where

any one or more of the following apply:

1. The Committee member or a member of his/her immediate family is the individual or a member of the specific tribal group, nation, or institution directly making the claim.
2. The Committee member or a member of his/her immediate family is being paid by the individual, tribal group, nation, or institution directly or indirectly making the claim, or in some way has a financial interest in the outcome of the claim (pay received from the Smithsonian for serving as a member of the Committee is not included in any of these categories).
3. The Committee member or a member of his/her immediate family has a direct and current academic or research association with the collection in question.

Although the Committee member cannot discuss, be present in the discussion, or vote in a decision where any of the above circumstances hold, the member may assist the group or institution in the preparation of written materials or comments for submission to the Committee. However, the member shall not directly communicate orally or in writing with the Committee with respect to the person or the group making the claim.

Any member who believes there may be a conflict of interest, for any reason herein specified or not, is expected to identify the potential conflict and allow the remaining Committee to judge as to the propriety of the member continuing to participate in the case(s) in question.

In those circumstances in which the Committee is reviewing completed case reports or consulting with Native American groups or individuals, other museums, or federal agencies, the above restrictions may not apply. The determination of a conflict of interest in these instances will be decided on the basis of a majority Committee vote. The Committee shall consider the question of conflict of interest each time such activities are undertaken.

When a member, either by his/her own declination or by a vote of the Committee, is restricted from participating in the resolution of a dispute or the review of a finding owing to a conflict of interest, a written statement of the reason for the exclusion must be appended to the Committee's report on the particular dispute or review and included in the Committee's yearly report

### *III. Reimbursement and Support of Committee*

Funding for the work of the Committee is provided by Federal appropriation to the National Museum of Natural History. Members of the Committee, shall be paid at a rate equal to the daily rate for GS-18 of the General Schedule, or its equivalent, for each day for which the member is actually engaged in official Committee business, including travel time.

While away from their homes or regular places of business in the performance of authorized services for the Committee, members shall be allowed to claim authorized travel expenses, including per diem in lieu of subsistence, according to official rates for federal employees, provided that required receipts and documentation are presented in a timely manner and that such expenses have not already been paid directly by the Smithsonian Institution on the members' behalf.

Such business must be authorized in advance by the Secretary or his designee. The reimbursement for time and/or expenses cannot be paid without advance written authorization. Members will also be reimbursed at the GS-18 rate, or its equivalent, but without expenses, for time before official meetings in reading and other preparation, on the basis of one preparation day for each official day in meeting. Allowance for more advance preparation time will be at the discretion of the Secretary or his designee.

Administrative and secretarial staff support for the Committee shall be provided by the Smithsonian Institution, consistent with the Committee's defined duties and available funds. The Committee shall be independent of, but work in close cooperation with, the Institution so as to complement and not duplicate the staffing and work of the Institution.

#### *IV. Meetings of the Committee*

Committee meetings will be held at least biannually, in the fall and spring at the Smithsonian Institution. These meetings will be used to conduct regular activities associated with the Committee's mandate. Additional regular meetings may be scheduled at the Smithsonian Institution during the year, if necessary. Meetings may be held elsewhere than the Smithsonian Institution if the Committee deems such meetings necessary in order to carry out its mandated tasks.

A quorum for meetings and other business consists of five (5) Committee members. Meetings also will include participation by a representative of the Smithsonian Institution. Unless otherwise stated, the Committee will operate under Robert's Rules of Order.

All meetings shall be convened by the Secretary or his designee in close consultation with the Chair of the Committee and at times of mutual convenience to the Smithsonian Institution and the Committee.

Minutes shall be kept of all official meetings, hearings, and fact-finding meetings of the Committee. These shall be available for review by the Smithsonian and the Committee.

#### *V. Functions of the Committee*

The duties of the Committee as set forth below are advisory. Specifically, the Committee's responsibilities shall be to (as stated in P.L. 101-185 and P.L. 104-278):

1. Ensure, with respect to the inventory and identification, fair and objective consideration and assessment of all relevant evidence;
2. Review, upon request of any affected party or otherwise, any finding relating to the origin or the return of such remains or objects;
3. Facilitate the resolution of any dispute that may arise between Indian tribes and between tribes and the Institution with respect to the return of such remains or objects; and;
4. Perform such other related functions as the Secretary may assign.

#### **MONITORING ROLE** (with respect to responsibility # 1 above)

The monitoring role of the Committee shall insure a fair and objective consideration and assessment of all relevant evidence during inventory and identification of remains and objects; and assessment of the timeliness of inventory, identification, and return of remains and funerary objects, sacred objects, and objects of cultural patrimony.

#### **Inventory of Remains and Objects**

Inventory procedures of the Institution shall be monitored and assessed, at least annually, to determine effectiveness and timeliness. They include:

1. General inventory and summary of human remains, funerary objects, sacred objects, and objects of cultural patrimony.
2. Inventory of collections initiated as a response to tribal requests for return.

Inventory assessments of the Institution's repatriation units will be based on:

1. Biannual reports which shall include:
  - a. Brief statements on all active cases.
  - b. Indications of outside concern on the progress of specific cases.

- c. A summary report on all cases

The biannual report must be received by Committee members at least two weeks prior to the biannual Committee meeting.

2. Oral reports made by Smithsonian staff at the biannual Committee meetings.
3. Other communications from the Smithsonian, as initiated by the Institution or requested by the Committee.

### **Identification of Remains and Objects**

Smithsonian notification of tribes regarding the identification of culturally affiliated remains and/or objects shall be monitored and assessed, at least biannually.

Evidence used to determine cultural affiliation of remains and/or objects shall be monitored and assessed, at least annually, through:

1. Examination of the methods and criteria used by the Smithsonian.
2. Examination of the qualifications of outside expert consultants and the methods and criteria used by these consultants.

Questions or comments of Committee members regarding evidence may be addressed in writing to the Chair, or advanced at a duly called Committee meeting.

### **Return of Remains and Objects**

Arrangements and timeliness for the return of remains and/or objects shall be monitored and assessed by:

1. The Institution shall document each concluded case with a completed case report and all associated decisions stemming therefrom, which will be shared with the Committee.
2. Each completed case report will be considered by the Committee at the next biannual meeting.
3. After the return of remains and objects the Committee may contact tribal representatives for their opinions about the return arrangements, timeliness, and resolution of the case.

### **Smithsonian Institution Operations**

The charter of the Committee specifically does not include:

1. Determining the inventory priorities or process.
2. Overseeing or supervising the staff, operations, budget, or expenditures of the Smithsonian.

Staffing and funding shall be monitored only as a function of the Committee's oversight role of Smithsonian procedures and effectiveness.

All basic case documentation is done by the Smithsonian Institution. The Institution will keep the Committee fully informed of the progress of its work through biannual reports, correspondence, and briefings at regular meetings. Case reports and any Institutional review of case reports will also be provided to the Committee.

### **REVIEW OF FINDINGS** (with respect to responsibility # 2)

The Committee shall, upon the request of any affected party or otherwise, review any finding relating to the origin or the return of such remains or funerary objects, sacred objects, or objects of cultural patrimony. This mandate of the Committee is interpreted as follows:

Anyone, including the Committee itself, can request that the Committee review a finding made by the Smithsonian. This is interpreted to mean a decision resulting from the completed case report after institutional review.

The person making the request for review should make the request in writing to the Secretary or his designee, indicating the basis for their request. The Secretary will forward copies of the request, with his recommendation for action, to each Committee member and relevant Smithsonian office or official.

The Committee will discuss the request for review no later than the next regularly scheduled meeting. If the Committee decides that a further review of the finding(s) is warranted, it will request authorization from the Secretary to proceed with a formal review.

At a minimum, the Committee may decide to base its review on:

1. The original finding, as well as the case report and associated documentation.
2. Documentation, evidence, or statements presented by the individual or group requesting the review.

Additional information will be requested if there is a Committee consensus that the materials presented are insufficient for it to make a determination. The Committee may request any or all of the following:

1. That affected parties on any or all sides come before the Committee to answer questions about the case.
2. That consultants be hired to prepare additional reports addressing key issues in the dispute.
3. That consultants be invited to come before the Committee to answer questions in an attempt to clarify issues.
4. That the affected parties prepare additional materials based on questions presented by the Committee.

The Committee's recommendations to the Secretary will be based on a majority vote and will be submitted to the Secretary in writing. If the Committee vote is not unanimous, a written statement of the minority opinion(s) may be included with the recommendation. The final determination on the review of a finding rests with the Secretary.

The Committee will review such other matters as requested by the Secretary.

#### DISPUTE RESOLUTION (with respect to responsibility # 3)

The facilitation of the resolution of disputes within and between Native American groups and individuals with respect to the return of human remains and objects is part of the Committee's mandate. The Committee is invoked by the Secretary for dispute resolution in the following instances:

1. When requested in the course of arriving at an institutional decision on a case with more than one claimant.
2. Once the decision is made relating to the return of human remains and objects that is subsequently disputed by one or more Native American groups or lineal descendants.
3. Whenever necessary to facilitate the resolution of disputes among Native American groups or lineal descendants relating to the return of human remains and funerary objects, sacred objects, or objects of cultural patrimony.

Procedures for consideration of disputes follow those detailed above for review of findings. A report on each

dispute considered by the Committee that reflects majority vote and minority opinion (if appropriate) will be submitted in writing to the Secretary with the understanding that the Secretary will distribute copies of the full report to all affected parties. The final decision on the dispute rests with the Secretary.

## APPOINTMENT OF CONSULTANTS

A consultant is anyone hired to gather evidence or render an expert opinion on a case. All consultants will be hired with the approval of the Secretary or the Secretary's designee.

Any three Committee members may recommend that a consultant be hired. The Committee may provide a list of possible consultants.

### *VI. Rules of Evidence*

The Committee, in conformance with Public Law 101-601, will subscribe to the following definition of **cultural affiliation**:

*Section 2 (2): "Cultural affiliation" means that there is a relationship of shared group identity, which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.*

Cultural affiliation is a relative concept. It can be ascertained using a variety of different kinds of evidence. Multiple lines of evidence will be used in most circumstances to assess affiliation. In some cases, only one line of evidence may be available. In some instances a single line of evidence for cultural affiliation may be found adequate.

Cultural affiliation may be ascertained by the following kinds of evidence, listed alphabetically: (a) anthropological, (b) archaeological, (c) biological, (d) expert opinion, (e) folkloric, (f) geographical, (g) historical, (h) kinship, (i) linguistic, (j) oral tradition, (k) sociological, or (l) other relevant information.

The strength or power of the claim for repatriation will be assessed by the persuasiveness of the evidence, which should include some sense of time, form, and genealogical relationships.

The Secretary shall ensure that the members of the Committee have full and free access to: (a) the human remains and funerary objects subject to section 11 of P.L. 101-185 and other cultural items subject to NMNH repatriation policy, which follows P.L. 101-601, and to (b) any related evidence, including scientific and historical documents.

### *VII. Amendments to the Charter and Rules of Operation*

Any amendment to the above Charter and Rules of Operation can be made by unanimous consent of the Committee and with approval by the Secretary or his designee.