

REPORT
of the
**Panel for a National Dialogue on
Museum/Native American Relations**

February 28, 1990

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A. Summary of Findings and Recommendations

The Panel's principal findings and recommendations are:

1. The issue for resolution is the disposition and treatment of Native human remains, funerary items, religious objects and objects of national or cultural patrimony possessed by museums, universities, and other institutions. Resolution of the issue should be governed by respect for the human rights of Native peoples and for the values of scientific research and public education.
2. Respect for Native human rights is the paramount principle that should govern resolution of the issue when a claim is made by a Native American group that has a cultural affiliation with remains or other materials. In such cases, the wishes of the nation or group regarding the disposition of the materials must be followed.¹
3. With regard to Native human remains which are not culturally identifiable with specific, present-day nations or people, the Panel is divided. A majority believes that a respect for Native human rights requires that a process be developed for disposition of these remains in cooperation with, and with the permission of, Native nations. Such process should take legitimate scientific interests into account in appropriate instances where Native consent is secured. Other Panel members² believe that scientific and educational values may predominate where cultural affiliation with a present-day Native group does not exist.

1. Lynne Goldstein and Douglas H. Ubelaker think that American Indian groups should be given full opportunity to present their concerns and otherwise be included in the decision-making process. Decisions in such situations should be made on a case-by-case basis by the institution involved after input from the American Indian, scientific and museum communities.

2. Lynne Goldstein, Michael Moratto and Douglas H. Ubelaker.

4. Human remains, whether culturally identifiable or not, must at all times be treated with respect.
5. Repatriation standards as recommended in the Report should be judicially enforceable.
6. Federal legislation implementing the recommendations of this Report is needed.¹

1. Lynne Goldstein, Michael Moratto and Douglas H. Ubelaker disagree with this recommendation. They do not think that federal legislation is needed for this purpose.

B. Introduction

Many museums in the United States contain collections of Native American human remains, funerary objects, sacred ceremonial or religious objects, or items relating to the cultural patrimony of Native American tribes. The proper treatment and disposition of these materials has been a divisive issue. Some Indian nations have, for example, made repeated requests for the repatriation of materials over periods of many years without satisfactory or any response to their requests. At times, there have not even been meaningful discussions among the parties involved.

The issue is an extremely important one for Indian nations and museums. For tribes, the lack of control over the treatment and disposition of these Native American materials in museum collections may interfere with their ability to maintain traditions and ceremonial obligations, and it also may constitute a bitter reminder of past discrimination and injustices. For museums and archaeologists, loss of access to these materials may limit important professional study and hinder public interpretation. In addition, continued conflict over the treatment and disposition of Native American materials seriously disturbs cooperation between tribes and museums that can be beneficial to both groups, as well as to the general public.

In the Second Session of the 100th Congress, the Senate Select Committee on Indian Affairs favorably reported S.187, a bill intended to resolve many of the outstanding issues regarding the disposition of Native American materials in museums. The museum and archaeology communities opposed this legislation as it was drafted. At a hearing on the legislation in July, 1988, Michael J. Fox, Director of The Heard Museum in Phoenix, Arizona, testified on behalf of the American Association of Museums, expressing its concerns regarding the proposed bill. At the end of his testimony, Mr. Fox suggested that Native Americans and museums "enter into an immediate and intense year-long dialogue on the identification, use, care, and ownership of Native American materials."

In its Report on S.187, the Senate Select Committee responded to Mr. Fox's suggestion. The Committee noted that "the museum community has acknowledged the necessity of responding to tribal demands for repatriation and has volunteered to facilitate a dialogue between tribes and

museums to develop recommendations for addressing the conflict." The Report went on to encourage this dialogue, "provided that the tribes want to participate and have an equal opportunity to frame the agenda for such a dialogue and development of recommendations."

As a result of the Senate Select Committee's response to Mr. Fox's suggestion, The Heard Museum and its Barry M. Goldwater Center for Cross-Cultural Communication accepted the responsibility for organizing and sponsoring the dialogue, with the aim of reporting results to the Committee prior to the opening of the Second Session of the 101st Congress in January, 1990. The communication process was named The National Dialogue on Museum-Native American Relations, and the group of participants came to be called the Dialogue Panel.

The present Report is the result of this year-long effort. The Panel believes that the dialogue process has been successful. Concerns, strong feelings, and procedural and substantive ideas were frankly and openly shared among the members of the Panel, many of whom were members of groups that had previously held sharply divergent positions on the issues involved. Such a candid and extended exchange of views had not often occurred in the past; the process of mutual education that resulted was quite valuable. Even more gratifying was the fact that, members of the Panel were able to reach broad consensus on a set of general principles and procedural and substantive policy guidelines that, in the Panel's view, should govern the behavior and respective rights of museums and tribes in relation to Native American materials.

The Panel recognizes that there are important related topics that the Panel has not been able to discuss in depth in the limited time available to it. In addition, it is important to understand that the Panel saw its task as formulating policy recommendations, not as drafting legislation¹. Such

1. For example, terms such as "cultural affiliation", "funerary items", "sacred ceremonial or religious objects", and "objects of national or cultural patrimony" would require definition in legislation. Some members of the Panel believe that precise definitions of such terms are essential for interpreting and evaluating the present Report. Their endorsement of the Report is based on the understanding that appropriate definitions will be incorporated in legislation.

legislation would have to incorporate appropriate definitions and spell out applicable procedures. The process of legislative drafting should include consultation with the groups that have been represented in the Panel -- Native American governments and peoples, anthropologists and representatives of the museum community.

This Report presents the Panel's findings and policy recommendations to the Senate Select Committee, to the museum, anthropological and Native American communities, and to the general public. As more fully described below, we recommend that legislation recognize the right of Native American groups to participate fully in the decision-making process with regard to human remains and specific cultural materials. Our hope is that this will result in solutions that will meet outstanding Native American concerns while allowing scientific investigation in appropriate situations. Our further hope is that the adoption of these recommendations will lead to a new era of cooperation rather than conflict between Indian nations and museums with consequent benefits to both and to the general public.

C. Panel Organization

The Senate Select Committee Report was issued in October, 1988. Shortly thereafter The Heard Museum's Barry M. Goldwater Center for Cross-Cultural Communication convened a meeting at The Heard Museum to develop plans for the year-long dialogue that the Committee had encouraged. This planning meeting took place on December 12, 1988.¹

1. The following individuals attended the December 12, 1988 meeting:

Cecil Antone Intertribal Council of Arizona	Rennard Strickland Visiting Professor College of Law, Arizona State University
Paul Bender Dean and Professor of Law, College of Law, Arizona State University	Harriet Toro Phoenix Area Vice President National Congress of American Indians
Michael J. Fox Director, The Heard Museum	Christy Turner Professor of Anthropology Arizona State University
Richard L. Johns President, The Heard Museum Board of Trustees	R. Gwinn Vivian Associate Director Arizona State Museum
Daniel Lewis Legislative Assistant, Indian Affairs Office of U.S. Senator John McCain	Peter H. Welsh Deputy Director, The Heard Museum President, Council for Museum Anthropology
John Ravesloot Arizona State Museum	David Wilcox Associate Curator of Anthropology Museum of Northern Arizona
Charles Redman Chairman, Department of Anthropology Arizona State University	

The following individuals were invited to the December 12, 1988 meeting, but were unable to attend:

Russell P. Hartman Curator, Navajo Tribal Museum	June Tracy Legislative Assistant, Indian Affairs U.S. Senator Dennis DeConcini
Alex Skibinc Legislative Assistant, Indian Affairs U.S. Congressman Morris Udall	

Those present at the December 12 meeting agreed that a year-long national dialogue could prove valuable. They also agreed that such a dialogue must involve equal representation for Native American people. The dialogue panel, they thought, should include members of the museum community, anthropologists, members of the national Native American community, and members of tribal governments and traditional Native American groups. Ex-officio members of the panel would include a facilitator, members of the Senate Select Committee and House of Representatives staffs, and a panel administrator.

As the result of consultation among national leaders of the museum, anthropology and Native American communities, the following people were invited to serve as members of the Panel for a National Dialogue on Museum- Native American Relations:¹

Panel Members

Willard L. Boyd²

President

Field Museum of Natural History

W. Roger Buffalohead

Director

American Indian Learning and Research Center

University of Minnesota

1. Affiliations are indicated as of the time the Panel began its meetings. In addition to those listed, the following people attended particular meetings as alternates or substitutes:

George Armelagos

President

American Association of Physical Anthropology

Jonathan Haas

Vice President, Collections and Research

Field Museum of Natural History

Daryl LaPointe

Winnebago Tribal Council

2. Mr. Boyd was unable to attend some Panel meetings or to participate in the formulation of this Report.

Vine Deloria, Jr.¹
Professor
Department of Political Science
University of Arizona

Lynne Goldstein
Associate Professor
Department of Anthropology
University of Wisconsin-Milwaukee

Suzan Shown Harjo²
Executive Director
National Congress of American Indians

Walter R. Echo-Hawk
Staff Attorney
Native American Rights Fund

Oren Lyons
Chiefs Council, Onondaga Nation
Six Nations Iroquois Confederacy

Will Mayo
Chiefs Conference

Michael Moratto
President, INFOTEC Research, Inc.
Fellow and Research Associate in Anthropology
California Academy of Sciences

Harriet Toro³
Phoenix Area Vice President
National Congress of American Indians

Reuben A. Snake, Jr.
Chairman
Winnebago Tribal Council

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1. Although invited to join the Panel, Professor Deloria was unable to participate in the Panel's discussions or in the formulation of this Report.
 2. Now President and Director of The Morning Star Foundation, Washington, D.C.
 3. Although invited to join the Panel, Ms. Toro was unable to participate in the Panel's discussions or in the formulation of this Report.

Martin Sullivan
Director and Assistant Commissioner of Education
New York State Museum

Douglas H. Ubelaker
Head, Division of Physical Anthropology
Smithsonian Institution

Peter H. Welsh
Director of Research/Chief Curator
The Heard Museum
President, Council for Museum Anthropology

Facilitator

Paul Bender
Dean and Professor of Law
College of Law, Arizona State University

Congressional Staff

Daniel Lewis
Legislative Assistant, Indian Affairs
U.S. Senator John McCain

Kimberly Craven
Legislative Assistant
U.S. Congressman Ben Nighthorse Campbell

Marie Howard
Legislative Assistant, Indian Affairs
U.S. Congressman Morris Udall

Michael Moreno
Special Assistant
U.S. Senator Dennis DeConcini

June Tracy
Legislative Assistant, Indian Affairs
U.S. Senator Dennis DeConcini

Patricia Zell
Chief Counsel
U.S. Senate Select Committee on Indian Affairs

Research Associate

Rennard Strickland
Visiting Professor, College of Law
Arizona State University

Administrator

Michael J. Fox
Director
The Heard Museum

Recorder

Gloria Lomahaftewa
The Heard Museum

The Panel met for the first time on April 1, 1989, at The Heard Museum in Phoenix. Subsequent Panel meetings were held at the Museum on May 6, 1989; July 13-14, 1989; and November 6-7, 1989. A drafting group met at the Museum on February 9, 1990.

Panel discussions were generally free and unstructured, with the Panel setting its own agenda. It was agreed at the outset that members of the Panel would act in their individual capacities and not as formal representatives of the organizations or groups to which they belonged. The Panel members came to understand early in this dialogue process that, despite a long history of conflict over the issues, a substantial core of agreement actually existed regarding many important issues of principle and practice. Except where specifically indicated, this Report represents the views of all of the Panel members who participated in the formulation of this Report.¹

1. Generally, only regular and ex-officio Panel members participated in the Panel's discussions. However, at its July 13-14 meeting, the Panel was greatly aided by a presentation by Mark Price, of the University of Missouri, on the background of common and statutory law relating to the treatment and disposition of human remains.

D. General Principles

1. The Human Rights of Native Americans

- a. Relationships between museums and Native American peoples with regard to Native human remains, funerary objects, sacred ceremonial or religious objects and items of national or cultural patrimony should be governed by respect for the human rights of Native Americans and for the values of scientific research and public education. The Panel believes that human rights should be the paramount principle where claims are made by Native American groups that have a cultural affiliation with remains and other materials.¹ Such human rights include religious, cultural, and group survival rights, as understood within the context of U.S. and international standards of human rights and rights of self-determination.

The Panel is divided with regard to the strength of the human rights principle where no present-day Native groups have cultural affiliation with human remains or other materials. A majority believes that the human rights principle is paramount in this situation as well; other Panel members² believe that scientific and educational values may predominate where cultural affiliation with a present day Native group does not exist.

- b. In far too many instances, the human rights of Native American nations and people have been violated in the past through the collection, display and other use of human remains and cultural materials without Native American consent and in ways inconsistent with Native American traditions and religions. Often, these violations have occurred in the name of science, non-indigenous religions,

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economic development and entertainment, as well as in pursuance of commercial grave robbing. All Panel members deplore this history and agree that future practices must avoid a repetition of such excesses.

- c. Respect for the human rights of Native Americans requires that Native nations and groups that have a cultural affiliation with existing collections be given the right to determine whether those materials should be returned to repose or repatriated.¹
- d. The Panel recognizes the value of historic and scientific research and public education, and the need to pursue them in a respectful, non-intrusive manner that recognizes the rights of Native American nations and people.
- e. The Panel believes that federal legislation is needed to establish general policy guidance consistent with the findings and recommendations of this Report.²

2. The Role of Museums

- a. The essential goals of museums are to advance and disseminate knowledge through the acquisition, preservation, study, and interpretation of collections.
- b. Knowledge of the past can be gained through studies of many different kinds of sources, including human remains and cultural materials. In some cases they are the only source of information about peoples and lifeways of the past.

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2. Lynne Goldstein, Michael Moratto and Douglas H. Ubelaker do not think that federal legislation is needed for this purpose.

- c. If research methods and techniques continue to improve, more may be learned from collections in the future than is presently possible.
- d. Knowledge gained through studies of museum collections, including human remains, may benefit society generally and Native Americans particularly. Such studies can increase awareness of the past, enhance knowledge of ancestral peoples--including information about diet, illnesses, physical characteristics, cultural complexity, and population relationships--and contribute to improved diagnosis and treatment of disease.
- e. Educating the public about past cultures and societies is inherently worthwhile. Those who study museum collections should improve the communication of their findings to all concerned audiences, especially to Native Americans.
- f. Human remains must at all times be accorded dignity and respect.¹ Human remains retained in museum collections should receive appropriate scientific study, should be responsibly conserved, and should be accessible only for legitimate scientific or educational purposes.²

1. Some panelists believe that "dignity and respect" mandate burial and that it is not inherently possible for museums to withhold these dead in a way that accords them respect.

2. As discussed below, a majority of the Panel believes that all Native human remains are ultimately entitled to a decent burial, even when their cultural affiliation is unknown.

E. Policy Guidelines

1. Museum Responsibilities

- a. Museums hold a fiduciary responsibility for the care and interpretation of all their collections. They bear an extra burden in regard to those collections that are considered sacred or central to cultural patrimony by Native peoples, and for human remains and funerary objects.

Experience suggests several elements of "good practice" by museums that hold such materials. While these elements of good practice have been developed in the context of the National Dialogue on Museum-Native American Relations, museums should also consider how to apply them to the concerns of other cultural groups.

- b. Human remains, funerary objects and sacred objects should never be collected or retained by institutions whose mission does not require the preservation, serious study, and interpretation of such materials. An institution's collection policies should conform closely to its mission statement, and should be reviewed regularly by trustees and senior staff.

To the fullest extent possible, an institution should consult with living cultural groups regarding ownership, consent, and treatment issues before deciding whether to acquire sensitive material related to those groups. Any institution that acquires human remains, funerary items or sacred objects should determine on a case-by-case basis that it has consent of culturally affiliated Native peoples and that the acquisition is related to its institutional mission. In all events, the recommendations of this Report should be followed in resolving questions about the retention of such materials.

- c. Institutions are obligated to interpret cultural materials such as sacred and ceremonial objects with accuracy, sensitivity, and respect for their relationship to the of Native peoples. Meaningful dialogue with these groups should occur on a regular basis to assure that the Native beliefs and viewpoints are represented fairly and objectively.

The need for meaningful dialogue is especially critical when sensitive materials are proposed for exhibition. Wherever possible, institutions should seek opportunities to work in partnership with Native peoples, to bring interpretive programs to Native peoples, and to train museum educators and school teachers.

- d. The museum profession as a whole will benefit from greater understanding and expertise in addressing issues related to human remains, funerary items, and other objects regarded as central to the continuation of traditional religious and cultural practices. The American Association of Museums, in collaboration with other appropriate professional organizations, should take the initiative to develop programs for their memberships. These programs could include: training with regard to legal issues; employment of Indian curators and other staff members; using consultants to address issues of general planning, collections management and public educational programs; completing documentation of all sensitive collections; bringing Native people into policy-making activities and collection management and interpretive activities; and continuing systematic exchange of information and viewpoints with Native people.
- e. National standards and criteria relating to Native human remains, funerary objects, sacred ceremonial and religious objects and items of tribal cultural patrimony should be established, in consultation with Native peoples, by the American Association of Museums and other appropriate organizations, such as the Society for American Archaeology, the American Association, of Physical Anthropology, and the American Anthropological Association. Such standards should also require the high professional and ethical qualifications of persons seeking access to such collections. However, the majority of the Panel believe that such professional standards alone cannot substitute for the federal legislation we recommend.

The organizations' demonstrated respect for the original peoples and cultures of this country will help instill in the general public an understanding of the responsibilities of the nation to Native American peoples.

2. Exchange of Information Between Museums and Native American Groups
 - a. Museums should take the initiative to compile inventories and document prior studies of all of their Native American materials. In addition, they should, on their own initiative, make these inventories available to potentially interested Native peoples offering to discuss the materials with them. Museums should do their best to learn about and identify these interested peoples. Consideration should also be given to depositing these inventories where they would be available to individuals or groups who might be interested in them and to whom they might not otherwise be accessible.
 - b. Museums should promptly answer inquiries requesting information about Native American materials. A museum's response should come from the museum director or someone in an equivalent policy-making position.
 - c. Museums should supply relevant inventories of their Native American materials on request. If the inventory or other requested information will take some time to compile, the request should be answered promptly, with an indication that the information is being compiled, and with a realistic estimate of how long that will take.
 - d. A museum's curatorial staff should be informed by museum administration of requests for information about the museum's collection materials or requests for the return of materials.
 - e. When a request is made for the return of Native American materials, a museum should promptly offer to share all the information it has about the source and prior history of the materials. Museums should also provide Native people physical access to the materials in which they are interested.
 - f. If a museum is uncertain about the cultural affiliation of a party requesting the return of materials, it should request information about that affiliation. If a request is made by one party for return of materials that a museum believes may be more closely affiliated with

another party, the museum should advise both parties of the request. That other party should be invited to join the negotiation and decision-making process with respect to the materials. A request may not be rejected simply with a statement that the museum doubts or denies the requesting party's "standing."

- g. In general, when requests for the return of materials are made, both requesting and custodial parties should attempt to share all relevant information as the basis for their subsequent negotiations about the proper disposition of the materials.
- h. Full implementation of the recommendations made in this section of the Report will require the provision of additional technical and financial resources to museums.

3. Repatriation Policies and Procedures.

- a. Repatriation policies and procedures as recommended in this Report should apply to the following materials in the collections of museums, universities or similar institutions: Native human remains; funerary items; sacred ceremonial and religious objects, and objects of national or cultural patrimony (i.e., inalienable items owned in common by tribes or clans that have historical or governmental importance to present and future generations).
- b. Institutions must respond to claims for these materials made by tribal groups or tribal governments; they need respond to claims made by individuals only when those individuals can demonstrate a family relationship to the materials.
- c. If a tribal group has a cultural affiliation with these materials the wishes of that tribal group regarding the reburial, disposition or treatment of the materials must be followed.¹ Specifically, the tribal

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group has the right to determine whether remains and funerary objects should be returned to repose. In the case of sacred ceremonial and religious objects and items of inalienable national or cultural patrimony, the tribal group has the right to require either repatriation under terms of proper use and care or the group's participation in decisions regarding curation and display.

- d. When participating in decisions regarding the disposition of skeletal remains and other materials, tribal groups should make reasonable accommodation for valid and respectful scientific and educational uses of these materials when such accommodations are compatible with religious and cultural practices. Museums and other institutions should thus explore with the tribes the opportunities for such uses and seek the tribe's approval of, and cooperation with, such uses.
- e. Where Native American remains are not culturally identifiable with specific present-day nations and people, Panel opinion is divided as to the most appropriate approach. A majority of the Panel believes that the following should apply:
 1. Scientific study of human remains carries an obligation to secure appropriate consent. None of these dead consented to donate themselves to science;
 2. Present-day Native American nations are most closely connected to the dead and have the authority to speak on behalf of unclaimed remains;
 3. Native American nations and people strongly believe that these human remains are entitled to a decent place of rest. These wishes should be respected;
 4. Therefore, a process for finding a decent place of rest for these dead should be developed with the cooperation and permission of interested Native peoples. Such a process should incorporate legitimate scientific interests in appropriate instances, if Native consent is secured.

Other members of the Panel¹ believe that Native human remains that cannot be identified culturally with contemporary American Indians, yet are considered valuable by the scientific community, should be preserved and remain accessible for future research. This position recognizes that:

1. Scientific study of such collections yields unique and important information about Native Americans living at a time that is not accessible from other research materials.
 2. As methods of scientific analysis continue to improve, more may be learned from these remains in the future than is presently possible.
- f. Wherever possible, the disposition and treatment of skeletal remains and other materials should be determined consensually through cooperative and timely discussions between the institution involved and all interested Native American groups. Where issues remain after such good faith discussions, an attempt should be made to settle these issues through mutually agreed upon processes of mediation or arbitration.

If unresolved issues remain, applicable legal standards should be judicially enforceable. It is important that the process for enforcing these standards be equally accessible to all tribes and museums, regardless of their wealth or resources.

1. Lynne Goldstein, Michael Moratto and Douglas H. Ubelaker.