

## **International Repatriation Consultation**

(Tribal Nations Conference)

September 27, 2016

3:00pm – 4:30pm

*Note: This is a summary of the session. In the interest of safeguarding sensitive and confidential information, comments are not attributed to a named Tribal representative or Tribe and every effort has been made to report only non-sensitive information.*

A Tribal leader from the Southwest provided an opening blessing.

Principal Deputy Assistant Secretary – Indian Affairs (PDAS-IA) Larry Roberts opened the session by noting that:

- International repatriation issues are one of the more important items the Administration is working on;
- The Federal Government's work with the Pueblo of Acoma to advocate for removal of the Pueblo's shield from the Eve Auction House in France can serve as a model for future efforts to bring home Tribal cultural items;
- The Federal agencies are here to hear from Tribal leadership on how we can do better and to set the groundwork for how future Administrations can carry this effort forward.

A video of Secretary Sally Jewell on the importance of international repatriation was presented.

Cheryl Andrews-Maltais then introduced the panel of Federal representatives. Each provided a brief introduction:

- Eric Wilson, International Affairs Coordinator for the Office of the Assistant Secretary – Indian Affairs, U.S. Dept. of the Interior: Noted that the Antiquities Act, NAGPRA, and ARPA are tools domestically but this consultation focuses what we can do on the international level to bring a halt to sales of cultural property abroad. Mr. Wilson noted that there are posters throughout the room listing comments received during listening sessions on this topic.
- Brooke Hobbie, Office of International Affairs, U.S. Dept. of the Interior: Introduced the office as working closely with Indian Affairs and other Interior bureaus and offices on this issue. Ms. Hobbie noted that she and other career staff will be looking to continue work on this in the future. Ms. Hobbie stated that a record is being prepared but none of the comments will be attributed and requested input on the structure of the consultations.
- Gina Allery, Office of Tribal Justice, U.S. Dept. of Justice: Stated that the Office of Tribal Justice is the point of contact for Tribes who seek assistance in repatriating specific property. The Office's focus is on violations of existing U.S. laws when the items are taken from Indian land or Federal land.
- Lorie Nierenberg, U.S. Dept. of State: Stated that, in the past, her office had mostly focused on assisting other countries to keep their cultural objects from being imported into U.S., but that, in the past few years, the office has added a focus on Tribal cultural objects that are sent to foreign countries, raising the issues with foreign auctions and museums, and working toward repatriation. Her office is currently working to establish a bilateral working group with the Government of France on this issue.

Senior Policy Advisor to PDAS-IA, Cheryl Andrews-Maltais noted that the Secretary and PDAS-IA are both committed to addressing this issue and that all the Federal representatives present are looking to Indian Country as to what the consultations should look like, how to move forward, and guidance on where Tribes would like the Federal Government to be. Ms. Andrews-Maltais also noted that House Concurrent Resolution 122, PROTECT Patrimony Resolution, passed the House and has been introduced in the Senate, and that Senator Heinrich's bill is under consideration in Congress. She noted the importance of hearing Indian Country's views on these efforts.

A Tribal Leader from the Midwest stated:

- The biggest concern is how we identify what we are missing;
- We believe that if we go to French auction houses, we will see cultural items are up for sale because the French had historically been present in our Tribal lands;
- In our culture, most of the items that have left us are living beings and we have been told by the elders that to move into the future, we must bring the past to the present.

A Tribal leader from the Southwest stated that the Tribe has experience in both preventing illegally trafficking and seeking repatriation and thanked the PDAS-IA for recent efforts to assist in returning a cultural object. This Tribal leader noted it is the end of the Obama Administration and encouraged DOI to choose a proposed action to prioritize and move quickly in order to make progress by the end of the year. The two top items he suggested prioritizing were:

- Prepare and finalize an interagency document that agencies and Tribes could rely on for procedures to protect cultural items. Define a process for Tribes to use to be successful in their own efforts to repatriate, provide a template for people to use working with Congressmen.
- Strengthen existing federal statutes – work with Tribes on existing and the two proposed pieces of legislation. (He also encouraged other Tribal leaders to support the proposed legislation).

He also noted:

- Issues are ripe for Tribal consultation;
- Tribes should be permitted to provide any input they feel is appropriate;
- Clarity is needed as to which items qualify, because items are difficult to define.
- Building good relationships with directors and dealers who have been willing to voluntarily repatriate.
  - Tribes have nonprofit status so are willing to provide seller with a document to allow them to write off the repatriation to the Tribe as a donation.
  - Approaching through a relationship is less difficult than the legal approach.
  - Suggested explaining to dealers that the Tribe is interested in items of cultural patrimony rather than all items belonged to the Tribe, and the Tribe has no intent to shut down businesses, and requesting the dealer contact the Tribe to verify whether an item is one of cultural patrimony.
- There are individuals who can help Tribes on the law enforcement side as far as identifying items of cultural patrimony regionally.
- Tribes consider these items to have a life.

Another Tribal leader from the Southwest noted that:

- Their involvement with repatriation originally began on the domestic stage, where the Tribe began to learn a lot of items were lost and eventually faced the same issue on an international level, particularly with French auction houses. The Tribe contacted several Federal agencies including the FBI and State to determine what they could do.
- A question is whether France is the only country or are other countries doing this too.
- Because of the nature of the items, the Tribe sought the assistance of attorneys and in one case filed in the French court to no avail because the French Government holds that tribes have no standing. It has been frustrating.
- Tribes need a pamphlet or other document identifying an effective way of communicating with foreign countries and overcoming obstacles like France not recognizing tribes.
- It's good to hear that the Federal representatives are working on this issue – it's needed and this has been going on for years.
- In the Tribe, there are 12 communities – each with own means of identification and meaning of cultural items. Some have lost items of such great significance that it has literally caused the society of a community to cease functioning.
- Federal agencies need to come together to educate foreign countries on Tribes and the importance of bringing the items back home so that the societies can continue with faith and ceremony.

PDAS-IA Roberts noted that the Federal Government has had some success in pulling together an interagency agreement on the Indian Child Welfare Act (ICWA) as an interagency vehicle for coordination, training, and enforcement. He suggested that a similar Memorandum of Understanding that lays out the steps for enforcement on repatriation may be a way to address the issue.

A Tribal leader from an Alaska Native village described a few of the issues that Alaska Native villages face on an ongoing basis due to their isolation, including difficulties in accessing clean water and quality health care and detaining criminals. This Tribal leader stated that:

- For Tribes, the tie to lands and sacred objects are connections with elders;
- It was necessary for him to leave his children home and come to Washington, DC, to fight for Tribal rights because Tribes are being attacked on all levels;
- Policies and procedures are needed to ensure Tribes' voices are not taken away;
- Environmental pollution that elders fought generations ago is still there;
- Alaska Native villages need to band together and fight for their interests because Alaska Native Corporations fight for profit; AND
- To have meaningful consultation, consultation must occur with each Tribe, in each village, because not all can attend the Alaska Federation of Natives (AFN).

A Tribal Leader from the upper Midwest stated that she was appalled at hearing what was happening with Tribal artifacts and sends her prayers to all Tribes affected. She will be working hard to bring her Tribe's people and objects home and will work with her Tribe's repatriation workgroup to provide input into this consultation.

A Tribal leader from the Northeast reminded the Federal representatives to bring Tribes to the table for meetings among Federal agencies.

A Tribal leader from the Northwest stated that:

- It is hard to imagine people who want to steal and desecrate artifacts belonging to Tribes;

- There is an unwritten law of each Tribe regarding the way of life in Indian country that the U.S. Government should still abide by, in addition to written treaties and other laws;
- He supports the plan to return items to Tribes; and
- The Kennewick Man needs to be repatriated.

Another Tribal representative noted that the United Nations (UN) Declaration on the Rights of Indigenous Peoples promotes the establishment of a mechanism within the UN for repatriation, and wondered whether the State Department has had any discussions on that. He stated that it would make sense if the Federal agencies considered the UN efforts in this effort. The State Department representative responded that she is aware of an ad hoc working group and will look into more specifics.

The President of the National Association of Tribal Historic Preservation Officers (NATHPO) noted :

- A new definition of “Indian tribe” that would include Alaska Native Corporations is under consideration in Congress and this could change the dynamics of the Native American Graves Protection and Repatriation Act (NAGPRA) and the National Historic Preservation Act (NHPA);
- Consulting at the Alaska Federation of Natives conference is not consulting with Tribes per se; and
- There should be an initiative to repatriate the remains of WWI veterans who were buried abroad.

A Tribal leader from the Southwest noted a related issue: the imitation of Native arts and crafts and their sale in foreign countries and the imitation of Tribe-specific crafts by members of other Tribes. Related to this topic, a Tribal attorney suggested the Federal agencies should outline the process identifying the intersection of indigenous knowledge for how a Tribe can address when someone makes things from their Tribe. This attorney also noted that the UN World Intellectual Property Organization is working on a document they plan to approve in two months and suggested that the Obama Administration consult with Tribes on the document and take a position on it.

A Tribal leader from the upper Midwest noted that it is early in her tenure, so she will be soliciting feedback from her Tribe’s Historic Preservation Officer (THPO) and will submit written input.

The NATHPO President suggested involving the U.S. Fish and Wildlife Service in this effort because there have been instances where FWS has been successful in halting domestic auction sales where eagle feathers had been removed from items in an attempt to circumvent federal law. She also suggested that the National Park Service could aid in this effort.

A Tribal leader stated that they are trying to prevent the taking and selling of Tribal cultural objects and items from every angle, but would like to see stronger consequences (punishment) for taking and selling. He will work with his Tribal council to provide written input.

Ms. Andrews-Maltais wrapped up the session by stating that the Federal agencies are working on a toolkit for Tribes to access agencies for assistance in repatriating ancestors and items, and looks forward to continued Tribal input.

A representative of the U.S. Department of Justice noted that the Federal partners are aware that this topic is of a sensitive nature and that the Federal agencies will do their best to keep information confidential.

The session closed at 4:50 p.m.