

**Statement by
Ford W. Bell, DVM, President,
American Association of Museums**

**To the
Senate Committee on Indian Affairs
The Honorable Daniel Akaka, Chairman
The Honorable John Barrasso, Ranking Member**

**On the Committee's June 16, 2011 Oversight Hearing:
"Finding Our Way Home: Achieving the Policy Goals of NAGPRA"**

Chairman Akaka, Ranking Member Barrasso, and Members of the Committee: Thank you for this opportunity to submit public witness testimony on this important topic.

The American Association of Museums (AAM) is proud to represent the full range of our nation's 17,500 museums – including aquariums, arboretums, archaeological museums, art museums, botanical gardens, children's museums, culturally specific museums, historic sites, history museums, maritime museums, military museums, natural history museums, nature centers, planetariums, presidential libraries, science and technology centers, tribal museums, zoological parks, and other specialty museums – along with the 400,000 professional staff and numerous volunteers who work for and with museums.

For hundreds of years, museums have held objects in the public trust. Today, American museums preserve and protect more than a billion objects. Sometimes they face questions related to historic artifacts; ownership; Nazi-era assets; sacred objects; human remains; the loan, sale, or donation of objects; or their diligence in probing the history of such objects.

The museum field takes these concerns very seriously. Since 1925, the museum field has been actively working to ensure that museums adhere to rigorous ethical standards. These current standards, best practices, and ethics from the field include:

- The American Association of Museums (AAM) Code of Ethics for Museums
- AAM's Standards and Best Practices for U.S. Museums
- AAM's Accreditation Program Requirements
- Each museum's Institutional Code of Ethics
- Each museum's Institutional Mission
- Guidelines established by organizations such as the American Association for State and Local History, the Association of Zoos and Aquariums, and the Association of Art Museum Directors

AAM lists all of its standards and ethics on its website and provides many opportunities for the museum field to learn more about them and how to adopt them within their own institutions. We offer an online library of resources, an Information Center for our members, numerous titles in our bookstore, and numerous professional development opportunities – both in person and online – for the entire museum field.

AAM's Code of Ethics for Museums clearly states that the “stewardship of collections entails the highest public trust and carries with it the presumption of rightful ownership, permanence, care, documentation, accessibility, and responsible disposal.” This standard serves as the very foundation of collections care and management in our nation's museums.

Twenty years ago, the museum community joined many other constituencies in working with Congress to enact a law that struck a careful balance: ensure that extensive research is conducted to draw correct conclusions about the origin of artifacts, establish detailed processes for consultations and repatriations, and repatriate artifacts accordingly. For 20 years, museums have been diligent in their efforts to build bridges and foster collaboration and cooperation with the tribal community and have repatriated numerous objects and artifacts in accordance with the law.

One thing that the law did not provide was funding to support the extensive work that museums would undertake to comply with it. It is not entirely surprising that the Government Accountability Office reported earlier this year that federal agencies have been slow to comply with the law. In many cases, these agencies point to a lack of resources as the reason for their non-compliance. It is important to note that despite the lack of resources available for this purpose, museums across the nation – the overwhelming majority of which are non-profit educational institutions – have hired staff, invested significant resources, and otherwise worked diligently to fulfill the policy goals of NAGPRA.

Currently, the National NAGPRA Office provides grants to support the cost of repatriating an object or artifact, but there are no grant funds available to support the extensive research and outreach necessitated by the law and critical to ultimately determining if and to whom repatriation is appropriate. To remedy this situation, we recommend establishing a fund to support the extensive work that museums undertake to comply with the law.

AAM wishes to associate itself with the comments by panelist Kevin Gover, who serves as Director of the National Museum of the American Indian. He very ably articulated the challenge that museums face: Repatriation is not just about returning human remains and cultural items, it is about ensuring their correct disposition.

We also recommend that the Committee continue its oversight of the National NAGPRA Office and its handling of the regulations related to Culturally Unidentifiable Human Remains (Section 10.11).

The museum community has serious concerns about the rule concerning the application of NAGPRA to culturally unidentifiable human remains and associated funerary objects, and AAM has expressed these concerns to the Department of the Interior's National NAGPRA Office on several occasions (January 14, 2008, May 13, 2010, and May 19, 2011), each time in response to

a request for public comment. We are pleased to outline these concerns once again for the Committee:

Lack of clarity. The new regulations define the term “aboriginal lands” in a vague manner that is inconsistent with other sections of the regulation. This vague definition makes it very difficult for museums to identify the tribes who are the appropriate consultation parties and to award disposition based on aboriginal lands.

Unintended consequences. As stated above, repatriation is about ensuring the correct disposition of human remains and cultural items. The rule prematurely limits the rights of tribes that have not yet received federal recognition. The rule also diminishes the prospects for consultations that can lead to findings of cultural affiliation.

Legal jeopardy. The NAGPRA law contains an explicit provision that protects museums from legal action when the museum repatriates a cultural item in good faith. However, the law currently offers no legal protection for museums when they award disposition of culturally unidentifiable human remains in good faith.

Civil penalties. The original law established the premise that museums are suitable repositories for human remains and cultural artifacts covered by the law in the absence of a valid claim. The rule appears to reverse this premise – it specifies that right of possession can only be transferred by Native American groups or individuals affiliated with the remains. Since culturally unidentifiable human remains are, by definition, unidentifiable and therefore unaffiliated, this means that museums can never prove right of possession. The new regulation would subject museums to civil penalties if they do not transfer control of culturally unidentifiable human remains for which they cannot prove right of possession. This creates an untenable situation.

Expense. The new rule would require museums to redo portions of their original NAGPRA inventories by submitting Notices of Inventory Completion for culturally unidentifiable human remains. It also calls for additional consultation with an unknown but far larger number of tribes with aboriginal land claims in the area where the remains were removed. The research required to determine the appropriate tribes with which to consult is time-consuming and costly since there are no existing lists or sources that identify all potential claimants. After completing this research, extensive consultation is required. The cost of completing these additional steps is prohibitive.

I hope that all of the concerns outlined above will be strongly considered as any new steps are taken in the implementation of the NAGPRA law.

Finally, the GAO Report also indicated irregularities in the selection process of members of the National NAGPRA Review Committee, and I would like to share AAM’s most recent experience with the Committee. As you know, the NAGPRA law requires that the Review Committee be comprised of members of the museum, scientific, and tribal communities. In June 2008, AAM submitted names of potential Review Committee Members to the Department of the Interior, and none of them were selected.

However, I am very pleased to note that when AAM once again submitted names in December 2010, one of our nominees, Alex Barker, was selected. Dr. Barker, who serves as Director of the Museum of Art and Archaeology and as an Adjunct Associate Professor at the University of Missouri, will be a tremendous asset to the Committee. He is truly a seasoned professional with many years of experience working with all of the complex issues surrounding the NAGPRA law.

Thank you once again, Chairman Akaka and Ranking Member Barrasso, for allowing members of the public to express their views on this vital issue. Please do not hesitate to contact me if you would like additional information or wish to discuss any of these issues in greater detail.