

Doc. 01-5940 and FR Doc. 01-5941) on behalf of the museum. The notices listed 13 Native Hawaiian organizations as culturally affiliated. On March 12, 2001, the museum notified the 13 culturally affiliated Native Hawaiian organizations that the revised notices had been published.

On April 12, 2001, the museum informed the 13 culturally affiliated Native Hawaiian organizations that the museum had completed the NAGPRA requirements for repatriation to the 13 organizations. The museum requested that the 13 organizations notify the museum if repatriation and final disposition would require the recovery of the subject items from their "present location."

On August 7, 2001, the museum informed the 13 culturally affiliated Native Hawaiian organizations that the museum had repatriated the human remains and funerary objects to the 13 organizations on April 12, 2001, and that final disposition was the responsibility of the 13 organizations. The museum also stated that its role and statutory responsibility under 43 CFR 10.10 (d) was completed.

Between August 2001 and March 2002, the Royal Hawaiian Academy of Traditional Arts, one of the culturally affiliated Native Hawaiian organizations, continued to discuss the status of the repatriation with representatives of the museum.

On March 18, 2002, the museum sent an e-mail message to the academy, which stated that "the museum has completed its statutory responsibility under NAGPRA," and considered the matter closed. On the same day, the academy wrote to the Review Committee, requesting that the Review Committee consider a dispute between the academy and the museum.

Findings and Recommendations. On May 9-10, 2003, the Review Committee considered the dispute as presented by representatives of the Royal Hawaiian Academy of Traditional Arts and the Bernice Pauahi Bishop Museum, and, by a 6-1 vote, made the following findings and recommendations --

"The dispute seeks to establish whether an appropriate repatriation occurred between the Bernice Pauahi Bishop Museum and 13 claimants for 83 items described as "human remains" and "funerary objects" recovered from the Kawaihae Caves complex (Forbes Cave) in Hawaii in the early 20th century.

"The 13 claimants are the culturally affiliated Native Hawaiian organizations listed in 2 Federal Register notices: FR Doc. 01-5940 and FR Doc. 01-5941. The 83 items are those listed in the

museum's shipping invoice BP-20194, dated February 26, 2000.

"Having reviewed documentation submitted by the Royal Hawaiian Academy of Traditional Arts, 1 of the 13 claimants, and the museum, as well as having considered their oral presentations, the Review Committee finds that --

"1. The repatriation process used by the museum for the 83 items was flawed and remains incomplete.

"2. The place and manner of return for the 83 items has not been determined consistent with NAGPRA (25 U.S.C. 3005 (a)(3) and 43 CFR 10.10 (d)).

"3. The museum is responsible for the completion of the repatriation process for the 83 items.

"The Review Committee recommends that --

"1. The museum renew the consultation process for repatriation of the 83 items.

"2. The museum recall the February 26, 2000, loan of the 83 items to Hui Malama I Na Kupuna O Hawai'i Nei.

"3. The 13 claimants in the consultation process be treated in a respectful and equitable manner.

"4. The 83 items be made available to all parties in the consultation.

"The Review Committee commends the Royal Hawaiian Academy of Traditional Arts and the Bernice Pauahi Bishop Museum for their willingness to continue consultation and for their positive attitude towards finding the most appropriate repatriation and disposition solutions."

Minority Opinion by Ms. Rosita Worl. "The Review Committee recommended that a museum reopen a final decision and begin anew. I am unable to support the findings and recommendations of the Review Committee based on my understanding of NAGPRA, and thus offer a minority opinion.

"NAGPRA provides that a decision is final when a museum makes a determination that an item meets a NAGPRA category and that it is culturally affiliated to groups with standing to make a claim, the culturally affiliated groups exercise their right to claim, the notice is published in the Federal Register, the 30-day period lapses without controversy, and the item is transferred to the claimants.

"In 2001, 13 Native Hawaiian organizations filed claims for 83 human remains and funerary objects under the control of the Bernice Pauahi Bishop Museum. On March 9, 2001, the museum published notices in the Federal Register of its determination that the 83 objects satisfy the statutory definitions of human remains and

funerary objects and that the cultural items are culturally affiliated with the 13 claimants. No additional claimants came forward following publication of the notices. In a letter dated April 12, 2001, the museum repatriated the 83 human remains and funerary objects identified in the March 9, 2001, notices to the group consisting of the 13 claimants. The letter stated '[w]ith completion of repatriation, the legal interest in these human remains and funerary objects is transferred to the group. Final disposition is now the responsibility of the group.'

"The place and manner of repatriation are to be resolved by the museum and the claimant, but in this instance a claimant or claimants were already in possession. NAGPRA does not require that loans be recalled as a predicate to a determination and publication of a notice. A museum can maintain possession of an item during the pendency of a dispute. In this instance, the museum was notified that an agreement was reached and the museum then sent out a letter indicating that the matter was now in the hands of those asserting the claim. The museum obligation was then completed and any future dispute between the 13 claimants does not include the museum.

"The decision of the Review Committee grants a museum request to rethink a previous published decision. In so doing this, the Review Committee has granted the desires of one museum to the detriment of all museums that have an interest in the finality of decisions and the minimization of risk and cost in repatriation. NAGPRA expressly protects museums in 25 U.S.C. 3005 (f), and the findings and recommendations of the Review Committee seek to nullify that provision which is outside of the Review Committee's statutory authority.

"The minority opinion is that the Bernice Pauahi Bishop Museum is no longer a party in any dispute among the claimants as to the final resting place of the human remains and funerary objects. Whether the Review Committee may now assist the 13 claimants in resolving the dispute among them is a separate matter."

Dated: June 12, 2003.

Armand Minthorn,

Chair, Native American Graves Protection and Repatriation Review Committee.

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