

Well-Intentioned but Ineffective:

A Legislative History of the California Native American Graves Protection and Repatriation Act,
2001

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Introduction, Historiography, and Executive Summary

1. *Introduction*

Repatriation law and its ability to return items to Native American tribes grew dramatically in scope with the passage of the federal 1990 Native American Graves Protection and Repatriation Act. This legislation, itself the product of many decades of laws designed to protect the cultural items of native peoples, would influence the development of state-level repatriation statutes.¹ One example is the California Native American Graves Protection and Repatriation Act of 2001 (Cal NAGPRA, also known as AB 978), which attempts to implement federal NAGPRA with extra stipulations regarding non-federally recognized tribes.

Then-California Assemblymember Darrell Steinberg and Native Californian tribes created Cal NAGPRA to enforce the federal law in the state, as well as to assist non-federally recognized California native peoples with the repatriation of their items from organizations that received state funding. At the same time, it made it more difficult for California museums to comply with existing NAGPRA requirements and created confusion regarding the status of unrecognized tribes. In the end, the legislation was not enforced due to lack of funding. Despite its failures, the legislation was well intentioned and designed to further the sovereignty of California tribes. This honors thesis will argue that formative issues with the bill's structure resulted in its poor design. Problems of wording, definition, intent, and scope meant that even as the statute was approved by the California legislature and signed by the governor, it was not workable in its final form. I will analyze the history of the bill's creation to determine its

¹ According to Jack F. Trope and Walter R. Echo-Hawk, five "states have passed repatriation statutes since 1989. Three statutes were passed in response to specific repatriation and reburial matters" in Hawaii and Kansas, and "three are general repatriation laws" in Nebraska, Arizona, and California. Jack F. Trope and Walter R. Echo-Hawk, "The Native American Graves Protection and Repatriation Act Background and Legislative History," in *Repatriation Reader: Who Owns American Indian Remains?*, ed. Devon A. Mihesuah (Lincoln: University of Nebraska Press, 2000), 135.

viability as law in California, and will assess it through primary source documents from the era. During the legislative period, I will refer to the law as “AB 978,” and for all other time periods, as either “California NAGPRA” or “Cal NAGPRA.”

2. *Historiography*

I undertook research on California NAGPRA for several reasons, the most significant being that there is limited scholarship on the topic. Granted, it has only been in effect, though not enforced, for fifteen years; it appears necessary, however, to fill the gap of knowledge on this particular example of repatriation legislation. Compounding this lack of historical analysis is a general want of awareness on the part of the general public about repatriation law. This problem becomes even more important when one factors in the needs and representation of unrecognized tribes in the repatriation discussion.

My primary sources materials are from two main resources: the California State Archives in Sacramento, CA and the California Legislative Information website.² The State Archives provided legislative committee decisions and letters of support and opposition. The California Legislative Information site gives different versions of the bill as it moved through the state legislature, as well as a summarized history of Cal NAGPRA and bill analysis by the legislature. These resources have proved indispensable for this legislative history.

There exist few relevant secondary sources that solely examine Cal NAGPRA. I encountered three master’s theses, from 2006 to 2016, that discuss the law’s issues from anthropological and museum studies’ perspectives.³ It remains incredibly important to approach

² <http://www.sos.ca.gov/archives>
<http://leginfo.legislature.ca.gov/>

³ The theses of Ileana Maestas from California State University, Sacramento, Maria Cristina Gonzales-Moreno from John F. Kennedy University, and Kim Turner from the University of San Francisco provided a general overview of the law and attempts being made today to redefine it for implementation.

Cal NAGPRA from a historical perspective because without understanding the evolution of the bill, California cannot implement it in a practical and respectful way.

One can only write history with available resources. This thesis is largely based on documents from the California State Archives and the California Legislative Information Website, which record the basic facts, but leave many questions unanswered. These resources are weighted in favor of California institutions. They preserve the written record in digital form, and California agencies contribute more than tribes to that written account. Tribal groups often do not have the same level of resources and staff, which results in a limited public understanding of the Native Californian perspective.

Because of these specific sources, I think it is also important to confront my own biases on the topic. I firmly believe in the validity of Native American repatriation as a human right, particularly of human remains and sacred items. However, I was internally conflicted while writing this thesis because so many of my primary sources sided with California museums. I endeavored to balance the two issues in an honest analysis of Cal NAGPRA's history. At the conclusion of this research, I recognize that I have left out many voices on the topic. Time constraints and my own lack of proximity to the people directly involved means that certain aspects of the law and its development remain unknown, for now.

This thesis is premised on the idea that federal NAGPRA is the strongest precedent for repatriation legislation. NAGPRA has many problems that are detailed in other literature,⁴ but because it represents a long-awaited compromise between tribes and the federal government, I

⁴ For a recent assessment of the law, see Julia A. Cryne's article "NAGPRA Revisited: A Twenty-Year Review of Repatriation Efforts" in *American Indian Law Review* 34, no. 1 (2009): 99-122. For a case study of how to resolve some conflict with NAGPRA in the Southwest, see T. J. Ferguson, Roger Anyon and Edmund J. Ladd's "Repatriation at the Pueblo of Zuni: Diverse Solutions to Complex Problems" in *American Indian Quarterly* 20, no. 2 (1996): 251-73.

believe in its worth.

3. *Executive Summary of California NAGPRA*

Cal NAGPRA requires state funded organizations, mostly museums, to inventory their collections with the intent to repatriate certain classifications of Native American and native Californian items to California tribes. Among its primary goals are to “facilitate the implementation of the provisions of the federal Native American Graves Protection and Repatriation Act with respect to publicly funded agencies and museums in California,”⁵ as well as “provide a mechanism whereby California tribes that are not [federally] recognized may file claims with agencies and museums for repatriation of human remains and cultural items.”⁶ The legislation also provides for imposing financial consequences on organizations that do not comply. However, one of the most significant problems with Cal NAGPRA is its complete lack of funding. Thus, while it has been law for fifteen years, it is yet to be enforced in the state.

⁵ California, California Health & Safety Code D. 7, Pt. 2, Ch 5, Article 1, S. 8011 (b).

⁶ *Ibid.*, (f).

Section 2: History of federal NAGPRA

The historical origins of NAGPRA lie in numerous pieces of federal legislation enacted in the twentieth century. Though various archeological and anthropological policies existed prior to the 1980s,⁷ the evolution of NAGPRA began in earnest when Northern Cheyenne learned in 1986 that scientists at the Smithsonian Institution studied extensive numbers of Native American bones.⁸ Indian groups coordinated to pressure Congress for policy that would return these and other human remains, as well as certain kinds of cultural items, to the appropriate tribes - a process termed repatriation. The official federal debate over repatriation took place in Congress between 1986 and 1990. According to Jack F. Trope and Walter R. Echo-Hawk, congressional bills involving a possible museum “commission approach [were] abandoned in favor of legislation that would directly require repatriation of human remains and cultural artifacts and protect burial sites.”⁹ Two senators and two representatives - Daniel Inouye, John McCain, Charles Bennett, and Morris Udall - proposed bills covering specific areas for the repatriation discussion. The different aspects of these bills included “an inventory, notice, and repatriation process for human remains and certain cultural artifacts in the possession of federal agencies,” including “federal museums.”¹⁰ Concurrently, the Panel for a National Dialogue on Museum-Native American Relations (1990) reported to the Senate on standards of treatment for the objects in question, as well as gave strategies for museums to exchange views with tribes on the

⁷ One such policy was the American Indian Religious Freedom Act of 1978, which requires the U.S. “to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.” (Pub. L. 95-341, § 1, Aug. 11, 1978, 92 Stat. 469.)

⁸ Trope and Echo-Hawk, “The Native American Graves Protection and Repatriation Act: Background and Legislative History,” 136.

Trope and Echo-Hawk observe that “in 1986 a number of Northern Cheyenne leaders discovered that almost 18,500 human remains were warehoused in the Smithsonian Institution...” (136).

⁹ Ibid.

¹⁰ Ibid, 137.

materials.¹¹ NAGPRA was thus the culmination of several smaller debates within the federal government and Indian communities.

The Native American Grave Protection and Repatriation Act, signed on November 16th, 1990 by President George H.W. Bush, legally secured Native American rights to their cultural items in facilities that receive federal funding.¹² Under the policy, human remains, associated and unassociated funerary objects, and sacred objects of recognized Native American tribes, Alaskan natives, and Native Hawaiians are considered Native American ‘cultural items.’ NAGPRA applies to any federal agency and local, university, or state museum with Native American objects that includes federal funds in their revenues.¹³ Museums must consult with federally-recognized tribes while assessing their collections of the aforementioned materials.

NAGPRA authorizes the Secretary of the Interior to create a review committee with numerous responsibilities. The Secretary and the Review Committee must ensure that the inventory actions of the museums and repatriation notices are completed and published in the *Federal Register*. This committee is comprised of seven members that includes tribal religious leaders. The Review Committee provides the platform to mediate any competing claims or disputes between tribes and museums.

The federal policy uses two terminologies that became standard for repatriations: inventory and summary. Section 5 of NAGPRA states that agencies must “compile an [itemized] inventory” of “Native American human remains and associated funerary objects” to determine

¹¹ See Trope and Echo-Hawk 138-139.

¹² NAGPRA is also for the protection of Indian items found on federal lands: it “includes provisions for unclaimed and culturally unidentifiable Native American cultural items,” as well as “intentional and inadvertent discovery of Native American cultural items on Federal and tribal lands, and penalties for noncompliance and illegal trafficking.” (United States, Department of the Interior, National Park Service, “‘What Is NAGPRA?’ Frequently Asked Questions.” *National NAGPRA*. n.d., Web, accessed April 5, 2017.)

¹³ NAGPRA does not include the Smithsonian Institution because that agency is covered by a separate law. I will refer to museums, agencies, and other organizations interchangeably as “agencies” because they all possess native items.

their “cultural [affiliations].”¹⁴ Section 6 requires a written “summary” of “unassociated funerary objects... [and] sacred objects...in lieu of an object-by-object inventory.”¹⁵ These two lists differed from one another in terms of the materials they catalogued and the depth of specificity each required. Both inventories and summaries were to be completed with the input of tribal leaders within five years of the legislation’s approval - by November 1995. Once these inventories were completed, they would be published in the Federal Register. There, tribes could determine if a federal agency had items they wished to have repatriated.

Federal recognition is an important prerequisite for repatriation. Many tribes originally received recognition through the negotiation of treaties. If a tribe was not originally recognized or had been terminated, however, it must participate in the Bureau of Indian Affairs’ recognition process and meet that institution's exacting standards in order to be recognized today.¹⁶ The BIA manages a list of successful and petitioning tribes. Upon achieving acknowledgement, these tribes establish a trust relationship with the United States government and receive fixed benefits as a result. Federal recognition is a difficult process that can often take decades.

With few exceptions,¹⁷ only federally-recognized tribes can make use of NAGPRA. Federally-recognized tribes can claim human remains to which they have traceable connections.

¹⁴ 25 U.S.C.A. § 3003 (a)

¹⁵ 25 U.S.C.A. § 3004 (a), (b)(1)(A)

The National NAGPRA website differentiates the inventory from the summary pursuant to the Bureau of the Interior’s definition in 43 CFR 10.8 (b): summaries require “an estimate of the number of objects in the collection or portion of the collection; a description of the kinds of objects included; reference to the means, date(s), and location(s) in which the collection or portion of the collection was acquired, where readily ascertainable; and information relevant to identifying lineal descendants, if available, and cultural affiliation.” (National Park Service, U.S. Department of the Interior, “National NAGPRA Glossary.” *National NAGPRA*, December 23, 2009, Web, April 7, 2017.)

¹⁶ For a discussion of the seven criteria needed for federal recognition, see Laura Ruth Talbert, “Native American Graves Protection and Repatriation Act: Requiring Federal Recognition Digs Its Own Grave,” in *American Indian Law Review*, Vol. 37, No. 1 (2012-2013).

¹⁷ Some museums have consulted with unrecognized tribes in creating their inventories, and a few unrecognized tribes have coordinated with an affiliated federally-recognized tribe to repatriate items. I will detail some instances of the latter in this thesis.

To have the appropriate degree of “cultural affiliation,” these tribes must prove “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.”¹⁸ Multiple actors determine that relationship through methods such as historical analysis, archeological research, and native oral storytelling.

Alongside the required inventories and summaries, NAGPRA ordered agencies to make inventories of what it termed “culturally unidentifiable human remains.”¹⁹ The term refers to any human remains that did not have detectable connections with a contemporary tribe.²⁰ However, they were to be recorded in the event those connections could later be found. A large percentage of these kinds of remains belong to non-federally recognized tribes.

It is worthwhile to note that there are methods which unrecognized tribes can use to repatriate items with the federal policy. For one, as the “Review Committee has recognized that there are some cases in which nonfederally recognized tribes may be appropriate claimants for cultural items,” if a museum chooses, it “may consult with nonfederally recognized tribes” on an individual basis.²¹ However, this choice is entirely at the individual museum’s discretion.

Second, unrecognized tribes can ally with closely related federally-recognized tribes to repatriate items under the auspices of the recognized tribe. For example, Diana Wilson, a UCLA anthropologist, cites that Southern California federal tribes “are often the first to acknowledge unrecognized groups’ claims to remains that might otherwise be affiliated with them” and work

¹⁸ 25 U.S.C.A. § 3001

¹⁹ United States, Department of the Interior, National Park Service, “Culturally Unidentifiable Native American Inventories Database,” *National NAGPRA*, n.d., Web, accessed April 5, 2017.

²⁰ United States, Department of the Interior, National Park Service, “‘Inventory of Culturally Unidentifiable Human Remains,’ Frequently Asked Questions,” *National NAGPRA*, n.d., Web, accessed April 5, 2017.

²¹ United States, Department of the Interior, National Park Service, “‘We are a nonfederally recognized tribe. May we still participate in the NAGPRA process?’ Frequently Asked Questions.” *National NAGPRA*. n.d., accessed April 5, 2017.

to “[form] coalitions with the unrecognized groups.”²² Thus, there are ways to include non-recognized tribes in NAGPRA.

The more pressing difficulty is the minimal degree to which federal entities who do receive federal funding have complied with NAGPRA since 1990. The United States Government Accountability Office has observed that these agencies have not adequately inventoried their holdings with what information they possess.²³ National NAGPRA, the organization that supports federal museums and agencies with the policy, also struggles to perform its duties. It must adjudicate for many more federally recognized tribes than existed at NAGPRA’s inception.

Policy cannot be effective without enforcement, and NAGPRA’s record of active repatriations and successful cases is mixed at best. Federal law enforces NAGPRA provisions through civil penalties on museums. The Secretary of the Interior determines the extent of compensation in hearings based on the individual case and offense. These penalties are extremely vague, however, and depend on the “archeological, historical, or commercial value of the item involved...[and] the damages suffered” in each case.²⁴ I have not found records of the Department of the Interior ordering a museum to return items during the first decade of NAGPRA as law. In addition, Julia Cryne observes that because “the Act lists no other penalties for non-compliance,” federal courts cannot discipline a “federal agency...for failing to meet deadlines.”²⁵ All they can do is “remand the case...for further review or explanation.”²⁶ These

²² Diana Wilson, “California Indian Participation in Repatriation: Working toward Recognition” (*American Indian Culture and Research Journal*, Vol. 21, No. 3, 1997), 197.

²³ United States, U.S. Government Accountability Office, “Highlights.” *Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act*, GAO-10-768 (Washington D.C., July 2010).

²⁴ 25 U.S.C.A. § 3007 (b) (1-2)

²⁵ Julia A. Cryne, “NAGPRA Revisited: A Twenty-Year Review of Repatriation Efforts,” *American Indian Law Review* 34, no. 1 (2009), 106.

²⁶ *Ibid.*

unclear provisions contribute to overall difficulty in NAGPRA's enforcement and lower its effectiveness in achieving its goals of repatriation.

Section 3: History of California and its Native People

1. *California Tribes*

In the many centuries prior to European arrival, California Indians developed unique traditions for their individual communities. The area now defined as the state of California encompasses many types of environmental landscapes which directed the course of native life. From desert to dense forest, and from coastal shores to mountain ranges, it was and remains diverse. Due to the vast expanse of the region, it is difficult to estimate the true population of Native California before European arrival. Russell Thornton estimates that there were anywhere from “310,000-705,000” native people living in the area at that time.²⁷ California’s numerous communities were relatively small in size, and many possessed their own languages. The Linguistics Department at the University of California, Berkeley, assesses that at least “80 to 90 different languages were spoken within the boundaries of what is now the state of California.”²⁸ It is possible that the non-unity of Native Californians’ contributed to the disaster inflicted on them by white settlers when Europeans arrived in California. Due to both disease epidemics and violent clashes inflicted by the new arrivals, California Indian populations dramatically declined.

The Spanish empire was the first colonial power in California. During the late 1700s and early 1800s, Spanish missionaries required the horrific subjugation and forced labor of many native people in order to convert them to Catholicism. The missions that dot California recall the plans of the Spanish empire while it controlled the area. However, conflict arose among the European powers. Mexico would only control the area briefly after it revolted against Spain, and the young United States was interested in acquiring California. By the time the Gold Rush

²⁷ Russell Thornton, *American Indian Holocaust and Survival: A Population History since 1492* (Norman: University of Oklahoma Press, 1987), 109.

²⁸ See interactive state map for details about specific languages:
<http://linguistics.berkeley.edu/~survey/languages/california-languages.php>

brought massive numbers of white settlers to California in 1849, the United States began to dominate the native population - which at this point was heavily decimated due to the aggressive impact of Spanish and Mexican rule.

Once in control of the region, the United States took possession of California tribes in order to civilize or slaughter them. As historian Benjamin Madley analyzes in *An American Genocide*, the decades between the Gold Rush and the end of the Civil War were terrifyingly bloody for native Californians due to their systematic murder by white Americans. During those thirty years, “attacks on California Indians were the most lethal element of a...growing xenophobic campaign to forcibly expel all nonwhites from California’s gold-mining regions.”²⁹ These norms of violence against the indigenous population developed into a massive plan of annihilation endorsed by California and Washington, D.C. Working in concert, “the US government, state legislators, militiamen, and vigilantes perfected the killing machine.”³⁰ Russell Thornton’s *American Indian Holocaust and Survival* reinforces Madley’s argument with population estimates of California native people in this era. He chronicles the massacres of several Indian communities in the state by whites, and especially details the poignancy of the deaths of the Yahi Yana people.³¹ In short, this brutality and destruction sabotaged the future relationship between the state of California and its native inhabitants.

The United States defined California tribes as either federally recognized or unrecognized, and defined recognized tribes in two ways. First, the American executive branch could decree the creation of a reservation (rancheria) through executive order. Second, Congress could recognize a tribe through legislation or treaty. As Russell Thornton notes, “reservation

²⁹ Benjamin Madley, *An American Genocide: The United States and the California Indian Catastrophe, 1846-1873* (New Haven: Yale University Press, 2016), 92-93.

³⁰ *Ibid.*, 234.

³¹ Thornton, *American Indian Holocaust and Survival*, 107-113.

tribes with continuing federal contract are considered tribes under virtually every statute...”³² In the case of California, a tribe became federally-recognized when they received a rancheria. In spite of this definition, the federal government could also revoke recognition status.

The U.S. crafted treaties with California’s tribes in the same manner that the federal government signed treaties with East Coast tribes. Unfortunately, “the United States Senate not only refused to sign the 18 treaties that had been negotiated [between 1851-52], but they also took extraordinary steps” to discredit and dismantle them.³³ In 1871, the U.S. decided to abandon the treaty system, and no more treaties could be signed. Over the course of the next fifty years, and after strenuous advocacy, tribal groups received allotments from the federal government “to purchase small tracts of land in central and northern California for landless Indians.”³⁴ These ‘rancherias,’ the equivalent of reservations in California, became collective homes available to the tribes in the middle of the state - few tribal groups in southern California received rancherias.³⁵ Thus, the United States managed native Californians in an ad-hoc way and with poor intentions.

In the 1950s, federal termination policy eliminated most of the rancherias. As with many reservations, tribal members would receive an allotment of land and could either keep it or sell it for profit. The land would then return to the state. The California Native American Heritage Commission explains that

the implementation of termination set in motion a series of events that ultimately divested small tribes of 10,037 acres of land, disrupted tribal institutions and traditions and ultimately left these tribes more desperate, and impoverished than ever. Termination

³² Thornton, *American Indian Holocaust*, 194.

³³ United States, Department of the Interior, Bureau of Indian Affairs, “Who We Are” (Washington, D.C., updated May 3, 2017), accessed April 18, 2017.

³⁴ *Ibid.*

³⁵ Edward D. Castillo, “California Indian History,” *Native American Heritage Commission*, n.d. Accessed April 18, 2017.

failed miserably to improve the socioeconomic or political power of the California Indians.³⁶

Though nearly forty rancherias were terminated in 1958, 70% of those rancherias were later restored under judicial agreements or by an act of Congress.³⁷

California tribes struggled financially for decades before they became heavily involved with casino gaming in the 1990s. States had begun to regulate gaming on Indian reservations during the 1970s, but the 1987 U.S. Supreme Court decision in *California v. Cabazon Band of Mission Indians* changed the rules.³⁸ Though the state desired to impose restrictions on the activities of the Cabazon Band, the tribe “claimed that the imposition of gambling laws by the state government violated their sovereignty.”³⁹ The court ruled in favor of the tribe, and thus instigated a dramatic increase in tribal gaming across the country. Even though “states [could enforce] criminal laws on reservation land, gambling regulations [were] types of civil law and therefore not enforceable.”⁴⁰ This landmark case in California meant that during the next decade, federally recognized tribes ran very successful gaming institutions and slowly gained significant funds. Moreover, according to the *Handbook of North American Indians*, because of this level of funding, tribes have more “sovereignty” by managing “day-to-day self-governance.”⁴¹ As a result of restoration efforts after termination and the successes of the Indian gaming industry, the Bureau of Indian Affairs today recognizes 109 tribes within California.⁴²

³⁶ Ibid.

³⁷ United States, Department of the Interior, Bureau of Indian Affairs, “Who We Are.”

³⁸ *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

³⁹ Chicago-Kent College of Law at Illinois Tech, “*California v. Cabazon Band of Mission Indians*,” *Oyez*, accessed April 19, 2017.

⁴⁰ Ibid.

⁴¹ William C. Sturtevant, *Handbook of North American Indians, v. 2: Indians in Contemporary Society* (Washington: Smithsonian Institution, 1978), 150.

⁴² United States, Bureau of Indian Affairs, “Federally Recognized Tribes in California by U.S. Department of Interior, Bureau of Indian Affairs as of May 4, 2016,” *California Gambling Control Commission*, n.d., accessed April 29, 2017.

2. *A History of Collecting in the State*

There are potentially dozens of California museums, agencies, and other state entities that obtained Native American items between the 19th century and 2000. The budding disciplines of anthropology and archeology collected large numbers of human remains, sacred items, funerary objects, and other objects of cultural patrimony. In particular, “during the first half of the 20th century, California's anthropologists played a leading role in both the exhumation of graves and the trade in funerary artifacts.”⁴³ Much of this collecting was not entirely legal - indeed, Native Californians consider “the [anthropologists and] scientists who took” the items to be ‘grave robbers with a license.’”⁴⁴ Prior to the enactment of federal NAGPRA, there was no systematic attempt to regulate museums in the state with anthropological collections that received federal funding.

California is home to both large and small Native American anthropological collections. The largest include the Phoebe Hearst Museum at the University of California, Berkeley, the Natural History Museum of Los Angeles County, and the San Diego Museum of Man. Each institution is in the possession of thousands of objects. Most California agencies, however, have smaller anthropological collections. For example, small to medium-size collections are at academic institutions like California State Universities at Chico and Sacramento, or in local museums such as the Riverside Metropolitan Museum in Riverside. Another agency with anthropological items is the California Department of Parks and Recreation, which routinely encounters human remains and other Native American objects when it maintains public works.

⁴³ Tony Platt, “UC and Native Americans: Unsettled Remains,” *Los Angeles Times*, June 18, 2013.

To my knowledge, an anthropologist or scientist does not technically need a license to conduct research on human remains.

⁴⁴ Richard C. Paddock. “Native Americans say Berkeley is no place for their ancestors,” *Los Angeles Times*, January 13, 2008.

When it encounters human remains, it works with local native groups to return them appropriately, and stores other items at the Statewide Museum Collections Center in Sacramento. Federal NAGPRA required these agencies and others to document and declare what items they had in their possession.⁴⁵

Despite the work that has taken place since the enactment of federal NAGPRA, one important resource is lacking. To the extent I could determine, there is no assessment or analysis of Native American anthropological collections in California institutions. An overview would dramatically assist in understanding the extent of this kind of museum holdings. Almost thirty years after federal NAGPRA, it is difficult to know how many objects a California institution that received federal funding would have held at any one time.

3. *The California Native American Heritage Commission*

Beginning in 1976 with California Assembly Bill 4239, the California Native American Heritage Commission (NAHC) represented native interests in cultural resource management for tribes in the state. It is an agency of, and its members appointed by, the Governor. The NAHC makes “recommendations to the Legislature about the protection of significant Indian religious and social [sites] and [assists] Native Americans in obtaining access to significant religious and social sites.”⁴⁶ With time and more state funding, the NAHC took on other tasks, such as the 1982 development of a Most Likely Descendent (MLD) List. The MLD list is based on the number of federally recognized tribes in California and the region in which they live. When Native American human remains are discovered by anyone in California, this list allows the NAHC to call on the appropriate tribe to deal with the remains.

⁴⁵ The California Department of Parks and Recreation has been particularly assiduous in their documentation, as evidenced by their website: https://www.parks.ca.gov/?page_id=26120

⁴⁶ California Native American Heritage Commission Records, Office of, R188, F3908:1-61, and F3803:1-2, California State Archives, Office of the Secretary of State, Sacramento, California.

4. *Precursor State Legislation to California NAGPRA*

After the creation of the NAHC, in 1982 California developed legislation surrounding Native American graves and funerary items. Under the provisions of California Public Resources Code 5097.9, “any person who knowingly or willfully obtains or possesses any Native American artifacts or human remains which are taken from a Native American grave or cairn after January 1, 1988,”⁴⁷ especially “with an intent to sell or dissect or with malice or wantonness,”⁴⁸ is criminally prosecuted with a felony. However, the legislation also gave some protection to private individuals. If a landowner discovered human remains and other items on their property, the law created a process to resolve the situation: the state required consultation with the NAHC and affiliated tribes to determine the appropriate method of burying the remains.⁴⁹

One provision of the former legislation, California Public Resources Code 5097.991, attempted to address the question of repatriation. The short provision simply declared that “It is the policy of the state that Native American remains and associated grave artifacts shall be repatriated,” but left the definitions and implementation of the law open to regulation.⁵⁰ Although vague, California nevertheless decided to make repatriation a state policy eight years before federal NAGPRA required it.⁵¹

⁴⁷ California Public Resource Code Section 5097.99 (a).

⁴⁸ *Ibid.*, (c).

⁴⁹ These options include removing the items entirely and giving them to the Most Likely Descendent, preserving the items where they were found, or another option mutually decided. (See Native American Heritage Commission, “Investigative Report Concerning the Feather River West Levee Project,” March 19, 2015, 9-10, https://turtletalk.files.wordpress.com/2015/03/nahc_frwlpinvestigativereport.pdf .)

⁵⁰ California, California Public Resources Code § 5097.991

⁵¹ It is interesting to note that the repatriation provision was placed in the Public Resources Code at all. Possibly, California viewed Native American human remains as a public resource, particularly as outlined in the California Register of Historic resources. (See Cal. Pub. Res. Code § 5024.1.)

Section 4: Inception of California NAGPRA

1. *Introduction:*

California NAGPRA was crafted for several reasons and reached the state legislature accompanied by history, different perspectives, and arguments for inclusivity.

2. *California agencies and NAGPRA compliance*

Steinberg and some California tribes declared that museums in California were not complying with NAGPRA. Ed Fletcher described that assertion in his June 2001 article for the *Sacramento Bee*. According to proponents of a state-level NAGPRA, “some museums [were] still dragging their feet a decade after the federal repatriation process began.” He cites that the “Phoebe Hearst Museum of Anthropology at the University of California, Berkeley, took 10 years to complete its inventory.”⁵² From the perspective of tribes within the state, museums did not want to give up items in their possession and thus delayed their duties under NAGPRA. Steinberg and his allies contended that California agencies were out of compliance with NAGPRA in the decade after the passage of the federal law.

On the other hand, many California museums countered that they were indeed in compliance with the federal law. For instance, the Santa Barbara Museum of Natural History “strongly [supported] the principle and practice of repatriation...to Native American tribes...as well as the development of measures on the state level to enforce compliance with [the] law.”⁵³ The Natural History Museum of Los Angeles County agreed, to a point. They declared their

⁵² Ed Fletcher, “Sounds an alarm: Critics say bill could strip museums of Indian artifacts.” *Sacramento Bee*, June 15, 2001, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

⁵³ Karl Hutterer and John Johnson of the Santa Barbara Museum of Natural History to Senator Jack O’Connell, July 6, 2001, page 1, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

deference to federal NAGPRA, but did not endorse state enforcement of it.⁵⁴ In the academic arena, the University of California protested to Steinberg that they did satisfy NAGPRA's requirements. Based on the provisions of the federal law and their own research, UC told Steinberg that it took "great pride in its efforts to comply with NAGPRA" and treated all items in its care "with the utmost dignity and respect."⁵⁵ The same language is repeated almost verbatim in a June letter to Steinberg from the Oakland Museum of California, suggesting that UC collaborated with non-academic institutions on the future of their Native American collections.

Although I cannot determine the extent of non-compliance by California institutions, there are grounds for this claim. By NAGPRA regulations, summaries and inventories were due three and five years after the establishment of the federal statute, respectively.⁵⁶ The inventories contained information about human remains and any associated funerary objects, and the summaries detailed everything else, such as sacred items. Museums needed to submit a complete and inclusive assessment of their collections through 1995, and update it periodically after that date as they acquired new items.

Evidence to support the perception of museum noncompliance can be found in the records of the National NAGPRA website. Inventories and summaries were recorded by National NAGPRA, the federal organization that monitored and enforced repatriations. Inventories and summaries were due by 1995. Between 1994 and 2000, National NAGPRA only logged 19 Notices of Inventory Completion from California agencies. Some of these inventories

⁵⁴ James Gilson and Eric Warren of the Natural History Museum of Los Angeles County to Ed Manning of Kahl/Pawnall Advocates, June 1, 2001, page 1, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

⁵⁵ Stephen A. Arditti of the University of California to Darrell Steinberg, June 13, 2001, pages 1-2, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

⁵⁶ 25 U.S.C.A. § 3003 and 3004

came from the same agencies, such as California State University campuses and the California Department of Parks and Recreation, meaning that there were likely more agencies that needed to submit their materials than did so in the appropriate amount of time.⁵⁷

Presumably, the complaint that California agencies were not complying with NAGPRA led into a larger issue - that the federal statute was not being enforced in the state during the 1990s. As I have noted before, NAGPRA does not have significant enforcement regulations. This struggle set the stage for Steinberg and his associates to create a repatriation law with teeth.

3. *Kumeyaay Cultural Repatriation Committee in conflict with UC San Diego*

Kumeyaay native communities in Southern California struggled to achieve repatriation before NAGPRA in a high-profile case. The University of California, San Diego (UCSD) began to restore the chancellor's house on the university grounds in 1976, when they uncovered remains over 10,000 years old. These remains, "known as the La Jolla Ancestors,"⁵⁸ held anthropological and spiritual significance for the Kumeyaay nations in Southern California. However, the remains moved around the state and across the country and their physical condition deteriorated due to mishandling.⁵⁹ Eventually, they came to UC San Diego for the anthropology department to conduct research.

⁵⁷ These agencies were: the California Academy of Sciences, the Fowler Museum of Cultural History (UCLA), CSU Fullerton, the California State Office Bureau of Land Management, CSU Bakersfield, the California Department of Parks and Recreation, the California Department of State Parks, CSU Fresno, Sonoma State University, the Oakland Museum of California, and the California Department of Transportation.

See https://www.nps.gov/nagpra/FED_NOTICES/NAGPRADIR/index.html

It is interesting to note that the Phoebe A. Hearst Museum of Anthropology at the University of California, Berkeley published its inventories on June 5, 2001 - right in the middle of the debate on Cal NAGPRA.

⁵⁸ Dawn Rewolinski, "Remains to be Seen: The Disparate Disposition of Culturally Unidentified Human Remains under NAGPRA's Final Rule," (PhD diss., New York University, 2014), 45.

⁵⁹ Tanya Sierra, "Tribes seeking return of remains: ancient bones found at UCSD," *Kumeyaay.com*, January 27, 2000, accessed April 7, 2017, Web.

Since the discovery of the remains on the UCSD campus, various tribes have attempted to gain possession of the La Jolla Ancestors from the university.⁶⁰ Though one such group, the Viejas Band of Kumeyaay Indians, attempted to obtain them through NAGPRA in 1996, UCSD disagreed. They maintained “cultural affiliation could not be established because of the age of the remains at approximately 9,500 years old...[and] it was determined that the remains were not Native American in the first place.”⁶¹ Many Kumeyaay groups challenged the decision, and formed a coalition to pursue repatriations of materials for confederated tribes. Twelve bands united to represent themselves as the Kumeyaay Cultural Repatriation Committee. As James May noted in his October 2001 article, the KCRC “spearheaded an effort to make sure federal laws were followed.”⁶² The KCRC believed some state-funded institutions were deliberately withholding Native American remains and other significant items and wanted to create change.

4. *Steinberg’s early involvement*

Assemblymember Darrell Steinberg, from the 9th District of California, became involved with repatriation legislation in the 1990s. During this period, major controversy broke out over the remains of Ishi, the last member of the Yahi Indian tribe of Northern California. Ishi was used by professors at the University of California, Berkeley as a ‘living museum.’ He was the only living person who lived in his people’s pre-European contact ways. When he died, Alfred Kroeber separated Ishi’s brain from the rest of his body for research by the Smithsonian

⁶⁰ For details of how the conflict has played out, see the 2012 case that attempted to resolve it: *Timothy White, Robert L. Bettinger, and Margaret Schoeninger v. University of California, CA*. No. 3:12-CV-01978 RS 9th Circuit Court of Appeals (2012).

Interestingly, in *White vs. University of California*, one of the plaintiffs was Robert Bettinger, a well-known University of California professor. When Cal NAGPRA eventually passed, he was on the first Repatriation Oversight Commission to represent the UC system.

(Jeffrey B. Fentress, e-mail message to author, November 7, 2016. Copy on file with author.)

⁶¹ Rewolinski, “Remains to be Seen,” 45-46.

⁶² James May, “New California repatriation law includes enforcement teeth,” *Indian Country Today*, October 31, 2001, accessed April 9, 2017, Web.

Institution. During the 1990s, major disputes arose over to whom, if anyone, Ishi's brain could be repatriated. The Smithsonian reasoned that if he was the last member of his tribe, he would have had no descendants who could claim his remains under federal NAGPRA. After significant uproar over that choice, northern California tribes reached out to the federal agency to request repatriation.

The situation became complicated very quickly. While the Smithsonian looked for "people who are related enough [to Ishi] that following the spirit of the law" would be possible, the California Legislature decided to debate the topic.⁶³ At the time, Steinberg was in charge of the Select Committee on Repatriation and ran the hearings that took place from 1999 to 2000.⁶⁴

Nine years after NAGPRA was created, there were still many Native American human remains in California agency collections. Steinberg positioned himself at the forefront of the legislative discussion on the problem. The assemblymember "was truly shocked when he found out how many American Indian remains were being held by California universities and museums."⁶⁵ Jim Adams quotes Steinberg in *Indian Country Today* as being aghast at the large collections:

'I tried to take a tour of the U.C.'s holdings and I couldn't even bring myself to go to where they have the remains,' Steinberg [said]. He [described] the idea of holding remains as 'gruesome' and [said] that this is an issue of dignity and civil rights for American Indians.⁶⁶

He reacted in a surprised and emotional way, which reinforced the general lack of knowledge most Americans had about Native American repatriation at the time.

⁶³ Mary Curtius, "Museum Refuses to Give Ishi's Brain to Indians," *Los Angeles Times*, March 25, 1999, accessed April 9, 2017, Web.

⁶⁴ Ibid.

⁶⁵ Jim Adams, "California Assembly committee holds repatriation hearings at Barona," *Indian Country Today*, August 9, 2000, accessed April 9, 2017, Web.

⁶⁶ Ibid.

Steinberg decided the best way to resolve the apparent noncompliance of California agencies with NAGPRA was to create more legislation that enforced it. He thought a state-level NAGPRA might be the answer. Steinberg wanted to underscore the seriousness of repatriation and to ““assure that there was a system of accountability separate from the federal law, which would expedite the return of remains and artifacts that rightfully belong to Native Americans.””⁶⁷ He based this assessment on the dispute over the remains of Ishi and the other collections of human remains in the state. Additionally, Steinberg wanted to respect the dead and knew ““there would be outrage”” if the bones of any other ethnic groups were ““warehoused in museums and in research laboratories.””⁶⁸ Both rational and emotional reasoning helped to push Steinberg to develop repatriation legislation for California.

5. *Hearings at Barona*

Conversations about California repatriations were escalating in early 2000. The California Legislative debate over Ishi’s remains took place relatively soon after the formation of the Kumeyaay Cultural Repatriation Committee (KCRC), and the leaders of those movements had much in common. It is unclear how Steve Banegas, Barona tribal member and chairperson of the KCRC, met Assemblymember Darrell Steinberg, but their objectives aligned in ways that were useful to both men.⁶⁹ Banegas wanted resolution on the case with UC San Diego, and Steinberg wanted to better apply NAGPRA in California. They could help one another with their goals.

⁶⁷ Diane Hatch-Avis, “AB 978: California’s New Repatriation Law,” *Society for California Archeology Newsletter* (Vol. 35, No. 3, September 2001), 1, 21.

⁶⁸ *Ibid.*, 21.

⁶⁹ There are no sources that mention when Banegas became the leader of the KCRC. However, because it was formed when the conflict with UCSD escalated, it is likely he was heavily involved with the UCSD case of the La Jolla Ancestors.

Banegas was upset about the lack of progress in the dispute with UC San Diego and “brought” it “to the attention of Assemblyman Darrel [sic] Steinberg, D-Sacramento.”⁷⁰ They agreed that repatriation in the state must be dramatically assessed. Thus, Steinberg called for hearings in July 2000 under the auspices of his Select Committee on Native American Repatriation. Many groups, including “representatives from tribes, state agencies, universities and museums” came to discuss with one another their issues with the federal NAGPRA and determine what they could fix.⁷¹ As Maria Gonzalez-Moreno observes in her analysis of the hearing, attendees examined potential legislation “that would hold museums and universities accountable for complying with” federal NAGPRA. She also mentions that the hearing participants “also discussed...the right for non-recognized tribes to file claims for repatriation, a novel idea to a series of historical problems non-recognized tribes have had in California.”⁷² Clearly, the two ideas about a state repatriation law and access to repatriation for unrecognized tribes were separate entities at this point. They would later fuse in the legislation that Steinberg guided through the legislature: California NAGPRA.

⁷⁰ Adams, “California Assembly committee holds repatriation hearings at Barona.”

⁷¹ Hatch-Avis, “AB 978: California’s New Repatriation Law,” 22.

⁷² Maria Cristina Gonzales-Moreno, “Restless Spirits: Museums and the California Native American Graves Protection and Repatriation Act Dilemma” (master’s thesis, John F. Kennedy University, 2007), 30.

Section 5: Legislative History

The California Legislature began to debate the ideas surrounding repatriation and what kinds of legislative options could enforce federal law. Darrell Steinberg, a powerful member of the state's lower house, came to his colleagues with a written proposal for discussion. He suggested legislation that could resolve issues with California repatriations. On February 23, 2001, Steinberg introduced AB 978 to the California Assembly.

AB 978 was the product of Steinberg's Select Committee on Native American Repatriation. The committee drafted this bill to create a repatriation policy for the state.⁷³ Under its provisions, "all state agencies and museums that receive state funding" and possessing Native American "skeletal remains or funerary objects" must create a process to repatriate these items.⁷⁴ Steinberg intended to use AB 978 to streamline federal repatriation law in California; however, the bill did not rely sufficiently on NAGPRA precedent and caused significant controversy as a result.

This edition of the bill was short and left much of the specifics of repatriation open to discussion in the two houses of California's legislature. Essentially, AB 978 mandated that state-funded agencies inventory their collections of human remains and funerary items for the purposes of returning them. These agencies needed to publish the results to state agencies and tribes before July 2, 2002.⁷⁵ One would assume that this timeline would have needed to be amended with each edition of the bill; it would take time for the bill to proceed through the

⁷³ Gary Davis, "Senate Committee on Governmental Organization Background Information Request," n.d., Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

This reasoning is strange, considering that California already had a policy of repatriation from 1982 (see Section 3, part 4 of this thesis).

⁷⁴ California, Assembly, AB 978 Legislative Counsel's Digest, as introduced February 23, 2001, *California Legislative Information*.

⁷⁵ AB 978 8013 (a), as introduced February 23, 2001.

legislature and then to be enforced in the state. However, that change was only belatedly added when the bill had already moved from the Assembly to the Senate. To arbitrate the process of repatriation itself, Steinberg created a Repatriation Oversight Commission. The group's purpose was to "mediate disputes between California tribes and museums and agencies...relating to the disposition of human skeletal remains and funerary objects."⁷⁶ The creators of AB 978 planned to fill the Commission with tribal members, state officials, and university representatives.

At this early stage, Steinberg worded the bill in such a way that it was unclear how or in what manner it differed from federal NAGPRA. This kind of legislation was relatively new - since the creation of NAGPRA in 1990, few states had adopted a state-level repatriation policy for repatriating Native American human remains from museums.⁷⁷ The bill's objective was to optimize repatriations for California tribes in concurrence with existing state law. A 1991 California law mandated that "Native American remains and associated grave artifacts shall be repatriated."⁷⁸ It is unfortunate that the wording of that statute is so general, or it might have preempted some of the work of the 2001 bill. Nevertheless, AB 978 intended to "apply the state's repatriation policy consistently with the provisions" of federal statute.⁷⁹

Due to California's bicameral legislature, the bill needed to progress through both the state Assembly and Senate. It would be evaluated by committees in both houses of the legislature to negotiate the details of the policy. Over the next seven months, the bill would go before two Assembly committees and two Senate committees before reaching the governor's desk. In the following analysis, I will be using Darrell Steinberg as the central figure in the legislative

⁷⁶ California, Assembly, AB 978 8026 (b), as introduced February 23, 2001.

⁷⁷ States that do have such laws are Hawaii, Arizona, Nebraska, and Kansas (see Trope and Echo-Hawk, Chapter 7 of *Repatriation Reader*).

⁷⁸ California Public Resources Code § 5097.991.

⁷⁹ AB 978 8011 (b), as introduced February 23, 2001.

narrative to track the bill's progress. During its time in the Assembly and the Senate, AB 978 would be subject to changes from Steinberg and committees that expanded its provisions. In the end, the final wording would actually inhibit the enforcement of NAGPRA through its contradictory terminology and sweeping intent towards the repatriation of objects.

1. Assembly

a. Committee on Business and Professions

Steinberg delivered AB 978 to its first committee at the end of March. This panel, the Assembly Committee on Business and Professions, was a unique choice, given that the committee's usual deliberations ranged from licensing health care workers to fashioning regulatory agencies.⁸⁰ After rounds of hearings and deliberations, the committee requested that Steinberg amend certain sections and re-refer the bill to them. They gave recommendations for the bill's language and intent. Once the required changes were made, the committee would reconsider it.

The Assembly Committee on Business and Professions requested that Steinberg make certain changes to the bill. For instance, he needed to expand the definition of "inventory" in AB 978 to include the "itemized list" that is "required under the federal Native American Graves Protection and Repatriation Act."⁸¹ By noting this as an option in the bill, Steinberg slightly lessened the amount of work an institution would need to complete to be in compliance with the legislation. The committee also asked that the bill have an entity to enforce repatriations. Steinberg designed a Repatriation Oversight Commission with the power to arbitrate between disputing tribes and California agencies. The "members of the commission shall receive

⁸⁰ <http://abp.assembly.ca.gov/>

⁸¹ California, Assembly, AB 978, 8012, (h), as amended April 16, 2001, *California Legislative Information*.

training”⁸² to “mediate disputes between California tribes and museums and agencies, as well as disputes arising between tribes and those entities relating to the disposition of human skeletal remains and funerary objects.”⁸³ If tribes or state agencies disagreed over who should have the item repatriated, Steinberg reasoned that the Commission would have authority to resolve the dispute.

However, these additions to the bill did not clarify the problems that people had begun to see with the wording and intent of the law. Questions still lingered over the financial impact of the bill on the state of California. Regardless, once Steinberg made the requested changes, AB 978 was re-referred to the committee on April 23, and their unanimous approval allowed it to pass on to Committee on Appropriations two days later.

b. Committee on Appropriations

Several weeks later, Steinberg brought AB 978 to the Assembly Committee on Appropriations. This financial committee arguably represented the most important Assembly evaluation, as most bills needed to pass through it to have any chance of becoming law. Though the first hearing was scheduled for May 16, Steinberg inexplicably cancelled it. He made substantial changes to the wording of the bill, and then re-referred to the committee.

These changes between May 16-22 dramatically expanded the scope of Steinberg’s California repatriation bill. First, in this version of AB 978, Steinberg inserted new phrases that would become cause for contention. One of these expressions was “cultural items,” where the legislature “[encouraged] voluntary disclosure and return of remains and cultural items by an agency or museum.”⁸⁴ The bill directly borrowed this term and its definitions from Title 25 of

⁸²California, Assembly, AB 978, 8026, (b), as amended April 16, 2001.

⁸³ AB 978, 8026, (b), as amended April 16, 2001.

Other mediation procedures were added to 8015 and 8016.

⁸⁴ California, Assembly, AB 978, 8011, (c), as amended May 22, 2001, *California Legislative Information*.

Section 3001 of the United States Code – federal NAGPRA. From there on, any references to what had previously read “human skeletal remains and funerary objects”⁸⁵ changed to “cultural items,” and encompassed a larger array of objects, such as funerary objects, sacred objects, objects of cultural patrimony, and traditional objects. In theory, this change appeared to better align AB 978 with federal NAGPRA. It was particularly important because sacred items and items of cultural patrimony were then appropriately acknowledged. Unfortunately, AB 978 still used its own definition of some repatriation terms.⁸⁶ Even more problematic, cultural items in this sense included the term “traditional object,” which meant “any object or item deemed by the affiliated tribe to be integral to its customs and traditions.”⁸⁷ This term had no parallel in federal NAGPRA and thus had no widely-understood definition. Opponents would later use that discrepancy to challenge the bill’s reach.

Secondly, Steinberg triggered a dramatic change by extending AB 978’s repatriation access to non-federally recognized tribes across the country. The “members of a present-day federally recognized or nonfederally recognized Indian tribe or Native Hawaiian organization” could request to have human remains and other items in California agencies repatriated to them, if they could prove “a relationship of shared group identity that can reasonably be traced historically” to “an identifiable earlier tribe or group.”⁸⁸ Federal NAGPRA did not include non-federally recognized tribes in its repatriation requirements. Steinberg’s decision meant that any unrecognized tribe, which previously would not have qualified for federal repatriation, would

⁸⁵ Ibid.

⁸⁶ AB 978 defined a “sacred item” as “a specified sacred or ceremonial object that is needed by the culturally affiliated tribe” (AB 978 8012, [f], [2]).

Federal NAGPRA states that sacred items are objects “needed for the modern-day practice of traditional Native American religions.” (United States, Department of the Interior, National Park Service, American Indian Liaison Office, “Native American Graves Protection and Repatriation Act (NAGPRA): A Quick Guide for Preserving Native American Cultural Resources,” *U.S. Department of the Interior*, 2012, page 1.)

⁸⁷ California, Assembly, AB 978, 8012, (f), as amended May 22, 2001.

⁸⁸ AB 978, 8012, (e), as amended May 22, 2001.

have a means to do so. Furthermore, other changes required tribal consultation in preparing the inventories, in accordance with federal NAGPRA rules, as well as specifically indicating when an item was affiliated with a California tribe.⁸⁹ In essence, by extending the bill's reach, Steinberg placed himself and the legislature in an untenable situation. Based on his language, it appears that at this point he intended to open California agencies to all unrecognized tribes. However, Steinberg would eventually narrow that provision to only include unrecognized tribes in California. After adding these new items, among others,⁹⁰ Steinberg re-submitted AB 978, and it passed the Committee on Appropriations' second reading.

In the bill's first hearing on May 30, the Assembly Committee on Appropriations outlined possible financial consequences of the bill. AB 978 sounded like "feel-good" legislation for tribes because it purported to streamline the requirements of federal NAGPRA for California agencies.⁹¹ On the other hand, the committee observed that it would also create extra costs for agencies to work with unrecognized recognized tribes and inventory the new "traditional items." Federal NAGPRA was already an unfunded mandate that required agencies and tribes to use their own money to accomplish repatriation. As a result of this bill, any organization receiving

⁸⁹ AB 978, 8013 (a) (4) and (5), as amended May 22, 2017.

⁹⁰ Steinberg also changed the composition of the Repatriation Oversight Commission. The May 22 version of AB 978 added changes to section 8025, which would then read:

"(1) Three [formerly six] voting members appointed by the Governor from nominations made by federally recognized California tribes within the state. One member each shall represent the northern, central, and southern areas of the state.

(2) Two voting members appointed by the Speaker of the Assembly from nominations made by federally recognized California tribes within the state. One member each shall represent the northern and southern areas of the state.

(3) One voting member appointed by the President of the Senate pro Tempore from nominations made by federally recognized California tribes within the state. This member shall represent the central area of the state.

(4) Two voting members appointed by the Governor from nominations submitted by state agencies or state-funded universities and colleges and museums.

(b) One member selected by nonfederally recognized tribes shall be an ex officio nonvoting member of the commission.

(c) The executive secretary of the commission shall be appointed by the Governor and shall be an ex officio nonvoting member of the commission."

⁹¹ Cindy La Marr, Capitol Area Indian Resources, Inc., letter to the editor, *Sacramento Bee*, June 16, 2001, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

California state funding would have to comply with AB 978. This requirement extended the reach of repatriation and thus required additional financing. The committee only gave vague estimates of itemized costs, such as the many millions of dollars for the institutions to create the inventories. The University of California alone projected that its costs for inventories alone would be over \$5 million dollars.⁹² Moreover, to adjudicate the repatriations, the Appropriations Committee projected that the Repatriation Oversight Commission would require funding of “\$500,000 to \$1 million” yearly.⁹³ It did not speculate on the costs that would be sustained by California museums and agencies in complying with AB 978 if passed, but observed they could be substantial.⁹⁴ Despite these red flags, the Assembly Committee on Appropriations unanimously passed the bill on May 31 on a 21-0 vote.

When Steinberg shepherded the bill back to the entire Assembly, AB 978 successfully hurdled its second reading. Not long after, the Assembly also completed its final reading of the bill and approved sending AB 978 to the Senate. In short, the legislature endorsed the broad sweep of the bill even with all of its flaws, as did a number of Native American tribes and groups in California. The bill received a unanimous approval from the Assembly, with a vote of 77-0.⁹⁵

2. *Senate*

In June, the Assembly had sent AB 978 to the California Senate. While it was in the Senate, Steinberg could not do the same kind of active lobbying he pursued in the Assembly because he was not a senator. Nevertheless, he worked for the Senate’s approval by leading

⁹² Chuck Nichol, “Assembly Committee on Appropriations Hearing Analysis,” *California Legislative Information*, May 30, 2001, page 2.

⁹³ *Ibid.*

⁹⁴ AB 978 was then referred to the Appropriations Committee’s Suspense File.

⁹⁵ Interestingly, this could have been 76-1: in the Assembly Journal for June 2001, it notes that “by unanimous consent, the following vote change was permitted on Assembly Bill No. 978: Assembly Member Wiggins, from ‘No’ to ‘Aye’.” It is unclear what prompted Wiggins to change her vote.

meetings and hearings about the legislation. The Senate Committee on Rules allocated the bill to the first relevant policy committee. The Rules Committee, tasked the Committee on Government Organization with AB 978 on June 19.

a. Committee on Government Organization

The committee filed a background information request, as was customary in the legislature. Because “bills are not heard in policy committee until 30 days after they have been introduced and printed, there is plenty of time [for the Senate and the public] to investigate” its provisions.⁹⁶ They met on July 2 to begin the hearing, but Steinberg cancelled it as he had the first meeting of the Assembly Committee on Appropriations. At this point, the Senate Committee on Governmental Organization invited Steinberg to make the amendments he desired, at which point the committee would hear the legislation again.

Clearly, being given that time to make amendments also made Steinberg more ambitious. This time, Steinberg’s changes were potentially explosive because they broadened AB 978’s reach in repatriation procedures.⁹⁷ Firstly, Steinberg installed penalties for California institutions that did not comply with the law. After a hearing to assess the repatriation issue, these fines were “not to exceed twenty thousand dollars (\$20,000) for each violation.”⁹⁸ In doing so, the Repatriation Oversight Commission would take into account both the sacred and societal meaning of the item, as well as the “economic and noneconomic” harm incurred by the native group requesting the repatriation.⁹⁹ Theoretically, this addition to AB 978 was highly beneficial

⁹⁶ <http://senate.ca.gov/legislativeprocess>

⁹⁷ It is also important to note that a commission-certified mediator no longer had to be competently “trained in Native American repatriation laws and familiar with Indian culture, custom, and tradition,” and “cultural items” now only refer to those originating in California.

(California, Senate, AB 978 8026 (b) and 8012 (d), as amended July 3, 2001, *California Legislative Information*.)

⁹⁸ California, Senate, AB 978 8029 (a), as amended July 3, 2001, *California Legislative Information*.

⁹⁹ AB 978 8029 (b) (3), as amended July 3, 2001.

– it gave consequences for misbehavior for the first time in the bill’s history. However, in the bill, Steinberg only gave an indefinite explanation of how this provision would be enforced. In order to acquire the money, the Attorney General of California would enforce legal proceedings against the institution at fault, which would take more time and did not guarantee that the item in question would be repatriated to the tribe.¹⁰⁰

Secondly, even though the bill was meant to streamline federal NAGPRA, Steinberg also newly specified who could be repatriated to under AB 978: federally-recognized tribes and state-recognized tribes who met certain requirements. In short, any tribe that has “state affiliation”¹⁰¹ could apply for repatriation, including “California tribes that are not federally recognized.”¹⁰² Of all Steinberg’s bill amendments, it is likely that this one created the most confusion. He introduced the term “state affiliation”¹⁰³ to encompass all tribal groups within California, federally recognized or not. It was unclear whether a state recognized tribe must be granted some form of dispensation from California, be petitioning for federal recognition, or both. The Judicial Council of California notes that in 2017, California has “109 federally recognized Indian tribes...and 78 entities petitioning for recognition” – that number is far higher than any other state. This decision re-focused the intent of the law on repatriating California Native American items to California tribes; in contrast, federal NAGPRA required any institution receiving federal

¹⁰⁰ This vagueness was still not addressed by the time the Senate discussed the bill in a July 10 hearing.

¹⁰¹ “‘State affiliation’ means that there is a relationship of shared group identity that can reasonably be traced historically or prehistorically between members of a present-day California Indian Tribe, as defined in subdivision (i), and an identifiable earlier tribe or group. Cultural affiliation is established when the preponderance of the evidence, based on geography, kinship, biology, archaeology, linguistics, folklore, oral tradition, historical evidence, or other information or expert opinion, reasonably leads to such a conclusion.”
(AB 978 8012 (f), as amended July 3, 2001.)

¹⁰² AB 978 8011 (f), as amended July 3, 2001.

¹⁰³ In this edition from early July 2001, “‘California Indian Tribe’ means any tribe located in California that meets the definition of Indian Tribe under the Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) or any tribe that is not recognized by the federal government that is petitioning for federal recognition and listed in the Bureau of Indian Affairs Branch of Acknowledgement and Research petitioner list”
(AB 978 8012 (i), as amended July 3, 2001.)

funds to repatriate any tribal human remains or sacred objects, among other items. In essence, by allowing unrecognized tribes to be part of the repatriation process without clear definitions, Steinberg made more work and confusion for the tribal leaders and museum workers who would implement AB 978.

Steinberg and the committee incorporated still more alterations to the bill during this period in July 2001. To substantiate the definitions and requirements within AB 978, they wrote additional sections that used federal NAGPRA language. For instance, though AB 978 already defined inventories, they removed the term “cultural items” and replaced it with “associated funerary objects;” the definition now defined an inventory as “an itemized list that summarizes the collection of human remains and associated funerary objects in the possession or control of an agency.”¹⁰⁴ The authors also added the NAGPRA definition of “summary,” further supporting the repatriation intent in the spirit of NAGPRA.¹⁰⁵ These changes clarified problems with the bill and legitimized it as a facilitator of the federal law. Perhaps belatedly, they also changed the date the inventories and summaries were due to January 1, 2003. Pushing it forward six months from the original date gave agencies over a year to complete the requirements.

Next, Steinberg detailed the bill’s definition of a tribe in a controversial way: the Repatriation Oversight Commission would have some power to decide if some non-federally recognized California tribes would be eligible for repatriation.¹⁰⁶ An unrecognized tribe

¹⁰⁴ AB 978, 8012 (g), as amended July 3, 2001.

¹⁰⁵ AB 978, 8013 (a) (5) as amended July 3, 2001 defines a summary as: “a document that summarizes the collection of unassociated funerary objects, sacred objects, or objects of cultural patrimony in the possession or control of an agency or museum. This document may be the summary prepared under the federal Native American Graves Protection and Repatriation Act.” This is the companion to the inventory, and is important because sacred items were not specified in AB 978 before this addition.

¹⁰⁶ The earliest definition of a California Indian tribe in AB 978 is in the amended version from the Senate on July 7, 2001. A more detailed version appeared in the second Senate version from July 17, 2001. Here, a “California Indian tribe” means any tribe located in California to which any of the following applies:

(1) It meets the definition of Indian tribe under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

“indigenous to the territory that is now known as the State of California” must be “listed in The Bureau of Indian Affairs Branch of Acknowledgement and Research petitioner list.”¹⁰⁷ At the same time, the Repatriation Oversight Commission would need to endorse it. Tribes had five criteria to meet for the Commission to assess their request (see footnote 34). In short, to qualify for repatriation under this legislation, the group would need to both petition for federal recognition while meeting the requirements of the Commission. The makeup of people on the commission, however, disappointed many tribal advocates for unrecognized groups; they found it unbalanced in comparison to the Federal NAGPRA Review Committee. Thus, they did not believe the Commission could make a fair decision on repatriation.

Regardless, Steinberg submitted his changes, then re-submitted the bill to the Senate Committee on Business and Professions. The committee passed the bill on July 16 with a vote of 11-0, and sent it to the Senate Committee on Appropriations.

b. Committee on Appropriations

The Appropriations Committee made few significant changes to AB 978 in August.

(2) It is not recognized by the federal government, but is indigenous to the territory that is now known as the State of California, and both of the following apply:

(A) It is listed in the Bureau of Indian Affairs Branch of Acknowledgement and Research petitioner list pursuant to Section 82.1 of Title 25 of the Federal Code of Regulations.

(B) It is determined by the commission to be a tribe that is eligible to participate in the repatriation process set forth in this chapter. The commission shall publish a document that lists the California tribes meeting these criteria, as well as authorized representatives to act on behalf of the tribe in the consultations required under paragraph (4) of subdivision (a) of Section 8013 and in matters pertaining to repatriation under this chapter. Criteria that shall guide the commission in making the determination of eligibility shall include, but not be limited to, the following:

(i) A continuous identity as an autonomous and separate tribal government.

(ii) Holding itself out as a tribe.

(iii) The tribe as a whole has demonstrated aboriginal ties to the territory now known as the State of California and its members can demonstrate lineal descent from the identifiable earlier groups that inhabited a particular tribal territory.

(iv) Recognition by the Indian community and nonIndian entities as a tribe.

(v) Demonstrated membership criteria.”

(AB 978, 8012 (j), as amended July 3, 2001.)

¹⁰⁷ AB 978 8012 (j), (2) (A), as amended July 3, 2001.

In 2005, this office became the Office of Federal Recognition.

Besides grammatical edits, the committee only changed certain appointment procedures for the Repatriation Oversight Committee.¹⁰⁸ The members were nominated by different groups: six by federally recognized tribes in California, one by state agencies and higher education institutions, one from the University of California, one from the California Association of Museums, and one from the Native American Heritage Commission. Previously, one member who represented federally-recognized tribes for central California was nominated by the President pro Tempore of the Senate. This nomination was switched to the Senate Committee on Rules, who already nominated a member from federal tribes for the northern California.¹⁰⁹ The bill does not provide maps or other indicators of where these regions would be. Not unexpectedly, this adjustment raised more questions – why was it necessary, and furthermore, why did these members of the legislative branch need to choose members of a governor’s commission? Granted, the governor appointed every other member of the Commission, but it was nevertheless a strange requirement to have the legislature involved.

It was also strange that the Appropriations Committee did not further investigate specific potential costs of this legislation - it was, after all, its purpose as a policy committee. They acknowledged that since AB 978 “[included] state requirements that are beyond those of the federal Native American Graves and Repatriation Act[,] it will impose additional costs” on all affected groups; however, they argued that “recent amendments significantly reduce the cost of compliance.”¹¹⁰ One is left to wonder what precise costs were reduced, as their assessment of

¹⁰⁸ Though slightly off-topic, it is important to note that the Repatriation Oversight Commission was charged with posting agency inventories, summaries, and tribal requests for repatriation on its website, in contrast to the federal NAGPRA policy of publishing these documents in the Federal Register.

¹⁰⁹ Because the executive secretary of the Commission would be a non-voting position, the governor of California could select that individual personally and did not require nominations from which to choose.

¹¹⁰ Karen French, “Appropriations Committee Fiscal Summary,” *California Legislative Information*, August 20, 2001, page 2, <http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml>.

fiscal impact only noted the costs for the Commission, and generalized as “unknown” the costs of both inventory creation for agencies as well as the actual repatriations to California tribes. The likelihood of AB 978 creating high costs for state agencies meant that the Committee ought to have given the issue more consideration.

The committee passed the bill on September 6 with a vote of 13-0. When AB 978 passed its last reading despite some listed opposition from outside of the legislature, the Senate unanimously passed AB 978 on September 10. They returned the amended version to the Assembly. The thirty Assembly and Senate coauthors endorsed the bill and encouraged its passage.¹¹¹ The legislation was finally given a unanimous vote of 79-0. The Assembly Office of Engrossing and Enrolling proofread the bill before sending it to the governor’s office for approval or veto. Governor Gray Davis approved AB 978 on October 12, and it was codified as Chapter 818, Statutes of 2001.

¹¹¹ Assembly Member Aroner, Calderon, Chan, Corbett, Correa, Frommer, Hertzberg, Hollingsworth, Kelley, Koretz, Leonard, Nation, Robert Pacheco, Pavley, Strickland, Strom-Martin, Vargas, Washington, Wesson, Zettel. Senator Alpert, Battin, Brulte, Burton, Chesbro, Figueroa, Karnette, Kuehl, McClintock, Soto, and Vincent.

Section 6: Opposition to AB 978

1. Introduction

Museums, anthropological societies, and California educational institutions disliked much of AB 978 because they feared its extensive reach would negatively impact their collections and work. On one hand, most groups who opposed the bill still “[agreed] with [Steinberg’s] intent to ensure that human skeletal remains and funerary objects are treated with dignity and respect.” For instance, the University of California system “[took] great pride in its efforts to comply with NAGPRA in repatriating Native American remains to lineal descendants and to culturally affiliated Native American tribes.”¹¹² There is some irony in this statement - UC was one of the major culprits in California agency non-compliance with NAGPRA. However, the University of California and many other state agencies were extremely concerned that if everything in their anthropological collections was to be available for repatriation, they could no longer conduct research for exhibits and academic work.¹¹³

The agencies argued that their work was in the interest of the California public and ought not to be irrevocably damaged because of the legislation. According to Eugene C. Scott, President of the American Association of Physical Anthropologists, AB 978 was “an ill-conceived and unworkable piece of legislation”¹¹⁴ that “[sabotaged] the very goals that it [was] designed to achieve.”¹¹⁵ Scott appeared to take issue with AB 978’s primary objectives:

¹¹² Arditti to Steinberg, June 13, 2001, page 1.

¹¹³ Stephen Arditti sent this letter to indicate the UC system’s strong objections to AB 978, and outlined the major issues: conflict with NAGPRA; the emptying of museums, expensive new inventories; unclear definitions of non-federally recognized tribes; imbalanced Commission; low standards of cultural affiliation; and vague civil penalties. He included amendments to the bill in his letter. The Oakland Museum of California sent a letter to Steinberg on June 18 using almost precisely the same wording as the UC letter and endorsing the amendments that UC sent.

¹¹⁴ Eugene C. Scott of the American Association of Physical Anthropologists to Assemblymember Darrell Steinberg, June 8, 2001, page 2, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

¹¹⁵ *Ibid.*, 3.

enforcing California compliance with NAGPRA, and extending repatriation to unrecognized tribes. Most California institutions saw NAGPRA as legitimate because of its balanced creation. From their perspective, AB 978 did not merit the same respect.

2. *Conflict with federal NAGPRA*

AB 978 differed from federal NAGPRA because federal NAGPRA took years, many people, and significant compromise to complete. Robert Kelly, president of the Society for American Archeology (SAA), wrote to Steinberg to express his dismay that AB 978 did not look at historical precedent for repatriation laws. He correctly asserted that federal NAGPRA “was neither Indian legislation, museum legislation, nor scientific legislation – it was compromise legislation.”¹¹⁶ Multiple tribes and archeology groups worked together to create the federal law, and none of the participants received everything they wanted. Kelly was concerned that the California law was too heavily weighted in the interests of California tribes. He believed that it ignored the precedent of consulting with non-tribal interested parties. To him, the two laws would challenge each other and the people implementing both: “AB 978 will work against the principles of reasonable compromise that Native American organizations, museums, SAA, and Congress carefully considered in developing NAGPRA.”¹¹⁷ The compromise, he notes, was found in the lengthy negotiations and hearings in which tribes, agencies, and his own SSA participated to find common ground. He implied in his letter that Steinberg’s bill was rushed and vague due to its rapid writing, which raised questions about its effectiveness. Though this letter only indicated the opinion of one society, the statements of Kelly and the SAA echoed those of other interested parties.

¹¹⁶ Robert L. Kelly of the Society for American Archeology, June 7, 2001, page 4-5, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

¹¹⁷ *Ibid.*, 1

a. *Conflict over language*

Furthermore, AB 978 did not streamline the work of federal NAGPRA, but expanded its reach through new definitions. Federal NAGPRA requires agencies to complete inventories and summaries that encompass human remains, sacred objects, and associated and unassociated funerary items. California agencies wrote to Steinberg and members of the Senate committees in June and July 2001 to express their strong concerns about the definitions in AB 978 that were not covered under NAGPRA. The broad definition of “traditional objects” caused the most controversy. According to the May 2001 edition of AB 978, traditional objects were “any object or item deemed by the affiliated tribe to be integral to its customs and traditions.”¹¹⁸ This term did not come wholly from NAGPRA. Steinberg created this new category of items eligible for repatriation and placed it under the term “cultural items.”

Confusion and frustration soon followed. “Cultural items” is a NAGPRA definition, but Steinberg’s bill redefined the term. For instance, the federal definition describes it as “human remains...associated...and unassociated funerary objects...sacred objects...and [objects of] cultural patrimony.”¹¹⁹ Organized in this particular order, the federal law placed higher value on

¹¹⁸ California, Assembly, AB 978, (f) (4), amended May 22, 2001, *California Legislative Information*.

¹¹⁹ 25 U.S.C.A. § 3001 (3).

“(A) ‘*associated funerary objects*’ which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.¹

(B) ‘*unassociated funerary objects*’ which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

(C) ‘*sacred objects*’ which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(D) ‘*cultural patrimony*’ which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been

human remains over the other items. In contrast, AB 978 defined a “cultural item” as a “funerary object...sacred object...object of cultural patrimony...[or a] traditional object.”¹²⁰ In the California bill, human remains were classified separately.¹²¹

The definition of “traditional object” caused concern that publicly funded museums and collections could be required to repatriate any native Californian items in their possession. “Traditional objects” was much less stringent than many agencies would have preferred. The “subjective, unilateral, vague, and inclusive definition could encompass [a] museum’s entire collection”¹²² of Native American items, argued the Natural History Museum of Los Angeles County. Similarly, the Society for American Archeologists complained that the bill “would permit the wholesale withdrawal of Native American collections from museums, and thus, from the public trust.”¹²³ From their perspective, AB 978 contradicted the responsibility of museums to present information through collections to the general public.

More letters decrying “traditional objects” made their way to Steinberg’s desk. A group of anthropology professors from the California State University system used extremely strong language when writing to members of the Assembly and the Senate on June 12. They reasoned

considered inalienable by such Native American group at the time the object was separated from such group.”

¹²⁰ California, Assembly, AB 978, 8012, (f) (1-4), amended May 22, 2001.

“(1) “*Funerary object*” means an object that is or was a part of a death rite or ceremony.

(2) “*Sacred object*” means a specified sacred or ceremonial object that is needed by the culturally affiliated tribe.

(3) “*Object of cultural patrimony*” means an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, which cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe, and the object is considered inalienable by that Native American group at the time the object was separated from that group.

(4) “*Traditional object*” means any object or item deemed by the affiliated tribe to be integral to its customs and traditions.”

¹²¹ “(g) ‘*Human remains*’ means the physical remains of the body of a person of Native American ancestry in any state of decomposition. For purposes of this chapter, ashes and other remnants from ceremonial burnings shall also constitute human remains.”

(AB 978, 8012 (g), amended May 22, 2001.)

¹²² James Gilson and Eric Warren of Natural History Museum of Los Angeles County to Ed Manning, Kahl/Pownall Advocates, memorandum, June 1, 2001, page 1, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

¹²³ Kelly to Steinberg, June 7, 2001, 4.

that by “[redefining] the meaning of cultural items...this [opened] the door for tribes to claim anything, *from genuine religious items to dirt*, as ‘traditional.’”¹²⁴ This surprisingly emphatic language from the seventeen undersigned professors suggests that they believed Native Californians would manipulate the repatriation system. However, under NAGPRA, native people specifically possess the right to reclaim items needed to practice their religions, and individual communities decide what fits in that category - not museums or anthropologists. Moreover, the legacy of white settler colonialism and ensuing theft of ancient sacred objects gives tribes the upper hand in that discussion. Generally, museums and other researchers believed their work was threatened by the non-NAGPRA term “traditional items,” and spoke out to the California legislature accordingly.

b. *Conflict over claims to items*

Moreover, AB 978 expanded federal NAGPRA to tribal groups not previously eligible for repatriation, creating confusion about how this choice worked with existing repatriation law. On one hand, it pitted museums against tribes. Most agencies wanted to continue working with federally recognized tribes to resolve issues. In its proposed a series of amendments to the entirety of AB 978, the University of California at Berkeley claimed that it “[supported] cooperative relationships with tribes” and continued “to foster positive relationships with Native communities...seeking to invoke the repatriation process.”¹²⁵ One ought to consider this statement with reservations. Berkeley provided little evidence to further its assertion, which was particularly concerning because it had not fully complied with federal NAGPRA’s inventory and

¹²⁴ Terry L. Jones and Mark Q. Sutton, et al, of the California State University, to the California Legislature, June 12, 2001, page 2, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

Emphasis added.

¹²⁵ University of California Proposed Amendments to AB 978 (As Amended 5/22/01), n.d., page 1, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

summary requirements at this point. At the same time, the UC system, museums and other California agencies were extremely concerned about the impact of expanding repatriation to non-federally recognized tribes. The Natural History Museum of Los Angeles County believed this decision created “potential conflict among Native American groups and museums” and destabilized “numerous existing positive relations between museums and Native Americans.”¹²⁶ The murkiness on this definition confused agencies and bolstered their opposition to AB 978.

Another problematic definition was the unclear term ‘state recognized tribe.’ AB 978’s repatriation policies would include tribes that have state level recognition. According to Alexa Koenig, a state recognized tribe has no federal recognition. It has “not yet managed to secure the federal government’s confirmation of [its] sovereign status. However, [its] ongoing presence as [a] bona fide [tribe] is acknowledged by the states in which [its members] reside.”¹²⁷ If a tribe is recognized by its state, but not the federal government, it could receive some benefits similar to those received by federally-recognized tribes. While the recognition is not to the same degree, through this method, an unrecognized tribe could receive some degree of acknowledgement. However, state recognition is uncommon for tribes because there are no official standards that classify tribes in this way across the nation.

AB 978 did not outline a helpful process to determine how a tribe could achieve state recognition for repatriation.¹²⁸ Then as now, no formal principles for state recognition exist in the state of California. A very small number of California tribes have “been granted” state

¹²⁶ Gilson and Warren to Manning, June 1, 2001, 2.

¹²⁷ Alexa Koenig and Jonathan Stein, “Federalism and the State Recognition of Native American Tribes: A Survey of State-Recognized Tribes and State Recognition Processes across the United States” (*48 Santa Clara L. Rev.* 79, 2008), page 83.

Koenig uses this definition for her discussion, but goes on to explain the awkwardness of this term: because states acknowledge all federally recognized tribes, technically all federal tribes are also state-recognized.

¹²⁸ Kelly to Steinberg, June 7, 2001, 3.

recognition “on a case-by-case basis through joint resolutions passed by the legislature, without the Governor's signature.”¹²⁹ If this kind of classification was formalized in the state, state recognized tribes could use legislation like AB 978 to enforce repatriation requests. However, Steinberg's bill attempted to set standards for state recognition without customary standards of research and consultation. Repatriation rights have been classified under the auspices of federal recognition since NAGPRA was created in 1990, and few state recognized tribes have attempted to enact repatriations since.¹³⁰

3. *Repatriation Oversight Commission*

AB 978 created the Repatriation Oversight Commission to regulate repatriations in California. However, the Commission's composition weighted towards tribes caused consternation among museums and state agencies for several reasons. For example, the Commission would have significant power: it could impose civil penalties such as fines on non-compliant institutions, as well as mediate all California repatriation requests. Their decisions on repatriations would be final, in direct contrast to federal NAGPRA's Review Committee.¹³¹ Moreover, the actual makeup of the Commission was weighted in favor of tribes: from the beginning, the Commission represented more tribes than museum agencies.

Museums found those numbers to be biased. Many California museums and agencies would not fully support the bill without equalized representation. In fact, they scathingly asserted that the “egregious imbalance in the composition of the commission deprives the commission of

¹²⁹ Koenig and Stein, “Federalism and the State Recognition of Native American Tribes,” page 112. Because of these circumstances, only two tribes have this kind of designation in California.

¹³⁰ NAGPRA-required inventories and summaries would need to either be adapted to include all state-recognized tribes, or completely re-done in order to re-assign culturally unidentifiable items and remains. For example, in the case of human remains that were previously considered ‘culturally unidentifiable’ under NAGPRA, the remains might belong to one of the nonrecognized tribes. However, AB 978 only gave agencies from the bill's passage until July 2002 to complete inventories that could have been large in scope, and many objected to that.

¹³¹ The federal NAGPRA Review Board can only make recommendations.

credibility, goes against established concepts in public policy and public process, and abandons the diverse experiences and legitimate concerns of museums.”¹³² This criticism was not undeserved - as mentioned before, California tribes held a majority of the seats. When the bill required nine members on the Commission, all but two were nominated by federally-recognized tribes. Another member was nominated by a non-federally recognized tribe, and the ninth was nominated by state agencies and colleges.¹³³ On expanding the commission to ten members, the University of California and the California Association of Museums each was permitted to nominate a member.¹³⁴ This change allowed more contributions from museums.

On the other hand, it is possible that placing more Native Californians on the Commission was a fair balance. By giving tribes more of a voice in dealing with repatriations, California tribes would be fully engaged and their sovereignty reinforced. The high representation of tribes on the Commission would be more appropriate to help enforce NAGPRA. Perhaps beneficially, the final version of AB 978 enabled 70% of the Commission to be tribal nominees. The museum critique of its balance remained, but the Commission appropriately gave more agency to native communities directly involved with issues of repatriation.

The Repatriation Oversight Commission encountered another challenge in the scope of its duties. While the chaptered version of the bill outlined its responsibilities, many aspects remained unknown. Writing in June 2001, California State University anthropology professors asked if the Commission would “impose civil penalties to those [institutions] complying with

¹³² Hutterer and Johnson to O’Connell, July 6, 2001, 1.

¹³³ California, Assembly, AB 978, 8025, amended May 22, 2001.

¹³⁴ California, Senate, AB 978, 8025, amended August 20, 2001, *California Legislative Information*. All versions did not include in the final count the executive secretary, who did not vote.

federal law?”¹³⁵ Their defensive tone displayed their concern that AB 978 did not comply with NAGPRA, and could also give undue power to the Commission. Besides the aforementioned enforcement of repatriation duties for California, the Commission was also to “administer the budget of the commission... [and] establish and maintain a website for communication between tribes and museums and agencies.”¹³⁶ This first provision is a major issue that I will deal with in depth in a later section. It is sufficient to say that although the Commission was to administer the budget, the legislature did not explain the source of the Commission’s funding. The second provision reinforces the fact that AB 978 did not enforce federal NAGPRA, but instead expanded it. It also seems odd that the Commission would post the repatriation announcements on their website. Federal repatriations are announced on the Federal Register through the Notice of Intent,¹³⁷ and it was certainly possible to publicize repatriations in a similar way with California’s Code of Regulations. As evidenced, several of the Commission’s obligations were insufficiently detailed to make them unworkable or impractical.

There also arose the possibility that the California Native American Heritage Commission (NAHC) was a more appropriate body to enforce AB 978 than the Repatriation Oversight Commission. When the governor of California created it in 1976, the NAHC was

charged with the duty of preserving and ensuring accessibility of sacred sites and burials, the disposition of Native American human remains and burial items, maintain an inventory of Native American sacred sites located on public lands, and review current administrative and statutory protections related to these sacred sites.¹³⁸

¹³⁵ Jones and Sutton, et al, to the California Legislature, June 12, 2001, 2.

¹³⁶ California, Assembly, AB 978, 8026 (c-d), as introduced February 23, 2001.

One should also note that their responsibilities included “[assisting] California tribes in obtaining the dedication of appropriate state lands for the purposes of reinterment of human remains and cultural items” (Ibid., (g)). In their letter of March 19, 2001, the Alliance of California Tribes pushed Steinberg to empower the Commission in this aspect.

¹³⁷ The Notices of Intent to Repatriate Database:

https://www.nps.gov/nagpra/FED_NOTICES/NAGPRADIR/index2.htm

¹³⁸ California, Native American Heritage Commission, “Welcome,” *California Native American Heritage Commission*, accessed March 20, 2017.

The responsibilities of the Repatriation Oversight Commission would have duplicated many of these duties already shouldered by the NAHC for several decades. Why, many groups questioned, create a brand-new agency with unspecified powers that would only be a drain on state funding? A number of California agencies and groups wrote to Steinberg suggesting that the NAHC take on the requirements of AB 978. The Yurok Tribe counseled Steinberg to, at the very least, give the NAHC a place on the Repatriation Commission. Ignoring the existing state entity appeared ridiculous.¹³⁹ Nevertheless, not every tribal group agreed with this perspective. Chairwoman Rosemary Cambra of the Muwekma Ohlone Tribe was troubled by what she considered to be the “unaccountable fiefdom of power”¹⁴⁰ controlled by the NAHC. She commended AB 978 as returning power of stewardship to documented tribes.

4. *Financial opposition*

Most California financial organizations opposed the bill or doubted its value because of its multiple flaws. Though they found problems with many aspects of the bill, they unified around one idea: why create a state version of NAGPRA at all? They understood and agreed with the premise that federally-funded agencies must repatriate human remains, sacred items, and funerary objects in their possession. Most, if not all, state agencies in California received both state and federal funding. Thus, federal NAGPRA already applied to them. The overall intention of AB 978 was in question: how best to enforce the federal law? Steinberg assumed that creating a state version of NAGPRA through AB 978 would help facilitate federal NAGPRA. However, it

¹³⁹ Howard McConnell, Vice Chairman of the Yurok Tribe, wrote that the NAHC could also propose the “Non-federally recognized tribe nominee,” and that the nominated person must be allowed to vote on the Commission. “To do otherwise,” he explained, “is to perpetuate the second-class stigma that has been unjustly placed on [such] tribes.”

Howard McConnell to Darrell Steinberg, June 27, 2001, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

¹⁴⁰ Rosemary Cambra to Darrell Steinberg, March 17, 2001, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

only expanded the amount of money and effort required of agencies in California to comply with new regulations. Several groups and agencies had monetary concerns about AB 978, but their voices were largely ignored.¹⁴¹

One of AB 978's most glaring financial issues was its failure to provide any additional funding for enactment or enforcement. This problem further contrasted it with NAGPRA. Although NAGPRA did not provide funding for enactment or enforcement, it did offer several kinds of grant options for institutions to use in repatriations.¹⁴² The Department of Finance, the economic division that advised the California governor, opposed AB 978 in its May and August bill analyses. It criticized the lack of funds set aside for the bill's implementation. Because AB 978 "substantially duplicates many of the requirements of NAGPRA, ...makes no appropriation, nor...[specifies] a funding source," the Department of Finance "believes that most of the costs" to enact and enforce the legislation "will fall to the General Fund."¹⁴³ At the same time, Steinberg and his colleagues did not request that money be set aside to empower the Repatriation Oversight Commission, which was the only way the Commission could have enforced the law.¹⁴⁴ Because the Department of Finance oversaw funding for the entire state, their opinion should not have been taken lightly.¹⁴⁵ However, AB 978 sailed through the legislature despite the

¹⁴¹ The financial worth of artifacts or objects could have been another factor in AB 978, as Virginia Bickford wrote to Steinberg in July 2001. However, I will only note this idea and not delve into it because I found no other letters directly making this argument and I do not want to over-emphasize it. Moreover, she used strongly worded language that is better understood in the context of the whole letter.

¹⁴² <https://www.nps.gov/nagpra/grants/INDEX.HTM>

¹⁴³ Cindy Shamrock, Department of Finance Bill Analysis, page 1, August 16, 2001, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

¹⁴⁴ The August Department of Finance Bill Analysis notes that the bill has since added a penalty for non-compliance, "however, the bill is silent on how these monies can be used" (Ibid., page 2).

¹⁴⁵ In its analysis, the Department of Finance also made an important, though not particularly succinct, statement about how the (lack of) funding interacted with AB 978's intent to streamline NAGPRA. They acknowledged that there are California agencies which may not have been complying with NAGPRA. On the other hand, it was unknown to what degree this issue exists. Without further research, it seemed hasty to enact legislation to solve that problem - if indeed that was the purported goal.

Department of Finance's questions about its funding.

The May-April 2001 cost estimate from the University of California (UC) provides a good assessment of agency-level funding concerns.¹⁴⁶ The two primary reasons for the cost increase for AB 978 were the creation of new inventories and the repatriations of newly eligible items. Using UC's structure of two costs - inventories and repatriations - one can view their objections to the bill from the perspective of monetary and human resource expenses accrued.¹⁴⁷

The expansive requirements of AB 978 required new inventories for the University of California system's archeological collections. The bill compelled the University of California to "undertake new inventory efforts" for the "new category of '[traditional] objects,'" which encompassed a significant number of items.¹⁴⁸ The University of California argued that because these did not fall under the original requirements of NAGPRA, it would be dramatically expensive to create that kind of detailed inventory. Simultaneously, assembling them would be more work for UC staff.¹⁴⁹ They also had far less time to write the inventories than NAGPRA allowed - AB 978 only gave a year, until January 2003.

¹⁴⁶ I will refer to the entire system of the University of California schools as 'the University of California' or 'UC.' Even though the University of California, Berkeley, is also referred to as 'the University of California,' I do not refer to it as the latter for the sake of clarity.

Observed elsewhere, this example raises the question of UC's compliance with NAGPRA - it was one of the agencies accused of taking too long to complete their inventories and summaries. However, because they were the most articulate in their financial opposition, I will use them as an example regardless.

¹⁴⁷ They actually reference five costs, including the cost to participate in state dispute resolution procedures," "consulting with tribes," and "the cost to the state in setting up and administering new state commission," but I have narrowed the focus to the two most succinct cost estimates.

University of California Cost Estimate for Complying with AB 978 (Steinberg) as amended May 22, 2001, n.d., page 1, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

¹⁴⁸ Ibid.

The assessment argued that inventorying these 'traditional objects' would create unknown costs for the University of California. The UC system would need to refer to both federally and non-federally recognized tribes to inventory these items, and moreover, would need to do the same basic NAGPRA inventories for the latter kind of tribe.

¹⁴⁹ UC determined that "based on past experience and the new requirements, we believe that it would take at least **80 Full-Time-Equivalent museum scientist staff to complete the new inventories...**" After yearly salaries and "administrative costs," the total estimate would come to "at least \$5.4 million systemwide" (Ibid.).

More concretely, repatriating the array of the UC's cultural items meant high costs for the system's many campuses. A repatriation entailed photographing the item, noting its particular information, and then appropriately wrapping and shipping the item for return. For example, the University of California at Berkeley and at Davis assumed that in order to repatriate at least 10% of their collections, at a rate of "\$300 per cultural item," their combined costs would come to \$13.5 million.¹⁵⁰ Essentially, the University of California was gravely concerned about the costs of complying with a new NAGPRA law for California.

¹⁵⁰ Ibid., 2.

Section 7: Support for AB 978

1. *Introduction*

In contrast to the well-articulated opposition, the supporters of AB 978 used strikingly similar language to indicate their approval of the bill. They did not use a series of specific reasons like the California agencies who argued in opposition. Rather, tribal groups, academic institutions, and governmental representatives rallied around the general value of repatriation to the native peoples of California. I will outline the route of support as described in the public record, then illustrate some potential arguments in favor of AB 978 that the three groups could have made, but did not.

2. *Steinberg's argument*

As the creator of AB 978, Darrell Steinberg naturally supported his own legislation. He wrote dozens of formal letters to detail his reasoning to his constituents, other California voters, and the upper levels of California government. One of the most polished of these letters was his September 18th, 2001 message to California Governor Gray Davis. Steinberg requested that Davis sign AB 978 into law for three major reasons. He maintained these explanations throughout the bill's tenure in the legislature, where only the specific wording and scope of the bill changed and developed.

The first reason for Davis to sign AB 978 into law was that California agencies had struggled to adhere to federal NAGPRA. Steinberg cited that over the previous decade, "progress towards full compliance with the [latter] law has been slow and difficult" due to the "complexity of tasks associated with repatriation in California and a lack of resources."¹⁵¹ He intended AB

¹⁵¹ Darrell Steinberg to Governor Gray Davis, September 18, 2001, page 1, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

978 to “[provide] a more streamlined mechanism for California to comply with the law.”¹⁵² His assessment was correct - inadequate funding and other issues plagued NAGPRA from its inception, as many historians and political scientists have noted. In her thesis “Restless Spirits,” Maria Gonzales-Moreno observed that these “serious delays in repatriations” caused “California Indian people...to notice and [feel] that museums and universities were not complying with the law.”¹⁵³ By the time Steinberg drafted the bill in 2001, struggles with NAGPRA meant that little had been accomplished.¹⁵⁴

However, in his letter to Davis, Steinberg claimed that the costs of AB 978 would not be dramatically different from what was already required of museums by federal NAGPRA. He asserted that “while there is a cost associated with compliance to AB 978, it is largely the same cost that” any agency receiving federal funding will bring upon itself “through compliance with [the] existing federal law.”¹⁵⁵ This argument is surprising. Federal NAGPRA did not require federally-funded agencies to coordinate with non-federally recognized tribes; it merely stated that agencies had the option to do so. In stating his position on funding, Steinberg ignored the high cost of coordination with recognized and unrecognized tribes for California institutions. Accordingly, it is not clear why Steinberg asserted that the bill would not have high costs.

A second reason Steinberg presented was that by creating a state-level repatriation standard in California, state-funded agencies would become answerable to the state as well as the federal government. As detailed in previous sections, the Repatriation Oversight Commission would implement the new requirements. It would “aid in repatriation efforts in accordance with

¹⁵² Ibid.

¹⁵³ Gonzales-Moreno, “Restless Spirits,” 29.

¹⁵⁴ Michelle Locke, “Ishi comes home, but most other Native remains stay on shelves,” *Berkeley Daily Planet* (Berkeley, CA), August 20, 2000, accessed March 2017.

¹⁵⁵ Steinberg to Davis, September 18, 2001, 2.

the law and mediate disputes that may arise relating to the disposition of remains and funerary objects.”¹⁵⁶ Steinberg reasoned that institutions might become more compliant with both the state and federal laws if the state could employ enforcement tactics.

The other principle in Steinberg’s argument was the assumption that the vast majority of objects in California museum collections, particularly human remains, ought to be repatriated. He wrote that of the more than one hundred federal tribes in California, “a large number...have legitimate claims to the thousands of human remains and funerary objects currently stored in warehouses and museums.”¹⁵⁷ This number would grow if the state included the objects to which non-federally recognized tribes laid claim. Steinberg wanted museums and agencies to repatriate “these items so they [could] be laid to rest in accordance to tradition and custom.”¹⁵⁸ His perspective became firmer in a June 2001 interview. Ed Fletcher quotes Steinberg as stating that despite “...critics’ concerns...Indians should have the right to take back any of their work. ‘We ought to make every effort to return all their items,’ Steinberg said. ‘On principle, the Native Americans have the first call here.’”¹⁵⁹ Despite the potential for developing this line of argument, in his letter to the governor, he left the wording vague and did not elaborate further. In general, Steinberg could have expanded his discussion of AB 978’s merits to make it clearer, but did not in this letter nor in others.

3. *Support: Tribal*

Other kinds of support came from California tribal groups. Multiple native communities across the state wrote letters of support to Steinberg to explain their reasons for backing AB 978. From early March to the end of May 2001, the tribes peppered Steinberg with the same letter.

¹⁵⁶ Steinberg to Davis, 1.

¹⁵⁷ Steinberg to Davis, 2.

¹⁵⁸ Ibid.

¹⁵⁹ Fletcher, “Sounding an alarm,” June 15, 2001.

Nearly all of the fifty-six form letters that Steinberg received used the same wording, copied repeatedly.¹⁶⁰ Tribal leaders endorsed Steinberg's bill in its early stages because they saw power in a state-level NAGPRA.

California tribes appreciated that Steinberg chose to advocate for repatriation in California. From their perspective, AB 978 “[would] finally allow California’s federally recognized tribes to gain possession of objects that were taken from unprotected burial sites...in the possession or control of an agency...and return them to their rightful owners.”¹⁶¹ Because this wording was standard across the many letters Steinberg received, it was likely circulated by another person or group who asked them to sign on. This template could have come from members of the Native American Heritage Commission, which had officially taken a neutral position on AB 978, but whose members took stances of both support and opposition.

Importantly, at the time of these letters, the legislation *did not yet extend* to non-federally recognized tribes. Steinberg added that provision while the bill was in the Assembly Committee on Appropriations in mid-May 2001. It is not clear if the tribal perspective on AB 978 changed after that date because the paper trail is extremely thin.

A few tribal lobbyists came forward to endorse the bill's passage as well. For example, a Sacramento-based contract lobbyist firm, Norwood and Pedrotti, wrote to the Assembly to advocate for the bill. They summarized the benefits the bill would create for tribes such as their client, the Barona Band of Mission Indians. Norwood and Pedrotti asked that the Assembly approve “when this measure is heard in the Assembly Business and Professions Committee” because AB 978 “adds accountability for the application of NAGPRA specifically by California

¹⁶⁰ Interestingly, some of the letters have strange typos.

¹⁶¹ Victor Fejeran of the Hopland Band of Pomo Indians to Darrell Steinberg, May 21, 2001, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

institutions repatriating to California tribes.”¹⁶² The firm noted that federal NAGPRA was better suited to the repatriation needs of large tribes in the Mid- and Southwest, not to the small and numerous California tribes. Thus, California tribes needed a special bill. Norwood and Pedrotti may have seen a reason for this argument because they held a particular position on the issue as tribal lobbyists. It is not mentioned by other supporters.

The leadership of one tribal community closely followed the development of Steinberg’s legislation. The Barona Band of Mission Indians, a federally recognized group of Kumeyaay Indians in the Capitan Grande Band, campaigned for AB 978 in San Diego and across Southern California. Steve Banegas, a Barona council member, lobbied the Assembly and Senate committees that heard the bill. He noted that “Barona [was] a national leader in utilizing NAGPRA...” but as the federal law did “not contain any teeth...there is nothing to force” institutions to repatriate.¹⁶³ He was successful - and afterwards, he commended state representatives who passed the bill for “allowing us to take one step closer to repatriating the remains of our ancestors back into the care of their descendants, helping us to fulfill our responsibilities as native people.”¹⁶⁴ In his letters to state senators, he used language that corresponded to Steinberg’s official statement on AB 978. For example, he pointed out that the bill “seeks to streamline and add an accountability step to the repatriation process,” among other provisions.¹⁶⁵ During the early stages of AB 978’s development, Banegas and the Barona tribe advocated for its passage.

¹⁶² J. Kevin Pedrotti and John A. Norwood to Assemblymember Lou Correa, April 12, 2001, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

¹⁶³ David Baron to Michael Gotch, email message, June 25, 2001, MF 9:2 (100), GCBF, California State Archives, Office of the Secretary of State, Sacramento, CA.

¹⁶⁴ Steve Banegas to Assemblymember Lou Correa, May 1, 2001, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

¹⁶⁵ Steve Banegas to Senator Jim Brulte, July 3, 2001, page 1, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

Additionally, the Kumeyaay Cultural Repatriation Committee provided major support to AB 978. Before Cal NAGPRA arrived at its first committee, Steinberg had already received a letter from a California tribal association that supported the bill. The Kumeyaay Cultural Repatriation Committee (KCRC)¹⁶⁶ represented a coalition of tribes in San Diego. Steve Banegas headed the KCRC. In his March letter, Banegas assured Steinberg that the KCRC would promote AB 978's repatriation intent. He also felt that it "[would] go a long way toward providing a means of satisfactory resolution" to the "collection and curation of our ancestors' material remains."¹⁶⁷ In essence, the KCRC backed Steinberg's legislation because it could assist their repatriation work - their sole purpose.

Banegas appeared to be a close ally of Steinberg in the legislative process of AB 978. He lauded Steinberg as "truely [sic] [representing] the interests of all the people of California" in creating the bill.¹⁶⁸ Banegas implied that Steinberg had expanded his constituency as an assemblyman beyond his 9th Assembly District by representing the voices of native peoples. The Barona councilmember worked to gather tribal support for the legislation while Steinberg piloted AB 978 through the California Legislature.

a. *Potential supporting argument: Emotional Narrative*

Because the public record is sparse and repetitive, I will outline one major argument in favor of AB 978 that most tribal supporters did not explicitly state. The emotional narratives from individuals and tribes directly connected to repatriations are worthy of discussion. To

¹⁶⁶ The KCRC was made up of 12 tribes whose mission statement was: "To protect and preserve ancestral remains, sacred lands and sacred objects under the Native American and Graves Protection Act (NAGPRA) for today and future generations."

¹⁶⁷ Steve Banegas to Darrell Steinberg, March 2 2001, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

¹⁶⁸ Steve Banegas to Darrell Steinberg, letter with handwritten note, June 8, 2001, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

illustrate this, anthropologist Ann M. Kakaliouras observes that for

many Native American people...repatriatables...give material evidence to the destruction, dispossession, and scientific objectification of their cultures and heritages...[moreover,] the reception and ritual integration of repatriated human remains is often mournful, therapeutic, and empowering...¹⁶⁹

On one hand, the supporters did not need to make this argument because the legislation passed the California legislature with their general support. It is nonetheless possible that emotional narratives could have provided more context and understanding for non-native California legislators and academics to interpret and apply the provisions of AB 978.

There are endless examples and stories of how repatriated items, particularly human remains, impact tribal members in an emotional way. For instance, Eric Hemenway, a tribal member and repatriation specialist for the Little Traverse Bay Bands of Odawa Indians, wrote an article for *Museum Anthropology* where he described the pain he felt when re-burying human remains that had been repatriated to his tribe.¹⁷⁰ Re-interring human remains caused him to grieve because the person he handled was originally laid to rest, then rudely ripped from its final resting place. He endured the reburial process as if it was a second funeral for a loved one.

Hemenway also gives a greater perspective on the identity contemporary Native Americans feel towards the remains of their ancestors. He explains,

When those individuals died, no matter how many thousands of years ago, their interment was forever; their burial ceremony did not include being dug up and treated like a subhuman piece of scientific evidence. The identity of the dead has to be seen as that—dead people—and all dead people have their final rights, no matter what ethnic group they are from. Only with NAGPRA we are dealing with the Indian dead, and when they are not shown the proper respect of other dead, it feels like their identity as people is not even being acknowledged.¹⁷¹

¹⁶⁹ Ann M. Kakaliouras, "An Anthropology of Repatriation: Contemporary Physical Anthropological and Native American Ontologies of Practice" (*Current Anthropology* 53 no. S5, 2012), S214.

¹⁷⁰ Eric Hemenway, "Trials and Tribulations in a Tribal NAGPRA Program" (*Museum Anthropology* 33, 2010), 177-178.

¹⁷¹ *Ibid.*, 176.

To return to the California legislation, this kind of emotional narrative would have been extremely useful for the supporters of AB 978 to utilize. It brings the humanity of respect for the dead to the forefront of the repatriation conversation.

Back in California, tribal memoirs also provided passionate stories of repatriation. Author Deborah Miranda, a Ohlone/Costanoan-Esselen tribal member, recalls her family's history as intertwined with the stories of her tribe. In her memoir *Bad Indians*, she includes a moving poem from the perspective of Native American bones. These bones call the viewer to see them not just as “lonesome piles/ of sticks with no names,/ no tribal ID, no stories/ but the one in our teeth/ that brought us here,” but as people.¹⁷² “These bones,” they cry, are “all we have/ to offer” for identification - “we confess everything, chewed/ by the mouths of history and science..touch us. Claim us./ Take us home.”¹⁷³ Miranda's poem is especially relevant because the Ohlone/Costanoan-Esselen, are not federally-recognized. Thus, her poetry on human remains becomes more poignant due to the tribe's inability to request repatriation.

As previously mentioned, Native Californian supporters of AB 978 did not use emotional narrative arguments in their written support, with one remarkable exception. Steve Banegas wrote an intense and highly charged letter to the Governor's secretary, Anne Richardson, that highlighted the intangible meaning of the bill to Banegas' people. He wrote the letter near the end of the legislative process to acquaint the Governor with the meaning of repatriation before the bill arrived at the Governor's desk. Banegas' role in getting AB 978 passed gives him a particular voice and position on the topic. It is important to stress that this letter is one of the only examples of this reasoning in the public record, and is thus a special case - one cannot assume that every Native Californian felt as he did. However, its striking argument is too important to

¹⁷² Deborah A. Miranda, *Bad Indians: A Tribal Memoir* (Berkeley, Calif.: Heyday, 2013), 151.

¹⁷³ *Ibid.*

ignore.

Banegas' letter separated itself into two separate, but connected, discussions. The first was the Kumeyaay responsibility to respect and uphold the sanctity of the graves of their ancestors. According to Banegas, the Kumeyaay believed that any interruption of someone's tranquil "final resting place...is a severe hindrance in their travels in the afterlife."¹⁷⁴ Each living individual had a duty to secure this state of affairs for their ancestors. He or she must do their utmost to prevent this kind of upset in the natural order of life and death. That person had even more at stake, however, because if he or she failed to accomplish this obligation, they would "suffer a diminished life...[with] upset and illness to generations following."¹⁷⁵ To reiterate his point about intergenerational responsibility to graves, Banegas emphasized the spiritual consequences that face contemporary Native Californians that do not ensure the proper burial of their ancestors.

Banegas called on a second, more dramatic, argument to give non-natives a perspective about repatriation - he used current events to make a strong emotional connection to tragedy and the handling of human remains. Barely a month before the writing of his letter, terrorists attacked the World Trade Center on September 11, 2001 and caused the deaths of thousands. Banegas called on the raw emotions of this traumatic episode in his letter to Richardson. He asked, do

we remove and examine a thousand bodies buried in the World Trade Center disaster to give us an idea about the heights, weights and diseases of a sample of the New York population? Do we put them in storage for 50 or 100 years, so that perhaps our scientific methods will have improved to the point where we can learn even more about them?...Or do we put them to rest?¹⁷⁶

Though the image was extreme, especially for the American public at that time, the reason he

¹⁷⁴ Steve Banegas to Anne Richardson, October 5, 2001, page 1, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid., 1.

used this example was clear: museum control of Native Californian human remains was disrespectful to the humanity of the dead. Banegas concluded by requesting that the Governor sign the bill into law:

In a similar disaster for California Indians, circumstances beyond our control made it impossible for us to take proper care of our ancestors...Our generation looks forward to doing our part toward carrying out their sacred duty to properly care for the remains of our ancestors...Culturally and spiritually, we are ready to do our part, and AB 978 will help us to do this.¹⁷⁷

4. *Support - Governmental*

Both the California Attorney General and Lieutenant Governor approved of AB 978's repatriation intentions. The Office of the Attorney General indicated its backing of any repatriation law that "promotes the basic human rights and dignity of individuals."¹⁷⁸ It reminded Steinberg that many questions about the bill's specific requirements still needed to be answered, but appreciated that the changes would make the bill clearer. In a similar way, the California Lieutenant Governor also supported AB 978 because it would "promote the tribes' cultural rituals and ensure that [their] human remains are treated with dignity and respect."¹⁷⁹ However, neither the Attorney General nor the Lieutenant Governor gave distinct reasons for their support, which indicates that they believed AB 978 to be 'feel-good' legislation. Both the Attorney General and the Lieutenant Governor thought that the bill would produce positive changes for the wellbeing of California tribes, while simultaneously requiring little work from the state. The two public figures endorsed the bill's intent and represented AB 978's main governmental backing outside of the state legislature.

¹⁷⁷ Ibid., 2.

¹⁷⁸ Joe. J. Ayala of the Office of the Attorney General to Darrell Steinberg, June 6, 2001, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

¹⁷⁹ Lieutenant Governor Cruz M. Bustamante to Darrell Steinberg, July 2, 2001, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

5. *Non-opposition: Academic*

In a surprising turn of events, two of the most vocal opponents of AB 978 - the University of California (UC) and the California State University (CSU) system - changed their minds in midsummer 2001. Both academic institutions formerly “had a number of serious concerns...about potential conflicts” with federal NAGPRA, “lack of balance in the composition of the Repatriation Oversight Commission,” and the “unfunded” mandate and timeline for “supplemental inventories and summaries.”¹⁸⁰ They made their position abundantly clear - they were unhappy with the bill as written.

To combat the academic institutions’ reluctance to endorse his bill, Steinberg assembled a group to study ways to improve AB 978. It is unclear precisely when or for how long this group of “tribes, museums, state agencies, and public postsecondary educational institutions” met.¹⁸¹ However, due to the fact that the CSU withdrew its opposition to the bill before the hearing in the Senate’s Committee on Governmental Organization,¹⁸² which met in early July, this working group would likely have gathered in late June to early July 2001. The meetings produced results; both UC and CSU’s “most significant concerns were addressed as a result of that process...[and] in the spirit of compromise.”¹⁸³ Unfortunately, there are few details about these meetings in the public record. Little information exists on what caused the universities to change their perspectives so dramatically.¹⁸⁴

¹⁸⁰ Stephen A. Arditti of the University of California to Senator Dede Alpert, August 13, 2001, page 1, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

¹⁸¹ Ibid.

¹⁸² Sara I. Ramirez of the California State University to Senator Dede Alpert, August 14, 2001, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

¹⁸³ Arditti to Alpert, August 13, 2001, 1.

¹⁸⁴ While it does not quite answer the question of what changed the UC position, it is worthwhile to note once again that in early June 2001, the Phoebe Hearst Museum published its first NAGPRA inventory - nearly 6 years late.

Further Questions and Gaps in Data

1. *Further Questions*

In this honors thesis, I could not fully analyze several questions due to lack of available information. First, what specifically drove Steinberg include unrecognized tribes in California NAGPRA in the first place? Limited public record of unrecognized tribes' frustrations with repatriation exists. Secondly, how did Darrell Steinberg and Steve Banegas meet and agree to work together on this legislation? Primary sources such as private e-mails and phone conversations would likely tell this part of the story, but I did not have access to these types of sources from the two men. Thirdly, why did federal NAGPRA need to be enforced in California through Cal NAGPRA and the Repatriation Oversight Commission? Was there another way that the federal law could have been better enforced?

2. *Gaps in Data*

a. *Needed resources*

I strongly concur with Maria Gonzales-Moreno's assessment of resources needed to better understand the history of Cal NAGPRA. Certain kinds of resources do not currently exist, but would be invaluable additions to this history. Her three resource requests are:

1. An overview of laws specifically affecting California Indians from Colonial Mexico to the modern day. I would also request a list of cultural resource laws from that time frame. Furthermore, some of the resources Gonzales-Moreno found are no longer accessible; these links and websites have been lost over time, in part due to the malleability of the internet as a database.
2. "A database of museums with NAGPRA objects pertaining to California

Indians.”¹⁸⁵ It would be much easier to explain the history of collecting human remains, sacred objects, and other items in California with a database that includes lists, visuals, and contact information.

3. “A list of all non-recognized tribes in California is needed...[including] the tribes’ current status in the federal recognition process, if applicable, and geographic location....There is a partial list of non-recognized tribes that the Native American Heritage Commission maintains, but [it] may not include all tribes.”¹⁸⁶

Additionally, other resources from the early 2000s would have been helpful to understand this historical analysis. In May 2001, Larry Myers, the Executive Secretary of the Native American Heritage Commission, asked Darrell Steinberg if a study had been “completed which identifies the successes and failures of repatriation under current federal law? How many institutions are refusing to cooperate and work with tribal governments...?” He recommended that the California Assembly maintain its Select Committee on Native American Repatriation and write a report that identified the degree of noncompliance in California institutions.¹⁸⁷ Though I did not encounter a study of this kind in the course of my research, and it is unlikely that it was written, it could nevertheless exist.

To further pursue this research, interviews with participants in the legislative process would be vital. In conducting research on supporters of AB 978, I attempted to interview certain individuals involved with the legislation. Darrell Steinberg was the logical first choice, but all my efforts to personally contact him were unsuccessful. He became mayor of Sacramento, CA in December 2016, and his office and campaign staff claimed that his workload was too immense to speak with me. They did, however, reluctantly give me permission to access his bill file on AB

¹⁸⁵ Gonzales-Moreno, “Restless Spirits,” 62.

¹⁸⁶ *Ibid.*, 63.

¹⁸⁷ Larry Myers, “Analysis of AB 978,” May 9, 2001, page 1, Darrell Steinberg Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.

978 at the California State Archives, which formed the foundation of my resources for this honors thesis.

I also attempted to reach Steve Banegas to gain a deeper understanding of the tribal perspective. Unfortunately, when I finally reached him, he did not want to talk with me about the bill. While it is impossible to know, his reluctance to do so may be related to the invasive methods that many historians and other investigators have used to conduct past research on indigenous communities. In the past, researchers of Native American history have not always used the knowledge they obtained for the benefit of the communities with which they worked. Indeed, many native people are often upset and frustrated with researchers who misuse their narratives and history for personal gain.

This problem fits too neatly within the larger paradigm of Western research ‘on’ native peoples. Much of this research does not come from the native communities themselves, but from Western academics who do not take into account the scope of their practices nor their possible impact. Linda Tuhiwai Smith, a member of several native New Zealand groups, explains certain questions that must be asked of any researcher:

Whose research is it? Who owns it? Whose interests does it serve? Who will benefit from it? Who has designed its questions and framed its scope?...How will its results be disseminated? ...These questions are part of a larger set of judgements on criteria that a researcher cannot prepare for, such as: Is her spirit clear? Does he have a good heart? What other baggage are they carrying...*Can they actually do anything?*¹⁸⁸

Overall, I recognize that there is more to the story than what I can analyze here due to information accessibility from California’s government and tribes. As it is relatively recent, some of the facts are restricted and there are limits to the history I can write without that information. However, this thesis encompasses the scope of the topic which I can reasonably address.

¹⁸⁸ Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, second edition, (London: Zed Books LTD, 2012), 11. Emphasis added.

Conclusion

California NAGPRA is a law with good intentions for tribal communities, but problems with its construction meant that it failed to achieve its goals. The creators of Cal NAGPRA, Darrell Steinberg and Steve Banegas, wanted to enforce the federal Native American Graves Protection and Repatriation Act in California because they believed many agencies were not in compliance. Cal NAGPRA is an unfunded mandate that requires any state-funded agency with certain Native American items to inventory these items in order to repatriate them to California's many tribes. Nevertheless, California NAGPRA overreached the objectives of federal NAGPRA by opening repatriation to non-federally recognized tribes in California without appropriate procedural foundations.

Even those most experienced and knowledgeable on California Indian affairs doubted California's attempt at state-level repatriation law. In 2007, Maria Gonzalez-Moreno interviewed Larry Myers, the former Executive Secretary of the Native American Heritage Commission. Myers believed that

Cal-NAGPRA, [if] funded, would experience the same problems as federal NAGPRA, such as insufficient number of staff, overwhelming mediation claims, and ensuring compliance. *The greatest concern Mr. Myers shared was the lack of attention to understanding that in cases where both federal and state laws address the same issue, federal law preempts state law.* In the event Cal-NAGPRA was implemented, federal NAGPRA would take precedence, resulting in conflicting information, compliances and fines.¹⁸⁹

California NAGPRA intended to enforce federal NAGPRA, but its implementation would have only furthered the problem of non-compliance with the federal law. Other solutions to enforce the federal law may have existed at the time, but California chose to pursue the legislative option.

¹⁸⁹ Gonzales-Moreno, "Restless Spirits," 44. Emphasis added.

This kind of state-level repatriation statute showed some promise with its intent to repatriate Native American items; however, Cal NAGPRA's provisions were poorly worded and only vaguely defined. It also neglected to set aside the funds needed to implement repatriations, which doomed its efforts. In short, California's struggles with federal NAGPRA allowed tribes and legislators to discuss alternative enforcement tactics. However, the inception of Cal NAGPRA and the ensuing debate over its provisions highlight the challenges of implementing federal statute through state legislation. Essentially, Cal NAGPRA is a law with a dramatic and complex history that has yet to be enforced in California due to these manifold issues.

Bibliography

- Adams, Jim. "California Assembly committee holds repatriation hearings at Barona." *Indian Country Today*. August 9, 2000. Accessed April 9, 2017. Web.
- California, Assembly, AB 978, as introduced February 23, 2001, *California Legislative Information*, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200120020AB978.
- California, Assembly, AB 978, as amended April 16, 2001, *California Legislative Information*, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200120020AB978.
- California, Assembly, AB 978, as amended May 22, 2001, *California Legislative Information*, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200120020AB978.
- California, California Health & Safety Code § D. 7, Pt. 2, Ch. 5 (West).
The California Native American Graves Protection and Repatriation Act
- California, California Public Resources Code D. 5, Ch. 1.75 (West).
Native American Historical, Cultural, and Sacred Sites
- California, Native American Heritage Commission. "Welcome." *California Native American Heritage Commission*. accessed March 20, 2017. <http://nahc.ca.gov/>.
- California, Senate, AB 978, as amended July 3, 2001, *California Legislative Information*, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200120020AB978.
- California Native American Heritage Commission Records, Online Archive of. R188, F3908:1-61, and F3803:1-2, California State Archives, Office of the Secretary of State, Sacramento, California.
http://www.oac.cdlib.org/findaid/ark:/13030/tf8r29n9jq/entire_text/.
- California State Archives. MF 9:2 (100), GCBF, California State Archives, Office of the Secretary of State, Sacramento, CA.
- Castillo, Edward D. "California Indian History." *Native American Heritage Commission*. n.d. Accessed April 18, 2017. <http://nahc.ca.gov/resources/california-indian-history/>.
- Chicago-Kent College of Law at Illinois Tech. "California v. Cabazon Band of Mission Indians." *Oyez*. Accessed April 19, 2017.
- Curtius, Mary. "Museum Refuses to Give Ishi's Brain to Indians." *Los Angeles Times*. March 25, 1999. accessed April 9, 2017. Web.
- Cryne, Julia A. "NAGPRA Revisited: A Twenty-Year Review of Repatriation Efforts." *American Indian Law Review* 34, no. 1 (2009): 99-122.

- French, Karen. "Appropriations Committee Fiscal Summary." *California Legislative Information*. August 20, 2001.
<http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml>.
- Gonzales-Moreno, Maria Cristina. "Restless Spirits: Museums and the California Native American Graves Protection and Repatriation Act Dilemma." Master's thesis, John F. Kennedy University, 2007.
- Hatch-Avis, Diane. "AB 978: California's New Repatriation Law." *Society for California Archeology Newsletter*, Vol. 35, No. 3, page 1, 21-27. September 2001.
https://scahome.org/wp-content/uploads/2015/12/SCA_Newsletter_Vol_35_No_03_September_2001.pdf.
- Hemenway, Eric. "Trials and Tribulations in a Tribal NAGPRA Program." *Museum Anthropology* 33. 2010.
- Kakaliouras, Ann M. "An Anthropology of Repatriation: Contemporary Physical Anthropological and Native American Ontologies of Practice." *Current Anthropology* 53 no. S5. 2012.
- Koenig, Alexa and Jonathan Stein. "Federalism and the State Recognition of Native American Tribes: A Survey of State-Recognized Tribes and State Recognition Processes across the United States." *48 Santa Clara L. Rev.* 79. 2008.
- Locke, Michelle. "Ishi comes home, but most other Native remains stay on shelves." *Berkeley Daily Planet* (Berkeley, CA). August 20, 2000. Accessed March 2017.
<http://www.berkeleydailyplanet.com/issue/2000-08-26/article/1105?headline=Ishi-comes-home-but-most-other-Native-remains-stay-on-shelves>.
- Madley, Benjamin. *An American Genocide: The United States and the California Indian Catastrophe, 1846-1873*. Lamar Series in Western History. New Haven: Yale University Press, 2016.
- May, James. "New California repatriation law includes enforcement teeth." *Indian Country Today*. October 31, 2001. Accessed April 9, 2017. Web.
- Miranda, Deborah A. *Bad Indians: A Tribal Memoir*. Berkeley, CA: Heyday. 2013.
- Nichol, Chuck. "Assembly Committee on Appropriations Hearing Analysis." *California Legislative Information*. May 30, 2001.
<http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml>.
- Paddock, Richard C. "Native Americans say Berkeley is no place for their ancestors." *Los Angeles Times*, January 13, 2008. Web.

- Platt, Tony. "UC and Native Americans: Unsettled Remains." *Los Angeles Times*. June 18, 2013. Web.
- Rewolinski, Dawn. "Remains to be Seen: The Disparate Disposition of Culturally Unidentified Human Remains under NAGPRA's Final Rule." PhD dissertation, New York University, 2014.
- Sierra, Tanya. "Tribes seeking return of remains: ancient bones found at UCSD." *Kumeyaay.com*. January 27, 2008. Accessed April 7, 2017. Web. http://pages.ucsd.edu/~rfrank/class_web/UnivHouse/TribesSeekingRemains012708.pdf.
- Smith, Linda Tuhiwai. *Decolonizing Methodologies: Research and Indigenous Peoples*, second edition. London: Zed Books LTD, 2012.
- Steinberg, Darrell Papers, Accession #2005-001, California State Archives, Office of the Secretary of State, Sacramento, CA.
- Sturtevant, William C. *Handbook of North American Indians, v. 2: Indians in Contemporary Society*. Washington: Smithsonian Institution. U.S. G.P.O., 1978.
- Thornton, Russell. *American Indian Holocaust and Survival: A Population History since 1492*. Norman: University of Oklahoma Press, 1987.
- Trope, Jack F. and Walter R. Echo-Hawk. "The Native American Graves Protection and Repatriation Act Background and Legislative History." In *Repatriation Reader: Who Owns American Indian Remains?*, ed. Devon Abbott Mihesuah. Lincoln: University of Nebraska Press, 2000.
- United States, 25 U.S.C.A. § Ch. 32 (West).
The federal Native American Graves Protection and Repatriation Act
- United States, Department of the Interior, Bureau of Indian Affairs. "Federally Recognized Tribes in California by U.S. Department of Interior, Bureau of Indian Affairs as of May 4, 2016." *California Gambling Control Commission*. n.d. Accessed April 29, 2017. http://www.cgcc.ca.gov/documents/Tribal/2016/Federally_Recognized_Tribes_in_CA.pdf.
- United States, Department of Interior, Bureau of Indian Affairs. "Who We Are." Washington, D.C. Updated May 3, 2017. Web. Accessed April 18, 2017. <https://www.bia.gov/WhoWeAre/RegionalOffices/Pacific/WeAre/index.htm>.
- United States, Department of the Interior, National Park Service, American Indian Liaison Office. "Native American Graves Protection and Repatriation Act (NAGPRA): A Quick Guide for Preserving Native American Cultural Resources." *U.S. Department of the Interior*. 2012. Accessed March 2017. <https://www.nps.gov/history/tribes/documents/nagpra.pdf>.

United States, Department of the Interior, National Park Service. "Culturally Unidentifiable Native American Inventories Database." *National NAGPRA*. n.d. Web. Accessed April 5, 2017. <https://grantsdev.cr.nps.gov/Nagpra/CUI/>.

United States, Department of the Interior, National Park Service. "Frequently Asked Questions." *National NAGPRA*. n.d. Web. Accessed April 5, 2017. <https://www.nps.gov/nagpra/FAQ/INDEX.HTM>.

United States, Department of the Interior, National Park Service. "National NAGPRA Glossary." *National NAGPRA*. December 23, 2009. Web. Accessed April 7, 2017. <https://www.nps.gov/nagpra/TRAINING/GLOSSARY.HTM>.

United States, Government Accountability Office. "Highlights." *Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act*, GAO-10-768. Washington D.C. July 2010. <http://www.gao.gov/assets/310/307872.pdf>.

Wilson, Diana. "California Indian Participation in Repatriation: Working toward Recognition." *American Indian Culture and Research Journal* 21, no. 3 (1997): 191-209.