

October 18, 2016

“The Theft, Illegal Possession, Sale, Transfer and Export of Tribal Cultural Items,” U.S. Senate Committee on Indian Affairs, field hearing at the Pueblo Indian Cultural Center, Albuquerque, New Mexico.

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TOPIC: Repatriation of Native American Sacred Items: The Diplomatic vs. Punitive Approaches

MAIN GOAL: To help facilitate the safe return of Native American Sacred Items to their rightful, tribal caretakers.

I. INTRODUCTION

For over 35 years, I have served as a tribal diplomat, helping to repatriate many, many cultural items to Native American spiritual leaders. I have provided this service at the request of respected tribal elders. They have asked me to help negotiate privately the safe return of sacred objects to their home tribal communities. My work has been kept so secret; today is the first time I have been publicly identified. In recent months, I have sought to facilitate the return of the Acoma shield.

Tribal elders have entrusted me with these secret assignments, because they grew to trust me after years of service as a tribal historian. For decades, I have helped tribes build tribal libraries, tribal archives, and tribal museums. I also have helped traditional elders prepare statements for the United Nations and testimony for international conferences. In 1983, I testified in behalf of the Iroquois Confederacy before the United States Senate Select Committee for Indian Affairs, then chaired by my late friend, Senator Daniel Inouye. Our efforts resulted in a resolution being passed in the U.S. Senate, 100-0, passed the House overwhelmingly, and signed by the President, officially recognizing “Iroquois Influences on the U.S.

Constitution.” My testimony, published in this book, has been used in Native American schools and major universities. The Spanish Edition was paid for by the government of Mexico and distributed to Mexican judges and politicians interested in amending the Constitution of Mexico. Our Native American publications have attracted diverse groups of readers around the world.

II. How can we best facilitate the safe return of these Native American Sacred Items?

ANSWER: There are two primary approaches to repatriation: A. “Punitive” and B. “Diplomatic.”

In my experience, there are two ways to address the return of sacred items: first, the “Punitive Approach,” which could also be called the “Carrot and the Stick Approach”; or, second, the “Diplomatic Approach,” which could also be called the “Carrot and the Carrot Approach.” In my estimation, the Diplomatic Approach is by far the better path.

A. “The Punitive Approach” - In my description of this approach, the “Carrot” is the “Sacred Object.” The “Sticks” are laws that would criminalize “possession, sale, transfer and export” of items considered “sacred” or “objects of cultural patrimony.” In my professional opinion, I advise against the “Punitive Approach” for the following reasons:

1. Out of fear some people, facing the threat of felonies, jail terms, huge fines, legal fees, and public humiliation may simply get rid of these items in whatever way possible, including possibly their destruction. This is the worst fear of tribal elders
2. “Punitive Laws” would create a black market for items not destroyed. This is a major concern expressed by tribal elders.
3. “Punitive Laws” probably would be judged “unconstitutionally vague.” The public and the courts would need to have a way to reasonably determine what is legal and what is not. No scientific tests exist to determine what is “sacred” and what is not.
4. “Punitive Laws would require illustrated lists defining what is “sacred” and what is an “object of cultural patrimony.” Tribal elders do not want to create illustrated lists of sacred items.

Of course laws against theft should still stand as a deterrent.

B. “The Diplomatic Approach” – In my description of this approach, the “Carrot” is the “Sacred Object,” and the other “Carrots” are ways in which all parties “win.” This means everyone is respected and allowed to hold their heads up high in dignity.

I support the “Diplomatic Approach” for the following reasons:

1. The time is right to encourage this approach because, increasingly, many collectors, because of their love of these objects and their appreciation of Native cultures, want to see “sacred objects” go back to Native American Spiritual Elders.
2. Diplomacy does not create a black market, but rather it promotes transparency and open negotiations.
3. Diplomacy would not require law enforcement, related expenses, and cases that would over burden the courts.
Diplomacy does not require illustrated lists. Diplomats trust the tribal elders to identify what they would like returned.

I wish to underscore the importance of collectors for Native American Nations and artists. Imagine what would happen, if collectors decided to stop collecting. I am concerned about the future of Native American artists. Instead of vilifying collectors, I believe we need to do everything we can to attract a younger generation to be patrons of Native Arts.

To help make the point that collectors are mostly kind-hearted people, I have been given to understand that the current holder of the Acoma shield wishes its safe return “home” to Acoma. I believe that such a return, using the Diplomatic Approach, will lead to thousands of additional objects, some sacred, some historic, some works of art, coming back voluntarily to Native American Nations. Let’s use the diplomatic approach to facilitate the safe return of Native American Sacred Items to their rightful, tribal caretakers.

LAWS UNDER CONSIDERATION FOR AMENDMENTS:

- 1. NAGPRA – The Native American Graves Protection Act**
- 2. ARPA – The Archaeological Resource Protection Act**
- 3. IACA – The Indian Arts and Crafts Act**

Amendments to these laws, if not carefully written, could affect other laws related to Inter-state and International Commerce, as well as various treaties between the United States and foreign nations. Serious Constitutional

questions also could be raised. However, I do have many good ideas for amending these laws in ways that will benefit Native Americans and the general public.

COST ANALYSIS OF PROPOSED AMENDMENTS:

The “Punitive Approach” - While initial costs may be minimal, the potential long-term costs could easily become many millions of dollars in annual appropriations. The actual cost of criminalizing Native American art collecting will involve authorizations for personnel in various federal agencies and special training of additional law enforcement personnel. Additional costs would require appropriations for law enforcement equipment, as well as travel, computer databases, networking, and other investigative costs required in the “Punitive Approach.”

OR, if the “Diplomatic Approach” is chosen, the costs are minimal, involving travel expenses, educational training, and some legal consulting costs. If proponents of the “Diplomatic Approach” requested assistance from the public at large, donations could easily cover all the costs of the “Diplomatic Approach.” In this best-case scenario, the cost to the U.S. government and the U.S. taxpayers would be ZERO.

CONCLUSION:

In my professional opinion, the “Diplomatic Approach” is preferable to the “Punitive Approach.” Let us revisit our purpose:

MAIN GOAL: To help facilitate the safe return of Native American Sacred Items to their rightful, tribal caretakers.

I would encourage the Committee, as it deliberates on the most effective legislation going forward, to not only embrace the Diplomatic Approach, but to affirmatively engage the collecting community for its input on how to strike an appropriate balance in the law in order to facilitate the return of sacred objects.