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Eagle Party

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EAGLE PARTY

Jay Wexler

*Who may obtain eagle carcasses, parts, and feathers
from the Repository?*

Only enrolled members of federally recognized tribes may apply to receive and possess eagle carcasses, parts, and feathers from the Repository for religious purposes.¹

THE ROCKY MOUNTAIN ARSENAL National Wildlife Refuge is a straight shot up Havana Street off of I-70 just east of downtown Denver, past an Office Depot and the national headquarters of a company called Scott's Liquid Gold. No signs point to the Refuge, which was created on the site of a chemical munitions facility back in the mid-1990s and is now home to a herd of bison, dozens of burrowing owls, and so many furry prairie dogs that a roadside sign warns oncoming traffic of their po-

Jay Wexler is a professor of law at the Boston University School of Law. His book, HOLY HULLABALOO: A ROAD TRIP TO THE BATTLEFIELDS OF THE CHURCH/STATE WARS, was published by Beacon Press in 2009. His forthcoming book, THE ODD CLAUSES: UNDERSTANDING THE CONSTITUTION THROUGH TEN OF ITS MOST CURIOUS CLAUSES, will be published by Beacon Press in the fall of 2011.

¹ Fish and Wildlife Service, "Ordering Eagle Parts and Feathers From the National Eagle Repository" Fact Sheet, Page 1, www.fws.gov/forms/3-200-15a.pdf (vis. Jan. 31, 2011).



tential “XING.” The entrance is hardly inviting, although the officer working the booth there kindly directed me two miles north to the collection of administration buildings where I was able to find the National Eagle Repository, a macabre little division of the Fish and Wildlife Service that collects dead bald and golden eagles and sends them (and their parts) to members of federally recognized Native American tribes who need them for religious rituals and other significant ceremonies. Applying to the Repository is the only way to legally get hold of any part of either eagle in the United States; the Bald and Golden Eagle Protection Act, enacted in 1940, punishes unauthorized possession of eagle parts with a hefty fine and possible prison time.

The building that houses the Repository is nondescript and gives no hint of what’s inside. In addition to the eagles, the structure also contains the National Wildlife Repository, where the federal government stores illegally killed, traded, and shipped animals (and their parts, and things made from their parts) after they are no longer needed as evidence in ongoing trials and until they can be sent to a school or a museum or some other educational institution in need of an elephant tusk or endangered turtle carapace. As I waited for the appointed time of my visit, I checked out the main public room

Eagle Party

of the building. It's decked out like a mini-natural-history-museum, tables filled with illicit items like tiger pelts and alligator boots and fur coats. Hanging out there was a nice way to pass the time. I took guesses at some Wildlife Repository Jeopardy questions I found on a white board lurking behind an illegally-festooned mannequin (categories: "Wildlife Trade," "Plants," something else) and put my hand into the mouth of a stuffed polar bear. This was fun and interesting, but I quickly got impatient. I was really just there for the eagles.

At Boston University, I've taught church-state law and environmental law for almost a decade. A few years ago, I spent six months traveling around the country to the cities and towns where landmark Supreme Court law-and-religion cases started. I wanted to see the places and meet the people involved in these controversies that I had previously known only from law books. In my travels, though, I hadn't made it out west very far and I hadn't looked into any cases involving Native Americans. It's hard to say you know very much about the relationship of church and state in America without knowing something about how these issues play out with American Indians.

After I published my road trip book, I came across the case of *United States v. Wilgus*. It's a case involving a white man named Sam Wilgus who, having lived with a Southern Paiute family in Utah for a bunch of years, became an active member of the Native American Church, a peyote-based religion with nearly a quarter million followers in the United States. Several Indian friends had given Wilgus eagle feathers over the years for him to use in religious rituals, but the police took them away during a routine traffic stop in 1998. Wilgus and his lawyer have been fighting the government ever since, arguing that the Eagle Protection Act violates his religious freedom rights. The government argues that it can't let non-Indians possess eagle feathers for two reasons – it would threaten the eagles, and it would undermine genuine Native American religion and culture. Demand for eagles and their feathers far outstrips the supply. If Wilgus gets a feather, then won't lots of other white people apply for feathers? And if lots of white people apply for feathers, then what happens to the Native Americans who want feathers but

can't get them? Haven't we done enough to the Native Americans already? But, then again, shouldn't Wilgus have the right to practice his religion? And what about the eagles? Does it matter that they were once on the endangered species list but were recently removed?

In February of 2009, Wilgus won in the federal district court in Salt Lake City. The Tenth Circuit Court of Appeals heard the government's appeal in November of 2009. Anything – including an eventual hearing in the Supreme Court – could happen. I'm not sure exactly what I think about the case. To help me figure it out, I went back on the road. I visited Salt Lake City and talked to Wilgus and his lawyer, Joe Orifici. I talked to some experts in American Indian law. Last August, I made it to the Repository.

*Name of Religious Ceremony in which these materials
will be used.*

(You may choose not to provide the name of the religious ceremony if doing so will violate your religious beliefs.)²

Bernadette Atencio seemed pretty serious when I first met her – appropriate, I suppose, for someone who has worked in law enforcement at the Fish and Wildlife Service for thirty years (somehow it hadn't quite dawned on me that I was coming to interview a really senior federal *police officer*). Dressed in her khaki FWS uniform and holding a mug that said "Chicago," she also appeared pretty not that excited about talking to me. Again, no shock there. What good could possibly come from talking to some nerdy east coast academic? But it turned out that Atencio was quite forthcoming. First we talked numbers. The Repository, which has been in the Denver area since 1995 – previously it was in Oregon, and before that, in Pocatello, Idaho – receives about 2,000 eagles a year, two-

² *Id.* (U.S. Fish and Wildlife Service, Eagle Parts for Native American Religious Purposes, Permit Application & First Order (Form 3-200-15a)).

Eagle Party

thirds of them bald eagles. Atencio quickly compared that number to the much larger number of pending applications – over 6,000 still waiting to be filled, most of them for whole birds, rather than feathers or other parts. The eagles come from all over, generally from state fish and wildlife officials who either find them or are contacted by private individuals who find them. Demand has increased significantly in recent years as the word has gotten out that the Repository is the place to go for legal eagles. Large feather orders, in particular, have increased over the past three years, but these are difficult to fill as well – “plucking takes time,” Atencio pointed out. “You can’t always get the perfect feathers.”

I asked if anyone ever comes out to visit the Repository, and Atencio said that a lot of people do make the trip. She uses the natural-history-museum room as a kind of classroom for students or special interest groups who come to learn about the agency’s work. Sometimes tribal elders visit too. According to Atencio, the Eagle Repository is never quite what they expected. I wondered what alternative these elders had in mind – I mean, the place collects and dismembers dead eagles, what else could it possibly look like? Atencio told me that the elders often think that there are going to be thousands of dead eagles just hanging out waiting to be processed, as though the government had some nefarious interest in hanging onto these things for as long as possible. In fact, at any given time, there are maybe a hundred or two in the freezer. As Atencio pointed out, the birds do not arrive in pristine condition. Most have been laying out in the wild for a long time before someone finds them and sends them in. By the time they show up in Denver, they’re often infested with bugs or in pieces. “A wing hanging here,” Atencio said. “A leg hanging there.” When the Repository cannot use the whole bird, the staff “pieces them out,” meaning that they put together maybe the claws from one bird with the wing of another and a torso from yet another, in order to make a whole bird. Atencio told me that the elders who visit are often surprised by the care and detail that the Repository staff exercises when processing the birds; several times, she described her mission as basically “customer service.” Running a dead-eagle processing agency is not a job for everyone, but for

Atencio, who describes her work as a “passion,” it seems to be a perfect fit.

I asked if we could take a look around, and Atencio led me on a tour of the facility. From a corridor, I was able to peer through a glass window into the cavernous, science-lab-looking room where they process the eagles. Two walk-in metal freezers that reminded me of my college days working at a gourmet supermarket flanked the back wall. Florescent lights hung down over a blue-green linoleum floor. A large, boxy silver vent provided ventilation, and two industrial gray tables with incorporated sinks provided the platforms for eagle examining and dismembering. An enormous pallet stacked with nearly 170 identical Federal Express boxes was waiting to be taken away. Each box, according to Atencio, contained a set of loose feathers. As the relevant “Fact Sheet” explains, the Repository fills orders for both “Quality Loose Feathers” and “Miscellaneous Eagle Feathers.” The latter consists of “various size feathers (such as primaries, secondaries, tail, and plumes).” There is no guarantee these feathers will be any good. As the sheet puts it: “Quality may vary.”

Next stop was the massive warehouse where Atencio and her small staff, working in their Wildlife Repository roles, keep a million and a half (!!) items of endangered species related contraband, while they figure out where to send it all. Seemingly endless rows of gigantic blue shelves stretch back the entire length of what seemed to be some sort of hangar where you might park a mid-sized jet. The aisles are arranged by creature, or type of creature. One nearby was labeled the “Elephant, Rhinoceros, Yak, Ostrich, Zebra” aisle. As I was talking to Atencio about something or other, I turned my head toward a different aisle to find my gaze returned by a line of tiger heads, each staring through dead eyes out of plastic bags right at me. Several leopard (or maybe cheetah) heads were next to the tigers. I asked if there were any pandas around, and mercifully Atencio said she didn’t have any of those. Since I had a camera with me, I asked if I could take some pictures. Atencio said no; for security reasons, pictures are not allowed in the warehouse. But, to my surprise, she said we could go into the eagle processing room, and I could take

Eagle Party

pictures there. Perhaps, she added, some eagles might have arrived that need processing. I could watch that. And take pictures.

“Really?” I asked.

“Really,” Atencio said.

Sweet!

Because the supply of eagle carcasses, parts, and feathers is limited, you may have only one request pending at a time, and you may not request both a whole bird and additional parts in the same request.

Requests for whole carcasses average 2 ½ to 4 years to fill (shorter wait for bald eagles, longest wait for immature golden eagles). Requests for loose feathers can usually be filled in 3 to 6 months. An order for parts may not exceed the equivalent of a whole bird. A request for 10 quality feathers includes 8 wing feathers, two tail feathers. Please refer to page 3 for descriptions of different eagle parts and feathers.³

It is kind of hard to explain what a dead bald eagle smells like. It's not as bad as you might think, but it's not great either. Maybe kind of like a dead fish. Not a slab of sashimi-grade tuna, of course, but also not like something that's been decaying on the beach for a week. Probably a dead eagle smells a lot like a dead chicken. But then again, I don't know what a dead chicken smells like. Probably it smells something like a dead fish. One thing is for sure, though: processing a dead bald eagle sends a lot of tiny fluffy feathers up into the air. It was practically snowing dead eagle feathers in the room while I watched two people from Atencio's staff work through a few newly-arrived birds. It was a little disconcerting that the two men working with the birds were wearing face masks (and full length protective suits), while I stood there trying to breathe as little as

³ *Id.* (Instructions for Applying for a Permit For Native American Religious Purposes.).

possible so as not to contract any eagle-carcass-fluffy-feather-borne diseases, whatever those might be, if indeed such diseases exist (how could they not?).

The first box of eagles the staff went through was from South Carolina. Immediately, Atencio told me that these would almost certainly be bald eagles (I guess golden eagles are not found in the Carolinas) and they would probably be on the small side. The word she actually used was “dinky.” A young man named Adam, who had been working at the Repository for a while before heading off to college (and I thought my college supermarket job was weird!) unpacked the box and took out what seemed to me to be a not entirely dinky bald eagle. He removed the bird from a plastic bag and started examining it. The eagle was in better condition than I had expected. Its face was bloody, and it had a large wound right in its belly, but it was completely intact, and the feathers looked decent. Adam extended the enormous wing and combed through the feathers. Explaining that each eagle has ten “primary” feathers and fourteen “secondary” feathers, he counted them all up and checked the quality of each one. The wing was looking good, and so was the other one, but when he got to the tail, there was a problem. “Oooh, what happened there?” Atencio asked. The tail was missing six out of its twelve feathers and would have to go. Adam took a huge red bolt cutter looking thing and chopped the tail off in one crunchy click. Then he took the tail and put it in a trash can. “That will need to be replaced.” Adam made some detailed notations on a complicated-looking recordkeeping form and moved on to another task.

Meanwhile, on the eagle-processing table opposite from where Adam was set up, longtime Repository specialist Dennis Wilst was hard at work on another South Carolina bird, which was notable for its extremely well-preserved head. “This guy is amazingly fresh,” Wilst announced to the room. “He still has an eyeball – you don’t often see that.” The eyeball might have been fresh (it didn’t look that fresh to me, but what the hell did I know?), but the head itself was a different story. Whoever had found the eagle had probably put it a freezer right away – thus, the fresh eyeball – but the ice in the freezer had soaked the head and turned it into a “big mess.”

Eagle Party

Wilst and Atencio discussed how to proceed. If they put the head into the freezer immediately, the eyeball would stay fresh, but the rest of the head would be compromised. On the other hand, if they tried to dry out the head first, the eyeball might suffer. After some back and forth, they decided to try and dry the head out for a while. Wilst retrieved a pair of bolt cutters, chopped off the head, and put it aside. I, of course, snapped a picture. As for the rest of the bird, again the wings were fine, but the tail was, in Wilst's words, "not looking too good." This time, Wilst cut off the wings and put them aside to dry, disposing of the rest of the bird (except for the head, of course) in a nearby trash can.

I stuck around a little longer to see Wilst pull a slightly bigger Minnesota eagle out of a box and admire its "pretty" golden claws, which Atencio told me could be used as a replacement for some other bird's "bumblefoot" infested feet. I nodded my head as though I knew what "bumblefoot" was. Honestly, I could have watched this all day, but I had stayed enough and didn't want to wear out my welcome. I thanked everyone and took my leave. On my way out of the Refuge, I dodged prairie dogs with my rented Hyundai and considered the Wilgus case. I still didn't quite know what to think about it.

*Please Clean and Disinfect all Eagle Processing Areas
Including Sinks at the End of Each Day.*

Thank you.⁴

GB

⁴ Sign posted inside Eagle Processing Room.