

Appeal Nos. 02-35994 & 02-35996 (Companion Appeals)

IN THE UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

ROBSON BONNICHSEN, ET AL.,

Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA, ET AL.,

Defendants-Appellants,

and

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION, ET AL.

Defendants-Intervenors-Appellants.

Appeal from the U.S. District Court for the District of Oregon, District
Court No. 96-1481JE (D. Or.)

**MOTION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE OF THE SOCIETY
FOR AMERICAN ARCHAEOLOGY SUPPORTING PLAINTIFFS-APPELLEES
AND SEEKING AFFIRMATION OF THE DISTRICT COURT DECISION**

Michael J. Fanelli
James A. Goold
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 662-6000
Fax: (202) 662-6291

**Attorneys for the
Society for American Archaeology**

The Society for American Archaeology (“SAA”) is the leading professional organization of archaeologists engaged in archaeological and related studies of the Native American archaeological record. SAA is a Section 501(c) (3) non-profit association with more than 6,600 members. For more than a decade, SAA has led the scientific community in national discussions about the repatriation of Native American human remains and cultural items. In 1990, SAA was the primary scientific organization involved in the negotiations among Native American organizations, museums, scientific organizations and Congress that resulted in the statute at issue in this appeal, the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001 *et seq.* SAA has provided testimony at U.S. Senate and House of Representatives committee hearings on the bill and helped form a coalition of scientific organizations and Native American groups that, once a compromise had been reached, strongly supported NAGPRA’s enactment. Since NAGPRA’s passage, SAA has closely monitored its implementation and has consistently provided comment to the NAGPRA Review Committee established by the statute, to the Department of the Interior, and to other agencies. SAA has twice testified at oversight hearings of the U.S. Senate Committee on Indian Affairs on the implementation of NAGPRA and, in 1998, testified before the U.S. House Resources Committee on a proposed amendment to NAGPRA. SAA has closely followed this case from the outset and was granted leave to participate in the district court proceeding as *amicus curiae*.

The legislative record shows that NAGPRA was intended to reasonably balance Native American interests in human remains and cultural items with those of the scientific community and the broader public. Over the last 10 years, SAA has been alarmed to see an increasing divergence between the actual practice of NAGPRA implementation by some

Federal agencies and museums and what SAA believes to be plainly required by the letter and spirit of the Act. Affirmance of the district court's decision will help restore and preserve the balance that was hoped to be achieved by NAGPRA's drafters. Conversely, if the district court's decision is overturned, such action will distort the intended balance of NAGPRA and have potentially devastating consequences for science, archaeologists and the interested public. This case provides an important opportunity to clarify a number of key issues in the interpretation of the law and the interests and the opinions of the SAA are not adequately represented by the parties.

As the leading scientific organization of American archaeologists, SAA respectfully submits that it can provide the Court with the considered view of a broad cross-section of the American archaeological community on interpretation of NAGPRA and its application in this case. SAA requests permission to appear and participate in this case as *amicus curiae* for the purpose of providing this Court with its views.

For the foregoing reasons, this motion for leave to file a brief as *amicus curiae* should be granted.

DATED this 2nd day of June 2003.

Respectfully submitted,

/s/ Michael J. Fanelli
Michael J. Fanelli
James A. Goold
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 662-6000
Fax: (202) 662-6291

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served by U.S. priority mail the foregoing Motion for Leave to Participate as *Amicus Curiae* of the Society for American Archaeology, this 2nd day of June, 2003, to the following:

Paula A. Barran
Barran & Liebman, LLP
601 SW Second Ave., Suite 2300
Portland, OR 97204-3159

Dan Hester
Fredericks Pelcyger Hester & White LLC
1075 South Boulder Rd., Ste. 305
Louisville, CO 80027

David J. Cummings
Nez Perce Office of Legal Counsel
P.O. Box 305
Lapwai, ID 83540-0305

Alan Schneider
1437 SW Columbia St., Ste. 200
Portland OR 97201

Naomi Stacy
Office of Legal Counsel
Confederated Tribes of the Umatilla
Indian Reservation
P.O. Box 638
Pendleton, OR 97801

Timothy R. Weaver
Cockrill & Weaver, PS
316 N. Third St.
P.O. Box 487
Yakima, WA 98907

Thomas A. Zeilman
Yakama Nation Office of Legal Counsel
Fort Rd., P.O. Box 151
Toppenish, WA 98948

Thomas P. Schlosser
Rob Roy Smith
Morisset, Schlosser, Homer, Jozwiak
& McGaw
801 Second Avenue, Suite 1115
Seattle, WA 98104-1509

Melissa T. Campobasso
Office of the Reservation Attorney
Colville Confederated Tribes
P.O. Box 150
Nespelem, WA 99155-0150

Carl V. Ullman
Klamath Tribes
Box 957
Chiloquin, OR 97624-0957

Christopher L. Burford
Audie Huber
Confederated Tribes of the Umatilla Indian
Reservation
P.O. Box 638
Pendleton, OR 97801

Ellen J. Durkee
David F. Sheey
Appellate Section
Environmental & Natural Resources Division
Department of Justice
P.O. Box 23795, L'Enfant Plaza Sta.
Washington, D.C. 20026

Yvonne T. Knight
Walter R. Echo-Hawk
Native American Rights Fund
1506 Broadway
Boulder, CO 80302-6296

Robin Michael
US Department of Justice
General Litigation Section - EPA
P.O. Box 663
Washington, D.C. 20044-0663

James E. Egan
315 W. Kennewick Avenue
Kennewick, WA 99336

Allison Rumsey
US Department of Justice
Environment & Natural Resources Division
Office of the Assistant Attorney General
950 Pennsylvania Ave., NW, #2740
Washington, D.C. 20530

Aimee S. Bevan
U.S. Department of Justice
Environment and Natural Resources Div.
General Litigation Section
P.O. Box 663
Washington, D.C. 20044-0663

Bonnie Richardson-Knott
Lane Powell Spears Lubursky, LLP
601 SW Second Ave., Suite 2100
Portland, OR 97203

S. Shawn Stephens
Christopher Dove
Locke Liddell & Sapp LLP
3400 JPMorgan Chase Tower
600 Travis St.
Houston, TX 77002-3095

Richard M. Donaldson
Grant & Eisenhofer, P.A.
1220 North Market Street
Suite 500
Wilmington, DE 19801

Jeremy D. Mishkin
Montgomery, McCracken, Walker & Rhoads
123 S. Broad Street, 28th Floor
Philadelphia, PA 19109

Mr. Joseph P. Siofele
12691 Sunnymeadows Drive
Moreno Valley, CA 92553

David F. Shuey
Senior Counsel
Land Acquisition Section
P.O. Box 561 (zip 20044-0561)
601 "D" Street, N.W., Room 3422
Washington, D.C. 20004

Timothy W. Simmons
Assistant United States Attorney
District of Oregon
1000 SW Third Avenue, Suite 600
Portland, OR 97204-2902

Sherry Hutt
5635 E. Lincoln Drive
Paradise Valley, AZ 85253

Joe H. Thrash
Assistant Attorney General
P.O. Box 12548, Capitol Station
Austin, TX 78711-2548

Dr. Andrei Simic
Department of Anthropology
University of Southern California
3601 Watt Way GFS 120
Los Angeles, CA 90089

Dr. Harry Glynn Custred, Jr.
Professor of Anthropology
California State University, Hayward
148 Los Cerros Avenue
Walnut Creek, CA 94598

/s/ Michael J. Fanelli
Michael J. Fanelli
Covington & Burling
1201 Pennsylvania Avenue
Washington, D.C. 20004
(202) 662-6000