



**SOCIETY FOR AMERICAN ARCHAEOLOGY**

OFFICE OF THE PRESIDENT

June 3, 1999

The Honorable Daniel K. Inouye  
 Vice Chairman  
 US Senate Committee on Indian Affairs  
 838 Hart Senate Office Building  
 Washington DC 20510

Re: Additional Question Regarding the Scope of the Term "Cultural Affiliation"

Dear Senator Inouye:

In your letter of May 17, you ask that I review an additional question following from the April 20 NAGPRA oversight hearing. I am pleased to have this opportunity to respond.

**ISSUE: SCOPE OF CULTURAL AFFILIATION**

Your testimony asserts that agencies and museums complying with NAGPRA have expanded the statutory definition of cultural affiliation.

Question: What harm do you see in a broad interpretation of "cultural affiliation"?

Answer: The concern that SAA expressed was with interpretations of "cultural interpretation" that are clearly inconsistent with the letter and spirit of the Act. We believe that the definition of cultural affiliation lies at the very crux of the balance struck by NAGPRA between Native American and Native Hawaiian interests in the past and the interests of science and the broader public in our shared American heritage. We believe that cultural affiliation, in the sense defined in the statute, is precisely what gives repatriation claims their legitimacy. The definition provided by the Act attempts to specify the nature and strength of the relationship that must obtain between the human remains or cultural items and a modern tribe or Native Hawaiian organization in order for traditional claims to outweigh scientific ones. To the extent that the definition is disregarded and "cultural affiliation" is assigned to relationships that cannot possibly meet the statutory standard, then the balance provided by the Act is lost and we believe that the interests of science and the public suffer.

I would like to be clear that I am not asserting a priority of either scientific claims or scientific evidence over traditional claims and traditional evidence; I am asking only that both traditional and scientific interests be balanced within the framework provided by NAGPRA. To support a finding of cultural affiliation, NAGPRA requires that there be a relationship of shared

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group identity that can be reasonably traced between a modern tribe or Native Hawaiian organization and an identifiable earlier group. We understand this to mean that there must be an earlier group that had a self-conscious identity something akin to that of a modern tribe *and* that this identity, in some reasonable sense, persists into the present. This straightforward reading of the definition clearly admits a quite substantial range of relationships, and reasonably specifies those cases that we believe Congress intended to remedy.

By the same token, that definition excludes some relationships as too weak to qualify as "cultural affiliation." The expansions of the definition to which we object appear to equate a very general, but unspecified, sense of "cultural relationship" with the statutory definition of "cultural affiliation." In an extreme case, we even have a museum inventory assigning "cultural affiliation" to remains for which it is unable to assign a cultural, temporal, or even racial designation. We believe that if the Congress had intended "cultural affiliation" to mean "any cultural relationship" it would have said so, and that the statutory definition of cultural affiliation is absolutely crucial to preserving the balance that has allowed the scientific community to support the bill and to continue to work towards the effective implementation of the act.

In many cases, there are clearly identifiable earlier groups, but the agency or museum fails to develop the evidence that would link this earlier group with a modern tribe, instead taking the shortcut of assigning "cultural affiliation" with a large and diverse collective of tribes. In other cases, the museum or agency may see a reasonably strong relationship with one tribe and assign cultural affiliation without adequately considering whether there are another tribes that might have stronger claims under the law. In these cases, and others in which the agencies and museums fail to do an adequate job of assessing the evidence, it is the interests of the rightful claimants that are ignored, as well as those of science and the public.

Thus overly broad interpretations of cultural affiliation fail to protect the strong interests of tribes in making sure that human remains and cultural objects rights are returned to the proper group. It was certainly my sense that when NAGPRA was debated Congress was quite concerned that the process insure that where there is repatriation, that it be to the right group. When there is inadequate attention to the evidence required by the definition, the legitimate rights to repatriation of individual (and particularly, smaller) tribes are easily subjugated to political and economic expedience. It is just this problem that led to the dispute heard at the last Review Committee meeting between the Hopi Tribe and Chaco Canyon National Historic Park. The Hopi Tribe presented a strong case that its interests were seriously compromised by Chaco Canyon National Historic Park's failure to compile and assess both the scientific and traditional evidence relating to cultural affiliation as required by the statute.

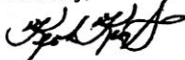
In order for cultural affiliation to be implemented as envisioned in the statute, a process for the disposition of culturally unidentified human remains must be in place. As you know, developing recommendations for the disposition of culturally unidentified human remains is an issue to which the Review Committee has already devoted much attention and which is now its highest priority. Much of the stretching of the definition of cultural affiliation appears to be an attempt to effect repatriation where no legal process is now available. However, repatriation is an important and irreversible decision. Just as Congress did not rush to judgment on how to solve that difficult problem, agencies and museums should wait for the establishment of legal process to deal with human

remains for which the strength of relationship does not meet the statutory standard of cultural affiliation.

Finally we should note that it is often the case that the scientific and public interests go essentially unrepresented in NAGPRA's repatriation process. Unfortunately, it frequently appears to be the case that the goals of expedience and cost avoidance take the priority over thorough consultation with the tribes and over reasoned assessments of the available scientific, historical, and traditional evidence. NAGPRA inventories published in the Federal register are not in any way reviewed with respect to the adequacy of the evidence collected or the reasonableness of the affiliations decided. While NAGPRA provides tribes with an administrative ability to contest determinations of affiliation, the only recourse of the scientific community is to the legal system.

SAA would be the first to agree that lawful application of the definition of cultural affiliation is a challenging task, because of the need to assess fairly the different forms of evidence and to reasonably interpret the definition's concepts of "shared group identity," "identifiable earlier group," and "reasonably traceable." We also believe that it is a vitally important job that must be carefully addressed by the agencies and museums charged with making the determinations. Because we believe that the problem lies not so much in the definition, but in plainly unreasonable applications of it, we have asked the Secretary of the Interior to issue guidance on this topic (we included a copy of our letter to the Secretary with our original testimony) and would welcome any assistance the Committee can provide in promoting compliance with the law in making determinations of cultural affiliation.

Sincerely,



Keith W. Kintigh  
President