

**Society for American Archaeology
Comments on the NAGPRA Review Committee's
Draft Recommendations on the
Disposition of Culturally Unidentifiable Remains**

The Society for American Archaeology would like to take this opportunity to thank the NAGPRA Review Committee for its efforts to grapple with this difficult issue. SAA appreciates the committee's consideration of earlier SAA comments as it developed the most recent "Draft Recommendations Regarding the Disposition of Unidentifiable Remains.". The following comments reflect a substantial analysis and discussion of the current draft by members of the SAA Executive Board and the Committee on Repatriation and incorporate suggestions offered by some of our 6000 members.

There are three primary components to the most recent draft that we would like to address: the concept of shared group identity as it relates to the disposition of culturally unidentifiable remains; the proposal to amend NAGPRA in order to include non-Federally recognized tribes in the repatriation process; and proposal to amend NAGPRA to provide for the disposition of culturally unidentifiable associated funerary objects.

1. The Review Committee's solution to the disposition of culturally unidentifiable human remains is to establish in regulation, a definition in of shared group identity as "a relationship between a present day Indian tribe or tribes and an earlier group based on: 1) direct historical links and/or 2) a combination of geographical, temporal, and cultural links". This change effectively extends the definition of cultural affiliation that appears in the act by substituting the quite general term "relationship" for the statute's much more restrictive "identity." Shared group identity was intended by the Congress to be a relatively restrictive criterion; the earlier group should have essentially the same identity as the modern tribal group, they should not merely be "related" on the basis of vagaries of location extended backward temporally, or generalized cultural links. SAA believes that this definition is contrary to the intent of Congress and that the proposed change would, in fact, make the implementation of NAGPRA even more difficult. Under the revised definition of shared group identity, an earlier group would frequently have cultural affiliation with two or more contemporary Indian groups that are culturally distinct and who could not reasonably be viewed as having a shared identity.

While we understand that the revised definition is designed to resolve the problems caused by a lack of cultural affiliation, we fear that the proposed resolution may create more serious problems than it appears to resolve. For example, the new definition of shared group identity would frequently create joint cultural affiliations in cases where there is already a clear-cut affiliation with a single modern group, based on the current legislative and regulatory language. Under the proposed definition, many claims of cultural affiliation that are evidentially very much weaker, would have to be accepted with equal legitimacy. It is our opinion that such an outcome is not a workable solution to the problem, and will further complicate an already difficult repatriation process.

2. From the time that NAGPRA was being drafted, the Society for American Archaeology has supported the principle of more inclusiveness in the repatriation process. While a proposal to amend NAGPRA to include "legitimate" non-Federally recognized Native American groups is consistent with our position, it is precisely the specific determination of legitimacy that has always been the problem. Thus, we feel that it is incumbent on the NAGPRA Review Committee to specify how such legitimacy can be established.

3. The proposal to amend the law to provide for repatriation of culturally unidentifiable associated funerary items appears to be a different aspect of the first addressed above. As we understand the proposal, no amendment would be required if the proposed definition of shared group identity were adopted. The funerary objects would no longer be "unaffiliated", but through the convolutions of the proposed redefinition would become "affiliated". Until the problem of unaffiliated human remains can be better resolved, SAA feels that this amendment would not be helpful.

In sum, the Society for American Archaeology does not believe the draft as currently written provides a workable solution for the disposition of unaffiliated human remains. We believe that it would foster additional contradictions of interpretation, and in fact, make compliance with NAGPRA, including repatriation, more difficult for tribes, institutions, and agencies. Further, we believe the proposed redefinition of shared group identity is contrary to the Congressional intent in NAGPRA.

The approach taken by the NAGPRA Review Committee assumes that in the legislation's charge to "[recommend] specific actions for developing a process for disposition of [unidentifiable] remains", "disposition" is equivalent to "repatriation". The record clearly shows that Congress recognized other forms of disposition, for affiliated and unaffiliated remains. Repatriation is only one potential disposition outcome. Perhaps the Review Committee should recognize that there is a substantial class of human remains that are truly "culturally unidentifiable".

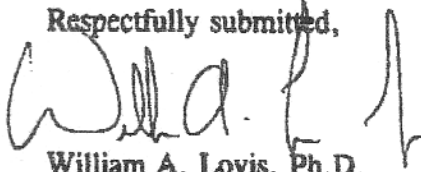
Clearly, it will be very difficult to develop a process for determining the disposition of unidentifiable remains upon which all constituencies can agree. Nonetheless, it is essential that a solution to this problem does not create additional problems of implementation for aspects of NAGPRA that are currently working. In its future engagement of this issue, we believe it is essential that the Committee take a broad view of the possible dispositions of unidentifiable remains, rather than pursuing a narrow view focusing on repatriation as the sole option; an alternative that Congress itself intentionally avoided in drafting NAGPRA.

Despite our criticisms, the Society for American Archaeology appreciates the careful consideration and work that went into these draft recommendations and we hope that these comments will help advance the discussion. However, as the SAA has recommended to the NAGPRA Review Committee on at least two prior occasions, insufficient effort has been expended in taking advantage of our collective experiences in repatriating culturally affiliated remains, as well as in the analysis and reporting of unidentifiable remains. It is our opinion that

it is this experience that will allow the Review Committee to more effectively address the problem of culturally unidentifiable remains.

The Society for American Archaeology thanks the Committee for this opportunity to comment on the Draft Recommendations. If we may be of further assistance in the continued formulation and review of this document please do not hesitate to contact us.

Respectfully submitted,



William A. Lovis, Ph.D.
Chair, Committee on Repatriation
Society for American Archaeology



William D. Lipe, Ph.D.
President
Society for American Archaeology

cc: SAA Committee on Repatriation
Donald Craib, SAA Manager of Government Affairs