

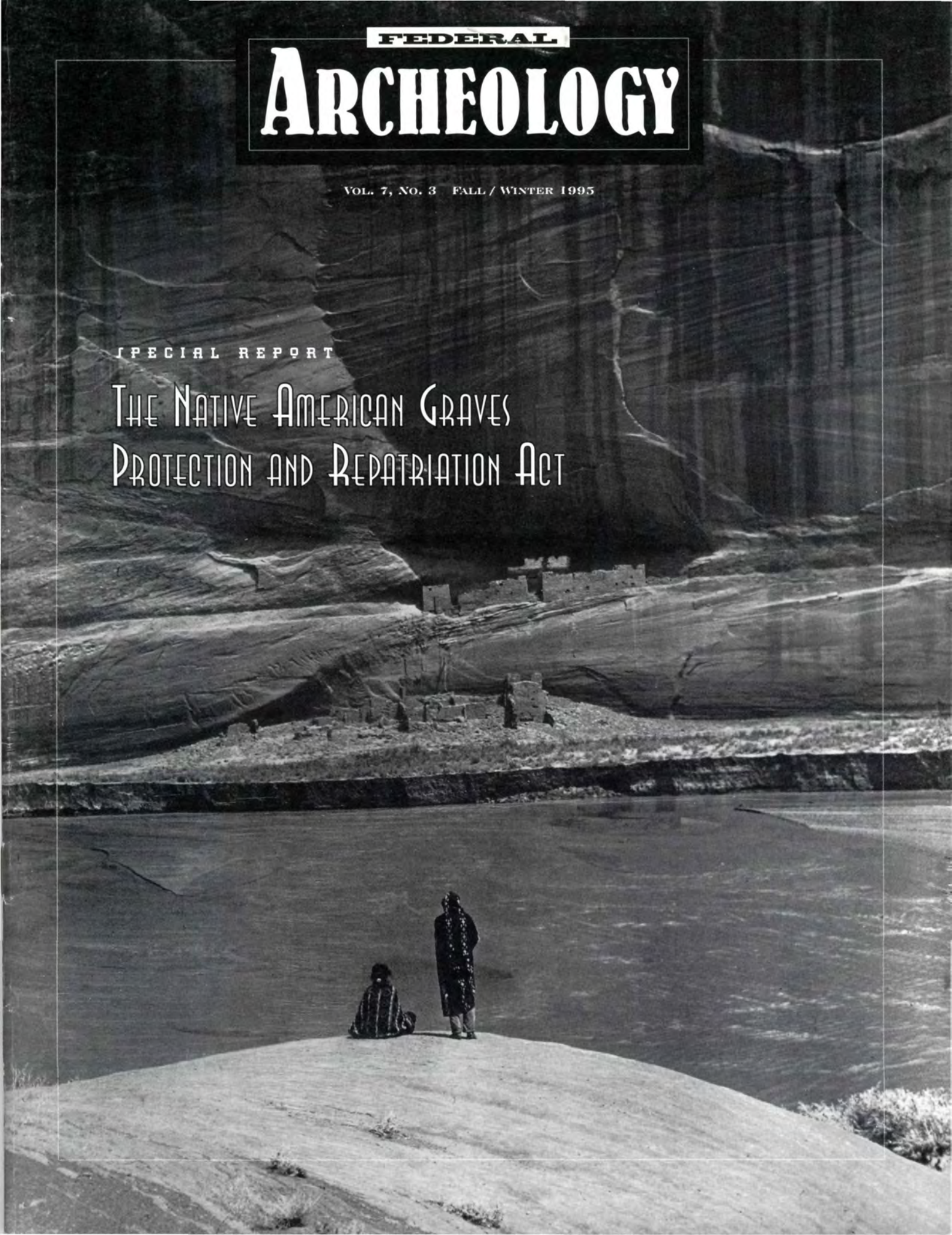
FEDERAL

ARCHEOLOGY

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SPECIAL REPORT

THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT



The Reality of Repatriation

Reaching Out to Native Americans

FRANCIS P. McMANAMON

THE REPATRIATION of Native American remains and funerary objects has become prominent in the past 20 years. The intense convictions of many Native Americans have been magnified by sympathy from other Americans who share the belief that curation is not appropriate treatment for the dead. These forces have accelerated what might have been a longer-term evolution in the relationship between American Indians, archeologists, and museum professionals. One outcome has been the dramatically increased power of native groups over the disposition and treatment of remains and related artifacts. This new reality requires archeologists and others to work on more equal footing with Native Americans than has been the case in the past.

The history of relationships between archeologists and the Native Americans has not been marked by cooperation, mutual respect, or clear and frequent communication. In its early years, during the 19th century, archeology supported the stereotype of American Indians then current. Scholars tended to discount the substantial achievements evident in the archeological record. The plundering of Indian graves in the interest of craniology and phrenology during this period amply illustrates the absence of consideration for the Native Americans of the time. Modern Indians have effectively exploited this sorry chapter in anthropology and archeology to obtain explicit legal protection for unmarked graves.

FORTUNATELY, the profession evolved. Today, archeologists not only employ more scientific methods, but also seek to use the archeological record to show how past cultures dealt with problems not unlike those that our society faces today. The material and organizational accomplishments of ancestral Native Americans are admired now. So, it is ironic that many archeologists have yet to reach out to the very public most connected to that past—contemporary Native Americans. Even more ironic given the fact that, because of the Native American Graves Protection and Repatriation Act and other laws, archeologists must consult with Indian tribes and other native groups over a host of issues.

Granted, there are decades of mistrust to overcome—a serious challenge to contemporary archeologists who must make up for past failures, as well as lost time. However, there ought to be no doubt about the potential importance of archeological investigations to Native Americans. Although some tribes and advocacy groups have disavowed archeology and

its interpretations, others have embraced them. The Makah, Navajo, and Zuni, among others, have had archeological staff in their cultural resource programs for years. Recent times have witnessed widespread interest by Native Americans in such programs as well as in cultural centers, language retention, and other activities related to cultural preservation. Increasingly, American Indians seek technical information and training in preserving archeological and ethnographic resources, as well as act as instructors themselves. National Park Service courses in curation, interpretation, preservation, and ethnography have all been well attended by Native Americans.

Clearly, archeologists and Native Americans share the same goals—understanding the past and preserving the remains related to it. How can they foster cooperation? First, by improving communication—among organizations, and perhaps more importantly, among individuals. Second, by clearly and calmly articulating the value of different approaches and how they benefit the other party. Third, by being neither patronizing nor timid in their relationships. And finally, by committing to working together for the long term.

SOME CRITICS note that there has been a lot more talk promising cooperation than actual payoff. Acknowledging the truth in this sentiment, it is encouraging that even Indian activists and scholars—such as Vine Deloria and Roger Echo-Hawk, writing no less in *American Antiquity* and the *SAA Bulletin* (both published by the Society for American Archaeology)—have identified areas in which cooperation between archeologists and Indians would be mutually beneficial and lay the groundwork for future collaborations.

Deloria suggests that archeological methods could be helpful in locating and preserving traditional sacred sites. Echo-Hawk calls for archeologists and Indians to reconcile archeological data and native oral traditions, which he believes would enrich everyone's understanding of America's ancient history.

Archeologists have displayed the full range of responses to repatriation, from an attitude of "It's about time" to claims that it signals the end of archeology. Clearly it represents not the end but the chance for a new beginning.

Francis P. McManamon is Departmental Consulting Archeologist, Department of the Interior, and Chief, Archeological Assistance, National Park Service.

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Cover: "Alone with the Past," Canyon de Chelly, Casa Blanca Ruins, AZ, ca. 1910, by Roland Reed.



"The Pueblo Graveyard," Taos, NM, 1993, by 12-year-old Melanie Stout, one of many young Native American photographers trained by professionals volunteering with the "Shooting Back from the Reservation" program.

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Implementing the Native American Graves Protection and Repatriation Act

News, Views, and Recently Noted

An Invitation to Native Americans

The footsteps of the Paleoindians—the first people to inhabit the vast, primordial wilderness of the continent's forests, deserts, and plains—represent the opening chapter of a North American genesis. Now their modern-day descendants may join in a plan to protect the nation's Paleoindian heritage, increasingly threatened by both man and nature.

On January 27, representatives from the National Museum of the American Indian and the National Congress of American Indians met with Park Service staffers planning "The Earliest Americans," a National Historic Landmark theme study. Over the next few years, partners in the project—including federal agencies, state and local governments, scholars, and avocationalists—will work together to identify nationally significant Paleoindian archeological sites.

Ultimately, they hope to nominate a number of new National Historic Landmarks, clarify the boundaries of existing ones, and develop a body of knowledge to help manage and protect them.

The project may not be limited to archeological sites, however. For the first time in

the NHL program, Native American traditional origin sites—places figuring prominently in stories of creation and the emergence of peoples—may qualify based on that criterion alone. Since many current-day tribes may trace their origins to Paleoindian sites, planners called on the NMAI to help enlist their involvement.

Native Americans at the meeting said that tribes, though interested in formally protecting sites, would not want to attract unwarranted attention. "We have a lot of things in our country that survive only because outsiders don't know about them," said George Horse Capture of the NMAI.

NPS Chief of Archeological Assistance Francis P. McManamon was optimistic that, working together, the study planners could find a way to overcome the confidentiality concerns. "We want to commemorate a heritage, not put dots on a map," he said.

Clara Sue Kidwell, assistant director for cultural resources at NMAI, expressed the hope that working together would bring about "a mutual education for all." Kidwell is crafting a position paper with NPS study coordinator Bob Grumet that captures the range of views expressed

at the meeting. The next step may be discussions with specific Indian groups and tribes from across the country.

Planners have already surveyed state historic preservation offices to identify Paleoindian archeological properties inventoried to date. They've also investigated the National Archeological Database and National Register Information System, as well as the recent literature.

Twenty-five Paleoindian sites are currently designated as NHLs. However, several appear to be from more recent times, evidencing the need for an update.

In late February, planners are releasing a report on the theme study's planned framework for comment nationwide. Copies will be sent to SHPOs in all 50 states and to NHL archeology committee project liaisons for further distribution and input. Responses are due by April.

"The Earliest Americans" comes on the heels of an earlier theme study, "Historic Contact: Early Relations Between Indians and Colonists in Northeastern North America, 1524-1783," to be published by the University of Oklahoma Press in the fall. That study led to the designation of 17 archeological NHLs.

Pleased with the outcome of that effort, the NPS history areas committee was willing to consider other themes on important historical periods that are generally not well known. David Brose, chair of a joint NPS-Society for American Archaeology NHL committee, presented two classes of archeological sites as candidates that could excite everyone: early industrial properties—many threatened by development—and Paleoindian sites.

"Although Paleoindian sites are very rare and fragile, they are found across the entire continent," said Brose, associate director of the Royal Ontario Museum. "We also knew that Native American communities could have a real role in their interpretation."

The legacy of the earliest Americans, whether manifest in the intangible language of spirituality or the testament of charred rocks or clovis points, can only benefit.

Preservation vs. Conservation

Because the Natural Resources Conservation Service (formerly SCS) impacts vast amounts of private land, it often faces a dilemma. Conservation methods like terracing fields

continued on page 6

Highway 22 is only a small part of Puerto Rico's \$7.5 billion plan to modernize its infrastructure, but it played a big role in a dramatic meeting of the island's future with its past. If the new road hadn't met the Rio Indio where it did, the story beneath the river's banks might never have been told.

Perhaps construction crews should have noted the name of the place: "Paso del Indio," Indian Ford. Below them lay the remains of three ancient settlements, each buried and sealed neatly in stratigraphic time by a catastrophic hurricane and flood. Separating them was the river's signature: a sandy, yellowish alluvial deposit, 20 to 30 centimeters wide in places.

Since the site lay in a flood plain, a 1988 survey assumed human occupation to be unlikely. It wasn't long, however, before the backhoes started turning up bones, which led the island's highway authority to hire independent archeological contractors Adalberto Maura and Osvaldo Garcia Goyco. The two launched what has become one of Puerto Rico's most ambitious archeological investigations ever, offering a startlingly clear picture of life among the island's earliest inhabitants.

Paso del Indio was a busy place for over a thousand years. From about 400 to 600 A.D., it was occupied by a people known locally as the Ignieri, referred to in the archeological literature as Saladoid. They were possibly the first ceramic agriculturalists in the Caribbean. Then came the Pre-Taino, from 600 to 1200 A.D., followed by the Taino, who populated much of the region until European contact.

Each of them saw their settled life along the fertile banks decimated by storm. "It would have been devastating," says Maura. "All the agriculture, the manioc, would have been washed away. The trees, the birds, the animals disappear. All the fish are swept away. Even transportation down the river in canoes or walking over land would have been difficult." Silt would have rendered the water undrinkable.

Archeologists believe that the upheavals account for the high infant mortality rate they have discovered. Almost three-fourths of the remains excavated are children of weaning age. The reasoning is they would have been the first to succumb.

One discovery eerily mirrors a Spanish friar's recounting of a native creation myth. Ramón Pané, dispatched by Columbus, returned home with the story of a Taino goddess whose death giving birth to twins caused a flood that covered the earth. So it was with some surprise that archeologists found, in the deepest tomb on the site, the skeleton of a woman of about 18 who died during childbirth. The skeleton of her baby had partially emerged from her womb.

Garcia Goyco speculates that the site could yield anywhere from 150 to 175 remains, with 105 discovered so far.

The Native American Graves Protection and Repatriation Act does not apply to territories, and there are no federally recognized native groups in Puerto Rico. With European conquest, native islanders either went extinct or intermarried with whites and Africans, which is clearly reflected in the island's population today.

Bridge to the Past Road Project Reveals Decimated Settlements



KAREN ANDERSON

Excavation had been underway for several months before the section 106 process of the National Historic Preservation Act was initiated. The project had been issued a permit from the Corps of Engineers, but the work being done, according to the regulations as they existed at the time, did not qualify as a federal undertaking. During the course of construction, however, amendments were made to the regulations defining what constitutes a federal undertaking. So, when the highway authority needed a new permit after the old one expired, the project was suddenly subject to 106 compliance. Until that point, Paso del Indio was under the authority of the Consejo para la Protección del Patrimonio Arquelógico Terrestre de Puerto Rico, a state agency.

The development opened the door for the Puerto Rico state historic preservation office. According to Deputy SHPO Karen Anderson, it was several months before a mitigation agreement was prepared. Among other things, the SHPO called for delineating the full boundaries

of the site and excavating all areas of construction impact. The project also benefitted from the expertise of Jefferey Walker, technical advisor on loan from the Forest Service.

The process of turning an accidental find into a planned excavation has been painstaking. The mitigation plan was negotiated several times, primarily because the SHPO did not agree with the Consejo's position that the remains be displayed. "That made getting a memorandum of agreement much more difficult," says Anderson. By the time the memorandum was signed, it had been decided that the remains would not be shown publicly.

The unexpected encounter with the island's past points to what Anderson says is a need for better surveying methods, especially in flood plains. "How do we deal with it in the future so we don't have the same situation again?" she says. "It's not just digging little shovel pits because you're not going to find anything."

Meanwhile, the soil of Paso del Indio continues to turn up secrets that illustrate her point. Below the Ignieri strata, a section of stone pavement previously thought tied to pre-Taino times at the earliest was discovered. Once again, archeologists pause to consider what the site is trying to tell them. "That," says Garcia Goyco, "is a mystery."

and leveling land, though effective for agriculture, can potentially destroy archeological sites. Yet when sites are found, landowners—fearing state interference—are sometimes reluctant to have the Service notify the state historic preservation officer. So the NRCS is caught between losing landowner trust and failing to promote preservation.

A new programmatic agreement promises to address these and other problems. The agreement, among the Service, the President's Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers, hopes to help the NRCS carry out its mission—conservation—while protecting the sites and artifacts that turn up on farms and ranches across the nation.

An earlier agreement, struck in 1984, was terminated two years ago when a few states expressed disagreement over NRCS compliance with section 106 of the National Historic Preservation Act. Interim measures were put in place as the current terms were negotiated.

The new agreement completely revises NRCS policies and procedures. Notably, the Advisory Council has loosened its regulations.

Mike Kaczor, federal preservation officer of the NRCS, says the arrangement is designed "to tailor the compliance process to [NRCS] operations." The size and nature of the agency's workload makes it

difficult to treat all cases by the book, he says. "We don't have the staff to efficiently handle 106 on a case-by-case basis."

Now, trained staff from the agency's local field office can do the initial inventory if a site is found on land where the NRCS is giving assistance. Any further work is to be done by qualified specialists.

An operational plan will guide NRCS in gathering all the relevant data about each site at issue, helping the Service, the landowner, and the preservation officer come to an agreement about what to do. This, says Kaczor, will provide a firm factual basis for making decisions.

Expect more flexibility on all sides, says Kaczor. "There's an anti-regulatory climate out there right now. If you try to shove 106 compliance down people's throats, you're going to see historic preservation take a 180-degree swing." Now policy can be fine-tuned at the state level, because procedures that are applicable in New Mexico may not be in Vermont. The agreement also stipulates that NRCS will continue to take advantage of new technology and requirements for quality assurance, monitoring, and reporting. The Advisory Council, for its part, will periodically review the process.

"The new agreement allows for a lot more communication about agency mission and function," says Kaczor. "We're helping over-all historic preservation a heck of a lot better."

Friedman Honored for Building Outreach, Bureau Profile

The Bureau of Reclamation has given its prestigious resources management award to Edward Friedman, federal preservation officer at its Denver office. Reclamation Commissioner Dan Beard, in presenting the award, cited Friedman's far-reaching influence. Friedman was instrumental in creating the Federal Preservation Forum, which has fostered cooperation among cultural resource managers and programs nationwide. He is also credited with boosting his bureau's public and professional visibility.

Friedman has been notably active in promoting compliance with the Native American Graves Protection and Repatriation Act. And with Reclamation's support, he worked with the Society for American Archaeology to launch a public education newsletter that now reaches over 5,000. He has also educated the Denver-area public about the BOR's work, developing displays for Earth Day and supporting presentations at schools and universities.

Cutting-Edge Courses

The NPS Rocky Mountain regional office is offering training in some of archeology's most effective electronic tools. Archeologists, architects, cultural resource managers, and anyone interested in mastering the technology are encouraged to attend. Participants need no previous technical experience.

"Remote Sensing/Geophysical Techniques for Cultural Resource Management" will be given May 22-26 at Cahokia Mounds State Park in Collinsville, IL. Participants will be instructed in the geophysical equipment and aerial photographic techniques used to identify, evaluate, and protect cultural resources. Training includes use of magnetometers, conductivity and resistivity meters, metal detectors, ground penetrating radar, and low altitude, large scale aerial reconnaissance. Attendance for the course is \$475.

"Low Altitude, Large Scale Aerial Reconnaissance for Cultural Resource Management" will take place May 5-14 and August 1-9 at San Juan College, Farmington, NM. The course, co-sponsored by the Park Service and San Juan College, provides introductory instruction in LALSAR, which uses camera-equipped remote-controlled model aircraft to produce large-scale, high-resolution photographs. Aside from lectures on the theory and practice, the course offers practical experience in flight training and constructing the aircraft. Attendance is free.

For more information, contact Steven L. De Vore, U.S. Department of the Interior, National Park Service, Rocky Mountain Region, Interagency Archeological Services, 12795 West Alameda Parkway, P.O. Box 25287, Denver, CO 80225-0287, (303) 969-2882.

No Compensation for Developers Denied Permission to Disinter

Under Iowa law, if human remains more than 150 years old are found to have state or national significance, the state archeologist can deny permission to disinter. Since this may limit construction on someone's property, is the landowner entitled to compensation?

The issue was recently decided by the Iowa Supreme Court in *Hunziker v. State*, 519 N.W.2d 367 (Iowa 1994). By a 4-1 majority, the court, in a broad-ranging opinion, affirmed a lower ruling denying several land developers a writ of mandamus that would have commanded the state to condemn a parcel of land they own and, pursuant to the United States and Iowa constitutions, provide them just compensation.

The plaintiff/appellant developers purchased the lot in question in 1988 as part of a 59-acre tract of farm land that they subsequently transformed into a housing subdivision. In 1991, after they sold the lot for \$50,000, the state archeologist learned that a Native American burial mound from the Woodland Period (500 B.C.-1000 A.D.) lay near the center of it.

Pursuant to Iowa Code section 305A.9 (1991), the

Protecting the Nation's Archeological Heritage

KENNEDY, HARRIS SPEAK AT FBI HEADQUARTERS

National Park Service Director Roger Kennedy shares a moment with Assistant Attorney General Jo Ann Harris at the Society for



American Archaeology's public service awards, which honored five Department of Justice employees. Both made presentations at the December ceremony, along with senior law enforcement administrators from the Departments of Interior and Agriculture. It was the third time

in the last year that Harris had addressed a gathering of archeology, law enforcement, and cultural resource management professionals.

Top law enforcement representatives—together with officials from the U.S. Navy—also turned out for a November ceremony at Norfolk's Nauticus Museum to recognize citizens who helped apprehend looters. The "citizen stewards" were the first to receive rewards paid for by fines levied under the Archaeological Resources Protection Act. Officials from the Navy took the opportunity to present—for the first time—its policy on submerged ships and aircraft.

Both ceremonies applauded the successful cooperative work of the Interagency Archeological Protection Working Group.

archeologist prohibited disinterment of the mound and required a buffer zone around it. As a result, the city refused to issue a building permit.

The developers refunded

the purchase price to the buyer and took back the lot. Then they brought a mandamus action in the district court, alleging that the state's action amounted to a regula-

tory taking without compensation. The lower court held that the developers never had a vested property right under statutory or common law to build a house on an ancient burial mound.

The developers appealed to the Iowa Supreme Court, which acknowledged that when land use regulation denies the owner all economically beneficial or productive use of the land, the state must pay just compensation. The court went on to note, however, that under limited circumstances, the state may resist payment of compensation.

Thus if the state could show that, under Iowa nuisance and property law, the developers' rights regarding the lot never included the right to use that parcel in the way the regulation forbids, there would be no compensable taking.

The developers claimed that in order to prevail, the state would have to show that Iowa property law forbade them from constructing a family residence on the lot, absent the statutory sections authorizing the state archeologist to deny disinterment. They argued that, because the state cannot make such a showing, a taking occurred for which they must be compensated.

In addition, the developers

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Hiking in a remote wilderness area, you discover a large Anasazi pot wedged between two rocks.

Your father is using a backhoe to dig a water line for your new family home. He discovers the remains of several American Indian bodies, but wants to finish using the backhoe, which is rented out for only a day.

On a scouting trip to a historic ghost town, you notice your scout leader picking up bits of pottery. When you tell him that taking artifacts is illegal, he retorts that little things like broken sherds really don't count.

These are just a few of the dilemmas students face in *Silent Witness: Protecting American Indian Archaeological Heritage*, a learning guide and video for teachers created by the National Park Service with the National Parks Foundation. The package, based on the time-honored idea of cultivating minds while they are young, has been sent to every middle and high school in Arizona, New Mexico, the southern half of Utah, southwestern Colorado, and El Paso.

Aside from putting students on the spot, the lessons encourage them to consider what they value about their own histories. Sites and artifacts are given a personal dimension as "messengers" of past peoples, who shared many of the same hopes, needs, and concerns that students have today. One of the guide's most important goals is helping young people become culturally literate, as evidenced by an exercise that asks them to interpret what Abraham Lincoln meant when he said, "A country with no regard for its past will have little worth remembering in the future."

The video drives home the point with a series of jarring juxtapositions. Native American dancers in silhouette fade to a slow pan of rock art, with viewers gradually aware that "K.C. Rules," "The Brethren," and "Bronco 88"



JENS JORGEN JENSEN

SILENT WITNESS

LEARNING GUIDE TESTIFIES TO LOSS OF NATIVE AMERICAN TREASURES

have been spray-painted atop the ancient symbols. A rusted refrigerator stands at the base of petroglyphs outside Albuquerque, New Mexico. In an Arizona cave, gouges scar a wall where native peoples once expressed themselves in millenia long past.

As the video makes clear, these places—called "outdoor churches" by a ranger at Bandelier National Monument—are still revered by the descendants of native peoples. Narrator Robert Redford poses the question, "Why, then, do we treat them the way we do?"

A reformed looter offers one telling clue. The man, caught removing three Navajo pictographs, says "I thought it was like J-walking. It's illegal, but nobody cares." The director of the Hopi cultural preservation office tells of a German buyer offering \$15,000 for a Sityaki polychrome vessel during an FBI sting.

The video—also useful for educating the general public—testifies to the need for laws like the Archaeological Resources Protection Act and the Native American Graves Protection and Repatriation Act. Handcuffed looters—cardboard boxes crammed with sherds nearby—dramatically illustrate the lure of the marketplace. Fragments of stolen pottery commonly resurface as jewelry or as photographic props in advertisements.

A young Navajo says that the issue comes down to a conflict over what we value as a society. Thanks to projects like *Silent Witness*, perhaps Americans will come to realize the priceless heritage that is being lost, never to be replaced.

For more information, contact Glen Kaye, National Park Service Southwest Region, Division of Interpretation, P.O. Box 728, Santa Fe, NM, 87504-0728, (505) 988-6838. Copies of *Silent Witness* are limited, and there are no plans to reproduce it.

"I thought it was

like J-walking.

It's illegal, but

nobody cares."

—LOOTER CAUGHT REMOVING
NAVAJO PICTOGRAPHS

asserted that the state archeologist made the find and denied permission to disinter after they had purchased the land.

Consequently, they argued, the state archeologist's action constituted a post-purchase regulatory action that, because it effectively eliminated the land's only economically productive use, was a compensatory taking.

The court rejected the developers' arguments. It held that the Iowa Code sections that authorize the state archeologist to deny disinterment were part of the state's property law long before the plaintiffs purchased the land in question. The developers, therefore, took title to the land subject to the provisions of those sections.

The court recognized that any limitation so severe as to prohibit all economically beneficial use cannot be newly legislated or decreed without compensation, but must inhere in the title itself and in the restrictions that background principles of state property and nuisance law already place upon land ownership. The court found, however, that when the developers acquired title to the land, there was no right to disinter the human remains and build in the area where the remains were located. The state, under existing law, could prevent disinterment. Consequently, there was no compensatory taking.

TVA Uses Civil Penalty Process to Prosecute Muscle Shoals Digger

In only the second use of ARPA's civil penalty provision, the Tennessee Valley

Authority has successfully prosecuted a man caught digging an archeological site along the Tennessee River in Muscle Shoals, Alabama.

On February 7, 1994, officers with TVA's public safety service observed a man digging with a knife into an eroded bank that is part of the Authority's Muscle Shoals Reservation. Recognizing that the area appeared to be an archeological site, the officers issued the man a notice of violation of ARPA.

TVA archeologists subsequently discovered that the site was an archeological midden containing lithic flakes, fire-cracked rock, and two burned surfaces indicating levels that had once seen human occupation. Although the man denied he was digging for artifacts—and none were found in his possession—the archeologists determined that part of the site had been destroyed along a 27-foot stretch of bank. The value of the destroyed resources was estimated at \$2,645.

Discussions between the violator's attorney and TVA counsel led to an agreement that, pursuant to section ff of the act, the TVA would assess a civil penalty of \$400, and in exchange the violator would waive his rights to a hearing and an appeal. The TVA decided that attempting to recoup the full cost of the damages would not be cost-effective, and so accepted the \$400 penalty.

TVA's success in the case is an outcome of its Archaeological Resources Protection Act program, sponsored by the public safety

U.S. RETURNS ARTIFACTS TO SOUTH AMERICA



ROSA WILSON/NPS

Some 35 illegally obtained artifacts discovered in New Mexico were returned to their countries of origin in a September 26 ceremony at DOI headquarters in Washington, DC. National Park Service Director Roger Kennedy, presiding over the event, called it "an affirmation" of his agency's commitment to preserving cultural heritage nationally and internationally.

The artifacts, found in the possession of a deceased Santa Fe resident, were obtained by the federal government through civil forfeiture. Investigators from the National Park Service and the BLM found that the person had traded artifacts he removed from federal lands in New Mexico for others from Peru, Ecuador, Costa Rica, and Mexico.

Among the returned items were jadeite figurines, ceramic vessels, effigy whistles, a textile loincloth, and prehistoric copper money. Though it is not known whether the items entered the country after import laws were enacted, then-NPS Southwest Regional Director John E. Cook said that returning them was dictated by "ethical conscience."

service. From September 1993 to January 1994, 226 individuals underwent eight hours of training at various locations in the Tennessee Valley. The trainees included law enforcement officers, federal archeologists, a state district attorney, and land management agents from TVA and other federal and state agencies.

This second application of ARPA's civil penalty provision follows a 1992 case brought by the Forest Service, where an administrative law judge upheld a \$43,500 penalty against violators.

Recently, the National Park Service archeological assistance division published technical brief 16, *The Civil Prosecution Process of the Archaeological Resources Protection Act*, by the Hon. Sherry Hutt, who is on the bench of the Maricopa County, Arizona, superior court. The brief—which details the procedure for pursuing ARPA violations under the administrative law process—is intended to familiarize federal and tribal land managers with ARPA's civil provisions and provide them with a blueprint for prosecuting violators civilly. It is also a valuable instruction manual for federal law enforcement personnel and departmental solicitors.

To receive a copy, contact the NPS Archeological Assistance Division, P.O. Box 37127, Washington, D.C. 20013-7127, (202) 343-4101.

National Register Felon Convicted

A man who did over \$40,000 damage to a National Register site has

become the first felon convicted under ARPA in the Corps of Engineers Tulsa District, which encompasses Oklahoma and parts of Kansas and Texas.

John Raley, U.S. Attorney for the eastern district of Oklahoma, announced that on October 13 Randall Leon Craig, 21, of Talihina, was found guilty of a felony violation of the act. Based on evidence presented by assistant U.S. Attorney Paul Hess, Chief Judge Frank H. Seay sentenced Craig to three years' probation and six months in a federal halfway house.

The case against Craig arose after a year-long investigation by the FBI and the Corps of Engineers, assisted by the Oklahoma Department of Wildlife and Latimer County authorities. The investigators found evidence of looting in the Lake Wister Locality Archeological District, a National Register property under Corps authority.

Hess contended in court that during September 1993 Craig excavated, removed, damaged, or otherwise altered or defaced the archeological site without a permit, causing harm in excess of \$40,000. Disturbed artifacts observed on the surface of the site included tools, large and small animal bones, shellfish, and ceramics. Burned rocks, likely arranged in circles by the site's early inhabitants, were scattered about, obliterating anything archeologists might have learned from them.

Lake Wister Locality contains 220 recorded sites dating from 2000 B.C. to 1500 A.D. It lies within the heartland of the Fourche

Maline culture, which developed along the Poteau River Basin more than 1,500 years ago. The culture—which represents the beginning of sedentary and agricultural life in eastern Oklahoma—was ancestral to the Mississippian-related chieftain societies that flourished between the 10th and 14th Centuries along the Arkansas River. The Lake Wister sites are strewn with cultural materials, plant and animal remains, and burials.

Smith Awarded for Building Network, Awareness

The National Park Service has given George S. Smith a special achievement award. Smith, chief of the Southeast Archeological Center's investigation and evaluation section, has been instrumental in establishing an ARPA task force in the region, which has prosecuted 11 cases to date, all convictions. Smith has also increased awareness among park personnel and the public.

Aside from personally training staff at various agencies, Smith arranged for the Federal Law Enforcement Training Center's 40-hour ARPA course to be taught at several parks throughout the region.

And, thanks to Smith and NPS special agent Chip Davis, the region instituted a shared services program to maximize archeological resource protection. When a violation occurs, the regional office in Atlanta determines whether the case can be pursued effec-

tively using local expertise. If additional assistance is required, it is dispatched from the center.

Smith co-edited the book, *Protecting the Past*, whose royalties were donated to the Society for American Archaeology to aid protection and education programs.

Traffickers Prosecuted in First NAGPRA Cases

Two recent cases represent the first time anyone has been prosecuted for violating the criminal provisions of NAGPRA.

In a December prosecution—the first for trafficking Native American human remains—a Virginia man pled guilty to a two-count charge of violating both NAGPRA (18 U.S.C. 1170 (a)) and ARPA (16 U.S.C. 470ee). Richard P. Maniscalco, 49, sold a BLM undercover agent the leg bone of a Cheyenne Indian and assorted artifacts including buckles, cartridges, bullets, casings, and Native American funerary objects he removed from federal and Indian lands in Montana. Some of the artifacts were taken from the Little Big Horn Battlefield National Monument.

Pursuant to a plea agreement, Maniscalco agreed to forfeit dozens of illegally obtained items. Sentencing is set for March 14.

In a Department of Justice press release, Helen E. Fahey—U.S. Attorney for the eastern district of Virginia—commended the teamwork of the National Park Service, the FBI, and the U.S. Attorney's Office for the district of Montana. Assistant U.S. Attorney Dennis M. Kennedy

handled the prosecution.

In an earlier case—the first for trafficking Native American sacred objects—Brian and Gerald Garcia of New Mexico were found guilty of removing kachina dolls from the Pueblo of Acoma in violation of NAGPRA (18 U.S.C. 1170(b)). The two then attempted to sell the dolls to an undercover BLM agent.

Brian Garcia was fined \$300 and received 18 months probation. His brother Gerald was also fined \$300 and ordered to spend three months in a halfway house.

Assistant U.S. Attorney Rhonda Backinoff was lead prosecutor.

Course Touts Team Approach

The Federal Law Enforcement Training Center—the nation's lead organization for interagency training of federal law officers and justice personnel—is offering a five-day course demonstrating the benefits of the team approach to investigating archeological resources violations. The program, which fosters networking, is intended for both law officers and archeologists at the federal, state, and local levels. Course content was developed in conjunction with the National Park Service, the Bureau of Land Management, and the Forest Service.

The 1995 schedule is:
March 27-31, Williamsburg, VA
April 17-21, Portland, OR
July 17-21 (location tbd)
September 11-15 (location tbd)

For more information, call (800) 74FLETC or (912) 267-2345.

SPECIAL REPORT

THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT

REBIRTH OF A LEGACY

On September 7th, Native Americans, sitting alongside museum staffers and government officials, watched an inspiring scene unfold in the least likely of places: a fluorescent-lit, drop-ceiling, standard-issue office space in downtown Anchorage. What they witnessed—an enthralling performance by the Ahnuvuk Point Hope Dancers (right)—was a living, breathing symbol of why



TED PEDERSON

they were here. Over three days, as part of a NAGPRA workshop, they would roll up their sleeves in pursuit of a common goal: returning a culture to its rightful owners.

There is a misconception that NAGPRA establishes a new set of rights for native groups. "This legislation doesn't create new rights, it just mandates that the old ones be

applied equally," says Program Leader C. Timothy McKeown, citing a common law provision called "the right to repose" that saw to it that whites were buried with dignity even as thousands of native remains

and sacred objects found their way to neat rows and numbered cabinets across the nation.

But that was then, and this is now, says McKeown at workshops like the one pictured here. His job is to balance the diverse interests of those assembled—native groups, museums, medical schools, government agencies—and encourage repatriation in ways that, if not each representative's preferred option, are at least palatable to all.

By the evidence in this issue, that approach is working—in some cases, even better than what those who crafted the law expected.

INSIDE THE ACT



CONFESIONS OF A BUREAUCRAT

On November 16, 1990, with the flourish of the presidential pen, George Bush signed the Native American Graves Protection and Repatriation Act into law. Since then, the seven-member review committee—charged with advising the Secretary of the Interior and Congress on implementing the act—has heard testimony in Albany, Oahu, and points in between. Regulations have been mustered through public comment and await finalization. Native groups are examining summaries of collections—the deadline having passed for museums and federal agencies to provide them—while more than \$2 million in grants has been awarded to help implement the act. Meanwhile, museums and agencies face a fast-approaching dead-

My perspective on implementing the act is colored by my role in it. I am not intimately familiar with the decisions made every day by individual curators, land managers, tribal representatives, and traditional religious leaders. The other articles in this issue provide their viewpoints. My perspective is that of a regulator, an administrator, a trainer, in short: a bureaucrat.

The constitution established clear roles for each of the three branches of government. The Congress creates laws and appropriates funds for their implementation.



Addressing museum professionals and tribal officials at repatriation workshop. PHOTOGRAPH BY TED PEDERSON

line to provide inventories of human remains and associated funerary objects among their holdings.

NAGPRA program leader C. Timothy McKeown takes stock of the success in implementing the congressional mandate so carefully crafted nearly five years ago.

The courts interpret those laws to resolve disputes. The Executive implements the laws.

Congress assigned responsibility for implementing the act to the Secretary of the Interior, who in turn delegated much of it to the departmental consulting archeologist and the archeological assistance division of the National Park Service. The division hired me shortly afterwards.

I am charged with four primary responsibilities: providing staff support for the review committee; developing regulations for implementing the statute; adminis-

OPPOSITE: "BUFFALO DANCERS, LAGUNA, NEW MEXICO" BY LEE MARMON (PUEBLO OF LAGUNA)

By C. TIMOTHY MCKEOWN

tering grants to Indian tribes, Native Hawaiian organizations, and museums; and providing guidelines and training to those with obligations to meet under the act.

Each of these responsibilities must be met within the context of regulations imposed by the Federal Advisory Committee Act, the Administrative Procedures Act, and the Freedom of Information Act. They also require frequent interaction with other entities such as the *Federal Register* and the Office of Management and Budget.

Drafts and Disputes

NAGPRA specifically identifies the Secretary of the Interior as the official responsible for implementing the law. However, the act goes on to establish a committee to provide recommendations to the Secretary and facilitate the resolution of disputes.

Establishing such a committee involves more than calling people on the phone and asking for advice. The Federal Advisory Committee Act establishes the rules under which committees must be constituted and operate. The first requirement was that the committee be chartered by the Secretary. On August 2, 1991, then-Secretary Manuel Lujan signed the charter spelling out the committee's responsibilities.

Next, nominations for membership were gathered. The Federal Advisory Committee Act requires that they be solicited through a notice in the *Federal Register*; NAGPRA further mandates that nominations come from Indian tribes, Alaska Native villages and corporations, Native Hawaiian organizations, and national museum and scientific organizations.

Over 50 nominations were received. After a thorough review, Secretary Lujan on March 3, 1992, appointed 6 private citizens including Rachel Craig (Inupiaq), Dan Monroe (Peabody and Essex Museum), Tessie Naranjo (Santa Clara Pueblo), Martin Sullivan (Heard Museum), William Tallbull (Northern Cheyenne), and Phillip Walker (U.C. Santa Barbara). In making the appointments, Secretary Lujan noted that "the committee faces a challenging set of tasks, ranging from advising me on the regulations needed for implementing the statute to assisting in the resolution of disputes caused by its requirements. All of these tasks must be approached with a willingness to listen to each side of an issue and a careful reading of the statute."

The committee's first meeting was April 29-May 1, and one of the first orders of business was recruiting a seventh member. On August 4, Jonathan Haas (Field Museum) was appointed by Secretary Lujan after the committee's unanimous nomination.

There have been eight meetings since, generally lasting three days each. Announced 15 days in advance as required by the Federal Advisory Committee Act, the meetings are always open to the public. Rachel Craig, the first chair, was succeeded by Tessie Naranjo in 1992.

The committee makes recommendations on a variety of topics, including draft regulations and guidance documents. The meetings are also the main forum for consultation among the committee, Indian tribes, federal agencies, and museums. One of the committee's most difficult jobs, however, is helping to resolve disputes.

The first was at the fourth meeting, in February 1993. The dis-

pute concerned the remains of two individuals in the possession of the University of California's Phoebe Hearst Museum of Anthropology, on the Berkeley campus. Hui Mālama I Nā Kūpuna 'O Hawai'i Nei—a nonprofit organization that provides expertise in Native Hawaiian cultural issues—claimed that the remains were culturally affiliated with Native Hawaiians and should be repatriated. Hearst Museum representatives countered that the information readily available to them was not sufficient to determine that the remains were culturally affiliated with a present-day Native Hawaiian organization.

Based on information from both parties, the committee made two findings, published in the *Federal Register* on April 15. They recommended that the Hearst Museum revise its determination of one individual's remains to be Native Hawaiian. They further recommended that the second individual's remains be deaccessioned by the Hearst and transferred to a museum in Hawaii where the issue of cultural affiliation might better be addressed. Both parties followed the recommendations and both individuals have since been reburied [for more on the dispute, see article by Edward Halealoha Ayau].

A second dispute surfaced at last November's meeting in Albany. The Marine Corps was ready to repatriate 1,500 sets of remains, but 15 different parties were making claim. The committee recommended that the Corps retain possession until the claimants resolved their differences.

Over the past three years, the committee has developed a style quite in contrast to what one might expect given the different constituencies represented by its members. The group acts by consensus, with the only formal vote being a unanimous decision at the first meeting to dispense with *Roberts Rules of Order*. Several members have described the committee as a second family.

In the Beginning, There Was the Word . . .

My approach to promulgating regulations is similar to that of a biblical scholar. The act represents a "received" text that cannot be altered, only clarified. The intellectual task of clarifying the law and the process of making regulations are guided by numerous "meta-rules," or rules for making rules.

Rules of statutory construction provide the context for clarifying particular terms and phrases. Thou shalt not interpret the law in a fashion that contradicts the constitution of the United States. Thou shalt analyze only those terms that are ambiguous, and then only within the specific context of legislative history. Thou shalt grant dominion to new or specific law over the old or general.

Promulgating regulations is a highly formalized activity covered by provisions of the Administrative Procedures Act. Regulations must first be published in the *Federal Register* as a proposed rule. Public comment is invited and, after each substantive comment is addressed in a preamble, the final rule can be published in the *Register*. Final rules go into effect 30 days after that.

Congress stipulated in section 13 of the act that the Secretary promulgate implementing regulations within 12 months of enactment, a difficult task given the complexity of the rule-making process—which also requires consultation with the review committee—and the unfortunate fact that Congress neglected to appropriate funds to complete the task in FY1991. Work on the



On a museum tour during Alaska repatriation workshop.

TED PEDERSON

regulations began soon after money was appropriated in the FY1992 budget.

A working group drawn from several federal agencies wrote the first draft of the regulations, presented to the review committee at its first meeting. The committee reviewed three complete revisions before the proposed regulations were published.

The proposed rule for implementing the act (43 CFR 10) was published for public comment in the *Federal Register* on May 28, 1993. Public comment was invited for a 60-day period, ending on July 27. Copies of the rule were sent to the chairs or chief executive officers of all Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations; national Indian organizations and advocacy groups; national scientific and museum organizations; and state and federal agency historic preservation officers and chief archeologists.

Eighty-two written comments were received representing 89 specific Indian tribes, agencies, museums, and private firms and

individuals. These included 13 Indian tribes, 10 Indian organizations, 9 museums, 3 national scientific and museum organizations, 11 state agencies, 7 universities, 19 federal agencies, 9 other organizations, and 8 individuals. Several letters represented more than one organization.

Comments addressed nearly all sections and appendices of the proposed rule. All comments were fully considered when revising the rule for publication as a final rulemaking. Final regulations are currently being reviewed within the Department of the Interior. The final rule will go into effect 30 days after it is published in the *Federal Register*.

A number of sections were reserved in the proposed regulations, to be filled in later. Drafts of two of these reserved sections—one detailing civil penalties and the other providing a sample inventory—have been developed and reviewed by the review committee. Publication of these sections as proposed regulations can be expected soon.

The committee has solicited public recommendations regarding three additional reserved sections of the regulations—those dealing with the disposition of unidentified human remains in muse-

One fall day in 1991, I received an unexpected phone call from Dr. Francis P. McManamon, chief of the archeological assistance division at the National Park Service. Dr. McManamon introduced himself and began to ask a few questions. Given the reason for his call, I responded in detail.

Several weeks before, the governor of Santa Clara Pueblo had received a letter requesting applications for a position on the review committee for the Native American Graves Protection and Repatriation Act. This letter was forwarded to my office—the Santa Clara cultural preservation program—along with a request from the governor that I respond.

I sent the necessary paperwork and was surprised when Dr. McManamon called requesting additional information. After several questions about my role in the community, he asked if I would be willing to serve a five-year term on the committee. I said yes. My world has changed dramatically since that day.

In the course of my involvement with NAGPRA, I have read the statute many, many times. I have had the opportunity to discuss its meaning with a wide range of both traditional Native Americans and non-tribal people. One thing that has struck me is how differently these two groups define relationships.

Traditional Native Americans believe that everyone and everything exist in an integrated and pervasive system of relationships. One resident of Santa Clara Pueblo puts it this way: "We are part of an organic world in which interrelationships at all levels of life are honored. Our relations to the place we live—the land, water, sky, mountains, rocks, animals, plants—is tangible. Our sense of social relationships leads us to respect all who have gone before and all who will follow, our elders as well as our youth."

Traditional Native Americans see an essential relationship between humans and the objects they create. A pot is not just a pot. In our community, the pots we create are seen as vital, breathing entities that must be respected as all other living beings. Respect of all life elements—rocks, trees, clay—is necessary because we understand our inseparable relationship with every part of our world.

This is why we honor our ancestors and the objects they created. This honoring allows us to remember our past and the natural process of transformation—of breathing, living, dying, and becoming one with the natural world. Not even in death are we unrelated.

My understanding of relationships has been hard to reconcile with the non-tribal view. Consider museums. Human remains and cultural items are treated as non-living entities. Unacknowledged are the enduring relationships that traditional Native Americans maintain with their ancestors and their world.

I have come to realize that the staffs of most museums and agencies do not share our basic values and philosophic views. Museums certainly have had a great impact on traditional Native Americans and our perceptions of who we are. But we do not share the assumptions underlying what museums do: collection, preservation, documentation, and exhibition.

This difference in view surfaces in most of the activities surrounding NAGPRA. Encouragingly, this has led to a growing awareness among all those with a stake in repatriation.

Nowhere is this more apparent than at meetings of the committee. From the very first one—when six members were asked to nominate a seventh—decisions have been by consensus. This is the way of my people and the one with which I am most comfortable. The meetings are often more like open discussions than formal get-togethers. Decisions are made only after all members, as well as the public, get a chance to air their views. Thus far, all of our decisions have been unanimous.

When the committee held hearings in Hawaii on the remains of Pacific islanders, member Dr. Martin Sullivan, head of the Heard Museum, asked Indians in the group to talk about accept-

ing spiritual testimony [see article by Edward Halealoha Ayau]. Dr. Sullivan was sincerely trying to understand how we should assess this evidence.

During our Phoenix meeting last year there was animated discussion in which the public questioned the validity of scientific study. Leigh Jenkins, cultural preservation officer for the Hopi, stood up and in a gentle but certain voice talked about how his program works with the archeological community to clarify issues about the past.

NAGPRA has brought together two completely different worldviews in a forum where people freely discuss their differences. This relationship, like any human relationship, is sometimes awkward, sometimes caring, and sometimes difficult. But it is a relationship that will continue.

For more information, contact Tessie Naranjo, P.O. Box 1807, Española, NM 87523, (505) 753-7326, fax (505) 753-8988.

THOUGHTS ON TWO WORLDVIEWS

By TESSIE NARANJO



Naranjo, right, with her mother, Rosa.

um or federal agency collections, the disposition of unclaimed human remains and cultural items from federal or tribal lands, and the future applicability of the statute. The committee expects to continue soliciting such recommendations at future meetings. Drafts of these sections are expected soon.

Getting the Word Out

The archeological assistance division is involved in a wide range of technical assistance activities related to implementing the act. A number of them relate to providing the documents to assist various parties.

One such effort led to a memorandum suggesting procedures for summarizing and inventorying collections as called for by the act. Over 1,200 copies of the memorandum—signed by the Department of the Interior's assistant secretary for fish and wildlife and parks—have been distributed to federal agencies, museums, Indian tribes, Native Hawaiian organizations, and other interested parties.

Congress intended NAGPRA to foster open discussion and joint deliberations. To that end, the division compiled lists of contacts at federal agencies and at 760 Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations. Originally published in July 1993, the list has been updated several times since.

The tribal contact list was compiled using documents available from the Bureau of Indian Affairs, as well as through individual contacts with Alaska Native, Native Hawaiian, and Indian tribal officials. It contains the name of the chairperson or corporation president unless the division has received written notification from the chairperson or a resolution from the tribal council designating another individual as the NAGPRA contact. The agency list contains the name of the federal preservation officer unless the agency has notified the division in writing that someone else is the designated contact.

The division was also instrumental in the republication of a U.S.G.S. map identifying tracts within the continental United States for which an Indian tribe proved its original occupancy. First published in 1978 as part of the final report of the Indian Claims Commission, the map has proved extremely useful in helping identify appropriate Indian tribes with which to initiate consultation.

The division was instrumental as well in developing and implementing a NAGPRA module for the National Archeological Database. The module provides the full text of the act, its legislative history and regulations, as well as information on agency and tribal contacts and notices of activities related to act. Other modules provide a bibliographic inventory of archeological reports, an inventory of permits for archeological and paleontological projects on federal and tribal lands, and maps showing archeological and environmental data.

Training initiatives have proceeded simultaneously on four fronts. Experience has led us to identify three fundamental

implementation principles: 1) When in doubt read the act, 2) If still in doubt consult with Indian tribes, and 3) (The Prime Directive) Never, ever, get involved in tribal politics.

The first and often most effective training is in response to individual telephone calls. Division staff has also made numerous presentations as part of regularly scheduled meetings of intertribal, museum, and scientific organizations. The third level of training has been through the growing number of workshops, such as those organized by the National Museum of the American Indian. Lastly, I have been fortunate to have the opportunity to co-teach, with Judge Sherry Hutt, a course on the act through the continuing education program of the University of Nevada-Reno.

It's in the area of training that I have been able to see first-hand the sweeping changes in attitude precipitated by NAGPRA as the nation grapples with understanding and implementing the law.

Funding the Mandate

Section 10 of the act authorizes the Secretary of the Interior to award grants to assist museums, Indian tribes, and Native Hawaiian organizations in implementing provisions of the Act. Unfortunately, funds were not appropriated until FY1994, when slightly over \$2 million was included in the federal budget. Last summer, Secretary of the Interior Bruce Babbitt announced awards totalling \$2.14 million, no match for the \$23 million in grant monies requested by proposals from native groups and museums [see lead story in "NAGPRA News" later in the issue].

Funding for additional grants was included in the FY 1995 budget request. As before, grant guidelines have been distributed to all Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations with standing in the NAGPRA process and to all museums that have submitted copies of their summaries to the NAGPRA office. Successful applicants will be announced this summer. The president's FY1996 budget includes a request for \$2.3 million in grants.

The review committee, in its first report to Congress, identified lack of funding—for agencies, museums, and native groups—as the primary obstacle to the act's success.

In the nearly five years since passage of the act, there has been a dramatic increase in dialogue among tribes, museums, and agencies. Not all of it has been pleasant. No one expected that it would be. The framework established by Congress and implemented by the Secretary has provided an effective way to resolve differences of opinion. Clearly, the act's effect is only just beginning to be felt, and indications are that cooperation that Congress intended will continue to grow.

"In the larger scope of history, this [act] is a small thing," said Congressman Morris Udall. "In the smaller scope of conscience, it may be the biggest thing we have ever done." Our efforts are dedicated to fulfilling that legacy.

For more information, contact C. Timothy McKeown, NPS Archeological Assistance Division, P.O. Box 37127, Washington, D.C. 20013-7127, (202) 343-4101, fax (202) 523-1547.

"[All of the review committee's tasks] must be approached with a willingness to listen to each side."

—FORMER SECRETARY OF THE INTERIOR MANUEL LUJAN



Discourse at Alaska repatriation workshop.
TED PEDERSON

NAGPRA GRANTS FY94

1. WORKSHOP FOR ALASKA NATIVE VILLAGES AND CORPORATIONS (September 8-10, 1994). Keepers of the Treasures-Alaska, with Arctic Slope Native Association and Bristol Bay Native Corporation. Contact Jana Harcharek: (907) 852-0320.

2. COORDINATION FOR BERING STRAITS VILLAGES AND CORPORATIONS. Bering Straits Foundation. Contact Vernon Olson: (907) 443-5252.

3. ST. LAWRENCE ISLAND CONSULTATION. University of Alaska Museum, with Native Villages of Gambell and Savoonga. Contact Aldona Jonaitis: (907) 474-7505.

4. KENAI PENINSULA COLLABORATION. Kenaitze Indian Tribe, with Kenai Native Association, Salamatof Native Association, Salamatof Tribal Council. Contact Rita Smagge: (907) 283-3633.

5. CLAN LEADER AND CULTURAL ITEM DOCUMENTATION. Central Council of Tlingit and Haida Indian Tribes. Contact Cheryl Eldemar: (907) 463-7186.

6. CONSULTATION WITH TLINGIT REPRESENTATIVES. Hood Museum of Art, with Central Council of Tlingit and Haida Indian Tribes and Peabody Museum of Archaeology & Ethnology. Contact Kellen Haak: (603) 646-3109.

7. Southeast Alaska Consultation. Alaska State Museums. Contact Bruce Kato: (907) 465-2901

8. CONSULTATION WITH WASHINGTON TRIBES. Burke Memorial Museum, with the Kalispel Tribe, Spokane Tribe, Hoh Tribe, Lower Elwha Tribal Community, Lummi Tribe, Makah Tribe, Muckleshoot Tribe, Nisqually Indian Community, Port Gamble Indian Community, Suquamish Tribe, Puyallup Tribe, Quileute Tribe, Quinault Tribe, Shoalwater Bay Tribe, Skokomish Tribe, Squaxin Island Tribe, Tulalip Tribe, Swinomish Tribe, Snoqualmie Tribe, and the Confederated Tribes of the Colville, Chehalis, and Yakima Reservations. Contact James D. Nason: (206) 543-9680.

9. CONSULTATION WITH WASHINGTON AND IDAHO TRIBES. Cheney Cowles Museum, with the Kalispel Tribe, Spokane Tribe, Hoh Tribe, Lower Elwha Tribal Community, Lummi Tribe, Makah Tribe, Muckleshoot Tribe, Nisqually Indian Community, Suquamish Tribe, Puyallup Tribe, Quileute Tribe, Quinault Tribe, Shoalwater Bay Tribe, Skokomish Tribe, Squaxin Island Tribe, Tulalip Tribe, Swinomish Tribe, Snoqualmie Tribe, Jamestown Klallam Tribe, Nez Perce Tribe, Coeur D'Alene Tribe, Kootenai of Northern Idaho, Flathead Tribe and the Confederated Tribes of the Colville, Chehalis, Warm Springs, Umatilla, and Yakima Reservations. Contact Lynn Pankonin: (509) 456-3932.

10. DOCUMENTATION AND SUMMARY ASSESSMENT. Skokomish Indian Tribe. Contact Edward H. Binder: (206) 426-4232.

11. CONSULTATION WITH OREGON TRIBES. University of Oregon Museum of Natural History, with Confederated Tribes of the Grand Ronde Community, Confederated Tribes of Siletz Indians, Confederated Tribes of the Warm Springs Reservation, Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, Confederated Tribes of the Umatilla Reservation, Burns Paiute Tribe, Coquille Tribe, Cow Creek Band of Umpqua Indians, Klamath Tribe. Contact Don Dumond: (503) 346-5101.

12. CONSULTATION WITH THE HOOPA AND KARUK TRIBES. Peabody Museum of Archaeology & Ethnology with Hoopa Tribe, Karuk Tribe of

California, American Museum of Natural History, and the Haffenreffer Museum. Contact Barbara Isaac: (617) 495-2254.

13. Documentation and Summary Assessment. Washoe Tribe of Nevada and California, with Reno-Sparks Indian Community. Contact Jody Steele: (702) 265-4191.

14. CENTRAL SIERRA ME-WUK COLLABORATION. Tuolumne Band of Me-Wuk, with Calaveras Band of Me-Wuk Indians, Jackson Rancheria of Me-Wuk Indians, Sierra Native American Council, American Indian Council of Mariposa County. Contact Reba Fuller: (209) 928-3475.

15. KUMEYAAY BANDS COLLABORATION. Campo Band of Mission Indians, with Cuyapaipe Band of Mission Indians, San Pasqual Band of Indians. Contact Ralph Goff: (619) 478-9046.

16. CONSULTATION AND INVENTORY. Catalina Island Museum Society, with Santa Ynez Band of Chumash Mission Indians. Contact Patricia Anne Moore: (310) 510-2414.

17. CONSULTATION AND INVENTORY. L.A. County Museum of Natural History, with Santa Ynez Band of Chumash Mission Indians. Contact Margaret Hardin: (213) 744-3381.

18. DOCUMENTATION AND SUMMARY ASSESSMENT. Hualapai Tribe. Contact Loretta Jackson: (602) 769-2254.

19. CONSULTATION WITH THE HOPI TRIBE. Peabody Museum of Archaeology & Ethnology, with Hopi Tribe, American Museum of Natural History, Hood Museum, Haffenreffer Museum. Contact Barbara Isaac: (617) 495-2254.

20. DOCUMENTATION AND SUMMARY ASSESSMENT. Zuni Pueblo. Contact Roger Anyon: (505) 782-5558.

21. ALL-APACHE COLLABORATION. Jicarilla Apache Tribe, with the Fort McDowell Mohave-Apache Indian Community, San Carlos Apache, Tonto Apache, White Mountain Apache, Yavapai-Apache Indian Community, Mescalero Apache, Fort Sill Apache, and Kiowa Tribe. Contact Calvin Veneno: (505) 759-3242.

22. CONSULTATION REGARDING PECOS PUEBLO, NM. Peabody Museum of Archaeology, with Jemez Pueblo, Cochiti Pueblo, and Santo Domingo Pueblo. Contact James W. Bradley: (508) 749-4490.

23. CONSULTATION AND INVENTORY. Museum of New Mexico Foundation, with the Pueblo of Acoma, Jemez Pueblo, Navajo Nation, Pueblo de San Ildefonso, Taos Pueblo, Isleta Pueblo, and Pueblo of Zuni. Contact Bruce Bernstein: (505) 827-6344.

24. DOCUMENTATION AND SUMMARY ASSESSMENT. Southern Ute Indian Tribe. Contact Helen Hoskins: (303) 563-9583.

25. CONSULTATION AND INVENTORY. Denver Art Museum, with Colorado Historical Society, Hopi Tribe, Osage Tribe of Oklahoma, Northern Cheyenne, Southern Cheyenne Tribe, Southern Ute Tribe, Ute Mountain Tribe, Ute Tribe of Uintah, and Ouray Reservation. Contact Nancy Blomberg: (303) 839-7572.

26. MUSEUM COMPLIANCE WORKSHOP (April 29-30, 1995). Panhandle-Plains Historical Museum, with Museum of Texas Tech University. Contact Karen Anderson: (806) 656-2234.

27. CONSULTATION AND INVENTORY. Panhandle-Plains Historical Museum, with Museum of Texas Tech University, Cheyenne-Arapahoe Tribes of Oklahoma, Comanche Tribe, and Kiowa Tribe. Contact Karen Anderson: (806) 656-2234.



28. ARCHEOLOGY COMPLIANCE WORKSHOP (November 1-2, 1994). Museum of Texas Tech University, with Panhandle-Plains Historical Museum. Contact Mei Wan Campbell: (806) 742-2442.

29. DOCUMENTATION AND SUMMARY ASSESSMENT. Caddo Indian Tribe of Oklahoma. Contact Elmo Clark: (405) 656-2344.

30. CONSULTATION AND INVENTORY. Oklahoma Museum of Natural History, with Oklahoma Archaeological Survey, Caddo Tribe of Oklahoma, and Wichita and Affiliated Tribes of Oklahoma. Contact Julie A. Droke: (405) 325-4712.

31. CONSULTATION AND INVENTORY. Arkansas Archeological Survey, with Osage Tribe of Oklahoma, Quapaw Tribe of Oklahoma, and Tunica-Biloxi Tribe of Louisiana. Contact Thomas J. Green: (501) 575-3556.

32. CONSULTATION AND INVENTORY. Mississippi State University, with Chickasaw Nation of Oklahoma, Choctaw Nation of Oklahoma, and Mississippi Band of Choctaw Indian. Contact John W. O'Hear: (601) 325-3826.

33. CONSULTATION AND INVENTORY. Columbus Museum, with Creek Nation of Oklahoma, Poarch Band of Creek Indians of Alabama, Kialegee Tribal Town of the Creek Indian Nation, Thlopthlocco Tribal Town of the Creek Indian Nation, Miccosuki Tribe of Miami, Seminole Tribe of Florida, and Seminole Nation of Oklahoma. Contact Frank T. Schnell: (706) 649-0713.

34. CONSULTATION REGARDING THE ETOWAH SITE, GA. Peabody Museum of Archaeology, with Alabama-Quassarte Tribal Town of Creek Nation, Cherokee Nation of Oklahoma, Creek Nation of Oklahoma, Georgia Department of Natural Resources, Kialegee Tribal Town of the Creek Indian Nation, Poarch Creek Band, Smithsonian

Institution, Thlopthlocco Tribal Town of the Creek Indian Nation, and United Keetoowah Band of Cherokee Indians. Contact James W. Bradley: (508) 749-4490.

35. NAGPRA PHOTOGRAPHIC DOCUMENTATION. Cincinnati Museum of Art. Contact Bill Mercer: (513) 721-5204.

36. WOTAKUYE WICAGLOKU (BRINGING OUR RELATIVES HOME). Cheyenne River Sioux Tribe. Contact James D. Picotte: (605) 964-2543.

37. DOCUMENTATION AND SUMMARY ASSESSMENT. Leech Lake Band of Chippewa. Contact Rose Kluth: (218) 335-8095.

38. DOCUMENTATION AND SUMMARY ASSESSMENT. Menominee Indian Tribe of Wisconsin. Contact Betty Jo Wozniak: (715) 799-5154.

39. CONSULTATION AND INVENTORY. New York State Museum, with Cayuga Indian Nation, Oneida Indian Nation, Oneida Tribe of Wisconsin, Onondaga Nation, Seneca Nation, Seneca-Cayuga Tribe of Oklahoma, St. Regis Mohawk Tribe, Tonawanda Band of Senecas, Tuscarora Nation. Contact Lynne P. Sullivan: (518) 474-5813.

40. EASTERN MASSACHUSETTS AND RHODE ISLAND MUSEUM CONSORTIUM. Children's Museum, with Fruitlands Museum, Haffenreffer Museum, Museum of Art at Rhode Island School of Design, Museum of Natural History at Roger Williams Park, and Peabody Museum of Archaeology. Contact Joan Lester: (617) 426-6500 x261.

41. CONSULTATION AND INVENTORY. Maine State Museum, with the Abbe Museum, Peabody Museum of Archaeology, Peabody Museum of Archaeology & Ethnology, Aroosook Band of Micmac Indians, Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation. Contact Joseph R. Phillips: (207) 287-2301.



An Interview with Carey Vicenti



CAPITAL PRESENCE

"I still can't believe I'm here," Carey Vicenti says as he walks the streets of the nation's capital. It's a long way from New Mexico for the Jicarilla Apache tribal judge, recently arrived at the Bureau of Indian Affairs to further the development of tribal courts nationwide.

Actually, Vicenti is no stranger to the city, having been instrumental in the passage of the Indian Tribal Justice Act. But this time his presence—as exemplified by this interview—promises to provide Washington with a window on how NAGPRA is galvanizing tribes across the country.

Vicenti earned his judicial acumen from long experience on Apache lands, sitting in judgment for over 30,000 cases. As an activist in repatriation, he admonishes Native Americans to grasp this "historic opportunity to assess where you are as a people." Here he speaks philosophically on NAGPRA's broad impact, sketching its potential to invigorate the system of justice—for American Indians and, ultimately, the entire nation.

PHOTOGRAPHS BY DAVID ANDREWS

FEDERAL ARCHEOLOGY: How did you become a tribal judge?

VICENTI: I came out of law school, went back to the res, and said, "Well, what do you want me to do? I'll gladly work with the tribal attorneys." And they said, "No, we need a judge." And I said, "No, never. Never be a judge."

Then I spent the whole summer looking for work. And different tribal leaders came to me and said, "Well, we really do need a judge." Until I—I think it was just after our tribal feast, on September 15, I counted all the people I'd talked to over the summer and went, "That's the whole council, the president, the vice president. That's everybody. I think I am doomed."

(Laughter)

So I ended up taking the job.

FA: The word "judge" doesn't really encompass everything you do.

VICENTI: Yes, and the history of the tribe has some bearing on it. In the old days, smaller bands of say 40 or 50 Apaches needed someone who decided issues. Because of the exigencies of aboriginal life. You are wandering around gathering food and hunting and some controversy comes up and you can't coalesce into the larger tribe to solve the problem, so you resort to that person.

In post-occupation times these "judges" were picked by the Bureau, but its framework for understanding what they do was really crude. The Bureau thought they just decided cases. So gradually the job transformed into a justice-of-the-peace kind of thing, a Mayberry situation, where people come in and say, solve this problem. But no one even thinks about jurisdictional questions or what the law says. It's just sort of—balance the equities.

FA: Problem solving.

VICENTI: Yes. And people don't hesitate to come in on their own. They don't stand back and say, "I can't talk to the judge, this is an impermissible communication."

On the other hand, I doubt seriously that they look at me and say "This a wise man." Though I did have a funny conversation with some elders. I was urging that they need to be brave at this time, courageous, and don't balk at the difficult issues. And one of them said to me, "You know, you are a pretty wise man." And the other guy sat there, his arms folded over a fat belly and he goes, "Yeah, but nobody knows it."

(Laughter)

People come to me because I have a track record of solving problems. We do about 3,600 cases a year. So over nine years—that's 32,000 cases, approximately.

FA: Let's talk a bit about how this bears on NAGPRA. How do you see the act helping tribal communities?

VICENTI: I don't know if it is a tribe-based issue. It is more of a social reorganization issue, a social mental health issue. When you repatriate objects and human remains, it is such a monumental event, very much like bringing back the Lost Ark of the Covenant. It's giving you an historic opportunity to assess where you are as a people.

And this is consistent with that bravery, that courageousness, I was talking about. I sort of made that story seem small and

facetious, but really I was imploring these elders not to be mediocre with repatriation. Because this is the restoration of some important religious articles.

In the western world, if you have the repatriation of, say, a lost portrait of George Washington, you can have celebrations, shoot off fireworks, and say this is wonderful. But it won't quite elevate to the status of, say, recovering some Dead Sea scrolls where a lot of the Bible is spelled out and explained. And of course that difference in scale portends a lot of very profound implications.

FA: How does courage come into play?

VICENTI: Over the course of repatriation, we may make the most hideous of discoveries that our metaphysics are incomplete. That the restoration of our patrimony doesn't answer all the difficult questions we face. We have to muster the courage to recognize that we are a new generation, with its own issues, and this one is ours.

FA: Could you talk about the kinds of discussions that go on inside a tribe, vis-a-vis NAGPRA?

VICENTI: In my own tribe, a very funny phenomenon has occurred. Years ago, there was a second language type of funding, and people didn't really jump forward and say, well, let's restore the Apache language.

Language is not a major assessment of your character. But how you treat the dead is a real statement of your worth. So with repatriation people just came out of the woodwork and started conversing about what this means.

Not all of the debate has been positive. A lot of it has been like, "I don't want to deal with the dead, you keep them." But when people begin to think about that it may not be just a body in a box, but a body and a jaw, or part of a body and a jaw, or a head on a shelf, people have come forward and said, "Well, that is not right. I don't want to deal with death as an issue, but I think I will on this."

That is on one level. You have cultural leaders coming out. And then on a separate level you have the contention between the political leaders of the tribe and their desire to move forward on repatriation issues, their hesitance to become the primary force in the repatriation process.

In other words, there is almost a church and state distinction looming in the background—partly a carryover, I think, from western civilization. And it could blow up in the long run if we don't take into account that the political leadership may differ vastly from the religious leadership.

Like, for instance, in a case where a political leader, during the election process, may not have stated his or her predilection towards fundamental Christian notions. And therefore, the potential for obstructing repatriation, which is an issue by traditional province.

The discussion has really brought out a new, general societal discussion about the place of tradition and tradition's reaction to modern forces and modern events. And what appeared to be irreversible changes—for instance, the change in family structure.

FA: What role do you play in it as a tribal judge?

VICENTI: I really don't.

FA: What about as a member of the tribe?

VICENTI: Ahh, I just raise difficult questions for everybody. And force them to think and confront them when there is a skirmish.

Actually, my involvement came about in a couple of ways. I went to the traditional leaders and said, "My juvenile court isn't working any more. The juveniles have no respect for me and they don't seem to have respect for any of the tribe infrastructures. Maybe there is something you guys can do, as traditionals, to help me out."

And they took me aside and said, "Well, we have this stack of summaries and inventories. You take care of this for us and . . .

(Laughter)

. . . we will help you out." And I looked at them suspiciously and said, "Wait a second, is this a tradeoff?" And they didn't even bat an eye. It was like, "No, we don't exactly know how to help you until you get all this other stuff in order."

And then it sort of fell into place that, unless they were able to get the traditional, philosophical, religious, metaphysic framework back together, they weren't going to be very useful in tackling alternatives to juvenile questions.

I was really interested in restoring our traditional system of justice. It just took that meeting to finally push me over the edge and say, well, there is a definite tie between the restoration of traditional notions of justice and restoration of the heart of our people. Without the heart, they wouldn't have the mind to pursue restoring our system of justice.

FA: Do people in the tribe have a certain way of dealing with repatriated objects and remains?

VICENTI: Sometimes there is a disparity in what people think should be done. Some people say, "This object may have belonged to the dead, so we shouldn't touch it." I don't know if that isn't a Chicken Little type of attitude.

We have the chance to recover, perhaps, some lost techniques of construction for a lot of items. Lost artistic conventions. Things of that sort. And interestingly enough as well, is that some people are actually discussing whether such things should be held in a museum.

But people are not sure that is the best way. Maybe these items shouldn't be in the hands of museums. Maybe they shouldn't even be subject to public scrutiny. Perhaps they should be studied only by our people and then put away.

In the past, of course, people learned these [artistic conventions] by watching craftsmen do them. People probably studied the object as well. But it wasn't stored in a box for that particular purpose. It was used for whatever it was used for and then the next craftsman would know that.

FA: In terms of repatriation, how do you think museums and

agencies should deal with tribal communities?

VICENTI: Well, we go to a museum with a white stone in one hand and a black stone in the other and say, you choose.

Dealing with museums can be easy or tough. One museum would not allow us access at all. It was not just their saying, "Well, to be honest with you guys, this is bad timing for us. Let's arrange to do it on such and such a date, so we can work jointly." Instead the museum said "No, you can't do it at all."

In which case, the traditional leaders called me up and said, "We want you to go on this trip and, because we want to brag and say that you know how NAGPRA works and that you are, that you are an Indian attorney." And as soon as it was mentioned, the museum just said, "Okay —

(Laughter)

—okay, you can look at whatever you want." And that was it. That is sad. That is really sad. I suspect that there are a lot of curators out there, anthropologists and archeologists, who see the loss of cultural items much as a butterfly keeper would see all his butterflies flying away.

This is going to be a difficult learning period in terms of what this means for these professions. Because I don't think they have thought about what NAGPRA means in depth. It is just sort of . . . legitimacy is a given. How dare you drop an existential question in our lap? We shouldn't have to answer it. Why, we have the momentum of the institution behind us. And the whole scientific world. That is where it is really difficult, coming to grips with a more liv-

ing practice of archeology than this currently somewhat dead practice.

On the other hand, we have seen a couple of archeologists affiliated with tribes who just leap out at this opportunity, almost as if it is a point of liberation for them as well to raid the collection and liberate the anthropologists.

FA: What do you think the future will bring?

VICENTI: I think in the next 10, 15, 20 years you are going to see these professionals become—at least if they abandon some of these older notions—really close friends of the tribal people. And the tribal people will be looking to them to advance their own political objectives.

As an example, I am here to advance the development of tribal courts nationwide. And the battle in past years has been as to whether or not tribal courts are affording due process to their tribal litigants so other litigants can appear before the tribal courts. I feel confident that we will find justifications for why due process, as accorded in the tribal court, is just as fair, if not fairer, than processes that exist in the state or federal court systems.

But we just haven't done it yet because of a lack of familiarity



"One would just hope that tribal leaders and government officials

recognize the importance of

[NAGPRA] and take advantage of

the momentum it creates."

between the Indian people and these professionals. And well, certainly there is a great deal of distrust. But once that is taken care of, we could justify increased funding and perhaps even changes in the federal Indian law that would, ultimately, stabilize tribal governments.

So there is a lot of potential there if these professionals come to see the same vision.

FA: Could you talk a bit about how NAGPRA's western legal approach fits with tribal values?

VICENTI: I don't think it does. NAGPRA is an odd little beast. It is like a bat. It is furry, but it also has wings.

A lot of the language was developed to protect the legal relationship between Indian tribes and the federal government. In other words, it wanted to fit neatly into the normal type of legislation that benefits Indians.

But it also wanted to be a character we call remedial legislation, which tries to take care of a past wrong. For instance, like the federal government obliterated a tribe and then allowed all of its cultural patrimony to be shattered and scattered in all different directions across the nation. And maybe there isn't a tribe left. All we have are the lineal descendants, who can no longer coalesce into a tribal governmental entity.

But they are entitled to protection under this law. And when you start protecting individuals and their rights—in this case their right to patrimony—you have to characterize that as a civil right, or a property right, or a right based upon some kind of vague liberty interest. And you are trying to remediate it with this legislation.

So the problem is the winged portion is dealing with Indians as a group and the furry part is dealing with them as individuals. So we have this collective and individual stuff that seems to be competing. And making it really hell for Tim [McKeown] and Frank [McManamon] to develop standards for who are the eligible beneficiaries of this act. And there is a lot of contention about that.

So as a law it doesn't even fit neatly within the normal western categories. Calling it western law—it even falls short of that designation. And it dovetails with tribal interests only inasmuch as the tribes really need and desire to have their patrimony restored to them. And that's it.

FA: You remarked recently that now is a good time to be an Indian. Could you elaborate on that?

VICENTI: There was a time in my life when I was really sad that I had been born into a time when all the major Indian legal issues were settled. More sadly, they were settled in the Supreme Court, primarily by non-Indian lawyers representing Indian interests. And if my experience is any proper sampling of the total Indian experience, then all that was left for us, especially as lawyers, was this sort of janitorial sweeping up of the small issues after the big ones were solved.

Beyond that was just the fact that I missed out on a lot of that. Missed out on the old ways and the way we lived and the good company and good advice.

But this is a good time because I think we are viewing a breakdown in a lot of the structures in America. We are seeing a lot of American jurisprudence—not just simply in terms of case law—but a lot of the concepts are beginning to run into dead ends. For instance, [the controversy over] computer software and intellectual property, which is really a reaction to the dead ends brought into being by unchanging copyright law or unchanging property law.

And then you have the breakdown in criminal justice as a matter of being totally retributational. You have a systemic breakdown in terms of the adversarial system of justice, and now we see all this migration towards alternative dispute resolution processes—remediation, arbitration, and other projects.

And at least from a judicial perspective, it really suggests to me that a lot of our traditional practices have a great deal of value as an alternative to western systems. And it is just becoming abundantly clear that our notions of contrition and harmony and restoration and so forth are really offering new goals to the system of justice.

As far as social organization, well we have the opportunity to organize and perhaps offer different mechanisms for social reorganization than currently exist in western society. I don't know if they are always viable, but at least they are an alternative.

And that is the bad part about the western world is that we are rapidly moving away from alternatives, or perhaps I should put it, moving away from legitimate alternatives. You are seeing a proliferation of a million different alternatives with no frame of reference by which you can evaluate them.

But a tribal perspective offers an approach to social organization that, for the most part, has been untried in the western world and yet has its own validity. So when I came to realize that, I just went, well, geez, you know, it's like I see the front end of the red carpet to the 21st century.

FA: Any final comments?

VICENTI: Congress kind of screwed up with this legislation. Not enough foresight. I think they just wanted get the issue behind them. But it is by no means a small issue with Indian people.

I think even tribal governments, which are the leaders, play down the importance which this has to their own constituent communities. Because this act has had the strange effect of mobilizing the people at a grassroots level. Either along with their tribal leadership or in spite of their tribal leadership. And that is actually a good phenomenon from the community mobilization perspective. One would just hope that tribal leaders and government officials will recognize the importance of this and take advantage of the momentum it creates.



"When you repatriate objects and human remains, it is such a monumental event, very much like bringing back the Lost Ark of the Covenant."

Oklahoma Tries a Different Path

LIFE AFTER MUSEUMS

Museums can often seem like graveyards of culture, places where objects are brought when they have lost their function in our lives. This holds especially true for Native Americans, who have too often seen their heritage displayed behind glass. Kevin Smith, cultural coordinator at Tulsa's American Indian Heritage Center, can remember seeing a Pawnee medicine bundle (a collection of sacred ceremonial objects wrapped in buffalo hide) on display at the Museum of Modern Art in New York. "I'm not Pawnee, I'm Cherokee," he says. "But I was extremely offended. I remember thinking, 'This should offend anyone with feelings for the sanctity of another person's religion.'"

As federal repatriation laws come into effect, such displays are becoming things of the past. The laws cover not only human remains and the favorite possessions buried with them, but objects still used in Indian ceremonies and important communal belongings such as Iroquois wampum belts or Delaware Mesingw outfits (Mesingw is the guardian spirit of game animals).

Museums were given three years to inventory their collections and send lists of such goods to tribes that might claim them. While the effort is costing established museums dearly (Congress has never appropriated the funds originally meant to pay for the act's requirements), it is a great boon to tribes struggling to preserve their traditions.

It is hard to talk to Oklahoma tribes these days without hearing about cultural centers in the making. The Osage, the Creek, the Wichita, and the Chickasaw already have them, and most others are planning them. With 37 federally recognized tribes in Oklahoma, such museums seem on the verge of a great flowering. Lydia Wyckoff knew she had come to the right place when she moved to Tulsa's Philbrook Museum from Yale's Peabody Museum two years ago. With repatriation in the offing, places like Philbrook were having to reach out to Oklahoma tribes for the first time in years. While some ceremonial goods would leave collections, many more would return in the form of traveling exhibits. "Native Americans are aware that sacred material must be properly taken care of," Wyckoff says. "They can either build a museum that has proper temperature, humidity, and light control—and that's very, very costly. Or we can work with them on exhibits in our museum."

Wyckoff has separate exhibits in the works with the Otoe, Osage, and Delaware tribes. "The Delaware will help us exhibit their things, and we will make a video about the Big-House religion [the religious ceremony was last held in 1924]." Wyckoff doesn't want to tell the tribes how to design exhibits around such traditions. "The whole point is to give them back

the control which European Americans took away. Why should museums perpetuate that by telling them what kind of museum they can have?"

Some tribes hope to take such autonomy a step further. The Chickasaw are working to create a Smithsonian-type national museum of the American Indian—the Museum of Indian Territory—in Tulsa; the American Indian Heritage Center also hopes to find permanent digs in Tulsa, and a consortium of 30 tribes has taken out a lease on property outside Oklahoma City, where it hopes to build an Oklahoma Institute of Indian Heritage. All three face the challenge of fundraising and collection gathering.

AIHC is perhaps further along. Founded by Native Americans two years ago, the center is based at Tulsa's Harwelden and has sponsored Indian art shows at Philbrook and Gilcrease. It primarily serves northeastern Oklahoma. The OIIH, on the other hand, would try to serve the entire state, according to Executive Director Iola Hayden, a Comanche: "We want to provide a place for tribes to show the artifacts that they receive through repatriation," she says. "But we will also have live exhibits, where people tell stories, build traditional houses, play games, and show the way they used to live."

By combining the resources of all the state's tribes, museums like these hope to attract enough visitors and funding to support themselves. "You can't have 60 museums spring up in Oklahoma and have support for all of them," the Smithsonian's Timothy Baugh says. "Museums very rarely pay for themselves, and federal funding is decreasing." On a national level, the same approach undergirds plans for a new National Museum of the American Indian, slated to be built on the Mall in Washington, D.C. in 2001. Directed by Richard West, Jr., son of Oklahoma painter Richard West, the museum will not have regional branches as originally proposed, but it will offer traveling exhibits designed by and for Native Americans. The museum's Cultural Resources Center, to be built in Suitland, Maryland, will have a computer system that will allow Indians nationwide to access descriptions of their tribe's objects in the museum's collection. While some fear that a good deal of the national museum's collection will have to be repatriated, most feel it is on exactly the right track. "A lot of Indian people are putting their hopes in that museum," says Kevin Smith.



Sityaki Revival jar, 1982, Joy Navasie. From "Design and World View: The Politics of Hopi Ceramics," Philbrook Museum of Art. WILLIAM K. SACCO

Excerpted by permission from "Life After Museums," by Burkhard Bilger, Oklahoma Today, May-June 1993.

The Peabody's initial cost estimates for repatriation were based on "what we thought we had rather than what we have now discovered," says Assistant Director Barbara Isaac. In carrying out NAGPRA inventories, staffers have seen the number of North American artifacts jump from an estimated 800,000 to 8 million.

Isaac offers her thoughts on facing "a national responsibility without a nationally supported budget" and how that affects the museum's plans for developing closer ties with Native American peoples.

The Peabody "can never exhibit more than a small fraction" of what lines its shelves, says Isaac, with Robert Ganong and John Stubbs of the repatriation staff.

PHOTOGRAPH BY HILLEL BURGER



An Epimethean View OF THE **FUTURE**

at the Peabody Museum

OF ARCHAEOLOGY AND ETHNOLOGY
at Harvard University

BY BARBARA ISAAC

If viewing the past is likened to looking northwards down the Nile, then deciphering the future must be seen as an attempt to navigate the Sudd, the floating mass of waterweed that obstructs the upper reaches from which the Nile springs. The way travelled is clear enough, but the future, except perhaps for the immediate stretch ahead, is an interwoven tangle of unknowns.

Faced with a task as stupendous as the one demanded by NAGPRA, museum official and tribal member alike peer into this future, endeavoring to clarify the way ahead. Even though the legislation prescribes an identical route for all museums, the ends of the journey may not be the same, and no prediction for the Peabody will necessarily apply to other museums.

In the past I have hesitated to offer such a prediction because to do so is a daunting and presumptuous task. However, since the staff of the National Park Service has been unerringly patient with our numerous telephone calls, my sense of gratitude has overridden my judgement. And now, after six weeks of thought, I am even less sure of what lies ahead. So I take Epimetheus as the model to follow, "always looking behind him to see what had happened, till he really learnt to know now and then what would happen next," as Charles Kingsley wrote in *The Water Babies*.

The history of the Peabody Museum of Archaeology and Ethnology is such that existing attributes and conditions will significantly affect its future. The first is, quite simply, one of size. It is not that great size is a prerequisite for survival but, like a stranded whale, it does not make for an easy disposition.

The collections at the Peabody are gargantuan. One of the byproducts of the NAGPRA inventory process has been to clarify the numbers of North American items in our care (themselves a fraction of the whole). Under our eyes these have increased, in the case of human remains, from an estimated 7,000 to about 10,000, and multiplied, in the case of archeological objects, by a factor of ten from an estimated 800,000 to 8 million.

To those who can't understand why the staff cannot exactly enumerate the collections, the answer is that, although our registration and documentation have always been thorough, to keep running totals—by varied classificatory systems, of different accessions and types of objects from across the world, through 36 catalogue registers and thousands of catalogue cards—was never seen as important, and indeed never was until we needed to present an inventory as defined by NAGPRA.

BUT THE SIZE OF OUR COLLECTIONS relates intimately to the second factor affecting our future: our mission. This is as important to a museum as a lodestar is to our Nile navigator. Collections can be administered exclusively and inclusively with perhaps a direct relationship between large size and exclusivity. The Peabody is from foundation and of necessity a research museum (its staff can never exhibit more than a small fraction of what is held). Its mission holds that "concern for education at all levels should characterize and influence every aspect of the Peabody Museum."

Implicit is the sense that our collections are held in trust. Despite Harvard's image as a bastion of privilege and despite the size of its collections, the Peabody is not an exclusive museum and this trust is not seen as an exclusive one. Since new storage facilities were completed in 1986, collections management staff have made every effort to accommodate visits and research requests from all and every possible constituent. There is a real and palpable sense amongst the staff that this trust is to be practiced both on behalf of the larger institution of Harvard University, which presently holds title to the collections and

spends a large sum each year in properly maintaining them, as well as on behalf of those communities from whom the collections came. Again, to quote from our mission: "The Peabody Museum has a special role and responsibility . . . for developing closer relationships with Native American peoples."

The dedication of the staff to serving the needs of those outside the museum has created a record of past behavior that informs my hope for the future. The Peabody did not wait for NAGPRA in order to address problematic issues. In 1972, 39 individual skeletal remains were conveyed to the Narragansett for reburial; in 1976, despite no legal obligation on the part of the Peabody, collections of national importance were returned to Mexico; in 1989, the Sacred Pole was repatriated at the request of the Omaha. I would argue that over the years the Peabody, supported by Harvard's administrators, has shown a thoughtful and responsible attitude not only towards its collections, but to the interests of those diverse peoples who also have claims that need to be considered.

ANOTHER FACTOR that has had an immediate and urgent effect on the museum has been that, during the five years from mid-1991 to mid-1996, Neil Rudenstine, the president of Harvard, has seen fit to make funding available to meet, if possible, the NAGPRA deadlines. The conditional is invoked here since the original estimate of funding, itself substantial, was based on the numbers of what we thought we had rather than what we have now discovered as a result of the funded work. The eventual financial burden will be enormous.

Is it possible for the museum to continue its course with only gentle adjustments into the next century? Some adjustments are certainly required. These are suggested by existing anxieties, caused by the following conditions.

The first is related to the Peabody's staffing structure. As a university museum its director and curators are senior faculty with full-time teaching responsibilities. Despite the importance of the collections, there is no faculty member, with the exception of the associate curator of comparative ethnology, for whom the collections are the primary responsibility, for whom the first and foremost interest is potential research opportunities and the need to engage elders, scholars, and artists from the wider tribal or international communities—as well as academics and students—with the objects remaining in our care. This has left the museum without full-time champions totally dedicated to its long-term development, without which its cultural and humanistic potential cannot be realized.

This is not to say that the museum hasn't been excellently served by past and present directors. Our present achievements testify to that; but in being asked to look at the future it is a combination of this fact with others that gives cause for concern.

The Peabody is not a local museum growing out of neighborhood support, nor is it a state or nationally funded museum. Yet because of its size, its antiquity, and the quality of its holdings, both cultural and archival, the Peabody may correctly be regarded as a national treasure. Under NAGPRA guidelines it sent out summaries of collections to all 756 of the recognized tribes. In addition, it holds objects that are affiliated to many groups that were terminated or have never received recognition.

The breadth of the holdings therefore places this museum, along with several other large university institutions, in a situation where it is essential for staff to consult with tribes across the country. In this it has a national responsibility but not a nationally supported budget. In fact a proposal for funding a portion of the crucial inventory of human remains and associated archeological objects had to be turned down by the National Park Service, along with many others, due to lack of funding by the federal government. This means it is highly unlikely that the inventory process can be finished in 1995.

It becomes apparent that the museum's future relationship with tribes—whether that immediately mandated by NAGPRA or post-repatriation, allowing the full and appropriate use of the collections still housed in the museum—will be equally difficult to administer if the staff continue under the same extreme pressures as they do today. With only a modest endowment in relation to the huge size of the collections, the museum is dependent on a larger academic institution that has to mediate among several urgent educational priorities. Even if future directors and staff continue to fulfil the stated mission and foster access to the collections, if the endowment and budget remain at present levels, it will become increasingly difficult to meet the requirements of all our constituents in a timely fashion despite our very best attempts.

Nonetheless, however difficult, the requirements of NAGPRA will eventually be met and the view that the museum is a charnel house and that it closets the spoils of an unjust history will become untenable. Yet, once these charges are nullified by the appropriate return of human remains and other sensitive objects, there will still be no defensible future for the museum if the interests of tribal groups cannot be actively engaged with the collections that remain. Such an engagement will happen only if telephone requests, letters, and visits can continue to be processed promptly and respectfully.

One change that is already underway is in the type of access offered: I have emphasized that access should be general and open, but it is necessary to add that not all access will be equal. There are some areas that should be accorded privacy. Helping the director and staff to define these is part of the responsibilities we expect from our visitors. Allowing boundaries to be drawn is no more than what the university already accords to other segments of the population such as professors whose papers enter the Harvard archives.

BEING WHAT I AM, a pragmatic Anglo Saxon female of middling years, I cannot predict all the specific reasons that lie behind any one individual or group of individuals wanting to consult over what is contained in our shelves and archives. In the past this has ranged from a Chumash singer seeking information on regalia to be worn while celebrating the return of condors to the wild, to a filming of the Feejee mermaid for Japanese TV viewers. But it is not necessary to predict these needs. What the importance of our collections may be to those who experience them should be defined and continually redefined by the users.

For me, there is no sense of property, censorship, or ownership, but rather an understanding, old-fashioned perhaps, that to enjoy something can make it one's own without depriving others of the

same experience—and as something is enjoyed so it becomes imbued and enriched with greater and greater meaning. So many objects in museums have been decontextualized from all but the most impoverished of frameworks that it is a major challenge to bring them back into connection with the real (dangerous word!). This is a challenge for future tribal members and anthropologists that is appreciated at the Peabody and that we hope, with our help, will be met.

EVEN IF THE PEABODY were to return half of the Native American collections, the balance still to be curated for North America and the rest of the world would be extremely large and there is nothing to prevent it from growing in a governed way. There will continue to be an avoidance of items acquired unethically. But the ongoing vitality of North American Indian and indigenous cultures elsewhere ensures that museums have a responsibility (if they believe in their missions) to acquire new collections. The Peabody has just received a bequest of 1,200 items that will significantly expand the southwestern collections, particularly for items made between 1950 and 1980. Only about five objects fall under the provisions of NAGPRA, presumably reflecting the new and enlightened attitudes towards what it is appropriate to acquire.

Finally one of the greatest pleasures and potentials for change during the last years has been the involvement of local Native Americans—helping us on our repatriation committee; creating exhibits (three have been mounted recently, with staff assistance: "Cayoni: Traditional Creek Wood Carving," on the work of Joe Johns; "Enduring Rhythms: Songs and Dance of the Pueblo Indians," curated by Louise Naranjo in 1993; and this year "The Children of Changing Woman," by Ernestine Cody Begay); and collating and checking records for input into the database.

Early on there was outraged glee when it was discovered, during the perusal of some ancient records, that a sacred object had been illicitly carried out of a pueblo in a loaf of bread! Since then, the students and the staff have been involved in wide-ranging discussions that have not avoided the harder issues of museum and tribal responsibility during and after repatriation (see reference). Vigorous debate has been carried out with honesty and respect on all sides, thus offering a means of developing appropriate procedures—the museum's stated mission mediated by a constituency that is at once Harvard and tribal.

To those observers who question whether the Peabody will still be around 100 years from now (the irony of the question is not lost on me) the answer is a resounding yes.

Reference

Collaborative Management. Paper by Anne-Marie Victor-Howe, Kate McHale, Kathy Skelly, Patrick Tafoya presented at a panel on indigenous curation, American Anthropological Association, December 1994.

For more information, contact Barbara Isaac, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, (617) 495-2248, fax (617) 495-7535.

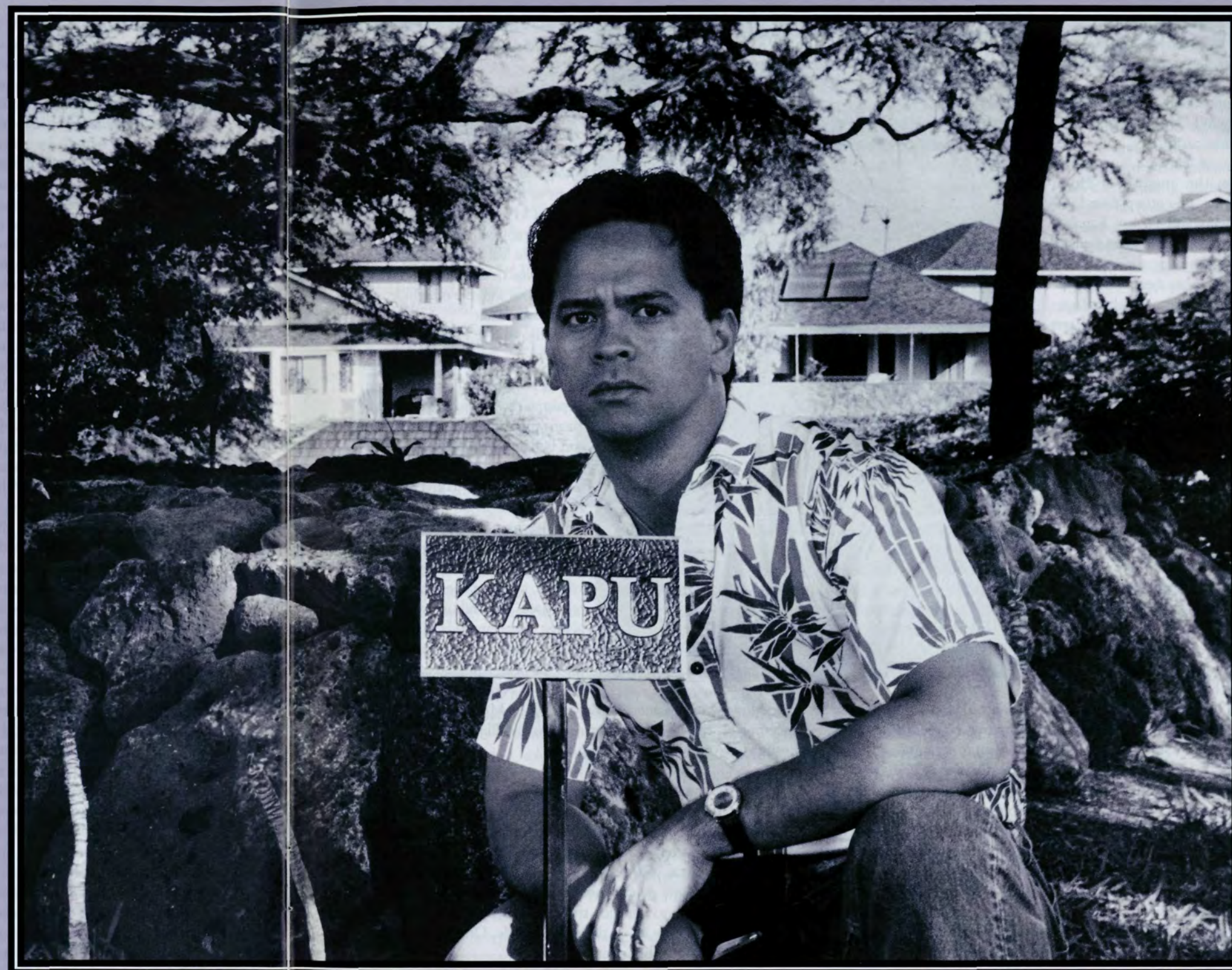
Rooted in Native Soil

By EDWARD HALEALOHA AYAU

The transformation of a few politically powerless native Hawaiians into a force that can move institutions began when ancestral graves were removed to make way for a luxury hotel on Maui in 1988. Edward Halealoha Ayau reflects on the growth of

the group Hui Mālama I Nā Kūpuna 'O Hawai'i Nei and its recent dispute with the University of California's Phoebe Hearst Museum.

Above: *Kapu* means "taboo, sacred, forbidden, consecrated," says Ayau, next to a *kahua pohaku* (stone platform) built to protect a Native Hawaiian reburial site. The brass sign, he says, "warns all to stay away but does not explain why in order to protect the *huna* [secret] associated with the *nā iwi kūpuna* [ancestral bones]."



In Hawaiian, the word *kānu* means to plant, to cultivate. It is a native Hawaiian belief that from this planting comes *ulu* (growth), both physical and spiritual. The bones of our ancestors nourished the ground from which our food grows, which, in turn, nourishes our bodies. Secure in the knowledge that our ancestors are where they belong, in Hawaiian earth, free from harm, our spirits are nourished as well.

When speaking of one's ancestors, it is appropriate to recite one's *mō'okū'auhau* (genealogy). By reciting the names of my ancestors, I am reminded that but for their existence, I simply would not be. I am humbled by this reminder and duty bound to care for those who came before me.

In 1988, on Maui at a place called Honokahua, a private landowner obtained permits to develop a Ritz Carlton hotel. During con-

struction, more than 1,100 ancestral native Hawaiians were archeologically removed and examined, over many protests.

Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, which means "group caring for the ancestors of Hawai'i," was born from the anguish of Honokahua. The group, founded by Edward and Pualani Kanahale, was established to return the bones of the native Hawaiians to their families, to replant them, and to protect sacred burial and reburial sites. Eventually, native Hawaiians pressured the state to purchase the land at Honokahua and appropriate funds for reburial. The ancestors were ceremonially replanted and the reburial site sealed.

One lesson learned from Honokahua was that, even though it was our sacred responsibility as descendants of these ancestors, we did not have the legal authority to determine the proper treatment of their burial sites. Nor were many of us trained in the protocols related to the handling of ancestral burial objects. Much had to change.

In July 1990, state legislation was enacted creating island burial councils, made up of a majority of native Hawaiians, to decide whether to preserve or relocate burial sites on state and private lands. I administer the councils as director of the burials program, which is part of the state historic preservation division in the department of land and natural resources.

On the federal level, the National Museum of the American Indian Act specifically authorized Hui Mālama to conduct repatriation of remains and burial objects from the Smithsonian. In July 1990, the group coordinated the first of three repatriations from the Institution's National Museum of Natural History. These efforts, culminating three years later, resulted in the return of approximately 229 ancestral native Hawaiians and burial objects.

Funds for the first repatriation came from our own pockets—so strong was the inspiration, the calling, by the ancestors to be brought home. What Hui Mālama began to understand from this first repatriation experience is that we are merely vehicles to conduct the work and that it is really the ancestors who are directing us, guiding us to them and returning them home.

To listen to the calling, the group maintained *pule* (prayer)

ADVICE ON WORKING WITH MUSEUMS

I wish to make the following suggestions to assist tribes with repatriation efforts.

First, and above all else, follow your own teachings and draw strength, guidance, and inspiration from your heritage. Adapt NAGPRA to your indigenous culture.

Second, establish a working relationship with museum staff. The effort will help establish and clarify the museum's philosophy with regard to NAGPRA compliance.

Third, identify the decision-making process or hierarchy at the museum. Be clear who the decision makers are and make it clear to the museum who your decision makers are.

Fourth, for purposes of clarity, reduce discussions to writing wherever possible. Leave little to assumption. Moreover, copy the National Park Service NAGPRA program on correspondences.

Fifth, in problematic cases with uncooperative museums, ask your congressional delegation to write letters or make telephone calls. In extremely problematic cases—and where the culture agrees—use the media to convey your intentions. We have found from experience that society in general agrees with good faith efforts to return ancestral remains, rather than with museum demands to withhold them from reburial.

Finally, whenever making an assertion, ask the museum official to explain back to you what they think you meant. For example, we may say to Museum X, "Don't study our ancestors." By this we mean no taking or gleaning of any scientific data whatsoever. However, the museum may think we meant, "minimal recording of age, sex, stature, pathologies, cranial measurements, denotation, and ethnicity determination is acceptable, but not intrusive examination such as DNA analysis and/or carbon dating."

If we do not clarify what we mean, the museum may think it adequately consulted with us. For their part, encourage museums to request clarification of any statement or action by the group or any member.

—Edward Halealoha Ayau

requesting assistance and inspiration from God and the ancestors. We ask,

e hōmai ka 'ike
grant us knowledge,
e hōmai ka ikaika
grant us strength,
e hōmai ka akamai
grant us intelligence,
e hōmai ka maopopo pono
grant us righteous understanding,
e hōmai ka 'ike pā pā lua
grant us visions and avenues of communications with the other side,
e hōmai ka mana
grant us positive energy.

In November 1990, the Native American Graves Protection and Repatriation Act provided the legal means to return ancestral remains and burial objects to Hawai'i. The new law represented an attempt to make things *pono* (correct; right) for these ancestors.

By learning the language of NAGPRA, and more importantly, by spiritually reconnecting with *nā kūpuna*, we have been inspired to repatriate and rebury ancestral Native Hawaiians held at federally funded institutions ranging from the American Museum of Natural History in New York City to the

Field Museum in Chicago. Internationally, Hui Mālama has returned ancestral Hawaiians from as far away as the University of Zurich Institute of Anthropology.

Hui Mālama firmly believes that the repatriations and reburials were a direct result of intervention by God and the ancestors to inspire and energize us. For us, *pule* is reality, for through *pule* spiritual help is requested to affect the physical world. And so the relationship between ancestors and descendants is one of interdependence—the living have a duty to care for the dead. In turn, the ancestors respond by protecting us on the spiritual side. One cannot completely exist without the other.

At the same time, the members of Hui Mālama have been subject to the pain suffered by the ancestors as a result of the taking. By acquiring knowledge of past mistreatment, we relived anguish and frustration. This motivated us to accept the responsibility of caring for the ancestors and ultimately seeking what is right.

In Hawaiian thought, sense of place is a very strong value—that which is above remains above, that which is below remains below. The proper place for ancestral Hawaiians is not on a museum shelf or display, but rather planted in Hawai'i. Absent con-

sent from families, ancestral remains should never have been removed. Such actions have disturbed the balance of things.

For the most part, our experiences with repatriation have been positive. We offer museums two paths. The first is one of peace. We say treat us as partners, as natives, as human beings, and follow the NAGPRA law. We hold much aloha for those institutions who have, and share our hospitality with staff whenever they visit Hawai'i.

The second path is confrontation. We prefer the former; however, it does not matter which path is selected. In sharing aloha or going to war, we maintain a balanced perspective.

Our experience with the Hearst Museum followed the second path. In September 1992, the museum repatriated two incomplete sets of ancestral Hawaiian remains to Hui Mālama, refusing at the same time to release two additional sets. We asked the NAGPRA review committee to help resolve the dispute.

At issue was testimony by members of Hui Mālama regarding a ceremony conducted at the museum. The members said they were clearly inspired by the spirits of the ancestors to take them *all* home. Hui Mālama asserted that to rely solely on physical evidence would discriminate against us as a spiritual society. The committee decided to hold hearings in Hawai'i on the matter.

For the first set of remains, Hui Mālama established their cultural affiliation with ethnographic, archeological, and osteological data—in addition to spiritual evidence. However, with regard to the second set of remains, the skull of "a Polynesian," the committee was unable to make a finding of affiliation. Nonetheless, the committee recognized that the remains were clearly from Hawai'i and recommended they be returned to a museum there to help clarify the issue.

The museum accepted both recommendations. In August 1993, Hui Mālama returned to the Berkeley campus of the University of California, where the museum is located, to conduct repatriation. Upon return to Hawai'i, the second set of remains were turned over to the Bishop Museum, which conducted physical examination and confirmed that the remains were indeed that of a *kanaka maoli* (native Hawaiian). Soon thereafter, both sets of remains were replanted.

Our efforts, then and now, are guided in part by a belief that the ancestors may exact retribution for failure to protect them from those who would steal their *mana*. We advocate against scientif-

ic study. In our view, such actions amount to desecration—handling bones without prayer, without protocol, and with the intent to take without permission. We wonder how an act that desecrates the dead could possibly benefit the living. Moreover, we wonder what benefits accrue to the ancestors.

For those who advocate osteological examination of native Hawaiian remains, I say the following. Osteology begins at home. Study the bones of your ancestors first, before touching ours.

In my grandmother's last days, she never told me that my lessons in Hawaiian culture would continue beyond her death by digging up her bones and subjecting them to examination. This is not a Hawaiian custom. Instead, without saying, my grandmother's teachings continue through my prayers and dreams. The point is that science is not the only means to define man's existence. Spirituality is the necessary balance.

Hui Mālama members have been taught by our *kumu* (teachers) that:

Nana mā kou e mālama i nā iwi o ko mā kou kūpuna
Nāna mo'o e mālama i kou mā kou iwi
A hō'omau ka lōkahi o kā kou.

We will care for the bones of our ancestors
Our children will care for our bones
As we continue this interdependency.

Hopefully, if we teach our children right, barbaric acts of grave robbing will not happen again and our own bones can be planted, grow, then disintegrate and return to *Pā-pāhanaumoku* (*Pāpā* the earth mother). I close with the words of the Kohala chief Kamehameha, who united the Hawaiian islands under one rule:

Imua e nā pōki'i a inu i ka wai 'awa'awa
'A'ohe hope i hō'i mai ai

Forward my children and drink the bitter waters
There is no turning back.

Mahalo.

For more information, Edward Halealoha Ayau can be contacted at Hui Mālama, Post Office Box 190, Hale'iwa, Hawai'i 96712-0190, (808) 587-0010, fax (808) 677-8230.



The reburial site's stone platform, built by master Native Hawaiian mason Billy Fields, "covers a bottomless cement vault intended to protect our ancestors' return to the earth goddess Haumea," says Ayau (right).

By Rosita Worl



Until the 1960s, Indian children grew up playing "Cowboys and Indians," and more than likely, they wanted to be the cowboys. They never wanted to be anthropologists, however, and today there are less than 70 Indians in the profession.

With NAGPRA, Indians and anthropologists have the opportunity to reconcile their differences or redraw the old battle lines. The knowledge held by both parties will be central to the repatriation process, which promises to involve over 500 museums and institutions. If a cooperative stance is adopted, both Indians and anthropologists, and as a consequence the general public, will benefit. If an adversarial position is assumed, expect a long, drawn-out fight in which both sides could suffer.

NAGPRA mandates a legislative resolution to the competing philosophies of Indians on the one side and museums and scientists on the other. Anthropologists argue that human remains and cultural objects have scientific and educational value, and therefore should be preserved. Indians contend that appropriating human remains violates the sanctity of the dead as well as the civil rights of the living. Indians also maintain that alienating a tribe from its culture undermines its integrity and ability to survive.

In this battle, Congress ruled on the side of the Indians. However, Congress did not *carte blanche* mandate the return of native remains and objects. Indians must substantiate their claims.

Stated simply, the basic goals of anthropologists are to obtain, record, and transmit cultural knowledge. A general assumption is that they need access to cultural material to meet these objectives. By offering new alternatives, NAGPRA challenges this supposition.

Rather than lament the loss of access, anthropologists should see repatriation as an opportunity. Collaborative research between anthropologists and Indians could very well lead to broader, deeper insights into Native American societies. Not only that, such collaborations could introduce a new methodological approach to the field of anthropology,

which has a history of evolving through such intellectual changes and shifts in methods.

To validate their claims, Indians will have to provide substantial amounts of information. Undoubtedly, they will consult the anthropological literature, and in some instances see the need to correct it.

Some Indian groups have been the favorites of anthropologists, and much has been written about them. Others have been studied less. These tribes will, of necessity, require addi-

NAGPRA: Symbol of a New Treaty

tional research to pursue their claims. Of course, they will interpret the research from their own perspective—how they view the world and the significance of objects in specific rites. While some might question their scientific objectivity, such interpretations have been lacking in the literature, and are bound to bring new insights and challenge earlier assumptions.

Information on claims must, of course, meet certain standards—in order to withstand review by the repatriation offices of museums and agencies. Indians must prove that each associated funerary object, sacred object, and object of cultural patrimony is exactly that. They must then demonstrate that the object was previously owned or controlled by their tribe or a tribal member. To support a claim for an unassociated object or a sacred object, Indians will need to describe ceremonies in which it was used as well as the role of their religious ideologies. An object's significance to specific funerary rites must be described. For

objects of cultural patrimony, Indians must demonstrate communal ownership and what that means in terms of their traditional property laws.

These activities offer Indians and anthropologists a unique opportunity to analyze sociocultural changes since European contact. Indians may be required to identify the forces that prevented the practice of traditional rituals, and describe the resulting impact on their tribes. At the least, they will have to describe the historical circumstances leading to an object's alienation from their culture.

The return and reintegration of cultural objects has untold consequences for renewal among tribes. In addition, the research required by the repatriation process will help us understand why these traditional cultures persist.

For anthropologists, repatriation could be an employment windfall. Not since the National Environmental Policy Act of 1969, which requires agencies to consider the cultural impacts of construction activities, has the field of anthropology been given such a boost.

The study of material culture will gain, not lose, in the process. Traditionally, anthropologists begin their research by analyzing a specific social or cultural phenomenon, with the role of material culture generally secondary or peripheral. The repatriation process, however, focuses on objects within their cultural setting—which is the essence of material culture. The resulting research can only enhance our knowledge.



BOB HALLINEN/ANCHORAGE DAILY NEWS

Rosita Worl is a Tlingit from the Thunderbird Clan of Klukwan, Alaska. An anthropologist with the University of Alaska Southeast, she is

To truly fulfil all this potential, Indians and museums must not let substantiating "right of possession" pit them against each other. For each object, Indians must present evidence that an agency or museum does not have the right to possess it. The museum or agency, to maintain possession, must prove that it does. While it is expected that museums will seriously review all repatriation requests, they could instead use their resources to vigorously support their right of possession. Meaningful consultation among all parties is the only way to avoid such conflict.

curator of "Tlingit Clans and Corporations," a planned exhibition at the Smithsonian's National Museum of Natural History. Worl also serves on the board of trustees for the National Museum of the American Indian, Smithsonian Institution. For more information, contact her at SEALASKA Corporation, P.O. Box 21454, Juneau, AK 99802, (907) 463-5012, fax (907) 586-1003.

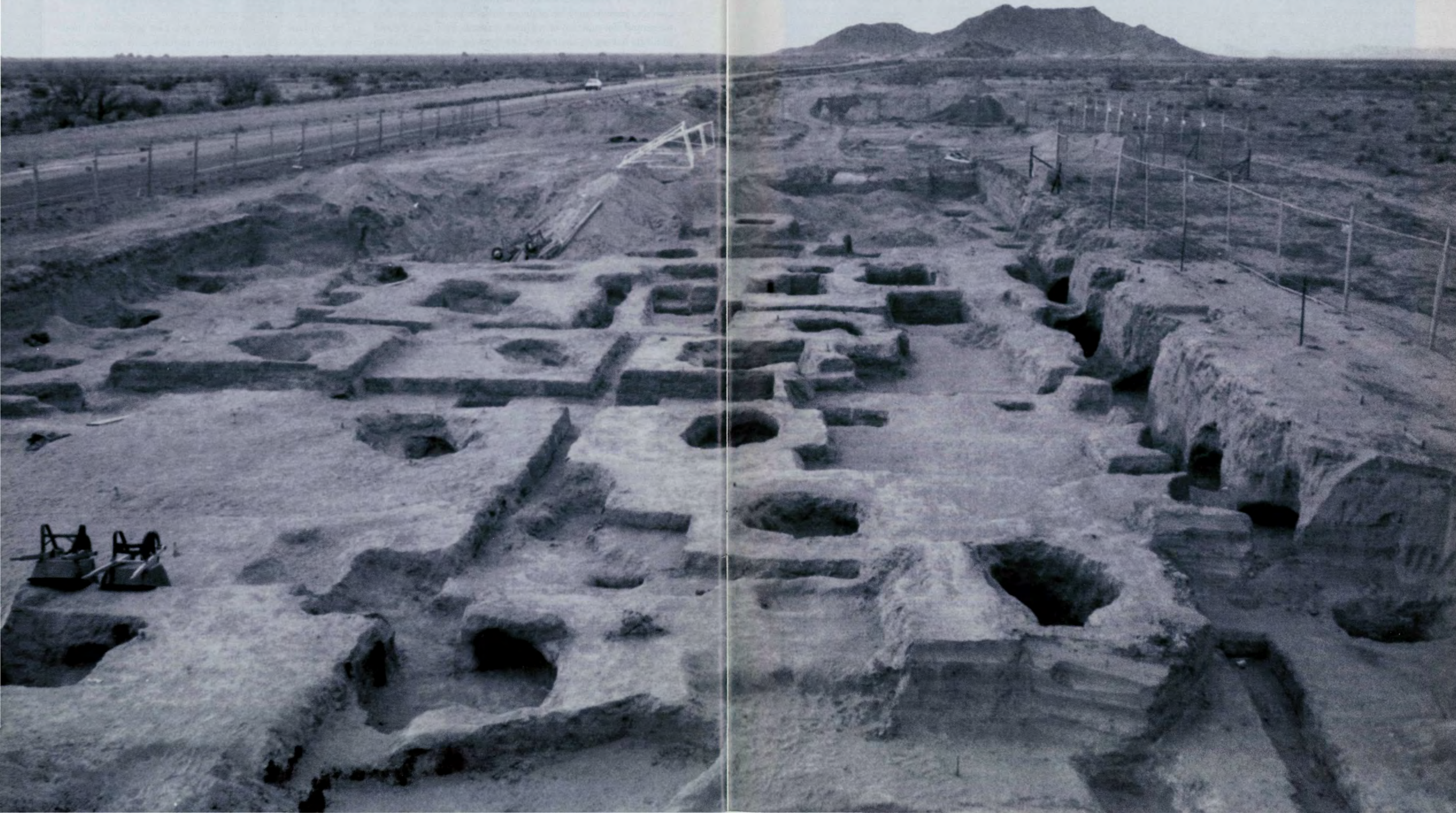
Above: Unloading one of four intricately carved posts returned to a village whale house in Klukwan, Alaska, after a decade of litigation arising from their sale to a Seattle collector. Worl was an expert witness in the case, which voided the purchase because the village had not ratified it.

THE ROAD TO COMMON GROUND

The Gila River Indian Community, home of Arizona's Pima and Maricopa tribes, has had a strong working relationship with archeologists since they excavated the Hohokam site, Snaketown, over a half century ago. Today, with burgeoning Phoenix encroaching on its boundaries, the community has become a force

in Arizona archeology, as was evident when a gravesite was found during construction of a four-lane highway through the reservation. John Raveslout, the project's principal investigator, talks about finding the middle road between tribal values and scientific goals.

BY JOHN C. RAVESLOOT





Before white settlers diverted its waters in the late 1800s, the Gila River was the lifeblood of Pima farmers, who worked the desert soil much as they had for generations. "The Pimans reflected a mode of living that stretched back in time more than 2,000 years," said the late Emil Haury, who excavated the Hohokam site, Snaketown. The remains of native settlements line the length of the river, which bisects the reservation where 12,000 Pima (known as Akimel O'odham, or "River People") and Maricopa (known as Pee Posh, or "People") live today.

Both tribes claim ancestry with the Hohokam, the ancients who made the arid flatlands bloom for centuries. "The enduring character of Hohokam society was, in large measure, a product of their nearly perfect adaptation to a desert homeland," said Haury. When 450 Hohokam gravesites were found during the building of the Papago Freeway in downtown Phoenix, Gila River residents played a major role in reburying the remains outside the right of way. In 1989, the community joined forces with others tracing their lineage to the Hohokam—the Salt River

Pima-Maricopa Indian Community, Ak-Chin Indian Community, and Tohono O'odham Nation—to develop a policy for preserving their shared heritage.

The residents of Gila River are genuinely interested in what archeologists have learned about their past. Nonetheless, they have strong feelings about the ultimate disposition of their ancestors' remains. They prefer that burial sites be left undisturbed. Given the explosive growth of neighboring Phoenix, this is not always possible.



Top: Fording the Gila River, ca. 1910, its depths drawn down by settlers upstream; above: Pima man planting wheat, 1906. Many reservation residents still farm as a way of life.

D.B. LINDERMAN/ARIZONA STATE MUSEUM/UNIV. OF ARIZ.

In 1989, the Pinal County Highway Department proposed widening 14 miles of reservation road into a four-lane highway. At the department's request, archeologists from Arizona State University surveyed the right of way in advance of construction. They found seven archeological sites. The department realigned the road around four of them and asked the archeologists to assess the rest for eligibility in the National Register of Historic Places.

One—a Hohokam village—was eligible. Arizona State, at the department's request, prepared a mitigation plan, which proposed excavating the site. Meanwhile, the community was making its own plans to steer the project. A 17-member tribal council, which repre-

sented Gila River's seven political districts, stipulated that:

1. The tribal council have veto power over the mitigation plan.
2. All artifacts, which are considered community property, be protected in storage designated by the mitigation plan. Storage outside the community is considered temporary until a site inside is found. All artifacts shall be returned upon demand to the community.
3. Human remains be treated with reverence and immediately reburied at a site determined by the community. Limited non-destructive analysis of such remains will be granted prior to reburial, but knowledge of the reburial site will be restricted.
4. The community's land use planning staff be informed immediately should human remains be encountered in order to monitor their recovery.
5. Should any agreed-upon plans be altered, by any agency, before or during excavation, the community be informed well before the changes go into effect.

Arizona State agreed to limit skeletal analysis to nondestructive techniques such as cleaning, inventory, visual documentation, and measurement. However, the university argued that immediately reburying remains and associated funerary objects would not allow time for adequate analysis and documentation. The university asked Gila River for three months (following field investigations) for study in the lab. The community agreed, but requested that the archeologists make every effort to return any remains and associated artifacts as quickly as possible.

After working out these few points, the two parties drew up a memorandum of agreement merging the mitigation plan with the community's stipulations. Once field investigations got underway, it became clear that the planning had been worth the effort when the archeologists discovered a series of Hohokam cremations and associated funerary objects. That discovery, though important, was soon eclipsed by a find that would galvanize the entire community.

In July of 1990, the first evidence of a turn-of-the-century cemetery began to surface. Who was buried there? If the graves were Pima, they could provide a rare glimpse of a society that left few written records. Never before had a Pima cemetery been excavated.

For the community, the discovery had many unforeseen ramifications. Should the remains be paved over by the highway? Or should they be exhumed? Whose traditions should guide reburial? Those of the Pima? The Maricopa? Was it a Christian cemetery or was it a traditional one? Several districts came forward with competing claims for the site.

In light of this unexpected turn of events, the community and

Arizona State halted the investigation to reexamine their agreement and plan a new course of action.

Interviews with elders and review of historic maps failed to determine who may have been buried at the site. While a few elders remembered seeing the cemetery as children, none could recall

how large it was, when it was used, or who used it. It was common knowledge, however, that Pima and Maricopa Indians lived side by side in the general vicinity during the mid to late 1800s.

For this reason, and because archeologists found a ceramic vessel some recognized as Maricopa, community members thought the burials might be of that tribe. Some elders, however, argued that the Maricopa always cremated their dead. That left the decision with the Pima.

Arizona State put forth several options to avoid or mini-

mize disturbance to the cemetery if the road widening went forward as planned: 1) Move the right-of-way; 2) Cover the site with several feet of protective dirt before construction; 3) Excavate the burials and associated funerary objects, conduct nondestructive study, and then return them to the community for reburial; 4) Have a mortuary company relocate the cemetery.

In October of 1990, after three months of discussion, the community chose the third option. Community members did not want the burials paved over; rather, they wanted the dead reburied in the same fashion as they had been originally. A mortuary company, they concluded, would not have the background to accomplish this goal. They felt that the slow and meticulous way in which archeologists work would not only provide the necessary information for reburial but also ensure that the remains were treated with respect and dignity.

The community's natural resources committee (which also handled cultural matters) gave Arizona State the go-ahead to excavate based on the earlier provisions of the memorandum of agreement. However, the committee asked that the analysis focus on determining whether the remains were of Pima or Maricopa descent.

The resolution of this issue, while of interest for its historical value, was important from a practical standpoint as well. Which district(s) should be responsible for selecting a reburial site and conducting the reinterment? At the time, with several districts laying claim to the burials, the tribal council was at an impasse.

The excavation turned into a cooperative effort between the community and Arizona State. Pima and Maricopa worked alongside graduate students in archeology and physical anthropology, all under the supervision of university archeologists. Since everyone was concerned about vandals, a security firm was



Pima roundhouse, 1934. D.B. LINDERMAN/ARIZONA STATE MUSEUM/UNIV. OF ARIZ.

hired to protect the cemetery during nonworking hours.

Several days after fieldwork resumed, in November 1990, Gila River asked the university to hold the Hohokam cremations and associated funerary objects beyond the 90 days originally agreed upon. The additional curation time would enable the community to arrange for the return of all the burials recovered during the project. At the same time, the university was instructed not to use cardboard boxes for temporary curation of human remains. Rather the tribe asked that lightweight wood boxes, with brass fasteners, be constructed for containment.

The university agreed to extend the 90-day period. The manner in which the remains were curated was another issue. While Arizona State respected the tribe's wishes, the project budget would not allow any other form of temporary storage. Furthermore, the university questioned using wooden boxes for storage (and reburial) since neither the Hohokam cremations nor the cemetery remains had been buried in coffins. After some discussion, the community agreed to the cardboard boxes.

Sixty-three burials were ultimately removed and transported to the lab for documentation and study. During the course of the laboratory work, the university made several presentations to the natural resources committee, tribal council, and elders to keep them abreast of the research, particularly those aspects related to assessing the cultural affinity of the remains. The archeologists also invited the community—and in particular the elders—to inspect the lab and repository, to give them a first-hand look at how the analysis was done and the remains stored. About 75 elders accepted. They considered the tour an important learning experience and asked the archeologists to make a presentation in the community so all could learn how tribe members were buried a century ago.

In accordance with the memorandum of agreement, the university completed study of the remains within 90 days, in May 1991. The research revealed the site to be a late 19th or early 20th century Catholic Pima cemetery, which may have been in use for only a relatively brief period. A genetic affinity assessment of the burials, made on the basis of comparative dentition studies, provided some support for this interpretation. The dental evidence suggested that the burials were more closely related to modern day Pima than Maricopa Indians, although Mexican and Maricopa dental traits were present as well.

At the community's request, the university agreed to continue curating the cemetery burials until such time that the tribe found an appropriate reburial site. This process was a lengthy one, tak-



Blacktop laid over the cemetery's former location, an 18-wheeler rumbles on to points unknown.

ing two years to complete. The burials, along with the Hohokam cremations, were returned to the community in the spring of 1993. During the fall of the same year, a reburial ceremony took place attended by community members only.

It is hoped that the above summary provides some insight into how we in Arizona, archeologists and Native Americans, are dealing with the multifaceted ramifications of the Native American Graves Protection and Repatriation Act. I believe our experi-

ence demonstrates that the implementation of this new law will be a lengthy process, requiring considerable time and effort by Native Americans and archeologists alike. Native American communities like Gila River will have many difficult decisions to make. Some of these decisions, such as those relating to cultural affinity, will require input from archeologists, physical anthropologists, and cultural anthropologists.

In the process, we archeologists must not forget that we are dealing with people and their traditions, not merely the material record. Only by working together can we amicably resolve differences and at the same time make important contributions to our understanding of the past.

Postscript

In the summer of 1993, the Gila River Indian Community made an important step in this direction by establishing its own cultural resource management program. The community believes that the program will provide greater control of the interpretation, protection, and preservation of its rich cultural heritage, both on and off the reservation.

John C. Ravesloot, who was employed by Arizona State University over the course of the project, now works as the community's cultural resources coordinator. For further information, contact him at the Gila River Indian Community, P.O. Box E, Sacaton, AZ 85247, (602) 562-3301, fax (602) 562-4008.

Adapted from "Working Together to Understand the Prehistory and History of the Gila River Pima, Arizona," presented by John C. Ravesloot and Clarence Chiago at the symposium "The Reality of Repatriation: Issues of Implementation," Society for American Archaeology, 57th annual meeting, Pittsburgh, PA.

Implementing the Native American Graves Protection and Repatriation Act

Grants Awarded to 41 Projects

On July 7, Secretary of the Interior Bruce Babbitt announced the awarding of NAGPRA grants to 41 projects (see list on page 18). Grant recipients are undertaking a broad range of projects to implement the act, including conducting workshops and training, coordinating intertribal and inter-museum discussions, and hiring repatriation coordinators to prepare and review documents.

Many projects emphasize collaboration: tribes with tribes (as the Jicarilla Apache proposed in their All-Apache Summit), tribes with museums (as in the Maine State Museum's proposal to answer complex questions of cultural affiliation), and museums with museums (as will occur at the NAGPRA compliance workshops co-sponsored by the Pan-Handle Plains Historical Museum and the Museum of Texas Tech).

The projects were selected from 220 proposals; 104 Native groups and 101 museums submitted. The Secretary praised the projects as "exemplifying the type of partnership between museums and Indian tribes that is mandated by the act."

Section 10 of NAGPRA authorizes the Secretary of the Interior to make grants to museums to assist them in con-

ducting inventories and identification required under the act, and to Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations to assist in the repatriation of human remains and cultural items.

In October 1993, Congress finally appropriated \$2.3 million dollars for the eagerly anticipated grants. The total requested by proposers was approximately \$23 million.

Funding for additional grants was included in President Clinton's FY 1995 budget request. Grant guidelines were distributed in September to all 764 Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations with standing in the NAGPRA process and to all museums that have submitted copies of their summaries to the DOI departmental consulting archeologist. Selection criteria will be similar to those used in evaluating the FY1994 submissions, with special considerations given to collaborative proposals.

Review Committee Prompts Peabody Repatriation

The Mashpee Wampanoag Indian Tribe will receive items from the Andover, Massachusetts, Peabody Museum of Archaeology as a result of a recommendation made by the NAGPRA review committee at its eighth meeting at Albany last November.

Although a relationship of shared group identity can be traced between the Mashpee Wampanoag and the remains and objects in question, the tribe is not federally recognized. The review committee's recommendation provides a mechanism for future cases of repatriation to non-federally recognized tribes.

The case was just one item on an agenda that ranged from the abstract task of writing regulations to the emotional one of dealing with human remains. The repatriation of Native Hawaiian remains in the possession of the Marine Corps was held off pending the outcome of a dispute among the 15 different parties claiming affiliation. The committee recommended that the Corps retain possession until the claimants resolve their differences.

Attendees had the opportunity to comment on three additional NAGPRA regulation sections that the review committee will discuss at its February meeting. These regulations will deal with the disposition of culturally unidentifiable human remains in the collections of museums or federal agencies; the disposition of unclaimed human remains and cultural items from federal or tribal lands; and the future applicability of NAGPRA.

Workshops Coming Up

Representatives from the NPS archeological assistance

division will make presentations, conduct workshops, or teach classes on NAGPRA implementation at:

University of Nevada-Reno continuing education course, Nachitoches, LA, March 16-18, 1995 [Leanne Stone: (702) 784-4062]

University of Nevada-Reno continuing education course, Juneau, AK, March 30-April 1, 1995 [Leanne Stone: (702) 784-4062]

Museum compliance workshop, in conjunction with the Texas Museum Association meeting, Amarillo, TX, April 29-30, 1995 [Karen Anderson: (806) 656-2234]

For additional information contact the identified person or Jean Kelley of the NAGPRA staff.

Inventories Provide Stark Picture . . .

Several museums and agencies, in complying with the act, have compiled lists of remains and funerary objects, providing just a small picture of the native heritage in storage cabinets across the nation.

Since August 1993, eight museums and federal agencies have submitted inventories, along with accompanying letters of notification. Five identify at least 1,757 individuals and 281 associated funerary objects as Native Hawaiian. They come from a host of institutions: the Peabody and Essex Museum, the Peabody Museum of

Archaeology and Ethnology at Harvard, the Bernice Pauahi Bishop Museum, the Peabody Museum of Natural History at Yale, and the U.S. Marine Corps.

An inventory from the Putnam Museum of History and Natural Science of Davenport, Iowa, documents a scalp believed to belong to White Antelope, a Southern Cheyenne peace chief killed at the Sand Creek Massacre in 1865.

Two submissions—from Abbe Museum and the Acadia National Park, both in Maine—document at least 19 individuals and two associated funerary objects affiliated with the Penobscott, Passamaquoddy, Maliseet, and Micmac, collectively known as the Wabanaki Tribes of Maine.

An inventory from the Peabody Museum of Archaeology and Ethnology (Harvard) lists a minimum of five individuals and four associated funerary objects culturally affiliated with the Northern Cheyenne.

An inventory from the South Dakota State Archaeological Research Center in Rapid City, South Dakota, cites two individuals culturally affiliated with the Lower Brule Sioux, two with the Crow Creek Sioux, two with the Standing Rock Sioux, and one with the Cheyenne River Sioux.

Letters of notification, which summarize the contents of the accompanying inventory in enough detail to help individuals or groups to identify cultural items to which they can reasonably be believed to be affiliated, were published in the *Federal Register* as required.

A 30-day period following each notice was allowed for additional lineal descendants or culturally affiliated tribes to contact the appropriate museum or federal agency official regarding proper treatment and disposition of sensitive cultural items.

In all, 27 such notices have been published since 1990 accounting for 1,997 remains and 467 funerary objects.

... Mirrored by the Federal Register

A suggestion that museums and other institutions publish their intent to repatriate has yielded results in the *Federal Register*. Five notices have appeared since August 1993, the result of a proposal in a memorandum on summaries, inventories, and notification from earlier that year.

The University of Iowa identified a carved figure as both a sacred object and an object of cultural patrimony culturally affiliated with Zuni Pueblo. Chicago's Field Museum of Natural History determined a sundance wheel to be a sacred object culturally affiliated with the Northern Arapahoe. The Nebraska State Historical Society listed 31,651 items as unassociated funerary objects culturally affiliated with the Pawnee of Oklahoma. The Anchorage Museum of History and Art identified a wolf headdress as an object of cultural patrimony culturally affiliated with the Douglas Indian Association and the Yanyei clan. The Denver Art Museum identified what is known as the Elk Tongue Beaver bundle as a sacred object culturally affiliated with the Blackfeet Nation.

The January 1993 memorandum suggested that the notices be published when unassociated funerary objects, sacred objects, or objects of cultural patrimony are identified to be affiliated with a lineal descendant or a culturally affiliated Indian tribe, Alaska Native village or corporation, or Native Hawaiian organization. It was also suggested 30 days be allowed after publication for additional lineal descendants or culturally affiliated groups to contact the appropriate museum or federal agency regarding the proper disposition and treatment of such items.

A Little Reminder for Agencies and Museums

Despite the enormous effort to make institutions aware of the statute's mandate—and the near certainty that their holdings include untold thousands of Indian cultural items—the phones of the NAGPRA program office have been quieter than one would expect. So recently, three leading national organizations put their weight behind a message aimed at those who may think they are excluded.

In September, with the assistance of the American Anthropological Association, the American Medical Association, and the Institute for Museum Services, Departmental Consulting Archeologist Francis P. McManamon sent nearly 15,000 letters requesting comprehensive compliance. At the review committee's request, the letter went out to departments of anthropology, medical schools, and museums across the country, reminding

them that the act applies to any organization, state or local agency, or institution of higher learning that receives federal funds and has possession of or control over Native American human remains or cultural items.

The letter also reiterated the November 16, 1993, deadline for completing summaries of Native American collections that may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony. November 16, 1995, is the deadline for completing, in consultation with Indian tribes, inventories of Native American human remains and funerary objects.

Osteological Database Software Available

One of the repercussions of NAGPRA has been demands for a consistent method and standard techniques for recording data that describes human remains. Now, with a grant from the National Science Foundation, the University of Arkansas has developed computer software to meet this need.

Called the Standardized Osteological Database (SOD), the software was designed using *Standards for Data Collection from Human Skeletal Remains*, which resulted from an NSF seminar at the Field Museum in 1991. A number of nationally known physical anthropologists worked together to produce the integrated text, with photographs and appendices illustrating recording protocols.

The Center for Advanced Spatial Technologies developed SOD using FoxPro



Bureau of Indian Affairs Recognizes Tribes

On September 22, the Bureau of Indian Affairs recognized three Michigan tribes: the Little Traverse Bay Band of Odawa Indians, the Pokagon Band of Potawatomi Indians (above in 1927), and the Little River Band of Ottawa Indians. On October 31, the Bureau recognized the United Auburn Indian Community, and on November 2 the Paskenta Band of Nomlaki Indians.

Any museum or agency that has possession of or control over remains or cultural items affiliated with these tribes should provide a summary to:

Frank Ettawageshik, President, Little Traverse Band of Odawa Indians, 1345 US 31-N, PO Box 246, Petoskey, MI, 49047, (616) 348-

3410, fax (616) 348-2589.

Joseph B. Winchester, Chairman, Pokagon Band of Potawatomi Indians, 53237 Town Hall Road, Dowagiac, MI, 49047, (616) 782-6323, fax (616) 782-9625.

Dan Bailey, Chairman, Little River Band of Ottawa Indians, 409 Water St., Manistee, MI 49660-1586, (616) 723-8288.

Fred Cooper, Chairman, United Auburn Indian Community, P.O. Box 418, Auburn, CA 95604.

Everett Freeman, Spokesperson, Paskenta Band of Nomlaki Indians, P.O. Box 988, Williams, CA 05987.

software, which runs on IBM PCs (with a Mac version ready in four months). Users do not have to own FoxPro software in order to run the program. Files can be imported directly into most spreadsheet and statistical software packages. For ease of use, SOD was designed with a point and click interface, though a standard keyboard can be used as well. SOD consists of one general infor-

mation table, twelve tables of skeletal data, and eleven tables of dental information.

The software may be useful for a variety of purposes, including NAGPRA inventories. It was not developed to satisfy compliance with the statute, however, so collections data fields are not tailored to the act's requirements. If use of the software becomes widespread, one result could be a national

database of human osteological information.

The cost for disks and manual is \$15. Contact Jerry Rose, Department of Anthropology, Main 330, University of Arkansas, Fayetteville, AR 72701, (501) 575-5247.

Standards for Data Collection from Human Remains, published in the Arkansas Archeological Survey Research Series, is

available through the Survey at P.O. Box 1249, Fayetteville, AR 72702-1249. Cost is \$25 plus \$3 shipping (priority mail).

For Additional Information

Contact Timothy McKeown, NAGPRA Program Leader, NPS Archeological Assistance Division, P.O. Box 37127, Washington, DC 20013-7127, (202) 343-4101, fax (202) 523-1547.

Look Again Before Repatriating

Avoiding a Moral and Legal Morass

ROBERT PICKERING AND R.L. JANTZ

ONE OF THE MOST DIFFICULT ISSUES in complying with NAGPRA is the category "culturally unidentifiable remains," which is exactly how one would describe some of the isolated skulls and incomplete skeletons here among the Denver Museum's anthropological collections. In the past, the assumption was that these unattributed skeletal materials—few collected through systematic excavation—were probably American Indian. However, recent tests of two skulls prove the error in that assumption.

One of us, a curator with forensic and archeological experience in the United States as well as southeast Asia and the South Pacific, had already questioned the assumed affiliation of the skulls, accessioned in 1946. So they were sent to Richard Jantz at the University of Tennessee for analysis using FORDISC 1.0, which classifies crania against reference samples drawn from nine groups: 1) white males, 2) white females, 3) black males, 4) black females, 5) Amerindian males, 6) Amerindian females, 7) hispanic (Mexican-American) males, 8) Vietnamese males, and 9) Chinese males.

Since we assumed the crania could have come from anywhere, they were also compared to data on 30 male and 26 female samples kindly supplied by Professor W.W. Howells from his world group. This analysis was carried out with SAS PROC DISCRIM.

Although FORDISC classified the first skull as Amerindian, it also resembled the south Asian and Australasian samples in Howells' group. The second skull was characterized as white by FORDISC and as Norse by comparisons with Howells' group, providing strong evidence that it was from a European-derived population. Therefore, repatriation of the first skull may be inappropriate, and of the second almost certainly inappropriate.

REPATRIATING NON-INDIAN REMAINS to tribes is neither required nor justified under NAGPRA. Moreover, such acts are not consistent with the public trust vested in museums and agencies. Specimens that may have significant educational and research value may be improperly lost or destroyed. In addition, repatriating the wrong remains may violate the religious beliefs of the tribes receiving them.

All museums or repositories with undocumented skeletal material possibly subject to NAGPRA must re-examine their holdings. If they assume without analysis that such remains are Native American, they could be making a serious legal and ethical error.

We recommend the following course of action. First, have all unassociated remains examined by an osteologically trained physical anthropologist, preferably one with forensic experience. Second, have curators and collections staff examine original accession records as well as annual reports listing donations and names associated with them. Third, if necessary, send any skulls in question to the University of Tennessee for independent evaluation with FORDISC 1.0. Only when these procedures become standard will museums raise the level of confidence that remains are not misattributed or wrongfully deaccessioned.

ONE OF THE ADDED BENEFITS of re-examining collections is that museums and repositories will develop better documentation of all their human remains, regardless of cultural, ethnic, or racial affiliation. This increased information may make skeletal collections even more useful in educational programs and research projects pertaining to human biological variation.

FORDISC 1.0, a user-friendly program designed originally for forensics, allows comparisons with up to nine groups using 21 standard measurements. The program, which runs on IBM-compatible PCs, is available from the Department of Anthropology, University of Tennessee, Knoxville, TN 37996-0720, e-mail JANTZ@UTKVX.UTK.EDU.



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