

**Statement by the American Association of Physical Anthropologists
on the Secretary of Interior's Letter of 21 September 2000
Regarding Cultural Affiliation of Kennewick Man**

20 October 2000

The American Association of Physical Anthropologists (AAPA), the largest professional scientific organization devoted to the study of physical anthropology in the United States, was part of the coalition of Native American and scientific groups that worked for the passage of the Native American Graves Protection and Repatriation Act (NAGPRA). Since the passage of the act a decade ago, the AAPA has continued to support NAGPRA's key goal of ensuring that culturally affiliated, federally recognized Native American groups are allowed to make decisions regarding the disposition of their ancestral remains.

The AAPA supports the rights of Native Americans to claim human remains and funerary objects in cases where the modern group is culturally affiliated with the remains in question. Our support stems from the fundamental belief that cultural affiliation is what provides the moral and ethical basis for repatriation. Where cultural affiliation exists, repatriation claims must be honored; but where cultural affiliation is absent, repatriation claims have no moral foundation.

Because of our strong commitment to the goals of NAGPRA, the AAPA is deeply troubled by Secretary of Interior Bruce Babbitt's September 21, 2000, decision that the 9,500- 9,000 year old remains of Kennewick Man are culturally affiliated with five modern claimant tribes whose members currently live in the vicinity of the Kennewick discovery (the Confederated Tribes of the Colville Reservation, Confederated Tribes of the Umatilla Reservation, Confederated Tribes and Bands of the Yakama Indian Nation, the Nez Perce Tribe of Idaho, and the Wanapum Band). We believe that this decision is inconsistent with the law and thereby does great damage to the carefully negotiated balance between Native American, scientific, and broader public interests that are at the heart of NAGPRA.

Under NAGPRA, modern federally recognized tribes have the right to claim ancestral remains to which they are "culturally affiliated." In the statute, cultural affiliation is defined as "a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group." A careful reading of the statute and the associated House and Senate reports clearly shows that Congress envisaged the legislation as a compromise between the interests of native peoples and the larger public (including the scientific and educational communities). To resolve the very difficult and emotional issues surrounding who should control the disposition of ancestral remains, the act established a delicate balance between the competing, and sometimes conflicting, interests of scientific, museum, and descendant groups. This fundamental point is most forcefully expressed in the composition of the NAGPRA Review Committee, which is required by law to include three representatives of the Native American community and three representatives of the scientific/museum community. The AAPA firmly believes that all of these groups have legitimate interests in human remains and the artifacts associated with them, and that NAGPRA is the best means we currently have to weigh the relative strengths of these interests in individual cases.

NAGPRA recognizes the broad spectrum of relationships that exist between modern people and ancestral remains. These range from the remote common link that all living people share with our progenitors who lived in Africa millions of years ago to the close genetic and emotional ties that exist between living people and recently deceased family members. NAGPRA is an expression of a general principle that most Americans would agree with: when there is a clear relationship of shared group identity that can be traced between a modern group and an earlier group, members of the modern group should be given the responsibility for deciding the appropriate disposition of their relative's remains. On the other hand, when a clear relationship of shared group identity cannot be traced, there is also general agreement that those remains should be considered part of the biological and cultural heritage of all people. The information about the history of humankind that such remains can yield is our common legacy. For this reason, they should not be subject to the exclusive control of any one modern group of people.

In recognition of the many different ways in which people learn about and interpret the world around them, Congress wisely stipulated that the standard for determining the existence of a relationship of shared group identity should incorporate a broad spectrum of biological and cultural information. According to the statute, a relationship of shared group identity must be established relying on a "preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion." Developing a solution that integrates, among other things, evidence of genetic affinity with expert testimony from spiritual leaders is challenging. However, the AAPA believes that it is possible to forge compromises that respect traditional beliefs about ancestral relationships while at the same time giving equal credence to scientific evidence concerning the strength of the biological and cultural relationships between earlier populations and modern societies.

Secretary Babbitt's decision that Kennewick Man is culturally affiliated with a few modern Native American groups currently living in the area of the discovery does great damage to the careful balance of conflicting interests that is at the heart of NAGPRA. Given the rapidity of cultural change, what we know about the migratory propensities of earlier human populations, and the questionable shared group identity of a modern coalition of tribes that are in part a result of governmental manipulation of earlier tribal identities and territorial boundaries, it is exceedingly unlikely that someone who lived in approximately the same geographic area 9,000-9,500 years ago would have a shared group identity with any of these modern federally recognized tribes.

This prima facie case for the lack of a relationship of shared group identity under the terms Congress envisaged for NAGPRA is not weakened by the extensive cultural, archaeological, and physical anthropological studies that the Department of Interior initiated in

response to litigation over requests to study the skeleton. Indeed, an unbiased evaluation of the evidence provided by the scientists that the Department of Interior hired to assess this issue leaves little doubt: a relationship of shared group identity cannot be reasonably traced between the group of people who occupied the Kennewick area more than 9000 years ago and any present-day, federally-recognized tribe.

In spite of the overwhelming scientific evidence suggesting the lack of a traceable relationship of shared group identity between Kennewick Man and any specific group of modern tribes, the Secretary of Interior determined that a shared group identity did indeed exist with a small number of native groups that currently live in the Kennewick area. This determination of cultural affiliation relies almost exclusively on the geographical context of the find and oral traditions. On the other hand, the physical anthropological and archaeological studies show important biological and cultural differences and very substantial cultural discontinuities between the Kennewick individual and the modern tribal groups who claim his remains. The Secretary dismisses this convincing evidence for a lack of cultural affiliation with ad hoc speculation about intermixing "with other groups migrating into or through the region." He also argues that if the "lack of available data from the earlier time periods" could be remedied, these new data might conceivably support his assertion of cultural affiliation. In other words, the Secretary appears to have based his decision on the premise that a lack of archaeological evidence for cultural affiliation has no evidentiary value because, if more data were available, it might conceivably provide evidence for the existence of a relationship of shared group identity.

Using the Secretary's logic, anything is possible and there is no basis for evaluating competing ideas with current evidence. Using the Secretary's logic, as the antiquity of a set of remains increases, so does the ease with which the preponderance of evidence is shifted to cultural affiliation with a federally recognized tribe using the flimsiest of arguments based on geographical proximity, folklore, and oral traditions. By making it easier to argue that a relationship of shared group identity existed in precisely those cases in which the least evidence of such a relationship is available, the approach taken by Secretary Babbitt in the Kennewick case inverts what was clearly Congress's intent in passage of NAGPRA.

The AAPA is sensitive to and recognizes the legitimacy of Native American concerns over the disposition of their ancestral remains. We are also keenly aware of the important role that skeletal studies can play in helping to determine the cultural affiliation of human remains. Physical anthropologists have a long history of working with law enforcement agencies, federal and other government officials, and Native American groups to provide a scientific perspective on the cultural affiliation of inadvertently discovered human remains, both ancient and modern. In light of this, the Secretary's failure to fully incorporate such scientific evidence into his decision making process is very puzzling.

The scientists who studied the Kennewick remains have documented that this person's cranial form is distinctive and different in many significant respects from that of the modern Native American groups living in the same area. These differences can be interpreted in a variety of ways. For example, they may reflect either no direct relationship between the Kennewick individual and the modern tribes that claim him or, alternatively, that this person's cranial morphology represents the ancestral condition of groups that subsequently lived in the Kennewick area. Regardless of how the unambiguous differences between Kennewick Man and living native peoples are interpreted, the scientific findings made by physical anthropologists were not considered, at least as is reflected in the Secretary's letter in which he attempts to explain his decision. This situation is regrettable because it undermines both the spirit of compromise and the mutual respect that was the basis for the passage of NAGPRA.

What is lost when culturally unaffiliated remains such as those from Kennewick are made unavailable for scientific analysis? Skeletal studies have broad implications for basic and applied research in the social and natural sciences, medicine, and forensic work. The comparative perspective provided by skeletal studies is extremely valuable in helping us to unravel the environmental and genetic causes of diseases. These studies also contribute to our ability to estimate age and sex from skeletal remains, among other biological characteristics, that are critical to our longstanding collaboration with law enforcement agencies at the national and local levels.

Finally, is there harm in returning remains to a tribe with no demonstrable cultural affiliation to those remains? The answer is an emphatic yes. Such repatriations carry a high probability of error, in the sense that the actual affiliations may well turn out to be with other groups. Our knowledge of the past is not static, but keeps improving with time. For example, recent breakthroughs in DNA analysis mean that many currently unidentifiable remains may well be identifiable in the future. Thus, premature repatriation to an unaffiliated group runs the risk, in fact the near certainty, of disenfranchising at least some of the groups to which those remains are truly affiliated. It also deprives all other groups, Native American and otherwise, of the opportunity to learn about our shared humanity from those remains.

In conclusion, the AAPA believes that Secretary Babbitt's decision is based upon an indefensible interpretation of the available evidence. Moreover, the decision sets an unfortunate precedent for future repatriations. Using the Secretary's logic, the term of "cultural affiliation" becomes meaningless and the compromise that is the basis for NAGPRA is destroyed. His decision suggests that geographic proximity and folklore are sufficient evidence of cultural affiliation to the exclusion of other kinds of evidence. It is our hope that this unfortunate decision will be reversed through a governmental process that revisits the intent, legal and otherwise, of NAGPRA.