



SOCIETY FOR AMERICAN ARCHAEOLOGY

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CONTACT: John Neikirk
202/789-8200

SAA Responds to the Kennewick Man Court Decision

The Society for American Archaeology (SAA) is generally pleased with Friday's decision by a Federal court in the litigation concerning the 9,000-year-old remains of Kennewick Man (Bonnichsen et al. v. United States, Civil No. 96-1481JE, District of Oregon). This crucial decision not only affects the disposition and opportunities for scientific study of the 9,000-year-old remains of Kennewick Man, but will have far-reaching consequences for the implementation of the Native American Graves Protection and Repatriation Act (NAGPRA).

The lawsuit was originally filed in 1996 by a group of prominent scientists who asked the court to prevent the U.S. Army Corps of Engineers from giving these remains to a coalition of Indian tribes for reburial. The tribes had claimed Kennewick Man's bones under NAGPRA, and had asked the government to stop all scientific studies. In their lawsuit, the scientists argued that the remains were of great scientific importance. They further argued that the remains were not demonstrably Native American and their cultural affiliation could not be determined, thereby questioning the legal validity of the tribes' claim.

SAA President Robert Kelly stated that "Judge Jelderks' decision in the Kennewick case will go a long way toward restoring the balance between the interests of science and those of Native Americans that Congress mandated when it passed NAGPRA in 1990." The ruling makes clear that in order for a modern tribe to make a valid claim, it must have a shared group identity, a demonstrated "cultural affiliation," with an identifiable earlier group to which the ancient individual belonged. As SAA had argued in its amicus curiae brief, the court found that no such relationship has been demonstrated: "The Kennewick remains are so old, and information as to his era so limited, that it is impossible to say whether the Kennewick Man is related to the present-day Tribal Claimants" (Opinion, p. 38). For this and other reasons, the court rescinded the government's decision to give the remains to the tribes under NAGPRA, and ordered the government to allow scientific studies requested by the plaintiffs.

The central compromise of NAGPRA, strongly supported by SAA, was to provide tribes with the right to reclaim the remains of their ancestors where lineal descent or cultural affiliation could be established, but to retain human remains for scientific study where a reasonably close connection to a modern tribe could not be established. However, in the 12 years since the passage of NAGPRA, the balance between scientific and Native interests provided for in the law has been badly eroded through administrative

decisions that have, in practice, distorted the statutory definition of cultural affiliation in order to accommodate the interests of Native American groups at the expense of scholars' ability to expand our knowledge of the past through study of the affected remains and objects. Judge Jelderks' opinion does nothing to undermine NAGPRA's objectives as they were intended by Congress. However, as the first significant judicial review of key legal issues, it provides an urgently needed corrective to the expansive interpretations of the Act that have been too often employed by federal agencies and museums.

The Kennewick decision will have a pervasive impact on the implementation of NAGPRA nationally because it so clearly lays out the legal requirements that must be fulfilled by claimant tribes and so carefully articulates the meaning and evidentiary demands of "cultural affiliation," upon which most NAGPRA repatriation claims rest.

In its *amicus curiae* brief, SAA also argued that the remains should be considered Native American for the purposes of NAGPRA, citing the language and intent of the statute. In this respect, SAA supported the position of the U.S. government and all the Indian tribes involved in the case. The court, however, reached a different conclusion. Its decision stated that "the term 'Native American' requires, at a minimum, a cultural relationship between remains or other cultural items and a present-day tribe, people, or culture indigenous to the United States. A thorough review of the 22,000-page administrative record does not reveal the existence of evidence from which that relationship may be established in this case" (Opinion, p. 30). SAA believes that the logic employed by the judge suggests that this aspect of the ruling will affect only extremely rare cases but it is disappointed that the judge rejected its arguments on this issue.

SAA welcomes the clarity the court's opinion will bring to how NAGPRA is interpreted. The decision sets important precedents that will balance the legitimate interests of tribes in reclaiming the remains of direct ancestors with the equally legitimate public interest in understanding the human past. Such balance was Congress's intent when NAGPRA was passed.

With nearly 7,000 members, SAA is the leading professional organization of archaeologists in the United States. For more than a decade, the Society has led the scientific community in national discussions about the repatriation of Native American human remains and cultural items. SAA was the primary scientific organization involved in a coalition of Native American organizations, museums, and scholarly societies that pushed for NAGPRA's enactment in 1990. Since that time, SAA has closely monitored NAGPRA's implementation and has consistently provided comment on these matters to Congress, government agencies, and the courts.

The court's opinion may be found on the web at <http://www.kennewick-man.com>.