



SOCIETY FOR AMERICAN ARCHAEOLOGY

TESTIMONY TO OVERSIGHT HEARING ON NAGPRA IMPLEMENTATION
UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS
DECEMBER 6, 1995

The Society for American Archaeology (SAA) appreciates this opportunity to provide testimony to the Senate Committee on Indian Affairs oversight hearings on Native American Graves Protection and Repatriation Act (NAGPRA) implementation. As the largest society representing archaeology in the United States, SAA was an active party in the drafting of the NAGPRA legislation and has continued to provide commentary on various aspects of its implementation. These oversight hearings are an appropriate forum through which to take a retrospective view of NAGPRA implementation, assess current progress on NAGPRA, and simultaneously isolate evident problems and pose potential solutions.

Overall, the Society for American Archaeology is optimistic about the progress that institutions and tribes are making in complying with the law. We know of many examples of successful negotiations and consultations. Museums, other repositories, and federal agencies are taking seriously the multiple charges of collection inventory, tribal notification, and consultation with affected tribes. Most institutions appear to have met the major legislated deadlines for compliance. Likewise, Native American tribes, Native Hawaiian organizations, and Native Alaskan corporations have responded to various notifications and initiated dialogues with institutions, visited repositories, and in many instances have brought repatriation requests to closure.

This optimism, however, is qualified by the fact that institutions and tribes are engaged in individual compliance activities notwithstanding: 1) a lack of adopted regulations five years after NAGPRA passage; 2) draft regulations that do not provide adequate direction; and 3) a lack of adequate funding assistance that has placed substantial burdens on scarce operating budgets. Furthermore, it is the considered opinion of SAA that 4) the NAGPRA Review Committee is inadvertently compounding these problems by prematurely

engaging in the advancement of protocols for the disposition of unaffiliated human remains, exceeding what we believe is their legislative charge, not allowing sufficient time for affiliated remains to be properly addressed by institutions and tribes, nor allowing procedures for unaffiliated remains to be informed by sufficient experience with affiliated remains.

The lack of adopted regulations for NAGPRA implementation has placed complying institutions, agencies, and tribes in the tenuous position of interpreting draft regulations to meet their independent needs. It should be noted that the two primary time points for compliance articulated in NAGPRA have already passed, that NAGPRA is now five years old, and that regulations have not yet been adopted to provide institutions and tribes with appropriate procedural guidance. SAA comments on the draft NAGPRA regulations have been submitted to the NAGPRA Review Committee and are a matter of record. These regulations still contain ambiguous language and do not provide adequate guidance, particularly in the area of determining cultural affiliation. SAA urges the committee to undertake immediate further review and comment on the draft regulations, modify them in a fashion that makes clear to affected parties their roles and procedures, and then move the regulations rapidly toward adoption.

While SAA believes that substantial progress has been made by institutions and responding tribes toward NAGPRA compliance, these efforts have been severely hampered by inadequate federal assistance to fund the legislative mandate. Institutions and tribes have, of necessity, diverted scarce operating funds and personnel assignments, or sought special internal funding allocations, to meet compliance deadlines. Institution size or tribal size does not necessarily correlate with the magnitude of affected collections. As a consequence, many tribes are only now responding to collection summary notifications, and there are certainly institutions that are both late in compliance and/or have sought deadline extensions. The latter could have been avoided with appropriate budgetary allocations. At present, inventory compliance has been largely completed. However, the additional burdens of consultation,

negotiation, and disposition have yet to be borne by either party. It is essential that sufficient funding for NAGPRA be made available to assist in these important ongoing phases of compliance.

NAGPRA was a carefully negotiated agreement on the part of affected constituencies including Native American organizations, museums, archaeologists, legislators, and others. The collective wisdom of these parties was to hold issues on the disposition of unaffiliated human remains and funerary objects in abeyance, with a view toward addressing affiliated remains and objects first, learning from this process, and with the knowledge gained, apply this information to the more difficult issue of unaffiliated remains. It was generally understood that resolving this issue would require a separate piece of legislation with further negotiations drawing on the experience garnered with affiliated remains.

Determination of cultural affiliation is not necessarily a simple or straightforward process, either for Native American groups or for institutions. Everyone is struggling with making these determinations now. NAGPRA was written to address a wrong seen by many—that there were a number of human remains, funerary objects, and sacred objects that should be returned to those tribes with whom the materials are affiliated. The issue of unaffiliated remains goes beyond this initial intent, and when NAGPRA was written, this point was acknowledged by asking only that the NAGPRA Review Committee create a list of these remains and make some suggestions on how they might be treated. The treatment of unaffiliated remains must be rooted in the knowledge gained by the treatment of affiliated remains. As we have mentioned in a letter to the NAGPRA Review Committee, that committee could develop this process by assisting institutions and tribes in the immediately pressing processes of consultation and negotiation. The committee could also request that museums and tribes provide examples from their own negotiations and consultations, in an effort to provide the needed baseline data for recommendations for the treatment of unaffiliated remains.

It is not our experience that museums are trying to avoid their duties under NAGPRA; both tribes and museums are working hard to cooperate and consult. For all sides the deadlines are too soon, the money is limited, and everyone is severely hampered by the lack of regulations. We are learning a lot, and a lot of good will and new working relationships may ultimately come from this law. We do not need additional rules and regulations before we have even had the opportunity to complete the existing process.

Once again, we thank the United States Senate Committee on Indian Affairs for the opportunity to provide comment in these oversight hearings on NAGPRA implementation.

Respectfully submitted,

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

December 4, 1995