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Published by: University of Minnesota Press
Stable URL: http://www.jstor.org/stable/1409506
Accessed: 15/09/2010 18:49

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**Protecting Native American Human Remains, Burial Grounds, and Sacred Places**

**Panel Discussion**

*James Riding In, Cal Seciwa, Suzan Shown Harjo, Walter Echo-Hawk*

**Introduction by Rebecca Tsosie**

NAGPRA was passed in 1990. It is a very important piece of legislation because it has legally enforceable provisions, and it does many important things and obviously remedied a huge gap in the law prior to that time. Basically, NAGPRA protects Native peoples' rights in several different ways with respect to four categories of cultural items. The first and most important one involves ancestral human remains, which are defined as physical remains of a human body of a person of Native American ancestry. I think when we get into the panel discussion we'll talk about how that is being interpreted today in a contemporary case known in the news media as the Kennewick Man case. It deals with very ancient remains of a Native person that were found in the state of Washington, and whether or not contemporary tribes in that area can claim him as an ancestor under NAGPRA. The statute also applies to funerary objects, both those that are associated with human remains and those that are unassociated. It also applies to sacred objects, which are defined as specific ceremonial objects needed by Native American religious leaders for the practice of their traditional Native American religions. The panelists will discuss how these technical definitions within the statute are being implemented. The final category is objects of cultural patrimony, defined as items having an ongoing historical,
traditional, or cultural importance to the Indian tribe or Native Hawaiian organization itself, rather than being property owned by an individual member. Obviously, a key component of this category is the traditional law of the Native nation and how it describes the cultural relationship of the people with a particular item.

In addition to outlawing the commercial trafficking of human remains and funerary objects—which was just a horrible, horrible problem, and by the way, still is, despite being illegal—NAGPRA also imposes an obligation on federal agencies or museums to inventory the human remains and the sacred objects in their possession and to disclose the results so that Native people can claim repatriation rights. Those repatriation rights go to culturally affiliated tribes, and there is a technical definition in the statute for that. NAGPRA also applies to excavations that are done after the effective date of that statute on either federal land or tribal land. If they are excavated on tribal land, then they basically belong to the tribe who owns that land. But if they are found on federal land, then you have to go through that whole culturally affiliated process. NAGPRA has two reserve sections, one dealing with what they call "culturally unidentifiable human remains" and one dealing with what they call "unclaimed human remains," in other words, remains in federal repositories that have not yet been claimed. The category of "culturally unidentifiable human remains" was the subject of a grant that we did here at Arizona State University, and many of the people today that are talking to you were members of our working group—Suzan Harjo, Walter Echo-Hawk, James Riding In, Wallace Coffey, and many other people worked very hard to come up with recommendations. We had Native people from all over the country, from Hawaii, from Alaska, from within the states here, who made recommendations on that issue. Professor Riding In will talk to you more about this. The central part of it was that the whole notion of something being "culturally unidentifiable" does not make sense to Native peoples. It just doesn't resonate with Native peoples' traditions. Today it is really troublesome to me. Two days ago I went on the National Park Service Web site. I looked for the report to Congress from the NAGPRA review committee (composed of both Native and non-Native people, which advises on NAGPRA and sort of advises on disputes). They hadn't done an annual report to Congress, as they are supposed to have done, for three years. So they did a three-year report, and their summary of the problems, it seemed to me, did not reflect the reality of what I could see from working on these issues. They said, with respect to culturally unidentifiable human remains, that the review committee had made a recommendation in 2000 and they were just waiting for regulations to be issued. In fact, that isn't the case. It was a very contentious recommendation, and Native people strongly disagreed with the review committee, the whole affair being something
of a compromise process between scientists and Native people. The five recommendations that the group came up with were widely adopted in other regions. I am very pleased that the speakers on the panel today will talk to you about these issues and others that we all need to be informed about.

JAMES RIDING IN

Nawa [Hello].

This religious freedom battle has been a long, ongoing struggle, and there is no end in sight. Repatriation is just one part of the struggle. I've been involved in repatriation for a number of years now, and I consider it to be both a spiritual and a sacred journey. Much of our guidance, much of our personal inspiration, involvement, and commitment in this issue comes from spiritual concerns. Spiritual leaders often guide us in our work. It's not archaeologists who tell us what to do, it's not people in academia, it's people who are deeply rooted in the spirituality of our cultures and who are committed to overturning what we consider to be one of the greatest atrocities committed against us: the theft of human remains ancestral to us.

Let me share an incident with you that expresses how sacred this business of repatriation is to many of us. In 1998, the University of Nebraska, Lincoln, faced a situation in which a physical anthropologist was accused of mistreating Native human remains, of using some of our ancestors for a puppet show for the amusement of his class, and of committing unethical research. A charge also surfaced indicating that during the late 1960s university employees had incinerated an unknown number of Indian remains simply because they had no scientific value. When that information surfaced, the press did a thorough job of telling the truth about the matter, helping our efforts. Over the years, the press has been a big factor in repatriation; it seems that reporters, editors, and the public can understand repatriation issues. Although the media has oftentimes been an important ally for us in this repatriation struggle, they can also work against us, as in the Kennewick Man case. I want to stress that point.

Facing a public relations nightmare, university officials invited fourteen or fifteen Native nations with a historical connection with Nebraska to send representatives to Lincoln to discuss what should be done to resolve the matter. During the first morning of that two-day meeting, tribal leaders asked all of the non-Indians to leave the room so we could develop a plan of action. During lunch, several of us drafted an agreement on behalf of the Indian leadership that reflected the discussions held earlier that morning. The agreement we wrote called for the university to change the designation of all those human remains in its collections that were listed as "culturally unidentifiable" to be
listed as culturally affiliated with the Indian nations in attendance for the purposes of repatriation, to cover the cost of reburying those remains, and to cover the cost of any research that we wanted done so that individual nations could determine if any of the remains in question were affiliated exclusively with them. Another point of the agreement was the erection of a monument on campus to explain what had gone on in terms of the mistreatment and destruction of our ancestors by fire. In the afternoon, we asked the non-Indians to reenter the room, and we presented university officials with the terms of the agreement. To our surprise, the university chancellor accepted them without question.

This meeting resulted in a historical agreement because NAGPRA does not provide for the repatriation of human remains that are classified as culturally unidentifiable. It is a misnomer to say that our ancestors in museums are culturally unidentifiable. Those people who dug up our ancestors claimed ownership of them. In many instances, university anthropologists declared that there was no way to link the human remains in their collections to modern-day Indians, meaning that universities with sets of human remains in that category have no legal obligation to repatriate them under NAGPRA. At the University of Nebraska, there were eight hundred or so human remains classified as culturally unidentifiable, and the agreement provided that the university would recognize a shared group relationship between those human remains and the signatory Indian nations. Repatriation is also a sovereignty issue and that fact gives Indian nations a say in the disposition of human remains.

After that agreement was reached, a working group of tribal representatives began a long process over several meetings to determine what we would do with those remains. What tribal group or groups would rebury them? Where would we put them back into Mother Earth? At one point, we sought spiritual guidance. Sammy Little Owl, a Mandan, Hidatsa, and Arikara from North Dakota, agreed to conduct a ceremony. He has an ability to communicate with our ancestors. Following the ceremony, Sammy said that a number of excited children had run up to him, followed by a leader who said they had lived on a high bluff overlooking the Missouri River and that was where they wanted to be reburied.

Thankfully, the Northern Poncas agreed to share their land for the reburial. Near Niobrara, Nebraska, in 2002, we returned our ancestors to Mother Earth in a site very similar to the one Sammy had described to us. The cemetery sat on a bluff overlooking the Missouri and Niobrara rivers.

A reburial is a very spiritual undertaking. It is done with the greatest reverence, and it brings joy to us because we know that we have removed the spirits of our ancestors from those places where they've been incarcerated, and that we are putting them back into the womb of
Mother Earth where they belong. While filling the grave with earth near Niobrara that day, we looked up and saw an eagle flying in circles, going up and up and up until it disappeared. All these things are what I mean when I say this business of repatriation is both a spiritual and a sacred journey. I sometimes refer to my work in repatriation as liberation research. Those of use who participate are trying to liberate the spirits of those ancestors who have been stripped from Mother Earth, from where our ancestors thought would be the final resting place of their loved ones, and put in institutions such as the University of Nebraska where they were treated so terribly. They were placed on public display and studied. Sometimes professors and museum curators used the crania, or skulls, as paperweights. In some situations, Indian students were forced to sit in classrooms that had Indian skulls lined up against the walls. When I was in the service in 1970, I went to Washington, DC, and visited the Smithsonian Institution. What I remember most vividly are the Indian remains, including skulls, on display. I did not see white skeletal remains on display, only Indians.

The theft of our ancestors happened through a process of colonization done in the names of Manifest Destiny and the rights of discovery. Europeans claimed that they had preemptive rights not only to our lands and resources, but to our dead as well. Repatriation is a struggle for justice, respect, and burial rights. Suzan Harjo and Bunky [Walter] Echo-Hawk were very instrumental in this movement. Along with others, they were leading forces behind the enactment of NAGPRA.

The first trip I took to Washington, DC, for repatriation was in 1989 on behalf of the Pawnee Nation. It was on the eve of passage of the National Museum of the American Indian Act, which provided for a repatriation policy for the Smithsonian. Bunky, his brother Roger, Steve Moore (another Native American Rights Fund attorney), Carole Nuttle (the vice president of the Pawnee Nation at that time), and I went to the Smithsonian to talk to its head official and with Doug Owsley, a physical anthropologist who had a legacy of exploiting the remains of our Pawnee ancestors. In the meeting, I felt that blatant lies were being told to discourage us from seeking information about our relatives. It was an eye-opening experience.

Several months later, Roger and I began research at the Smithsonian on behalf of the Pawnee people. When we entered those places within the Smithsonian where the human remains were kept, we saw row after row of shelves that reached almost to the ceiling. Just walking into those areas gave me such an oppressive feeling. It was a feeling right here [points to chest]. It would come and hit me right here, like my chest was caving in. It was a painfully oppressive feeling that conveyed the message that we must do something to liberate the spirits of our ancestors from their state of captivity.

NAGPRA and the National Museum of the American Indian Act
provide Indian nations an avenue to repatriate our ancestors. Also, funerary objects are vital, because in our beliefs repatriation cannot be complete unless the funerary objects are placed in the graves along with those remains when they are returned to Mother Earth.

These laws have enabled Indian nations to recover and rebury thousands of ancestral remains. However, there are still tens of thousands of human remains in institutions across the nation, meaning our work is not complete. Many human remains listed as culturally affiliated with Indian nations have not been returned. Sometimes Indian nations reject the repatriation for cultural reasons. Sometimes there are economic reasons because some Indian nations lack the resources and personnel to do this type of work.

Another important reason for keeping so many of these human remains in institutions is because museum personnel have categorized many of them as culturally unidentifiable. NAGPRA allows the NAGPRA review committee to make recommendations to the secretary of the interior regarding the disposition of the so-called culturally unidentifiable human remains. To date, there have been several sets of recommendations put forward, but none have been adopted. Until a policy is implemented, the fate of those human remains not assigned a cultural affiliation is in doubt. However, as we did at the University of Nebraska, one way to use NAGPRA to rebury these culturally unidentifiable remains is to get the holding institutions to change their designation to that of being culturally affiliated.

In 2001, I participated in another successful repatriation initiative of this nature in Colorado. In that year, the Colorado Historical Society called a meeting to discuss how research should be done to establish cultural affiliation with Indian nations of those human remains in its collections. The position we Indians took was that research was unnecessary to determine cultural affiliation, for we knew that the human remains held by the Colorado Historical Society had a cultural connection with all or some of the Indian representatives at the meeting. I attended that meeting as an observer and was supposed to sit quietly and not say a word. Cal Seciwa, an old friend and colleague at Arizona State University, was selected as one of the session moderators. I talked with him beforehand about what needed to be done. As the meeting commenced, other Native participants reinforced the idea that we must take charge of the agenda by asking the non-Indians to leave and by developing a repatriation agreement. We took these actions. After drafting the agreement, we asked the non-Indians (the people in charge of the Colorado Historical Society and others) to return to the room, presented the proposal to them, and they accepted it. Several months later, over three hundred sets of remains covered by the agreement were reburied in Colorado.

There is unfinished business with NAGPRA. The meeting that
Rebecca Tsosie referred to took place in this very room in December 2001, when delegates from numerous Indian nations came together and developed a policy statement, or recommendations, calling for the return of culturally unidentified human remains to Indian nations. What we came up with in that meeting was, for one thing, that these remains belong to us, American Indian peoples. Never have we ceded, given up, or surrendered our rights to our dead. This was something that was taken from us through the process of colonization. We have never consented to scientific research on these remains. I want to qualify that point, however. Some Native groups have allowed invasive testing, but by and large I think that most Indian nations oppose that type of research. Another recommendation called for the immediate discontinuation of all scientific research being done on human remains ancestral to Indians. We also asked for the repatriation of funerary objects, and finally we stated that the federal government must absorb the costs of reburials. This solution is a simple matter of justice designed to bring an end to all these past wrongs committed against our ancestors and us in the name of science, in the name of curiosity, and in the name of greed.

Several months after the ASU meeting concluded, the NAGPRA review committee accepted a controversial set of recommendations stipulating that repatriation of these so-called culturally unidentifiable remains would be voluntary and that decisions to do so would be left up to individual institutions. We found that position totally unacceptable because there was no guarantee that we would be able to repatriate any of those human remains and funerary objects affected by the recommendations. In response, some of us went to the review committee meeting at Seattle and challenged those recommendations. As a result of our protests, along with other individuals from throughout Indian Country who saw the recommendations as being pro-science, the review committee changed the language to say that institutions may offer to repatriate those human remains, which is significantly different than saying they may return them. The interior secretary has not approved those recommendations, however.

Repatriation is an ongoing struggle. It's not over yet. The protection of our sacred sites and the burial sites of our ancestors is a spiritual issue we face everyday. Desecration is an ongoing process. I hope that some of you will take an interest in carrying on this struggle and join the national effort that has been underway for many years.

COMMENT BY REBECCA TSOSIE

The NAGPRA review committee was supposed to hold a meeting on this issue, but they cancelled that meeting and said that they were going to reschedule it. [James Riding In comments to Rebecca Tsosie] Professor
Riding In says that it may be held in Washington, DC, so that the federal agencies will have to come and talk about their lack of compliance with the statute, which is another egregious problem, in some ways related and in some ways, obviously, its own problem. There may be 75,000 sets of human remains in that category, but that was a conservative estimate, so it could definitely be well over 100,000. We just don't know. I would encourage all of you to get involved. The review committee is supposed to be a public forum for people to comment and express their views.

CAL SECIWA

Ke'shi [Hello].

I am Shiwi, Zuni. I am one of the founding members of the Zuni Salt Lake Coalition. I want to share the story of the Zuni Salt Lake Coalition and our efforts to protect a sacred site that is a part of the Pueblo of Zuni Reservation. This sacred site, Ma’l okyattsk’e, Salt Lake, is the home of Ma’l okyattsk’e, Salt Woman. Located in west central New Mexico, it is also important to many other Southwestern Native people—Acoma, Hopi, Laguna, Navajo, Apache. We all hold this area in reverence, and it is an important part of our spiritual well-being. Not only the lake but also the land surrounding the lake, approximately fifteen miles in radius, is hallowed ground. This area was not included in a congressional act that returned ownership of the lake back to the Zuni Pueblo in 1978. Known as the Sanctuary Zone, it is our indigenous Geneva, Switzerland. In the times of our ancestors, all warfare was forbidden there and neutrality was observed. All were afforded safe passage, enforced by members of the Zuni Bow Priesthood, to and from the lake and sanctuary area, and allowed to harvest Salt Woman’s flesh, salt, which is meant for domestic, ceremonial, and spiritual use.

This long-standing tradition became threatened in the early 1980s when a Phoenix, Arizona, electric utility company, the Salt River Project (SRP), made plans to develop the Fence Lake Coal Mine, eleven miles upstream from the lake. This 18,000-acre coal strip mine would provide five years of coal to be transported by a forty-four-mile rail line, which would cut across ancient pilgrimage trails and destroy shrines and ancestral burial sites, ending at SRP’s Coronado generating plant located near St. Johns, Arizona. In turn, electricity would be produced for the customers of SRP, known in the Phoenix area as “our Earth Wise” utility company. Although I knew of their plans because I served as the tribal administrator with the Pueblo of Zuni during the 1980s, as an SRP customer I was certainly never informed of the plans.

The critical point of contention in opposing the development was the impact on the use of underground aquifers by SRP and the negative effect it would have on the underground springs that feed life-
giving water to Salt Woman's home. Observing the efforts of my pueblo's leadership and other tribal leaders' consistent opposition to this development over the last two decades, from a distance, I felt useless to help in any way, except with prayer and hope. However, when I learned in 2001 that New Mexico Mining Permits were approved for development of state lands that SRP had leased and that the federal Life of Mine permits were imminent, I knew some type of action needed to be taken to bring this issue out to the public and to assist my people's efforts to protect Salt Woman's home and surrounding area.

Upon consulting with the Zuni Tribal Council and their staff, I learned that other people and organizations were equally concerned about the issue, and upon contacting some of these folks we all agreed to come together and join forces with the Pueblo of Zuni and other tribes to begin a public, political, and spiritual awareness campaign.

In late September 2001, representatives of the Center for Biological Diversity from Tucson, Arizona; Citizens Coal Council from Denver, Colorado; Water Information Network from Albuquerque, New Mexico; Sierra Club's Environmental Justice Program from Flagstaff, Arizona; Zuni Tribal Council members and "Citizen Cal," all came together at Zuni Pueblo, New Mexico, to discuss and establish principles of understanding, strategies, action plans, and time frames for action. After presentation and acceptance of our collective plans, the Zuni Tribal Council, through tribal resolution, established the Zuni Salt Lake Coalition (ZSLC) in October 2001. Immediately, the ZSLC issued "A Call to Arms" to different sectors of society in this country and beyond.

We requested assistance from indigenous, environmental, political, legal, historical, and spiritual communities to bring light to this injustice. Thus, we embarked on a real-life David and Goliath story. We started to implement our actions—postcard mailings, petitions, e-mails—first with the president of SRP, telling him to drop the plans for the mine, and then to the secretary of the interior, Gale Norton, demanding that the federal Life of Mine to SRP not be issued. Rallies and public presentations were held, letters were issued to the editors, and we conducted two 271-mile spiritual runs: from Phoenix to Zuni in July 2002, then from Zuni to Phoenix in October 2002, concluding with a march on SRP corporate headquarters on Columbus Day. In February 2003, we conducted a twenty-four-hour vigil run around SRP headquarters on the one-hundred-year anniversary of SRP's creation. Through the efforts of our allies from Tonatierra, an indigenous embassy based in Phoenix, we cultivated the support of Hispanic communities. Our allies in the media produced and aired public service announcements in Spanish, English, Hopi, Navajo, Apache, and Zuni informing the people of our efforts and soliciting their help. The Shiwi Messenger, a Zuni community newspaper, produced and published a special edition on the issue.
We developed a Web site, www.zunisaltlakecoalition, and even had a billboard truck carrying our message of “SRP is targeting our sacred lands / Save Zuni Salt Lake.” We sent educational information to various members of Congress, state legislators of New Mexico and Arizona, and other Native and non-Native politicians. The New Mexico Council of Churches and the Arizona Ecumenical Council also supported our efforts with letters of endorsements and testimonials at public events. We gained support resolutions from the All Indian Pueblo Council of New Mexico and the Inter Tribal Council of Arizona, and even got the attention of the UN Indigenous Forum. One of our proudest efforts was to hold a “People’s Hearing” at Zuni in July 2003, where over four hundred people participated and gave testimonials in their respective languages and emotions. This was in light of the fact that no official public hearing had been conducted at Zuni by the federal or state agencies.

With all our collective efforts, prayers, and tears, with thousands of voices from all over the world being heard, and contending with growing administrative, legal, and political pressures, on August 4, 2003, the Salt River Project dropped their plans for the Fence Lake Mine. I only wish that they had made this announcement on August 12, the anniversary of the 1680 Pueblo Revolt. This action came as a total surprise, although a pleasant surprise. All enjoyed the taste of victory, but for only a few days.

Within a couple of weeks, the State of New Mexico Minerals and Mining Division issued out the same parcels of land, and more, that SRP had been leasing from the state, soliciting bids for oil, gas, and coal bed methane gas exploration and development, unbeknownst to the Pueblo of Zuni and the ZSLC. We discovered that the federal government, through the Bureau of Land Management (BLM), was going to take similar action. These developments would have similar or even more destructive impacts as the strip mining on the underground aquifers that feed the salt lake. So, with little rest and little knowledge of these extractive industries’ methods, we began a new chapter in the struggle to protect our sacred lands. I and other organizational members of the coalition immediately filed administrative protest with the BLM and are now ready to pursue administrative and legal remedies on this matter.

One other disturbing issue still lingering from the battle with SRP is the reburial of eight ancestral remains that were unearthed during the archaeological clearance for the proposed rail line. Although the plans for the mine were dropped, the remains were not returned to their original sites, despite the wishes of the Zuni and Hopi peoples. The application of NAGPRA in this instance did not apply because the remains were on private land. The matter was eventually resolved when the two tribes agreed to have the ancestors reburied on Zuni land in Arizona.

As we all leave here today to continue our inherent rights of ex-
ercising our spiritual rights and employ our responsibilities of stewardship over Mother Earth and all that exists, I wish you well with prayers and strength. La: we, that is all, E'la: kwa.

SUZAN SHOWN HARJO

The first time I really appreciated the difference between the way white people thought about death and showed respect for the dead and the way Indians do was when I was about nine years old and I first read Shakespeare's *Hamlet*. I was horrified at the graveyard scene, where the gravediggers are the comic relief—in a play where everyone ends up dead, hence the closing line, "the rest is silent." But in the gravedigger scene you have people yukking it up in a graveyard and Hamlet there with Horatio, his school chum. They're tossing skulls about, and they're visiting with each other and talking about worms crawling through people that were dead, and this was a laugh a minute for the people of England at the time. Hamlet says, while he's holding a skull, "Do you know who this is?" and one of the gravediggers says, "Yay, a horse and madman, it was Yorick, the court jester." It stops the scene cold. Hamlet says, "Alas, poor Yorick. I knew him, Horatio." Then the scene turns serious. I thought, they have to have known the dead people personally. They don't have respect for people and places for the dead unless they knew them, otherwise it's a big joke and about worms crawling around. The stuff of humor for ten-year-olds.

It really taught me that people from European cultures didn't have the same sensibility as we had. The Modoks went to the Smithsonian Institution once, looking for the skull of Captain Jack, one of their revered leaders who had been beheaded. They found it on the desk of a Smithsonian scientist, where it was being used as an ashtray. Well, since NAGPRA, that can no longer happen—not because of NAGPRA, just because they don't allow smoking in those institutions anymore. Otherwise, you will still find the skull on the desk, with paper clips and the like. You will find Indian bodies in green boxes, floor to ceiling. It's an extraordinary thing.

One of the most important things that happened in all of our legislative efforts, something that you won't find in any of the legislative history of NAGPRA, was a House hearing about repatriation and about the National Museum of the American Indian. Native Hawaiian men came and stood along three walls of the hearing room. They just stood there. Massive Native Hawaiian men, just standing there. The afternoon before, they had gone to the National Museum of Natural History of the Smithsonian where all these green boxes are, and they had made an appointment and very politely asked to see all their dead relatives. Box after box was brought to them. When the tables were filled with the boxes, they picked up all the boxes and said, "We'll be taking
them home now." And they just left. They didn't wait for permission, they didn't wait for a law, they just left. The next day, when they came and stood in that hearing room, there wasn't a Native person in that room who didn't know that we owned the world, and that anything that we were going to do was charmed and blessed and that we would win. It was quite the thing.

I love the stuff that's not in the legislative history. The first repatriation of a Zuni war god on the record was in the late 1970s from the Denver Art Museum. Actually, the first one was a setup, sort of a test to see what people cared about. Maytag, of the Maytag refrigerator fortune, a very nice lady who supported a lot of Native artists in Santa Fe, was incensed that these sacred objects were going up on the block. She called some of us one time about one that was being auctioned from Sotheby's or Christie's, I can't quite remember, one of the large auction houses in New York. She said, "Why don't you just walk in and get it?" And I said, "Because I don't want to be in the slammer." And she said, "How about if I did it?" And I said, "What right would you have to do it?" She said, "That's why it has to be an Indian." I said, "But I'm not Zuni." She asked some other people, whom I won't implicate by name. Some were willing to do it and some weren't. She said, "Well, I don't think they'll stop me." She thought maybe they would send her a bill, as if it were a shoplifting. If you are very, very rich, and you do some shoplifting, they send a polite note saying, "We notice that you adored the coat that cost $5,000, do send us a check." We thought maybe that would happen. To test it, she went in and said, "I'll take that now. I'm going to return it to the Zuni people." And she walked out. Walked to her apartment. Later flew out to Zuni and returned that war god. No check, no call, no one ever followed up.

That told us a lot. The non-Indians didn't want to litigate this. That was a very important thing. It changed the approach for a lot of us. Not for the litigators among us, but it changed the approach for those of us who were looking for ways to craft policy. Walter Echo-Hawk can tell you how many lawsuits were ready to go when we finally came up with the agreement with the Smithsonian and eleven months later came up with the agreement for NAGPRA. Some things we fell into by accident, some things were calculated. Going after the Smithsonian holdings first was calculated, because they were king of the mountain. We knew that if you beat the king of the mountain, everyone else will come tumbling down. That is what happened. It wasn't automatic, and it was very difficult going those next eleven months and through the NAGPRA negotiations. Nevertheless, once the giant was slain, we did have a much easier time of it. The uncomfortable part was that we were in close proximity to the very people who liked having skulls for ashtrays.

We were part of the process for an Indian dialogue report at the
Heard Museum, which was an effort by some in Congress, some in Arizona, and some in museums with large Indian holdings, to slow us down or to obviate the need for national repatriation policy. I chose the Indian side of it, and the Heard Museum's Michael Fox chose the non-Indian side of it, and we ended up with a dialogue report—well, we sort of suspended dealing so that we could get the Smithsonian agreement without their knowledge, without the knowledge of the other side. They were surprised by that and were sort of knocked off their thrones a bit. They were appalled, though, that we were insisting on the term "human remains," for example. In the national dialogue report every physical anthropologist and every archaeologist specifically, by name, disassociated themselves from the term "human remains." They didn't like the term, they wanted to keep saying "bones" and "skeletons" and other scientific terms, "grave goods" instead of funerary objects. They didn't like that we were changing the lexicon. As any good colonist knows, when you change the terminology, you change the terms of the interaction. We knew how to do that because it had been done to us. We insisted on "human remains" and they insisted on having their names withdrawn from that part of the report. They didn't like the implication that human rights attached to our dead relatives, that we had the right to get buried and stay buried, that we weren't the archaeological property of the United States of America or of the museums. It was mighty stuff, just the simple changing of the terms.

One of the terms that is now coming back to haunt us is "unidentifiable human remains." We say, of course, "unidentified." Right now there is a big push to try to categorize a huge number of Native people, dead Native people, as unidentifiable. Some of us suspect that it is in order to conduct DNA testing on them without having anyone able to object. I believe that that is the goal and that the Park Service NAGPRA office is an important part of that effort and maybe even working with people in specific institutions around the country on those tests. I would like to find evidence of that. Maybe some energetic researchers in this audience would like to undertake that effort and help us search. Even the museums, who have now turned in their inventories, for the most part, are saying that the Park Service needs to publish those inventories and let people in Indian Country know what the museums have said, so that we can say, "Oh, in that museum they're saying that they have this many unidentifiable human remains, they've come from such and such a place, we think that they belong to us, and we can claim them."

People from very large museums in the meeting that Dr. Tsosie moderated and organized and reported on were saying that 75 percent, 85 percent, maybe a higher percentage, of those people currently classified as unidentifiable human remains can be identified if the Park Service will just release the information, will publish where they were taken from. Just the bare information that the museums have
given to the Park Service. Our hope is that everyone will insist on the Park Service doing their job, which they’re saying can’t be done for “a period of time,” meaning until the next ice age. We’re saying it needs to be done right now. They want to rush and have a rule that would have the effect of declaring all the human remains now classified as unidentifiable locked into that definition. We’re saying, what’s the rush? Why rush now? You’ve not rushed during any of the implementation of the repatriation laws, and now you want to rush? If you have a vote in any sense or an opinion, let the Park Service and various museums, and Congress in particular, know that the Park Service is not doing a good job, that they may be doing something dastardly, and that the dastards should be investigated.

WALTER ECHO-HAWK

Rebecca Tsosie has asked me to give some quick remarks about the Kennewick Man case. This case is titled Bonnichsen v. United States. It was filed in the state of Oregon by some scientists to test the limits of the NAGPRA legislation. Some scientists are unhappy and displeased with the NAGPRA legislation and the social changes brought about by NAGPRA. Before NAGPRA and similar legislation, Native dead were considered property belonging to the U.S. government. These dead were scientific remains and strictly treated as “archaeological resources” of the United States. With the passage of NAGPRA, society acted to change that way of thinking about Native dead and to treat them more like the dead of other races.

NAGPRA is one of the laws that implement the legislative agenda set in motion by the American Indian Religious Freedom Act of 1978. It is a landmark human rights law for Native people. NAGPRA created a backlash in some quarters of the scientific community. I believe that there is a movement among parts of the scientific community to weaken NAGPRA, to slow and impede its implementation. I believe that this lawsuit was brought as part of a strategy to test the actual limits of this statute. The facts of the case are as follows. The Columbia River gorge of Washington State and Oregon is a very ancient tribal area. My wife and her family are from Celilo Falls. The gorge has long been occupied by our Native people. It is the home of many tribal petroglyphs and origin legends that predate the United States. The tribes and bands indigenous to that area still know their origins and aboriginal ties to the region. In 1996 a person discovered some human remains that were unearthed by erosion on a riverbank along the Columbia River on U.S. Army Corps of Engineers land. The dead man was over nine thousand years old. Five tribes of that area submitted a NAGPRA claim to these remains: the Yakama Nation, the Nez Perce Tribe, the Confederated Tribes of the Colville Reservation, Confederated Tribes
of the Umitilla Nation, and the Wanapum Band. My wife and her family are enrolled Yakamas who belong to the Wanapum Band. They filed a joint NAGPRA claim to rebury this man. Based on evidence submitted by the tribes, the Department of the Interior determined that there was enough evidence to culturally affiliate these remains with the five tribes to satisfy the NAGPRA standards and therefore decided to turn the remains over to them for reburial. The evidence consisted largely of oral traditions that these tribes have, and continue to have today, about that region. The scientists were upset because of the very old age of the remains. They wanted to study them, regardless of the feelings of the Native people in the area, as is so often the practice. Some have studied Native American remains throughout their careers without the consent of the next of kin. They brought a lawsuit in the federal district court to enjoin reburial and to get permission to conduct their studies.

This test case is pretty good strategy on their part because from the standpoint of law, our facts for defending the reach of the statute are poor in that these remains are in fact very, very old. It is hard to present ironclad evidence in court of a relationship to remains that are that ancient. Moreover, the location where the remains were discovered is outside of aboriginal tribal areas as determined by the Indian Claims Commission in NAGPRA. So there is a geographic loophole that puts the Ancient One in an area that is not clearly covered by the statute. The scientists did a lot of fund-raising, got a really good attorney, and sued the government. By the luck of the draw, they got a judge who had a burr under his saddle against the government. They took the government “to the cleaners” in the district court. About a year ago, the court ruled in their favor, issuing a ninety-page opinion enjoining the reburial of the remains, overturning the decision of the Department of the Interior to repatriate these remains, and granting access to the scientists to study the remains. This case is now on appeal in the Ninth Circuit. We recently filed a brief in the appeal on behalf of the Morning Star Institute and the Association of American Indian Affairs. We had an amicus brief in the trial court on behalf of the National Congress of American Indians.

The case raises many statutory issues about the proper interpretation of NAGPRA and about the procedures employed for making decisions under the statute. The appeal has been briefed and argued before the Ninth Circuit and is presently on submission. This test case is working its way through the courts. We’ll just have to wait and see what the outcome will be and then assess whether any further tinkering with the statute will be necessary. Depending on what the court does, Indian Country may need appropriate congressional action to preserve the intent of the statute. This case illustrates that whenever a historic Native statute is enacted, Native people must be ever vigilant to protect the statute from attacks and uphold the constitutionality of the statute.