

July 20, 2005

Senator John McCain, Chairman
Senate Committee on Indian Affairs
United States Senate
836 Hart Office Building
Washington, DC 20510
FAX: (202) 224-5429

Re: Proposed NAGPRA Amendment

Dear Senator McCain:

We are concerned about the potential consequences of your proposed amendment to the Native American Graves Protection and Repatriation Act (NAGPRA). The amendment proposes to redefine the meaning of the term "Native American" by adding the words "or was" to Section 2(9) of the statute so that it would now include all prehistoric remains found in the United States, even those that have no cultural, linguistic, genetic or any other significant connection to modern American Indians. This change would overturn the decision of the federal district court in *Bonnichsen v. United States of America* that interpreted NAGPRA to mean that only those remains that can be shown to have a demonstrated connection to modern American Indians fall under the law, and that those remains of such antiquity that the demonstration of a connection is impossible do not. This decision was upheld by the Ninth Circuit Court of Appeals.

If NAGPRA is changed to redefine "Native American" as stipulated in your proposed Amendment, all human remains found on federal land regardless of their antiquity would become subject to the repatriation provisions and other restrictions of the statute. The effect would be to privatize our national, indeed the common human, patrimony represented by the Kennewick Man skeleton and other ancient remains that until now the government has traditionally protected. In this way Americans would be barred from learning more about our common heritage to the detriment of everyone concerned. Those who seek possession of ancient skeletal remains under NAGPRA often base their claims to a large extent on oral traditions. Such claims are wholly untenable because the historical validity of oral traditions become more problematic over time, fading to virtual unreliability for dates that are in excess of just a few hundred years.

ORAL HISTORY AND ORAL TRADITIONS

Oral history is knowledge from a person's direct experience. Such testimony is often collected and placed in the historical record. Care, however, must be taken when eliciting such testimony due to the fallibility of memory, selective recollection and other factors. Oral traditions, on the other hand, are memories of the memories of other people's narratives. In the process of oral transmission (passing down an account by word of mouth) changes inevitably take place revealing a dynamic much like that of rumor that folklorists, sociologists and psychologists have studied extensively. Indeed legend, passed down for at least one generation, has been characterized as "crystallized rumor." Even though oral traditions "crystallize" in the sense that a definable story is preserved in the process of oral transmission, the details of the story vary, sometimes greatly and sometimes in important ways to yield a number of different variations on a common theme. In fact such variation is a defining feature of folklore to which oral traditions belong.

THE PROCESS OF ORAL TRANSMISSION

The transformative processes of oral transmission are: deletion of information, the telescoping of events, thus distorting chronology, the fusion of events and persons, the insertion of elements from other events or from other well known oral traditions, as well as the inclusion of what has been called neo-traditions, recently invented narratives with a contemporary purpose rather than the description of historical fact. David Henige, who has extensively studied the process of oral transmission and the usefulness of oral narratives as history, says that "the mental landscape is being repeatedly exposed to weathering" thus progressively diminishing orally transmitted narratives as sources of historical fact.

THE GENERA

The genera of oral tradition are the types of narrative which appear in a body of folklore. This type of variation also plays a part in the usefulness of an orally transmitted narrative in retrieving historical facts. Myths, for example, are the least factually reliable folk narratives. First, myths do not deal with the historical past, but rather with Creation or with a timeless realm of fabulous happenings, monsters, superhuman heroes and wondrous transformations. Myths address the unknowable, providing answers to metaphysical questions such as; where did we come from? How did things come into existence? Why are they the way they are? As well as questions of why the human condition is the way it is and why one way of life differs from another. Also, myth has a moral dimension, explaining things in moral rather than factual terms.

Mythic narrative also has a dream-like quality, taking reality apart and putting it back together according to its own logic, what anthropologist Claude Levi-Strauss has called "mythologic". Indeed myth and dream share several characteristic in this respect, leading some scholars to argue that

myth and dream have the same psychological source; dreams are symbolic representations on the individual level while myth parallels them on the social level. Their significance, therefore, does not reside in historical fact but rather in the cultural and the psychological realm. The truths they reveal are thus psychological, not historical. Mythic narratives, therefore, should not be treated as historical narrative.

The historian, however, is on better ground with legends. Legends are narratives told about human beings who have lived in the historical past they are thought by narrators to be true. Historical fact is more likely to be captured in such narratives, especially when archeological and historical sources are available for verification, a subject that has been extensively studied by scholars.

Among the many examples that might be cited one is particularly illustrative of the process of narrative transformation. Robert Lowie studied the Plains Indians in the early twentieth century when traditional narratives were even more accessible than now. The introduction of the horse, whose provenience and date of introduction can be independently verified, was of major historical significance. Yet in the oral traditions of the Assiniboins of the Canadian plains the advent of the horse has been transformed into "a cosmogonic hero-myth".

Lowie also discovered the absence of any reference to the arrival of Lewis and Clark among the Lemi Shoshone notwithstanding its epochal consequences for the lives of those people. Instead, the origin of the White Man is found in myth: the children of Iron-Man as opposed to the Indians who are the children of Coyote (sometimes Wolf). Jan Vansina who has studied the oral traditions of Africa as possible sources of history, also discusses how the appearance of the White Man is treated in African oral traditions. The first explorer with whom the people had contact, he says, is not retained in folk memory. Instead it is the first White Man who happened to have made an impression on them; a merchant, for example, or a missionary or colonial administrator who came much later. Oral traditions are therefore highly suspect when trying to establish and date first contacts. Many post-contact traditions are also suspect. An example of the latter are the nineteenth

century Ponca reports of living hairy elephants and forty feet long monsters in Nebraska.

DISTORTION OF FACT AND INSERTION OF ELEMENTS IN ORAL TRADITIONS

Establishing chronology is also nearly impossible in oral traditions, and completely impossible in events that were supposed to have occurred thousands of years ago. One reason is the telescoping of events to create a longer or short time span in oral presentation. Other reasons are the erosion of factuality as time goes on, and the absorption of historical events into enduring, timeless mythic themes. The advent of the horse among the Assiniboins cited above is one of hundreds of examples. Also, when oral narratives tell of earthquakes, and other cosmic disturbances there is usually no way to correlate them with actual events revealed in the geological record.

Diffusion of elements from one area to another can be an important source of distortion. Patterns of diffusion of motifs (narrative elements) and folk themes have been carefully studied all over the world for well over a century, providing a wealth of data on how the process works. Unless one has access to verifiable information outside the folk tradition, the investigator is never sure which elements are local, and thus perhaps historically accurate, and which ones have been borrowed from distant places and other bodies of oral narrative.

Another source of confusion when searching for historical fact in oral narrative is what Levi-Strauss has described as "the astonishing similarity between myths collected in widely different regions" arising not from diffusion but from psychological parameters common to people everywhere and through time. Revitalization movements are also a source of distortion. The history of contact between native peoples and Europeans recurrently resulted in crisis for the native cultures. Very often a prophet arose with a new meaning system to explain the resulting trauma in mythic religious terms and to propose how the situation may be reversed. The Ghost Dance in America and the Cargo Cults of New Guinea are among the numerous examples of this process. Explanations that purport to be historical in nature, therefore, may actually be very recent components of a revitalization movement. Neo-traditions are also a source of distortion. A neo-tradition is an invented story designed to establish a connection between aspects of the past and the present to meet a group's changing needs and aspirations. Eric Hobsbaum and Terence Ranger edited an entire volume on this phenomenon. A case in point is the Lumbee of North Carolina in whom a tradition was invented asserting that the Lumbee are the descendants of the offspring of Algonquin Indians and sixteenth English settlers from the lost Roanoke Colony. This narrative, although not true, seems so compelling that it has

convinced others that the Lumbee's "self-identification was embedded in history".

The searcher for historical fact in oral traditions, therefore, must sift through possible diffusion, recurrent themes, the possibility of recent origin (revitalization movements and neo-traditions) as well as the various distorting factors inherent in the dynamics of oral transmission in order to find the kind of information applicable, for example, to establishing a connection that could support a claim to rightful possession of ancient remains. The further back in time one goes, the less historical fact one finds. For those reasons, oral traditions cannot be considered reliable evidence for establishing connections between modern claimants and human remains that are more than a few centuries old, let alone those as remote as Kennewick Man, Spirit Cave Man and numerous others.

Those who attempt to gain possession of such remains by using oral traditions as a basis for their claims are appealing to evidence that simply does not exist. There is no way at present to determine whether skeletons as old as Kennewick Man are related either culturally or biologically to modern American Indians. It is very possible that they are not because of the many contingencies that existed to human survival in the remote past. Such remains should not be made subject to NAGPRA. They should remain a part of the national patrimony so that we and future generations can learn the stories that are hidden in their bones. We urge you to withdraw your proposed amendment to NAGPRA's definition of Native American. If requested, we would be happy to make ourselves available to the Committee members or staff to answer questions by telephone or e-mail concerning these matters. We can be contacted at the telephone numbers and e-mail addresses listed under our respective names on the attached page of biographical information.

Respectfully submitted,

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Biographical and Contact Information

Ronald Mason, Ph.D. is Emeritus Professor of Anthropology and Henry M. Wriston Professor of Social Science at Lawrence University, Appleton, Wisconsin. Before joining the faculty he worked as museum curator. He has

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