

The Reality of Repatriation

Reaching Out to Native Americans

FRANCIS P. McMANAMON

THE REPATRIATION of Native American remains and funerary objects has become prominent in the past 20 years. The intense convictions of many Native Americans have been magnified by sympathy from other Americans who share the belief that curation is not appropriate treatment for the dead. These forces have accelerated what might have been a longer-term evolution in the relationship between American Indians, archeologists, and museum professionals. One outcome has been the dramatically increased power of native groups over the disposition and treatment of remains and related artifacts. This new reality requires archeologists and others to work on more equal footing with Native Americans than has been the case in the past.

The history of relationships between archeologists and the Native Americans has not been marked by cooperation, mutual respect, or clear and frequent communication. In its early years, during the 19th century, archeology supported the stereotype of American Indians then current. Scholars tended to discount the substantial achievements evident in the archeological record. The plundering of Indian graves in the interest of craniology and phrenology during this period amply illustrates the absence of consideration for the Native Americans of the time. Modern Indians have effectively exploited this sordid chapter in anthropology and archeology to obtain explicit legal protection for unmarked graves.

FORTUNATELY, the profession evolved. Today, archeologists not only employ more scientific methods, but also seek to use the archeological record to show how past cultures dealt with problems not unlike those that our society faces today. The material and organizational accomplishments of ancestral Native Americans are admired now. So, it is ironic that many archeologists have yet to reach out to the very public most connected to that past—contemporary Native Americans. Even more ironic given the fact that, because of the Native American Graves Protection and Repatriation Act and other laws, archeologists must consult with Indian tribes and other native groups over a host of issues.

Granted, there are decades of mistrust to overcome—a serious challenge to contemporary archeologists who must make up for past failures, as well as lost time. However, there ought to be no doubt about the potential importance of archeological investigations to Native Americans. Although some tribes and advocacy groups have disavowed archeology and

its interpretations, others have embraced them. The Makah, Navajo, and Zuni, among others, have had archeological staff in their cultural resource programs for years. Recent times have witnessed widespread interest by Native Americans in such programs as well as in cultural centers, language retention, and other activities related to cultural preservation. Increasingly, American Indians seek technical information and training in preserving archeological and ethnographic resources, as well as act as instructors themselves. National Park Service courses in curation, interpretation, preservation, and ethnography have all been well attended by Native Americans.

Clearly, archeologists and Native Americans share the same goals—understanding the past and preserving the remains related to it. How can they foster cooperation? First, by improving communication—among organizations, and perhaps more importantly, among individuals. Second, by clearly and calmly articulating the value of different approaches and how they benefit the other party. Third, by being neither patronizing nor timid in their relationships. And finally, by committing to working together for the long term.

SOME CRITICS note that there has been a lot more talk promising cooperation than actual payoff. Acknowledging the truth in this sentiment, it is encouraging that even Indian activists and scholars—such as Vine Deloria and Roger Echo-Hawk, writing no less in *American Antiquity* and the *SAA Bulletin* (both published by the Society for American Archaeology)—have identified areas in which cooperation between archeologists and Indians would be mutually beneficial and lay the groundwork for future collaborations.

Deloria suggests that archeological methods could be helpful in locating and preserving traditional sacred sites. Echo-Hawk calls for archeologists and Indians to reconcile archeological data and native oral traditions, which he believes would enrich everyone's understanding of America's ancient history.

Archeologists have displayed the full range of responses to repatriation, from an attitude of "It's about time" to claims that it signals the end of archeology. Clearly it represents not the end but the chance for a new beginning.

Francis P. McManamon is Departmental Consulting Archeologist, Department of the Interior, and Chief, Archeological Assistance, National Park Service.

CONTENTS

FEDERAL ARCHEOLOGY is published by the National Park Service Departmental Consulting Archeologist and Archeological Assistance Program.

DEPARTMENTAL CONSULTING ARCHEOLOGIST
CHIEF, ARCHEOLOGICAL ASSISTANCE
Francis P. McManamon

DEPUTY CHIEF
Veletta Canouts

GUEST EDITOR
C. Timothy McKeown

MANAGING EDITOR
David Andrews

ASSOCIATE EDITOR
Joseph Flanagan

CONTRIBUTING EDITORS
S. Terry Childs
Dan Haas
Ruthann Knudson
C. Timothy McKeown
David Tarler
Richard C. Waldbauer

PRINTING COORDINATOR
Jerry Buckbinder

Printed by McDonald and Eudy, Temple Hills, MD, under contract to the U.S. Government Printing Office.

Statements of fact and views are the responsibility of the authors and do not necessarily reflect an opinion or an endorsement by the editors or the National Park Service.

Send comments, articles, address changes, and information on conferences, training, and publications to Editor, NPS Archeological Assistance Division, P.O. Box 37127, Washington, DC 20013-7127, (202) 343-4101, fax (202) 523-1547.

Cover: "Alone with the Past," Canyon de Chelly, Casa Blanca Ruins, AZ, ca. 1910, by Roland Reed.



"The Pueblo Graveyard," Taos, NM, 1993, by 12-year-old Melanie Stout, one of many young Native American photographers trained by professionals volunteering with the "Shooting Back from the Reservation" program.

SPECIAL REPORT

The Native American Graves Protection and Repatriation Act

INSIDE THE ACT 12

Taking stock of the congressional mandate so carefully crafted nearly five years ago.

BY C. TIMOTHY MCKEOWN

THOUGHTS ON TWO WORLDVIEWS 16

At meetings of the NAGPRA review committee, Native Americans and museum representatives are often separated by different ways of viewing the world. BY TESSIE NARANJO

INTERVIEW WITH CAREY VICENTI 20

Why tribal leaders, government officials, archeologists, and museum professionals should take advantage of the momentum that is galvanizing Native Americans across the country.

AN EPIMETHEAN VIEW OF THE FUTURE 26

Epimetheus, said Charles Kinsley in *The Water Babies*, was "always looking behind him to see what had happened, till he really learnt to know now and then what would happen next." Harvard's Peabody Museum is looking both ways to deal with its 8 million North American artifacts. BY BARBARA ISAAC

ROOTED IN NATIVE SOIL 30

In 1988, the remains of native Hawaiians were removed to make way for a luxury hotel on the island of Maui, leading to the birth and growth of the group Hui Mālama I Nā Kūpuna 'O Hawai'i Nei. BY EDWARD HALEALOHA AYAU

NAGPRA: SYMBOL OF A NEW TREATY 34

NAGPRA represents the chance for a new covenant between archeologists and Native Americans. If they choose cooperation, anthropology could face a boost unrivaled in over two decades. BY ROSITA WORL

THE ROAD TO COMMON GROUND 36

With nearly a half-century of experience in working with archeologists, Arizona's Gila River Indian Community was well-equipped to deal with the discovery of a cemetery during construction of a four-lane highway across its land. BY JOHN C. RAVESLOOT

Columns

IN CONTEXT 2

Francis P. McManamon

BACKFILL 44

Robert Pickering and R.L. Jantz

Departments

DIGGINGS 4

News, Views, and Recently Noted

SITEWATCH 7

Protecting the Nation's Archeological Heritage

NAGPRA NEWS 41

Implementing the Native American Graves Protection and Repatriation Act

News, Views, and Recently Noted

An Invitation to Native Americans

The footsteps of the Paleoindians—the first people to inhabit the vast, primordial wilderness of the continent's forests, deserts, and plains—represent the opening chapter of a North American genesis. Now their modern-day descendants may join in a plan to protect the nation's Paleoindian heritage, increasingly threatened by both man and nature.

On January 27, representatives from the National Museum of the American Indian and the National Congress of American Indians met with Park Service staffers planning "The Earliest Americans," a National Historic Landmark theme study. Over the next few years, partners in the project—including federal agencies, state and local governments, scholars, and avocationalists—will work together to identify nationally significant Paleoindian archeological sites.

Ultimately, they hope to nominate a number of new National Historic Landmarks, clarify the boundaries of existing ones, and develop a body of knowledge to help manage and protect them.

The project may not be limited to archeological sites, however. For the first time in

the NHL program, Native American traditional origin sites—places figuring prominently in stories of creation and the emergence of peoples—may qualify based on that criterion alone. Since many current-day tribes may trace their origins to Paleoindian sites, planners called on the NMAI to help enlist their involvement.

Native Americans at the meeting said that tribes, though interested in formally protecting sites, would not want to attract unwarranted attention. "We have a lot of things in our country that survive only because outsiders don't know about them," said George Horse Capture of the NMAI.

NPS Chief of Archeological Assistance Francis P. McManamon was optimistic that, working together, the study planners could find a way to overcome the confidentiality concerns. "We want to commemorate a heritage, not put dots on a map," he said.

Clara Sue Kidwell, assistant director for cultural resources at NMAI, expressed the hope that working together would bring about "a mutual education for all." Kidwell is crafting a position paper with NPS study coordinator Bob Grumet that captures the range of views expressed

at the meeting. The next step may be discussions with specific Indian groups and tribes from across the country.

Planners have already surveyed state historic preservation offices to identify Paleoindian archeological properties inventoried to date. They've also investigated the National Archeological Database and National Register Information System, as well as the recent literature.

Twenty-five Paleoindian sites are currently designated as NHLs. However, several appear to be from more recent times, evidencing the need for an update.

In late February, planners are releasing a report on the theme study's planned framework for comment nationwide. Copies will be sent to SHPOs in all 50 states and to NHL archeology committee project liaisons for further distribution and input. Responses are due by April.

"The Earliest Americans" comes on the heels of an earlier theme study, "Historic Contact: Early Relations Between Indians and Colonists in Northeastern North America, 1524-1783," to be published by the University of Oklahoma Press in the fall. That study led to the designation of 17 archeological NHLs.

Pleased with the outcome of that effort, the NPS history areas committee was willing to consider other themes on important historical periods that are generally not well known. David Brose, chair of a joint NPS-Society for American Archaeology NHL committee, presented two classes of archeological sites as candidates that could excite everyone: early industrial properties—many threatened by development—and Paleoindian sites.

"Although Paleoindian sites are very rare and fragile, they are found across the entire continent," said Brose, associate director of the Royal Ontario Museum. "We also knew that Native American communities could have a real role in their interpretation."

The legacy of the earliest Americans, whether manifest in the intangible language of spirituality or the testament of charred rocks or clovis points, can only benefit.

Preservation vs. Conservation

Because the Natural Resources Conservation Service (formerly SCS) impacts vast amounts of private land, it often faces a dilemma. Conservation methods like terracing fields

continued on page 6

Highway 22 is only a small part of Puerto Rico's \$7.5 billion plan to modernize its infrastructure, but it played a big role in a dramatic meeting of the island's future with its past. If the new road hadn't met the Rio Indio where it did, the story beneath the river's banks might never have been told.

Perhaps construction crews should have noted the name of the place: "Paso del Indio," Indian Ford. Below them lay the remains of three ancient settlements, each buried and sealed neatly in stratigraphic time by a catastrophic hurricane and flood. Separating them was the river's signature: a sandy, yellowish alluvial deposit, 20 to 30 centimeters wide in places.

Since the site lay in a flood plain, a 1988 survey assumed human occupation to be unlikely. It wasn't long, however, before the backhoes started turning up bones, which led the island's highway authority to hire independent archeological contractors Adalberto Mauras and Osvaldo Garcia Goyco. The two launched what has become one of Puerto Rico's most ambitious archeological investigations ever, offering a startlingly clear picture of life among the island's earliest inhabitants.

Paso del Indio was a busy place for over a thousand years. From about 400 to 600 A.D., it was occupied by a people known locally as the Igneri, referred to in the archeological literature as Saladoid. They were possibly the first ceramic agriculturalists in the Caribbean. Then came the Pre-Taino, from 600 to 1200 A.D, followed by the Taino, who populated much of the region until European contact.

Each of them saw their settled life along the fertile banks decimated by storm. "It would have been devastating," says Mauras. "All the agriculture, the manioc, would have been washed away. The trees, the birds, the animals disappear. All the fish are swept away. Even transportation down the river in canoes or walking over land would have been difficult." Silt would have rendered the water undrinkable.

Archeologists believe that the upheavals account for the high infant mortality rate they have discovered. Almost three-fourths of the remains excavated are children of weaning age. The reasoning is they would have been the first to succumb.

One discovery eerily mirrors a Spanish friar's recounting of a native creation myth. Ramón Pané, dispatched by Columbus, returned home with the story of a Taino goddess whose death giving birth to twins caused a flood that covered the earth. So it was with some surprise that archeologists found, in the deepest tomb on the site, the skeleton of a woman of about 18 who died during childbirth. The skeleton of her baby had partially emerged from her womb.

Garcia Goyco speculates that the site could yield anywhere from 150 to 175 remains, with 105 discovered so far.

The Native American Graves Protection and Repatriation Act does not apply to territories, and there are no federally recognized native groups in Puerto Rico. With European conquest, native islanders either went extinct or intermarried with whites and Africans, which is clearly reflected in the island's population today.

Bridge to the Past Road Project Reveals Decimated Settlements



KAREN ANDERSON

Excavation had been underway for several months before the section 106 process of the National Historic Preservation Act was initiated. The project had been issued a permit from the Corps of Engineers, but the work being done, according to the regulations as they existed at the time, did not qualify as a federal undertaking. During the course of construction, however, amendments were made to the regulations defining what constitutes a federal undertaking. So, when the highway authority needed a new permit after the old one expired, the project was suddenly subject to 106 compliance. Until that point, Paso del Indio was under the authority of the Consejo para la Protección del Patrimonio Arquelógico Terrestre de Puerto Rico, a state agency.

The development opened the door for the Puerto Rico state historic preservation office. According to Deputy SHPO Karen Anderson, it was several months before a mitigation agreement was prepared. Among other things, the SHPO called for delineating the full boundaries

of the site and excavating all areas of construction impact. The project also benefitted from the expertise of Jefferey Walker, technical advisor on loan from the Forest Service.

The process of turning an accidental find into a planned excavation has been painstaking. The mitigation plan was negotiated several times, primarily because the SHPO did not agree with the Consejo's position that the remains be displayed. "That made getting a memorandum of agreement much more difficult," says Anderson. By the time the memorandum was signed, it had been decided that the remains would not be shown publicly.

The unexpected encounter with the island's past points to what Anderson says is a need for better surveying methods, especially in flood plains. "How do we deal with it in the future so we don't have the same situation again?" she says. "It's not just digging little shovel pits because you're not going to find anything."

Meanwhile, the soil of Paso del Indio continues to turn up secrets that illustrate her point. Below the Igneri strata, a section of stone pavement previously thought tied to pre-Taino times at the earliest was discovered. Once again, archeologists pause to consider what the site is trying to tell them. "That," says Garcia Goyco, "is a mystery."

and leveling land, though effective for agriculture, can potentially destroy archeological sites. Yet when sites are found, landowners—fearing state interference—are sometimes reluctant to have the Service notify the state historic preservation officer. So the NRCS is caught between losing landowner trust and failing to promote preservation.

A new programmatic agreement promises to address these and other problems. The agreement, among the Service, the President's Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers, hopes to help the NRCS carry out its mission—conservation—while protecting the sites and artifacts that turn up on farms and ranches across the nation.

An earlier agreement, struck in 1984, was terminated two years ago when a few states expressed disagreement over NRCS compliance with section 106 of the National Historic Preservation Act. Interim measures were put in place as the current terms were negotiated.

The new agreement completely revises NRCS policies and procedures. Notably, the Advisory Council has loosened its regulations.

Mike Kaczor, federal preservation officer of the NRCS, says the arrangement is designed "to tailor the compliance process to [NRCS] operations." The size and nature of the agency's workload makes it

difficult to treat all cases by the book, he says. "We don't have the staff to efficiently handle 106 on a case-by-case basis."

Now, trained staff from the agency's local field office can do the initial inventory if a site is found on land where the NRCS is giving assistance. Any further work is to be done by qualified specialists.

An operational plan will guide NRCS in gathering all the relevant data about each site at issue, helping the Service, the landowner, and the preservation officer come to an agreement about what to do. This, says Kaczor, will provide a firm factual basis for making decisions.

Expect more flexibility on all sides, says Kaczor. "There's an anti-regulatory climate out there right now. If you try to shove 106 compliance down people's throats, you're going to see historic preservation take a 180-degree swing." Now policy can be fine-tuned at the state level, because procedures that are applicable in New Mexico may not be in Vermont. The agreement also stipulates that NRCS will continue to take advantage of new technology and requirements for quality assurance, monitoring, and reporting. The Advisory Council, for its part, will periodically review the process.

"The new agreement allows for a lot more communication about agency mission and function," says Kaczor. "We're helping overall historic preservation a heck of a lot better."

Friedman Honored for Building Outreach, Bureau Profile

The Bureau of Reclamation has given its prestigious resources management award to Edward Friedman, federal preservation officer at its Denver office. Reclamation Commissioner Dan Beard, in presenting the award, cited Friedman's far-reaching influence. Friedman was instrumental in creating the Federal Preservation Forum, which has fostered cooperation among cultural resource managers and programs nationwide. He is also credited with boosting his bureau's public and professional visibility.

Friedman has been notably active in promoting compliance with the Native American Graves Protection and Repatriation Act. And with Reclamation's support, he worked with the Society for American Archaeology to launch a public education newsletter that now reaches over 5,000. He has also educated the Denver-area public about the BOR's work, developing displays for Earth Day and supporting presentations at schools and universities.

Cutting-Edge Courses

The NPS Rocky Mountain regional office is offering training in some of archeology's most effective electronic tools. Archeologists, architects, cultural resource managers, and anyone interested in mastering the technology are encouraged to attend. Participants need no previous technical experience.

"Remote Sensing/Geophysical Techniques for Cultural Resource Management" will be given May 22-26 at Cahokia Mounds State Park in Collinsville, IL. Participants will be instructed in the geophysical equipment and aerial photographic techniques used to identify, evaluate, and protect cultural resources. Training includes use of magnetometers, conductivity and resistivity meters, metal detectors, ground penetrating radar, and low altitude, large scale aerial reconnaissance. Attendance for the course is \$475.

"Low Altitude, Large Scale Aerial Reconnaissance for Cultural Resource Management" will take place May 5-14 and August 1-9 at San Juan College, Farmington, NM. The course, co-sponsored by the Park Service and San Juan College, provides introductory instruction in LALSAR, which uses camera-equipped remote-controlled model aircraft to produce large-scale, high-resolution photographs. Aside from lectures on the theory and practice, the course offers practical experience in flight training and constructing the aircraft. Attendance is free.

For more information, contact Steven L. De Vore, U.S. Department of the Interior, National Park Service, Rocky Mountain Region, Interagency Archeological Services, 12795 West Alameda Parkway, P.O. Box 25287, Denver, CO 80225-0287, (303) 969-2882.

Sitewatch

Protecting the Nation's Archeological Heritage

No Compensation for Developers Denied Permission to Disinter

Under Iowa law, if human remains more than 150 years old are found to have state or national significance, the state archeologist can deny permission to disinter. Since this may limit construction on someone's property, is the landowner entitled to compensation?

The issue was recently decided by the Iowa Supreme Court in *Hunziker v. State*, 519 N.W.2d 367 (Iowa 1994). By a 4-1 majority, the court, in a broad-ranging opinion, affirmed a lower ruling denying several land developers a writ of mandamus that would have commanded the state to condemn a parcel of land they own and, pursuant to the United States and Iowa constitutions, provide them just compensation.

The plaintiff/appellant developers purchased the lot in question in 1988 as part of a 59-acre tract of farm land that they subsequently transformed into a housing subdivision. In 1991, after they sold the lot for \$50,000, the state archeologist learned that a Native American burial mound from the Woodland Period (500 B.C.-1000 A.D.) lay near the center of it.

Pursuant to Iowa Code section 305A.9 (1991), the

KENNEDY, HARRIS SPEAK AT FBI HEADQUARTERS

National Park Service Director Roger Kennedy shares a moment with Assistant Attorney General Jo Ann Harris at the Society for



American Archaeology's public service awards, which honored five Department of Justice employees. Both made presentations at the December ceremony, along with senior law enforcement administrators from the Departments of Interior and

Agriculture. It was the third time in the last year that Harris had addressed a gathering of archeology, law enforcement, and cultural resource management professionals.

Top law enforcement representatives—together with officials from the U.S. Navy—also turned out for a November ceremony at Norfolk's Nauticus Museum to recognize citizens who helped apprehend looters. The "citizen stewards" were the first to receive rewards paid for by fines levied under the Archeological Resources Protection Act. Officials from the Navy took the opportunity to present—for the first time—its policy on submerged ships and aircraft.

Both ceremonies applauded the successful cooperative work of the Interagency Archeological Protection Working Group.

archeologist prohibited disinterment of the mound and required a buffer zone around it. As a result, the city refused to issue a building permit.

The developers refunded

the purchase price to the buyer and took back the lot. Then they brought a mandamus action in the district court, alleging that the state's action amounted to a regula-

tory taking without compensation. The lower court held that the developers never had a vested property right under statutory or common law to build a house on an ancient burial mound.

The developers appealed to the Iowa Supreme Court, which acknowledged that when land use regulation denies the owner all economically beneficial or productive use of the land, the state must pay just compensation. The court went on to note, however, that under limited circumstances, the state may resist payment of compensation.

Thus if the state could show that, under Iowa nuisance and property law, the developers' rights regarding the lot never included the right to use that parcel in the way the regulation forbids, there would be no compensable taking.

The developers claimed that in order to prevail, the state would have to show that Iowa property law forbade them from constructing a family residence on the lot, absent the statutory sections authorizing the state archeologist to deny disinterment. They argued that, because the state cannot make such a showing, a taking occurred for which they must be compensated.

In addition, the developers

continued on page 9