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NAGPRA's Broader Impacts: Assessing the Variety of Procedures followed by Medical Examiner and Coroner Offices for the Analysis and Disposition of Human Skeletal Remains

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To the Graduate Council:

I am submitting herewith a thesis written by Megan Kelley Kleeschulte entitled "NAGPRA's Broader Impacts: Assessing the Variety of Procedures followed by Medical Examiner and Coroner Offices for the Analysis and Disposition of Human Skeletal Remains." I have examined the final electronic copy of this thesis for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Arts, with a major in Anthropology.

Amy Z. Mundorff, Major Professor

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NAGPRA's Broader Impacts: Assessing the Variety of Procedures followed by
Medical Examiner and Coroner Offices for the Analysis and Disposition of Human
Skeletal Remains

A Thesis Presented for the
Master of Arts
Degree
The University of Tennessee, Knoxville

Megan Kelley Kleeschulte
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DEDICATION

For Gram and Grandpa

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First, I would like to thank my parents, David and Darlene, for the unrelenting support they have given me. Mom and dad, your steadfast and unwavering belief that I can do anything has made that my reality. You have allowed me to share my dreams with you without ever expressing an ounce of doubt that all my aspirations, and more, were out of reach. This thesis is the result of the many years you have stood behind me without question, allowing me to explore whatever path I found myself following, and always being there at the end of the road, ready and eager for what was next. To my sisters, Jess, Taylor and Maddie, growing up together was nothing short of chaos, but watching the amazing and unique women you have each grown up to be never fails to inspire me. You each have characteristics and traits I have never been able to find in myself, but watching you wield them reminds me there is always time to learn.

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Abstract

The Native American Graves Protection and Repatriation Act, passed in 1990, was enacted in order to provide Native Americans with the legal means to reclaim the remains of their ancestors. Although it has been almost 30 years since the law was passed, it has not been successful in ensuring Native American remains are repatriated in the proper manner. This thesis examines the implementation of NAGPRA within medical examiner and coroner offices, a venue that has yet to be explored in this context.

Through the distribution of a nationwide survey, data was collected on medicolegal practitioner's familiarity with NAGPRA as well as the presence of disposition protocol for non-forensically significant Native American remains. The results indicate that there is a disconnect present between the medicolegal profession and the implementation of NAGPRA. This research will discuss what has led to this disconnect as well as what can be done to bridge it.

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Chapter 1: Introduction

The Problem

Medical examiner and coroner offices (ME/C) are responsible for the medicolegal investigation of death across the United States. The structure of these offices is dictated by state law resulting in variation within the nationwide system. The state laws governing death investigation also vary in regard to qualifications skills, term length, official title, term limitations, and method of coroner selection (Hanzlick 1996). Jurisdictional differences are also influenced by various interrelated factors including social, religious, historical, political, and legal influences, as well as the development of medical specialties (Choo et al 2012). Although it is acknowledged that there is structural, operational, and resource variation amongst offices, there is little research on the infrastructure and operating procedures of these offices. Some research on the way in which jurisdictional differences leads to variation in the process and procedures of death investigation of forensically significant cases has already and continues to be conducted (Voelker 1995, Hanzlick 1996, Hanzlick and Combs 1998, Jentzen 2009). However, no research has been done on the variation in methods and protocols for the handling and subsequent disposition of cases that are determined to be non-significant, meaning they do not fall under the jurisdiction of medicolegal death investigation.

The protocol, or lack thereof, for non-forensic cases has ramifications for laws regarding the handling of human skeletal remains, specifically the Native American Graves Protection and Repatriation Act (NAGPRA). Although it is a civil and human rights law that empowers Native Americans with a legal pathway for the repatriation of the remains of their ancestors and funerary objects, NAGPRA has been met with much resistance and controversy, especially from

the scientific community who created the collections of remains and continues to study them today. This has led to what some might consider to be a limited or unsuccessful implementation of the law.

This thesis will investigate the status of NAGPRA implementation within ME/C offices, a realm that has not been explored or discussed in a NAGPRA context to date. By surveying medicolegal practitioners across the country about their familiarity with NAGPRA, as well as the official and unofficial disposition protocols employed within their office, this research hopes to determine the factors that contribute to both NAGPRA awareness and the presence of disposition protocol that is NAGPRA compliant.

One expectation at the beginning of this research was that medicolegal practitioners would not be familiar with NAGPRA and would therefore not have a disposition protocol that is NAGPRA compliant. If this expectation is met, recommendations for how to increase familiarity with the law as well as a discussion of what compliant protocol should consist of can begin. However, the most important objective of this thesis is to aid medicolegal practitioners in understanding the significance of NAGPRA as well as what they can do moving forward to be compliant in both the handling as well as the disposition or repatriation of non-forensically significant Native American remains. In doing so, these practitioners will be acknowledging and respecting the civil and human rights of Native Americans as well as following ethical responsibility to ensure that these remains are given to the tribes and families that have fought for years to claim them.

Research Questions

Keeping in mind the current inconsistencies within the modern ME/C system, as well as the difficulties NAGPRA implementation has faced so far, the following research question is presented:

1. *Does the US ME/C system include standardized policy for the evaluation of non-forensically significant Native American remains, including a disposition protocol that is NAGPRA compliant?*

There are a number of factors that are expected to influence an individual's familiarity with NAGPRA and subsequently affect the presence of disposition protocol that is NAGPRA compliant. Considering the expected effect of these demographic factors on both familiarity and presence, the following research question results:

2. *Will factors such as education, position within an office, and proximity to federal or tribal lands have an association with an individual's familiarity with NAGPRA as well as the presence of compliant disposition protocol within their office?*

Understanding that employment of forensic anthropologists within ME/C offices is not standard nationwide and that the responsibility of a forensic anthropologist is the identification of human skeletal remains, the following research question is asked:

3. *Do ME offices that employ a forensic anthropologist have a set of standardized protocols within their office for the evaluation of forensically non-significant Native American remains as well as a protocol for disposition?*

Below is a short overview of the following chapters.

Chapter Organization

Chapter Two: Background

This chapter provides a brief history of the development of the coroner system, and how it was implemented in the United States, as well as the events that lead to the creation of the position of medical examiners. This synopsis will focus on the aspects of this history that have contributed to the long-term variation that characterizes the system as well as how the antiquated nature of the system is reflected in the current structure of the ME/C system. The chapter will then provide a review of the historical context that lead to the passage of the Native American Graves Protection and Repatriation Act (NAGPRA) in 1990, as well as a discussion of the legislative history proceeding NAGPRA that served to limit or takeaway Native American civil and human rights.

Chapter Three: The Current Climate

This chapter explores NAGPRA literature, with a focus on reviewing the current status of implementation of the law. The chapter provides a discussion of what people working with NAGPRA see as the main impediments to successful implementation. These include the priorities of museums/agencies who should be compliant with the law, cultural affiliation determinations, the vague definitions used within the law, the role of science and scientific endeavors, as well as reburial. The chapter discusses each of these issues in detail as well as what NAGPRA practitioners have recommended as solutions to each. Additionally, this chapter serves to orient each of these problems within practical considerations that must take place on each side of implementation. This will serve to inform the discussion of the implementation of NAGPRA protocols within ME/C offices that will take place in the following chapter.

Chapter Four: NAGPRA Compliance

This chapter begins with a discussion of how NAGPRA applies to the ME/C system. It clarifies several of the definitions used within NAGPRA, such as “museum”, “control” and “possession”, in order to demonstrate what the responsibilities of ME/C offices are under the law and what stipulations apply to these offices. The chapter also explores the role of state laws for handling human remains; what the differences in these laws on a state by state basis include; as well as what states have laws that mandate that a medical examiner or coroner be present at the scene of an accidental discovery to make a determination of significance, and subsequently assume jurisdiction. The chapter also briefly discusses how determinations of forensic non-significance should be made. This discussion is followed by a brief explanation of civil penalties, including what they are; to whom they apply; who enforces them; and what monetary consequences are associated with non-compliance. The chapter concludes with a compliance case study. As the only medical examiner office in the country that has a NAGPRA notice published in the *Federal Register*, the Medical Examiner’s Office with which the interview was conducted provides insight on what the NAGPRA process will look like in ME/C offices. The discussion also highlights some of the practical realities that the office has faced in trying to comply with NAGPRA.

Chapter Five: Methods

This chapter details the methods that were employed in order to collect both the qualitative and quantitative data analyzed to evaluate the nature of NAGPRA implementation within ME/C offices. Preliminary interviews were conducted in order to speak with forensic anthropologists who have worked long-term in an ME/C office. These interviews were done to

understand these practitioners' experience with NAGPRA in their own office, as well as to get their feedback on the structure and content of some of the survey questions that would be employed later. The chapter then discusses the logic behind the structure of the survey distributed for data collection, the types of questions included, and Qualtrics, the distribution platform. A pilot survey was distributed in order to see how well the survey was received as well as to gain insight on how each question reads. Feedback from respondents to the pilot survey informed the removal or restructuring of a number of survey questions.

The chapter then discusses the steps taken for survey distribution. This includes the associations I initiated contact with through email and the direct phone calls to association presidents. This section concludes with a list of all the associations and other networks that were used for distribution, as well as the total number of individuals that received the survey. Survey respondents were asked if they would be willing to participate in follow up interviews. This chapter includes a discussion of what parameters were set for these interviews; as well as the number of interviews and in what format these interviews would be conducted.

The chapter concludes with a discussion of the statistical methods that will be employed to evaluate the data. These consisted of descriptive statistics as well as chi-square tests to discover if associations are present between the hypothesized variables and NAGPRA awareness, as well as the association between these variables and the presence of a disposition protocol. Cramer's V post hoc test was also employed for the significant chi-square results.

Chapter Six: Results

This chapter presents the quantitative and qualitative data collected through the distribution of the survey. The chapter begins with descriptive statistics of the respondent's

demographics. This is followed by the statistical analyses conducted, including chi-squares and Cramer's V tests. The chapter also includes a categorization of the qualitative responses provided by the survey respondents.

Chapter Seven: Discussion and Conclusions

The purpose of this project was to evaluate whether NAGPRA has been successfully implemented with ME/C offices by looking at the nature of official and unofficial disposition protocols present within these offices. The goal of this research was to evaluate these disposition protocols for compliance with NAGPRA's stipulations, as well as to determine what factors contribute to the presence or lack of compliant disposition protocol. This chapter will discuss why implementation of NAGPRA in ME/C offices has not yet been successful as well as what needs to change in order to work towards rectifying this issue. The chapter will conclude with recommendations for NAGPRA compliant disposition protocols.

Chapter 2: Background

History of the Coroner and Medical Examiner

The exact origin of the office of the coroner is not definitively known. The earliest mention of the term, which comes from the Latin word “corona” meaning crown, was made as early as A.D. 925. The position was established as an office of the crown in 1194 by Richard I. The qualifications required to fill this position included knighthood and the ownership of real property (Blair 1953). The duties of the office included the forfeited property of felons, treasure troves, the wreckage of ships, and valuables that might be found on unidentified or unclaimed bodies. The right to search the dead developed into the responsibility of investigating deaths from violence or unknown causes. During the reign of Edward I (1274-1307) the office became an established position within the English local government (Blair 1953). Edward I advanced the office by making it elective instead of appointed, and by dictating the duties of the office in statutes (Blair 1953).

Although four different forms of coroners developed, including an ex officio sovereign coroner, a franchise coroner, a borough coroner, and a county coroner, the county coroner became the most popular and widespread. The county coroner in England had four main duties: keeping records of all matters pertaining to criminal justice in the county, collecting all goods of criminals for the king, hearing the appeals and confessions of felons, and keeping records at inquests (Blair 1953).

The county coroner became an essential position within the English system and was included in the traditions and practices brought to the American colonies by English settlers. Records as early as 1636 detail the enactment of a coroner position at the New Plymouth

Colony. An inquest into the death of John Deacon, “on behalf of our sovereign lord, the King” was made in March of 1636 (Shurtleff 1855: 48). This inquest was followed by the official establishment of a coroner in the New Plymouth colony. Although these quotations came specifically from Plymouth, similar laws were enacted in the other colonies, and the office of the coroner became a standard position within colonial local government. These colonial coroners possessed little or no knowledge of medical practice or theory, but they functioned well in the new political environment that required only common sense and a commitment to public service to be successful (Jentzen 2009). The position also grew in power due to a lack of governmental officials and evolving democratic political structures (Jentzen 2009). Overtime the laws of the colonies evolved into a commingling of English common law, the Bible, and local tradition. However, due to the singular origin of coroners, the general procedures and duties of the office remained consistent from one colony to another. However, the methods of appointment, number of coroners per county, and terms of service varied depending on individual colonial charters (Jentzen 2009).

As colonial governments transitioned into state constitutions at the beginning of the Revolutionary War, the office of the coroner was among the political institutions that followed. The Northwest Ordinance (1787) as well as the Constitution (1788) tied the powers of local police, including coroners, to the states (Jentzen 2009). Later, the Mississippi Territorial Law (1799) would do the same for Southeastern states. The responsibilities of the office of coroner included acting as conservator of the peace, holding inquests of violent and casual deaths happening in the county, and to succeed the office of sheriff in case it was vacated by death or other unforeseen reasons. Antiquated responsibilities that were vestiges of the English coroner

system, such as only the coroner could arrest the sheriff, also remained with the position (Jentzen 2009).

In the beginning of the nineteenth century, with influence from emerging political parties and national expansion, traditional republicanism began to fall to reform. The office of the coroner, largely considered a position of public service, became a stepping stone for common men seeking entry into politics (Jentzen 2009). Although coroners lacked formal qualifications, they often opted not to involve physicians in their inquiries, particularly when they believed the cause of death to be obvious. Often if there were no visible marks of violence or homicide, the final determination of death was “visitation of God in a natural way and not otherwise” (Jentzen 2009: 18). Coroners also had the authority to subpoena physicians, requiring them to testify or perform postmortem examinations without pay. Due to the unlicensed, proprietary medical schools in existence at the time, which offered poor training and no knowledge of postmortem techniques, testifying usually casted physicians in a poor and unqualified light (Jentzen 2009). As a result, physicians avoided these scenarios, and refused to engage in death investigation as a public service. In 1860, the Maryland Code of Public General Laws required the attendance of a physician in cases of violent death, and later required coroners to be physicians. Maryland continued as the only state with these mandates (Mohr 1993).

Frustrated with the system, physicians began to call for a “scientific” approach to death investigation, challenging the coroner office as antiquated and ineffective. Editorials attacking the lay coroner began to appear in medical journals. One such editorial in the *Boston Medical and Surgical Journal* argued, “Does it not seem strange, that the custom so generally prevails

throughout the country, of appointing gentlemen to the office of coroner, who although otherwise qualified, are not medical men?" (66). These editorials continued to be published and their language escalated, often accusing coroners of being inadequately trained and incompetent. To support these arguments, physicians relied on the scientific nature of death investigation, using the British medicolegal autopsy process as an example of what the American system should have been. The fight for more scientific procedures and the need for more professionalization in the field led to the founding of the American Medical Association (AMA) and its code of ethics. The first constitution of the organization included an entire section on forensic medicine and the role and responsibilities of physicians in death investigation (Jentzen 2009). In 1857, an AMA committee published a report that called for the abolishment of the position of coroner, recommending that the legal and medical duties of death investigation be separate, and the political appointment of coroners be terminated (Jentzen 2009). Despite the recommendations of the committee, there was no change to the coroner system, largely in part to politicians' lack of interest in developing state medicine.

The issue came to a breaking point in Boston, Massachusetts in March of 1877, when an appointed coroner, A.W.K. Newton was found to have obtained his position by providing false information, and was accused of stealing and embezzling money during his death investigations (Boston Medical and Surgical Journal 1877). The allegations against Newton provided a much-needed catalyst for those fighting for the dismemberment of the office of the coroner. Organizations such as the Boston Medical Society continued to criticize the process of coroner selection, the large number of coroners, and the ever-growing reports of financial abuse on the part of coroners (Boston Medical and Surgical Journal 1877). The fight was led by Boston lawyer

Theodore H. Tyndale, who also called for the complete abolishment of Boston's coroners, as only men who were politically loyal to the governor were appointed to the office.

Tyndale's proposed reform including separating the medical and judicial functions of the coroner, similar to the earlier suggestions of the AMA. He put forth that the legal duties should belong to a local district attorney, and the medical responsibilities should be transferred to physicians. These medical examiners, as he referred to them, would be appointed by the governor for a term of seven years, same as the coroner, but would be selected from men trained in the science of medicine. The responsibilities of medical examiners would include the investigation of all deaths in their district that occurred from violence as well as to perform autopsies that been authorized by the district attorney, mayor, or selectmen of that district (Boston Medical and Surgical Journal 1876). According to Jentzen (2009), the new law passed the following month, and was considered an overwhelming success. The governor appointed 75 medical examiners for the state, cutting the operating cost to two-thirds of the former coroner system. Despite the success of the new system, the lack of medicolegal training was still evident. It became apparent that more formalized training was necessary. In May of 1877, a group of physicians and lawyers collaborated to create the Massachusetts Medico-Legal Society, whose objective would be to sponsor educational training and seminars for physicians who desired to become medical examiners (Jentzen 2009).

The success in Massachusetts inspired similar movements in other cities. Cleveland (1914), New York City (1915), and Newark (1927) all sought to abolish the coroner's office and replace it with a medical examiner system. Additionally, within the five years following the reforms, Massachusetts, Kentucky, Louisiana, Michigan, Connecticut, and Rhode Island all

worked to create their own medical examiner systems (Jentzen 2009). Rhode Island however proposed a unique reform, consisting of a state medical examiner system that included the appointment of twenty-four medical examiners for each county and independent inquest officers, retaining the title of coroner, who would be elected every three years by town councils. The Rhode Island compromise was copied in many states in order to quell the political unrest that accompanied attempts to transition to medical examiner systems.

As more and more states pushed for reform, the extent of the corruption and inadequacies of the coroner system continued to surface. Payoffs by insurance companies, changes to death certificates in exchange for additional payment, mishandling of bodies, as well as the continued appointment of coroners based solely on political agendas were increasingly reported (Wallstein 1915). Supported by these realizations, medical examiners continued to be instituted successfully in various states. For example, in January of 1918, Dr. Charles Norris was appointed by the Mayor as the Chief Medical Examiner of New York City (NYC). He remained in the position until 1935, during which time he developed a toxicology laboratory, improved identification techniques, and trained young physicians in the field of legal medicine (Jentzen 2009). Upon vacating his position, the NYC Office of the Chief Medical Examiner was considered the best office in the country (Jentzen 2009). Despite a few success stories, the structure of death investigation continued to be disorganized and politically charged into the twentieth century. Coroners remained a central tenant of both the American medicolegal and political system, without a strong, centralized effort for reform.

By the middle of the twentieth century, death investigation remained rooted at a cross road. The debate over coroners and medical examiners resurfaced in July of 1945, hitting the

national stage after the mishandling of the brutal murder of a woman in Cleveland, Ohio. Dr. Samuel Gerber, the coroner responsible for the investigation, became a celebrity that summer, even though the highly publicized case was fraught with inconsistencies. Gerber found Dr. Samuel Sheppard, husband of the woman, guilty, and Sheppard was sentenced to life in prison at the state penitentiary. Sheppard would later be exonerated in 1966 when attorney F. Lee Bailey finally proved that Gerber was wrong (Neff 2001). The national attention the case received reawakened reformers seeking to abolish the coroner system. The most vocal critic was Richard Childs, a progressive era reformer from New York, who believed it was undemocratic for politicians to hand-select coroners from their political appointees (Jentzen 2009). In November of 1949, Childs, along with other like-minded reformers, invited medicolegal “experts” to attend the National Municipal League’s annual conference, in order to work towards developing the structure for a model medical examiner law. The result was a proposal published in 1951 entitled, *A Model State Medico-legal Investigative System*, which acquired widespread recognition from legislators, medical societies, and the media (Jentzen 2009). The media attention in particular, in conjuncture with the remaining impressions from the Cleveland investigations, inspired continuing media investigations of coroner wrongdoing. As a result, states and counties began looking inward at their own coroner systems. Encouraged by numerous media stories, and continued publications by Childs and other reformers that attacked the coroner system, the National Conference of Commissioners on Uniform State Laws published the *Model Post-mortem Examinations Act* in 1954. A year later the model law was recommended for adoption in all states by the Council of State Governments (Jentzen 2009).

This concentrated effort at reform was successful in triggering widespread institution of medical examiner systems throughout the United States. By 1963, nearly half of the elective coroner positions in the United States had been abolished. However, the momentum quickly stalled as 39 states maintained and refused to abolish the coroner structure, with only 15 of those agreeing to the establishment of county medical examiners. Additionally, although the model law inspired some reform, no states had adopted the law into their constitution. The fight to reform the system continued on as a struggle between those who had individual interest and personal gain embedded within the coroner system and those that sought a higher standard for death investigation, arguing for scientific accuracy and a democratic and effective system.

Today, medical examiner and coroner offices (ME/C) are responsible for medicolegal death investigation across the United States. According to the last census of ME/C offices by the Bureau of Statistics, there are 2,000 offices in the United States: 1,400 coroner offices and 600 medical examiner offices (Hickman et al 2007). In general, coroners are elected officials with varying levels of medical training and experience, while medical examiners are forensic pathologists with medical specialization in anatomical pathology, and an additional year of fellowship training after residency (Hanzlick 1996). Although the ME/C system is a nationwide system, the structure of these offices is dictated on a state basis. This variation begins with the type of offices within these states. Twenty-nine states have coroners in some or all counties, and two states, Texas and New York, have more than 1 coroner per county (Hanzlick 1996). Of the 29 states with county coroners, 21 of them elect all of the coroners within the state. Of the remaining 8 states, 4 appoint all of the coroners, and in the other 4 some coroners are elected

and some are appointed. Regardless of how the office is selected, most terms are 4 years (Hanzlick 1996).

Similar to the development of different types of coroners in the original English system, different systems of medical examiners developed within the US death investigation system. The first is the county medical examiner who is appointed and responsible for the death investigation within that county, with no coroner positions present (Hanzlick & Combs 1998). These positions most commonly exist within only some counties in a state, but they can also be present in all counties in a state. A district regional medical examiner system consists of an appointed medical examiner who is responsible for a group of counties, also with no coroner positions present (Hanzlick & Combs 1998). A state medical examiner system has an appointed medical examiner that is responsible for the entire state with no coroner positions present. These systems can operate from a single centralized office, or from regional or district offices that are branches of the state medical examiner office (Hanzlick & Combs 1998). A referral based medical examiner system has an appointed medical examiner that has the authority to oversee death investigations or provide support to coroners who have primary responsibility for a jurisdiction. An ad-hoc affiliate medical examiner system makes medical examiner services available to coroners without any formalized statute requiring the use of these services. Finally, there is an autonomous, stand-alone medical examiner.

Variation also exists within the structure of these offices. The state laws governing death investigation vary in regard to qualifications, skills, term length, official title, term limitations, and method of coroner selection (Hanzlick 1996). Jurisdictional differences across the country

also arise from interrelated factors including social, religious, historical, political, and legal influences, as well as the development of medical specialties (Choo et al 2012).

This variation has had long term and entrenched effects on the process of death investigation. A recent report published by the National Science and Technology Council's Fast-Track Action Committee on Strengthening the Medicolegal Death Investigation System (2016) found that ME/C offices lack the adequate personnel and resource to address the country's medicolegal death investigation needs (CFDS No.16.560 2017). The report also indicated that there are systematic issues with death investigation quality, infrastructure, inadequate facilities, and inconsistent expertise (National Science and Technology Council Report 2016). Additionally, the National Association of Medical Examiners (NAME) agrees that in many jurisdictions investigations are the responsibility of personnel without medical training or are performed by people with little or no education in death investigation (thename.org). The NAME Executive Committee also published a resolution in 2009 that endorses the findings of the report published by the National Research Council as well as its recommendations (thename.org 2009).

NAGPRA Background

The conditions and historical context leading to the passage of the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 are rooted in the intersection of colonialism, racism, and scientific endeavors. Evidence documenting this intersect is present from the beginning of Native American and colonial relations following the landing at Plymouth Rock in 1620 (Trope & Echo-Hawk 1997). An exploring party returned to the Mayflower with items that had been removed from a grave, noting "We brought sundry of the prettiest things

away with us, and covered up the corpse again” (Trobe & Echo-Hawk 1997: 40). Although this quotation comes from NAGPRA literature, Linda Tuhiwai Smith (1999) makes an argument for the issues associated with relying on colonial accounts of interaction with indigenous communities. She presents that “from an indigenous perspective Western research is more than just research... it is research which brings to bear, on any study of indigenous peoples, a cultural orientation, a set of values, a different conceptualization of such things as time, space and subjectivity, different and competing theories of knowledge, highly specialized forms of language, and structures of power” (42).

Following the end of the Civil War, the United States entered a period of rapid growth and innovation, ignited by a competitive spirit to become the world’s first industrial superstate. Advancements such as the transcontinental railroad, the coal and steel complex, and sophisticated financial markets established the United States as a wealthy and powerful world leader. The desire to dominate filtered down and came to resonate in the sciences. The creation of Harvard and Yale’s Peabody Museum, the American Museum of Natural History, the Metropolitan Museum of Art, and the University Museum of Archaeology and Paleontology in Philadelphia were all born out of the desire to collect the best natural history collections in the world, specifically ones that would rival other international institutions, such as those in Great Britain and France (Thomas 2000).

These museums were focused on questions about race and human history and turned to human skeletal remains for answers (Redman 2016). This process included sending practicing natural scientists out on expeditions to collect specimens that would be accessioned into these collections (Thomas 2000). The epitome of these collections became human skulls, particularly

those of Native Americans. Scientists working for these museums and other private institutions were focused on collecting evidence that would support their ideas about the human body, race, human origins and prehistory (Redman 2016). They began to fill spaces known as “bone rooms” with the “specimens” they had “collected” or that were sent to them. Researchers studied the remains in attempts to classify the races and develop an understanding of human history (Redman 2016). Although this began gradually, it quickly turned into a fierce competition amongst scientists to fill their bone rooms with rare and interesting “specimens”.

The Army Medical Museum, established in 1862, was originally created in order to collect examples of battlefield injuries to aide in the training of army doctors (Redman 2016). Soon the museum began to request the collection of Native American crania in order to update its collection to reflect the burgeoning conflict occurring between the former Union Army and Native Americans on the Plains (Lamb 1917). Hoping to obtain “specimens” that represented each tribe, Dr. G. A. Otis, curator of the museum, continued to request the collection of crania from (1864 to 1881). These “specimens” would also aide in the pursuit of new projects in comparative anatomy, and other endeavors to classify human races based on physical features and appearance (Redman 2016). These studies included the growing belief that human behavior and attributes, including intelligence, were correlated with physical attributes, particularly the size and shape of the skull (Morton 1939; Redman 2016). The Surgeon General’s Order of 1868, made it official federal policy for army personnel to obtain Native American crania and other body parts for the museum (Trope & Echo-Hawk 1997).

Although one of the most notable, the Army Medical Museum was not the only institution with this objective and thus the collection of Native American crania and post-cranial

remains continued. In the decades that followed, over 4,000 skulls were taken from battlefields, burial grounds, POW camps, hospitals, and fresh graves (Trope & Echo-Hawk 1997). An account by one soldier after grave robbing fifteen Blackfeet Indian graves highlights this practice, noting “I regret the lower maxillae are not on each skull, I got all I could find, and they are all detached save one. There is in the box a left radius & ulna of a women, with the identical bracelets on that were buried with her. The bones themselves are nothing, but the combination with the ornaments make them little noticeable” (Trope & Echo-hawk 1997: 41). The sentiment encapsulated in this quotation is imperative for understanding the roots and perspectives of this issue, all pivoting around the bones themselves. For Native Americans it is not the materialness of the remains that matters, but rather the spiritual and ancestral connection to their tribes and their lands, as well as the violations of their rights as humans and citizens of this country. For scientists and collectors, the merit of these remains is more object-oriented, with importance placed on the information that can be learned and the support for scientific endeavors. This dichotomy between science and spirituality remains central as the conflict between Native American and those that impinge on their human rights continues to unfold.

In the early nineteenth century, scientific interest in human skulls, particularly those of Native Americans, progressed from the small studies started by the AMM and other institutions. Scholars sought physical evidence to explain the observable physical and cultural differences between peoples. The most notable of these scholars included Albert Gallatin and Samuel G. Morton. The latter believed that physical and cultural variation was a direct result of the different racial categories evident from the skull shape and size (Morton 1939). In 1939 Morton published *Crania Americana*, arguing that Caucasians had larger brain capacities and

were more capable of intelligence than Native Americans. With this assessment at its foundation, phrenology developed, and crania collection increased in order to support attempts to relate intelligence, personality, and behavior to skull size (Gossett 1997). Morton's findings also supported the "Vanishing Red Man" theory, which provided scientific justification for the relocation, and subsequent genocide of Native American tribes (Trope & Echo-Hawk 1997). Although not all practicing scientists at the time were as forthcoming with their racist conclusions, many continued to collect, study and display nonwhite remains that supported the scientific racism that characterized the era (Redman 2016). According to Samuel Redman, author of *Bone Rooms*, "In many respects, the practice reinforced existing and emerging colonial power dynamics veiled as scientific and social progress" (2016: 6). The final decades of the nineteenth century and the beginning of the twentieth century encompassed the most active period for the collection of human remains

Beginning in the 1970s and 1980s, after nearly a hundred years of resistance, Native American leaders began a renewed national campaign to point out that non-Indian graves were protected from desecration, grave robbing, and mutilation by law in all fifty states. Despite these objections, Native American graves were considered "nonrenewable archaeological resources" and were to be treated as such (Thomas 2000). Growing sentiment over this issue and the history of mistreatment and abuse resulted in the declaration that Native American concern for their dead must supersede scientific objectives (Ousley 2015). In 1986, a group of Northern Cheyenne representatives discovered that there were almost 18,500 human remains housed in the Smithsonian Institution. This figure served as a catalyst for a united national effort by tribes and organizations for legislation that would mandate the repatriation of human

remains and cultural items (Chari & Lavallee 2013). In November of 1989, the National Museum of the American Indian Act was passed, creating a National Museum of the American Indian within the Smithsonian Institution. The act also included a provision that required the Smithsonian, in consultation with Native American tribes, to inventory human remains and funerary objects in its possession or control (Chari & Lavallee 2013). This inventory was to be shared with tribes, and upon request of a lineal descendent or affiliated tribe, the remains and objects were required to be returned.

Although the focus had turned to returning remains that had already been taken, instances of grave robbing were occurring still, even in the last decades of the 20th century. In 1971, road construction in Iowa created a national incident. The remains of twenty-six Anglo-Americans and one Native American woman and baby were discovered during highway construction (Babbit 2013). The white remains were reburied in a local cemetery, while the Native American woman and baby were sent to the state archaeology department for analysis. The district engineer, John Pearson, informed his wife, Maria Pearson, a civil rights activist, of the incident (Babbit 2013). She began lobbying the Iowa legislature and State Archaeologist for a proper burial for the Native American remains. Pearson was successful after months of negotiations, and in 1976 Iowa passed the county's first Native American legislation protecting Indian graves and ensuring the repatriation of Native American remains. The legislation also created four cemeteries dedicated for the reburial of Native American remains (Babbit 2013).

The Slack Farm, named for the family that owned it, contained a Native American archaeological mound and village site located near the Ohio River in Kentucky. The Slack family the farm was known for protecting the site from looters, but a death in the family forced the

Slacks to sell the farm (Yates 2003). In the fall of 1987, a group of pot hunters paid the new owners \$10,000 for permission to excavate the site (Fagan 1988). It is reported that nearly 650 graves were unearthed by the looters during a two-month period. The looters were arrested in December of 1987 and charged with 'desecrating venerated objects' (Fagan 1988). At the time this charge was considered a misdemeanor, resulting in a small fine for those convicted. Additionally, as four of the ten men lived in other states, they could not be charged for the misdemeanor in Kentucky, and all charges were dropped in March of 1990 due to lack of prosecution (Yates 2003). Considered a massive failure on the part of the law, Slack Farm inspired Kentucky to increase the desecration of graves from a misdemeanor to a felony offence (Hicks 2001). The Slack Farm incident, in addition to the Iowa incident, are considered to have played a major role in the renewed Native American activism. The incidents also became inspirations for future legislation that protected Native American remains and reburial (Yates 2003).

Another key event resulting from the united objections of tribes was taking place at the Heard Museum in Arizona. In early 1990, a report entitled, the *Report of the Panel for a National Dialogue on Museum/Native American Relations*, was put together by museum representatives, scientists, and Native Americans (Chari & Lavallee 2013). The report found that federal legislation and enforceable standards were necessary in order for repatriations to be conducted in an effective and respectful manner. The report also called for regular dialogue between tribes and museums, and the open sharing of information about inventories, claims, and dispositions (Trope 2013). This call for legislation provided the necessary framework for future judicial action.

In 1990, the Native American Graves Protection and Repatriation Act (NAGPRA) was passed by the United States Congress and signed into law. NAGPRA provides a legal pathway for Native Americans to claim and repatriate the remains of their ancestors. Additionally, the law permits living Native Americans to exercise their traditional responsibilities toward the dead. Additionally, NAGPRA covers the importance of tribal consent when dealing with Native American graves on tribal lands and requires consultation with tribes when remains are found on federal lands (H.R.5237 1990). It also mandated that museums, universities, and institutions that receive federal funding were required to send an inventory of human remains and associated grave goods to tribes that could be affiliated with those remains and items by 1995 (H.R.5237 1990). Additionally, as a human rights law, NAGPRA not only provided the right to repatriate human remains and cultural objects, but also the right to have indigenous knowledge systems and traditional practices equally recognized and considered by law makers and the scientific community (Chari and Lavallee 2013). The enactment of this law was complicated by the fact that many members of Congress believed that Native American human skeletal remains and burial items were collectible “objects”, and as such, museums were the appropriate institutions for safe keeping. Additionally, the ever-looming attitude that it was the scientific communities' right and responsibility to study these objects remained.

According to Lobo and colleagues (2016), it is estimated that the skeletal remains of tens of thousands, possibly hundreds of thousands, of Native Americans are held by various universities, museums, historical societies and private collections across the United States. As of January 2018, the National NAGPRA online database shows a minimum of 133,217 culturally unaffiliated and 60,798 culturally affiliated skeletal individuals held by institutions in the United

States, for a current total of 194,015, not including the close to 20,000 individuals held by the Smithsonian Institutions (nps.gov).

Legislative History

According to Jack Trope, who has worked closely with tribal advocates and Congressional staff on the legislative issues that led to the passing of NAGPRA, “the law is first and foremost human rights legislation, designed to address the flagrant violation of civil rights of America’s first citizens” (2013: 28). The extent of these violations is evident with an evaluation of the legislative history that has driven this issue. The section that follows provides an overview and discussion of this legislation.

Protection and care for the dead are cultural traditions present around the world, often with an acknowledgement that treatment of the dead is an indicator of the humanity of a society or culture. Former British Prime Minister William Ewart Gladstone wrote, “Show me the manner in which a nation or a community cares for its dead, and I will measure with mathematical exactness the tender sympathies of its people, their respect for laws of the land, and their loyalty to high ideals” (Woolley 1990: 1). Respect for the dead is considered an integral part of the legal structure of the United States (Trope 2013). Basic values such as protection against vandalism and desecration, criminal law prohibiting grave robbing and mutilation of the dead, are present and enforced in all fifty states to ensure that human remains are not mistreated. Additionally, disinterment of the dead is viewed unfavorably by current western Christian cultural norms, allowed only in highly unusual circumstances or under strict conditions set by the courts (Trope & Echo-Hawk 1992). However, these protections, taken for granted by most United States citizens, have been denied to Native Americans

(despite the fact they are also United States citizens, though only since 1924). Common law has failed to recognize that tribes maintain strong cultural connections with their ancestors, a sentiment that is not limited to immediate next of kin (Trope 2013). Laws have also failed to consider unique indigenous burial practices such as scaffold, canoe, or tree burials, as well as the fact that many tribes have been removed from their homelands, involuntarily leaving behind their traditional burial grounds (Chari & Lavallee 2013). The failure of the United States government to acknowledge the cultural and political rights of native tribes is evident in legislation passed throughout the history of the United States Congress.

The intervention into Indian affairs by the United States government began in 1783 with the First Continental Congress Indian Proclamation which stated, "The United States in Congress assembled have the sole and exclusive right and power of regulating trade and managing all affairs with the Indians" (Irwin 1997). This provided legal precedent for the suppression of Native religious practices under the supremacy of western standards. This precedent was quickly followed by the 1819 Indian Civilization Fund Act, intended to create a fund for the reform and civilization of Native Americans in accordance with imposed cultural norms (Irwin 1997).

Government action to displace Native Americans was solidified with the Removal Act of 1830. This Act granted the President, Andrew Jackson, the ability to grant land west of the Mississippi River to Indian tribes that agreed to relinquish and leave their tribal lands. The Act provided financial and material means for travel to the newly granted locations, as well as a guarantee that Native Americans would live under the protection of the federal government. Subsequently, the act provided a legal channel for Jackson and other government officials to

bribe and threaten Native American tribes into signing removal treaties and relocation West (history.state.gov). By the end of his presidency, Jackson had successfully signed almost seventy removal treaties, displacing nearly 50,000 Native Americans from eastern tribes to the West of the Mississippi (history.state.gov).

In response to the continuation of the removal process, the Cherokee nation negotiated the Treaty of Echota, which forfeited all Cherokee land east of the Mississippi river in exchange for \$5 million, relocation assistance and compensation for lost property (history.com).

However, the Cherokee people were divided, and many refused to leave their land. By 1838, only 2,000 Cherokees had left Georgia, so President Van Buren sent General Winfield Scott and 7,000 soldiers to facilitate the removal process (history.com). Scott and his troops forced the remaining Cherokee from their lands and marched the Cherokee people more than 1,200 miles to their new territory. This journey has since been named the Trail of Tears, as whooping cough, typhus, dysentery, cholera and starvation became rampant along the way, resulting in the death of more than 5,000 Cherokees (history.com)

In addition to the practices of grave-robbing and skull collection, the post-Civil War era in the United States saw further suppression of Native American religious freedom. During this period, which continued until the late-twentieth century, religious practices and rites such as the Sun Dance were made illegal, as they were deemed “barbaric and uncivilized” by the US government (Irwin 1997: 40). In 1869, the Grant Peace Policy was passed and created the Board of Indian Commissioners. The duty of this board was to educate “Indians” on industry, art, and Christian principles. Beginning in 1872, with the funds allotted for Native American reform, the Commissioner of Indian Affairs, noted that it should be the responsibility of Protestant agents

to look after the “intellectual and moral intelligence” of Native children that fell within the reach of their influence. As a result, Native American children were removed from their homes and forcibly sent to Christian missionary schools where they were denied the right to speak their language, wear traditional clothing, or practice Native religion in any form (Irwin 1997). These boarding schools continued to exist throughout the early 2000s, despite denunciations by the Meriam Report (1928) and the Kennedy Report (1969) (Churchill 2004). Other missionary activity targeted Native religions as “the bane of all civilized Christian ideology” (Irwin 1997). Subsequently, Native American ceremonies were banned, religious practices were disrupted, and sacred objects were confiscated or destroyed.

In 1883, the Bureau of Indian Affairs for the Indian Courts passed the Indian Religious Crimes Code, prohibiting Native American ceremonial activity under the threat of imprisonment (Irwin 1997). After the movement of Native Americans to reservations, religious suppression quickly followed suit. In 1892 the Commissioner of Indian Affairs, Thomas J. Morgan, codified his “Rules for Indian Courts” which established Native American dances and medicine men as criminal offenses, including detailed charges for both practices (Irwin 1997).

In 1906, Congress passed the Antiquities Act, with the aim of protecting archaeological resources that were located on federal lands from looters. Included in the laws definition of “archaeological resources” were the remains of Native Americans interred on federal lands, making them federal property (Trope & Echo-Hawk 1992). The Antiquities Act permitted the exhumation of Native American remains with a federal permit, in order for them to be preserved in public museums. It did not require the consent of tribes, even if removal took place on tribal reservations or land, up until 1978. This policy continued to deprive Native

Americans of the right to dispose of the deceased in a traditional manner or maintain possession over sacred objects as reservation lands fell under federal jurisdiction (Irwin 1997).

The rest of the 20th century was characterized by a shift in the tide, albeit a slow one, of the sentiment of jurisdiction. In order to rectify the injustices of the past, legislation to combat or reconcile past laws was drafted and enacted. However, the forward progress of these laws is questionable, as they provided a constant reminder of why they were needed in the first place. This trend began in 1934 when John Collier was appointed as the Commissioner of Indian Affairs and passed the Indian Reorganization Act. The act ended allotment, allowed for the appointment of Native people to the Bureau of Indian Affairs, and encouraged the formation of tribal governments, but only with a written constitution and by-laws that were approved by the Department of the Interior (Irwin 1997).

In 1974 official, government-supported attempts at tribal termination officially ended with the passage of the Indian Self-Determination and Education Assistance Act (ISDEAA), which authorized the Secretary of the Interior to implement “an orderly transition from federal domination of programs for and services to Indians to effective and meaningful participation by Indian people in the planning, conduct, and administration of those programs and services” (Irwin 1997: 43). This provided training for Native Americans for programs they were interested in taking over in the future, as well as the distribution of funds more directly to people living on reservations. In 1978 the Indian Child Welfare Act guaranteed that there would be no more governmentally enforced education, and more importantly the end of forcibly transferring Native American children to boarding schools and the subsequent adoption by non-Natives (Irwin 1997).

The religious persecution Native Americans faced continued well into the 20th century. Concerted efforts against this led to the passage of the American Indian Religious Freedom Act (AIRFA) in August of 1978. This act guaranteed the constitutional protection of first amendment rights for Native Americans. In 1979, the Archaeological Resources Protection Act (ARPA) attempted to rectify the consequences of the 1906 Act by ruling that permits needed to be obtained for excavations on sites more than 100 years old, that consent must be obtained for any work on tribal lands by tribal landowners, and that work on public lands held to be sacred by any tribes required that those tribes be notified before permits are granted (Irwin 1997). However, human remains recovered on federal lands remained defined as “archaeological resources” and as such were property of the United States. If these remains were excavated under a federal permit, they could be “preserved” by universities, museums, or another scientific or academic institution. Although great strides were made in rectifying the injustices imposed on Native people, these laws still neglected to give Native American tribes the right to claim control over their ancestral dead that were under federal jurisdiction, continuing the suppression of religious traditions regarding treatment of the dead.

In 1987, the National Park Service, in response to the American Indian Religious Freedom Act, issued a policy which called for the exploration of methods for integrating the needs of religious practitioners in the management of park resources (Irwin 1997). The Iroquois Recognition Bill, also passed in 1987, acknowledged the “contribution of the Iroquois Confederacy of Nations in the development of the United States Constitution and to reaffirm the continuing government to government relationship between tribes and the United States established in the Constitution” (Irwin 1997). In 1993, the Religious Freedom Restoration Act

(RFRA) was signed into law, telling the US government not to “substantially burden religious exercise with compelling justification and to provide a claim or defense to persons whose religious exercise is substantially burdened by government” (Irwin 1997). This law provides another example of legislation whose language is purposefully vague, as religious exercise could be interpreted differently than protection of religious rights. Finally, in 1994, the Native American Free Exercise of Religion Act (NAFERA) was passed, amending the 1978 American Indian Religious Freedom Act. As the 1978 Act was viewed as ineffective in court cases involving Native American religious freedom, the 1994 Act provided the necessary teeth for the protection of those rights (Irwin 1997).

Chapter 3: The Current Climate

The Implementation Process

It has been 28 years since the Native American Graves Protection and Repatriation Act (NAGPRA) was signed into law. Its recognition of the human rights, civil rights, and indigenous rights of Native peoples makes it a milestone piece of legislation. In 2012, Mervin Wright, a member of the NAGPRA review committee, stated “Since 1990, much work was completed to achieve the goal of NAGPRA. However, there is so much more work to fully achieve the intent of NAGPRA” (915). In his 2012 testimony at the Senate Committee on Indian Affairs Hearing, Wright discusses three of what he believes to be the most pressing issues facing the achievement of the law’s intent. These issues include the interpretation of the law; what has gone wrong in the implementation process so far; and finally what needs to be corrected in order for implementation to succeed (Wright 2012).

Wright (2012) argues that although the law was intended to provide equal protection for the rights of Native peoples that are afforded to every other American citizen, it has not succeeded in giving Native people a strong voice in the repatriation process or a seat at the decision-making table. Further, he argues that as more time passes since the movement to enact the law, more and more often Native voices are not being heard. Although the law calls for the protection of Native burials, Wright argues it has yet to successfully blend the traditional principles and philosophies of the Native perspective within the network of the legal bureaucracy and officials that dictate its stipulations. Harms (2012) supports this argument, noting that “NAGPRA was written in terms and concepts of Anglo-American law, but Native American cultures that NAGPRA impacts do not share these same legal conceptions” (605). The

successful implementation of the law relies on the intersection and collaboration of three key players: Native Americans, the bureaucratic agencies responsible for writing and enforcing the law, and the museums and agencies who are expected to comply with the law. The continued misalignment of the perspectives and objectives of these three groups has resulted in major, ongoing issues that are impeding the success of the law. The chapter that follows contains an in-depth discussion of these issues.

The Priorities of (Should Be) Compliant Museums and Agencies

In regard to implementation, Wright (2012) refers to a report issued in 2010 by the Government Accountability Office, in which they detail the regulatory requirements that serve to prohibit and even restrict the successful repatriation of Native American human remains and objects subject to NAGPRA. The report found that one of the largest setbacks to implementation is the fact that compliance with NAGPRA is clearly not a priority of the federal government, as is evident in the failure of museums and agencies to comply with the law. Wright (2012) argues that this failure to comply lies in the matter of control. The same government that fails to make NAGPRA a priority, is also responsible for enforcement of the law, which would provide the necessary incentive for compliance (Wright 2012). Harms (2012) presents a different viewpoint, arguing a challenge to implementation on the part of museums was the time limit they were given to comply. NAGPRA presented a three-year time frame for creating a summary of unassociated funerary objects, sacred objects, and objects of cultural patrimony, due in 1993, and a five-year limit for completing inventories of associated funerary objects and human remains, due in 1995 (25 U.S.C. 3003(b)(1)(B)) (See Appendix 6 for Notice of Inventory Completion for culturally affiliated and Appendix 7 for culturally unidentifiable

remains templates). Harms (2012) argues that some museums' collections are so large that this did not provide adequate time to inventory, summarize, and consult with the necessary tribes. However, the Secretary of the Interior was authorized in the law to extend the 1995 deadline for any museums that made "a good faith effort" to complete its inventory (McKeown 2013).

Mirroring the argument presented by Wright (2012), Cryne (2009) highlights the priorities of agencies' and institutions as an impediment to successful NAGPRA implementation. Her argument is supported by the findings of a study undertaken by the National Association of Tribal Historic Preservation Offices (NATHPO) regarding federal agency implementation of NAGPRA. NATHPO is a non-profit organization of tribal leaders that aids in monitoring and implementing federal and tribal preservation laws. In the survey used to collect data for the report, many agency's responses indicated that there is a lack of training and resources necessary to comply with NAGPRA (Cryne 2009). The report's findings indicate that none of the agencies who responded have a full-time employee for NAGPRA issues (nathpo.org 2008). Of the agency employees who work part time on NAGPRA issues, 97% estimated that NAGPRA related activities account for 20% or less of their time (nathpo.org 2008). Further, 44% of the respondents indicated that they do not receive training on NAGPRA, and when asked whether new Federal employees assigned with implementing NAGPRA receive training on the act, 31% indicated that they do not, and 25% said it does not apply (Figure 3.1) (nathpo.org 2008). Of those that specified they do receive training, six indicated they received training from the NPS NAGPRA Program, four received training from a private consultant/company, four had in house training, and two cited another federal agency (nathpo.org 2008). Cryne (2009) points

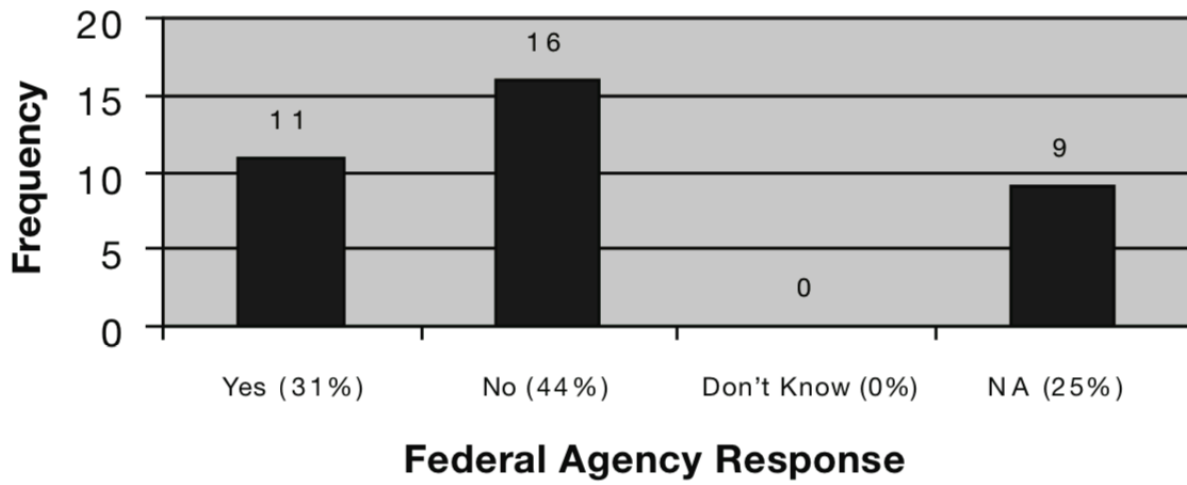


Figure 3.1 "Receive NAGPRA Training at Outset" (NATHPO 2008: 22)

the finger back at Congress, arguing that if they allocated the proper funding for agencies, then the lack of resources could not be used as an excuse for non-compliance.

Section 10 of NAGPRA authorized the Secretary of the Interior to make grants available to assist museums in conducting summaries and inventories and to assist tribes in repatriating cultural items. When the law was first enacted the required assistance was estimated at \$10 million over five years for museums and between \$5 and \$10 million for tribes by the Congressional Budget Office (McKeown 2013). When Congress finally appropriated \$2.3 million for grants in 1994, the grant applications totaled \$12.7 million. The 2.3 million in allocated grant funds were not made available until after the November 1993 deadline for museum summaries (McKeown 2013). As such, the National Park Service granted extensions of up to three years for the inventory deadline to 58 museums, mostly due to the delay in grant funding (National Park Service 1996). Over the years the two separate applications for grant funding for museums and tribes have melded into just one application for everyone. However, there are two separate types of grants available today including: a documentation/consultation grant available to tribes and museums; and repatriation grants which are only available to tribes. Between 1994 and 2010 Congress has appropriated \$40 million in grants: 58% to Indian tribes of Native Hawaii organizations and 28% to museums (Figure 3.2) (McKeown 2013). The remaining grant funds have been diverted to other uses beginning in 2002, discussed in further depth below.

Thirty-one tribal respondents to the NATHPO survey indicated that their tribe had applied for a NAGPRA consultation/grant, and 26 of those had received that grant (nathpo.org 2008). However, 13 of those same respondents indicated that the grant was not an adequate amount to conduct the proposed NAGPRA work, and nine respondents indicated that their

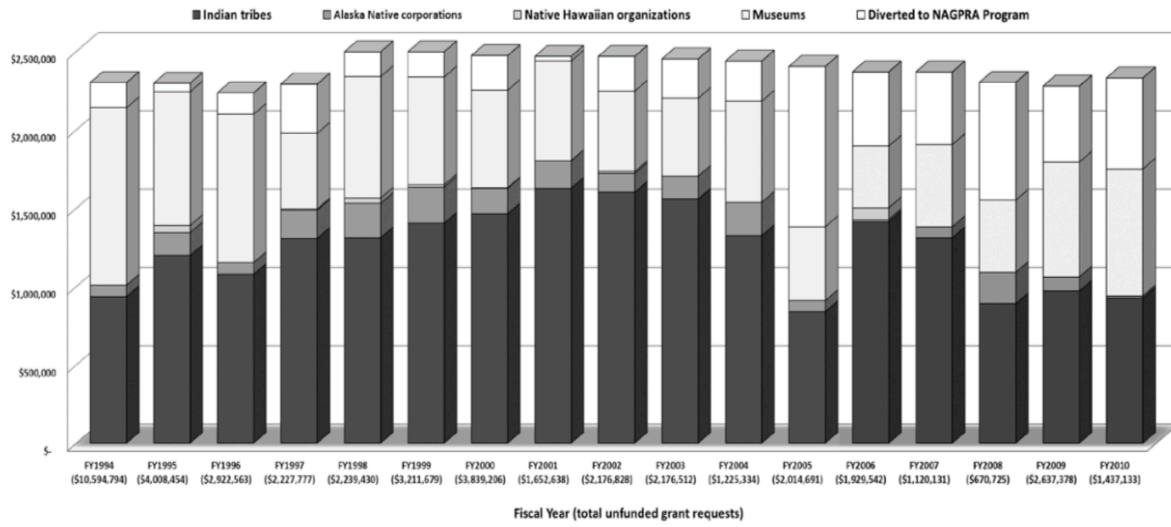


Figure 3.2 “Disbursement of NAGPRA Grant Funding”, 1994-2010 (McKeown 2013)

tribe provides financial assistance to support their NAGPRA work that is independent of Federal grants (nathpo.org 2008). Five of these respondents cited the contribution ration as 3:1 (Tribe:Federal) (nathpo.org 2008). Additionally, a researcher examined the funding history of the NAGPRA grant program, in order to discover the other purposes, the money had been diverted to since 2002. This was done by comparing the amount of federal funds that have been allocated to the grant program to the total amount of funds used to support repatriation and museum efforts. The findings indicate that a large amount of funds were not being used at the local level. Specifically referencing the 2006 and 2007 fiscal year, \$936,830 that should have been devoted to supporting NAGPRA grants was being used for administrative support of the overall program (nathpo.org 2008). Further, in the 2005 fiscal year, \$680,000 of NAGPRA grant funds was used by the government to cover some of the fees for the attorneys that were owed to the plaintiffs from *Bonnichsen vs. U.S.* (The Kennewick Man Case) and another \$355,011 was diverted for administrative fees (nathpo.org 2008, McKeown 2013).

Another issue supporting non-compliance is the lack of enforcement within the law. Aside from civil penalties for failure to comply, which result in relatively minor fines, the law lists no other consequences for non-compliance. Though the law stipulates that all inventories were to be completed by 1995, no federal agency can be penalized for failing to meet this deadline, failing to provide notice to tribes or failing to provide notice of a change in the status of remains (Cryne 2009) (though museums and institutions can be penalized). The only course of action for federal agencies is a procedural review to ensure implementation, although it seems the effectiveness of this provision speaks for itself. The NATHPO report indicates that 47% of the tribal respondents felt that Federal courts had been too lenient in sentencing

individuals or institutions convicted of NAGPRA related “crimes” (nathpo.org 2008)

Additionally, when asked if they believed the Federal courts had been too lenient in prosecuting individuals accused of grave looting or trafficking remains, 65% of respondents said yes (nathpo.org).

Cultural Affiliation

“Cultural affiliation” was first defined in the original statutes as “a relationship of shared group identity that can be reasonably traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group” (43 CFR § 10.2 (e)(1)). In regard to cultural affiliation, a 2007 report, conducted by a National NAGPRA program intern, surveyed the Culturally Unidentifiable Native American Inventories Database exploring the attributes of the human remains included in the database (Kline 2007). The report found that often agencies were making determinations of cultural affiliation based on pre-determined objectives. Additionally, the report noted that agencies had the freedom to determine cultural affiliations depending on a number of factors, with no regulation on how to prioritize or dismiss certain lines of evidence. Cryne (2009) also argues that these determinations are further complicated by “ambiguous” language in the law. Cultural affiliation decisions can only be overturned if they are directly contrary to the terms of that statute or the agency is found to have completely disregarded the presented evidence. Cryne (2009) asserts that agency decisions made without further study can result in remains being affiliated with the wrong tribe, misidentified as Native, or misidentified as non-native.

Wright (2012) raises issue with the term “culturally unidentifiable”, deeming it a term that was made up as “a placeholder in the legislation”, a compromise that was forced to be

accepted in order to allow the legislation to move forward. The term is interpreted loosely, and is often used as a scapegoat in the bureaucratic process, as it is not a designation that can be proven using scientific means. The original 1990 NAGPRA required that museums and agencies make a “good faith effort” and use the information already in their possession to make determinations of cultural affiliation (Mountain 2017). This effort required no additional research or study to make such determinations in order to ensure that this research was not “an authorization for the initiation of new scientific studies of such remains and funerary objects or others means of acquiring or preserving additional scientific information from such remains and objects” (43 CFR 10.9 (e) (5) (iii)). Additionally, under the original NAGPRA, human remains could not be repatriated if they were deemed culturally unidentifiable, or if several tribes claimed the remains, with museums unable to determine who the affiliated tribe was (Harms 2012).

Wright (2012) argues most of the remains and items that received this designation could have actually been identified if tribes were presented with the same information and voice that the repositories had. To support this, he presents the number of culturally unidentifiable human remains and cultural items held at institutions, citing them at 125,000 remains and approximately 875,000 items, numbers which are three times larger than before the term culturally unidentifiable was added to the equation (Wright 2012). According to the National Park Service, to date those numbers have grown to 133,657 culturally unidentifiable human remains and 1,158,186 associated items ([nps.gov/nagpra](https://www.nps.gov/nagpra)). However, of those originally inventoried as unidentifiable, 8,880 individuals and 172,566 items have been culturally affiliated ([nps.gov/nagpra](https://www.nps.gov/nagpra)).

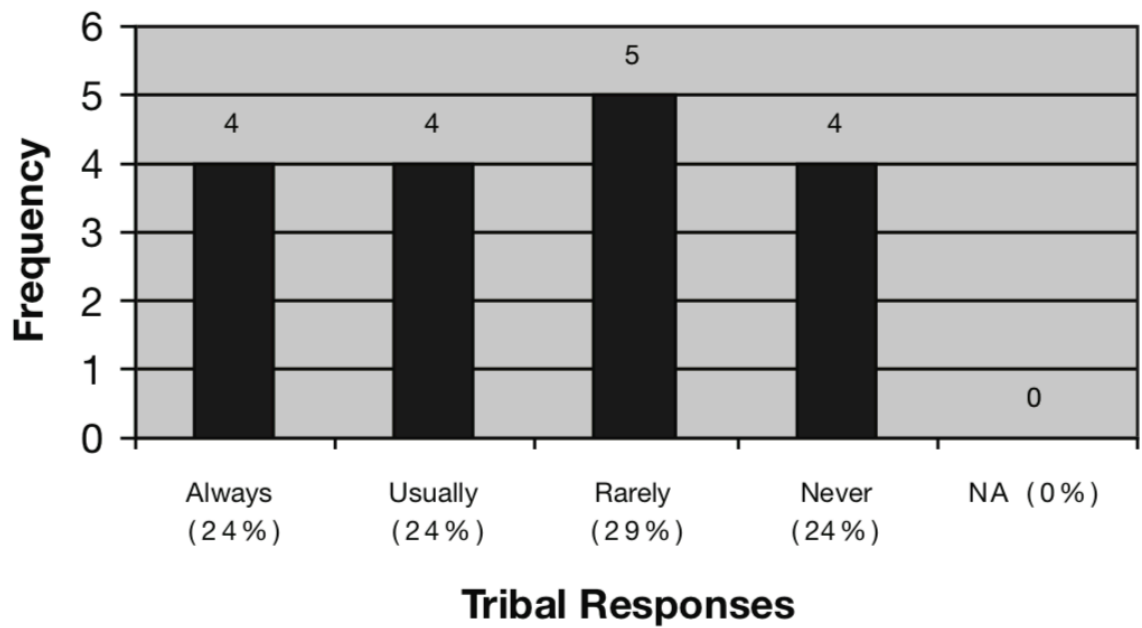


Figure 3.3 "Federal Agencies Made a Good Faith Effort" (NATHPO 2008: 16)

Tribal respondents to the survey distributed for NATHPO's report felt Federal agencies could have made a greater effort in any point of the NAGPRA compliance process, but particularly that of determining cultural affiliation (Figure 3.3). In the report discussed previously, Kline (2007) focused on states with the highest number of unidentifiable remains and found that a majority of them could be associated with a geographic location, or at least a state, as well as an archaeological time period. He also found that 65% of the remains had one or more associated funerary object, and 71% had been systematically excavated (Kline 2007). Kline (2007) concluded that 80% of the remains classified as culturally unidentifiable could be reasonably culturally affiliated.

In her evaluation of the law, "NAGPRA Revisited: A Twenty-Year Review of Repatriation Efforts," Julia Cryne (2009), explores the conflict that arises when scientists and tribal interests collide, and how NAGPRA is situated in this conflict. Cryne's (2009) comments focus on the report released by the National Association of Tribal Historic Preservation Officers. One of the goals of the 2008 report was to "assess the implementation of NAGPRA and identify where improvements might be made" (Cryne 2009: 104). The report evaluates the Act's effectiveness using inventory notices, the process of determining cultural affiliation, and surveys from Federal agencies and tribes regarding a variety of NAGPRA issues.

Vague Definitions

According to Harms (2012) the "ground-breaking nature" of NAGPRA means the scope and definitions of the law are not completely clear, even after more than two decades since its passage. Again, referring to the 2010 report conducted by the Government Accountability Office, Wright (2012) argues that the regulatory restrictions in NAGPRA that prohibit or restrict

the repatriation of collections are the product of vague interpretations and numerous legal loopholes that make the process convoluted and complicated. First, he argues the federal government promulgates regulations that are aimed to force the repatriation of Native American burial collections. However, going forward he believes these regulations need to include the entirety of Native tradition, as the belief is that a burial is inclusive of everything in the funeral process, as well as everything that went into the ground, caves, or scaffolds used. Although NAGPRA dictates the repatriation of funerary or associated objects, there is no stipulation that prevents the separation of remains and funerary objects. To keep the law as is he argues, “allows and promotes disrespectful practices in the name of an honorable act” (Wright 2012: 918).

Harms (2012) also argues that the subcategories of “cultural items” have caused interpretation issues. These subcategories include: associated funerary objects, unassociated funerary objects, sacred objects, and cultural patrimony. “Cultural items” for NAGPRA purposes also includes human remains (25 U.S. Code § 3001(3)). These term’s definitions often overlap and impose categories that do not align with Native traditions regarding these objects (Harms 2012). Specifically, “unassociated” and “associated” grave goods are both objects that were buried with an individual, but associated objects are those that are in the possession of the same institution that has possession of the human remains they were buried with, while unassociated objects have been separated from the original remains. However, the designation of associated can change if the object is separated from the remains they were buried with once they arrived at a museum or institution (Harm 2012).

Harms (2012) argues the distinction between “sacred” and “religious objects” is also a point of contention, as NAGPRA only applies to sacred objects. Additionally, these sacred objects are only protected by NAGPRA if they are needed for present day use in religious ceremonies. The term cultural patrimony is also difficult, as it does not apply to objects that may be of significance to a whole tribe but are individually owned. Additionally, critical terms such as human remains, lineal descendent, consultation, possession and control are not defined in the act (McKeown 2013).

Bonnichsen vs. United States provides perhaps the best-known example of how the vague definitions and loose interpretations of the law affect its success. During the case colloquially known as the Kennewick Man case, the definition of “Native American” was pushed to the extremes. The situation began in July of 1996 when two college students discovered a human skull on the bank of the Columbia River. Further investigation revealed an almost complete human skeleton. The discovery site was on federal land, but the land was not recognized as the tribal or aboriginal land of any modern, federally recognized tribe. Based on the age of the skeleton, estimated from anthropological analysis and radiocarbon dating, the United States Army Corps of Engineers (USACE) determined the skeletal was Native American and therefore subject to NAGPRA (Crowther 2000). In October of 1996, viewing the future repatriation of these remains as a lost opportunity for research, eight anthropologists filed a complaint against the USACE, seeking to stop the repatriation process (Crowther 2000). Opponents to the scientists considered their actions to be contrary to the intent and spirit of the law. However, the anthropologists argued that the USACE had violated NAGPRA by determining the remains were “Native American” without adequate evidence to do so and had

not considered evidence that proved the remains were not affiliated with any present-day tribe (Crowther 2000).

NAGPRA defines Native American to mean “of, or relating to, a tribe, people, or culture *that is* indigenous to the United States.” However, regulations published in 1995 by the Secretary of Interior reiterate this definition with the omission of “that is” (McKeown 2013). In determining whether the remains were of Native American ancestry, the judge determined there was a difference between a tribe “that is” indigenous and a tribe “that has been” indigenous, concluding the remains of Kennewick Man were too old to reasonably share any genetic or cultural features with a tribe “that is” presently in existence, determining the secretary’s alternative regulatory definition was invalid (Harms 2012, McKeown 2013). Wright proposes that the language in the law be amended to include any tribe “that was” in addition to “that is” in existence as this distinction fosters the collision of Native oral histories and traditions with bureaucratic determinations. To date, the definition has not been changed, and as such the interpretation of the definition made in *Bonnichsen vs. U.S.* applies in Alaska, Washington, Oregon, Idaho, Montana, Nevada, California, Arizona, and Hawaii, while the rest of the country follows the proposed regulatory definition with “that is” omitted (McKeown 2013).

The Kennewick Man trial highlighted some important problems with NAGPRA. Specifically, that problems still lie in the application of NAGPRA to ancient remains, as it was an Act of Congress through the Bring the Ancient Ones Home Act of 2015 (S.1979), not NAGPRA, that returned the remains to the tribes. The previously discussed issues with determining cultural affiliation are even greater when applied to ancient remains, and NAGPRA does not contain any provisions for dealing with those issues (Crowther 2000). Additionally, consistent

with other critiques of the law, difficulties arise when considering the definition of Native American. The law defines “Native American” as “of, or relating to, a tribe, people, or culture that is indigenous to the United States” (25 U.S.C. 3001). While Native American is clearly defined, what is considered indigenous is not, leaving room for interpretations and loopholes. Depending on how far back one would like to consider, it has been shown that the individuals who first populated the Americas came from the Asian or European continent (Crowther 2000). This logic, applied to the dictionary definition of Indigenous, “originating or developing or produced naturally in a particular land or region or environment” (Webster’s 1976), could be interpreted that no human remains are indigenous to the United States. Therefore, arguments for when people who migrated to the United States became indigenous for the purposes of the law need to be made, leading to conflicting conclusions. Crowther (2000) also argues that “it must be determined whether NAGPRA requires that an *individual* be indigenous to the United States or whether his *culture* must be indigenous to be considered Native American” (274). Again, as there are no provisions or guidelines in NAGPRA for these issues, different interpretations of these definitions will result in vastly different definitions of successful implementation of the act. Additionally, an article published in Scientific American in April, 2018 argues that NAGPRA must be updated to include ancient remains in response to technological advancements. The article cites DNA technology to support this, as remains once thought to be “culturally unidentifiable” can now be linked to modern groups through genetics, as was the outcome of Kennewick Man (scientificamerican.com 2018). Although not a definitive line of evidence, it certainly is a strong one.

However, this process is not as simple as the aforementioned article makes it seem. In a 2014 NewScientist article, Kim Tallbear, an anthropologist and member of the Sisseton Wahpeton Oyate, discusses how tribal membership goes far beyond DNA (Geddes 2014). Tallbear specifically focuses on how the now popular notion that Native American identity can be determined by a DNA test is too simplistic, as culture and tribal traditions also play a major role. She also argues that reliance on this type of testing negatively represents Native American identity as something that is purely racial or biological (Geddes 2014). Additionally, most tribes are adamantly against destructive analysis of Native American human remains, and NAGPRA specifically does not allow for new research to be done for the sake of making cultural affiliation determinations for NAGPRA.

This problem is not new, as it is an issue that Congress was aware of when drafting NAGPRA. Crowther (2000) notes that the issue of how to deal with ancient remains that could not be affiliated with modern tribes was controversial when the debates and votes regarding NAGPRA were occurring. Native American groups argued that these remains should still be made available for claim by tribes, while scientists and anthropologists voiced the remains should be made available for study (Crowther 2000). Keith Kintigh, a witness for the Society of American Archaeologists even argued that returning the remains to tribes deprived others of the opportunity to study and learn from the remains, therefore violating those individual's rights (Crowther 2000). Instead of taking a side on the issue, Congress passed the responsibility to the Department of the Interior. According to Crowther (2000) at least ten years after NAGPRA was passed, the Department of the Interior had still not devised any regulations for navigating the issue. However, regulations for the disposition of culturally unidentifiable Native

American human remains were implemented in 2010. These regulations provide a priority disposition order for culturally unidentifiable remains that will be discussed further in Chapter 7.

Scientific Endeavors

Cryne (2009) argues that many of the issues previously discussed, particularly the hesitation to repatriate collections, stem from the continued priority given to “ongoing studies or scientific endeavors”. NAGPRA stipulates that requested remains may be held onto if they are “indispensable” to the completion of a study or “would be a major benefit to the United States” (25 U.S.C 3005 (b)). However, Cryne (2009) highlights that due to the vague limitations on studies in the law, scientific groups have fought to prevent repatriation whenever possible. In the late 1980s, the Society for American Archaeology, a very vocal advocate of the use of human remains for study, stated,

Research in archaeology, bioarchaeology, biological anthropology, and medicine depends upon responsible scholars having collections of human remains available for replicative research and research that addresses new questions or employs new analytical techniques. . . . Whatever their ultimate disposition, all human remains should receive appropriate scientific study, should be responsibly and carefully conserved, and should be accessible only for legitimate scientific or educational purposes (Fowler 1987: 215).

Though the quotation may be outdated, the sentiment is not, as the divide between the goals of the scientific community and the desired outcomes of the tribes remains unabridged.

According to Devon Mihesuah (2000), author of *Repatriation Reader: Who Owns American Indian Remains?*, many anthropologists, museums, landowners, and even hobbyists continue to hesitate or flat out refuse to return remains or objects, citing scientific and academic freedom for support. A chapter of Mihesuah's (2000) book, authored by Patricia Landau and D. Gentry Steele, argues for the value of continued studies on Native American human remains. The authors begin the chapter by stating, "Physical anthropologists are willing to comply with NAGPRA's terms, but the need remains for long-term study of some skeletal collections before repatriation" (Landau & Steele 2000: 84). In order to support their argument, the authors cite a number of research areas that have benefited from the use of human remains including: health studies, particularly treponemal disease and the spread of syphilis, cranial modification, investigations of prehistoric life, ethnographic accounts of historical events, evidence of cannibalism, and colonization of the Americas (Landau & Steele 2000). The authors also present arguments for the importance of the acquisition and study of many individuals, arguing "the study of the remains of a single person can provide information that allows us to characterize that individual. In contrast, the study of remains of many individuals from a population provides data that can be used to generalize about other people of the society in which they lived" (Landau & Steele 2000: 94). They further argue that due to the value of these large collections questions such as how large the sample must be and how many individuals are enough are unanswerable.

With cold and calculated certainty, the authors also explain why remains must be held for such a long time, "A skeletal analysis is more than just looking at bones. The study of human remains is an analysis, in the true sense of the word, requiring the meticulous examination and

assessment of human remains in all their component parts from many perspectives. . . A skeletal analysis is a demanding and time-consuming undertaking; it must be done thoroughly” (Landau & Steele 2000: 96). In their conclusion, the authors state that while they accept the Native American perspective as an alternative viewpoint, they believe scientists feel “the same heartfelt sense of responsibility” towards skeletal remains. Additionally, they argue that, like Native Americans, they believe that ancestry goes beyond next of kin, and as such ancient people are the ancestors of all modern people (Landau & Steele 2000). In examining the failure to implement NAGPRA and its sentiments, arguments such as Landau and Steele’s (2000) highlight the strong and illogical arguments that come from the scientific community, using the desire to seek greater knowledge and the benefit to mankind to mask the immense failure to acknowledge the ethical principles that should take precedence.

An article by Douglas Ubelaker and Lauryn Grant (1989) explores some of the attitudes surrounding the preservation versus reburial debate. They cite some of the sentiments of prominent anthropologists that counter the concerns raised by Native American communities. In regard to the racist ideas that the collection and housing of Native American remains fosters, the authors present an argument from Jane Buikstra (1983) in which she states that the focus on these remains is not founded on racist preoccupations, but on the desire to explore the history and “proud heritage of a great people” (249). Similar lines of thought argue that it would in fact be racist to not have these collections, as that would reflect a lack of interest and indifference to the history of Native Americans (Ubelaker & Grant 1989). The authors further argue that the study of Native American remains has led to the disbanding of stereotypes that have characterized tribes and communities, proving history books to be outdated and

inaccurate. Additionally, they argue that without the study of Native American remains, future generations will suffer from gaps in the knowledge about their history, stating that anthropologists who study the remains can fill those gaps (Ubelaker & Grant 1989). Similar to Landau and Steele (2000), the authors cite seminal studies such as Larsen (1987), Buikstra and Cook (1980), Jantz and Willey (1983) Owlsey (1984) and Cohen and Armelagos (1984), for their contributions to science as support for the long-term curation and study of human remains. Although the studies cited may seem outdated, they provide the foundation from which further studies in the same topics have been developed. Ubelaker and Grant (1989) also argue that burgeoning fields at the time, including forensic anthropology, have benefited from the comparative value of these collections, as they considered them to be essential for the identification of human remains discovered in a medico-legal context. The authors conclude the argument for the scientific value of Native American collections noting, “Simply stated, the argument for long-term curation is that science changes. Much more can be learned from the remains in the future than scholars are capable of learning now... Immediate reburial precludes an opportunity for study of replicability or the development of new techniques” (Ubelaker & Grant 1989: 252).

The Scientific American article referenced above, entitled “Indigenous Remains Do Not Belong to Science,” argues that scientists have a moral obligation to seek out those who might have a connection with remains and give them the opportunity to decide their fate (DiChristina 2018). The article details a successful collaboration between scientists and a tribe in order to demonstrate that there is more to gain from these relationships than there is to lose. In January of 2018, researchers were able to recover DNA from bones of an infant girl found in Upward

Sun River, Alaska, dating to 11,500 years ago (DiChristina 2018). The researchers acquired approval for DNA sequencing from the Athabascans, who live near the site, and encouraged the tribe to share any questions they might have regarding the remains. The collaborative approach to the research led to the discovery that the remains represented a previously unknown branch of Native Americans and that the site contained the oldest evidence of salmon fishing in the Americas, a revered tradition to Athabascans (DiChristina 2018).

In response to the argument that the study of Native American remains is the only way to provide contemporary Native communities with information about their history, those with opposing beliefs argue that oral histories preserved and passed down by religious leaders and elders are adequate sources of history and do not need to be supplemented with skeletal analysis. Ubelaker and Grant (1984) cite Tymchuk's (1984) argument that the debate surrounding the issue of skeletal analysis must be seen in the context of "their cultural downfall's larger history" (Tymchuk 1984: 3). The issue does not simply involve Native American attitudes towards science but also the American public's attitude and perceptions of Native Americans. The push for the return of and respect for Native American remains is part of Native Americans' larger battle for equal rights and respect as well as a challenge to the American political and public belief system that has violated their rights as citizens and as people for hundreds of years.

Reburial

Harms (2012) also finds shortcomings in the law in regard to the reburial of remains. Although it is an important goal of NAGPRA to ensure that museum collections are put back in the ground, the requirements of the law stop at repatriation. The law does not stipulate that

Native American remains that were found on public lands are required to be reinterred there, nor does it state that remains found on private lands may be reinterred there, unless specific arrangements with the landowner have been made (Harms 2012). This often means that the original resting place of exhumed remains is not an option for reburial. Additionally, the process of handling remains during repatriation or reburial is an issue for tribes, as many believe there are repercussions when an ancestor is exhumed and separated from the objects with which they were buried with (Harms 2012). Handling, or even seeing these remains puts tribal members in danger and can even result in becoming ostracized in the community.

Tribal structure is also not equipped to handle the demands of repatriation, as is evident by the high turnover rates amongst Tribal Historical Preservation Officers. Issues also arise with the technical categorization of objects in the four categories discussed earlier, as well as making decisions on which items to make repatriation claims on from summaries provided to them rather than object-by-object inventories (Harms 2012). As these problems continue to persist, with little action taken to resolve them, a common sentiment that “because of the money it is costing, the resources it is draining, and the frustration it is engendering, NAGPRA has driven itself into the position of arousing the suspicions of Native Americans” (Fine-Dare 2002: 165). Despite having the words “Graves Protection” in the title of the NAGPRA law, the law does not contain any protections for burial sites, only tribal notification of burial sites that have been disturbed on federal land.

Chapter 4: Compliance

How NAGPRA applies to ME/C office

Within the Native American Graves Protection and Repatriation Act (1990), Section 43 CFR § 10.9 states that universities and museums must prepare an inventory of items within their possession and return human remains at the request of a lineal descendent, Indian tribe, or Native Hawaiian organization. The issue of vague language within the law comes into play here, as the definition of museum for NAGPRA purposes is meant to include “any institution or State or Local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items” (25 U.S.C 3001 (8)). “Receives federal funds” is also convoluted as the institution does not have to be a direct recipient, but rather the statement “means the receipt of funds by a museum after November 16, 1990, from a federal agency through any grant, loan, contract, or other arrangement by which a Federal agency makes or made available to a museum aid in the form of funds” (H10985-01 1990). Under this provision, institutions included under the definition of museum, including universities, as well as federal agencies were required to complete a summary of their collections by November 16, 1993 and provide these summaries to any federally recognized tribes or Native Hawaiian organizations that requested them (Willingham 2003). Additionally, these institutions and agencies were required to submit formal inventories of their collections by November 16, 1995 to the *Federal Register*. The *Federal Register* is the official journal of the federal government. It contains the rules of government agencies, any proposed rules, and public notices. The journal is updated daily and is an open source, searchable database.

As discussed in Chapter 2, the ME/C system, while a nationwide system, is dictated on a state by state basis, and therefore is not considered a federal agency. However, as a state agency that is mandated by state law to take possession of human remains and associated cultural items and control the disposition of those items, in addition to receiving federal funding, ME/C offices are considered a museum for the purposes of NAGPRA (Willingham 2003). According to Melanie O'Brien, Program Manager of the National NAGPRA Office, in the case of ME/C offices, "receiving federal funds" applies even when the state receives federal funding and those funds subsequently get distributed to state and local governments (Personal Interview, 30 Jan 2018).

Additionally, according to the last census of ME/C offices, conducted in 2004 by the Bureau of Statistics, of the 500,000 cases accepted for death investigation each year, 1% (5,000) of them were reported to be skeletal remains (Hickman et al 2007). Although not included in the census, it is expected that a subset of these skeletal remains will include non-forensically significant Native American remains. NAGPRA states that museums must prepare inventories and summaries for human remains in their control or possession. According to 43 CFR § 10.2, "control" means having a legal interest in the remains with or without physical custody, while "possession" means simply having physical custody of the remains (43 CFR § 10.2). If this expectation proves true, then "even though NAGPRA's discovery provision does not apply to state or private land, once state law takes charge of the discovery and because the state receives federal funds, NAGPRA's museum provisions will protect the remains and cultural items and govern their disposition" (Willingham 2003: 966). Further, in the case of remains that are sent to an office by an outside entity, "if the state or its agency has physical custody of the

remains or cultural items pursuant of state law, with a legal interest in them (in this case custody), this would constitute possession for NAGPRA purposes” (Willingham 2003: 967). As such the requirements for museums discussed above, as well as the consequences for non-compliance, apply to the ME/C system.

This issue must be taken one step further however, as a determination must be made that the skeletal remains either discovered or received by ME/C offices are not of forensic significance. According to Tatarek and Dean (2005), forensically significant cases are those in which the remains recovered have come from modern human individuals who died violently or unexpectedly, or for which the cause or manner of death is potentially a legal or otherwise significant issue. The authors emphasize that when presented with decomposed or skeletal remains, attention to anatomical detail, consideration of the available remains, and observation of the surrounding scene are all essential for identification (Tatarek & Dean 2005). The authors also highlight that remains can be found in many different contexts, not all of which require forensic investigation of personal identification. The context of the remains as well as the condition will aide a practitioner in making these determinations. Additionally, the presence of archaeological materials, such as pottery or arrowheads, may indicate historic or prehistoric remains (Tatarek & Dean 2005). These determinations are confounded by the fact that what constitutes forensic significance in terms of the age of the discovery varies. According to various state laws, the discovery needs to be anywhere from 50 years old to 150 years old to be considered non-significant (Florida Statue 872.05, Colorado Statutes 24-80-1302, Hawaii Administrative Rules 13-300-40).

Tatarek and Dean (2005) stipulate that in the event that a set of human remains is determined to be non-forensically significant and Native American, the proper course of action is to follow NAGPRA. They note that, “in the United States, Native American Graves Protection and Repatriation Act (NAGPRA) law dictates that law enforcement agencies, **coroners, and medical examiners** (emphasis added) must identify the nearest Native American group and notify them of any finds before proceeding with removal” (Tatarek & Dean 2005: 27). The authors even provide a chart that makes the process for the disposition of these remains seem relatively simple. However, the chart fails to acknowledge that historic remains are also included under NAGPRA (Figure 4.1).

State Laws for Handling Human Remains

When and if human skeletal remains will fall under the jurisdiction of ME/C offices is dictated by individual state laws for handling human skeletal remains and their specific stipulations. These laws regulate who is required to be present at the scene of an accidental discovery, as well as who takes possession of the remains if they are removed from the discovery site.

Thirty-three states have state laws that stipulate that either a coroner or medical examiner must be notified of an accidental discovery of human remains and that individual subsequently determines whether the remains are forensically significant or not. The medical examiner or coroner present also decides whether the remains will fall under their jurisdiction or not. These states include Alaska (dnr.alaska.gov), California (Health and Safety Code 7050.5), Colorado (24-80-1302), Florida (872.05), Georgia (O.C.G.A 31-21-6 (b)), Hawaii (13-300-40),

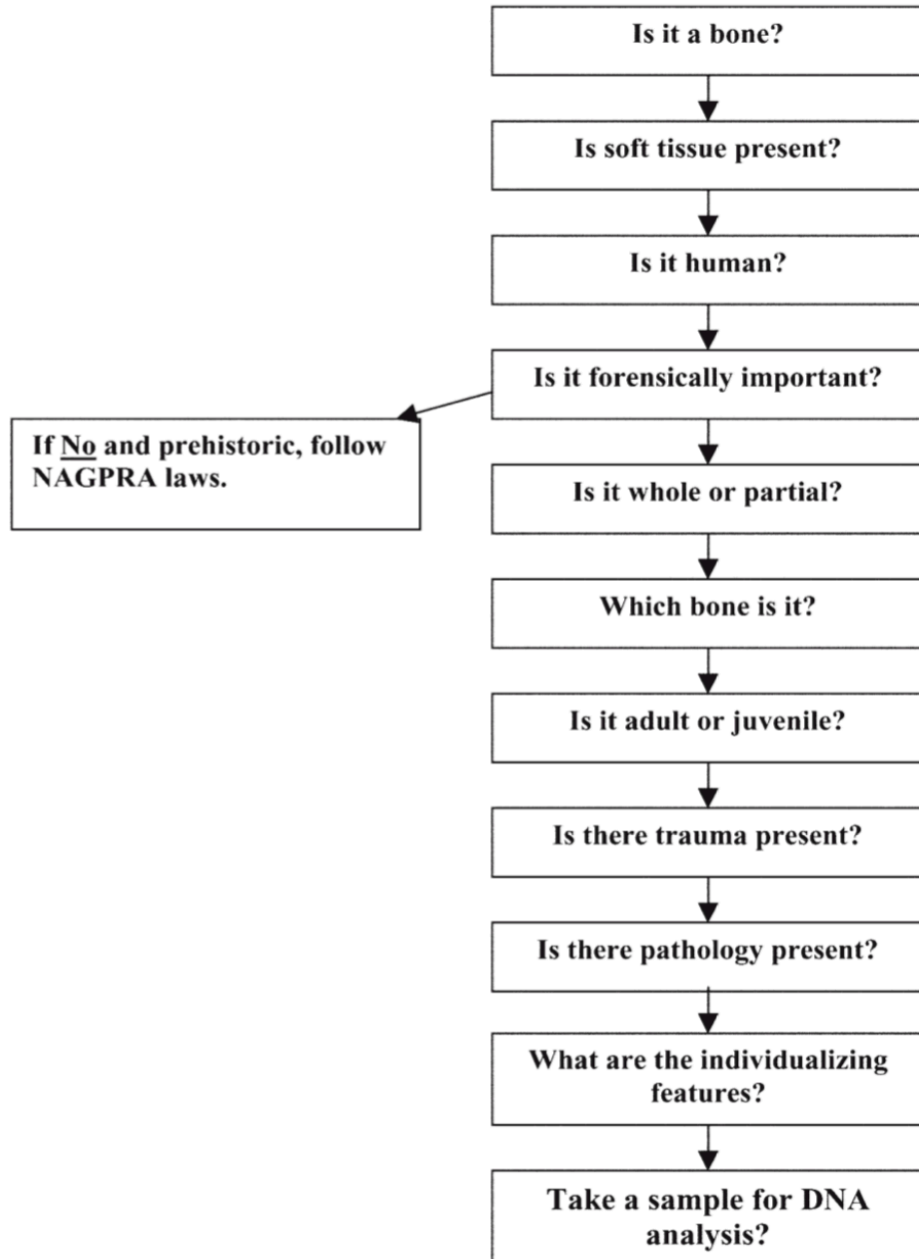


Figure 4.1 Chart Used to illustrate an algorithm in the analysis of fragmentary remains (Tatarek & Dean 200: 23)

Illinois (20 ILCS 3440/), Indiana (IC 14-21-1-29), Iowa (Code of Iowa 716.5), Kansas (K.S.A 75-2746 (b)), Kentucky (KRS 72.020), Louisiana (Ch. 10 680 B), Massachusetts (sec.state.ma.us), Minnesota 9M.S. 307.08), Montana (22-3-805(1)), 22-3-805(2)), Nevada (efotg.sc.egov.usda.gov), New Hampshire (227-c:8-a), New Jersey (52:17B-219), New Mexico (New Mexico State Protocol Section C ii.b.), New York (11-2008), North Carolina (70-29), North Dakota (NDCC 23-06-27), Oklahoma (Okla. Stat. tit. 21, 47-1168.4), Pennsylvania (House Bill No. 1771), Rhode Island (23-11-11(c)), South Dakota (Codified laws 34-27-25), Tennessee (11-6-107), Vermont (18 V.S.A 5212b), Virginia (dhr.virginia.gov), Washington (68.50.645, 27.44.055, 68.60.055), West Virginia (W.Va Code 29-1-8A), Wisconsin (Statute 307.08), and Wyoming (Wyoming State Protocol Section 4 B).

Other state laws dictate that a historical commission or state preservation office should be the first point of contact after the discovery of human remains. These states include Alabama (Alabama Code Chapter 460-X-10-.01 (f), Delaware (history.delaware.gov), Nebraska (Legislative Bill 97, Section12-1208), and Utah (9-8-307). Additionally, Oregon stipulates that if remains are discovered in any situation other than a criminal investigation, the State Historic Preservation Office as well as the Commission on Indian Services should be contacted first (ORS 97.746 (4)). Some states, such as Texas, have no law dictating the procedure for the discovery of human remains, but the Texas Historical Commission has provided their own recommendations for what to do, including who should be contacted and what follows jurisdiction decisions (Figure 4.2).

The passage of NAGPRA has elicited a response by some states to strengthen their laws protecting burial sites. According to Seidemann (2010) the implementation of these state laws

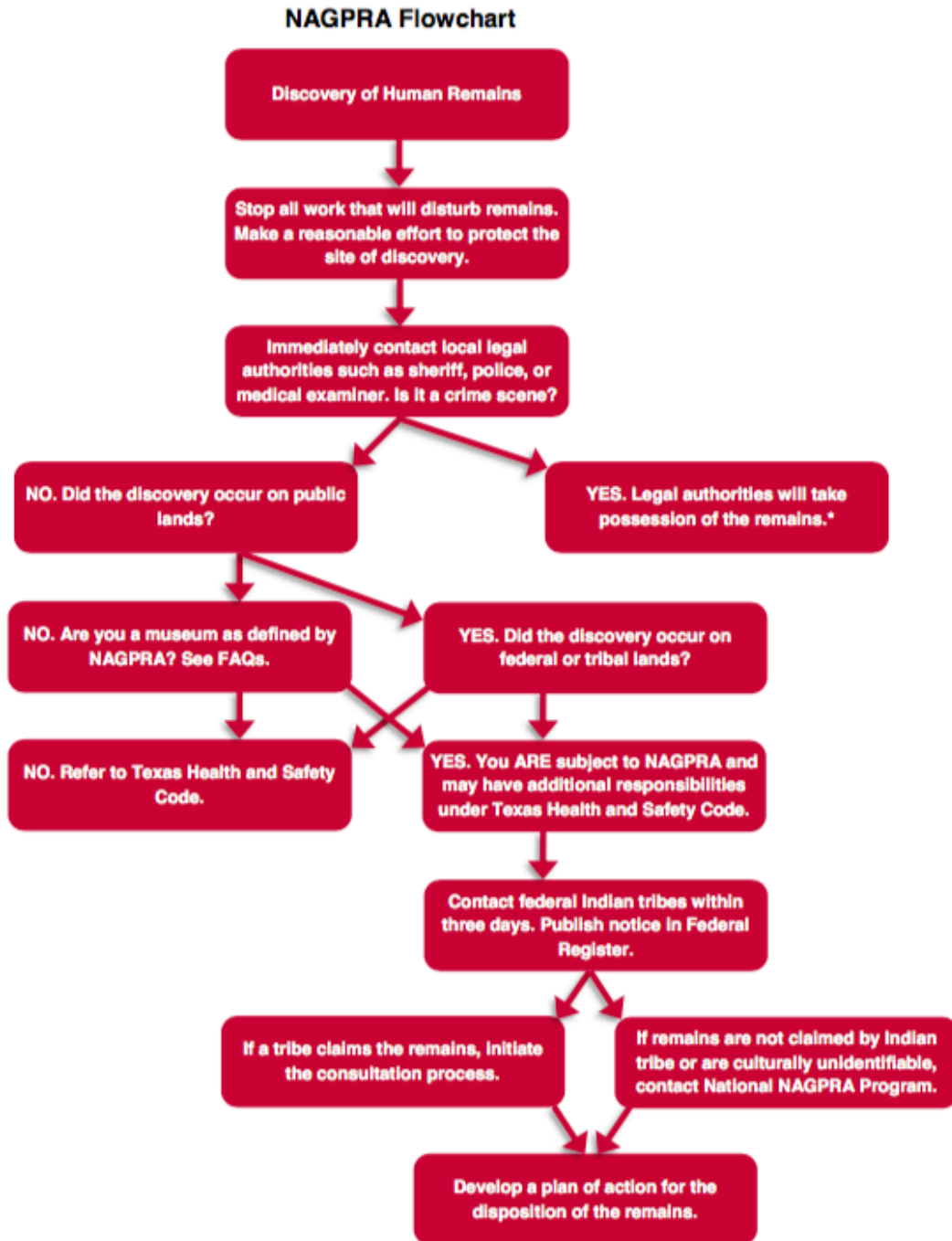


Figure 4.2 “NAGPRA Flowchart for the Discovery of Human Remains” (Texas Historical Commission 2011).

was inspired by the realization that NAGPRA's stipulations only apply to federal or tribal land. By expanding their laws, states could protect burial sites located on state or private land. The most extensive of these state laws is the 2001 California NAGPRA (Seidemann 2010). This law takes NAGPRA's exact stipulations and mandates them at a state level. Additionally, the law includes a means for non-federally recognized tribes to make repatriation claims (Cal. Health & Saf. Code 8011(f)). Maine has also passed a post-NAGPRA law (Me. R.S. 13:13-71-A), that when combined with the state's cemetery protection law, provides protection for all marked and unmarked burials, regardless of ethnicity, throughout the state. The law also mandates the protection of land used for interment of human remains as a cemetery, regardless of whether it is officially dedicated as such (Seidemann 2010). Montana's post-NAGPRA law, the Human Skeletal Remains and Burial Site Protection Act, protects marked, unmarked, recorded, registered, and unregistered graves and burial grounds on state and private lands (Mt. Code 22-3-801, et seq). The law also states that "all burials should be accorded treatment and respect for human dignity without reference to ethnic origin, cultural background, or religious affiliation" (Mt. Code 22-3-802(2)(a)). However, the law also permits the scientific analysis of inadvertent discoveries of human remains and artifacts (Seidemann 2010). This research must be peer reviewed and the law requires all remains and artifacts to be reburied upon completion of the research (Seidemann 2010). Finally, Louisiana's Unmarked Burials Act provides protection for burial sites that do not fall under the authority of the Louisiana Cemetery Board, including abandoned cemeteries (LA. R.S. 8:673). The law also specifically states that protection is extended to human remains, burial artifacts, and burial sites (Seidman 2010).

Civil Penalties

As discussed in Chapter 3, civil penalties are the consequence for museums and federal agencies who do not comply with NAGPRA. This provision was created in the days prior to enactment of the law through negotiations between representatives of the American Academy of Museums, Native American Rights Fund, Association on American Indian Affairs, and the Morning Star Foundation (McKeown 2013:70). H.R. 5237 (the bill that later became NAGPRA) stated that any museum that failed to repatriate human remains, funerary objects, sacred objects, or objects of inalienable communal property to a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization in a timely manner would be ineligible for federal grants or other assistance during periods of noncompliance (U.S. House of Representatives 1990). The Secretary of the Interior would be authorized to assess a civil penalty for any museum that failed to comply with any of the stipulated provisions in NAGPRA. Museum and tribal negotiators sought a more severe punishment. The two parties reached a compromise that consisted of including the archaeological, historical, or commercial value of the item involved; economic damages to any aggrieved party; and the number of violations that had occurred (McKeown 2013: 70). These provisions were proposed and considered by the Review Committee in 1992, but the Department of the Interior deferred the civil penalties regulations to be determined at a later date (U.S. Department of the Interior 1993).

The civil penalty regulations did not go into effect until 1997 and included six stipulations that would be considered as “failure to comply”: not completing a summary, inventory, notification, or notice of publication by the appropriate deadline; refusing to repatriate cultural items to a lineal descendant or culturally affiliated Indian tribe or Native

Hawaiian organization; or selling or transferring cultural items in violation of the act (McKeown 2013: 70). The 1997 rule also included a two-stage penalty. The first stage was based on a percentage of the museum's annual budget; the archaeological, historical, or commercial value of the cultural item; any economic or non-economic damages; and previous violations (McKeown 2013). According to the National NAGPRA Office, to date this penalty is 25% of the institution's annual budget, or \$6,666 for each item or set of remains (RIN 1024-AE37). A second penalty of \$1,100 per day could be added if the museum's non-compliance continued after the date of the administrative decision (McKeown 2013).

Final civil penalty regulations went into effect in 2003 and included two additional stipulations that would be considered as "failure to comply": not consulting with lineal descendants, Indian tribe officials, and traditional religious leaders as required; and not informing recipients of any presently known treatments with pesticides, preservatives, or other substances that represent a potential hazard to the object or to persons handling the objects (McKeown 2013:72). The 2003 regulations also raised the per day penalty to \$1,100 and created a civil penalty office chosen by the National Park Service to coordinate investigations (McKeown 2013). However, this responsibility shifted in 2005 to the National Parks Service (U.S Department of the Interior 2005). In 2010 alone, 69 allegations of non-compliance were reported, and investigations found 15 museums to be in violation of NAGPRA'S stipulations. These museums include: The Bishop Museum; City of Harrisburg, Pennsylvania; East Carolina University; the Peabody Museum at Harvard; Nelson-Atkins Museum; Northern Illinois University; Oregon State University; Pacific Lutheran College; Pierce College; Safety Harbor Museum; St. Joseph Museum; Texas Parks and Wildlife Department; University of

Massachusetts-Amherst; and University of Puget Sound (McKeown 2013: 72). The museum penalties consisted of \$5,000 or less, depending on whether the failure to comply was intentional or not, and if steps were taken towards compliance once notice was given (Figure 4.3) (McKeown 2017).

The provided figure lists penalties that have been filed as of 2015, however enforcement of civil penalties is an ongoing process. In April of 2018 the New York Times (NYT) printed an article discussing the charges brought against Marshall University for failing to complete an inventory of the Native American remains and artifacts in its possession (nytimes.com 2018). The NYT Associated Press reported that Marshall University officials knew about the NAGPRA requirements but still failed to comply with completing and submitting their inventory. According to David Tarler, NAGPRA's Chief of training, civil enforcement and regulations, "The purpose of NAGPRA civil penalties is to ensure that museums comply with the law, and this has been an important tool for ensuring that there is compliance with the NAGPRA process. The bottom line: The process is working" (nytimes.com 2018). The complaint against the university came from a former employee who reported that after beginning work at Marshall in 1989, he noticed Native American remains and artifacts in bags, on shelves and on the floor. David Cremeans, a Cherokee descendent, was upset by the state of the collection, inquired whether Marshall had complied with the law, and offered his help in doing so. Cremeans filed the complaint after it was clear the university was not interested in fulfilling the NAGPRA stipulations, stating "They don't want to devote the time it takes to do the job right. If you got federal laws, you've got to comply with the law. If you don't have the funding, then don't get into the program. If you don't want to comply with NAGPRA,

Museum	Submitted by	Failure to Comply	Failure to Comply					Amount Paid
			Transfer	No Summary	No Consult	No Inventory	No Repatriate	
East Carolina University	Eastern Tuscarora	12-Jun-06				1		\$ 3,750.00
Northern Illinois University	Thomas Berres	10-Oct-06				1		\$ 2,500.00
St. Joseph Museum	Pamela Cone	13-Apr-07	1					\$ 1,420.00
Pierce College	Puyallup Tribe	13-Apr-07				1		\$ 3,750.00
Pacific Lutheran College	Puyallup Tribe	13-Mar-07				1		
Safety Harbor Museum	Miccosuki Tribe	28-Mar-08			1			\$ 439.34
Safety Harbor Museum	Miccosuki Tribe	28-Mar-08			1			
University of Puget Sound	Puyallup Tribe	28-Mar-08				1		\$ 2,500.00
Texas Parks & Wildlife	Ysleta del Sur Pueblo	25-Mar-08				1		\$ 5,000.00
City of Harrisburg, PA	Onondaga Nation	21-Apr-09		1				\$ 9,820.00
City of Harrisburg, PA	Onondaga Nation	21-Apr-09			1			
Nelson-Atkins Museum	Kickapoo Tribe of Kansas	21-Apr-09					1	
Bishop Museum		22-Sep-08					1	\$ 13,500.00
Bishop Museum	Hui Malama I Na Kupuna O Hawaii Nei	22-Sep-08					1	
Bishop Museum	Hui Malama I Na Kupuna O Hawaii Nei	22-Sep-08					1	
Bishop Museum	Hui Malama I Na Kupuna O Hawaii Nei	22-Sep-08					1	
Bishop Museum	Hui Malama I Na Kupuna O Hawaii Nei	22-Sep-08					1	
University of Massachusetts	Mohican/Narragansett/Wampanoag	2-Feb-10				1		
Oregon State University	Hui Malama I Na Kupuna O Hawaii Nei	7-Jul-10				1		
Bishop Museum	Hui Malama I Na Kupuna O Hawaii Nei	9-Aug-10		1				
Harvard University	Hui Malama I Na Kupuna O Hawaii Nei	16-Sep-10				1		
Woods Memorial Library & Museum	Leonard Little Finger	16-Jul-10		1				
Woods Memorial Library & Museum	Leonard Little Finger	16-Jul-10					1	
Woods Memorial Library & Museum	Leonard Little Finger	16-Jul-10			1			
Woods Memorial Library & Museum	Leonard Little Finger	16-Jul-10			1			
Hamilton County Parks & Recreation	Miami Tribe of Oklahoma; Eastern Shawnee Tribe	8/10/2012; 11/2/2012				1		
Hamilton County Parks & Recreation	Miami Tribe of Oklahoma; Eastern Shawnee Tribe	10-Aug-12			1			
Hamilton County Parks & Recreation	Miami Tribe of Oklahoma; Eastern Shawnee Tribe	10-Aug-12		1				
Andover Newton Theological School	Sealaska Heritage Institute	29-Sep-15		1				
			1	4	4	10	6	\$ 42,679.34

Figure 4.3 Museums Charged with Failure to Comply (McKeown 2017: 5)

don't keep a museum" (nytimes.com 2018).As a result of noncompliance, Marshall University was fined \$4,999 (nytimes.org 2018).

A Compliance Case Study

There is the only one ME office in the United States that has submitted an inventory and published a Notice of that Inventory to the *Federal Register* in compliance with NAGPRA. The following is an interview with the medicolegal practitioner that submitted the inventories. The interview discusses the details of notice submission process as well as the results from them.

Dr. Benjamin Matthews (BM), 21 May 2018

Megan Kleeschulte (MK): According to the Federal Register your notice was published in 2015, is that correct?

BM: Well we have done two starting in 2012, looks like the last one was 2015. So that's when the third one was published.

MK: According to the notice, the anthropologist that was there before you received the case. How did you rediscover it?

BM: I didn't have to rediscover it because my mentor was here in the 80s. When I started working here twenty years ago one of the things I did, just as part of a backlog of cases, was find out what we had as far as unidentified remains. And then figure out of those which ones had medicolegal significance, and all of these prehistoric or historic cases, some of which came in to the office, when I was a graduate student in the 1980s, it didn't take long to find half a dozen or so that my mentor had kept here and had not turned over to NAGPRA. He had turned over a dozen or two to the State Museum, between 1992 when NAGPRA was enforced and 2005 or 6 he would routinely take one or two cases over to the museum a year and turn them over to the curators of physical anthropology, and up until 2006 they would accept them. That was the way a lot of us did business in the ME office, find the local university anthropology museum and turn them over. So, in 2006 when my mentor and I were both serving as anthropologists we found out from the State Museum that they would no longer accept these cases, and I think I was even told that because we are a governmental agency that has received funds from the federal government, that puts us on the hook to do this ourselves. That was the impetus for us to start doing this and not just once a year take them to the museum.

MK: Was the museum curating them or using them for teaching collections?

BM: That's a good question, I don't know. I assume they were filing the NAGPRA paperwork and turning them over, but I don't know the answer to that.

MK: The remains for this particular notice were found by hikers, so how much information about the remains did you have?

BM: Very little. The first one was 1989 and was found on Navajo land so we thought, and I've got probably eight more of these that we will send through NAGPRA eventually over the next few years, but this one had the best provenience as far as clearly being on tribal land, at least what the hikers told the police back in 1989, so this one seemed like a no brainer that the Navajo would want it back.

NAGPRA requires that a Notice of Inventory Completion for both human remains that are culturally identifiable as well as culturally unidentifiable human remains that were removed from tribal or aboriginal lands be submitted. Dr. Matthews' decision to submit the notice for the remains with the most provenience is a common one as the process for these remains is typically more successful. Knowing exactly where the remains were found gives tribes more information to determine whether they would like to make a claim on the remains or not, as well as giving the museum/agency a better idea of what tribes should receive a notice of the inventory completion.

MK: What was the process like submitting the NAGPRA notice? Did you have help from the NAGPRA office or did you try to navigate the process yourself?

BM: I certainly had help from the women in Washington that took some phone calls from me. I also asked the curator of physical anthropology at the State Museum if he had any students that were interested in both NAGPRA related things and forensic anthropology, and because I ran, and still run, an internship program here I said give me the names of the students or tell them to contact me, because if they agreed to do some NAGPRA work with me, because they had done this at the museum for the cases that had been turned over to the museum, I said if you agree to do that we can learn together, you can teach me and we would give them an internship in forensic anthropology. So, I had help

locally from undergraduate anthropology majors and I had help from at least two of the folks in DC.

The National NAGPRA Office is an excellent resource for museums or agencies who are at any stage of NAGPRA compliance. It seems that a fear of repercussions may dissuade people from calling for help, not wanting to draw attention to the fact that they have not been compliant. To be clear, the National NAGPRA office does not initiate civil penalties, and will help any institution hoping to gain compliance with the law. However, as has been discussed throughout this thesis, the process is complicated and quite confusing, and as such, having direct help from people whose job it is to know the law and implement it can be an incredible resource for ME/C offices who might be beginning this process.

MK: From start to finish, how long would you say the process of submitting the notice took?

BM: Well it probably just took a few hours of our time, but the interns would only come in for a few hours a week, so we took a couple of weeks to do the paperwork. And we were advised to mail the notice to about 11 or 12 tribes here even though in this particular case, the Navajo reservation case, I thought that was a wasted effort, but we were told to do it that way so. You know writing letters, signing letters, making copies, putting address labels on envelopes, mailing them out, it probably didn't take 10/20 hours of our time here. And we thought we would get a quick response, we would turn these remains back over to the tribe. . . that was three years ago.

Dr. Matthews' time estimation should be encouraging to offices. Although the process will definitely require more resources and time than have been devoted to this issue in the past, Dr. Matthews' estimate should provide some solace that NAGPRA compliance does not necessarily have to be an all-consuming process, particularly because ME/C offices are not dealing with nearly the same scale of collections as museums and universities are.

MK: So you still have them?

BM: Still have them. Yeah, we have done three of these now and I have gotten responses from two of the tribes, Hopi and Zuni, I think, and the cultural resource manager there is an archaeologist who was trained here, so it could be that he responds to me anthropologist to anthropologist, he feels like he is supposed to. What the stock answer is, because these remains are not from the four corners, even though they are concerned that we have them, and they would like for them to get returned, they believe they belong to one of the southern tribes that should be taking them. Yet the southern tribes never even have the courtesy of returning a letter or phone call.

MK: Did you hear from any tribes after the notice was published that you did not contact directly?

BM: No, as far as them reading the notice, no. I have literally heard from nobody except the Zuni and Hopi up in the four corners area. I don't even know if anyone is reading these. So, my frustration is that I feel compelled, and by law I'm supposed to do this, but if the tribes don't even respond, why are we doing this? I think I am going to sit on the six or seven more that are probably NAGPRA cases and I am going to sit on them until maybe the results of your Master's. Maybe if you get the word out that some anthropologists are willing to do the work it takes to post these, but we need to know, maybe just a courtesy, "thank you for telling us but we don't want them" or "we have no mechanism for receiving them". In the case of the Hopi and Zuni, the archaeologist has told me that the current tribal members, the panel up there, they don't want anything to do with human remains, so even if you could prove they are ancestral to the Hopi or Zuni, they still wouldn't take them.

MK: Have they mentioned if that's because their traditions don't allow them to, or because they don't trust the NAGPRA process?

BM: Probably both, but what I have been told is that we have mucked up, by digging up their ancestors we have mucked up the great procession and the afterlife and they don't want to introduce, they don't want those bones brought back because things are so mucked up by the non-native people that dug in their cemeteries and took their remains away they don't want the bad luck or bad karma, or just the sense that they are too distraught, collectively distraught by the whole scenario, and this is just Hopi or Zuni, and I don't think we have any cases here that are Hopi or Zuni. But most of these are trophy skulls, the cops bust somebody at a swap meet and they have a native cranium and they could be from anywhere, from any tribe in the county.

In 2012 the most seamless turn over to a tribe was the first one and that is because human remains were washed out of a bank on the Tohono O'odham reservation, and the then Sells Police Department, now the Tohono O'odham

police department, they investigated, they thought that they probably came from the cemetery, but for whatever reason they called our office and we had the parts of two individuals here. So, given that provenience, given that we had the police report and a little description of what happened, I just called the cultural resource manager there in Sells on the Tohono O'oham reservation, and explained to him, and he said well "I'll take them from you". So, we cut NAGPRA out of this in 2012, what's that 20 years after it was enacted, we cut it out, but I believe based on the provenience, I gave those remains to the person who would have gotten them through NAGPRA anyway. I think once or twice a year the bones the tribal members either find in washes or other places, they have a ceremony once or twice a year on their reservations. If we could do that in every instance that would save a heck of a lot of time.

MK: Have you thought about what will happen to the remains published in the notice if you never hear back from a tribe?

BM: Well I will retire eventually, and the person that takes my job, and I'll have a sit down, and amongst all the other things I talk about, this box I have on my lap right now that pertains to these dozen or so cases, and tell her/him my frustration and tell them why we stopped turning these over, or going through the paperwork, because it doesn't do anything for us except take time, and the remains are still here. The whole idea here, and I think most ME and coroner's offices would agree, we are trying to get these remains to the right person. ME/coroner's offices are really tasked for two things right, cause and manner of death, and typically the third thing we do, we help law enforcement identify people. Well in the case of prehistoric remains, we are not going to be able to identify the person but if we can identify that they are probably Native American, then this is tantamount to telling a family "your dad's autopsy is over, he is ready to be picked up" and they never come. Now we have mechanisms, most states and most jurisdictions can just bury these remains or have them cremated and put into a pauper's cemetery, but I don't advocate that, I wouldn't want to do that, we might even get some push back from the office in our county responsible for paying for indigent burials, but that's the only way for us to get remains out of here, is to turn them over to a family, funeral home, or governmental agency that buries indigent bodies, so that is a possibility, I would argue against it, but when I retire the next person may not. For ME/coroner offices they become a liability after a while because once we finish what we can do, just from a legal standpoint, they become a liability, from a humane standpoint, dead people belong buried or cremated or whatever the relatives want, which in the case of NAPGRA, are these tribal members that are on councils today that are responsible for policing up these isolated, scattered sets of remains and partial sets of remains and disposing of them the way they want. I know the different tribes in this state have annual or occasional ceremonies where they do just that, they collect these remains from the land, they assume

they are ancestral to them, they keep them in house, and they have these ceremonies. So, we know that's a mechanism, right now in Arizona it seems that none of the tribes are interested in taking remains, I assume they read the notices, but I don't know if that's true. Maybe the lack of response means that the person in charge is not even reading those things.

Dr. Matthews expresses an important concern here, and one that will be discussed in more depth in Chapter 7. Although he believes in the law and its purpose, the individual that replaces him may not and this poses an interesting question for what will happen to the remains that have not been claimed once he is gone. Although it is the law that the office must hold on to the remains in perpetuity until a claim is made or the office has filed and received approval of a Notice of Proposed Transfer or Reinternment of Unclaimed Cultural Items (See Appendix 8 for a template of this notice), whoever replaces Dr. Matthews or other practitioners that believe in compliance may not, and as such may have different ideas about what should be done with the remains. This highlights the importance of an official office protocol that clearly dictates the disposition and care of these remains in compliance with federal and state laws, ensuring that individual opinions cannot overshadow ethical principles.

MK: Did the NAGPRA office give you any direction on what to do if you didn't hear from any tribes about a claim?

BM: They said to wait, you know we have this caricature, this stereotype of "Indian time", you know they aren't going to respond. I get that, but a month and then a year, and then two years, I don't believe people are having meetings about "oh should we respond to that Matthews guy or not, lets table that, we will talk about it at the next meeting". I don't believe that's happening, so either they made a decision not to respond for whatever reason, or they don't even know that case was put into the register. So, I don't know, but to answer your question, we will keep the remains here for the interim, if NAGPRA streamlined or if each state for instance were to have all the tribes that are represented by the state, idk if that's a good way to do it, but if one of the tribes were elected to be the recipient or the arbiter, the responder to any case in the state. So maybe this guy that keeps responding to our NAGPRA notices but tells us they aren't

going to be the receiving entity, maybe on that level he and all the other people that work at that level for the tribes, maybe they can have annual or monthly meetings and one of the tribes act as recipient for all of them. Because like you said most of these are poorly, or non provenienced and who knows.

MK: The interns that come to work on these cases, have you ever received push back from your office on why you have them come work on the cases?

BM: No, no, no, anthropology has been integrated into our office for 50 years or so, even though, and I'm older than all the pathologists who work here, but overlapping with their predecessors, anthropologists are valued and trusted to do the right thing. And the right thing is to try to get these remains back to the tribes, and whether it's for the legal aspect or that we don't need to have these bones from historic or prehistoric burials that other groups should make the decision on what happens them, we shouldn't have them sitting in a cooler or in a cardboard box in a really hot storage room. So, whatever is driving it, one of these extremes, the anthropologists will continue to be the people entrusted with doing what we can to get the remains released to the right people.

Chapter 5: Methods

Preliminary Interviews

The preliminary work for this research was conducted between November 2017 and January 2018. This consisted of informal phone conversations with four practicing forensic anthropologists who have worked long-term in an ME office. These connections were facilitated through my advisor, Dr. Amy Mundorff, as she distributed emails to her personal network to set up these introductions.

The objective of these interviews was to speak with anthropologists actively working in medical examiner offices about their experiences with non-forensically significant Native American remains; specifically, identification and repatriation. The interviews also served to help me gain an understanding of the specific role that forensic anthropologists fill in these offices, as well as how involved they are with decisions about protocol and procedure. Anthropologists who had worked with the same office for a number of years were able to provide me with a brief history of the nature of repatriation in that office and how protocol and procedures have changed through the years. For example, Dr. Muck has worked in his office since prior to the implementation of NAGPRA in 1990. These interviews also served to inform both the design and content of questions that would be included on the survey developed for data.

The interviews were informal, with only a few scripted questions that were written prior to the phone calls. After these initial questions were asked, the conversation was directed by the individual experiences of the anthropologists and the particular details of their office's protocol or absence of protocol. Although these preliminary interviews were conducted with

only one subset of the total target population (anthropologists, forensic pathologists, and coroners), they were used to gain insight into how ME/C offices work, as well as how some of the questions might be perceived by medical examiners and coroners from the colleagues who work with them every day.

Survey

I developed an electronic survey administered through Qualtrics in order to collect information on the specific methods used by ME/C offices to determine if a set of remains are non-forensically significant Native American and any office disposition protocol. The survey, along with the introductory statement were reviewed according to the University of Tennessee, Knoxville Institutional Review Board procedures for research involving human subjects and was approved as exempt (reference # 669391) (Appendix 1). The survey consists of 39 questions that ask the respondents a mixture of multiple choice and open-ended questions. The survey design was largely informed by the principles and recommendations for survey design presented by Schuman and Presser (1981), Ivis and colleagues (1997), Krosnick (1999), Kaplowitz and colleagues (2004), and Bernard (2012: 251-298). The design of the survey was largely based on a previous study conducted by Garvin and Passqualaqua (2012) in which they collected data on the various methods employed by forensic anthropologists for sex estimation.

The survey was prefaced by an introductory statement that described the purpose of the study; respondent's participation; the potential harms and benefits associated with the survey; the protection of privacy and confidentiality; what will be done with the study results; the potential costs of participation and reimbursement; participation and withdrawal; as well as contact information for myself, my advisor, and the University of Tennessee's Institutional

Review Board. The organization of this introductory statement was informed by a survey being conducted by Dr. Jon Bethard (2018) on diversity within forensic anthropology, distributed to the membership of the American Academy of Forensic Science's anthropology members (Appendix 2).

After the introductory statement, the respondents were asked to provide their written consent (in electronic form) to participate. The survey was anonymous and did not collect identifying information such as name, email, or IP address. The survey began with a series of demographic questions asking the respondents to provide their age, sex, position within their office, type of office in which they work, where that office is located, as well as how many years they have worked in their profession. The survey progressed to questions regarding the respondent's familiarity with federal or state laws for handling human remains, and more specific questions regarding NAGPRA. These were followed by questions concerning the presence of official or unofficial protocols for the disposition of non-forensic Native American remains; the respondent's satisfaction with the protocol; and an opportunity to describe that protocol. The full survey appears in Appendix 3.

Distribution

A pilot survey was distributed to a small number of individuals through the professional network of Dr. Amy Mundorff. This pilot distribution served to ensure that the format and reception of the introductory statement and survey were ready for final distribution. I initiated contact with numerous organizations through email, in order to introduce myself and the project, as well as to encourage further discussion of the survey and the project via phone conversations. These emails were sent to the presidents of: The National Association of Medical

Examiners (6 Feb 2018), the California State Coroner's Association (21 Feb 2018), the Indiana Coroner's Association (21 Feb 2018), the Pennsylvania State Coroner's Association (21 Feb 2018), the Louisiana State Coroner's Association (21 Feb 2018), the South Carolina Coroner's Association (21 Feb 2018), the Missouri Coroner's and Medical Examiners' Association (21 Feb 2018), the Georgia Coroner's Association (21 Feb 2018), the Kentucky Coroner's Association (21 Feb 2018), the New York State Association of County Coroners and Medical Examiners (21 Feb 2018), the Colorado Coroner's Association (21 Feb 2018), the Illinois Coroner's and Medical Examiners' Association (21 Feb 2018), the Washington Association of Coroners and Medical Examiners (21 Feb 2018), and the Arkansas Coroner's Association (21 Feb 2018).

The president of one of the associations I contacted responded to my email on 6 February 2018 and requested that I send a version of the survey so they could provide some feedback. The president also asked to speak further by phone about the survey the following day. I include the following discussion in order to illustrate the perspectives and experiences that the practitioners I spoke with brought to the table. I believe including the verbatim language used is important to establish a working foundation and understanding of both individuals involved in the conversation. The following quotations are not meant to be critical or paint those who completed the survey in a poor light, but rather to confront some uncomfortable truths about the state of the relationship between NAGPRA and those to whom it applies.

This particular respondent had a few suggestions for the design of the survey, but overall thought it was well constructed. During our conversation they admitted they had never heard of NAGPRA, and therefore the academic office they work for does not have a protocol for

the disposition of non-forensically significant Native American remains. They also anecdotally reported that the current practice at their office is to transfer Native American remain to universities for their teaching collections because “they have the shovel shaped teeth that make them good for that sort of thing” (Personal interview, 7 Feb 2018). This response is a common sentiment and is one driven by good intentions. Historic remains can be excellent tools for teaching osteology, either due to the condition of the remains or unique morphological characteristics they possess. From this perspective and being unaware of either NAGPRA or its specific stipulations, it is easy to see why this solution would be a practical, even a beneficial alternative to those remains sitting in storage or being reburied. Despite this many of the associations I contacted were very receptive to the project and why it was important, as well as why it was important for ME/C offices to respond to the survey.

Other associations were not as receptive. Another association president claimed that they could easily answer the question provided in the introductory email. They also reported that all remains are sent to a university laboratory, which handles the skeletal recoveries and identifications for some of the jurisdictions, and as such there was no need for distribution of the survey, expressing that “he hoped that helped” (Personal Interview, 21 Feb 2018). After explaining that the survey went more in depth about federal laws for handling human remains, such as NAGPRA, and that collecting many responses from across that state would be helpful, the association responded that “gravesites are not handled by coroners in our state. The Attorney General’s Office manages all internment, disinterment issues” and that I should contact their office instead (Personal interview, 21 Feb 2018). I provided further explanation of how exactly NAGPRA applies to ME/C offices, as well as the civil penalties that could be accrued

as a result of non-compliance, including significant fines. This explanation seemed to clear up the matter, and the association agreed to distribute the survey to their membership. This response highlights the failure to implement NAGPRA as well as an understanding of the law's purpose that was discussed in Chapter 3, as it is clear the only incentive for distributing the survey was avoidance of the possible consequences for non-compliance, not belief in the retributive nature of the law.

Permission was granted to distribute the survey to the National Association of Medical Examiners (NAME), the Louisiana Coroner's Association (LCA), the South Carolina Coroner's Association (SCC), the Illinois Coroner's and Medical Examiners' Association (ICMEA), the Arkansas Coroner's Association (ACA), and the Colorado Coroner's Association (CCA). Each of the associations agreed to distribute the survey directly to their membership, except the Illinois Coroner's and Medical Examiners' Association, who requested I distribute the survey to their membership individually as the member's emails were public information. The survey was also distributed to forensic anthropologists by accessing email addresses of practitioners certified through the American Board of Forensic Anthropologists (ABFA) and through the professional network of Dr. Amy Mundorff for non-boarded practicing forensic anthropologists. Dr. Giovanna Vidoli also facilitated survey distribution to a number of coroners through her professional network. An individual, anonymous link was produced by Qualtrics for each association to which the survey would be distributed to. This link allowed respondents to remain anonymous, as it did not collect email addresses or IP addresses. The total distribution population was 1,597: 1,200 NAME members, 102 ICMEA members, 75 ACA members, 64 CCA members, 64 LCA members, 61 forensic anthropologists, and 13 coroners. It is possible that an

individual received the survey multiple times. NAME is a national association not limited to medical examiners. It also has anthropologists, medical investigators, coroners, and others within its membership and individuals may be members of more than one association.

Follow Up Interviews

A total of 61 respondents out of 192 indicated that they would be willing to participate in follow up interviews. However, it was outside the time constraints of this project to interview all 62 individuals. Additionally, the purpose of the follow up interviews was to gain some further insight into the responses provided, particularly the presence and content of a protocol. Sixty-four respondents reported that their office has an official protocol for the disposition of non-forensically significant Native American remains. Unfortunately, only one respondent attached an official protocol document. Fifty-seven respondents who indicated they have a protocol provided a fill-in description of this protocol; however, these descriptions were often brief and did not provide much detail. Fifty-five respondents indicated that their office has an unofficial protocol for the disposition of non-forensically significant Native American remains, but only 24 of those respondents provided a description. Mirroring the official protocol responses, the fill in descriptions were brief and vague. Finally, 55 respondents indicated their office does not have any protocol, official or unofficial, for disposition.

Clear parameters were set to choose follow up interview respondents that would capture each of the categories discussed above, as well as the different positions included in the respondent population. These parameters included six males and six females, with two forensic anthropologists, two medical examiners, and two coroners in each subset. Of the six respondents in each subset, half of the respondents indicated having an official protocol and

the other half did not. The three respondents without official protocol included at least one respondent that indicated having an unofficial protocol. Additionally, each of the respondents in the subsets were from different states, in order to capture geographically diverse responses. There were no parameters set for age or the number of years the respondent has worked in their profession.

I initiated follow up interviews with the 12 respondents on 30 April 2018, asking to set up an interview date and whether they would like to be interviewed via phone or through email. Interviewees who preferred phone were contacted using Zoom, so the call could be recorded.

Analysis

The survey was closed on 10 May 2018. As an anonymous link was distributed to each association independently, I exported each data set as a .csv file and then reimported each file into a combined folder in Qualtrics to create one complete dataset. This was done to facilitate data analysis and store the data in a single, discrete location. The complete dataset was then exported into IBM Statistical Package for the Social Sciences (Version 25.0).

Once the data was imported into SPSS some of the values for the response options had to be recoded. Survey question 10, which asked respondents whether they were familiar with the 1990 Native American Graves Protection and Repatriation Act, was recoded so that “Yes” was valued as three, “Maybe” was valued as two, and “No” was valued as one. For uniformity across the dataset, all the subsequent questions that provided “Yes”, “No” and “Maybe” as response options were recoded to match the recoded values of Question 10. This was done because all the questions with these options were inquiring about familiarity, awareness, or

opinion. Therefore “Maybe” needed a higher value than “No,” as a response of “Maybe” indicated a somewhat higher level of familiarity, awareness, or opinion than a response of “No”. Survey question 8 asked respondents to indicate their awareness of federal or state laws or any protocols pertaining to the discovery of human remains. The response options included not aware at all, slightly aware, somewhat aware, very aware, and not sure. These values were coded by Qualtrics as 45-50, values that would not be useful in the subsequent statistical analysis. The responses were coded so “not aware at all” was valued as one, “not sure” was valued as two, “slightly aware” was valued as three, “somewhat aware” was valued as four, and “very aware” was valued as five.

A total of 192 responses were collected. However, six respondents indicated that they did not reside within the United States and one respondent indicated that they work as an epidemiologist for the Federal Statistics Agency, so these responses were discarded as they fell outside the scope of this research. With these surveys removed the total respondent population was 185.

Descriptive statistics were conducted in order to provide the frequency of respondents by demographic information including: gender, age, education level, office affiliation, position within their office, office location by state, and the number of years the respondent has worked in their profession. Additionally, descriptive statistics were used to provide the frequency of respondent’s in regard to their opinion about the application of NAGRPA to ME/C offices as well as where respondents learned about the law’s applications.

As the data consisted of nominal variables, Pearson’s Chi-Square tests were employed to explore the association between variables that were hypothesized to affect familiarity with

NAGPRA and presence of disposition protocol. Position within an office, education level, and proximity to federal or tribal land were each assessed for their association to familiarity with NAGPRA. Familiarity with NAGPRA and proximity to federal or tribal lands were each assessed for their association to the presence of official and unofficial disposition protocol. Finally, the presence of a forensic anthropologist and consultation with an anthropologist were each assessed for their association with the presence of official and unofficial disposition protocol.

As this non-parametric test has less statistical power, if the results indicated statistical significance, a Cramer's V coefficient test was conducted in order to measure the strength of the association between the two variables being analyzed. The effect sized produced from this test can range from +1 to -1, with 0 indicating there is no association (Field 2013). A Cramer's V test was conducted for the association between: position within an office and familiarity with NAGPRA, education level and familiarity with NAGPRA, proximity to federal or tribal lands and familiarity with NAGPRA, familiarity with NAGPRA and the presence of official disposition protocol, proximity to federal or tribal land and the presence of official disposition protocol, familiarity with NAGPRA and the presence of unofficial disposition protocol, proximity to federal or tribal land and the presence of unofficial protocol, and the presence of a forensic anthropologist and the presence of unofficial disposition protocol.

Chapter 6: Results

The goal of this research was to investigate whether medical examiner and coroner's offices across the United States are aware of the Native American Graves Protection and Repatriation Act (NAGRPPRA), as well as whether they had implemented disposition protocol for non-forensically significant Native American remains that is compliant with the law. Additionally, this research explored what methods are being employed in these offices to determine whether a set of skeletal remains is non-forensically significant. Quantitative and qualitative data were collected and analyzed in order to explore possible associations amongst the variables that may have influenced the awareness, protocol, and general opinions of the survey respondents. The following discussion presents the results of the statistical analyses performed on the quantitative data, as well as the coding analysis conducted using the qualitative responses.

Respondent Demographics

A total of 185 individuals responded to the survey distributed for this research. Of the total respondents 58.9% (109/185) of the respondents were male, and 41.1% (76/185) were female. Of the 185 respondents, 98.37% (182/185) reported their age. Of the 182 respondents, 9.2% (17/182) were between 25-34 years old, 23.2% (43/182) were between 35-44 years old, 27% (50/182) were between 45-54 years old, 28.6% (53/182) were between 55-64 years old, 8.6% (16/182) were between 65-74 years old, and 1.6% (3/182) were between 75-84 years old.

Respondents were asked to report the highest level of education they had received. Of the 185 respondents, 99.45% (184/185) reported their highest level of education. Of the 184 respondents, 3.2% (6/184) were high school graduates, 6.5% (12/184) were college graduates,

9.2% (17/184) had an associate's degree, 4.3% (8/184) had a master's degree, 17.3% (32/184) had a doctoral degree, 55.7% (103/184) went to medical school, and 3.2% (6/184) indicated other. These responses included: bachelor's degree, a residency in pathology, and some college.

In regard to office affiliation, of the 185 respondents, 58.9% (109/185) worked at a medical examiner's office, 30.8% (57/185) worked at a coroner's office, 2.2% (4/185) worked at a private office, 5.9% (11/185) worked at an academic office, and 2.2% (4/185) indicated other. These responses included: government lab, hospital department, military, and Armed Forces Medical Examiner. In terms of position with their office, of the 185 respondents, 49.7% (92/185) were medical examiners, 20.5% (38/185) were coroners, 9.2% (17/185) were forensic anthropologists, 6.5% (12/185) were medicolegal investigators, and 14.1% (26/185) indicated other. These responses included: Chief Deputy Coroner, Deputy Coroner, Chief Executive Officer, Forensic Pathologist, Coroner and Forensic Pathologist, Pathology resident, Administrator/Director, Coroner's Physician, part time forensic pathologist consultant, Chief of Operations and Investigations, Chief Medical Examiner, Chief Administrator, Staff Pathologist, Surgical Pathologist and Medical Examiner, and Unidentified/Missing Persons Coordinator. Refer to Figure 6.1 for the response rate by state. Additionally, respondents were asked to report how many years they have worked in their profession. These responses ranged from 0 to 49 years (see Figure 6.2).

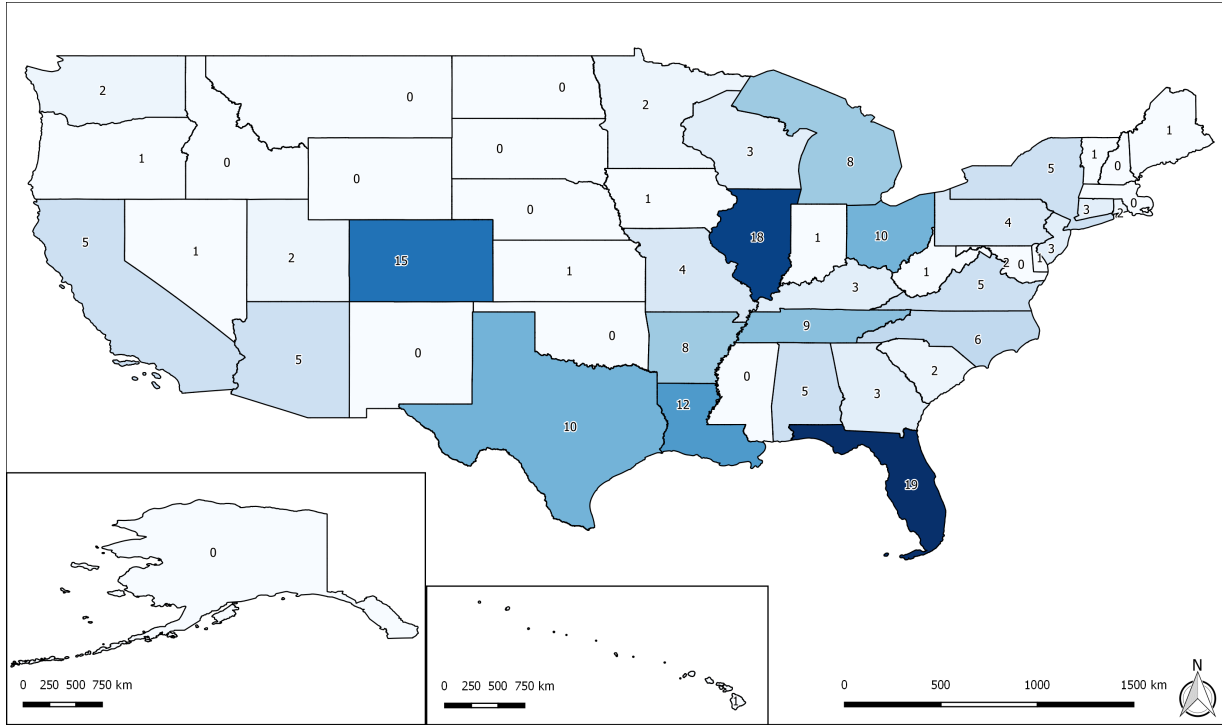


Figure 6.1 Response Rate by State

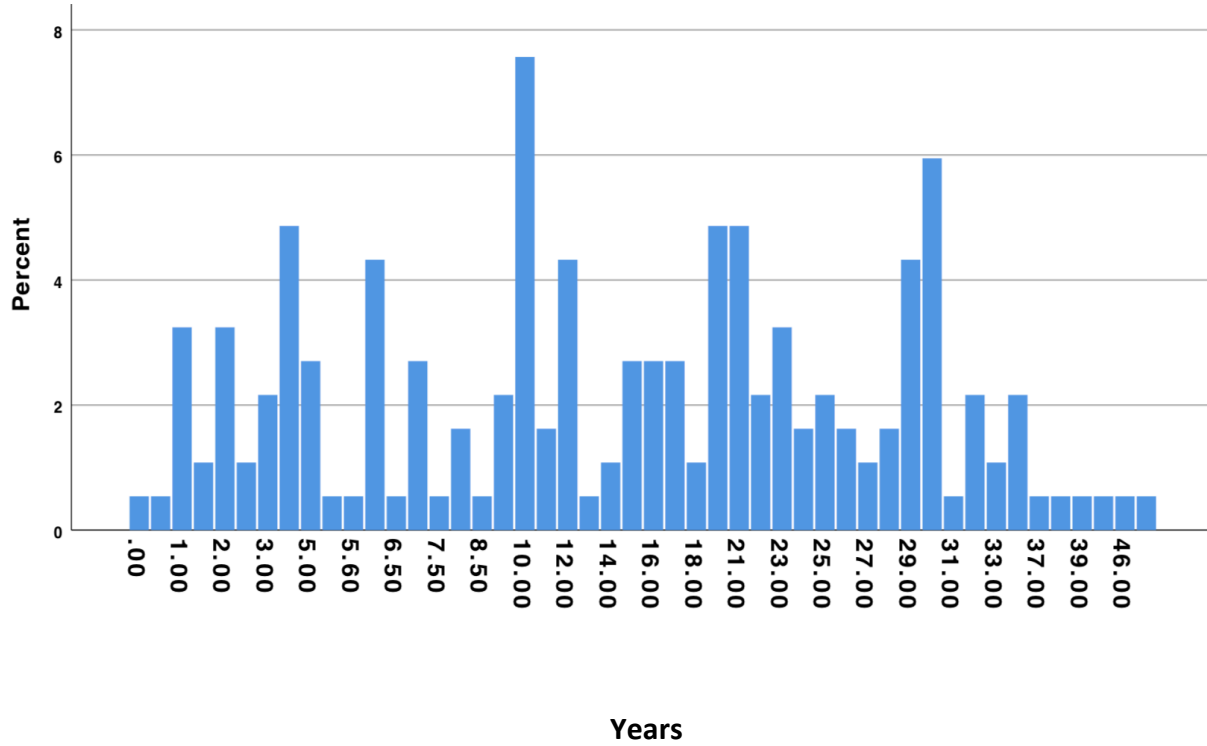


Figure 6.2 *Years Spent Working in the Medical Examiner/ Coroner (Including working at multiple offices)*

NAGPRA Awareness

Respondents were asked to report whether they were aware of federal or state laws or protocol pertaining to the discovery of human remains (Table 6.1). Of the 185 respondents, 99.45% (184/185) reported on their awareness of federal or state laws. Of the 184 respondents, 45.9% (85/184) reported that they were very aware of these laws, 37.3% (69/184) reported they were somewhat aware, 9.7% (18/184) reported they were slightly aware, 1.1% (2/184) were not sure, and 5.4% (10/184) were not aware at all. Next, the respondents were asked whether they are familiar with the 1990 Native American Graves Protection and Repatriation Act (NAGPRA) (See Table 6.2 for survey question response rates). Of the 185 respondents, 99.45% (184/185) reported on their familiarity with NAGPRA. Of the 184 respondents, 44.3% (83/184) indicated they were aware, 10.3% (19/184) said maybe, and 44.9% (82/184) were not aware of NAGPRA. Of the 85 respondents who reported being “very aware” of federal or state laws for the discovery of human remains, only 52 of those same respondents are familiar with NAGPRA. Further, of the 69 respondents were reported being somewhat aware of laws pertaining to the discovery of human remains, 28 reported being familiar with NAGPRA.

Quantitative results: Office Position, Education, and Geography

It was hypothesized that position within an office, level of education, and geographic location would all be factors influencing an individual’s familiarity with NAGPRA. In regard to position within an office, of the 130 respondents, 38% (30/130) of medical examiners were familiar with NAGPRA, while 62% (49/130) were not. Of the coroners, 52.9% (18/130) were familiar with NAGPRA, while 47.1% (16/130) were not. Finally, 100% (17/184) of forensic

Table 6.1 *Response Rate for Survey Question 11*

	Number of Respondents	Very aware	Somewhat aware	Slightly aware	Not sure	Not aware at all
		----- % -----				
Are you aware of federal or state laws or protocol pertaining to the discovery of human remains?	184	45.9	37.3	9.7	1.1	5.4

Table 6.2 Survey Question Response Rates

	Number of Respondents	Yes	Maybe	No
		_____ % _____		
Q.9 Is your office located within 1 hr (driving) of federal or tribal lands?	184	39.5	16.8	43.2
Q.13 Are you aware of the Native American Graves Protection and Repatriation Act (NAGPRA)?	184	44.3	10.3	44.9
Q.14 Do you believe NAGPRA governs cases submitted to an ME/C office?	83	62.7	32.5	4.8
Q.16 Does your office employ a forensic anthropologist or a full-time designated staff for assessing skeletal material?	184	48.1	-	51.4
Q.18 If not, does your office consult with an anthropologist for skeletal cases?	95	44.9	5.9	.5
Q.29 Does your office have an official protocol for the disposition of non-forensic, Native American remains?	182	34.1	19.5	44.9
Q. 35 Does your office have an unofficial protocol for the disposition of non-forensic, Native American remains?	182	30.3	21.1	47

anthropologists were familiar with NAGPRA. A 2x3 chi-square test indicated that there was a strong association between position and familiarity with NAGPRA ($\chi^2 = 21.687$, $df=2$, $p < .001$, Cramer's $V=.408$) (Figure 6.3) (See Table 6.3 for a complete list of chi-square response rates).

In regard to education level, of the 159 respondents, 33.3% (2/159) of high school graduates were familiar with NAGPRA, 66.7% (4/159) were not, 81.8% (9/159) of college graduates were familiar with NAGPRA, 18.2% (2/159) were not, 33.3% (5/159) of respondents with associates degrees were familiar with NAGPRA, 66.7% (10/159) were not, 57.1% (4/159) of respondents with master's degrees were familiar, 42.9% (3/159) were not, 74.2% (23/159) of respondents with doctoral degrees were familiar, 25.8% (8/159) were not, 42.7% (38/159) of respondents who attended medical school were familiar, and 57.3% (51/159) were not. A 6x2 chi-square test indicated that there is a strong association between education level and familiarity with NAGPRA ($\chi^2 = 16.037$, $df= 5$, $p=.007$, Cramer's $V = .318$) (Figure 6.4).

In regard to geographic location, respondents were asked if their office was located within 1 hour's driving distance of federal or tribal lands. It was hypothesized that respondents who work in proximity to federal or tribal lands would be more familiar with NAGPRA than respondents who do not. Of the 165 respondents, 71.4% (45/165) of respondents who work within 1 hour's driving distance of federal or tribal lands were familiar with NAGPRA, 28.6% (18/165) were not, 32.4% (24/165) of respondents who do not work with 1 hour (driving) of these lands were familiar with NAGPRA, 67.6% (50/165) were not, 50% (14/165) of respondents who are unsure of their proximity to federal or tribal lands were familiar with NAGPRA, and 50% (14/165) were not. The results of the 3x2 Chi-Square test indicated that there is a strong

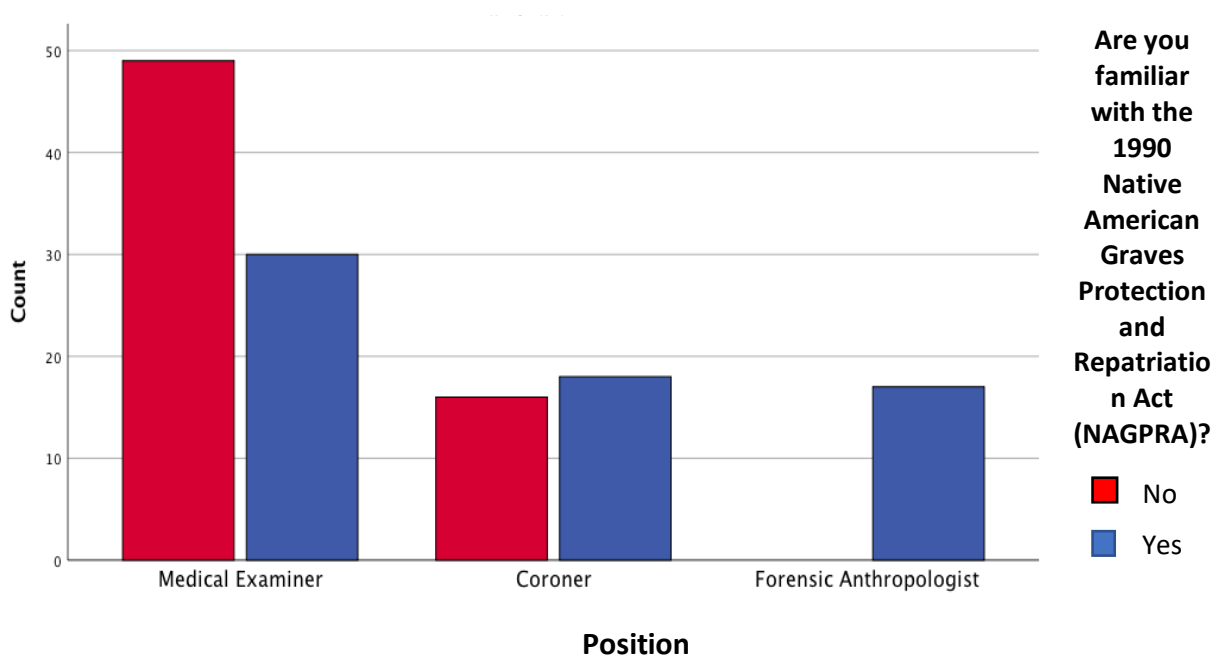


Figure 6.3 Association between position and familiarity with NAGPRA of survey respondents

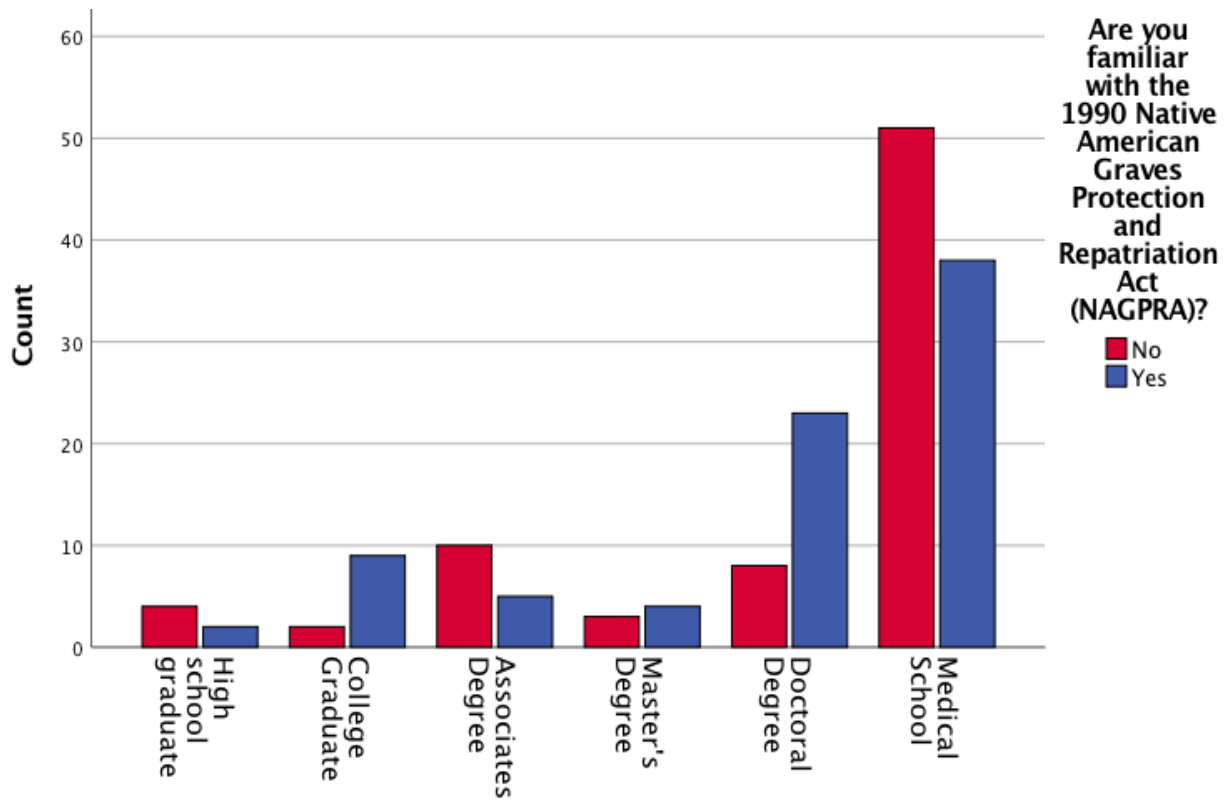


Figure 6.4 Association between education level and familiarity with NAGPRA of survey respondents

Table 6.3 *Chi-Square Response Rates*

	Number of Respondents	Yes	Maybe	No
		_____	% _____	_____
Association between office position and familiarity with NAGPRA (p<.001):	130	-	-	-
Medical Examiner	79	38	-	62
Coroner	34	52.9	-	47.1
Forensic Anthropologist	17	100	-	0
Association between education and familiarity with NAGPRA (p=.007):	159	-	-	-
High school graduate	6	33.3	-	66.7
College graduate	7	81.8	-	18.2
Associates degree	15	33.3	-	66.7
Master's degree	7	57.1	-	42.9
Doctoral degree	31	74.2	-	25.8
Medical school	89	42.7	-	57.3
Association between proximity to federal or tribal lands and familiarity with NAGPRA (p<.001):	165	-	-	-
Work within 1 hr (driving)	63	71.4	-	28.6
Do not work within 1 hr (driving)	74	32.4	-	67.6
Unsure	28	50	-	50

Table 6.3 Continued

	Number of Respondents	Yes	Maybe	No
Association between familiarity with NAGPRA and the presence of official disposition protocol (p=.007):	163	-	-	-
Familiar with NAGPRA	83	45.8	16.9	37.3
Unfamiliar with NAGPRA	80	22.5	21.3	56.3
Association between proximity to federal or tribal lands and the presence of an official disposition protocol (p=.001):	182	-	-	-
Within 1 hr (driving)	72	50	16.7	33.3
Not within 1 hr (driving)	79	25.3	16.5	58.2
Unsure	31	22.6	35.5	41.9
Association between familiarity with NAGPRA and the presence of unofficial disposition protocol (p<.001):	183	-	-	-
Familiar with NAGPRA	83	44.6	14.5	41
Unfamiliar with NAGPRA	80	13.8	26.2	60
Association between proximity and the presence of unofficial disposition protocol (p=.001):	182	-	-	-
Within 1 hr (driving)	72	44.4	13.9	41.7
Not within 1 hr (driving)	79	25.3	20.3	54.4
Unsure	31	12.9	41.9	45.2

Table 6.3 Continued

	Number of Respondents	Yes	Maybe	No
Association between presence of a forensic anthropologist and presence of official disposition protocol ($p=.618$):	182	-	-	-
Employ a forensic anthropologist	89	34.8	22.5	42.7
Do not employ a forensic anthropologist	93	34.4	17.2	48.4
Association between presence of a forensic anthropologist and unofficial disposition protocol ($p=.034$):	182	-	-	-
Employ a forensic anthropologist	89	39.3	21.3	39.3
Do not employ a forensic anthropologist	93	22.6	21.5	55.9
Association between consultation with an anthropologist and the presence of official disposition protocol ($p=.261$):	83	-	-	-
Consult with a forensic anthropologist	82	36.6	14.6	48.8
Do not consult with a forensic anthropologist	1	0	0	100
Association between consultation with an anthropologist and the presence of unofficial disposition protocol ($p=.734$):	83	-	-	-
Consult with a forensic anthropologist	82	24.4	20.7	54.9
Do not consult with a forensic anthropologist	1	0	0	100

association between proximity and familiarity ($\chi^2 = 20.701$, $df=2$, $p < .001$, Cramer's $V = .354$) (Figure 6.5).

NAGPRA'S Application to Medical Examiner and Coroner Offices

Respondents who indicated they were familiar with NAGPRA were subsequently asked if they believe the law applies to medical examiner and coroner offices. Of the 83 respondents who reported they were aware of NAGPRA, 100% (83/83) also provided their belief about its application. Of the 83 respondents, 62.7% (52/83) reported they believe the law applies to offices, 4.8% (4/83) reported they do not, and 32.5% (27/83) were unsure. Additionally, respondents who reported being familiar with NAGPRA were asked to report where they learned about the law. Of the 83 respondents who were familiar with NAGPRA, 97.59% (81/81) also reported where they learned about the law and its applications. Of the 81 respondents, 8.6% (7/81) reported learning about NAGPRA during their undergraduate education, 24.7% (20/81) indicated it was their graduate education, 2.5% (2/81) said medical school, 40.7% (33/81) said a colleague, 18.5% (15/81) said an article or book, and 4.9% (4/81) said the news or media.

Disposition Protocol

It was hypothesized that the structural variation in ME/C offices across the United States would correlate with the absence of standardized protocols for the disposition of non-forensically significant Native American remains. It was also hypothesized that in the event that protocols were in place, they would consist of procedures that were not NAGPRA compliant. Respondents were asked to report whether their office had an official or unofficial disposition protocol as well as what that protocol consists of. Respondents were also able to provide

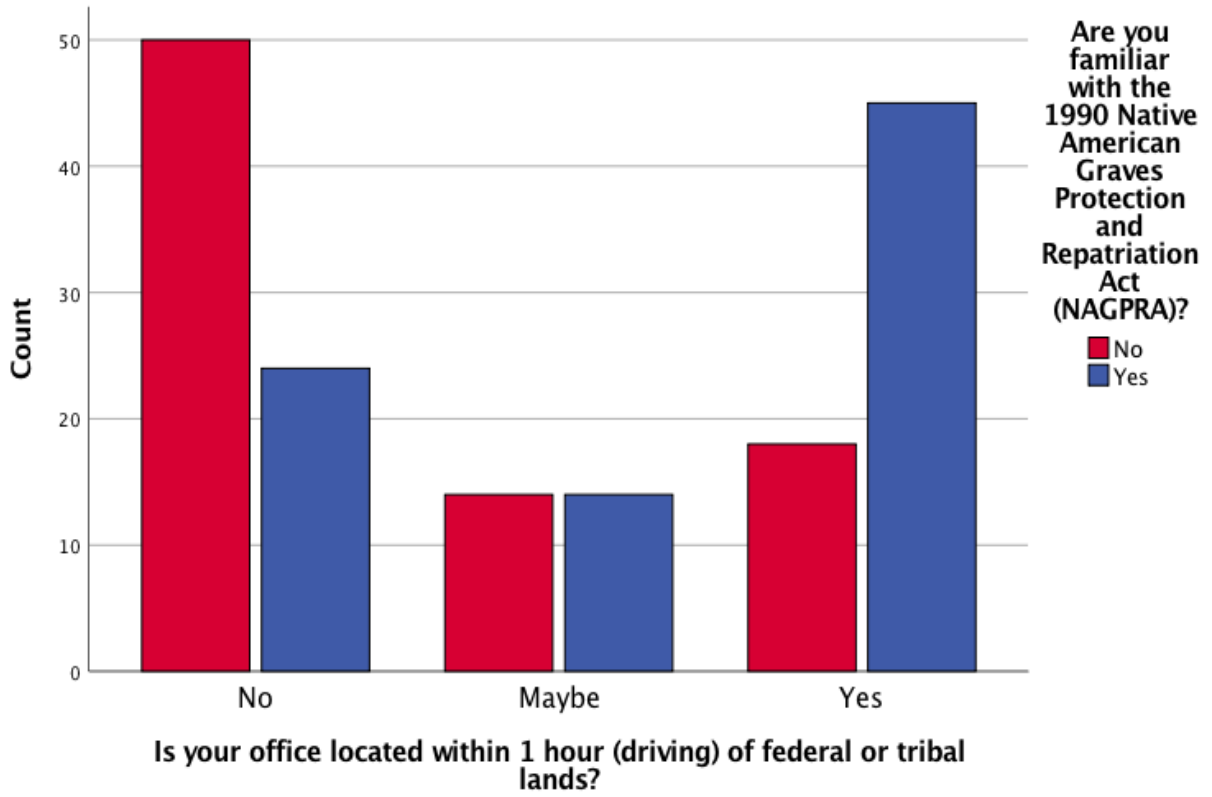


Figure 6.5 Association between proximity and familiarity with NAGPRA of survey respondents

official documentation of that protocol. Unfortunately, only a single respondent did provide official documentation. To explore this hypothesis, chi-square tests were employed to determine if there is an association between: (1) familiarity with NAGPRA and the presence of official disposition protocol; (2) proximity to federal or tribal lands and the presence of official disposition protocol; (3) familiarity with NAGPRA and the presence of unofficial disposition protocol; and (4) proximity to federal or tribal lands and unofficial disposition protocol.

Of the 182 respondents, 44.9% (83/182) reported that their office does not have an official disposition protocol, 34.1% (63/182) reported that their office does, and 19.5% (36/182) reported that they are unsure if their office has an official protocol. When considering familiarity with NAGPRA, of the 82 individuals who reported being unfamiliar with NAGPRA, 96.38% (80/83) also indicated the status of their official protocol. Of the 80 respondents, 56.3% (45/80) reported they do not have an official protocol, 22.5% (18/80) reported they do, and 21.3% (17) are unsure. Of the 83 individuals that report being familiar with NAGPRA, 37.3% (31/83) reported they do not have an official disposition protocol, 45.8% (38/83) reported they do, and 16.9% (14/83) reported they are unsure. The results of a 2x3 chi-square test indicated that there was a moderate association between familiarity with NAGPRA and the presence of official disposition protocol ($\chi^2=9.960$, $df=2$, $p=.007$, Cramer's $V=.247$) (Figure 6.6).

In regard to proximity, of the 73 respondents who reported their office is located within 1 hour (driving) of federal or tribal lands, 98.68% (72/73) also reported on the state of their official protocol. Of the 72 respondents, 33.3% (24/72) reported they do not have an official protocol, 50% (36/72) reported they do, and 16.7% (12/72) were unsure. Of the 80 respondents who indicated that their office is not located within 1 hour (driving) of federal or tribal lands,

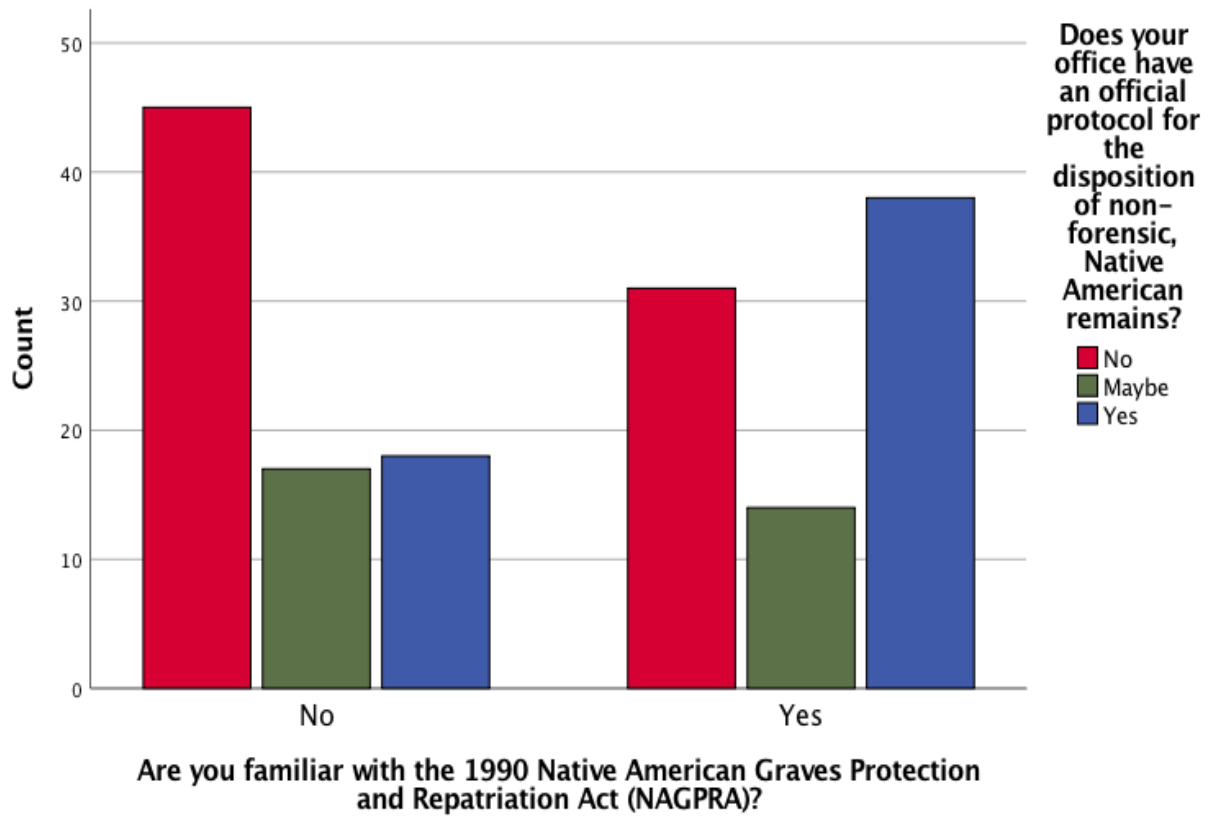


Figure 6.6 Association between familiarity with NAGPRA and the presence of official disposition protocol of survey respondents

98.75% (79/80) also reported on the state of their protocol. Of the 79 respondents, 58.2% (46/79) reported they do not have an official protocol, 25.3% (20/79) reported they do, and 16.5% (13/79) were unsure about their protocol. Of the 31 respondents who indicated they might be within 1 hour (driving) of federal or tribal lands, 100% (31/31) reported on the state of their official protocol. Of the 31 respondents, 41.9% (13/31) reported they do not have an official protocol, 22.6% (7/31) reported they do, and 35.5% (11/31) reported they were unsure about their protocol. The results of the 3x3 chi-square indicated that there was a weak-to-moderate association between proximity and the presence of official protocol ($\chi^2=18.082$, $df=4$, $p=.001$, Cramer's $V=.223$) (Figure 6.7).

Of the 182 respondents, 47.8% (87/182) reported that they do not have an unofficial protocol for the disposition of non-forensic Native American remains, 30.8% (56/182) reported they do, and 21.4% (39/182) were unsure. Of the 83 respondents that reported being familiar with NAGPRA, 100% (83/83) also reported on the state of their unofficial protocol. Of the 83 respondents, 41% (34/83) reported they do not have an unofficial protocol for disposition, 44.6% (37/83) reported they do, and 14.5% (12/83) were unsure. Of the 82 respondents that reported being unfamiliar with NAGPRA, 97.56% (80/82) also reported on the state of their unofficial protocol. Of the 80 respondents, 60% (48/82) reported they do not have an unofficial protocol, 13.8% (11/80) reported they do, and 26.2% (21/80) were unsure. The results of the 2x3 chi-square indicated a moderate association between familiarity and presence of unofficial protocol ($\chi^2= 18.879$, $df=2$, $p <.001$, Cramer's $V = .340$) (Figure 6.8).

In regard to proximity, of the 73 respondents that reported working within 1 hour (driving) of federal or tribal lands, 98.63% (72/73) also reported on the state of their unofficial

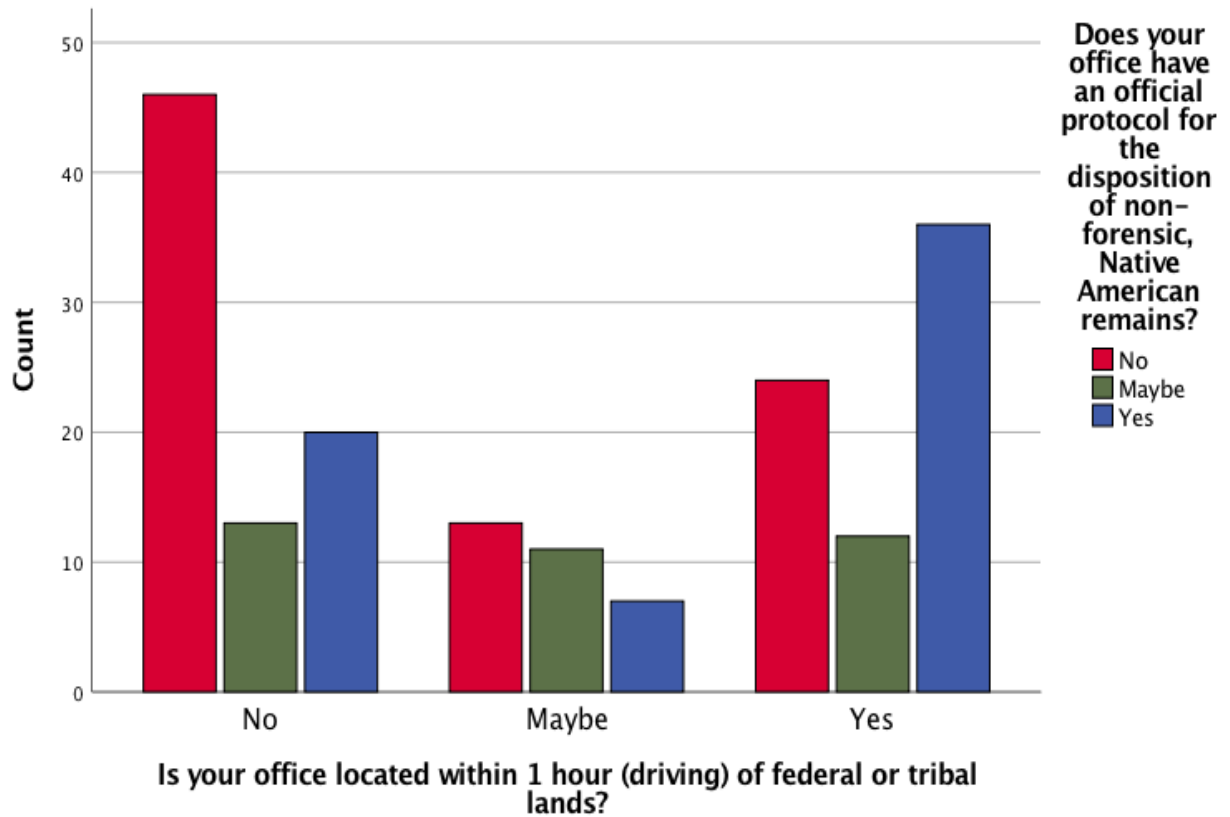


Figure 6.7 Association between proximity to federal or tribal lands and the presence of an official disposition protocol of survey respondents

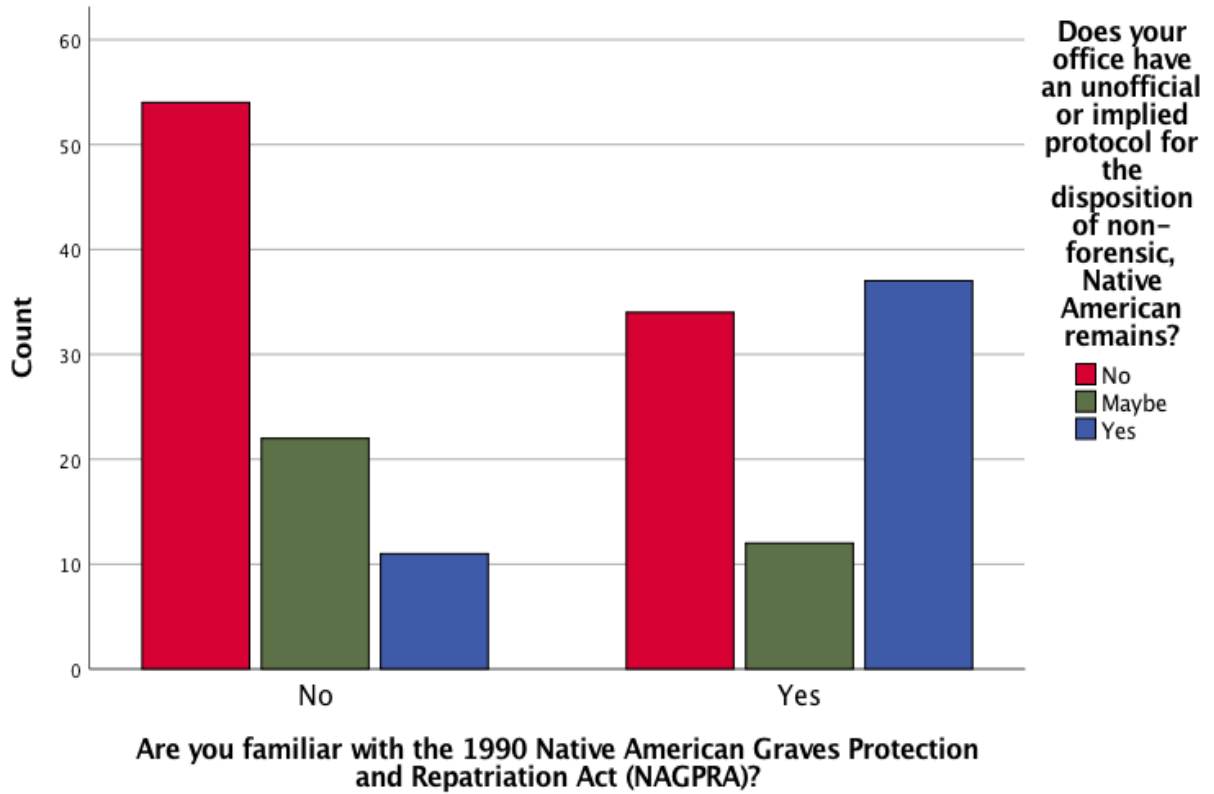


Figure 6.8 Association between familiarity with NAGPRA and presence of an unofficial disposition protocol of survey respondents

protocol. Of the 72 respondents, 41.7% (30/72) reported they do not have an unofficial protocol, 44.4% (32/72) reported they do, and 13.9% (10/72) were unsure. Of the 80 respondents that do not work within 1 hour (driving) of federal or tribal lands, 98.75% (79/80) also reported on the state of their unofficial protocol. Of the 79 respondents, 54.4% (43/79) reported they do not have an unofficial protocol, 25.3% (20/79) reported they do, and 20.3% (16/79) were unsure. Of the 31 respondents who are unsure about their proximity to federal or tribal lands, 100% (31/31) reported on the state of their unofficial protocol. Of the 31 respondents, 45.2% (14/31) reported they do not have an unofficial protocol, 12.9% (4/31) reported they do, and 41.9% (13/31) were unsure. The results of the 3x3 chi-square indicated that there was a moderate association between proximity and presence of unofficial protocol ($\chi^2 = 17.738$, $df=4$, $p = .001$, Cramer's $V = .221$) (Figure 6.9).

Respondents were also asked to provide a description of this protocol. Of the 63 respondents that report having an official protocol, 90.47 (57/63) provided a description of that protocol. These descriptions illustrate a variety of procedures, none of which consisted of NAGPRA compliant protocols. Table 6.4 organizes these responses by categories that highlight the most common responses, as well as the number of respondents that reported them. These categories included: contacting/giving remains to an archaeologist, transferring the remains to a university/museum/historic commission/preservation office, notifying local Native Americans, passing the responsibility to a forensic anthropologist, following state protocol, retaining/using the remains for education, reburying/reintering the remains, and uncertainty about the protocol.

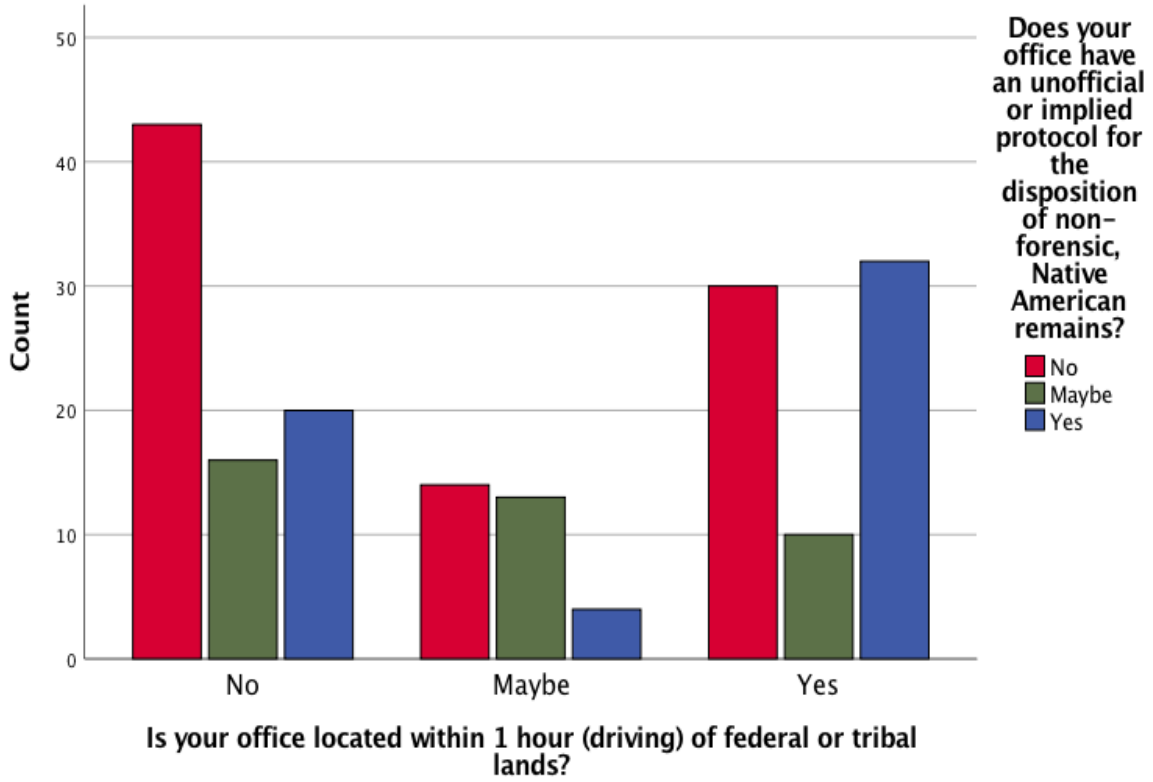


Figure 6.9 Association between proximity to federal or tribal lands and presence of unofficial disposition protocol of survey respondents

Table 6.4 *Official Disposition Protocol of the survey respondents*

Categories	Percentage	Count
Transfer to university/museum/historic commission/preservation office	28.07	16
Contact/ give to archaeologists	26.31	15
Notify local Native Americans	14.03	8
Unsure	14.03	8
Retain/use for education purposes	10.52	6
Pass responsibility to forensic anthropologist	8.77	5
Follow state protocol	8.77	5
Rebury/reinter	5.26	3

Of the 56 respondents that reported they have an unofficial disposition protocol for non-forensically significant Native American remains, 82.14% (46/56) described this protocol. Mirroring the official protocols, these responses included a wide array of procedures. However, two responses, “*assess skeleton. Make arrangements with NAGPRA*” and “*per NAGPRA regulations*”, alluded to a protocol that was developed with NAGPRA’s stipulations in mind. Table 6.5 provides the response rates by category.

The Role of Forensic Anthropologists

It was hypothesized that medical examiner offices that employ a forensic anthropologist would be more likely to have a set of standardized protocols within their office for the disposition of non-forensic Native American remains. Of the 184 respondents, 48.1% (89/184) reported that they do employ a forensic anthropologist or a full-time designated staff for assessing skeletal material, while 51.4% (95/184) reported they do not employ such a person.

In regard to official disposition protocol, of the 89 respondents who employ a forensic anthropologist, 100% (89/89) also reported on the state of their protocol. Of the 89 respondents, 34.8% (31/89) have an official disposition protocol, 42.7% (38/89) do not, and 22.5% (20/89) were unsure. Of the 95 respondents that reported they do not employ a forensic anthropologist, 97.89% (93/95) also reported on the state of their official protocol. Of the 93 respondents, 34.4% (32/93) have a protocol, 48.4% (45/89) do not, and 17.2% (16/89) were unsure. The results of the 2x3 chi square test indicated an association cannot be established between presence of a forensic anthropologist and presence of official disposition protocol ($\chi^2 = .963$, $df=2$, $p = .618$) (Figure 6.10).

Table 6.5 *Unofficial Disposition Protocol of survey respondents*

Categories	Percentage	Count
Contact/give to archaeologist	30.43	14
Transfer to university/museum/historic commission/preservation office	19.56	9
Notify local Native Americans	15.21	7
Pass responsibility to forensic anthropologist	15.21	7
Unsure	13.04	6
Retain/use for education purpose	8.69	4
Follow state protocol	6.52	3
NAGPRA Regulations	4.34	2
Rebury/reinter	0	0

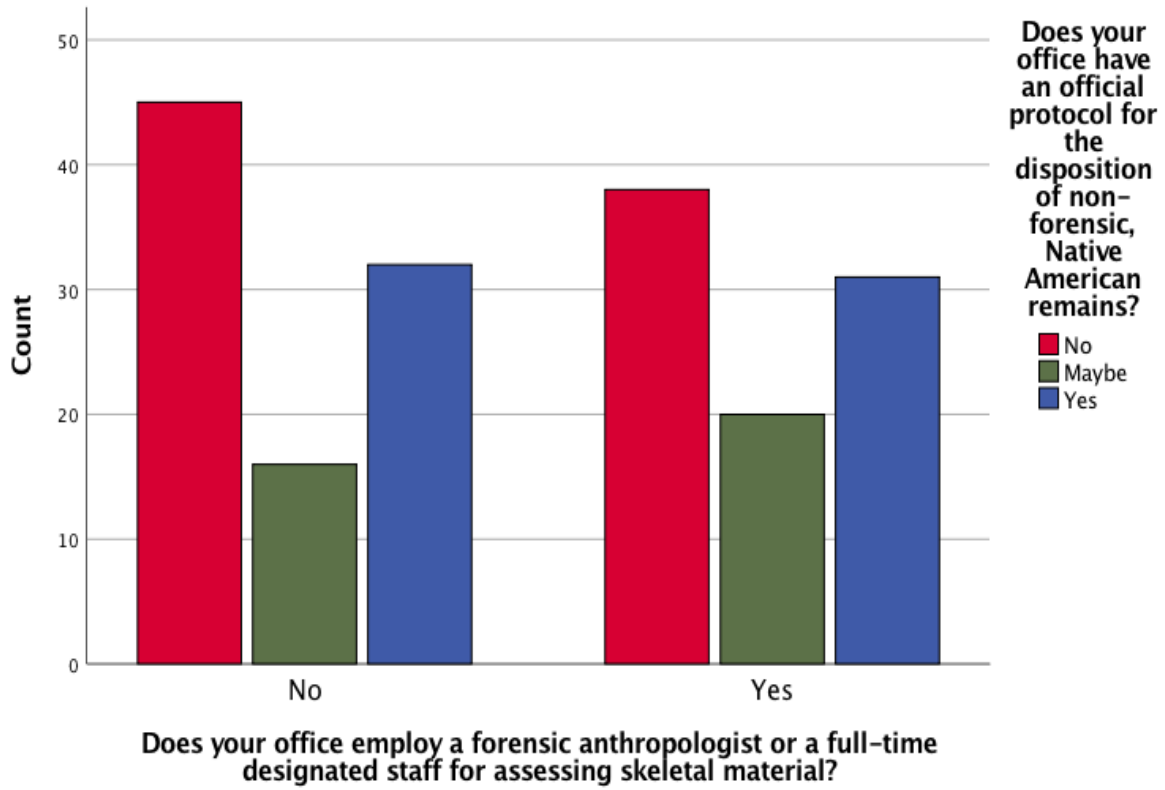


Figure 6.10 Association between presence of a forensic anthropologist and presence of official disposition protocol of survey respondents

In regard to unofficial protocol, of the 89 respondents who employ a forensic anthropologist, 100% (89/89) also reported on the state of their unofficial protocol. Of the 89 respondents, 39.3% (35/89) have an unofficial protocol, 39.3% (35/89) do not, and 21.3% (19/89) were unsure. Of the 95 respondents who do not employ a forensic anthropologist, 97.89% (93/95) also reported on the state of their unofficial protocol. Of the 93 respondents, 22.6% (21/93) have an unofficial protocol, 55.9% (52/93) do not, and 21.5% (20/93) were unsure. The results of the 2x3 chi-square test indicated a moderate association between the presence of a forensic anthropologist and the presence of unofficial disposition protocol ($\chi^2=6.763$, $df=2$, $p=.034$, Cramer's $V=.193$) (Figure 6.11).

Respondents that reported their office does not employ a forensic anthropologist were then asked if they consult with one for skeletal cases. Of the 95 respondents, 87.4% (83/95) reported they do, 1.1% (1/95) do not, and 11.6% (11/95) were unsure. Of the 95 respondents, 97.89% (93/95) reported on the state of their official disposition protocol. Of the 83 respondents who consult with an anthropologist, 98.79% (82/83) reported on the state of their official protocol. Of the 82 respondents, 36.6% (30/82) have a protocol, 48.8% (40/82) do not, and 14.6% (12/82) were unsure. Of the 1 respondent who reported their office does not consult with an anthropologist, 100% (1/1) also reported on the state of their official protocol, noting that their office does not have an official disposition protocol. Of the 11 respondents who are unsure if their office consults with an anthropologist, 90.9% (10/11) also reported on the state of their official protocol. Of the 10 respondents, 20% (2/10) have a protocol, 40% (4/10) do not, and 40% (4/10) were unsure. The results of the 3x3 chi-square test indicated an association

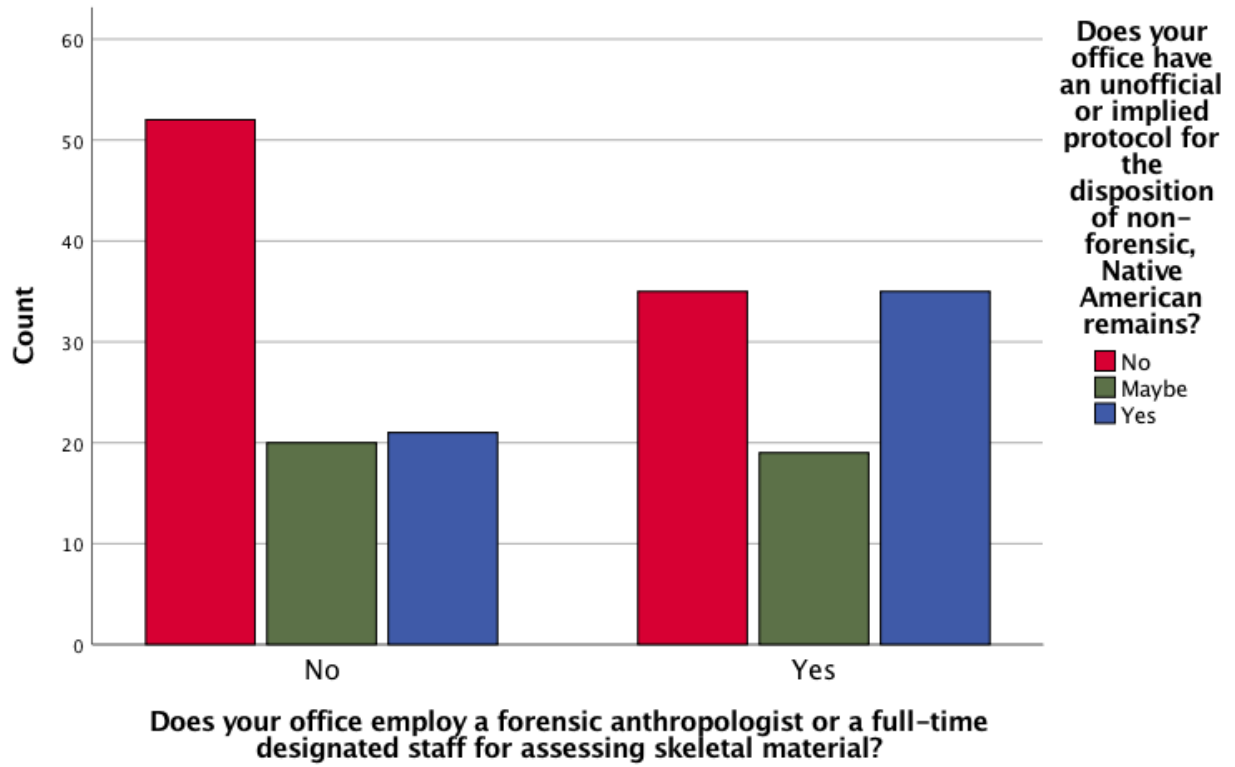
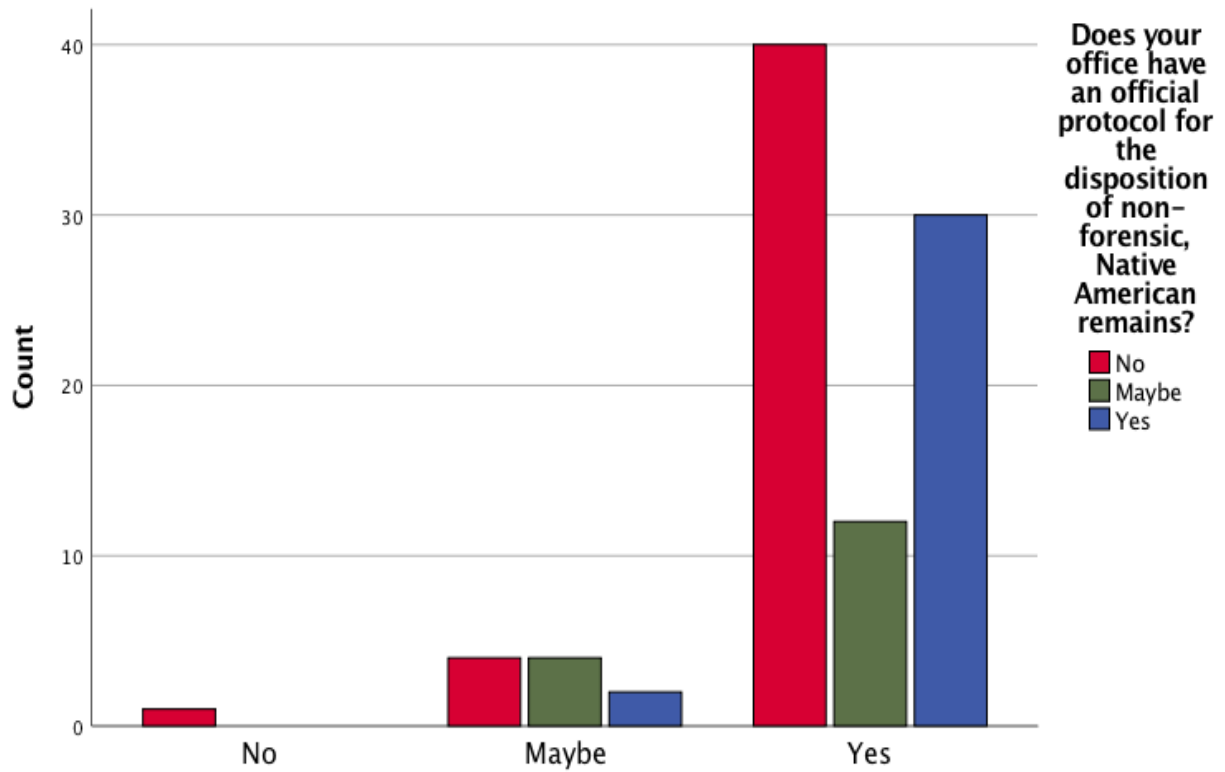


Figure 6.11 Association between presence of a forensic anthropologist and presence of unofficial disposition protocol of survey respondents

cannot be established between consultation with an anthropologist and the presence of official disposition protocol ($\chi^2=5.266$, $df=4$, $p=.261$) (Figure 6.12).

In regard to unofficial protocols, of the 83 respondents who reported consulting with an anthropologist, 98.79% (82/83) also reported on the state of their unofficial protocol. Of the 82 respondents, 24.4% (20/82) have an unofficial protocol, 54.9% (45/82) do not, and 20.7% (17/83) were unsure. Of the 1 respondent who reported their office does not consult with an anthropologist, 100% (1/1) also reported on the state of their unofficial protocol, noting that their office does not have an unofficial protocol. Of the 11 respondents who reported they are unsure if their office consults with an anthropologist, 90.9% (10/11) also reported on the state of their unofficial protocol. Of the 10 respondents, 10% (1/10) have an unofficial protocol, 60% (6/10) do not, and 30%(3/10) were unsure. The results of the 3x3 chi-square test indicated an association cannot be established between consultation with an anthropologist and the presence of unofficial disposition protocol ($\chi^2=2.012$, $df=4$, $p= .734$) (Figure 6.13).



Does your office consult with an anthropologist for skeletal cases?

Figure 6.12 Association between consultation with an anthropologist and presence of official disposition protocol of survey respondents

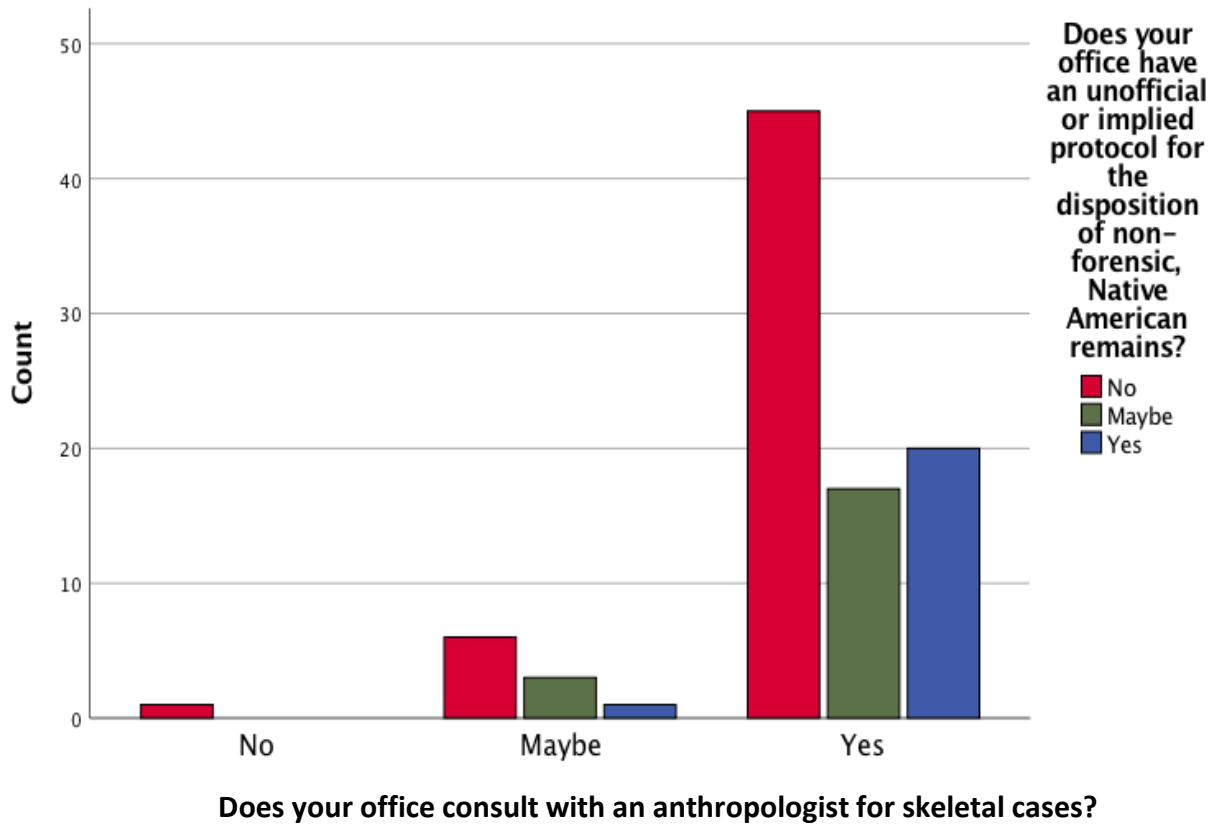


Figure 6.13 Association between consultation with an anthropologist and presence of unofficial disposition protocol of survey respondents

Chapter 7: Discussion and Conclusions

The Native American Graves Protection and Repatriation Act (NAGPRA), passed in 1990, was the culmination of efforts by Native Americans, anthropologists, scientists, museum workers, and politicians to provide a legal process for tribes to claim the remains of their ancestors. Section 43 CFR § 10.9 of the law states that universities and museums must prepare an inventory of the items within their possession and return human remains at the request of a lineal descendent, Indian tribe, or Native Hawaiian organization by 1995. As discussed in previous chapters, the definition of museum for NAGPRA purposes includes “any institution or State or Local government agency (including any institution or higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items” (25 U.S.C 3001 (8)). Therefore, medical examiner and coroner offices fall under NAGPRA jurisdiction as they receive their funding through the distribution of federal funds by state governments to local government offices.

As dictated by state law, medical examiner and coroner offices are often mandated to be present at the scene when human remains are discovered and subsequently assume jurisdiction of those remains once they are removed from the discovery site. NAGPRA applies when the remains recovered from discovery sites, now under the control of ME/C offices, or remains already in the possession of offices are determined to be non-forensically significant Native American. As such, the requirements for museums dictated in the law, as well as the consequences for non-compliance, apply to ME/C offices.

According to the 2004 census of ME/C offices conducted by the Bureau of Statistics, of the 500,000 cases accepted for death investigation each year, 5% (5,000) of the cases were

reported to consist of skeletal remains. Based on the survey of ME/C offices, it was my expectation that a subset of these cases would comprise of non-forensically significant Native American remains. The survey respondents were asked to report, on average, how many of the skeletal cases they receive each year are determined to be non-forensically significant Native American remains. The provided responses total a range of 55-915 cases each year. All of these cases, in addition to any back log or curated Native American remains under the jurisdiction of these offices, fall under NAGPRA regulations. It is important to note that these respondents only account for a percentage of the total ME/C system, so it can be expected that the total number of non-forensically significant Native American remains that enter the ME/C system each year is greater than the reported number.

The results presented in the previous chapter illustrate that despite the national attention and often contentious reputation that NAGPRA has received, the law has not succeeded in spreading widespread knowledge and acceptance amongst the practitioners to whom it directly applies. The results also indicate that the disconnect present between practitioners within the medicolegal profession and the implementation of NAGPRA is multifaceted and cannot be attributed to a single factor or shortcoming. Despite the civil penalties in place as consequence for non-compliance, not a single survey respondent reported having an official or unofficial protocol that consisted of NAGPRA compliant procedures, and not a single office has been charged with a civil penalty despite these protocols. The following sections will include a discussion of what has gone wrong in the implementation process so far as well as what needs to be corrected in order for implementation to succeed.

The first research question, *the current US ME/C system does not include standardized policy for the evaluation of non-forensically significant Native American remains, including disposition protocol that is NAGPRA compliant*, was supported as evidenced by the complete absence of reported office protocol that is NAGPRA compliant. The second research question, *factors such as education, position with an office, and proximity to federal or tribal lands will have an association with an individual's familiarity with NAGPRA as well as presence of compliant disposition protocol within their office*, was supported as evidenced by the statistical analysis that identified strong associations between education, office position, and proximity to federal or tribal lands and familiarity with NAGPRA as well as the absence of reported protocol that is NAGPRA compliant. Finally, the third research question, *ME offices that employ a forensic anthropologist will have a set of standardized protocols within their office for the evaluation of forensically non-significant Native American remains as well as protocol for disposition*, was not supported as there was not association detected between the presence of a forensic anthropologist for official disposition protocol, and only a moderate association present between presence of a forensic anthropologist and unofficial protocol. This is detailed below.

The Absence of Compliant Protocol

The root of the issue with non-compliance is simple. Practitioners within the medicolegal field are unfamiliar with the law and therefore they lack the necessary knowledge to implement a protocol that is NAGPRA compliant. The results indicate that this lack of familiarity is associated with all the hypothesized factors including: office position, education, geography, and the presence of a forensic anthropologist within the office. However, it is also

evident that the influence these factors have can be mitigated with NAGPRA specific training. The sentiment shared by one respondent, “if we don’t know about it, how can we properly respond when it happens,” highlights why a focus on education and training should be the first step in resolving this larger issue.

The education and training needed to provide offices and practitioners with the knowledge and experience necessary to operate in a compliant manner can be accomplished in two ways. The first would be for offices to begin to incorporate office-sponsored NAGPRA training for pertinent employees (medicolegal investigators, coroners, medical examiners, anthropologists etc., depending on the office structure), and then subsequently focus training on new hires after protocols are in place. Ideally this training should provide an overview of what the law is and why it was passed. Employees should understand how the law applies to their offices, with a focus on clarifying some of the law’s vague language, as well as what the office’s responsibilities of the office are under the law and the penalties for non-compliance. This training should follow the same logic as other mandatory, protocol-based training such as Blood Borne Pathogen, Biohazard Training, Sexual Harassment Training, and general Standard Operating Procedures, which are required to be an informed and effective member of any ME/C office.

As is the case with other mandatory training, there are resources available that provide the material needed to conduct NAGPRA training. Both the National NAGPRA Office and the National Association of Tribal Preservation Officers (NATHPO) provide online training resources including training agendas, training videos, NAGPRA basics trainings, and NAGPRA webinars (www.nps.gov/nagpra/training/). Additionally, the National NAGPRA Office has partnered with

the National Preservation Institute (NPI) to offer additional NAGPRA related training to federal agencies, tribes, and other interested parties. The goal of these trainings is to provide practical knowledge and tools needed to support NAGPRA efforts.

Additionally, NAGPRA training could become an approved Continuing Medical Education (CME) class offered at any of the numerous professional conferences practitioners may attend throughout the year. Professional conferences provide an annual opportunity for practitioners to earn their required CME credits to maintain their license, so new and interesting courses are widely sought out. For example, at the 2018 Annual American Academy of Forensic Sciences conference, there were five different CME courses ranging from 1-25 credit hours offered. The National Association of Medical Examiners as well as the International Association of Coroners & Medical Examiners also provide CME courses at their annual meeting. Implementing a CME course at any or all of these conferences would provide standardized training for a wide breath of medicolegal practitioners across the country as well as incentive for these practitioners to obtain this training.

Currently the lack of familiarity with the law, in conjunction with the relative lack of consequences for noncompliance (as civil penalties are rarely handed down), has resulted in either the presence of non-compliant protocol or the complete lack of protocol for non-forensically significant Native American remains within ME/C offices. The results of this research support the hypothesis that medical examiner and coroner offices across the country would not have standardized protocols for disposition, let alone NAGPRA compliant protocol. Nearly half of the respondents reported that their office does not have an official disposition protocol, and of the 34% that do, none of the described protocol were NAGPRA compliant.

It is not the intent of this project to place blame or criticize the current operating procedures in place within these offices. As stated above, the majority of these offices are not even familiar with the law, making it nearly impossible to have procedures that are in compliance with the law's stipulations. However, a discussion of the practices currently in use provides helpful insight into what can be corrected going forward.

The most common disposition protocol description included some variation of contacting or giving the remains to an archaeologist, followed by transferring the remains to a university, museum, historic commission, or preservation office. The rationale behind these decisions is common, and connects back to the sentiment discussed above, that human remains, particularly non-forensically significant ones, fall outside the purview of a medical examiner or coroner. In regard to non-forensically significant, historic remains, that are not Native American, this may be true, and a state archaeologist, museum, or university is a more appropriate repository for these remains than an ME/C office. However, as discussed in Chapter 4, once non-forensic Native American remains come under the control or within the possession of these offices, NAGPRA applies and therefore the decision to pass the remains along to another entity is no longer the correct or legal course of action. It is at this point in the decision-making process that NAGPRA training, and official office protocol that has been developed with NAGPRA stipulations in mind, would eliminate some of the ambiguity associated with determining what is the next step for these remains.

Although these practices highlight one issue on the part of ME/C offices, they bring to light an even larger issue on the part of practitioners that would be expected to be trained in NAGPRA law. Anthropologists, particularly archaeologists, should be more aware of NAGPRA and

its specific stipulations, due to their training, their role in the historic context leading to NAGPRA, as well as that they often come in contact with human remains at archaeological sites. The fact that archaeologists are agreeing to accept the transfer of these remains into their custody suggests that they are not as knowledgeable about the law as they should be. Rather than accepting Native American skeletal remains, archaeologists should be consulting with ME/C offices on the proper handling and disposition procedures are for these remains and directing the offices toward resources that will aide them in making NAGPRA compliant decisions. The results of this study indicate that it may be prudent in the future to conduct a similar study amongst state archaeologists as well as State Historic Preservation Offices and Tribal Preservation Offices so they may also be more informed about their specific role and responsibilities in regard to accepting remains held under the jurisdiction of ME/C offices.

The survey responses stating that the office protocol is to retain the remains or use them for education purposes reflect two sentiments. First, retaining the remains seems to indicate that these offices are following the same procedures for unidentified forensic cases Unidentified forensic cases are often curated at ME/C offices in the hopes that revisiting the case at a later date might yield new information or that one day the individual will be identified and claimed. Non-forensic Native American remains will never receive medicolegal identification (death certificate with name, cause and manner) and they cannot be claimed by their tribal relations unless the remains have an inventory submitted to the National NAGPRA office and published on the *Federal Register*. Retaining the remains indefinitely could also indicate that these offices are so unsure of what to do with them, that the chosen course of action is inaction. This sentiment, and these growing repositories of remains within offices were the initial inspiration for this

research, as they exemplify the burden these remains may pose for offices as well the best incentive to be NAGPRA compliant. The offices that retain Native American remains for educational purposes reflect the same sentiment expressed in Chapter 5, that a beneficial use is better than the remains sitting on shelves indefinitely. However, it is exactly this use of Native American remains that served as a driving force for the passage of NAGPRA, as tribes fought to ensure their relatives would not be used in this manner.

Although one of the least reported responses, the respondents that indicated their protocol consists of reburying or reinterring the remains is also cause for concern as it is illegal. In doing so, the remains may effectively no longer be in the control or possession of ME/C offices and therefore no longer fall under NAGPRA. Further, if the tribes have not been notified that these remains even exist or have been discovered, then there is no legal due process by which to make a claim and have those remains repatriated.

So, What Should Happen?

As previously discussed there are three common scenarios that will result in non-forensic Native American remains coming under the control or within the possession of ME/C offices: (1) discoveries of human remains; (2) remains that have been brought or sent to an office; and (3) any backlog of remains that are being curated there indefinitely. Each of these scenarios fall under the jurisdiction of NAGPRA and therefore require disposition protocol that is compliant with the law's mandates. The following is a discussion of a NAGPRA compliant protocol.

NAGPRA Compliant Protocol

In at least 34 states, state law mandates that medical examiners or coroners, depending on their system, must be notified of the discovery of human remains. Once a death notification

is made, a representative from the ME/C office is required to assess the discovery site in order to determine whether the remains fall under their jurisdiction. The decision on whether skeletal remains are forensically significant or not is based on a number of factors including recovery context, condition of the remains, associated graves goods and artifacts, and the age of remains. The age necessary to make to a death non-forensically significant does vary on a state by state basis and can range from 50 to 150 years.

If a set of remains taken under the jurisdiction of an ME/C office is later determined to be of non-forensic significance and Native American ancestry, NAGPRA applies. Once this determination is made, either by an anthropologist, archaeologist, medical examiner, coroner, or other qualified personnel, it is the responsibility of the ME/C office that has control to proceed with NAGPRA procedures.

Similarly, if remains are found in the collections at an ME/C office, the office has a two-year deadline to consult with potentially affiliated tribes and submit an inventory of the remains that are in the control of the office. The inventory is an item-by item description of human remains and any associated funerary objects that may accompany them. Please see Appendix 4 and 5 for the culturally affiliated inventory template as well as the culturally unidentifiable inventory template. Both of these inventories can be amended if new information develops from consultations or additional evidence. When beginning the inventory process, 43 CFR 10.9 dictates that consultation must be sought with any tribe that may be culturally affiliated with the remains or the land where the remains were discovered. The initiation of consultation should begin as soon as the inventory and cultural affiliation process begins. Consultation can be initiated with a letter but should be followed by a telephone or in-person conversation.

Consultation is meant to be an ongoing conversation, not a one-time event. This consultation should include the following information in writing: a list of all the tribes that have also been consulted in respect to the remain; a description of the inventory process; an estimated time frame for completing the inventory; and an acknowledgement that any additional documentation used to determine cultural affiliation will be supplied at the tribe's request.

During this process it is important to understand the difference between culturally affiliated and culturally unidentifiable and what information is needed to make these determinations. Cultural affiliation "means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group" (25 U.S.C 3001, Section 2). Affiliation is established using evidence based on geographical, kinship, biological, archaeological, anthropological, linguistic, folklore, oral tradition, historical evidence, or other evidence or expert opinion. The evidence used to make this determination will be dependent on the information associated with the discovery and consultation with tribes during the inventory process. Culturally unidentifiable means that no determination of shared group identity can be made based of the available information or consultation with tribes (25 U.S.C 3001, Section 2).

As of 20 April 2007, a museum, including ME/C offices that finds or receives new non-forensically significant Native American human remains that are not on a previously submitted inventory, has two years after the discovery or receipt of these remains to submit an updated inventory to the National NAGPRA Office. Offices that were established after 1990 or did not receive federal funding before 1990 have five years to complete an inventory of remains already

in their possession, and two years to submit inventory for new discoveries or remains that were received at the office (nps.gov).

Here is where the process will differ depending on whether the remains are culturally affiliated or culturally unidentifiable. As of 2010, the regulations on the disposition of culturally unidentifiable human remains (43 CFR 10.11) provides a process for their disposition if they have been listed on a culturally unidentifiable inventory. These items, including human remains, are to be dispositioned in priority order first to the tribe or tribes from whose land the human remains were removed from, followed by the tribe or tribes from whose aboriginal lands the remains were removed from. If there are no tribes or aboriginal land tribes that wish to make a claim, the office may disposition the remains to another Federally-recognized tribe or tribes. If no federally recognized tribe wishes to make a claim, the office can ask the Secretary of the Interior to make a disposition of the remains to a non-federally recognized tribe or reinter the remains. If an agreement on disposition is made between the office and a tribe that wishes to make a claim, then the office must submit a Notice of Inventory Completion.

For both claimed culturally unidentifiable remains, as well as culturally affiliated remains that an inventory has been submitted for, the next step is to submit a draft Notice of Inventory Completion (NIC) to the claimant tribes. Once all claimant tribes approve the NIC, the ME/C office sends the NIC to the National NAGPRA Office (Appendix 6 and 7). This notice will contain a description of consultation efforts; whether the remains were determined to be culturally affiliated or culturally unidentifiable; how and why this was the determination was made; and how many individuals or objects received this determination. The first submission of these notices to the National NAGPRA office is considered a draft, and each submission will be followed

by a temporary tracking ID number sent to the submitting office. The National NAGPRA Office will compare the NIC to the inventory that was submitted previously, as well as review it against the Government Printing Office Style Manual to make sure it follows the most recent template (See Appendix 6 and 7). Once a review of the draft notice is complete, it will be sent back to the submitting office for final approval, meaning the submitting office approves of the National NAGPRA Office's revisions. Upon final approval by the submitting office, the National NAGPRA Office then submits the NIC to the Department of the Interior for publication in the *Federal Register*. It is also the responsibility of the submitting office to notify claimant tribes that the NIC has been published, and that the 30-day wait period has started. Barring any counter-claims from federally recognized tribes, on the 31st day, legal control passes to the claimant tribes listed in the NIC, and the process of transferring the remains and objects for repatriation or disposition can begin.

After a notice has been published in the *Federal Register*, an office must wait at least two years for a tribe or tribes to make a claim. If after that time no tribe has made a claim, the office may proceed with a Notice of Proposed Transfer or Reinternment of Unclaimed Cultural Items (See Appendix 8 for template). This provides a legal process for an office to either transfer control of the remains to a more appropriate repository or reinter the remains.

Future Considerations

This thesis has exposed important problems with the implementation of NAGPRA policy at ME/C offices. The qualitative responses provided both in the survey and interviews, along with the anecdotal experiences shared by these practitioners sheds light on practical concerns that need to be considered moving forward.

As interview participants shared, there are a number of frustrations materializing for ME/C offices that have tried to operate in a NAGPRA-compliant manner. Both respondents report that the essence of this consternation stems from a lack of responses from tribes that have been contacted in regards to the remains in the possession of the respondents' offices. As Dr. Matthews mentioned, he personally sent 12 letters to tribes that may have an interest in the remains for which he submitted notices for, and only heard back from one. As another respondent reported, they have reached out to the 9 state-mandated tribes each time they are in possession of non-forensic Native American remains and have not heard back from any of them. This dichotomy seems to be creating a continued sense of frustration that, without correction, could build to indifference and further non-compliance. If this research is successful in convincing offices they need to be compliant with the law, yet the result of their additional time and resources yields the same results as non-compliance, meaning the human remains sit in perpetuity at ME/C offices, I am concerned that practitioners will quickly become disillusioned with the process and perhaps revert to old practices. Additionally, the law's lack of enforcement and consequences, aside from civil penalties associated with non-compliance, which are rarely levied, may make the risk of fines a minimal concern for these offices. However, it is important to note that museums or agencies that are not compliant could also be subject to class-action lawsuits from tribes, in both civil and criminal courts.

One respondent reported that they believe it would be beneficial for tribes to have a mandated response timeframe for notices, to mirror those placed on museums or agencies, including ME/C offices. A response from the contacted groups would ensure that ME/C offices at least know that the tribes have received and acknowledge the notice, and further whether or not

they are interested in making a claim. If offices know for sure that no tribes would like to make a claim, after two years, they may begin to follow the process for submitting a Notice of Proposed Transfer or Reinternment of Unclaimed Cultural Items (See Appendix 8 for notice template). This would allow offices to rebury or transfer unclaimed remains in a legal manner, according to NAGPRA regulations, and avoid becoming a repository indefinitely.

On the other hand, NAGPRA is a law intended to empower Native Americans and provide them with a means to claim their ancestors and rebury them on their own terms. Additionally, tribes are often inundated with internal issues that may take precedence to claims. These can include a lack of resources and funding, persisting issues such as unemployment, alcoholism and suicide on reservations, and debates amongst tribal elders on whether they even want to make a claim, as many tribes are still distrustful of the NAGPRA process. Giving tribes a mandated response time imposes these notices and repatriation as a top priority for tribes, forcing them to make it one when other issues would have otherwise taken precedence. This is not to say these tribes are not interested in repatriation but pressing issues amongst living tribe members may supersede those of their ancestors.

Further, this thesis effectively shows that the conversation surrounding NAGPRA and its implementation need to shift. Rather than solely focusing on the large collections held in museums and universities, as well as what resources need to be provided to accomplish repatriation of these collections, the National NAGPRA Office and the other entities striving for successful implementation need to direct some attention and resources to smaller institutions, such as ME/C offices. In order to ensure compliance and the successful completion of the notice process, it seems necessary that assistance for both cultural affiliation determinations and

consultation with tribes be provided to ME/C offices. Particularly in regard to cultural affiliation, currently the National NAGPRA Office does not offer assistance in making these determinations, as this is the responsibility of the museum or agency in possession of human skeletal remains, though they do give advice and recommend tribal contacts. However, many ME/C offices are not currently equipped with staff who are trained or in a position to make these determinations. While the focus has been on museums and universities, who in large part have resources like anthropologists, archaeologists, and historians, who can aide in these decisions, ME/C offices do not. As such, resources need to be provided to the offices that do not employ an anthropologist to easily talk to tribes in consultation to make cultural affiliation determinations. Perhaps a portion of the NAGPRA grant money discussed in chapter 4, could be allotted for this purpose. Otherwise this could be an opportunity for anthropology departments at universities to offer consultation resources, in a similar vein to services such as recovery and identification of human skeletal remains that are often provided to law enforcement by anthropologists. Additionally, training and direction on best practices for contacting and communicating with tribes as well as resources on what tribes (federally and non-federally recognized) are located near offices may provide a good starting point for offices beginning the consultation process.

Limitations

Although the survey response rate from practitioners working in medical examiner and coroner offices well exceeded expectations, there were still shortcomings in regard to the geographic distribution of the responses (see Figure 6.1). Unfortunately, many of the states that are most likely to encounter and subsequently handle Native American remains such as

Oklahoma, Montana, Nebraska, South Dakota, North Dakota, New Mexico, Wyoming, did not have a single survey respondent, and as such the nature of this issue within these states is still unknown.

Additionally, there were limitations concerning the demographic distribution of respondents regarding office position. As discussed previously, of the 185 respondents nearly half were medical examiners (92/185), 20.5% (38/185) were coroners, and only 9% (17/185) were forensic anthropologists. However, as employment of forensic anthropologists within ME/C offices is still rather limited across the country, the forensic anthropologist response rate is an accurate representation of this demographic breakdown. An equal distribution of respondents would have been ideal, as this would have provided a better indication of the variation present both within these groups and between them. Although I contacted 13 different state coroner associations, only 4 agreed to distribute the survey, largely decreasing the opportunity for coroner respondents. Additionally, not every state has a coroner association, or makes contact information for the country coroner's public, and so distribution to practitioners within those states was also limited.

Finally, due to the large number of respondents who reported they would be willing to participate in follow-up interviews, parameters for which respondents would be asked for follow up interviews had to be established. However, of the 12 respondents that fell within these parameters and were contacted about interviews, only two agreed to participate in them. Although these two interviews were incredibly interesting and helpful, the amount of qualitative data expected to be collected for this research was not able to be collected.

Conclusions

In the close to thirty years since The Native American Graves Protection and Repatriation Act was passed, the Act has been met with criticism and resistance on the part of scientists, museums, universities and practitioners, who are unable to put ethical and humanitarian responsibilities above personal, professional, or academic agendas. Although conversations regarding problems with the implementation of NAGPRA have taken place almost entirely in the realm of museums and universities, and amongst the professionals associated with them, this research has identified a new venue, the ME/C system, in which the NAGPRA compliance issue resides. As this is the beginning of conversations concerning NAGPRA and its place within medical examiner and coroner offices, this research will hopefully inform and direct the decisions that come next.

Ideally this thesis has been successful in advocating the sheer importance of this law and what repatriation means for the ancestors of these remains. As Representative Morris Udall (1990) stated in reference to NAGPRA, “In the larger scope of history, this is a very small thing. In the smaller scope of conscience, it may be the biggest thing we have ever done” (McKeown 2012). For ME/C offices, implementing the necessary changes in order to be NAGPRA compliant would require relatively minimal expenditures and resources in the grand scheme of their overall operation, but the result of these small changes and considerations could have life changing consequences for the tribes who have fought for years to have their ancestors returned to them.

Aside from the acknowledgement that NAGPRA is a federal law and therefore must be followed, compliance with NAGPRA indicates that ME/C offices, and those working in them, recognize the rights of Native Americans as well as their own role in ensuring that these rights are not ignored or violated. Although not direct players in the historical context that led to the

need for NAGPRA, offices that chose to operate in a compliant manner will also be acknowledging that ethical principles should be the foundation of any type of work, regardless of ancestry, sex, gender, race or religion.

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Appendices

Appendix 1

University of Tennessee Institutional Review Board Letter



THE UNIVERSITY OF
TENNESSEE
KNOXVILLE

February 05, 2018

Megan Kelley Kleeschulte
UTK - College of Arts & Sciences - Anthropology

Re: UTK IRB-18-04267-XM

Study Title: An Evaluation of Medical Examiner and Coroner Office's Approach to the Analysis of Skeletal Remains and the Consequences for NAGPRA

Dear Megan Kelley Kleeschulte:

The Human Research Protections Program (HRPP) reviewed your application for the above referenced project and determined that your application is eligible for **exempt** review under 45 CFR 46.101, Category 7. Your application has been determined to comply with proper consideration for the rights and welfare of human subjects and the regulatory requirements for the protection of human subjects.

Therefore, this letter constitutes full approval of your application (version 1.0) as submitted, including the Informed Consent Statement (v1.0), and the MK_SurveyV2 (v1.1). The listed documents have been dated and stamped IRB approved 2/5/2018.

****Please be sure to use the documents that are stamped approved as the IRB office made some revisions to your forms.**

Informed consent may be altered in accord with 45CFR46.116(d), with a consent cover statement used in lieu of a consent interview. The requirement to secure a signed consent form is waived under 45CFR46.117(c)(2).

In the event that volunteers are to be recruited using solicitation materials, such as brochures, posters, web-based advertisements, etc., these materials must receive prior approval of the IRB.

Any alterations (revisions) in the protocol [including any of the above listed stamped IRB approved] must

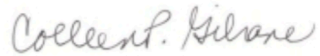
Institutional Review Board | Office of Research & Engagement
1534 White Avenue Knoxville, TN 37996-1529
865-974-7697 865-974-7400 fax irb.utk.edu

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be promptly submitted to and approved by the UTK Institutional Review Board prior to implementation of these revisions. You have individual responsibility for reporting to the Board in the event of unanticipated or serious adverse events and subject deaths.

Sincerely,



Colleen P. Gilrane, Ph.D.
Chair

Institutional Review Board | Office of Research & Engagement
1534 White Avenue Knoxville, TN 37996-1529
865-974-7697 865-974-7400 fax irb.utk.edu

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Appendix 2

Introductory Statement

Determining Non-Forensic Significance and Disposition of Human Skeletal Remains

Purpose of Study

The purpose of this research study is to better understand the variation in methods for determining the non-forensic significance of human skeletal remains. The study also hopes to understand how these determinations correlate to protocol for the disposition of non-forensic cases, specifically non-forensic Native American remains. The objective of the study is to develop standard procedures that will alleviate the burden these decisions pose for medical examiner and coroner offices as well as ensure that offices are operating in compliance with federal National American Graves Protection and Repatriation Act (NAGPRA).

Description of Participation

You have been asked to participate in this research study because you are a member of the Georgia Coroner's Association (GCA). Participation in this research study is voluntary and you maintain the option to not participate, including withdrawing from the study at any point with no penalty. The study involves completing an online survey that will take approximately 20 minutes.

The responses to the survey will be confidential, and we will not be collecting identifying information such as your name, email, or IP address, or any other personally identifying information. The survey will ask about your experience working in an ME/C office, some demographic questions regarding the number and nature of casework your office receives yearly, as well as questions related to the methods used to analyze these cases. All of the data collected will be stored electronically in a password protected format.

Potential Harms and Benefits

There are no known risks associated with this research study. Neither will you receive any direct benefit from participating in this study. However, we hope that the information learned from this survey will benefit practitioners working with human skeletal remains by facilitating the understanding and adherence to NAGPRA.

Protecting Privacy and Confidentiality

All the data collected during this study will be kept confidential and will not be shared with anyone outside the study unless required by law. Your short answers may be quoted in the master's thesis that will result from this study and any subsequent reports, publications, or presentations. You will not be named in any product that results from this study.

Study Results

The results of this study will be included in my master's thesis for the Department of Anthropology at the University of Tennessee, Knoxville. Therefore, the data will be shared with the members of my committee and will be presented during my thesis defense as well as any subsequent publications or presentations.

Potential Costs of Participation and Reimbursement to you

The activities included in this study will be of no cost to you. You will not be compensated for your participation in this study.

Participation and Withdrawal

Your participation in this survey is voluntary. You may change your mind and withdraw from the project at any point, without providing a reason.

Research Ethics Institutional Review Board Contact

If you have any questions about the research project, please contact Megan Kleeschulte (mkleesch@vols.utk.edu or 732-781-6118) or Megan's thesis advisor, Dr. Amy Mundorff (amundorff@utk.edu 865-974-8120). This research has been reviewed according to University of Tennessee, Knoxville Institutional Review Board procedures for research involving human subjects (Reference #: 669391). You may also contact the University of Tennessee, Knoxville Institutional Review Board at 865-974-7697.

Choosing "yes" below mean that you have read this information, and you voluntarily agree to take part in this study.

I hereby consent to participate in this research study.

Yes

No

Appendix 3

Survey

1. What type of office are you affiliated with?

Medical Examiner

Coroner

Private

Academic

Other: _____

2. What is your position within your office?

Medical Examiner

Coroner

Forensic Anthropologist

Medicolegal investigator

Other _____

3. What is your highest level of education?

High school graduate

College Graduate

Associates Degree

Master's Degree

Doctoral Degree

Medical School

Other: _____

4. What is your age?

18-24

25-34

35-44

45-54

55-64

65-74

75-84

85 or older

5. What is your gender?

6. How many years have you worked in a Medical Examiner/Coroner office(s)? Please give your total years in the profession, including if you've worked in multiple offices)

7. What state is your office located in?

8. Are you from the same state that the office you are currently employed at is located in?

Yes

No

9. Is your office located within 1 hour (driving) of federal or tribal lands?

Yes

Maybe

No

10. On average, how many cases does your office accept a year? (For the purpose of this study an accepted case includes anything the office conducted additional investigations on, completed a death certificate for, determined the cause of death, or continued under the office's jurisdiction as unidentified)

11. Are you aware of federal or state laws/protocols pertaining to the discovery of human remains?

Yes

No

Maybe

12. Please list the federal or state laws below.

13. Are you familiar with the 1990 Native American Graves Protection and Repatriation Act (NAGPRA)?

Yes

No

Maybe

14. Do you believe NAGPRA governs cases submitted to an ME/C office?

Yes

No

Maybe

15. Where did you learn about NAGPRA and its applications?

Undergraduate education

Graduate education

Medical school

A colleague

An article or book

News or media

16. Does your office employ a forensic anthropologist or a full-time designated staff for assessing skeletal material?

17. Is this person you?

18. If not, does your office consult with an anthropologist for skeletal cases?

19. On average, how many “fully skeletonized cases” do you assess each year (for the purposes of this study “a fully skeletonized case” can be an isolated bone or complete individual or anything in between, but it **does not** include decomposed, burned, or other remains with soft tissue present indicating a more recent time period).

20. Of the fully skeletonized cases, how many are determined to be archaeological in nature (non-forensic), either historic or older?

21. Of the archaeological, fully skeletonized cases mentioned above, how many were determined to be Native American?

22. What methods do you use in order to determine skeletal remains are archaeological (historic or older) and not forensic? Please check all that apply.

Recovery Context

Morphological features

Skeletal Measurements

Associated grave goods or artifacts

Condition of the remains

Software such as Osteoware or FORDISC

Other _____

23. If you employ published methods, please cite them below.

24. In regard to the methods indicated above, how satisfied are you with this protocol? (1 is not satisfied, 10 is very satisfied)

1 2 3 4 5 6 7 8 9 10

25. Are these methods different from other offices you have worked at in the past?

Yes

No

I have only worked at one office

26. Does your office have an official protocol for the disposition of non- forensically significant human skeletal remains?

Yes

No

27. If yes, please describe the steps in the protocol. (If it is a multi-page document, please attach below)

28. How satisfied are you with this protocol? (1 is not satisfied, 10 is very satisfied)

1 2 3 4 5 6 7 8 9 10

29. Does your office have an official protocol for the disposition of non-forensically significant, **Native American** remains?

Yes

No

Maybe

30. If yes, please describe the steps in the protocol.

31. How satisfied are you with this protocol? (1 is not satisfied, 10 is very satisfied)

1 2 3 4 5 6 7 8 9 10

32. Does your office have an unofficial or implied protocol for the disposition of non-forensically significant human skeletal remains?

Yes

No

33. If yes, please describe the steps in the protocol.

34. How satisfied are you with this protocol? (1 is not satisfied, 10 is very satisfied)

1 2 3 4 5 6 7 8 9 10

35. Does your office have an unofficial or implied protocol for the disposition of non-forensically significant, **Native American** remains?

Yes

No

36. If yes, please share this protocol below.

37. How satisfied are you with this protocol? (1 is not satisfied, 10 is very satisfied)

1 2 3 4 5 6 7 8 9 10

38. Are you willing to participate in follow up interviews regarding your responses to this survey?

Yes

No

39. Please provide us with your preferred contact information. (Please note: by providing you information your survey data will go from unknown to known so I may ask follow-up questions, however your responses will remain entirely confidential.)

Appendix 4

SAMPLE INVENTORY of Native American Human Remains and Associated Funerary Objects in the Control of THE MUSEUM/FEDERAL AGENCY that are considered to be CULTURALLY UNIDENTIFIABLE

The purpose of this inventory is to facilitate implementation of section 8 (c)(5) of the Native American Graves Protection and Repatriation Act by providing clear descriptions of those human remains and associated funerary objects currently in the possession or control of **THE MUSEUM/FEDERAL AGENCY** that are considered to be **CULTURALLY UNIDENTIFIABLE**.

The determination of the cultural affiliation of the human remains and associated funerary objects listed below has been based upon geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historic evidence, or other information or expert opinion. Primary information sources includes a review of our accession and catalogue records conducted during 201x and consultation with lineal descendants, Indian tribe officials, and traditional religious leaders on the following dates:

February x, 201x: Preliminary meeting at THE TRIBE's headquarters to discuss the nature of THE MUSEUM/FEDERAL AGENCY's collections and ways in which to facilitate the consultation process. Participants included THE MUSEUM/FEDERAL AGENCY director Albert Andrews and the following representatives of THE TRIBE: Belinda Baker (chair); Charles Campbell (designated NAGPRA contact); and Debbie Dawn (traditional religious leader).

July x-xx, 201x: Meeting at THE MUSEUM/FEDERAL AGENCY'S repository to review the collection. Participants included director Albert Andrews, THE MUSEUM/FEDERAL AGENCY's chief curator Edward Evans; Tribal NAGPRA contact Charles Campbell and traditional religious leader Debbie Dawn.

October x, 201x: Meeting at THE MUSEUM/FEDERAL AGENCY's repository to finalize determinations of cultural affiliation. Participants included chief curator Edward Evans and Tribal NAGPRA contact Charles Campbell.

In addition, consultation was carried out via electronic mail and telephone between chief curator Edward Evans and Tribal NAGPRA contact Charles Campbell throughout the process.

The following documentation has been included for each set of remains in the inventory:

- (1) Accession and catalogue entries;
- (2) A description of each set of human remains, including dimensions, materials, and photographic documentation, if appropriate, and the antiquity of such human remains, if known;
- (3) The geographical location from which each set of remains was excavated, removed, or collected, i.e., name or number of site, county, State, and Federal agency administrative unit, if known; the most specific provenience information should be provided;
- (4) Information related to the acquisition of each set of remains, including:
 - (i) The name of the person or organization from whom the remains were obtained, if known;
 - (ii) The date of acquisition;
 - (iii) The means of acquisition, i.e., gift, purchase, excavation, etc.;
- (5) A summary of any results of consultation with representatives of the culturally affiliated

Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations, related specifically to the remains, if applicable;

(6) A summary of the evidence used to determine the cultural affiliation of the human remains and associated funerary objects, including references to published material, if applicable.

The following inventory entry lists Native American human remains for which **THE MUSEUM/FEDERAL AGENCY** cannot establish cultural affiliation or for which cultural affiliation can be established with an Indian tribe or Native Hawaiian Organization (NHO) which is not currently recognized by the Federal Government.

Item: Human remains and associated funerary objects

Site Name: Unknown

Geographical Location: Unknown

Collection History: Accession records are missing

MNI (minimum number of individuals): 1

Description: Cranium, Native American (Shovel-shaped incisors)

Accession #: 1930.12

Catalogue #: AB901

AFO (associated funerary objects): 10

Description: – 5 ceramic pots, 1 lot of ceramic sherds, 4 feathers, 1 jasper flake

Consultation: director Albert Andrews and the following representatives of THE TRIBE: Belinda Baker (chair); Charles Campbell (designated NAGPRA contact); and Debbie Dawn (traditional religious leader).

Basis of Determination: Geographical affiliation is consistent with the historically documented territory of the Mashpee Wampanoag Indian Tribe, a non-federally recognized tribe. Collection history and consultation confirms cultural affiliation with the Mashpee Wampanoag Indian Tribe.

Cultural Affiliation: Culturally Unidentifiable

Item: Human remains and associated funerary objects

Site Name: Ridge Site (OP123)

Geographical Location: Quarry County, Florida

Collection History: Excavated by THE MUSEUM/FEDERAL AGENCY staff at the Ridge Site (OP123), Quarry County, in 1980. Found associated with Second Phase projectile points believed to date between 5000-8000BP. Carbon samples from an associated hearth yielded a date of 7490BP +/- 400.

MNI (minimum number of individuals): 1

Description: Nearly complete skeleton, Native American, Female, Age 19-35

Accession #: 1980.34

Catalogue #: AB234

AFO (associated funerary objects): 1

Description: 1 lot of jasper flakes

Consultation: director Albert Andrews and the following representatives of THE TRIBE: Belinda Baker (chair); Charles Campbell (designated NAGPRA contact); and Debbie Dawn (traditional religious leader).

Basis of Determination: Geographical affiliation is consistent with the historically documented territory of the Mashpee Wampanoag Indian Tribe, a non-federally recognized tribe. Collection history and consultation confirms cultural affiliation with the Mashpee Wampanoag Indian Tribe.

Cultural Affiliation: Culturally Unidentifiable

Item: Human remains

Site Name: Titicut Site

Geographical Location: Plymouth County, Massachusetts

Collection History: Excavated by THE MUSEUM/FEDERAL AGENCY staff at the Titicut Site, Plymouth County, Massachusetts, in 1947.

MNI (minimum number of individuals): 1

Description: Nearly complete skeleton, Native American, Female, Age 10-12

Accession #: 1947.14

Catalogue #: AB123

AFO (associated funerary objects): 0

Consultation: Associated funerary objects help date the burial to the Contact Period (1500-1650). director Albert Andrews and the following representatives of THE TRIBE: Belinda Baker (chair); Charles Campbell (designated NAGPRA contact); and Debbie Dawn (traditional religious leader).

Basis of Determination: Geographical affiliation is consistent with the historically documented territory of the Mashpee Wampanoag Indian Tribe, a non-federally recognized tribe. Collection history and consultation confirms cultural affiliation with the Mashpee Wampanoag Indian Tribe.

Cultural Affiliation: Culturally Unidentifiable

Appendix 5

SAMPLE INVENTORY of Native American Human Remains and Associated Funerary Objects in the Possession or Control of THE MUSEUM/FEDERAL AGENCY and Culturally Affiliated with THE TRIBE

The purpose of this inventory is to facilitate implementation of section 5 of the Native American Graves Protection and Repatriation Act by providing clear descriptions of those human remains and associated funerary objects currently in the possession or control of **THE MUSEUM/FEDERAL AGENCY** that are reasonably believed to be culturally affiliated with **THE TRIBE**.

The determination of the cultural affiliation of the human remains and associated funerary objects listed below has been based upon geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historic evidence, or other information or expert opinion. Primary information sources include a review of our accession and catalogue records conducted during 201x, and consultation with lineal descendants, Indian tribe officials, and traditional religious leaders on the following dates:

February x, 201x: Preliminary meeting at THE TRIBE's headquarters to discuss the nature of THE MUSEUM/FEDERAL AGENCY's collections and ways in which to facilitate the consultation process. Participants included THE MUSEUM/FEDERAL AGENCY director Albert Andrews and the following representatives of THE TRIBE: Belinda Baker (chair); Charles Campbell (designated NAGPRA contact); and Debbie Dawn (traditional religious leader).

July x-xx, 201x: Meeting at THE MUSEUM/FEDERAL AGENCY'S repository to review the collection. Participants included director Albert Andrews, THE MUSEUM/FEDERAL AGENCY's chief curator Edward Evans; Tribal NAGPRA contact Charles Campbell and traditional religious leader Debbie Dawn.

October x, 201x: Meeting at THE MUSEUM/FEDERAL AGENCY's repository to finalize determinations of cultural affiliation. Participants included chief curator Edward Evans and Tribal NAGPRA contact Charles Campbell.

In addition, consultation was carried out via telephone and fax between chief curator Edward Evans and Tribal NAGPRA contact Charles Campbell throughout the process.

The following documentation has been included for each set of remains and funerary object in the inventory:

- (1) Accession and catalogue entries, including the accession/catalogue entries of human remains with which each funerary object is associated;
- (2) A description of each set of human remains or associated funerary objects, including dimensions, materials, and photographic documentation, if appropriate, and the antiquity of such human remains or associated funerary objects, if known;
- (3) The geographical location from which each object was excavated, removed, or collected, i.e., name or number of site, county, State, and Federal agency administrative unit, if known (the most specific provenience information should be provided);
- (4) Information related to the acquisition of each set of remains or known object, including:
 - (i) the name of the person or organization from whom the object was obtained, if known;
 - (ii) the date of acquisition; (iii) the means of acquisition, i.e., gift, purchase, excavation, etc.;

(5) A summary of any results of consultation with representatives of the culturally affiliated Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations, related specifically to the remains or object;

(6) A summary of the evidence used to determine the cultural affiliation of the human remains or associated funerary object, including references to published material, if appropriate.

(7) The name of the culturally affiliated Indian tribe (NOTE: Must be recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians).

This inventory includes all human remains and associated funerary objects that are identified as being **culturally affiliated** with **THE TRIBE**.

Item: Human remains and associated funerary objects

Site Name: Oklahoma Territory

Geographical Location: Geary County, OK

Collection History: Reportedly collected in the Oklahoma Territory by Frank Fox in the late 1880's.

Mr. Fox reportedly identified the remains as being Chief Baker. Donated to THE MUSEUM/FEDERAL AGENCY in 1932.

MNI (minimum number of individuals): 1

Description: Nearly complete skeleton, Native American, Male, Age 35-60, Fractured left femur

Accession #: 1932.12

Catalogue #: AB123

AFO (associated funerary objects): 10

Description: 5 ceramic pots, 1 lot of ceramic sherds, 4 feathers, 1 jasper flake

Accession #: 1980.34

Catalogue #: YZ123

Consultation: Belinda Baker, current tribal chair and a lineal descendant of Chief Baker, indicates that THE TRIBE's oral history discusses how Chief Baker broke his left leg in the mid 1860s.

Basis of Determination: Biological evidence of fractured left femur is consistent with oral historic evidence and donor's attribution. Geographical affiliation is consistent with the historically documented territory of THE TRIBE.

Belinda Baker has declined to make a claim for these human remains as a lineal descendant.

Cultural Affiliation: THE TRIBE

Item: Human remains and associated funerary object

Site Name: Hill Site (QR1234)

Geographical Location: Geary County, OK

Collection History: Excavated by THE MUSEUM/FEDERAL AGENCY staff, with permission of the private land owner, at the Hill Site (QR1234), Geary County, OK, in 1980. Currently on loan to Professor Ice at Juliette State University.

MNI (minimum number of individuals): 4

Description: At least 4 individuals, Native American, 3 male, 1 sex unknown. All between 18-45
4 skulls, 3 mandibles, 1 femur, 3 tibia, 4 ribs

Accession #: 1980.12.1-15

Catalogue #: AB456

AFO: (associated funerary objects): 1

Description: 1 Whole "Hill Polychrome" bowl

Accession #: 1980.12A 1

Catalogue #: YZ123

Consultation: THE TRIBE's NAGPRA contact Charles Campbell identified the Hill Site as part of THE TRIBE's traditional occupation area.

Basis of Determination: No lineal descendant has been identified. Geographic affiliation is consistent with the historically documented territory of THE TRIBE. Associated funerary objects YZ123 consistent with 1750-1830 period when site area was occupied by THE TRIBE.

Cultural Affiliation: THE TRIBE

Item: Human remains

Site Name: Mill Site (QR5678)

Geographical Location: Geary County, OK

Collection History: Excavated by THE MUSEUM/FEDERAL AGENCY staff at the Mill Site (QR5678), Nancy National Monument, Geary County, in 1985. Inventoried under agreement with the National Park Service.

MNI (minimum number of individuals): 1

Description: Nearly complete skeleton, Native American Female, 18-45

Accession #: 1985.45

Catalogue #: AB789

AFO (associated funerary objects): none

Consultation: THE TRIBE's NAGPRA contact Charles Campbell identified Mill Site as being located in THE TRIBE's traditional area.

Basis of Determination: Archeologist Kimberly Kohn dates the Mill Site to the 1750-1830 period. No lineal descendant has been identified. Geographic affiliation is consistent with the historically documented territory of THE TRIBE. Archeological evidence is consistent with documented use of the area by THE TRIBE, TRIBE-2, TRIBE-3, and TRIBE-4 were known to occupy the Oklahoma Territory geographical area.

Cultural Affiliation: THE TRIBE and TRIBE-2, TRIBE-3, and TRIBE-4 (NOTE: a copy of this inventory has been provided to representatives of TRIBE-2, TRIBE-3, and TRIBE-4).

Appendix 6

NIC CA 2013.DOCX

4312-50

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-]

[PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: {Museum or Federal Agency, City, State Abbreviation}

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The {Museum or Federal Agency} has completed an inventory of human remains {and associated funerary objects}, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains {and associated funerary objects} and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains {and associated funerary objects} should submit a written request to the {Museum or Federal Agency}. If no additional requestors come forward, transfer of control of the human remains {and associated funerary objects} to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains **{and associated funerary objects}** should submit a written request with information in support of the request to the **{Museum or Federal Agency}** at the address in this notice by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: **{Responsible Official's Name, Museum or Federal Agency's Name, Street Address, City, State Abbreviation Zip Code, telephone (XXX) XXX-XXXX, email XXXX@XXXX.XXX}**.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains **{and associated funerary objects}** under the control of the **{Museum or Federal Agency, City, State Abbreviation}**. The human remains **{and associated funerary objects}** were removed from **{Location, County, State Abbreviation}**.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains **{and associated funerary objects}**. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the **{Museum or Federal Agency}** professional staff in consultation with representatives of *{list all tribes consulted in alphabetical order per the BIA list: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-10/pdf/2012-19588.pdf> or Native Hawaiian organizations; also list any non-Federally recognized Indian groups consulted}*.

History and description of the remains

In **{date of removal}**, human remains representing, at minimum, **{number}** individuals were removed from **{name of site}** in **{County, State Abbreviation}**. *{Include information regarding the circumstances surrounding the removal and all subsequent transfers until the item came into the Museum or Federal Agency's possession. Include details about the human remains, such as age, sex, burial number, etc.}* No known individuals were identified. The **{total number}** associated funerary objects are *{include number and type of each object or group of objects, e.g., 5 pottery sherds, 7 tools, 50 beads, 1 lot of buttons, or state No associated funerary objects are present.}*

{Paragraph here gives estimated age of the site and any additional circumstances known about the human remains or associated funerary objects. Identify the relevant earlier group/phase and how/why these remains have been determined to be Native American. Include lines of evidence for present-day cultural affiliation with the earlier identifiable group, e.g., any historical records, continuity of occupation, continuity of ethnographic materials. Also, reference any tribal evidence of cultural affiliation, e.g., oral history or tradition provided during consultation.}

{Repeat these two paragraphs as necessary. If the second paragraph identifying age, affiliation, etc., applies to multiple sites, include the information only once, after providing a paragraph for each site.}

Determinations made by the {Museum or Federal Agency}

Officials of the **{Museum or Federal Agency}** have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of **{total number}** individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the **{total number}** objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be

reasonably traced between the Native American human remains **{and associated funerary objects}** and *{list the tribes affiliated in alphabetical order per the BIA list: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-10/pdf/2012-19588.pdf> or Native Hawaiian organizations}*.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains **{and associated funerary objects}** should submit a written request with information in support of the request to **{Responsible Official's Name, Museum or Federal Agency's Name, Street Address, City, State Abbreviation Zip Code, telephone (XXX) XXX-XXXX, email XXXX@XXXX.XXX}**, by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE **FEDERAL REGISTER**]. After that date, if no additional requestors have come forward, transfer of control of the human remains **{and associated funerary objects}** to *{list the tribes affiliated in alphabetical order per the BIA list: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-10/pdf/2012-19588.pdf> or Native Hawaiian organizations}* may proceed.

The **{Museum or Federal Agency}** is responsible for notifying the *{list the tribes consulted with in alphabetical order per the BIA list: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-10/pdf/2012-19588.pdf> or Native Hawaiian organizations}* that this notice has been published.

Appendix 7

NIC CUI 10.11(C)(2)(I) 2013.DOCX

4312-50

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-]

[PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: {Museum or Federal Agency, City, State Abbreviation}

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The {Museum or Federal Agency} has completed an inventory of human remains {and associated funerary objects}, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains {and associated funerary objects} and any present-day Indian tribes or Native Hawaiian organizations.

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains {and associated funerary objects} should submit a written request to the {Museum or Federal Agency}. If no additional requestors come forward, transfer of control of the human remains {and associated funerary objects} to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains {and associated funerary objects} should submit a written request with information in support of the request to the {Museum or Federal

Agency} at the address in this notice by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: {Responsible Official's Name, Museum or Federal Agency's Name, Street Address, City, State Abbreviation Zip Code, telephone (XXX) XXX-XXXX, email XXXX@XXXX.XXX}.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains {and associated funerary objects} under the control of the {Museum or Federal Agency, City, State Abbreviation}. The human remains {and associated funerary objects} were removed from {Location, County, State Abbreviation}.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains {and associated funerary objects}. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the {Museum or Federal Agency} professional staff in consultation with representatives of *{list all tribes consulted in alphabetical order per the BIA list: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-10/pdf/2012-19588.pdf> or Native Hawaiian organizations; also list any non-Federally recognized Indian groups consulted}*.

History and description of the remains

In {date of removal}, human remains representing, at minimum, {number} individuals were removed from {name of site} in {County, State Abbreviation}. *{Include information regarding the circumstances surrounding the removal and all subsequent transfers until the item came into the*

Museum or Federal Agency's possession. Include details about the human remains, such as age, sex, burial number, etc.} No known individuals were identified. The {total number} associated funerary objects are {include number and type of each object or group of objects, e.g., 5 pottery sherds, 7 tools, 50 beads, 1 lot of buttons, or state No associated funerary objects are present.} {Repeat as necessary}

{Choose the appropriate paragraph below:}

FOR TRIBAL LAND PROVENIENCE

At the time of the excavation and removal of these human remains **{and associated funerary objects}**, the land from which the remains **{and objects}** were removed was the tribal land of {list tribe per the BIA list: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-10/pdf/2012-19588.pdf> or Native Hawaiian organization}. In {month year}, the {Museum or Federal Agency} consulted with {list tribe per the BIA list: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-10/pdf/2012-19588.pdf> or Native Hawaiian organization}, however, this Indian tribe or Native Hawaiian organization has not agreed to accept control of the human remains **{and associated funerary objects}**. In {month year}, the {Museum or Federal Agency} agreed to transfer control of the human remains **{and associated funerary objects}** to {list tribes in alphabetical order per the BIA list: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-10/pdf/2012-19588.pdf> or Native Hawaiian organizations}.

FOR ABORIGINAL LAND PROVENIENCE

At the time of the excavation and removal of these human remains **{and associated funerary objects}**, the land from which the remains **{and objects}** were removed was not the tribal land of any Indian tribe or Native Hawaiian organization. In {month year}, the {Museum or Federal Agency} consulted with all Indian tribes who are recognized as aboriginal to the area from which these Native American human remains **{and associated funerary objects}** were removed. These tribes are {list tribes in alphabetical order per the BIA list: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-10/pdf/2012-19588.pdf>}. None of these Indian tribes agreed to accept control of the human remains **{and associated**

funerary objects}. In {month year}, the {Museum or Federal Agency} agreed to transfer control of the human remains {and associated funerary objects} to {list tribes in alphabetical order per the BIA list:

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-10/pdf/2012-19588.pdf>}.
(Note: The URL in the original document is truncated at the end.)

Determinations made by the {Museum or Federal Agency}

Officials of the {Museum or Federal Agency} have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on {briefly state how the human remains were determined to be Native American}.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of {total number} individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the {total number} objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains {and associated funerary objects} and any present-day Indian tribe.
- Pursuant to 43 CFR 10.11(c)(2)(i), the disposition of the human remains {and associated funerary objects} may be to {list the tribes in alphabetical order per the BIA list: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-10/pdf/2012-19588.pdf> or Native Hawaiian organizations}.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains {and associated funerary objects} should submit a written request with information in support of the request to {Responsible Official's Name, Museum or Federal Agency's Name, Street Address, City, State Abbreviation Zip Code,

telephone (XXX) XXX-XXXX, email XXXX@XXXX.XXX}, by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE **FEDERAL REGISTER**]. After that date, if no additional requestors have come forward, transfer of control of the human remains **{and associated funerary objects}** to *{list the tribes in alphabetical order per the BIA list: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-10/pdf/2012-19588.pdf> or Native Hawaiian organizations}* may proceed.

The **{Museum or Federal Agency}** is responsible for notifying the *{list the tribes consulted with in alphabetical order per the BIA list: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-10/pdf/2012-19588.pdf> or Native Hawaiian organizations}* that this notice has been published.

Appendix 8

Notice of Proposed Transfer or Reinterment of Unclaimed Cultural Items (43 CFR 10.2(h)(2)(ii))

1. Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR § 10.7 (e), of the intent to transfer or reinter unclaimed Native American *[human remains/funerary objects/sacred objects/objects of cultural patrimony]* in the control of the *[name of Federal agency]*. Disposition of the cultural items described below has not occurred because *[name of Federal agency]* has not been able to reasonably identify any lineal descendant, Indian tribe, or Native Hawaiian organization entitled to ownership or control of the cultural items within two years of knowing or having reason to know that the cultural items were excavated or discovered, and removed from its Federal land.

A detailed assessment of the *[human remains/funerary objects/sacred objects/objects of cultural patrimony]* was made by *[Federal agency]* officials in consultation with representatives of *[consulted Indian tribes and Native Hawaiian organizations]*.

2. In *[date of removal]*, *[human remains/funerary objects/sacred objects/objects of cultural patrimony]* were removed from *[name of site, county, state]*. *[Include information regarding the circumstances surrounding the removal]*. *[No known individuals were identified/This individual has been identified as . . .]*.
3. Officials of *[Federal agency]* have determined that, pursuant to 43 CFR § 10.2 (d)(1), the human remains described above represent the physical remains of *[total number in notice]* individuals of Native American ancestry.

and/or

Officials of *[Federal agency]* have determined that, pursuant to 43 CFR § 10.2 (d)(2), the *[number]* items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

and/or

Officials of *[Federal agency]* have determined that, pursuant to 43 CFR § 10.2 (d)(3), the *[number]* items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by present-day adherents.

and/or

Officials of *[Federal agency]* have determined that, pursuant to 43 CFR § 10.2 (d)(4), the *[number]* items described above have ongoing historical, traditional, or cultural importance

central to the Native American group or culture itself rather than property owned by any individual.

4. Officials of the [*Federal agency*] have determined that, pursuant to 43 CFR § 10.6 (a):
 - a relationship of shared group identity cannot be reasonably traced between the [*human remains/funerary objects/sacred objects/objects of cultural patrimony*] and any Indian tribe or Native Hawaiian organization, and
 - the [*human remains/funerary objects/sacred objects/objects of cultural patrimony*] were not removed from lands that are recognized as the aboriginal land of any Indian tribe.
5. Disposition of the cultural items described above has not occurred pursuant to 25 U.S.C. 3002 (a) and 43 CFR § 10.6 because [*name of Federal agency*] has not been able to reasonably identify any lineal descendant, Indian tribe, or Native Hawaiian organization entitled to ownership or control of the cultural items within two years of knowing or having reason to know that the cultural items were excavated or discovered, and removed from its Federal land. Under 43 CFR § 10.2 (h)(2)(ii), the items described above are unclaimed cultural items.
6. Pursuant to 43 CFR § 10.7 (c), [*Indian tribe/Native Hawaiian organization requesting transfer*], a party not claiming the cultural items described above under the priority of ownership or control in 43 CFR § 10.6, has requested that [*Federal agency*] transfer these unclaimed cultural items to it. The [*Indian tribe/Native Hawaiian organization requesting transfer*] agrees to accept transfer, and to treat the items according to the laws and customs of the [*Indian tribe/Native Hawaiian organization requesting transfer*].

Representatives of any Indian tribe or Native Hawaiian organization wishing to claim the [*human remains/funerary objects/sacred objects/objects of cultural patrimony*] under the priority of ownership or control in 43 CFR § 10.6 should contact [responsible official], [*Federal agency, Street, City, State, Zip*], telephone (XXX) XXX-XXXX, before [insert date 30 days after second publication]. Transfer of the [*human remains/funerary objects/sacred objects/objects of cultural patrimony*] to the [*Indian tribe/Native Hawaiian organization*] may proceed after that date if no such claimant comes forward.

[*Federal agency*] is responsible for notifying [*consulted Indian tribe(s)/Native Hawaiian organization(s)*] that this notice has been published.

or

Pursuant to 43 CFR § 10.7 (d), the [*Federal agency*] proposes to reinter the unclaimed Native American human remains [and/or] funerary objects described above according to applicable interment law ([*cite to the applicable Federal or State interment law*]).

Representatives of any Indian tribe or Native Hawaiian organization wishing to claim the Native American human remains [and/or] funerary objects under the priority of ownership or control in 43 CFR § 10.6 should contact [*responsible official*], [*Federal agency, Street, City, State, Zip*], telephone (XXX) XXX-XXXX, before [*insert date 30 days after second publication*]. Reinterment of the unclaimed human remains [and/or] funerary objects may proceed after that date if no such claimant comes forward.

[*Federal agency*] is responsible for notifying [*consulted Indian tribe(s)/Native Hawaiian organization(s)*] that this notice has been published.

Vita

Megan Kelley Kleeschulte was born October 28, 1993 in Vernon, New Jersey to David and Darlene Kleeschulte. She is one of four girls, including sisters Jess, Taylor, and Maddie. She was raised within the Vernon Township school system and graduated from Vernon Township High School in 2012. Megan then began her undergraduate degree at Iona College but transferred to Monmouth University after her first semester. She graduated from Monmouth in 2016 Summa Cum Laude with a Bachelor of Arts in Anthropology and minors in Archaeology, Geographic Information Systems, and History.

Megan began her Master of Arts in Anthropology at the University of Tennessee, Knoxville under Dr. Amy Mundorff in 2016. While at UTK she has worked as a graduate teaching assistant for the undergraduate courses General Biology as well as Skills of Biological Investigation. Megan has also worked as the graduate research assistant for Expanding on Total Body Score with the Use of Geographic Systems (GIS), funded by the National Institute of Justice. She has also worked as an active graduate volunteer at the Forensic Anthropology Center (FAC), assisted with short course lectures and hands on activities, and lectured for outreach groups that come to the FAC. Megan has also been an active volunteer at the Archaeological Research Laboratory, assisting Dr. Ellen Lofaro with inventory and curation tasks. Megan will complete her Master of Arts in July of 2018 before continuing on to the Doctoral program at the University of Tennessee in fall 2018.