

ALTERNATIVE RECOMMENDATION, proposed by Ross Frank

NAGPRA — 25 U.S.C. 3001 (2)

"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.

ALTERNATIVE RECOMMENDATION: Kumeyaay cultural affiliation. One member of the committee readily concedes that if the question posed is whether the categories of summarized information in the majority report can establish claim to a continuous link between the present Kumeyaay and a double burial dated approximately 9,000 years B.P., the conclusion inevitably will be that the human remains are culturally unidentifiable at this time due to “[t]he highly imperfect and incomplete record of temporal sequencing of archaeological remains”, and because “[c]ultural identity cannot be proved or disproved on the basis of folklore and oral tradition at a level beyond 2,000 years in the absence of written records”. There is, however, another philosophical approach, advanced by the Kumeyaay Cultural Repatriation Committee claimant and which have not been considered seriously in the majority report, which indicates a different determination.

Kumeyaay use of the area from which the human remains under consideration were disinterred predates European settler society by a millennium, at the very least. Kumeyaay avow a deep sense of personal and communal responsibility for the recovery and proper reburial of all human remains of people who predate European settler society, no matter when or under what circumstances the original interment took place. Their approach towards the dead has been documented in early Spanish accounts of the Kumeyaay as well as in subsequent anthropological literature. For the last twelve years, this cultural imperative has been expressed collectively by the KCRC through appointed repatriation representatives from each of the twelve Kumeyaay tribes in San Diego County. For the purposes of assessing cultural affiliation as required by NAGPRA, this constitutes “a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe ... and an identifiable earlier group”.

Serious consideration of this argument and its ramifications is excluded from the majority report, making an alternative recommendation appear to involve a choice between privileging beliefs of a “present day Indian tribe” over the explanatory power of scientific method, when such a dichotomy may not be necessary or appropriate. The majority report contains summaries of data that are used to challenge the reasonableness, or to infer the unreasonableness, of any posited connection between the present Kumeyaay and the people who were buried at University House. It holds that inconsistencies and apparent contradictions among the types of available evidence make it impossible to determine cultural affiliation at this time. However, no concerted attempt has been made by the committee to bring a coordinated interdisciplinary analysis to bear on the disparate lines of evidence. Such an undertaking might provide alternative explanations of the posited differences between the University House burials and Kumeyaay of the past and present, and would include a Kumeyaay perspective in the resulting scholarly analysis.

The majority recommendation, (1) excludes completely the salience of the Kumeyaay representation of their own system of knowledge, cultural world view, and history offered to the UCSD NAGPRA Working Group during the January meeting of the consultation process and in other NAGPRA claims; and, (2) accords UCSD, the present legal conservator of the human remains in question, continued custody over bones for which it has neither a cultural affiliation, nor any claim based on “a relationship of shared group identity”. If there is another basis for retaining these human remains, it has not been explained, but assumed or inferred, in the majority report. The burials that form the basis for this claim were human beings whose most likely descendants, through both inherited culture and kinship, are the Kumeyaay people represented by the KCRC.