

Bevan

ALAN L. SCHNEIDER  
ATTORNEY AT LAW

1437 S. W. Columbia St., Suite 200  
PORTLAND, OREGON 97201  
Telephone (503) 274-8444  
(Facsimile) (503) 274-8445

1445 Willamette, Suite 9  
P. O. BOX 10552  
EUGENE, OREGON 97440  
(541) 484-5483

August 8, 2000

Ms. Aimee S. Bevan  
U.S. Department of Justice  
Environmental & Natural Resources Div.  
General Litigation Section  
P.O. Box 663  
Washington, D.C. 20044-0663

Re: Bonnicksen et. al. v. U.S.  
Civil No. 96-1481-JE

DEPARTMENT OF JUSTICE  
GENERAL LITIGATION  
SECTION  
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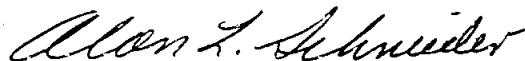
Dear Ms. Bevan:

Enclosed are copies of the following documents:

- (a) affidavit of Dr. Joallyn Archambault dated June 19, 2000
- (b) affidavit of Dr. Clayton C. Denman dated February 25, 2000
- (c) affidavit of Harold K. Lindsay dated July 31, 2000
- (d) affidavit of Dr. Andrei Simic dated March 10, 2000
- (e) affidavit of Allan R. Taylor dated March 21, 2000

Pursuant to the instructions we have previously received from defendants' legal counsel, we are sending these documents to you for inclusion as part of the administrative record relating to defendants' decision making process concerning the Kennewick skeleton. Please forward copies to Dr. McManamon and Lt. Col. Buhen (or his successor).

Very truly yours,



Alan L. Schneider

cc: P. Barran  
R. Donaldson  
C. Hawkinson  
Plaintiffs

ALS/sls

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90-2-4-1858

DOI 08972

1  
2 Alan L. Schneider, OSB No. 68147  
1437 SW Columbia Street, Suite 200  
3 Portland, OR 97201  
Telephone: (503) 274-8444  
4 Facsimile: (503) 274-8445

5 Paula A. Barran, OSB No. 80397  
6 BARRAN LIEBMAN, LLP  
601 SW 2<sup>nd</sup>, Suite 2300  
7 Portland, OR 97204  
Telephone: (503) 228-0500  
8 Facsimile: (503) 274-1212

9 Attorneys for Plaintiff

10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE DISTRICT OF OREGON

13 ROBSON BONNICHSEN, et.al., )  
14 ) USDC No. CV 96-1481 JE  
Plaintiffs, )  
15 ) AFFIDAVIT OF  
v. ) JOALLYN ARCHAMBAULT  
16 )  
17 UNITED STATES OF AMERICA, )  
DEPARTMENT OF THE ARMY, et.al., )  
18 )  
Defendants. )

19 \_\_\_\_\_  
20 STATE OF VIRGINIA )  
)ss.  
21 County Arlington )

22 I, JoAllyn Archambault, being first duly sworn, do depose and state as follows:

23 1. I am the Director of the American Indian Program of the National Museum of Natural  
24 History, the Smithsonian Institution, Washington, D.C. The purpose of the American Indian Program is  
25 to make the resources of the Museum more accessible to Native Americans by facilitating their on-site  
26

PAGE 1 AFFIDAVIT OF JOALLYN ARCHAMBAULT  
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ALAN L. SCHNEIDER  
1437 SW Columbia, #200  
Portland, Oregon 97201  
(503) 274-8444

DOI 08973

1 visits and their off-site access to information from the Museum's personnel and archives. As Director of  
2 the Program, I am in contact with Native American tribal officials and private individuals ranging in age  
3 from teenagers to elders in their 80s.

4 2. My professional qualifications are as follows. I hold a Ph.D. degree in anthropology which I  
5 received from the University of California, Berkeley, California, in 1984. I have been employed by the  
6 Smithsonian Institution since 1986. Prior to joining the Smithsonian, I was a member of the faculty of  
7 the Department of Anthropology, University of Wisconsin, Milwaukee, Wisconsin (1983-86), and the  
8 Director of Ethnic Studies, California College of Arts and Crafts, Oakland, California (1978-83). I am a  
9 cultural anthropologist and have spent my career teaching, conducting research, and administering  
10 programs relating to Native American studies. I have authored or co-authored more than seven  
11 published articles on Native American studies, and approximately 50 papers presented at professional  
12 conferences. In addition to the institutions named above, I have taught classes in Native American  
13 studies at a number of colleges and universities including among others: Pine Ridge Tribal College, Pine  
14 Ridge Reservation, South Dakota; University of California (Berkeley); the University of New Mexico;  
15 John Hopkins University. I helped to organize the first national association for Native American  
16 anthropologists and the Ella Deloria Fellowship Program to provide grants to Native American graduate  
17 students in anthropology.  
18

19 3. I am also an enrolled member of the Standing Rock Sioux Tribe of North and South Dakota.  
20 My father was Sioux and my mother was Creek. Both of them were raised on their respective tribal  
21 reservations. I am personally familiar with Sioux religious and cultural traditions, and I have great pride  
22 in my Indian heritage. I have personally participated in all of the major traditional ceremonies  
23 appropriate for a Sioux woman of my age and position in life, including a vision quest and the Sun  
24 Dance. I have also participated in the traditional ceremonies of other tribes. All of my important family  
25

1 and personal life events are conducted within the context of Sioux traditions.

2 4. As a cultural anthropologist and an American Indian, I believe that the Kennewick skeleton  
3 should be made available for study so we can learn as much from it as possible. The past is important  
4 because it can help to teach us about who we are and how we fit into the world. Kennewick Man is part  
5 of the human past, and we have an obligation to preserve as much knowledge of the human past as we  
6 can. We owe this obligation not only to ourselves, but more importantly to future generations, both  
7 Indian and non-Indian. They will judge us harshly if we needlessly allow part of their heritage to be lost.

8 5. I respect the traditional religious and cultural beliefs of my tribe and those of other tribes.  
9 However, respect does not mean that we must accept all of those beliefs as invariably accurate  
10 statements of historic or scientific fact. To do so would be contrary to commonsense and what we know  
11 about the world from other sources of knowledge. For example, origin stories (i.e., stories about how the  
12 world and/or people were created) vary widely from tribe to tribe. Depending upon the tribe involved,  
13 creation may be the work of Coyote, a bird, a first man, a turtle, and so on. Even within the same tribe,  
14 traditional beliefs can include multiple creation stories. For example, three different creation stories  
15 were accepted in my father's tribe when I was a child. Moreover, since oral traditions are transmitted  
16 verbally and stored by memory, the same origin story can be told or interpreted differently by different  
17 speakers. Ordinary logic tells us that not all of these different stories or versions can be true, at least in a  
18 factual sense. And we should not expect them to be. The purpose of origin stories is to provide  
19 metaphysical, rather than historic or scientific, explanations.  
20

21 6. Origin stories can occasionally contain elements that may reflect an actual historic event or  
22 process. For example, Hopi oral traditions claim that one part of their people came to the Arizona/New  
23 Mexico region from the west. This story may well be true, at least in a general way, since other lines of  
24 evidence indicate that the Hopi migrated to their tribal lands from points to the west and northwest. As a  
25

1 general rule, however, Indian origin stories should be viewed the same as the creation stories of other  
2 cultures. They are metaphysical statements, not historic or scientific treatises. Like other forms of great  
3 literature, they should be interpreted symbolically rather than literally.

4 7. Claims are frequently made today that all burial sites are "sacred" to Indians and that  
5 scientific study of human remains is contrary to traditional Indian beliefs. Such claims are a gross  
6 simplification and over-characterization of Indian traditions and attitudes. For one thing, there was no  
7 uniform traditional belief on these questions. Some tribes were reluctant to disturb burial sites or handle  
8 human remains, often because of a fear that tampering with the dead might result in bad fortune for the  
9 living. For other tribes, all connection between a person and his or her body ended on death, and the  
10 lifeless body had no special significance. Most tribes had beliefs somewhere in the middle. Burial sites  
11 and remains were important if they belonged to someone famous, or to a parent, grandparent or other  
12 known relative, or were sites still in active use. Burial sites and human remains that were not considered  
13 connected to a particular group generally were not revered or venerated in any way. This was  
14 particularly true when the burial sites were hundreds or thousands of years old and any association  
15 between living people and the deceased had terminated in the memories of the living.  
16

17 8. The concepts of ancestor worship and opposition to science advocated by some Native  
18 Americans are largely the creation of modern empowerment movements. As a general rule, under  
19 traditional Indian belief systems, one's immediate ancestors were respected since they were known  
20 individuals. More remote ancestors, however, ultimately became a general, tentative concept devoid of  
21 specific personalities. Unlike other parts of the world (Japan, China and some parts of Africa, for  
22 example), American Indians did not keep detailed genealogies going back into the past for hundreds of  
23 years which is a practice usually found in societies with ancestor worship traditions. As noted above,  
24 there was a range of attitudes toward the dead and their remains. Some tribes viewed the dead, even  
25

1 recently deceased, beloved relatives as potentially negative, troubling spirits who were malevolent  
2 toward the living. These tribes avoided human remains, and mortuary rites were considered dangerous to  
3 the living. Other tribes thought the dead joined other spirits who could be persuaded through religious  
4 rites to bring needed items to the living such as rain. For many tribes the concepts of the afterworld and  
5 the existence of the deceased in that world were obscure in contrast to the Judeo Christian tradition.  
6 Certainly there was no belief that all human remains from an earlier time belonged to an ancestral group  
7 or were related in any way to a group that may have found them accidentally.

8  
9 9. Likewise traditional belief systems were not opposed to science or technology. Traditional  
10 Indian societies were as willing as any other to accept new products and technologies deemed useful and  
11 desirable. Nor were they opposed to archaeology or the study of burial sites and human remains (except  
12 those associated with their own present communities). In many cases, Indians pointed out promising  
13 sites to archaeologists and some even participated as paid staff in the actual excavations.

14 10. The Kennewick skeleton is part of the heritage of all American Indians, and its study should  
15 not be blocked because of the wishes of one faction. Geographic proximity to the location of the  
16 skeleton's discovery does not give those tribes who happen to live there now a moral right to dictate  
17 what all other Indians can learn from this important new discovery. If Kennewick Man has any living  
18 descendants, they could reside anywhere in the United States (or outside it as well). To deny study of his  
19 skeleton is to deny them the opportunity to learn the truth about someone who may have been one of  
20 their ancestors. For all we know, he could be one of my ancestors. Who has the right to tell me what I  
21 can and cannot learn about my own past?

22  
23 11. The importance of the Kennewick skeleton, however, transcends any questions of biological  
24 descent. It is very possible, if not probable, that Kennewick Man has no living descendants. And even if  
25 he does, the few genes that his descendants would have received from him after 460 or more generations

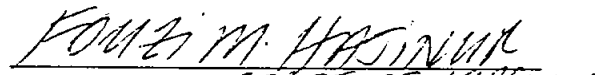
1 would be minuscule in terms of their overall genetic inheritance. Their strongest common bond with  
2 Kennewick Man would be the same common human inheritance that is shared by all people. At some  
3 point, and Kennewick Man has surely passed it, ancient skeletons become the common heritage of all  
4 people. Each of us has an equal right to learn what these ancestors can tell us. One of the most  
5 important things they can teach us is that the differences between people are only skin and hair deep.  
6 Beneath those superficial differences, we are all cousins and we all share a common ancestry. The  
7 lessons to be learned from Kennewick Man should unite us, rather than divide us.

8  
9 12. The anti-science and anti-intellectual arguments espoused by some Native American  
10 religious and political factions do not represent the views of all, or even a majority of, American Indians.  
11 Most American Indians are as interested about the world and the past as other people. They want to  
12 know the truth about the past, and they should be entitled to do so. They, and each new generation of  
13 Indians after them, have as much right as anyone else to be exposed to different ideas and to make up  
14 their own minds about what they believe or do not believe.

15 DATED this 19 day of June, 2000.

16  
17   
18 Jo Allyn Archambault

19 SUBSCRIBED and SWORN to before me this 19 day of June, 2000.

20   
21 Notary Public for STATE OF VIRGINIA  
22 My Commission Expires: 01/31/2003

1 Alan L. Schneider, OSB No. 68147  
1437 SW Columbia Street, Suite 200  
2 Portland, OR 97201  
Telephone: (503) 274-8444  
3 Facsimile: (503) 274-8445

4 Paula A. Barran, OSB No. 80397  
BARRAN LIEBMAN, LLP  
5 520 SW Yamhill Street, Suite 600  
Portland, OR 97204  
6 Telephone: (503) 228-0500  
7 Facsimile: (503) 274-1212

8 Attorneys for Plaintiff

9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE DISTRICT OF OREGON

12 ROBSON BONNICHSEN, et.al., )  
13 ) USDC No. CV 96-1481 JE  
Plaintiffs, )  
14 v. ) AFFIDAVIT OF  
CLAYTON C. DENMAN  
15 )  
16 UNITED STATES OF AMERICA, )  
DEPARTMENT OF THE ARMY, et.al., )  
17 Defendants. )

18  
19 STATE OF WASHINGTON )  
)ss.  
20 County of Kittitas )

21 I, Clayton C. Denman, being first duly sworn, do depose and state as follows:

22 1. I hold a Ph.D degree in anthropology which I received from the University of  
23 California, Berkeley, California, in 1968. From 1964 to 1996, I taught anthropology at Central  
24 Washington University in Ellensburg, Washington. I have engaged in numerous archaeological  
25 research projects in the Pacific Northwest and in adjacent areas, and I am familiar with the cultural



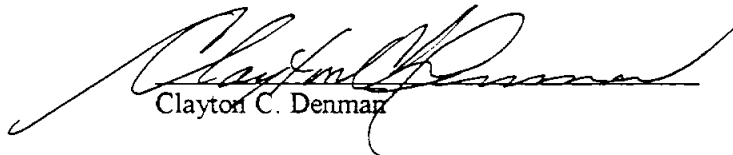
practices and beliefs of the Native American groups that reside in the area where the Kennewick  
1 Man skeleton was found. I retired from full time teaching in 1996.

2  
3 2. In 1957, before I began teaching, I was the field foreman for archaeological  
4 recovery efforts undertaken by the Grant County Public Utility District in connection with  
5 construction of the Priest Rapids Dam on the Columbia River. One day we discovered some  
6 human skeletal remains, including two crania, at a site near the river. I contacted Mr. Frank Buck,  
7 who at that time was the chief of the Wanapum Band of Native Americans, and asked him to come  
8 view the remains. Mr. Buck often came to watch our archaeological investigations, and seemed  
9 very interested in what we were doing.

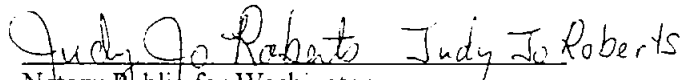
10 3. After Mr. Buck had seen the remains, I asked him if they were from his people.  
11 He told me that they were not Indian, and must be from the Stick People. He said that the Stick  
12 People came before his people, and that they were said by some to be the ones who made the  
13 petroglyphs. Mr. Buck told me that he did not want to take the remains for burial in the local  
14 Native American cemetery. He suggested that they be sent to a museum.

15 4. It is my understanding that Mr. Buck is now deceased.

16 DATED this 25<sup>th</sup> day of February, 2000.

17  
18   
19 Clayton C. Denman

20 SUBSCRIBED and SWORN to before me this 25<sup>th</sup> day of February, 2000.

21  
22   
23 Notary Public for Washington  
24 My Commission Expires: 2-8-2001

1  
2 Alan L. Schneider, OSB No. 68147  
1437 SW Columbia Street, Suite 200  
3 Portland, OR 97201  
Telephone: (503) 274-8444  
4 Facsimile: (503) 274-8445

5 Paula A. Barran, OSB No. 80397  
6 BARRAN LIEBMAN LLP  
601 SW 2<sup>nd</sup>, Suite 2300  
7 Portland, OR 97204  
Telephone: (503) 228-0500  
8 Facsimile: (503) 274-1212

9 Attorneys for Plaintiff

10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE DISTRICT OF OREGON

13 ROBSON BONNICHSEN, et.al., )  
14 ) USDC No. CV 96-1481 JE  
Plaintiffs, )  
15 ) AFFIDAVIT OF  
v. ) HAROLD K. LINDSAY  
16 )  
17 UNITED STATES OF AMERICA, )  
DEPARTMENT OF THE ARMY, et.al., )  
18 )  
Defendants. )

19  
20 STATE OF CALIFORNIA )  
)ss.  
21 County of LOS ANGELES )

22 I, Harold K. Lindsay, having been duly sworn, do depose and state as follows:

23 1. I am 65 years old, and semi-retired. I reside in Hollywood, California.

24 2. I am a direct descendant of Old Chief Joseph of the Wallowa (or non-treaty) Nez

25 Perce. They are called the non-treaty Nez Perce because, unlike other tribes, they never signed a

26 PAGE 1 AFFIDAVIT OF HAROLD K. LINDSAY

1 treaty with the United States government giving up their right to live on their ancestral lands in the  
2 Wallowa Valley of Oregon. When war with the government came in 1877, they attempted to flee to  
3 Canada. After a 1700 mile campaign and more than a dozen battles with Army soldiers, they  
4 eventually surrendered in northern Montana approximately 40 miles from the Canadian border.

5 3. Old Chief Joseph was the son of a Umatilla chief called Allokut and his Nez Perce  
6 wife. One of Old Chief Joseph's sons (and my great, great uncle) was Young Chief Joseph who led  
7 the Nez Perce in their epic campaign to avoid removal to a government reservation. It was Young  
8 Chief Joseph who uttered the famous statement "I will fight no more forever" when he and the rest of  
9 his people were eventually forced to surrender to government soldiers.

10 4. I am descended from Old Chief Joseph through his daughter (and my great  
11 grandmother) Julie Whitewolf who was born at the Whitman Mission, Washington in 1854. She died  
12 in 1944 and is buried in Tonesket, Washington. It is reported that Julia Dent Grant, the wife of  
13 future U.S. President Ulysses S. Grant, was the namesake of my great grandmother. I remember my  
14 great grandmother from family visits when I was a child. She was an exceptional person. I am proud  
15 to be her descendant and a descendant of her people.

16 5. I do not agree with those individuals who say that the Kennewick Man skeleton  
17 should not be studied by scientists. The people who say that do not represent my views, and they do  
18 not have the right to speak for me. We cannot know who Kennewick Man was and what part he  
19 played in the human past unless scientists are allowed to study his skeleton and discovery site. If  
20 Kennewick Man is related to modern Indians, he is a part of my heritage and I want to learn more  
21 about him. I respect the right of other people to choose not to learn about their heritage if that is  
22 their wish. By the same token, however, they should respect my right to learn more about my  
23 heritage if that is my wish (and it is).

1           6.       I do not believe that my great grandmother would have been opposed to study of the  
2 Kennewick Man skeleton. I never heard her or any of the other older tribal members express any  
3 beliefs that all old human bones were sacred or that they should be buried immediately upon  
4 discovery. My great grandmother and her generation accepted the fact that we all must die, and they  
5 did not dwell on it. Their concerns were not with the dead, but with the living – on the caring for  
6 their loved ones, on being kind and compassionate, and on sharing what they knew. They were proud  
7 of their heritage, and they wanted others (both Indians and non-Indians) to know about it.

8  
9           7.       My great grandmother grew up at a time when Indians still owned most of the  
10 Intermountain Northwest. She remembered what it was like to live the traditional ways before white  
11 settlers had fenced everything in. Until she died, she retained many of the old traditional beliefs,  
12 attitudes and ways of doing things. At the same time, however, she and the other survivors of her  
13 generation were realists. They knew that while change might be difficult, it could not be prevented.  
14 They also knew that change could be good. They were prepared to accept new things that could  
15 improve their lives and the lives of other Indians.

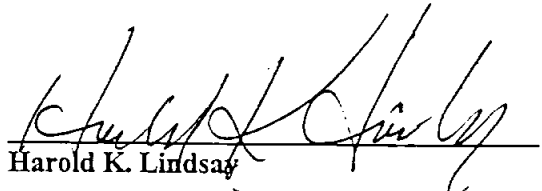
16           8.       I think it would be a great loss to all people if the remains of Kennewick Man were to  
17 be reburied without complete scientific study. There is much that can be learned from study of his  
18 skeleton, and what is learned could benefit us in many ways. For example, diabetes and arthritis are  
19 serious problems for modern Native Americans. Study of Kennewick Man might provide  
20 information that could help to overcome these or other health problems. And even if it doesn't, the  
21 skeleton should still be studied. Anything we can learn about the past is too precious to lose.

22  
23           9.       I do not think it is disrespectful to study ancient skeletons like Kennewick Man. To  
24 study something is to acknowledge that it is important and that we should be humble enough to try to  
25 learn from it. To refuse to learn what we can from Kennewick Man is the same as saying that he and  
26


1 his people did not matter, and that they should be forgotten. In my opinion, that is a form of  
2 disrespect.

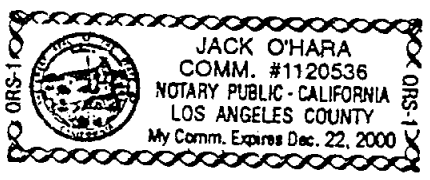
3 10. I want only what is the best for all Americans, both Indians and non-Indians. As we  
4 enter a new century, we will need all of the knowledge, understanding and compassion we can muster.  
5 Scientific study of the past will help us to face the new challenges that will confront humankind. We  
6 must learn from the past, but look to the future. The past is a nice place to visit, but we cannot live  
7 there.

8 DATED this 31 day of July, 2000.

9  
10  
11   
Harold K. Lindsay

12 SUBSCRIBED and SWORN to before me this 31<sup>st</sup> day of July, 2000.

13  
14   
15 Notary Public for California  
16 My Commission Expires: Dec. 22, 2000



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601 SW 2<sup>nd</sup>, Suite 2300  
Portland, OR 97204  
Telephone: (503) 228-0500  
Facsimile: (503) 274-1212

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ROBSON BONNICHSEN, et.al., )  
 ) USDC No. CV 96-1481 JE  
 )  
 ) Plaintiffs, )  
 )  
 ) AFFIDAVIT OF  
 )  
 ) v. ) ANDREI SIMIC'  
 )  
 )  
 ) UNITED STATES OF AMERICA, )  
 ) DEPARTMENT OF THE ARMY, et.al., )  
 )  
 )  
 ) Defendants. )

STATE OF Arizona )  
 )ss.  
County Maricopa )

I, Andrei Simic', being first duly sworn, do depose and state as follows:

1. I am a professor of anthropology in the Department of Anthropology, University of Southern California ("USC"), Los Angeles, California. I specialize in ethnic studies, including the role played by folklore and oral tradition in the formation and development of the cultural identity of ethnic

1 groups.

2           2. My professional qualifications are as follows. I have been a member of the faculty of  
3 the USC Department of Anthropology since 1971. I hold a Ph.D. in Social Anthropology (awarded  
4 1970) from the University of California, Berkeley, California, from which I also received my M.A. and  
5 B.A. degrees in 1969 and 1954, respectively. Over the course of my career, I have authored, co-authored  
6 or co-edited five books and monographs on anthropological topics, and more than 55 articles and book  
7 chapters. I have presented papers at approximately 27 professional conferences, and I have produced or  
8 consulted on 17 films and video productions. In addition to USC, I have taught anthropology courses at:  
9 U.C. Berkeley; California State University, Hayward; John F. Kennedy University; the Wrih Institute  
10 (both in Berkeley and Los Angeles). Although my professional research has focused principally on East  
11 European ethnic studies, I am familiar with Native American folklore and oral tradition. Among other  
12 things, I have taught classes on New World indigenous peoples and have studied their cultural practices  
13 and beliefs.

14  
15           3. I have grave reservations about claims that folklore and oral tradition can be used to establish  
16 a cultural relationship between a present-day ethnic group and a human skeleton as old as the Kennewick  
17 Man skeleton. It is one thing to use folklore and oral tradition as a means of ascertaining or  
18 demonstrating what the members of an ethnic group believe (or once believed) about the world and their  
19 collective past. It is another thing entirely to use folklore and oral tradition as proof of the truth of what  
20 the group believes. As a general rule, folklore and oral tradition are not stable enough to be taken as  
21 inherently accurate witnesses of events from the remote past.

22  
23           4. It is important in this regard to keep in mind the functions served by folklore and oral  
24 tradition. In some cases, a story or other oral account may be intended to transmit factual information  
25 about the world or human events. In other cases, however, a story's function may have little or nothing  
26

1 to do with the accurate transmission of factual information. For example, the function of a story may be  
2 to articulate norms of behavior, to provide metaphysical or religious answers concerning how the world  
3 and humans originated, or to establish ethnic boundaries distinguishing “us” from “them”. In such  
4 situations, it is social, cultural, economic and/or political considerations not factual accuracy that  
5 determines the content of the story or account.

6 5. The functions of folklore and oral tradition are best illustrated by considering the differences  
7 between myth, legend and oral history.

8 A. Myths are accounts of significant events that are said to have occurred during an ethnic  
9 group’s formative years or that make reference to overarching historical or cultural themes. Myths often  
10 take place in supernatural or other-worldly settings, or they may involved actions in this world by  
11 supernatural or superhuman actors. The principal function of myths is to underscore important values,  
12 ideas, and modes of behavior of a group. Myths in most cases are largely or completely lacking in any  
13 provable empirical foundation.

14 B. Legends can be distinguished from myths in that they most often focus on the ostensible  
15 deeds of heroes or other individuals who frequently are said to be “known” by name. Legends serve  
16 many of the same functions as myths, and like myths they may incorporate supernatural or magical  
17 elements. The degree to which legends reflect actual historical events and individuals as opposed to  
18 purely fictional elements will vary from story to story and culture to culture. As a general rule, unwritten  
19 legends that refer to events more than 1,000 years in the past contain little, if any, historical truth.

20 C. Oral histories are narratives that refer to events from living memory or the near past. They  
21 may consist of narratives based upon the experience and memories of a living individual, or they may  
22 involve more remote events such as something that happened to a grandparent or to the grandparent of a  
23 grandparent. Oral histories can vary in their factual accuracy. The creators of oral histories can be  
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1 mistaken in their perceptions or memories, they can deliberately embellish or misrepresent events, and  
2 errors can occur in the transmission of stories. As a general rule, oral histories tend to become less  
3 accurate the farther they are removed in time and location from the event being represented.

4 6. One special form of myths is origin stories. These stories provide explanations of how the  
5 world was created and how people, or particular groups of people, originated. Like other mythical  
6 stories, origin stories commonly incorporate supernatural, magical or superhuman elements. Origin  
7 stories play a special role in helping to define a group's claim to its "ancestral" territory as well as  
8 affirming the group's uniqueness, autonomy and quasi-sacred character. Origin stories can vary widely  
9 between groups, and sometimes even within the same group. For example, the Northern Paiute of the  
10 Great Basin are reported to have had a creation story that involved a supernatural creature called the  
11 Sagehen. According to this story, modern Native Americans appeared in the region (not far from where  
12 the Kennewick skeleton was found) only after all earlier people were destroyed by water. The Hopi of  
13 the American Southwest, on the other hand, have a creation story that involves their emergence from the  
14 underworld accompanied by friendly "kachinas" who helped them with rain dances when crops were  
15 planted.  
16

17 7. Folklore and oral tradition are not fixed, immutable elements of an ethnic group's culture.  
18 Change in both content and meaning is the general rule rather than the exception. Change can and often  
19 does occur with each new generation of group members, and can include the addition of new stories,  
20 deletions, substitutions and reinterpretation of meaning. Some of the processes that cause changes to  
21 folklore and oral tradition include the following:  
22

23 A. Folklore and oral tradition represent an ethnic group's response to the conditions confronting  
24 the group. As conditions within and outside the group change, its folklore and oral tradition will change  
25 to adjust to the new conditions that must be addressed. In some cases, change (both in prevailing  
26

1 conditions and in folklore and oral tradition) will be a slow, incremental process. In other cases, sharp  
2 fundamental ruptures may occur in a group's social, political and cultural fabric, and the resulting  
3 changes in its folklore and oral traditions may be dramatic. Depending on the nature and extent of socio-  
4 cultural change, myths may be totally abandoned in favor of new stories which appear to be more  
5 responsive to current conditions. A classic example of this phenomenon is provided by revitalization  
6 movements (see Paragraph 7 below).

7 B. Folklore and oral tradition can also change because of unintended errors in transmission.  
8 Human memory is not perfect, and even accounts of very recent events witnessed or experienced by an  
9 individual are highly suspect in terms of accuracy of detail. For example, eyewitnesses to such events as  
10 auto accidents, crimes, and the like often disagree as to what they recall (or think they recall). In  
11 addition, good story-telling almost always involves hyperbole and embellishment employed to heighten  
12 the dramatic appeal and/or to enhance the reputation of the narrator. Moreover, we know that oral  
13 communications, especially if they are long and complex, are seldom, if ever, retold in exactly the same  
14 way. Each person through whom a message passes acts as a kind of filter or refracting lens that can  
15 cause details to be lost or changed.

16  
17 8. Revitalization movements provide a vivid illustration of how an ethnic group's beliefs can  
18 change in response to new conditions. Revitalization movements have often arisen in situations in which  
19 so-called traditional peoples have come into contact with, or have been dominated by, representatives of  
20 more powerful and technologically advanced societies. Revitalization movements represent conscious  
21 (or unconscious) attempts to rationalize perceived unfavorable conditions and to create new cultural  
22 syntheses responsive to situations in which old values, concepts, and forms of behavior have proven  
23 inadequate. Revitalization movements typically involve supernatural and mythical components, and  
24 often promise either the restoration of an imagined "golden age" or the creation of a glorious "new  
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1 order.” An example of this phenomenon is the Ghost Dance which spread among Native Americans in  
2 the late 19<sup>th</sup> century. It was believed that the Great Spirit had foretold that a tremendous earthquake  
3 would destroy Whites and Native Americans alike, but that the Native Americans (then referred to as  
4 “Indians”) would be resurrected in three days to live thereafter in a state of plenty. For a time, this  
5 prophecy was widely believed by Native Americans but is no longer a generally accepted belief.

6 9. Similar processes of revitalization now appear to be at work in many areas of Native  
7 American culture. One example is the modern concept of a Pan-Indian brotherhood that discounts the  
8 historic divisions and animosities that once separated tribes. Other changes in Native American origin  
9 myths, legends and oral histories can be expected to result from the changing social, economic and  
10 political conditions that have confronted tribal organizations over the past several centuries.

11 10. Because folklore and oral tradition are subject to human control and change, their factual  
12 accuracy cannot be taken for granted. In some instances they may contain elements of historical truth,  
13 but critical analysis is needed to separate fact from fiction. Some of the considerations that should be  
14 taken into account in this regard include the following:

15 A. Purpose. As already noted above, folklore and oral tradition can serve a variety of different  
16 functions, and these functions can affect the factual accuracy of a story or account. Myths, origin  
17 accounts and legends generally have little, if any, basis in empirical facts.

18 B. Age. Due to the processes of cultural change, folklore and oral tradition tend to lose factual  
19 accuracy with the passage of time. Factual accuracy is rare in oral accounts older than 1000 years (and  
20 in many younger accounts as well).

21 C. External Evidence. Folklore and oral tradition should be compared to other lines of evidence  
22 relating to the event or issue in question. Oral accounts that are contrary to what is known from other  
23 sources should be discounted.  
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1 D. Improbables. Components of folklore and oral tradition that are so fantastic and improbable  
2 as to be entirely outside the realm of reality as it is generally understood must be viewed as articles of  
3 faith or interpreted symbolically. Most myths, origin accounts and legends fall within this category.

4 E. Method of Transmission. Some oral narratives, such as many Norse sagas and Polynesian  
5 chants made use of various mnemonic devices to improve recall and accuracy of transmission. When  
6 such devices were used, an oral narrative could retain its original structure and internal content for a long  
7 period of time. Narratives that did not employ systematic memory aids of this kind were subject to more  
8 rapid change, and could quickly lose whatever factual accuracy they once possessed.

9 F. Internal Consistency. Oral narratives should be analyzed for internal consistency and  
10 compared to the ethnic group's other oral traditions. Components that are internally inconsistent or that  
11 deviate from other oral traditions may represent transmission errors, conflicting traditions or modern  
12 embellishments.

13 G. Cultural Consistency. Oral narratives may contain components that are not consistent with  
14 the level of technology or cultural practices of the period in question. For example, a narrative may  
15 contain references to years or dates (e.g., we were created here 10,000 years ago) that were beyond the  
16 capabilities of a preliterate culture to count or record. For example, the counting systems of many  
17 preliterate groups consisted only of one, two and many. Likewise, narratives may contain references to  
18 cultural or scientific concepts (e.g., the evolution of species) that could not have been known by a  
19 preliterate hunter-gatherer society. Such components almost always reflect recent embellishments.

20 H. Prior Accounts. Oral narratives should be compared to any earlier accounts of the same  
21 narratives that may have been recorded by ethnographers, missionaries, travelers, etc. Inconsistencies  
22 between modern versions and the earlier accounts should be examined carefully. In many cases, they  
23 represent recent alterations that do not accurately reflect the group's original traditions.

1 I. Source of Account. Consideration should be given to the background of the individual telling  
2 the oral narrative. From whom did the teller learn the narrative being told? What kind of training in the  
3 group's oral traditions did the teller receive? Is he or she fluent in the native language? Does he or she  
4 know the rituals associated with the group's oral traditions? Narratives obtained from individuals who  
5 lack the appropriate qualifications may not be authentic or accurate.

6 11. Because of the central importance of folklore and oral tradition to an ethnic group's culture  
7 and identity, it is highly unlikely that any modern Native American tribe can have a "shared group  
8 identity" with a population that lived 9,200 years ago. The folklore and oral traditions of an ethnic group  
9 express the unique cultural identity of that group. They represent how the group views the world and  
10 itself, and the group's key values and ideology, cherished norms of behavior, social solidarity and/or  
11 group aspirations. The folklore and oral traditions of a group that lived 9,200 years ago will inevitably  
12 be very different from those of any group living today. There is no documented case of any culture that  
13 has survived over a period of 9,200 years. It is so unlikely as to appear impossible due to the numerous  
14 forces engendering culture change among all humans. Even urbanized, literate societies have not  
15 endured in unchanging configurations. For example, the Greeks of today are the carriers of a vastly  
16 different culture from that of the Greeks of the Classic period some 2500 years ago, and what has been  
17 preserved is due largely to the presence of a literate tradition. Among other things, modern Greek  
18 religion stems not from the ancient pagan traditions but from later Byzantine Christian beliefs. In  
19 addition, the language of classical Greece is so different it is not easily understood by modern Greeks.

20 12. The processes of cultural change are likely to be even more rapid and dramatic for  
21 preliterate hunter-gatherer societies since they do not have written records to help stabilize their language  
22 and customs. Over a span of 9,200 years, a hunter-gatherer society will cycle through at least 460  
23 generations assuming its female members do not have their first child until the age of twenty (in many  
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1 cases the actual average age of first conception may have been as early as thirteen or fourteen). The  
2 passage of that many generations would inevitably result in sweeping changes to the group's culture.  
3 The language spoken by its modern descendants, if there are any, would be so changed as to be  
4 unrecognizable by the ancestral populations. The same would be true for the group's folklore and oral  
5 traditions. Since individuals seldom if ever replicate an oral message exactly, it is hardly plausible that a  
6 myth or oral narrative would survive in any recognizable form after 460 generations.

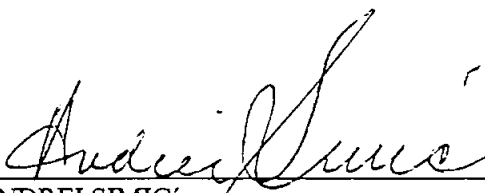
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8 13. Another impediment to cultural continuity over the span of 9,200 years is the probable lack  
9 of long-term geographic stability of New World prehistoric native peoples. It is now beginning to appear  
10 that there were significant migrations into the Americas beginning at least 12,000 years ago, and possibly  
11 much earlier as well. These movements appear to have occurred in waves, and the various waves may  
12 have differed from one another in terms of the biological, linguistic and cultural characteristics of their  
13 constituent populations. Significant cultural disruptions and changes are likely to have occurred  
14 whenever the members of these different waves came into contact with one another. Population  
15 movements from one geographic region to another did not end with the initial colonization of the New  
16 World, but rather continued throughout prehistory. For example, there is archaeological evidence  
17 indicating significant population movements in the Pacific Northwest over the past 7,000 years.  
18 Movements of native peoples in the United States were particularly pronounced following European  
19 contact, and continue even today as witnessed by the ongoing dispute between Hopi and Navaho over  
20 territory in the Southwest.

21  
22 14. In addition, major cultural changes occurred due to the introduction of European diseases to  
23 which Native Americans had no natural immunities. The mortality rates stemming from these diseases  
24 were so high that many Native American groups were reduced in size by 50% or more, and in some cases  
25 entire populations succumbed. These demographic shocks were so pronounced that few indigenous  
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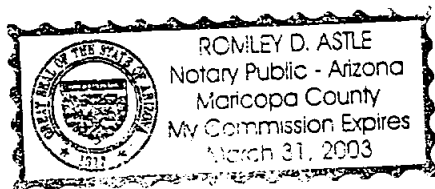
1 cultural practices were left unaffected.

2 15. In summary, it is highly unlikely that contemporary Native American tribes can trace any  
3 direct cultural or social continuity to a population that lived 9,200 years ago. No culture has been known  
4 to have remained static for that period of time. To think that it occurred in the case of the Kennewick  
5 skeleton defies logic and human nature.

6 DATED this 10 day of March, 2000.

7  
8   
9 ANDREI SIMIC

10 SUBSCRIBED and SWORN to before me this 10 day of March, 2000.



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Notary Public for ARIZONA  
My Commission Expires: March 31, 2003

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Alan L. Schneider, OSB No. 68147  
1437 SW Columbia Street, Suite 200  
Portland, OR 97201  
Telephone: (503) 274-8444  
Facsimile: (503) 274-8445

Paula A. Barran, OSB No. 80397  
BARRAN LIEBMAN, LLP  
601 SW 2<sup>nd</sup>, Suite 2300  
Portland, OR 97204  
Telephone: (503) 228-0500  
Facsimile: (503) 274-1212

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ROBSON BONNICHSEN, et.al.,	)	
	)	USDC No. CV 96-1481 JE
Plaintiffs,	)	
	)	AFFIDAVIT OF
v.	)	ALLAN R. TAYLOR
	)	
UNITED STATES OF AMERICA,	)	
DEPARTMENT OF THE ARMY, et.al.,	)	
	)	
Defendants.	)	

STATE OF COLORADO )  
)ss.  
County Boulder )

I, Allan R. Taylor, being first duly sworn, do depose and state as follows:

1. I am a professor emeritus of linguistics, Department of Linguistics, University of Colorado, Boulder, Colorado. I have devoted more than 35 years of my life to the study of human languages and the part they play in the cultural systems of their users.



1           2. My professional qualifications are as follows. I hold a Ph.D. degree in linguistics (awarded:  
2 1969) from the University of California, Berkeley, California. I have been a member of the faculty of  
3 the University of Colorado since 1964, initially in the Department of Slavic Languages (1964 to 1970)  
4 and later in the Department of Linguistics (1970 to present). My area of specialization in graduate  
5 school was Native American languages and linguistics, and this continued to be my primary research  
6 area throughout my academic career. I retired from full-time teaching in 1993. I am currently pursuing a  
7 master's degree in anthropology at the University of Colorado. Over the course of my career, I have  
8 authored or co-authored three books on topics relating to linguistics, more than 25 articles and book  
9 chapters, and approximately 12 papers that were presented at professional conferences. As a result of my  
10 research and studies, I am familiar with the processes involved in the evolution of languages and with  
11 what languages can (and cannot) tell us about the relationships between different past and present human  
12 populations.  
13

14           3. Linguistics can tell us nothing about the cultural affiliation of the Kennewick Man skeleton.  
15 Since dead men cannot speak and since the language which he spoke is itself long since extinct, either  
16 through evolution into another speech form, or because of outright language death, it is impossible to  
17 know what language he spoke. The only thing definitely known about Kennewick Man in a cultural  
18 sense comes from the projectile point embedded in his hip. This artifact can be localized in place and  
19 time, but it can not be attributed to a particular social or linguistic group since the specific identity of  
20 the peoples of that time and place is unknown. Because this connection is missing, even if we knew  
21 where the point originated (i.e., whether from his own people or another group), the language or  
22 languages spoken by the makers of these early projectile points is not and cannot be known.  
23 Consequently, we have no linguistic way to link the skeleton to any language in use 9,200 years ago.  
24 It is also impossible linguistically to connect Kennewick man to any language spoken today, since we  
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26

1 do not know which remote form of language he spoke as his mother tongue, and how such a putative  
2 language relates (if at all) to Native American languages currently spoken.

3 4. Nonetheless, linguistics can tell us some things about how Kennewick Man may, or may  
4 not, connect to the modern world, for he was a human being and he presumably spoke a human  
5 language. For one thing, even though we do not know what language he spoke, we can be certain that  
6 it would not be intelligible to anyone living today. All cultures and the different components of culture  
7 change over time, and this includes language. Languages constantly change and adapt in response to  
8 the needs and preferences of their users. We know this from study of the records of languages still  
9 spoken in many parts of the world, e.g. Latin, Greek, Persian, Tamil, and Chinese. Some of the  
10 processes affecting language change including the following:

11 A. Because it has to be learned anew by each generation, language undergoes inevitable  
12 changes in the learning process between individuals and from one generation to the next. This is a  
13 general cognitive process involving learning of all kinds. Such changes may include the addition (or  
14 loss) of words and expressions, variations in meaning, and subtle differences in pronunciation.  
15 Intergenerational changes may not be noticeable between a parent and a child, or even between a  
16 grandparent and a grandchild, but after 10 or 20 generations, they are both noticeable and pervasive.  
17 After 300 or 400 generations, the differences can be expected to be massive, to the point that the  
18 original language will now be a different language, or even a group of different related languages.

19 B. Language can also change as a result of contact with other groups speaking different  
20 languages. Changes resulting from such intergroup contact can be rapid and extensive. In some cases,  
21 the result can be the complete loss of one group's native language. A classic example of such an  
22 outcome is provided by the Pygmies of equatorial Africa who are thought to have once inhabited a large  
23 part of the continent. Due to the expansion of Bantu speaking agriculturists over the last 5,000 years, the  
24 part of the continent. Due to the expansion of Bantu speaking agriculturists over the last 5,000 years, the  
25 part of the continent. Due to the expansion of Bantu speaking agriculturists over the last 5,000 years, the  
26 part of the continent.

1 Pygmies are now confined to a few isolated enclaves in the Ituri rainforest of Zaire and elsewhere. None  
2 of the survivors speak or even remember the ancestral Pygmy language(s). Instead, they all speak the  
3 Bantu languages of their dominant neighbors. Even our own language, English, is an example of a  
4 language massively influenced by neighboring languages. The lexicon of English includes an enormous  
5 Romance component, over 50%, mostly from French but also much from Latin, which has entered the  
6 language since approximately 1000 years ago. Much of the synonymy of English, (e.g. freedom and  
7 liberty), and much of the technical and intellectual vocabulary (e.g. ecclesiastical and prestidigitation),  
8 are the result of its dual parentage, Romance and Germanic.  
9

10 C. Geographic isolation between groups can act to concentrate and perpetuate spontaneous and  
11 other language changes that occur differentially in the geographically separated groups. If the isolation  
12 continues for a sufficient period of time, separate languages will usually develop. This is what happened  
13 as the Germanic, Slavic, Celtic, and Romance languages spread over Europe. Social isolation (lack of  
14 contact between groups of speakers) can have the same effect. Black English dialect is a beautiful  
15 example of such a phenomenon: this dialect developed within an oppressed group which was socially  
16 isolated within a larger linguistic community, southern English. The dialect is different because most  
17 Blacks associated, and often continue to associate, primarily with other Black people rather than with  
18 speakers of other forms of English. Moreover, Black English has become a source of identity and pride  
19 for many Black people, who often prefer it over standard English—recall the Ebonics controversy of a  
20 few years ago.  
21

22 D. Language can also be affected by spontaneous or random changes that do not follow a  
23 regular, predictable pattern and cannot be explained. The cause can be something as trivial as a word or  
24 pronunciation change initiated (either consciously or unconsciously) by an influential person whose  
25 behavior is imitated by other members of the group. Over time, such changes may lead to distinct  
26

1 methods of expression and even new dialects.

2 5. In response to these processes, languages can change dramatically over a period of time much  
3 shorter than the 9,200 years that separate Kennewick Man from us. For example, speakers of modern  
4 English must be specially trained in order to read and understand the ancestral language of English,  
5 Anglo-Saxon or Old English, that was in use between the time of the invasion of the Angles and Saxons  
6 at the end of the Roman period in Britain (roughly 400 A.D.) and approximately a thousand years ago.  
7 As difficult as it is to learn to read Anglo-Saxon, it would be even more difficult for a modern speaker of  
8 English to understand spoken Anglo-Saxon since the details of the pronunciation of spoken languages  
9 are usually much more complicated than their written versions. To take another example, the Roman  
10 language of Julius Caesar's time (100 to 44 B.C.) had by the Late Middle Ages developed into multiple  
11 daughter languages as diverse as Catalan, French, Italian, Romanian, Romansch and Spanish all of which  
12 are largely mutually unintelligible today. The changes that occurred in these languages took place  
13 despite the moderating influences of a literary tradition. As these and other examples demonstrate,  
14 change in language is perfectly normal, and impossible to prevent. There is absolutely no reason to  
15 believe that Kennewick Man's human language was immune to the normal processes of linguistic  
16 change. Consequently, whatever language he may have spoken, we can safely conclude that it would be  
17 very different from anything spoken today, even its own direct descendent(s) if any still exist(s).  
18

19 6. Furthermore, the possibility cannot be excluded that Kennewick Man's language has not  
20 survived to the present even in a modified form. Languages not only change over time, they can also  
21 become extinct, just as the inevitable end of a species is extinction. In just the last 2,000 years,  
22 numerous European languages known to history have disappeared. Examples include Gaulish,  
23 Burgundian, Thracian, Oscan, Umbrian, Prussian, Norse, Provençal, Dalmatian, Cornish, Manx, and  
24 Turkic Bulgar. And this is a minimal list; many more could be added. European languages presently on  
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1 the verge of extinction include the Slavic languages Sorb and Wend, each spoken today (mostly as a  
2 second language) by a handful of people in eastern Germany. The same is true of the Welsh and Scottish  
3 Gaelic languages spoken in the British Isles. Similar language extinctions have occurred elsewhere in  
4 the world. Mention has already been made of the disappearance of the ancestral language(s) of the  
5 African Pygmies. Likewise, few traces exist today of the many different languages that must have been  
6 spoken in Southern China and Southeast Asia prior to the spread of Han Chinese and the Austroasiatic  
7 and Tai-Kadai languages during the last 7,000 years. In the New World, many of the Native American  
8 languages spoken in North America in 1492 A.D. no longer exist today. The proportion of such  
9 languages lost over the past 500 years may be as high as 75 percent. Other New World language  
10 extinctions undoubtedly occurred in pre-Columbian times as well. Since we do not know what language  
11 Kennewick Man spoke, we cannot be certain his language was not a casualty of an extinction event either  
12 long before or following the arrival of Europeans in this hemisphere.

14 7. Even if Kennewick Man's language has survived to the present in one or more modified  
15 forms, there is no way to identify the descendant language or languages since we do not know what the  
16 ancestral language was. The descendants of Kennewick Man and his language, if there are any, could  
17 reside presently anywhere in the Americas, just as his ancestors could be from anywhere in East Asia.  
18 Prehistoric hunter-gatherer groups were constantly on the move from place to place in response to  
19 resource scarcities (or abundances), competition from other populations, and other external pressures  
20 such as climate and natural disasters. Tribal territories could shift over vast distances, sometimes in only  
21 a few generations. For example, from comparative linguistic studies, we know that the Navaho and  
22 Apache peoples of the American Southwest speak an Athapaskan language that first originated around a  
23 thousand years ago far to the north in Canada. They are now separated by more than a thousand miles  
24 from the nearest related Athapaskan-speaking tribes in western Canada. Likewise, the Wiyot and Yurok  
25

1 languages of northern California are distantly related to the Algonquian languages most recently spoken  
2 in the Midwest, East, and Northeast of the United States. We do not know which group moved from  
3 where (i.e., whether it was the ancestors of the California tribes who moved or the others), but it is  
4 certain that migration occurred. We have no reason to believe that Kennewick Man and his tribal  
5 contemporaries were an exception to this pattern of population expansions, contractions and movements  
6 that characterized American and indeed all of prehistory. As a result, no present group or tribe can  
7 represent themselves as Kennewick Man's cultural or linguistic descendants. A person has to know what  
8 he or she is a descendent of in order to claim descent from it.  
9

10 8. The diversity of Native American languages in the Pacific Northwest at the time of European  
11 contact is not proof that the region was continually occupied by the same populations over the last 9,000  
12 years. Language diversity only proves that the languages involved have a long separate history. It does  
13 not necessarily prove continuous residence in one location. There was undoubtedly much language  
14 contraction, expansion, and exchange in North America over the last nine millennia. Although it is very  
15 possible that the ancestors of some of the present populations were in this region 9,000 years ago, we  
16 have no way to know which specific ones can make such a claim with historical correctness.

17 9. Given its age and circumstances of discovery, the Kennewick skeleton cannot be affiliated to  
18 any modern population except on a biological basis (i.e., through skeletal, dental, and genetic  
19 resemblances, which can only be discovered by detailed osteological analysis and testing). Such data,  
20 however, even if there appears to be a biological affiliation, will not be sufficient to establish a cultural  
21 or linguistic affiliation. Biology, culture and linguistics are independent variables, and there is no  
22 necessary connection between them. Populations can be biologically related and still speak different  
23 languages. For example, American Blacks are biologically related to West Africans, who speak a  
24 multitude of different languages, while American Blacks speak English today. Their close Caribbean  
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1 and Latin American relatives speak other forms of English, or dialects of French, Spanish, or Portuguese.

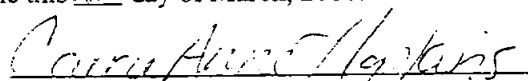
2 And even when people speak related languages, their cultures may be vastly different. For example, the  
3 pastoral culture of the Athapaskan-speaking Navaho of the American Southwest is very different from  
4 the marine-based cultures of the Athapaskan tribes of the Pacific Northwest. And both of these are in  
5 turn different from the caribou hunting cultures of the Canadian Athapaskan tribes.

6 10. It is pointless to speak of any linguistic or cultural affinities between Kennewick Man and  
7 any living Native American group(s). Even if he has any living direct descendants, their culture and  
8 language would be so different from his that he could not recognize them either as descendants or  
9 relatives. I am not aware of a single instance in which a linguistic affiliation has been established with  
10 any degree of confidence between a modern population and human remains as old as the Kennewick  
11 skeleton. Kennewick Man lived in a cultural world and a time that no longer exist. If anything remains  
12 of his culture, language and beliefs, it would be in forms so changed that they would be very difficult, if  
13 not impossible, to recognize today. But in any event, the point is moot: without knowing what his  
14 culture and language were, it is pointless to speak of modern continuities of either.

15 DATED this 21 day of March, 2000.

16  
17  
18   
19 Allan R. Taylor

20 SUBSCRIBED and SWORN to before me this 21 day of March, 2000.

21   
22 Notary Public for \_\_\_\_\_ My Commission Expires December 17, 2003  
23 My Commission Expires: 2335 Baseline Road, Boulder, CO 80303