

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

FILED
05 OCT 27 PM 4:00
LANCE S. WILSON
CLERK
BY _____
DEPUTY

FALLON PAIUTE-SHOSHONE TRIBE,)
a federally recognized Indian tribe,)
)
Plaintiff,)
)
v.)
)
UNITED STATES BUREAU OF LAND)
MANAGEMENT,)
)
Defendant.)


No. CV-N-04-466 LRH (RAM)

**MOTION OF THE ETHNIC MINORITY COUNCIL OF AMERICA
FOR LEAVE TO APPEAR AS AMICUS CURIAE**

The Ethnic Minority Council of America moves for an order granting it leave to appear and participate as *amicus curiae* in this action. The bases for this motion are set forth in the memorandum submitted herewith.

Respectfully Submitted,

Dated: Oct. 27, 2005



William E. Peterson (Nev. Bar No. 1528)
MORRIS, PICKERING & PETERSON
6100 Neil Road
Reno, Nevada 89511
(775) 829-6000

Richard M. Donaldson
MONTGOMERY, MCCrackEN, WALKER
& RHOADS, LLP
300 Delaware Avenue, Suite 750
Wilmington, DE 19801
(302) 504-7840

*Attorneys for the Ethnic Minority Council of
America*

CERTIFICATE OF SERVICE


I, William E. Peterson, certify that copies of the Motion of the Ethnic Minority Council of America for Leave to Appear As *Amicus Curiae* were served by first class mail, this 27th day of October, 2005, on:

Gordon Depaoli, Esquire
Woodburn & Wedge
P.O. Box 2311
Reno, NV 89505
Counsel for Plaintiff

Marc Slonim, Esquire
Ziontz, Chestnut, Varnell Berley, et al.
2101 Fourth Avenue
Seattle, WA 98121
Counsel for Plaintiff

Brian Chestnut, Esquire
Ziontz, Chestnut, Varnell Berley, et al.
2101 Fourth Avenue
Seattle, WA 98121
Counsel for Plaintiff

Greg Addington, Esquire
U.S. Attorney's Office
100 West Liberty Street
Reno, NV 89501
Counsel for Defendant



William E. Peterson

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

DISTRICT COURT
RECEIVED
OCT 27 2005
U.S. DISTRICT COURT

FALLON PAIUTE-SHOSHONE TRIBE,)
a federally recognized Indian tribe,)
)
Plaintiff,)
)
v.)
)
UNITED STATES BUREAU OF LAND)
MANAGEMENT,)
)
Defendant.)

No. CV-N-04-466 LRH (RAM)

**MEMORANDUM IN SUPPORT OF
MOTION OF THE ETHNIC MINORITY COUNCIL OF AMERICA
FOR LEAVE TO APPEAR AS AMICUS CURIAE**

The Ethnic Minority Council of America (the “EMCA”) seeks leave to appear and participate as *amicus curiae* in this action. The bases for this motion are set forth generally below and in greater detail in the *Amicus Curiae* Brief Submitted by the Ethnic Minority Council of America In Opposition to the Fallon Tribe’s Motion for Summary Judgment, which is being filed separately.

A. The EMCA

The EMCA was founded in 1985 to promote and protect our nation’s diverse ethnic heritage. Many of the EMCA’s members are of American Indian descent, living both within and outside the territorial limits of reservations created by treaty and recognized under federal law. The EMCA is politically and socio-economically diverse. Members of the EMCA are registered Democrats, Republicans and independents. They are located throughout the U.S. and pursue a wide variety of vocations ranging from homemakers to licensed professionals. They come from many religious backgrounds, including American Indian faiths, Christianity, Judaism, Islam, Hindu, Buddhism and agnostic belief systems.

B. The EMCA's Interest in the Spirit Cave Litigation

The EMCA supports the preservation of ancient remains and artifacts because these items are indispensable components of our common history. The EMCA believes that this history must be explored, understood and recorded for posterity. The EMCA believes that the cultural, educational, medical and scientific exploration of ancient artifacts and remains is a way of understanding and preserving our diverse cultural identities for our sake and for the sake of future generations.

Consistent with quasi-property rights long recognized in the law, the EMCA recommends repatriation of remains and other cultural items in cases *where the next-of-kin or other direct lineal descendants can be identified* and desire reburial, cremation or other disposition. Such repatriations should be reserved for *actual descendants*, not broadly-defined or aggregated groups or coalitions bound only by a common political or religious objective but with no historically shared group identity, or because of a mere geographic overlap.

The EMCA is concerned that the claiming tribe in this case seeks to exercise extraordinary property rights over the disposition of human remains and cultural material with which it has *no* demonstrated cultural affiliation, let alone one supported by a preponderance of the evidence. The exercise of these rights would impact many – indeed all – of our nation's diverse cultural citizens, including those represented by the EMCA.

The EMCA is concerned that while the Native American Graves Protection and Repatriation Act ("NAGPRA") was intended to and has on the one hand provided a practical enforcement system for the rights of present-day American Indians relative to ancestral materials and remains, that enforcement system has been misapplied in ways that disrupt the delicate balance of interests NAGPRA was intended to preserve. The EMCA is concerned that the Fallon Tribe urges a misapplication of NAGPRA in this case. That is, the Fallon Tribe seeks to extend

NAGPRA to ancient human remains whose connections, if any, to *any* present day American Indians has not been and cannot possibly be established in light of our current state of knowledge. This is contrary to the beliefs and desires of the EMCA as well as other American Indians who have expressed views that are at odds with those held by the Fallon Tribe.

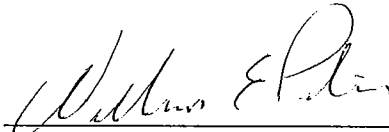
In particular, the EMCA seeks to demonstrate to the Court that concerns over the relaxed application of NAGPRA's "cultural affiliation" requirement proposed by the Fallon Tribe are more than merely academic. On the contrary, bending the cultural affiliation requirement to empower contemporary tribes to dictate the disposition of ancient remains and cultural items where, as here, (1) the remains cannot now and may never be assigned to an identifiable earlier group and (2) a showing of shared group identity is thus foreclosed from the start, would impinge upon the real-world rights and interests of other citizens. These other citizens include American Indians and other ethnic minorities who may have or in the future may be shown to have a more direct cultural relation to the remains than the claiming tribe or who may not, in any event, share the claiming tribe's traditionalist beliefs.

C. Request for Relief

The Court has broad discretion to appoint *amici curiae*. See, e.g., *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982). Accordingly, for these reasons and those more fully set forth in its *amicus* brief, the EMCA seeks leave to participate in this litigation as *amicus curiae* so that it can present to the Court perspectives not yet represented in this litigation but which, it believes, are directly implicated by this dispute and should be considered by the Court in rendering a decision.

Respectfully Submitted,

Dated: Oct. 27, 2005



William E. Peterson (Nev. Bar No. 1528)
MORRIS, PICKERING & PETERSON
6100 Neil Road
Reno, Nevada 89511
(775) 829-6000

Richard M. Donaldson
MONTGOMERY, MCCracken, WALKER
& RHOADS, LLP
300 Delaware Avenue, Suite 750
Wilmington, DE 19801
(302) 504-7840

*Attorneys for the Ethnic Minority Council of
America*

CERTIFICATE OF SERVICE

I, William E. Peterson, certify that copies of the Memorandum In Support of Motion of the Ethnic Minority Council of America For Leave to Appear As *Amicus Curiae* were served by first class mail, this 27th day of October, 2005, on:

Gordon Depaoli, Esquire
Woodburn & Wedge
P.O. Box 2311
Reno, NV 89505
Counsel for Plaintiff

Marc Slonim, Esquire
Ziontz, Chestnut, Varnell Berley, et al.
2101 Fourth Avenue
Seattle, WA 98121
Counsel for Plaintiff

Brian Chestnut, Esquire
Ziontz, Chestnut, Varnell Berley, et al.
2101 Fourth Avenue
Seattle, WA 98121
Counsel for Plaintiff

Greg Addington, Esquire
U.S. Attorney's Office
100 West Liberty Street
Reno, NV 89501
Counsel for Defendant



William E. Peterson

FILED

05 OCT 27 PM 4:01

LANCE S. WILSON
CLERK

BY _____
DEPUTY

Richard M. Donaldson
MONTGOMERY, McCracken, Walker & Rhoads, LLP
300 Delaware Avenue, Suite 750
Wilmington, DE 19801
(302) 504-7840

William E. Peterson (Nev. Bar No. 1528)
MORRIS, PICKERING & PETERSON
6100 Neil Road
Reno, Nevada 89511
(775) 829-6000

Attorneys for the Ethnic Minority Council of America

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

FALLON PAIUTE-SHOSHONE TRIBE,)
a federally recognized Indian tribe,)
)
Plaintiff,)
)
v.)
)
UNITED STATES BUREAU OF LAND)
MANAGEMENT,)
)
Defendant.)

No. CV-N-04-466 LRH (RAM)

**AMICUS CURIAE BRIEF SUBMITTED BY THE ETHNIC
MINORITY COUNCIL OF AMERICA IN OPPOSITION TO THE
FALLON TRIBE'S MOTION FOR SUMMARY JUDGMENT**

TABLE OF CONTENTS

| | Page |
|--|------|
| I. INTRODUCTION | 1 |
| II. BACKGROUND AND STATEMENT OF INTEREST | 3 |
| A. The EMCA | 3 |
| B. The EMCA’s Interest in the Spirit Cave Litigation | 3 |
| III. ARGUMENT | 5 |
| A. “Any Indian” Will Not Do Under NAGPRA’s Cultural Affiliation Requirement | 5 |
| B. The Fallon Tribe Has Not Established “Cultural Affiliation” Under NAGPRA | 7 |
| 1. The “Identifiable Earlier Group” | 7 |
| 2. “Shared Group Identity” | 9 |
| 3. The “Present Day Indian Tribe” | 11 |
| C. The Fallon Tribe’s Motion Is Based On The Erroneous Premise That American Indians Comprise A Homogenous And Unified Culture, And That The Fallon Tribe Represents The Views And Preferences Of All American Indians | 13 |
| D. The Fallon Tribe Does Not Represent The Views Or The Interests Of American Indians And Other Ethnic Groups Represented By The EMCA..... | 14 |
| E. The BLM’s July 26, 2000 Determination Must Be Upheld..... | 16 |
| IV. CONCLUSION..... | 17 |

TABLE OF AUTHORITIES

Page

CASES

| | |
|--|----------------------------------|
| <i>Bonnichsen v. United States</i> , 217 F. Supp. 2d 1116, <i>aff'd</i> , 367 F.3d 864 (9th Cir. 2004) | 1,5, 6, 8, 9, 10, 11, 13, 15, 16 |
|--|----------------------------------|

STATUTES

| | |
|--|---------------------------|
| <i>Native American Graves Protection and Repatriation Act</i> , 25 U.S.C. § 3001 <i>et seq.</i> | 5, 6, 7, 8, 9, 11, 14, 16 |
| <i>National Museum of the American Indian Act</i> , 20 U.S.C. § 80q-9(b) | 8 |
| 20 U.S.C. § 80q-9(b)..... | 8 |
| 25 U.S.C. § 3001(2) | 5 |
| 25 U.S.C. §3002(a)(2)(B) | 5 |

LEGISLATIVE MATERIALS

| | |
|---|---|
| H.R. Rep. No. 101-877 (1990), <i>reprinted in</i> 1990 U.S.C.C.A.N 4367 | 5 |
| H.R. 1646, 101 st Cong. (1989) | 8 |
| S. Rep. No. 101-473 | 5 |
| S. 1980, 101 st Cong. (1989) | 8 |

OTHER AUTHORITIES

| | |
|--|--------|
| 43 C.F.R. § 10.2(c)(2)..... | 10 |
| Zuni Tribe Resolution No. M70-90-L017 | 12, 13 |
| William A. Lovis, Keith W. Kintigh, Vincas P. Steponaitis & Lynne G. Goldstein, ARCHEOLOGICAL PERSPECTIVES ON THE NAGPRA: UNDERLYING PRINCIPLES, LEGISLATIVE HISTORY, AND CURRENT ISSUES, IN LEGAL PERSPECTIVES ON CULTURAL RESOURCES, 165-184 (Jennifer R. Richman & Marion P. Forsyth, eds., Altimira Press 2004) | 6 |

TABLE OF AUTHORITIES
(continued)

| | Page |
|--|-------------|
| R. A. Mariar, L. L. Banks, B. R. Billman, P. M. Lambert, & J. E. Mariar, <i>Biochemical evidence of cannibalism at a prehistoric Puebloan site in southwestern Colorado</i> , Nature 407 (2000) | 10, 11 |
| 1 R. Thwaites, <i>THE JESUIT RELATIONS AND ALLIED DOCUMENTS 1610-1791</i> (Burrows Bro. Pub., Cleveland Ohio, 1900) | 10 |
| O. H. Davis, <i>WINNEY ISLAND SYNOPSIS</i> (The Noteworthy Company, Amsterdam, New York, n.d.) . | 10 |
| T.J. Ferguson, <i>Historic Zuni Architecture and Society: An Archeological Application of Space Syntax</i> . Anthropological Papers, No. 60, 25-40 (University of Arizona Press, Tucson, Arizona 1996) | 12 |

I. INTRODUCTION

The Ethnic Minority Council of America (EMCA) submits this *amicus curiae* brief in opposition to the Fallon Tribe's motion for summary judgment seeking to set aside the Bureau of Land Management's July 26, 2000 Determination of Cultural Affiliation of Ancient Human Remains from Spirit Cave, Nevada (the "Determination"). The EMCA, which represents American Indians¹ and other ethnic minorities² who do not uniformly share the Fallon Tribe's traditionalist views, believes that the positions taken by the Fallon Tribe, if accepted, would eviscerate NAGPRA's³ "cultural affiliation" requirement, disrupt the delicate balance of interests struck by NAGPRA's repatriation provisions, and trod upon the rights and interests of American Indians and other ethnic minorities represented by the EMCA and Americans at large.

Accordingly, the EMCA argues below that:

(1) The Fallon Tribe's unique adaptation of NAGPRA's "cultural affiliation" requirement is impermissibly broad, and impinges on the rights and interests of American Indians and other ethnic groups whose ancestry and views are not represented by the Fallon Tribe but who nonetheless have or may be proven to have a cultural or biological connection to the "Spirit Cave" remains and cultural items;

¹ The EMCA believes that the term "Native American" is problematic, in part due to inconsistent interpretations of that term under NAGPRA. (The EMCA also notes, however, that NAGPRA's "Native American" definition has been substantially clarified by judicial interpretation since the BLM issued its July 2000 Determination. *See Bonnichsen v. United States*, 217 F. Supp. 2d 1116, 1134-1139, *aff'd*, 367 F.3d 864 (9th Cir. 2004)). For this reason, the EMCA will refer to present-day aboriginal Americans recognized by the federal Indian laws as "American Indians."

² This submission is made not only on behalf of the EMCA's American Indian members, but represents the views of the EMCA's many other ethnic members as well. They, too, have a compelling interest in North American prehistory generally, and in light of questions surrounding the ethnic origins of the Spirit Cave mummy itself, believe that they have a direct interest in the curation and analysis of the Spirit Cave remains and cultural items.

³ To avoid unnecessary confusion, this brief will use where appropriate the same nomenclature used in the Fallon Tribe's Memorandum (the "Fallon Br."). Thus, "NAGPRA" refers to the Native American Graves Protection and Repatriation Act, the "Tribe" or "Fallon Tribe" refers to the Fallon Paiute-Shoshone Tribe, the "BLM" to the Bureau of Land Management, and so on.

(2) The Fallon Tribe's motion for summary judgment is based on the flawed assumption that American Indians comprise a homogenous and unified culture;

(3) The Fallon Tribe does not represent the views or the interests of American Indians represented by the EMCA or who otherwise do not share the Fallon Tribe's traditionalist views;

(4) The American Indians and other ethnic minorities represented by the EMCA

- Reject the view that they or any particular ethnic group are the sole custodians of North American pre-history;
- Oppose the repatriation of human remains or cultural items under circumstances that present a risk of the remains or items being given to individuals who may subscribe to religious beliefs and practices that are (a) unrelated to those practiced by the cultural group to which the human remains are actually affiliated or (b) unrelated to the beliefs and practices of other present-day Americans whose ancestral link to the remains or materials may be proven to be more direct;
- Oppose the use of federal tax revenues to facilitate a repatriation project which, in essence, is a sectarian religious activity;
- Support the responsible curation and study of all human remains and cultural artifacts pending positive identification, generally;
- Support the careful and deliberate study and identification of the Spirit Cave remains and cultural items; and
- Support the view that preservation of the Spirit Cave remains and cultural items will promote the interests of American Indians, and will unite all citizens in a mutual exploration and celebration of our individual ethnic heritages.

For these reasons, the EMCA respectfully requests that the Fallon Tribe's motion be denied and that the BLM's July 26, 2000 Determination be upheld.

II. BACKGROUND AND STATEMENT OF INTEREST

A. The EMCA

The EMCA was founded in 1985 to promote and protect our nation's diverse ethnic heritage. Many of the EMCA's members are of American Indian descent, living both within and outside the territorial limits of reservations created by treaty and recognized under federal law.⁴

The EMCA is politically and socio-economically diverse. Members of the EMCA are registered Democrats, Republicans and independents. They are located throughout the U.S. and pursue a wide variety of vocations ranging from homemakers to licensed professionals. They come from many religious backgrounds, including American Indian faiths, Christianity, Judaism, Islam, Hindu, Buddhism and agnostic belief systems.⁵

B. The EMCA's Interest in the Spirit Cave Litigation

The EMCA supports the preservation of ancient remains and artifacts because these items are indispensable components of our common history. The EMCA believes that this history must be explored, understood and recorded for posterity. The EMCA believes that the cultural, educational, medical and scientific exploration of ancient artifacts and remains is a way of understanding and preserving our diverse cultural identities for our sake and for the sake of future generations.⁶

Consistent with quasi-property rights long recognized in the law, the EMCA recommends repatriation of remains and other cultural items in cases *where the next-of-kin or other direct lineal descendants can be identified* and desire reburial, cremation or other disposition. Such

⁴ Affidavit of Ellis J. Neiburger in Support of Amicus Curiae Brief of the Ethnic Minority Council of North America ("Neiburger Aff.," attached as Exhibit 1), ¶ 2.

⁵ *Id.* at ¶ 3.

⁶ *Id.* at ¶ 4.

repatriations should be reserved for *actual descendants*, not broadly-defined or aggregated groups or coalitions bound only by a common political or religious objective but with no historically shared group identity, or because of a mere geographic overlap.⁷

The EMCA is concerned that the claiming tribe in this case seeks to exercise extraordinary property rights over the disposition of human remains and cultural material with which they have *no* demonstrated cultural affiliation, let alone one supported by a preponderance of the evidence. The exercise of these rights would impact many – indeed all – of our nation’s diverse cultural citizens, including those represented by the EMCA.⁸

The EMCA is concerned that while NAGPRA was intended to and has on the one hand provided a practical enforcement system for the rights of present-day American Indians relative to ancestral materials and remains, that enforcement system has been misapplied in ways that disrupt the delicate balance of interests NAGPRA was intended to preserve. The EMCA is concerned that the Fallon Tribe urges a misapplication of NAGPRA in this case. That is, the Fallon Tribe seeks to extend NAGPRA to ancient human remains whose connections, if any, to *any* present day American Indians has not been and cannot possibly be established in light of our current state of knowledge. This is contrary to the beliefs and desires of the EMCA as well as other American Indians who have expressed views that are at odds with those held by the Fallon Tribe.⁹

⁷ *Id.* at ¶ 5.

⁸ *Id.* at ¶ 6.

⁹ *Id.* at ¶ 7.

III. ARGUMENT

A. “Any Indian” Will *Not* Do Under NAGPRA’s Cultural Affiliation Requirement.

NAGPRA neither promotes nor embodies a policy of universal repatriation.¹⁰ Rather, to prevail on a claim for repatriation where there is no known lineal descendant, a claiming tribe bears the burden of proving by a preponderance of the evidence that it is “culturally affiliated” with the remains or materials.

A finding of “cultural affiliation” with human remains requires proof of “a relationship of shared group identity which can reasonably be traced . . . between a present day Indian tribe . . . and an identifiable earlier group of which the decedent was a member. 25 U.S.C. § 3001(2) (emphasis added). *See also*, S. Rep. No. 101-473 at 8 (claimant must show “a continuity of group identity from the earlier present day group”).

Bonnichsen v. United States, 217 F. Supp. 2d 1116, 1143, *aff’d*, 367 F.3d 864 (9th Cir. 2004).¹¹

In proving a “shared group identity,” a claiming tribe bears the burden of establishing a “commonality” that “distinguishes the group and its members from other groups, and legitimizes the present-day group’s authority to represent the interests of deceased members.” *Id.* at 1148.

Thus, NAGPRA’s cultural affiliation requirement is considerably more than window dressing.¹² As commentators have noted:

¹⁰ The first objective [of NAGPRA] deals with Native American human remains, funerary objects, sacred objects and objects of cultural patrimony which are excavated or removed from Federal or tribal lands after the enactment of the Act. . . . If any of such remains or objects are found on Federal Lands *and it is known which tribe is closely related to them*, that tribe is given the opportunity to reclaim the remains or objects.

H.R. Rep. No. 101-877 at 12 (1990), *reprinted in* 1990 U.S.C.C.A.N. 4367, 4368 (emphasis added).

¹¹ Where competing interests exist, such as where more than one claiming tribe has derived from an earlier group, NAGPRA requires a determination of which tribe “has the closest cultural affiliation.” 25 U.S.C. §3002(a)(2)(B).

¹² Nor can “cultural *affiliation*” be equated with a less rigorous “cultural *relation*” standard. *See Bonnichsen* at 1138 (“It is clear from the full text of NAGPRA that the cultural relationship required to meet the definition of ‘Native American’ is less than that required to meet the definition of ‘cultural affiliation,’ . . .”). This makes sense if

Continued...

The determination of cultural affiliation is the *cornerstone* of NAGPRA because most decisions about disposition of human remains and objects are made with reference to that standard. In most circumstances, *cultural affiliation is the threshold for closeness of relationship that must be met for a Native American group to determine the disposition of the remains or objects.* As a consequence of its centrality to the decision-making process, the interpretation of this term is hotly contested.

William A. Lovis, Keith W. Kintigh, Vincas P. Steponaitis & Lynne G. Goldstein, ARCHEOLOGICAL PERSPECTIVES ON THE NAGPRA: UNDERLYING PRINCIPLES, LEGISLATIVE HISTORY, AND CURRENT ISSUES, IN LEGAL PERSPECTIVES ON CULTURAL RESOURCES, 165-184, at 177 (Jennifer R. Richman & Marion P. Forsyth, eds., Altimira Press 2004) (emphasis added).

The purpose of this submission is to demonstrate to the Court that concerns over the relaxed application of NAGPRA's "cultural affiliation" requirement proposed by the Fallon Tribe are more than merely academic. On the contrary, bending the cultural affiliation requirement to empower contemporary tribes to dictate the disposition of ancient remains and cultural items where, as here, (1) the remains cannot now and may never be assigned to an identifiable earlier group and (2) a showing of shared group identity is thus foreclosed from the start, would impinge upon the real-world rights and interests of other citizens. These other citizens include American Indians and other ethnic minorities who may have or in the future may be shown to have a more direct cultural relation to the remains than the claiming tribe or who may not, in any event, share the claiming tribe's traditionalist beliefs.

....Continued

one bears in mind the purpose of NAGPRA's repatriation provisions -- to re-unite remains and certain cultural items with an *appropriately affiliated tribe*, as opposed to *any tribe that makes a claim*. See *Bonnichsen*, 367 F.3d at 876 ("NAGPRA was intended to benefit modern American Indians by sparing them the indignity and resentment that would be aroused by the despoiling of their ancestors' graves and the study or display of their ancestors remains Congress's purposes would not be served by requiring the transfer to modern American Indians of human remains that bear no relationship to them.").

B. The Fallon Tribe Has Not Established “Cultural Affiliation” Under NAGPRA.

Views expressed by members of the Fallon Tribe during a May 8, 1996 meeting with representatives of the Nevada State Museum and the BLM were, regrettably, a harbinger of things to come. There, according to a summary of that meeting cited by the Tribe in its brief, Tribal representatives expressed the view that:

The age of the Spirit Cave mummy has no relevance . . . , nor does the mummy’s relation to contemporary Indian populations. They [members of the Tribe] consider themselves to be the caretakers of the ‘old ones’ and requested that they be allowed to rebury the mummy as soon as possible

Fallon Br. at 16 (quoting AAR 0178).

With the advent of litigation and the benefit of capable counsel, the Fallon Tribe’s position has taken on a new veneer, but has not changed in substance. The EMCA believes that the Fallon Tribe has failed to meet its burden under NAGPRA’s cultural affiliation requirement in at least three respects.

1. The “Identifiable Earlier Group”

First, the Tribe concocts and relies upon an expansive and ultimately indefensible “earlier group” theory. The Tribe argues that the occupants of the western Great Basin, which the Tribe attempts to unify under a “Desert Culture concept,” comprise an “identifiable earlier group” for purposes of establishing cultural affiliation. *See* Fallon Br. at 31, 43 (stating that the BLM improperly failed to consider “whether the occupants of the western Great Basin as a whole constitute an identifiable group. . . .”) and 85 (“The Great Basin Culture Area is a spatial grouping of peoples who, at the time of European contact, were far more similar to one another than they were to peoples in adjacent culture areas.”). This fails factually and legally.

Factually, the Tribe has failed to account for (among other things) the inevitable coming,

going, merging, splintering, and dying off of populations over the last *one hundred centuries* properly considered by the BLM. Determination at 14-19; 25-30; 59. It fails to account for the inevitable variations in populations (notwithstanding superficial similarities in material culture or adaptive strategies that may be observed or hypothesized) over an area so large.¹³ *See Id.* at 24-31. Indeed, even the Fallon Tribe concedes in its brief that “significant cultural variation” has been recognized in this region. Fallon Br. at 31. And it fails to account for unrelated, contemporary populations acknowledged even in the Tribe’s own oral histories. *See Id.* at 51-57.

Legally, it runs afoul of the “earlier group” concept envisioned by NAGPRA. As noted by the Society for American Archeology in its *amicus* brief filed in the *Kennewick Man* litigation:

Although the precise nature of the “earlier group” is not specified in the law or its regulations, NAGPRA’s legislative history and common sense imply that Congress intended it to be something on the scale of a modern tribe. This interpretation is supported by the prior use of “tribal origin” as the analogous term in the National Museum of the American Indian Act, 20 U.S.C. § 80q-9(b), which served as a model for NAGPRA. It is also supported by the synonymous use of the terms “tribal origin” and “cultural affiliation” in the 1989 bills introduced by Rep. Udall and Sen. Inouye (H.R. 1646 and S. 1980, respectively) that ultimately evolved into NAGPRA.[footnote omitted]

Memorandum of Law in Support of the Society for American Archeology’s *Amicus Curie* Submission at 16-17, *Bonnichsen v. United States*, CV 96-1481-JE, June 1, 2001, available at www.saa.org/repatriation/kennewickbriefs.html (last viewed on October 19, 2005). *See also Id.* at 17 (noting that “broad classifications of archeological patterning do not identify a specific group in the sense required by NAGPRA’s clear terms”).

¹³ The Great Basin encompasses approximately 200,000 square miles, and includes virtually all of Nevada and portions of Utah, Oregon, California and New Mexico. *See* <http://www.greatbasinweb.com/whatisgreatbasin.html> (last viewed on 10/19/05).

2. “Shared Group Identity”

The Fallon Tribe contends that NAGPRA’s requirement of a “shared group identity” with an “identifiable earlier group” need not “refer to a particular tribe or band of Indians.” Fallon Br. at 6. Rather, the shared group identity can encompass “broader groups that have been identified by contemporary observers, government officials, anthropologists and archeologists, or Indian people themselves, and to require only that a present-day tribe demonstrate a reasonable connection with such group.” *Id.*

Taken to its logical end, what the members of the Fallon Tribe appear to argue is that they (as “Indian people themselves”) are free to define a group as broadly as they see fit, and to include in that group largely unknown people who lived one hundred centuries ago. Thus, the Fallon Tribe argues that if it considers itself part of a “broader group” that hypothetically occupied 200,000 square miles covering portions of five states for a period of 10,000 years, then that meets NAGPRA’s shared group identity requirement.

If claiming tribes can define a group as broadly as this, then of course there is no “shared group identity” requirement under NAGPRA. As noted by the Ninth Circuit:

NAGPRA also was intended to protect the dignity of the human body after death by ensuring that Native American graves and remains be treated with respect. . . . Congress’s purpose is served by requiring the return to modern-day American Indians of human remains *that bear some significant relationship to them.*

Bonnichsen, 367 F.3d at 876-77 (emphasis added). In this sense, the Fallon Tribe’s view is not the only relevant point of reference; rather, the group of which the Spirit Cave mummy would have considered himself a member is equally if not more important. The latter cannot be gleaned from the unilateral pronouncements of the Fallon Tribe, but rather must be informed by factors

such as those set forth in 43 C.F.R. § 10.2(c)(2).¹⁴ See also *Bonnichsen*, 217 F. Supp.2d at 1147-48 (“The statutory language also implies that the members must perceive themselves as part of a group and function as such.”).

The peril of the Fallon Tribe’s grossly over-inclusive “shared group identity” theory is immediately apparent: While Jews may have resided in Nazi Germany, spoke German, and exhibited many material cultural traits common to the German population at-large, it certainly would not follow that German Jews and German Gentiles were at the time of the Third Reich united by a “shared group identity.” A more pertinent illustration of the peril of over-inclusion is the substantial archeological and historical evidence of cannibalism, ritualized torture and warfare among American Indian groups occupying common regions, utilizing similar tool kits, exploiting identical lithic resources, and otherwise arguably displaying more tangible cultural similarities than differences.¹⁵ But to suggest that the cannibalized remains of the unfortunate men, women and adolescents uncovered in Anasazi¹⁶ dwelling floors and refuse pits at the 850-

¹⁴ These factors are set forth in the Determination at 5-7.

¹⁵ See, e.g., R. A. Mariar, L. L. Banks, B. R. Billman, P. M. Lambert, & J. E. Mariar, *Biochemical evidence of cannibalism at a prehistoric Puebloan site in southwestern Colorado*, *Nature* 407, 74-78 (2000) (copy attached to Neiburger Aff. at Tab 2); I R. Thwaites, *THE JESUIT RELATIONS AND ALLIED DOCUMENTS 1610-1791* (Burrows Bro. Pub., Cleveland Ohio, 1900) (describing an incident in 1682 in which the Iroquois attacked and cannibalized the Tamarora tribe); O. H. Davis, *WINNEY ISLAND SYNOPSIS* (The Noteworthy Company, Amsterdam, New York, n.d.) (describing cannibalized human remains unearthed in a Woodland refuse pit at “Locus II” of the Winney Island Site in Saratoga County, New York).

¹⁶ “Anasazi” is a Navajo term meaning “Ancient Ones.” The Anasazi generally are believed to have occupied the “Four Corners” country of southern Utah, southwestern Colorado, northwestern New Mexico, and northern Arizona from about A.D. 200 to A.D. 1300, after which time they abruptly disappeared from this particular region. By A.D. 1400 almost all the Anasazi from throughout the Southwest had aggregated into large pueblos scattered through the drainages of the Little Colorado and Rio Grande rivers in Arizona and New Mexico. Their descendants still reside there in the few surviving pueblos. Interestingly, the cause of their “disappearance” from the Four Corners region has been linked theoretically to a possible incursion by Numic speaking peoples (the Fallon Tribe is a member of this language group):

There is mounting evidence, however, that the Numic-speaking peoples, of whom the Utes and Paiutes are part, had spread northwestward out of southwestern Nevada and were in contact with the Pueblo-like peoples of western Utah by A.D. 1200.

Continued...

year-old “Cowboy Wash” site in southwestern Colorado were united by a “shared group identity” with the people who killed them and consumed their flesh would be utterly absurd.¹⁷ Surely, the Anasazi victims (who may on one level be grouped with their killers under the Fallon Tribe’s “Desert Culture” classification) would not have chosen to have their earthly remains entrusted to the care of their killers or their killers’ descendants.

This is what NAGPRA’s “shared group identity” requirement is supposed to avoid, and why NAGPRA requires as a precondition to repatriation a showing of cultural *affiliation* and not merely a generalized cultural *relation*. *See supra* n. 12.

3. The “Present Day Indian Tribe”

The members of the Fallon Tribe – itself an amalgam of pre-existing tribes¹⁸ – also seek to fill the “cultural affiliation” breach by implying that, as the “caretakers” of the Spirit Cave remains, they act in accordance with the beliefs and wishes of all who may have an interest in the Spirit Cave remains and cultural objects. *See Fallon Br.* at 24 n. 5 (“In April 1999, the Executive Board of the Inter-Tribal Council of Nevada unanimously adopted a resolution on behalf of its member tribes – comprising every federally recognized tribe in Nevada – supporting the Fallon Tribe’s request for repatriation.”) and 16 (quoting meeting summary in which Fallon

....Continued

It is certainly possible that they were in San Juan County shortly after that. Ute and Paiute sites are very difficult to distinguish from Anasazi campsites, and we may not be recognizing them.

See <http://www.crystalinks.com/anasazi.html> (last viewed on 10/24/05).

¹⁷ *See Mariar (2000)*. While the Cowboy Wash example is particularly relevant because of its proximity to the Great Basin, such cannibalism was by no means confined to the American southwest, as evident from the Thwaites (1900) and Davis (undated) writings cited in n. 15 above.

¹⁸ “The Tribe is comprised of descendants of Northern Paiute and Western Shoshone people” *Fallon Br.* at 10.

representatives expressed view that mummy's relation to contemporary Indian populations "has no relevance," and that they consider themselves to be the "caretakers of the 'old ones'").¹⁹

But the Fallon Tribe does *not* represent the beliefs or the desires of all, nor do they even represent the beliefs and desires of all American Indians residing in the southwestern United States. By way of a concrete illustration, the Zuni Tribe,²⁰ which now occupies an area adjacent the Great Basin in western New Mexico, passed in November 1989 its formal Resolution No. M70-90-L017 (copy attached to Neiburger Aff. at Tab 1). In that Resolution, which was undertaken in response to inquiries from museums and research institutions about possible repatriation of affiliated remains, the Zuni concluded:

NOW, THEREFORE, BE IT RESOLVED, that the Zuni Tribal Council, in concurrence with religious leaders, has determined that these desecrated ancestral human remains, presently housed in museums and other institutions, should not be repatriated for reburial; and

BE IT FURTHER RESOLVED, that the Zuni Tribal Council, in concurrence with religious leaders, directs museums and other institutions to continue to respectfully care and curate any desecrated Zuni ancestral human remains.

BE IT FURTHER RESOLVED, that the results of any analyzes [sic] performed on ancestral Zuni remains will be sent to the Office of the Governor, the Zuni School District Library, and the Zuni

¹⁹ Notably, the Fallon Tribe does not identify which religious conventions will be followed in disposing of the Spirit Cave remains if repatriation is ordered – those of the Fallon Tribe's Christian members, or those of its non-Christian members?

²⁰ Of note, the dialect spoken by the Zunis (otherwise referred to as "Ashiwi") belongs to the same Uto-Aztecan language family as the Fallon Tribe's Numic dialects. See Fallon Br. at 78-84. See also <http://www.crystalinks.com/zuni.html> (last viewed on 10/19/05); <http://www.twingroves.district96.k12.il.us/NativeAmericans/Zuni.html> (last viewed on 10/19/05); and T.J. Ferguson, *Historic Zuni Architecture and Society: An Archeological Application of Space Syntax*. Anthropological Papers, No. 60, 25-40 (University of Arizona Press, Tucson, Arizona 1996). According to Zuni oral traditions, the Zuni for many generations wandered throughout the Mojave Desert area, from which, according to at least two scholarly writings, came the Numic-speaking people. *Id.* See also Fallon Br. at 78 (citing Lamb (1964) and Fowler (1971)).

Archeology Program Library, so that this knowledge is readily available to Zuni Tribal members.

Accordingly, at least one tribe whose affiliation with the Spirit Cave remains is no less tenable than the Fallon Tribe's has expressed a view regarding repatriation and study that is diametrically opposed to the position taken by the Fallon Tribe in this case.

C. The Fallon Tribe's Motion Is Based On The Erroneous Premise That American Indians Comprise A Homogenous And Unified Culture, And That The Fallon Tribe Represents The Views And Preferences Of All American Indians.

The Fallon Tribe may think it irrelevant whether the Spirit Cave mummy is related to them or not (Fallon Br. at 16), but members of the EMCA think it is very relevant. Likewise, the Fallon Tribe may consider itself to be the "caretaker" of the Spirit Cave remains and cultural items (*id.*), but the EMCA strongly disagrees. The Fallon Tribe's assumption that it thinks and speaks for all is what the EMCA finds most objectionable, and seeks to correct.

There is great diversity among American Indians. Far from being a one-dimensional, homogenous culture as the Fallon Tribe's brief suggests, American Indians have never, and do not now, speak with one voice. On the contrary, American Indians always have been and remain a remarkably varied group of peoples, with different languages, systems of governance, religious beliefs, economic strategies, internment practices, family structures, and so on. American Indians are not one culture; they are many cultures. And especially important here, there is no single tribe or organization that speaks on behalf of all American Indians. *Neiburger Aff.*, ¶ 9. Even among American Indians who generally may be said to hold "traditionalist" views, there is substantial diversity. *See, e.g., supra* discussion regarding the 1989 Zuni Resolution.

Our understanding of the peopling of North America is still far from complete. Consistent with the BLM's determination, many, if not all, of the very ancient remains or cultural items discovered in North America may not be related to *anyone* living today. If there

are living descendants, such descendants could include people who are not American Indian at all, who live outside the specific geographic region in which remains or cultural items were discovered, or live outside the United States. This means that, in the case of truly ancient remains and cultural items, the required showing of cultural affiliation as a precondition to repatriation is especially important because the disposition may implicate the rights and interests of individuals whose cultural or biological connection to the remains may be proven to be more direct than the claiming tribe's. Put another way, any relaxation of NAGPRA's cultural affiliation requirement to accommodate claims such as the one made by the Fallon Tribe here would impinge upon the rights and interests of American Indians (or other citizens) whose ancestry and views are not represented by the claiming tribe.

As described above, the views and preferences of the Zuni Tribe – which does *not* seek repatriation of human remains held in museum or research collections, and does not object to the responsible curation and study of remains already in collections – are contrary to the views expressed by the Fallon Tribe. And as described below, the views of the EMCA are not represented by the Fallon Tribe either.

D. The Fallon Tribe Does Not Represent The Views Or The Interests Of American Indians And Other Ethnic Groups Represented By The EMCA.

The following are views held by the EMCA, which materially conflict with the positions taken by the Fallon Tribe:

(1) American Indians and other ethnic groups represented by the EMCA support DNA testing, carbon dating, taxonomic measurements, and other study techniques which may lead to the identification of direct ancestral links or the absence of such links. Techniques used to identify the ethnic origins of human remains have improved over time, and likely will continue to improve in the future. They are unavailing, however, where human remains and the

potentially boundless information they contain have been secreted away or, worse, disposed of altogether. Neiburger Aff. at ¶ 10.

(2) American Indians and other ethnic groups represented by the EMCA support the responsible curation and study of all remains and cultural artifacts pending positive identification. This is true for remains and cultural items which may be linked to present-day American Indians, and also is true for remains and cultural items of mixed heritage (*e.g.* White-Indian) or non-American Indian derivation. *Id.*

(3) American Indians and other ethnic groups represented by the EMCA support the careful and deliberate study and identification of remains. Native Americans represented by the EMCA do not support the hurried disposition of remains with only minimal or no study, as the Fallon Tribe advocates. *Id.*

(4) American Indians and other ethnic groups represented by the EMCA oppose the use of tax payer money to facilitate a repatriation project which, in essence, is a sectarian religious activity. *Id.*

(5) American Indians and other ethnic groups represented by the EMCA are troubled by the likelihood that the disposition advocated by the Fallon tribe will result in the repatriation of human remains to unrelated individuals who may subscribe to religious beliefs and practices that are (a) unrelated to those practiced by the cultural group of which the Spirit Cave Mummy was is a member or (b) unrelated to the beliefs and practices of other present-day American Indians whose ancestral link to the Spirit Cave Mummy may be proven to be more direct than that of the Fallon tribe. *Id.*

(6) American Indians and other ethnic groups represented by the EMCA support the concept that preservation of the Spirit Cave Mummy will promote the interest of American

Indians, and will unite all citizens in a mutual exploration and celebration of our individual ethnic heritages. *Id.*

(7) American Indians and other ethnic groups represented by the EMCA do not share the view that they are the sole caretakers of North American pre-history. Whatever the abuses of the past, ours is a shared continent and by virtue of that a shared heritage. *Id.*

(8) American Indians and other ethnic groups represented by the EMCA believe that what the Fallon Tribe seeks to do with the Spirit Cave remains and cultural items is *not* beneficial and is *not* in our best interest. *Id.*

E. The BLM's July 26, 2000 Determination Must Be Upheld.

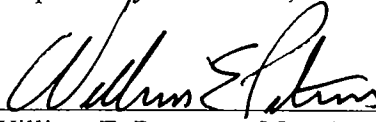
NAGPRA was not intended to give preemptive control over the prehistory of the southwestern United States to the Fallon Tribe. Nor was NAGPRA intended to elevate the religious views (be they Christian, non-Christian or agnostic) or political agenda of the Fallon Tribe over the beliefs and views of other tribes in the region (including the Zuni tribe) or elsewhere in the absence of a demonstration, supported by a preponderance of the evidence, of cultural affiliation.

The cultural origins and relationships of the Spirit Cave Mummy cannot be presumed. Because the Fallon Tribe's claim is not supported by a preponderance of the evidence, their motion for summary judgment must be denied and the BLM's Determination left in place.

IV. CONCLUSION

For each of the foregoing reasons, the EMCA respectfully requests that the Fallon Tribe's motion for summary judgment be denied and the BLM's Determination upheld.

Respectfully Submitted,



William E. Peterson (Nev. Bar No. 1528)
MORRIS, PICKERING & PETERSON
6100 Neil Road
Reno, Nevada 89511
(775) 829-6000

Richard M. Donaldson
MONTGOMERY, MCCRACKEN, WALKER
& RHOADS, LLP
300 Delaware Avenue, Suite 750
Wilmington, DE 19801
(302) 504-7840

*Attorneys for the Ethnic Minority Council of
America*

TAB 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

FALLON PAIUTE-SHOSHONE TRIBE,)
a federally recognized Indian tribe,)
)
Plaintiff,)
)
v.)
)
UNITED STATES BUREAU OF LAND)
MANAGEMENT,)
)
Defendant.)

No. CV-N-04-466 LRH (RAM)

STATE OF IL)
) SS.
COUNTY OF Cook)

**AFFIDAVIT OF ELLIS J. NEIBURGER IN SUPPORT OF THE *AMICUS CURIAE*
BRIEF SUBMITTED BY THE ETHNIC MINORITY COUNCIL OF AMERICA IN
OPPOSITION TO THE FALLON TRIBE'S MOTION FOR SUMMARY JUDGMENT**

1. My name is Ellis J. Neiburger, and I am an adult over the age of 21. I serve as a director on the board of directors of the Ethnic Minority Council of America (the "EMCA"), and in that capacity, have been authorized by the EMCA to make this affidavit on its behalf.

2. The EMCA was founded in 1985 to promote and protect our nation's diverse ethnic heritage. Many of the EMCA's members are of American Indian descent, living both within and outside the territorial limits of reservations created by treaty and recognized under federal law.

3. The EMCA is politically and socio-economically diverse. Members of the EMCA are registered Democrats, Republicans and independents. They are located throughout the U.S. and pursue a wide variety of vocations ranging from homemakers to licensed professionals.

They come from many religious backgrounds, including American Indian faiths, Christianity, Judaism, Islam, Hindu, Buddhism and agnostic belief systems.

4. The EMCA supports the preservation of ancient remains and artifacts because these items are indispensable components of our common history. The EMCA believes that this history must be explored, understood and recorded for posterity. The EMCA believes that the cultural, educational, medical and scientific exploration of ancient artifacts and remains is a way of understanding and preserving our diverse cultural identities for our sake and for the sake of future generations.

5. Consistent with quasi-property rights long recognized in the law, the EMCA recommends repatriation of remains and other cultural items in cases *where the next-of-kin or other direct lineal descendants can be identified* and desire reburial, cremation or other disposition. Such repatriations should be reserved for *actual descendants*, not broadly-defined or aggregated groups or coalitions bound only by a common political or religious objective but with no historically shared group identity, or because of a geographic link to a present-day claiming tribe or coalition.

6. The EMCA is concerned that the claiming tribe in this case seeks to exercise extraordinary property rights over the disposition of human remains and cultural material with which they have *no* demonstrated cultural affiliation, let alone one supported by a preponderance of the evidence. The exercise of these rights would impact many – indeed all – of our nation’s diverse cultural citizens, including those represented by the EMCA.

7. The EMCA is concerned that while NAGPRA was intended to and has on the one hand provided a practical enforcement system for the rights of present-day American Indians relative to ancestral materials and remains, that enforcement system has been misapplied such as

to disrupt the delicate balance NAGPRA was intended to strike. The EMCA is concerned that the Fallon tribe seeks to do precisely that in this case. That is, the Fallon Tribe seeks to extend NAGPRA to ancient human remains whose connections, if any, to *any* present day American Indians has not been and cannot possibly be established in light of our current state of knowledge, let alone be linked to a present-day descendant group. This is contrary to the beliefs and desires of the EMCA as well as other Indian groups – including the Zuni tribe – that have expressed views that are at odds with those held by the Fallon Tribe.

8. Attached to my Affidavit as Tab A is a true and correct copy of Resolution No. M70-90-L017 passed by the Zuni Tribal Council on November 16, 1989. Attached to my Affidavit as Tab B is a true and correct copy of an article entitled, “Biochemical evidence of cannibalism at a prehistoric Puebloan site in southwestern Colorado,” which was published in NATURE, volume 407, in September 2000.

9. There is great diversity among American Indians. Far from being a one-dimensional, homogenous culture as the Fallon Tribe’s brief suggest, American Indians have never, and do not now, speak with one voice. On the contrary, American Indians always have been and remain a remarkably diverse group of peoples, with different languages, systems of governance, religious beliefs, economic strategies, internment practices, family structures, and so on. American Indians are not one culture; they are many cultures. There is no single tribe or organization that speaks on behalf of all American Indians.

10. The following are views held by the EMCA, which materially conflict with the positions taken by the Fallon Tribe:

(a) American Indians and other ethnic groups represented by the EMCA support DNA testing, carbon dating, taxonomic measurements, and other study techniques which

may lead to the identification of direct ancestral links or the absence of such links. Techniques used to identify the ethnic origins of human remains have improved over time, and likely will continue to improve in the future. They are unavailing, however, where human remains and the potentially boundless information they contain have been secreted away or, worse, disposed of altogether.

(b) American Indians and other ethnic groups represented by the EMCA support the responsible curation and study of all remains and cultural artifacts pending positive identification. This is true for remains and cultural items which may be linked to present-day American Indians, and also is true for remains and cultural items of mixed heritage (*e.g.* White-Indian) or non-American Indian derivation.

(c) American Indians and other ethnic groups represented by the EMCA support the careful and deliberate study and identification of remains. Native Americans represented by the EMCA do not support the hurried disposition of remains with only minimal or no study, as the Fallon Tribe advocates.

(d) American Indians and other ethnic groups represented by the EMCA oppose the use of tax payer money to facilitate a repatriation project which, in essence, is a sectarian religious activity.

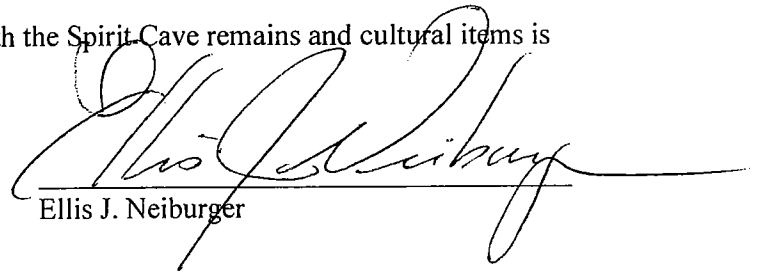
(e) American Indians and other ethnic groups represented by the EMCA are troubled by the likelihood that the disposition advocated by the Fallon tribe will result in the repatriation of human remains to unrelated individuals who may subscribe to religious beliefs and practices that are (a) unrelated to those practiced by the cultural group of which the Spirit Cave Mummy was a member or (b) unrelated to the beliefs and practices of other present-day

American Indians whose ancestral link to the Spirit Cave Mummy may be proven to be more direct than that of the Fallon tribe.

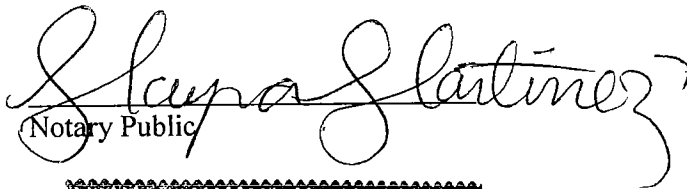
(f) American Indians and other ethnic groups represented by the EMCA support the concept that preservation of the Spirit Cave Mummy will promote the interest of American Indians, and will unite all citizens in a mutual exploration and celebration of our individual ethnic heritages.

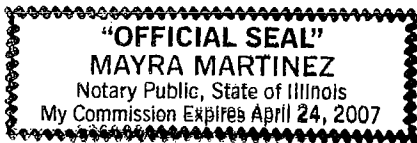
(g) American Indians and other ethnic groups represented by the EMCA do not share the view that they are the sole caretakers of North American pre-history. Whatever the abuses of the past, ours is a shared continent and by virtue of that a shared heritage.

(h) American Indians and other ethnic groups represented by the EMCA believe that what the Fallon Tribe seeks to do with the Spirit Cave remains and cultural items is *not* beneficial and is *not* in our best interest.

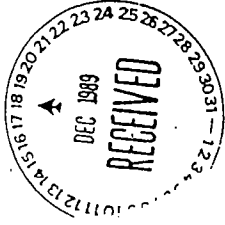

Ellis J. Neiburger

SWORN TO and subscribed before me
this 25 day of October, 2005.


Notary Public



TAB A



ZUNI TRIBAL COUNCIL
ZUNI, NEW MEXICO

November 16, 1989

RESOLUTION NO. M70-90-L017

WHEREAS, the Zuni Tribal Council, consisting of the Governor, Lieutenant Governor, and six Tenientes, is declared to be the legislative authority of the Pueblo of Zuni by Article V, Section 1, of the Constitution of the Zuni Tribe; and

WHEREAS, the Zuni Tribal Council has the authority in accordance with Article VI, Section 1, d. of the Constitution to represent the Tribe, and to act in all matters that concern the welfare of the Tribe; and

WHEREAS, in past decades, ancestral Zuni burials and their grave goods have been excavated and removed to museums and research institutions throughout the United States and other countries; and

WHEREAS, the Zuni Tribal Council recognizes that many museums and research institutions are presently custodians of ancestral Zuni remains and their associated grave goods, and house these collections of remains and grave goods in their facilities; and

WHEREAS, museums and research institutions throughout the United States are reassessing their policies of housing human remains and their associated grave goods; and

WHEREAS, many museums and research institutions are requesting guidance from the modern descendants of the individuals' remains for which museums and research institutions are presently custodians, regarding what course of action should be taken with these housed human remains; and

WHEREAS, the Zuni Tribal Council recognizes that certain American Indian peoples may request that certain ancestral human remains now held in museums or other institutions be returned to their descendants for reinterment, a position that the Zuni Tribal Council has recognized through passage of Zuni Tribal Resolution No. M70-89-L082; and

WHEREAS, the Zuni Tribal Council has, for the past decade, protected its ancestral remains by requiring reburial of all human remains and their associated grave goods removed from their resting place through archaeological excavations and other means, and continues to protect human burials through a reburial policy; and

WHEREAS, the remains of Zuni ancestor, previously excavated and removed from Zuni lands have been desecrated by their removal from their ancestral homeland; and

WHEREAS, there no adequate measures to reverse or mitigate the desecration of Zuni ancestral remains that are presently housed in museums and other institutions;

NOW, THEREFORE, BE IT RESOLVED, that the Zuni Tribal Council, in concurrence with religious leaders, has determined that these desecrated ancestral human remains, presently housed in museums and other institutions, should not be repatriated for reburial; and

BE IT FURTHER RESOLVED, that the Zuni Tribal Council in concurrence with religious leaders, directs museums and institutions to continue to respectfully care for and curate any desecrated Zuni ancestral human remains.

BE IT FURTHER RESOLVED, that the results of any analyzes performed on ancestral Zuni remains will be sent to the Office of the Governor, the Zuni School District Library, and the Zuni Archaeology Program Library, so that this knowledge is readily available to Zuni Tribal members.

ZUNI TRIBAL COUNCIL:

[Signature]
Besencio Lasillo, Lt. Governor

[Signature]
Edward Beyuka, Councilman

[Signature]
August Manooty, Councilman

[Signature]
Barton Martza, Ad. Councilman

[Signature]
Virgil Wyapo Sr., Councilman

[Signature]
Riva E. Lorenzo, Councilman

[Signature]
William Tsikewa Sr., Councilman

TAB B

.....

Biochemical evidence of cannibalism at a prehistoric Puebloan site in southwestern Colorado

**Richard A. Mariar*†, Banks L. Leonard‡, Brian R. Billman‡§,
Patricia M. Lambert|| & Jennifer E. Mariar†**

* *Department of Pathology, University of Colorado School of Medicine, Denver,
Colorado 80262, USA*

† *Colorado Archaeological Society, Denver, Colorado 80250, USA*

‡ *Soil Systems Inc., Phoenix, Arizona 85004, USA*

§ *Department of Anthropology, University of North Carolina-Chapel Hill,
Chapel Hill, North Carolina 27599, USA*

|| *Department of Sociology, Social Work and Anthropology, Utah State University,
Logan, Utah 84322, USA*

.....

The existence of cannibalism is one of the most controversial issues in the archaeology of the American Southwest. Disarticulated, cut-marked and heat-altered human remains from non-burial contexts at prehistoric Puebloan (Anasazi) archaeological sites in the Four Corners region of the American Southwest have been interpreted by some scholars as evidence of cannibalism¹. Osteological studies indicate that many of the disarticulated

bodies found at these sites were processed in a manner consistent with food preparation⁷. Opponents of this interpretation point out that non-cannibalistic practices such as secondary interment, corpse mutilation and ritualized witch executions might account for the assemblages^{8,9}. Osteological evidence alone does not document the actual ingestion of human flesh. Here we show consumption of human flesh did occur as demonstrated in preserved human waste containing identifiable human tissue remains from a site with osteological evidence of cannibalism.

Sometime around AD 1150 a small Puebloan habitation site (SMT10010) located along Cowboy Wash in southwestern Colorado was suddenly abandoned^{8,9}. The site inhabitants' principal residences were three pithouses (Features 3, 13 and 15; Fig. 1). Several lines of evidence indicate that during the abandonment or soon after, the bodies of seven people of both sexes and various ages were disarticulated, defleshed and apparently cooked as if for consumption by other humans⁸⁻¹². Their incomplete remains were left directly on floors and in other non-burial contexts in two of the pithouses (Features 3 and 13; Fig. 2)^{8,9}.

The contexts and types of artefacts left behind in the pithouses and the conditions of their roofs indicate that the pithouses at SMT10010 were suddenly abandoned^{8,9}. This site was excavated as part of a larger archaeological study of 17 Puebloan sites on the

southern piedmont of Sleeping Ute Mountain. The project involved the excavation of 105 structures, including 36 pithouses or pitstructures dating from AD 450-1280 (refs 9, 10). The abandonment observed in the pithouses at SMT10010 differed markedly from the pattern seen at the other sites excavated during the project. The typical pattern of structure abandonment involved removal of virtually all artefacts and materials of value. Grinding stones, finely polished tools, ornaments and whole vessels were rarely left behind. Structural wood and stone, especially shaped slabs, were routinely scavenged for re-use. In cases where roofing materials were not stripped, the roof was typically set ablaze after useable artefacts had been removed from the structure.

In contrast, at SMT10010, household goods, such as cooking pots and serving wares, valuable items, such as ornaments and polished stone tools, and salvageable construction materials, such as shaped stone slabs and wooden posts, were left in place in all the pithouses at abandonment. Many of the vessels, tools, ornaments and shaped stones were found directly on floor and bench surfaces with no sediment underneath, indicating that they were found at or near where they were originally left. Microstratigraphic evidence also indicates that the roofs of all the pithouses decayed gradually in place, rather than being burned or scavenged for re-use as was done with virtually all other southern Piedmont habitation structures^{8,9}.

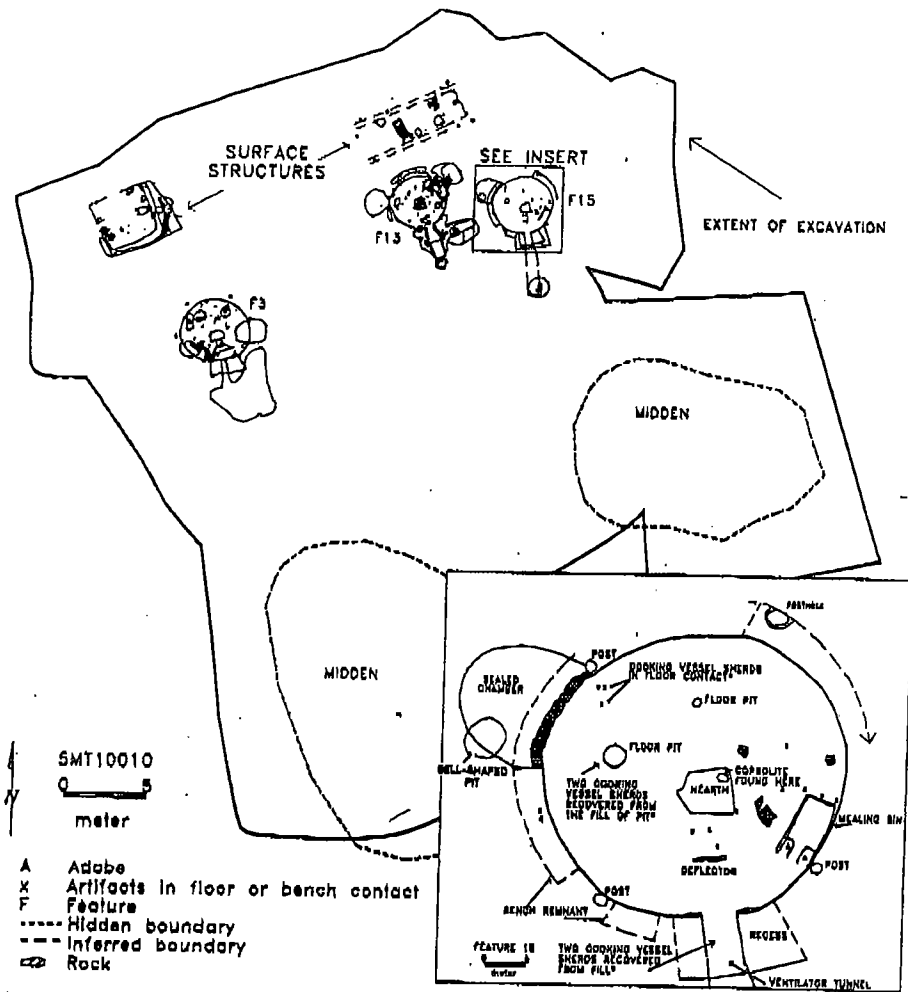


Figure 1 Site map of SMT10010, showing the three residential pithouses (Features 3, 13 and 15; F3, F13 and F15) with the associated surface structures and trash middens that were in use when the site was abandoned. The inset depicts the interior of Feature 15,

showing where the coprolite was recovered from the hearth and where cooking pot shards were recovered from the structure. The location of four shards recovered from fill above the floor is not indicated.

letters to nature

The disarticulated human remains were found scattered and piled in similar contexts to the valuable artefacts⁹⁻¹². In Feature 3, over a thousand human bones and fragments were found piled in a side chamber while others were recovered directly from the floor of the structure, with no sediment underneath (Fig. 1). The remains represented a minimum of four adults and one adolescent. In Feature 13, whole bones and fragments were left directly on the floor, piled in a side chamber and stacked on a bench. Scorched tooth and bone fragments were also found in the central hearth and in ash piles on the structure floor. The bones in Feature 13 were from two subadults.

Other things were left in the pithouses during or soon after the site was abandoned^{9,9}. A set of stone tools consistent with use in butchering was scattered around the hearth on the floor of Feature 13. Several of the tools were tested by crossover immunoelectrophoresis for blood residues; two cutting tools tested positive for human blood^{13,14}. Although no human remains were left behind in the third pithouse at the site (Feature 15) near the time of abandonment, fragments of a cooking pot were found scattered throughout the structure. Some of the fragments were in direct contact with the floor (Fig. 1, inset). Finally, an unburned human faecal deposit (coprolite) was found in the ashy fill of the structure hearth (Fig. 1, inset). Its unburned condition demonstrated that it was deposited after the last use of the hearth. This was the only coprolite recovered from the site and may be the only one identified from a structure hearth from anywhere in the American Southwest.

The abandonment of a cooking pot in Feature 15 opened the possibility that biochemical analyses might detect human tissue residues, supporting the hypothesis that human body parts were cooked. An immunological detection assay method (ELISA) has been used to identify animal meat residues in cooking pots from archaeological contexts¹⁵. To test for the cooking of human muscle tissue in ceramic vessels, 11 shards from the Feature 15 cooking vessel were analysed for human myoglobin. Myoglobin is a protein molecule that transports oxygen from the inner surface of the membrane of skeletal and cardiac muscle cells to the energy-generating components within the cells. Five shards from other vessel types, or from vessels that were already broken before the events surrounding the abandonment of 5MT10010 began, were also analysed for human myoglobin. One of these was from the floor of Feature 3, where it was found lying directly under the face of a

disarticulated human adolescent. The other four were from the floor of Feature 13, the same structure where blood residues were detected on cutting tools. Only the shards from the cooking vessel in Feature 15 tested positive for human myoglobin (2.8–48 µg of human myoglobin per shard).

For controls, 29 shards from other archaeological sites were tested using the same procedures: 14 cooking vessel shards from a midden area associated with a contemporaneous Pueblo II/Pueblo III (AD 1075–1175) site (5MT5501) from southwestern Colorado, and 15 shards from an intermittent campsite (5JF321) southwest of Denver that contained a Woodland Ceramic Tradition component (AD 150–1150) with associated shards from a minimum of 6–8 cooking vessels¹⁵. All control shards were negative for human myoglobin (< 1 ng per sample). The presence of human myoglobin only on cooking vessel shards from 5MT10010 is consistent with the hypothesis that human muscle tissue was cooked in that vessel.

The discovery of a coprolite that was deposited near the time of abandonment of the site, during or shortly after butchering and cooking of human remains, provided the potential to yield direct evidence of cannibalism. The coprolite was found in Feature 15 (Fig. 1) and consisted of a single mass of desiccated faecal material, 30 g dry weight, of a size and shape consistent with human origin^{14,16}. The position and condition of the coprolite indicated that it was defecated directly into the cold hearth in Feature 15 (Fig. 1, inset)^{9,9}. Macroscopic analysis of the human coprolite revealed no detectable plant remains, which is extremely unusual for an ancient Puebloan coprolite^{14,16-18}. Microscopic analysis indicated that starch granules and phytoliths were virtually absent. The absence of starch granules is considered a strong indicator that maize in particular was not part of the meal(s) represented in the coprolite¹⁹. The only pollens identified were from *Cheno-Am*, low-spine *Compositae*, and trace amounts from *Poaceae*, all of which could have derived from wind-borne, ambient pollen¹⁰. The absence of plant remains except for these pollen types is consistent with the hypothesis that the depositor of the coprolite had not consumed plant foods 12–36 h before defecation. Although bone fragments and keratinous elements, such as hair, were not detected among the gross contents, the absence of plant material indicated that the meal(s) represented by the coprolite were probably composed entirely of meat^{14,16}.

To test the hypothesis that human flesh was consumed, it was

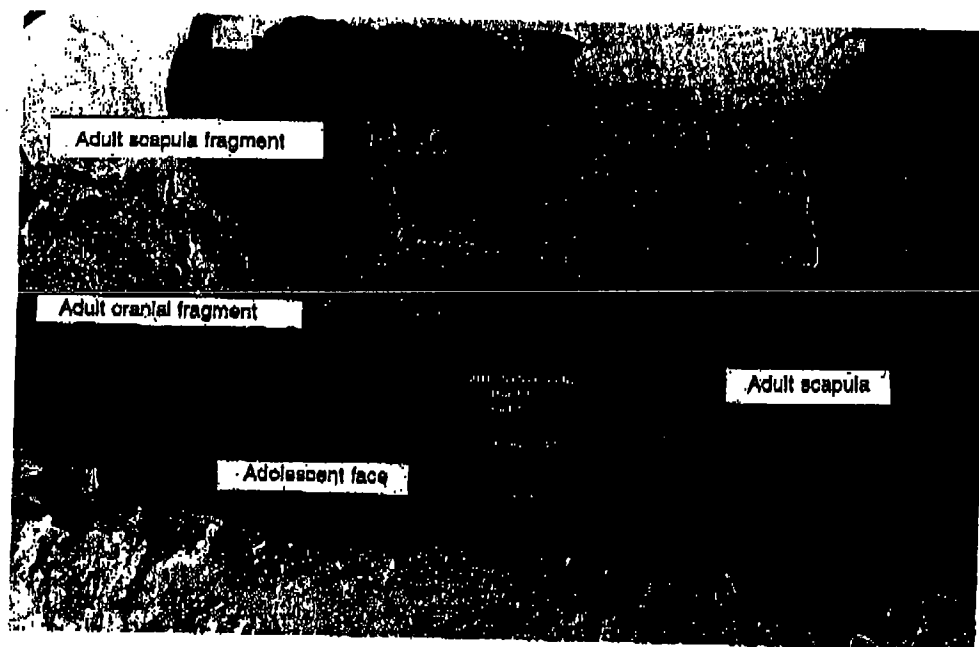


Figure 2 Human bones on the floor of Feature 3, south of the structure hearth.

necessary to identify a human-derived substance in the coprolite², but many human molecules normally occur in human stool material. For example, cells from the intestinal lining are constantly shed during the peristaltic process and blood from intestinal lesions may be present in stool samples. Therefore, it was necessary to identify a human substance that could only be present in the coprolite because it had been consumed by the depositor and could not be derived from his/her own tissues during digestion and elimination. Myoglobin is found only in skeletal and cardiac muscle cells, and not found in cells of the blood, skin, connective tissue, vascular tissue, tissues of the lymphatic system, nor in the smooth muscle cells of the digestive system. Therefore, human myoglobin should only be present in faecal material if it is consumed and passed through the digestive system by the depositor of the faeces. Furthermore, the chemical composition of myoglobin differs among animal taxa, making it possible to identify the type (species) of flesh consumed (J.E.M., unpublished results). Consequently, the ELISA technique can distinguish the presence of taxon-specific meat remains in the faeces of meat consumers. Bovine myoglobin, for example, was detected in samples from modern individuals that had consumed cooked beef within the last 24 h, demonstrating that taxon-specific myoglobin can be detected in faecal material.

Analysis of the coprolite from Feature 15 by ELISA detected human myoglobin (18–62 ng of human myoglobin per g of coprolite). The amount of myoglobin (> 5 s.d. above the average of the negative control) was lower than the amount detected on some of the shards from Feature 15 (7–10 s.d.). Apparently, the majority of the human myoglobin was broken down (degradation and hydrolysis) in the cooking process and in the gastrointestinal system of the consumer, and only a small amount remained in the coprolite that was recognizable to the human myoglobin-specific purified antibody. Human myoglobin was undetectable (< 5 s.d.) in 39 modern human faecal extracts used as controls, including samples from patients with positive blood in the stool sample. Furthermore, 20 prehistoric coprolites were tested as controls and showed no human myoglobin (< 5 ng of human myoglobin per gm of coprolite). The control coprolites were from Salmon Ruin, an open-air Puebloan site with occupation contemporaneous to 5MT10010. Although a possible cannibalism assemblage has been described from Salmon Ruin¹, all of the control coprolites were recovered from a deep

latrine deposit that clearly predates events surrounding the formation of the possible cannibalism assemblage (K. Reinhard, personal communication). To rule out contamination from insects in the coprolite from 5MT10010, internal larval proteins were tested for crossreactivity with human myoglobin; the results of these tests were negative.

Direct evidence for the consumption of human tissue by humans is necessary to demonstrate definitively that human cannibalism occurred at an archaeological site. Previous archaeological and osteological studies have strongly indicated that cannibalistic episodes took place among the ancient Puebloans, but the evidence has been essentially circumstantial. The analysis of the coprolite and associated remains from 5MT10010 at last provides definitive evidence for an episode of cannibalism involving ancient Puebloans. Results of the human myoglobin ELISA analyses of the human coprolite and shards from a ceramic vessel are consistent with the archaeological and osteological evidence of cannibalism at 5MT10010. During or after the sudden abandonment of the site, disarticulated, defleshed and heat-altered human remains were left in non-burial contexts in association with butchering tools with human blood residue, a cooking vessel with human myoglobin residue and a human coprolite containing human myoglobin. These data demonstrate that humans both processed and consumed human flesh at the site.

Cannibalism has occurred in a wide range of societies for a wide variety of reasons, including starvation, ancestor worship and political terrorism^{20–23}. With the presentation of the first direct evidence of cannibalism in the American Southwest in the prehistoric era, we hope that the debate will shift from the question of whether or not cannibalism occurred to questions concerning the social context, causes and consequences of these events. □

Methods

Artefact, coprolite and stool sample processing

We processed the shards, coprolite and control samples in an identical manner. We immersed the shards in artefact buffer (0.02 M Tris, 0.5 M NaCl, 0.5% Triton X-100, pH 7.4), sonicated them for 2 h and centrifuged them to remove particulate matter. We removed Triton X-100 by dilution/concentration three times using ultra-filtration membranes (cut-off at relative molecular mass < 10,000; Amicon). We dissolved the coprolites (100 mg) and control stool samples (500 mg) in artefact buffer and processed them as for the shards. The final volume was one-fifth the starting volume.

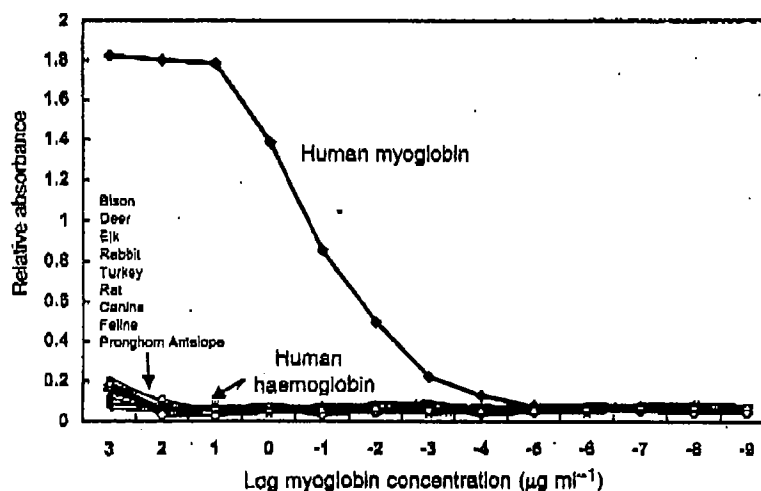


Figure 3 Specificity and sensitivity of the myoglobin assay. Dose–response curves from the ELISA assay demonstrate the specificity of the immuno-purified human myoglobin antibody toward human myoglobin, human haemoglobin and myoglobin from other animal species. The concentrations of myoglobin from each species were determined using a commercial protein assay. The myoglobin samples were assayed by

serial log-dilution for each myoglobin/haemoglobin sample. Each species of myoglobin was purified (> 80% myoglobin) by ion-exchange chromatography after extraction from skeletal muscle tissue. The other myoglobin species tested were bison, deer, elk, rabbit, turkey, rat, canine, feline and pronghorn antelope. Purified human haemoglobin was also tested.

Myoglobin detection assay

We used a sandwich-type ELISA to analyze for human myoglobin on shards, human coprolite samples and human stool samples. We applied a 100 µl aliquot of 1/1000 dilution of the capture antibody (immuno-purified rabbit anti-human myoglobin antibody from the purified immunoglobulin fraction, Sigma) in 0.05 M carbonate buffer, pH 9.6, to the plate overnight at 4 °C. We removed the unbound antibody by washing five times with ELISA wash buffer (0.025 M Tris, 0.14 M NaCl, 0.025% Tween, pH 7.4) in an automated ELISA washer.

We diluted the sample and controls 1/100 in ELISA dilution buffer (0.5 M Tris, 0.14 M NaCl, 0.03 M KCl, 0.2% Tween, 0.4% PEG-8000, pH 7.4) and applied 100 µl to the appropriate wells for 1 h at 22 °C. After washing the wells (as above), we applied mouse monoclonal anti-human myoglobin (Sigma; 100 µl diluted 1/4,000 in ELISA dilution buffer) for 1 h at 22 °C. We washed the wells three times and applied the detection antibody (Sigma; 100 µl of sheep anti-mouse IgG conjugated to horse radish peroxidase, diluted 1/10,000 in ELISA dilution buffer) 1 h at 22 °C. We washed the wells three times and added the substrate (TMB/Urea; Sigma) for 5 min. We stopped the reaction with 2 M H₂SO₄ and read the plate at 450 nm on an ELISA reader (Dytech MRX, Chantilly, VA). We assayed each sample or control using six replicates, three times each by two individuals. We averaged the values from each experiment and compared them statistically to the negative controls using the Student's *t*-test. We considered the results as positive when $P < 0.001$ and at least 5 s.d. above the average negative control.

The commercial rabbit anti-human myoglobin antibody reacted minimally with myoglobin from several other species used as possible food sources. To remove these cross-reacting antibodies, the rabbit anti-human myoglobin antibodies were immuno-adsorbed with different species of myoglobin (deer, bovine, sheep, antelope, rabbit, turkey, chicken, elk, mouse and rat). The individual myoglobin samples were coupled to Sepharose (Pharmacia) to bind the antibodies specific for the different species of myoglobin. The remaining human-specific antibodies were concentrated and used in the ELISA procedure. The immuno-purified polyclonal rabbit anti-human myoglobin antibodies recognized only human myoglobin in a dose-dependent manner (Fig. 3). The concentration of human myoglobin detected in the coprolite ranged from 18 to 62 ng ml⁻¹. No detectable concentrations of myoglobin were observed with serial dilutions of myoglobin (> 1 mg ml⁻¹) from the other species, including the 'food source' species found in the region (Fig. 3). Cross-reactivity with non-human primates was not considered, because no evidence of non-human primates has been found in prehistoric archaeological contexts in the continental United States. Furthermore, the nearest contemporaneous non-human primate populations were located in tropical Mexico.

Artefact and faecal controls

The control shards from 5MT5501 were provided by Jerry Fetterman, Woods Canyon Archaeological Consultants, Inc. The site occupation was contemporaneous to the Cowboy Wash site (5MT10010), but lacked any indication of possible cannibalism. 5MT5501 is located about two miles west of Dolores and 18 miles north of Sleeping Ute Mountain, in southwestern Colorado. The control shards from 5JF321 were provided by the Colorado Archaeological Society from their excavation about ten miles southwest of the Ken Caryl Valley¹¹. These shards are of the Woodland Ceramic Tradition. Some control shards from both 5MT5501 and 5JF321 were positive for deer and rabbit myoglobin and/or blood, but control shards from ancient Pueblo or Plains cultures did not contain human myoglobin residue.

Control faecal tests were conducted to determine whether human myoglobin was present in faeces from modern normal individuals (25 samples), modern individuals with blood in their stool samples (ten samples), or modern individuals who had consumed cooked beef within 24 h of defecation of the specimen (four samples). These controls did not show detectable levels of human myoglobin (< 5 s.d. of the average negative control). This result is consistent with the hypothesis that human myoglobin is not derived from the tissues of a defecator, even when the stool sample is positive for blood. In contrast, the control samples from the beef consumers tested positive for bovine myoglobin, demonstrating that orally ingested myoglobin can survive the processes of cooking and digestion, can be detected in human faecal material, and can be identified as to biological taxon of origin. The modern stool samples were collected for clinical testing and the remaining material was considered 'discarded specimen material' from the clinical laboratory. The only personal information available to the authors was the patient's occult blood status.

Received 7 March; accepted 6 June 2000.

1. Turner, C. G. & Turner, J. A. *Man Corn: Cannibalism and Violence in the American Southwest* (Univ. of Utah Press, Salt Lake City, Utah, 1999).
2. White, T. D. *Prehistoric Cannibalism at Mancos 5MTUMR-2346* (Princeton Univ. Press, Princeton, New Jersey, 1992).
3. Baker, S. *Rattlesnake Ruin (425A1853): A Case of Violent Death and Perimortem Mutilation in Anasazi Culture of San Juan County, Utah*. Thesis, Brigham Young Univ., Provo Utah (1990).
4. Bullock, R. A reappraisal of Anasazi cannibalism. *Kiva* 57, 5–16 (1991).
5. Darling, J. A. Mass infanticide and the execution of witches in the American Southwest. *Am. Anthropol.* 100, 732–752 (1999).
6. Nass, G. G. & Bellantoni, N. R. A prehistoric multiple burial from Monument Valley evidencing trauma and possible cannibalism. *Kiva* 49, 257–271 (1982).
7. Dongoske, K. E., Martin, D. L. & Ferguson, T. I. Critique of the claim of cannibalism at Cowboy Wash. *Am. Antiquity* 65, 179–190 (2000).
8. Leonard, B. L., McAndrews, K. & Lambert, P. M. in *The Puebloan Occupation of the Ute Mountain Piedmont* Vol. 3 (ed. Billman, B.) Ch. 3 (Soil Systems Publications in Archaeology No. 22, Phoenix, in the press).
9. Billman, B. R., Lambert, P. M. & Leonard, B. L. Cannibalism, warfare, and drought in the Mesa Verde region during the twelfth century A. D. *Am. Antiquity* 65, 145–178 (2000).

10. Billman, B. R. *The Puebloan Occupation of the Ute Mountain Piedmont: Synthesis and Conclusions*, Vol. 7 (Soil Systems Publications in Archaeology No. 22, Phoenix, in the press).
11. Lambert, P. M. in *The Puebloan Occupation of the Ute Mountain Piedmont* Vol. 3 (ed. Billman, B.) Ch. 6 (Soil Systems Publications in Archaeology No. 22, Phoenix, 1999).
12. Lambert, P. M., Billman, B. R., & Leonard, B. L. Explaining variability in mutilated human bone assemblages from the American Southwest: A case study from the Southern Piedmont of Sleeping Ute Mountain, Colorado. *Int. J. Osteoarchaeol.* 10, 49–64 (2000).
13. Newman, M. B. in *The Puebloan Occupation of the Ute Mountain Piedmont* Vol. 3 (ed. Billman, B.) Appendix A (Soil Systems Publications in Archaeology No. 22, Phoenix, in the press).
14. Lambert, P. M. et al. Response to critique of the claim of cannibalism at Cowboy Wash. *Am. Antiquity* 65, 397–406 (2000).
15. Hammond, W. & Rathbun, F. Preliminary report of the 1998 excavations at Swallow site (5JF321). Denver Chapter, Colorado Archaeological Society Report, 22–24 (1998).
16. Reinhard, K. J. in *The Puebloan Occupation of the Ute Mountain Piedmont*, Vol. 3 (ed. Billman, B.) Appendix B (Soil Systems Publications in Archaeology No. 22, Phoenix, in the press).
17. Minnis, P. E. Prehistoric diet in the Southwest: Macroplant remains from Four Corners feces. *Am. Antiquity* 54, 543–563 (1989).
18. Reinhard, K. J. in *Diet, Demography and Disease: Changing Perspectives of Anemia* (ed. Stuart-McAdams, P. & Kent, S.) 219–258 (Albina de Gruyter, New York, 1992).
19. Yinton, S. D. *Dietary Analysis of Coprolites from Northern Chile*. Thesis, Univ. of Nebraska (1997).
20. Brown, R. & Turin, D. F. *The Ethnography of Cannibalism* (Soc. Psych. Anthropol. Publishers, Washington DC, 1983).
21. Chagnon, N. A. *Yanomamö* (Harcourt, Brace, Jovanovich College, Fort Worth, Texas, 1997).
22. Grayson, D. K. Donner party deaths: A demographic assessment. *J. Anthropol. Res.* 46, 223–242 (1990).
23. Kenney, A., Bertulli, M. & Fricks, H. C. The final days of the Franklin Expedition: New skeletal evidence. *Arctic* 50, 96–46 (1997).

Acknowledgements

We thank T. G. Knight (Ute Mountain Ute Tribe), W. Hurley (Bureau of Reclamation), B. Harrill (Bureau of Indian Affairs), C. D. Breternitz (President of Soil Systems, Inc. and Principal Investigator) and C. K. Robinson (Projects Manager of Soil Systems, Inc.) for support of the excavation of 5MT10010; D. C. Kressin, A. Marlar and A. Schultz for help with the human myoglobin assay; the field crew at 5MT10010; and J. Merewether and M. Martin (Laboratory Directors for Soil Systems, Inc.). C. Murphy originally encouraged the coprolite and E. Hansen first identified it as a human faecal deposit. R.M. thanks W. Hammond for encouraging the establishment of a biomolecular archaeology laboratory.

Correspondence and requests for materials should be addressed to R.A.M. (e-mail: marlar@den-res.org).

CERTIFICATE OF SERVICE


I, William E. Peterson, certify that copies of the *Amicus Curiae* Brief Submitted by the Ethnic Minority Council of America In Opposition to the Fallon Tribe's Motion For Summary Judgment were served by first class mail, this 27th day of October, 2005, on:

Gordon Depaoli, Esquire
Woodburn & Wedge
P.O. Box 2311
Reno, NV 89505
Counsel for Plaintiff

Marc Slonim, Esquire
Ziontz, Chestnut, Varnell Berley, et al.
2101 Fourth Avenue
Seattle, WA 98121
Counsel for Plaintiff

Brian Chestnut, Esquire
Ziontz, Chestnut, Varnell Berley, et al.
2101 Fourth Avenue
Seattle, WA 98121
Counsel for Plaintiff

Greg Addington, Esquire
U.S. Attorney's Office
100 West Liberty Street
Reno, NV 89501
Counsel for Defendant



William E. Peterson

COPY

DISTRICT OF NEVADA
RECEIVED

OCT 27 2005

ENR, U.S. DISTRICT COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FALLON PAIUTE-SHOSHONE TRIBE,
a federally recognized Indian
Tribe, Plaintiff,

vs.

UNITED STATES BUREAU OF LAND
MANAGEMENT,

Defendant(s).

Case # CV-N-04-466 LRH (RAM)

VERIFIED PETITION FOR
PERMISSION TO PRACTICE
IN THIS CASE ONLY BY
ATTORNEY NOT ADMITTED
TO THE BAR OF THIS COURT

EFFECTIVE JUNE 1, 2004
FILING FEE IS \$175.00

Richard M. Donaldson, Petitioner, respectfully represents to the Court:

1. That Petitioner resides at 901 Paxson Drive
(street address)

West Chester, Chester
(city) (county)

Pennsylvania, 19382, (610) 436-1223
(state) (zip code) (area code + telephone number)


CAUTION: DO NOT REVISE OR RETYPE THIS FORM

1 10. Petitioner consents to the jurisdiction of the courts and disciplinary boards of the State
2 of Nevada with respect to the law of this state governing the conduct of attorneys to the same extent
3 as a member of the State Bar of Nevada.

4 11. Petitioner agrees to comply with the standards of professional conduct required of the
5 members of the bar of this court.

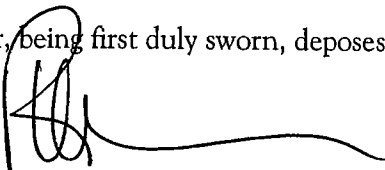
6 12. Petitioner has disclosed in writing to the client that the applicant is not admitted to
7 practice in this jurisdiction and that the client has consented to such representation.

8 That Petitioner respectfully prays that Petitioner be admitted to practice before this Court FOR
9 THE PURPOSES OF THIS CASE ONLY.

10 
11 _____
12 Petitioner's Signature

13 STATE OF DELAWARE)
14 COUNTY OF NEW CASTLE) SS:

15 Richard M. Donaldson, Petitioner, being first duly sworn, deposes and says:
16 That the foregoing statements are true.

17 
18 _____
19 Petitioner's Signature

20 Subscribed and sworn to before me this
21 26th day of October, 2005.

22 
23 _____
24 Notary public or Clerk of Court

SUSAN A. ALLEN
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires June 14, 2008

25 APPROVED:
26 Dated: _____
27 LANCE S. WILSON, CLERK
28 By: _____
Deputy Clerk

CERTIFICATE OF SERVICE

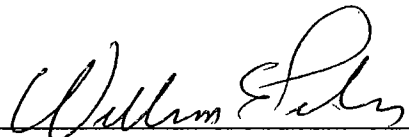
I, William E. Peterson, certify that copies of the Verified Petition For Permission To Practice In This Case Only By Attorney Not Admitted To The Bar Of This Court were served by first class mail, this 27th day of October, 2005, on:

Gordon Depaoli, Esquire
Woodburn & Wedge
P.O. Box 2311
Reno, NV 89505
Counsel for Plaintiff

Marc Slonim, Esquire
Ziontz, Chestnut, Varnell Berley, et al.
2101 Fourth Avenue
Seattle, WA 98121
Counsel for Plaintiff

Brian Chestnut, Esquire
Ziontz, Chestnut, Varnell Berley, et al.
2101 Fourth Avenue
Seattle, WA 98121
Counsel for Plaintiff

Greg Addington, Esquire
U.S. Attorney's Office
100 West Liberty Street
Reno, NV 89501
Counsel for Defendant



William E. Peterson