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Wednesday, September 05, 2012

Dr. Pradeep K. Khosla, Chancellor.

UC San Diego, 9500 Gilman Dr., La Jolla, CA 92093

Dear Dr. Khosla:

I am writing to ask that this letter take the place of the letter I wrote on Monday August 13, 2012, as we have better stated our position in this document. I am writing to you as president of the American Association of Physical Anthropologists (AAPA) and on behalf of the AAPA Repatriation Committee. As you may know, the AAPA participated in the development of the original NAGPRA legislation ratified in 1990 and was part of the coalition of Native American and scientific groups that worked for its passage. We continue to support NAGPRA's key goal of ensuring that culturally affiliated, federally recognized Native American groups be empowered to make decisions regarding the disposition of their ancestral remains. We are also keenly aware of the important role that skeletal studies can play in helping to determine the cultural affiliation of human remains. Physical anthropologists have a long history of working with law enforcement agencies, federal and other government officials, and Native American groups to provide a scientific perspective on the cultural affiliation of inadvertently discovered human remains, both ancient and modern.

I am writing specifically about ancient human skeletal remains that were excavated from University property in 1976, also known as the "La Jolla skeletons," which consist of the remains of at least two individuals. As you know, the Kumeyaay have claimed these remains in question because the skeletons were excavated from a location that the Kumeyaay, but not the federal government, consider ancestral aboriginal land. NAGPRA protects human remains that have been discovered since 1990 on federally recognized tribal lands, but the La Jolla skeletons were excavated before 1990 (in 1976) and on land that does not fall within the jurisdiction of NAGPRA. Additionally, from what little we know about the remains, including an estimated age of 9,000 years before the present, their connection to the Kumeyaay is not at all clear. Research has shown that there are no unambiguous morphological connections between the ancient remains and modern Native Americans, and early ethnographic reports recorded different Kumeyaay mortuary practices from those associated with these two skeletons. Naturally, culture and morphology can change over time within groups, and this is especially challenging with ancient remains. Ancient DNA analyses can shed light on genetic connections, but genetic sampling has not been allowed. A reasonable connection must be established between the ancient remains and modern tribe for there to be cultural affiliation, and therefore eligible for repatriation under NAGPRA as the law existed when the Kumeyaay made claims for these skeletons.

Public institutions have responsibilities to all interested communities: the general public, tribal members, and scientists. Human remains from western North America that are at least 9,000 years old are quite rare from this time period, a recent example being the Kennewick Man, which was contested in the Ninth Circuit Court, which includes California. The Kennewick decision reminded us that skeletal remains with no connections to present-day tribes are not only culturally unaffiliated, but are not considered Native American under the law: not every single individual who arrived in the New World before 1492 is an ancestor of modern Native Americans, be they Asians, Polynesians, or Vikings.

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It is our understanding that a UCSD committee was not able to establish a preponderance of evidence for a connection between the remains and the Kumeyaay. Because you have determined that the remains are culturally unaffiliated, the Kumeyaay have no legal or moral rights to determine what analyses may be conducted. The documentation of human remains is not forbidden by NAGPRA laws or regulations, and we are unaware of any thorough documentation of the remains, though in 2010, Arion Mayes published a paper in *American Indian Quarterly* ("These Bones are Real", volume 34, number 2, pages 131-156) that summarized bioanthropological approaches to analyzing the La Jolla remains under NAGPRA. The biological data that can be recorded and analyzed were limited, but Mayes concluded that there is a probable connection between the remains and the Kumeyaay simply due to shovel-shaped incisors, which are not exclusive to Native Americans and are found in many Asian and Pacific peoples at high frequencies. Once again, for repatriation under NAGPRA, a reasonable connection between the remains and a modern Native American group – a federally recognized tribe – to the exclusion of other groups – must be established in order to be repatriated under the law.

Better methods should be explored in order to establish the relationships of the La Jolla remains to other ancient and to modern Native Americans. I hope that you will make the remains available for study by experienced and qualified experts. CT scans and other methods of non-destructive should be allowed, as well as minimally destructive analyses to extract ancient DNA. Recent breakthroughs in DNA analysis mean that many remains that researchers currently cannot affiliate or identify may well be identifiable in the future. Current and future documentation and analytical methods may help to establish cultural affiliation, so the remains should be preserved for further studies.

The AAPA appreciates the interpretation of NAGPRA as moral legislation and of the motivation of institutions to "do the right thing", as well as compromise among many stakeholders. But there is harm in returning remains to a group with no demonstrable cultural affiliation to those remains. Such repatriations carry a high probability of error, and the actual affiliation may well turn out to be with another group. Our knowledge of the past is not static, but keeps improving with time. Premature repatriation to an unaffiliated group runs the risk of disenfranchising the group to which the remains are truly affiliated. It also deprives all other groups, Native American and otherwise, of the opportunity to learn about our shared humanity from those remains.

Once again, I hope that you will consider the tremendous scientific value of ancient remains to inform us all of the process of the peopling of the Americas. We think that this is best accomplished by following the repatriation laws, which we helped to compose.

Sincerely,

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