

The types of evidence which may be offered to show cultural affiliation may include, but are not limited to, geographical, kinship, biological, archaeological, anthropological, linguistic, oral tradition, or historical evidence or other relevant information or expert opinion. The requirement of continuity between present day Indian tribes and materials from historic or prehistoric Indian tribes is intended to ensure that the claimant has a reasonable connection with the materials. Where human remains and funerary objects are concerned, the Committee is aware that it may be extremely difficult, unfair or even impossible in many instances for claimants to show an absolute continuity from present day Indian tribes to older, prehistoric remains without some reasonable gaps in the historic or prehistoric record. In such instances, a finding of cultural affiliation should be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of gaps in the record.

NEW EXCAVATIONS OR DISCOVERIES

The substitute amendment provides that for any Native American human remains or funerary objects, excavated or discovered on Federal or tribal land after enactment of this Act, the lineal descendants shall have the right of possession. It further provides that for sacred objects, objects of cultural patrimony and human remains or funerary objects where there are no lineal descendants, the right of possession shall be in the Indian tribe or Native Hawaiian family or organization on whose land the items were found or the Indian tribe or Native Hawaiian family or organization which has the closest cultural affiliation to those items. The substitute amendment also provides that for those human remains or objects discovered on Federal lands where the cultural affiliation cannot be reasonably ascertained, the right of possession shall be in the Indian tribe or Native Hawaiian organization that aboriginally occupied the area where the items were discovered. This section of the bill requires an Indian tribe or Native Hawaiian community or organization to state a claim for the right of possession to objects found outside their traditional or present day lands.

The Committee recognizes that in some areas of the country several Indian tribes may have to claim human remains or objects found on their aboriginal lands. The Committee also recognizes that there may be circumstances where human remains or objects found on one Indian tribe's lands may be culturally affiliated with a different Indian tribe. In these situations, where more than one Indian tribe makes a claim for the right of possession, the Committee intends that a determination of the right of possession shall be based on the best available evidence given the totality of the circumstances. Determinations of the right of possession should be made pursuant to the regulations promulgated by the Secretary in consultation with the Review Committee. The Committee contemplates that the Review Committee could serve as a useful mediator in resolving a dispute between Indian tribes regarding the ownership, control, or right of possession of human remains or objects. In addition, the Committee intends this section to allow for the negoti-