

very issue. I hope that maybe we can resolve this by this piece of legislation. I know that you, Senator, as a Member of the Natural Resources Committee on the Senate side dealing with the Department of the Interior issues, that you will be dealing very closely with this very issue.

Senator, you are welcome to come up and join us.

Mr. AKAKA. Please excuse me. I'm going to have to return to some other parts of my schedule.

Mr. FALEOMAVAEGA. We have just been joined this morning by members of the Hui Malama I Na Kupuna o Hawai'i Nei. We just want to say Aloha, welcome.

Our next panel with us this morning is Dr. Keith Kintigh, representing the Society of American Archeology; Dr. Ray Thompson, director of the Arizona State Museum, and also representing the American Association of Museums; and Dr. Martin Sullivan, director of the Heard Museum, Phoenix, AZ, and former director of the New York State Museum.

I would like to welcome the members of our scientific community on this issue. We certainly would like to have Dr. Kintigh begin. Without objection, all your statements will be made a part of the record.

PANEL CONSISTING OF KEITH KINTIGH, CHAIR, TASK FORCE ON REBURIAL AND REPATRIATION, SOCIETY FOR AMERICAN ARCHEOLOGY; RAYMOND H. THOMPSON, DIRECTOR, ARIZONA STATE MUSEUM, APPEARING ON BEHALF OF THE AMERICAN ASSOCIATION OF MUSEUMS; AND MARTIN E. SULLIVAN, DIRECTOR, THE HEARD MUSEUM, PHOENIX, AZ

Mr. KINTIGH. Mr. Chairman, the Society for American Archeology is grateful for this opportunity to comment on the bills before the committee today. The Society for American Archeology is a scholarly and professional association composed of professional and avocational archeologists committed to the scientific investigation, interpretation and preservation of the archeological heritage of the United States. The Archeological Institute of America and the Society of Professional Archeologists join the SAA in its position on repatriation.

This morning I will summarize my prepared remarks which contain some rather specific comments on the bills. Also, I offer for the record a statement by a distinguished colleague, Lynne Goldstein, who was invited by the committee to testify but is not able to be here today.

First I want to make clear that the Society is not here to defend the status quo. The Dickson Mounds Museum, referred to by Mr. Haney, in fact tried to take the human remains off display, but as I understand, it was prevented from doing so by the legislature and the Governor. The SAA has written to the State in support of the closing of that exhibit.

Although we believe H.R. 5237 needs revision, it can become an important vehicle for the appropriate repatriation of human remains and objects, the enhancement of Native American access to material aspects of their heritage, and the protection from looting of Native American cemeteries. We are grateful to Representative

Udall and the committee staff for moving so far toward a positive and workable bill.

We also appreciate the eloquence of the stand for the protection of Native American graves taken in Representative Bennett's H.R. 1381.

Repatriation is the central goal of Mr. Udall's bill. Anthropologists are painfully aware that repatriation results in the destruction of information about the past. However, we recognize that where a modern group has a reasonably clear affiliation, that group's desire to control its own heritage takes precedence over scientific and public interests.

H.R. 5237 properly calls for a finding of cultural affiliation in the context of case by case consideration of repatriation requests by specific tribes or Native Hawaiian organizations. Unfortunately, the critical definition of cultural affiliation fails to ensure the control over human remains or objects is transferred to an appropriate group. We certainly are not asking for scientific certainty. The bill's stipulation, however, only of a reasonable relationship, is inconsistent with what we understand to be the legislation's intent.

For example, the Apache Indians speak a very closely related language to the Tlingit of Coastal Alaska, indicating what I would call a reasonable relationship. Surely the Tlingit should not be able to claim the remains of Apaches or vice versa.

I note that the Society of American Archeology argued strenuously, but unsuccessfully, for the inclusion of definitions for cultural affiliation or tribal origin in the Smithsonian bill, but were unable to have any consideration of those definitions.

Even more problematic in the H.R. 5237 definition is the presumption of affiliation between a group and human remains or objects from their aboriginal lands. The development of modern tribal groups has taken place over such a long time that it is not possible to make reasonable or unique assignments of modern tribal groups to atemporal aboriginal lands.

We recommend the definition of cultural affiliation in the draft substitute for Senate 1980. It requires a reasonable relationship between a modern tribe and a historic or prehistoric group that indicates a continuity of group identity through time.

We support the inventory and identification of museum collections and the notification of groups with which remains or objects may be affiliated. It will give Native American groups the information necessary to develop repatriation requests and provide them with a tremendous amount of information about their heritage. However, we hope that the committee recognizes the immensity of the costly task mandated by this legislation and that the Congress will be prepared to appropriate the necessary funds.

We are troubled that H.R. 5237 discourages further study of remains or objects in order to determine their cultural affiliation. Since the time when most collections were made, knowledge has been developed that would allow more and better determinations of affiliation. Discouraging study will reduce the number of items for which affiliation can be determined, contrary to the major goal of the bill.

Representative Bennett's H.R. 1381 flatly prohibits the disturbance of Native American graves on all lands of the United States.

H.R. 5237 forbids the disturbance only on Federal and tribal lands without the consent of the appropriate group. While we strongly support the prohibition of unauthorized excavation, we fear that these provisions are unworkable as they stand. They need to take into account the diverse situations to which they apply, recognizing that nearly all Native American graves now excavated by archeologists are removed because of imminent destruction due to the forces of development. Unavoidable disturbance and situations in which it is impossible to determine affiliation prior to excavation must be accommodated.

We were disappointed that H.R. 5237 has backed away from the courageous stand taken by Mr. Bennett's H.R. 1381 and Mr. Udall's H.R. 1646, both of which provide broad protection to Native American human remains regardless of the ownership of the lands on which they were buried. Just as endangered species are protected wherever they might be, all Native American sites should be protected.

Despite strong Federal and State laws, the antiquities market continues to encourage widespread looting. Strengthening the bill to include an unqualified prohibition on the sale and purchase of human remains and funerary objects could eradicate the commercial antiquities market, eliminating the incentive for the most destructive looting. This would do far more to protect Native American graves than all of the provisions of this bill and all other antiquities legislation combined.

In several places H.R. 5237 deals with remains and objects in which no cultural affiliation can be established. We believe it is neither necessary nor appropriate for this legislation to determine the disposition of unidentifiable remains, although further study is certainly appropriate. The return of presently unidentifiable remains to the wrong group not only deprives the group to which they may be rightfully affiliated, but also it deprives all other groups, Native American and otherwise, of the opportunity to learn from those remains.

H.R. 5237 can provide for the repatriation of remains and objects that are relatively clearly related to modern groups. Since there is broad agreement on this and other important issues, the difficult and contentious provisions concerning unaffiliated remains should be deleted.

In conclusion, we see many strengths and have noted several suggestions to improve this legislation. With an improved definition of cultural affiliation and elimination of the provisions determining the disposition of unidentifiable remains, the Society for American Archeology would be pleased to support H.R. 5237.

On behalf of the Society for American Archeology, I thank you for this opportunity to testify on this important legislation. I would be glad to answer any questions the committee might have.

[Prepared statements of Mr. Kintigh and Ms Goldstein follow:]