

Archeological Articles

Seeking Common Ground: Introductory Remarks Regarding Efforts To Pass An Unmarked Graves Protection Bill In Texas

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I. Introduction

As we approach the new millennium, it is appropriate to reflect on our past actions, assess the present, and plan for the future in areas we deem to be important. This conference is an opportunity for such an examination in regard to the treatment of unmarked graves in Texas.

When the 76th Texas Legislature convenes in January 1999, it will have been 12 years since the first bill was introduced to codify protection for unmarked human burials beyond the provisions of current cemetery laws and the Antiquities Code of Texas (Title 9, Chapter 191, Texas Natural Resources Code). Because over 90 percent of the land in Texas is privately owned, existing statutes do not ensure protection for the majority of unmarked graves in the state.

One of the purposes of my participation in this conference and in preparing this article, is to provide a historical context for where we find ourselves today. To better acquaint the reader with the events that have transpired during the past 12 years, I will provide the following chronological account. It is an account based on my review of the files of the Texas Historical Commission (THC) and from first-hand observations made as a result of my 14 years of service as an agency staff archeologist—most recently, as State Archeologist.

II. The Path To Common Ground

The path to “common ground” began with a discovery made in 1983 during the course of investigations at a highly significant archeological site in a construction right-of-way for a new highway in Williamson County, Texas. The discovery occurred at a location that came to be known as the Wilson-Leonard site (41WM235), and it was quickly recognized as one of great significance in the eyes of the archeological community. The discovery was a deeply buried prehistoric burial containing the skeletal remains of an adult female that according to Collins (1996:13) “...can now be confidently dated to between 10,000 and 9,500 years ago.” Interest and curiosity in the burial escalated, and it became an item of intense, state-wide media attention. Soon after the discovery was made public, it was suggested that the remains should

be exhibited for public viewing in the Capitol Rotunda. Ray Apodaca, Executive Director of the Texas Indian Commission (TIC), voiced his opposition to such an arrangement and was quoted in the July 22, 1984 issue of the *Fort Worth Star-Telegram* (Hastings 1984:25A): "Our belief is that human remains should be treated with and given no less dignity than humans themselves. Historically the display of Indian remains and religious objects by museums and collections has been very dehumanizing." Upon further consideration, there was no public exhibition of the Wilson-Leonard burial remains.

I mention this chain of events because it served as the catalyst for a series of informal discussions between Apodaca and then-State Archeologist, Robert J. Mallouf. Their discussions related to the treatment of Native American burial remains in Texas. While there were acknowledged differences of opinion, areas of potential agreement were also identified by the two men. They organized an ad hoc group known as the "Committee for the Protection of Human Remains and Sacred Objects" (CPHRSO) comprised of Native American tribal and non-tribal organizations, representatives of Texas museums, physical anthropologists, and the archeological community.

Six meetings of the CPHRSO were held in Austin, Fort Worth, and Dallas from December 1984 through May 1986 (Committee for the Protection of Human Remains and Sacred Objects files, Texas Historical Commission). Discussions were lively and consensus was worked out on a few of the issues but never achieved for other, more controversial subjects such as repatriation and reburial. When consensus on a particular topic was reached by CPHRSO members, recommendations were formulated and promoted in articles submitted for publication in professional newsletters and presentations made at conferences in order to achieve, at a minimum, an awareness of the issues. The recommendation to discourage the public display of Native American human remains in Texas museums was handled in this manner, prompting some museums to voluntarily remove human remains from public display. CPHRSO members also expressed their concern over the lack of a state statute aimed at protecting the thousands of unmarked burials that occur on private property representing 10,000 years or more of the human presence in modern-day Texas.

III. Seeking Common Ground in the Texas Legislature

While the aforementioned ad hoc committee was disbanded in mid-1986, Mallouf and Apodaca assumed the responsibility for exploring the means to achieve better legal protection for unmarked American Indian burials. The framework for the first bill to address this issue was developed by the THC-TIC team. Legislation was filed in the 70th Legislature as HB 321 (companion SB 609), entitled "*An act relating to the creation of criminal and civil penalties for offenses concerning American Indian burial remains and funerary objects,*" by Representative Lena Guerrero of Austin and El Paso Senator Tati Santiesteban, respectively. The bill was passed by the Texas Senate and progressed to the House Calendars Committee, where it remained at the close of the legislative session. Had HB 321/SB 609 been enacted,

Chapter 42 of the Penal Code and Title 9 of the Natural Resources Code would have been amended to prohibit the commercial trade of American Indian human remains or funerary objects. This amendment was intended to discourage looting of prehistoric and historic burials by commercial relic hunters.

During the interim between the 70th and 71st Texas Legislatures, a subcommittee hearing of the Texas House Committee on Cultural and Historical Resources was called by Representative Ralph R. Wallace III, chairman of the committee. The hearing, held on January 28, 1988, offered subcommittee members the opportunity to hear public testimony concerning the need for a state law to protect unmarked Native American burials. Supporters, including Native Americans, archeologists, and museum representatives, testified in favor of such legislation. Opposition was voiced by artifact collectors who feared that their ability to collect artifacts and to maintain private artifact collections would be compromised by a graves protection bill.

The interim hearing apparently convinced Representative Wallace of the need for a burial protection bill, and he filed HB 2434, entitled "*An Act relating to the creation of criminal penalties for certain offenses concerning human burials and to the jurisdiction over and disposition of certain human burials and associated human remains or burial objects*" during the 1989 session. El Paso Senator Tati Santiesteban again served as the sponsor for the Senate companion bill, SB 1327.

Apodaca and Mallouf were also offered the opportunity to provide input and consulted with the bill's sponsors. There was a significant change in the strategy of this bill: it sought to protect *all* unmarked graves, regardless of cultural affiliation, by establishing penalties for the disinterment of human remains and/or burial objects for personal gain and for the failure to report burial site desecration. This change broadened the support base to include ethnic heritage groups, museums, archeologists, Native Americans, and even some landowners who sought help in fending off grave looters. The bill specified a procedure for reporting burial discoveries of sufficient age, and created a committee to advise the State Archeologist in the development of guidelines for the appropriate disposition of human remains and burial objects that would come under the state's jurisdiction. HB 2434 was amended and passed by the House and Senate, but was among the 55 bills vetoed by Governor Clements on June 18, 1989 (Graves 1989). This veto may have been related to concerns expressed by prominent private collectors of Native American art in personal letters to the TIC and calls to Representative Wallace's office (Native American Policy Research Project 1992:7). The 71st session also marked the demise of the Texas Indian Commission and the end of a positive, collaborative partnership between the TIC and THC.

A third unmarked graves bill was introduced in 1993 by Representative Bob Hunter of Abilene in the 73rd Texas Legislature. The bill, HB 1179, incorporated certain aspects of the 1989 bill, including a notification process for unmarked burial discoveries. HB 1179 criminalized the public display of human remains for profit, the intentional destruction of unmarked burials, and the failure to report such activities to the proper authorities. However, HB

1179 differed from the previous bill, with the State Archeologist identified as the party responsible for determining the disposition and treatment of recovered remains and associated grave goods. The bill was passed by the House and proceeded to the Senate Committee on International Relations, Trade and Technology, where it was referred to a subcommittee to consider objections raised by members of the American Indian Resources and Education Coalition and the Texas Indian Bar Association. The major point of contention was the lack of repatriation and reburial provisions in HB 1179. No consensus could be achieved and the bill died in subcommittee.

Senator Gonzalo Barrientos of Austin filed a fourth unmarked graves protection bill in 1995, SB 528. This bill was also similar to previous unmarked graves legislation, particularly with respect to the creation of penalties for the intentional disturbance of a burial, failure to report knowledge of such activity, and the prohibition of the buying, selling, or bartering of human remains or funerary objects. In regard to the disposition issue, SB 528 specified that unclaimed remains would be placed by the State Archeologist at institutions that receive federal funds, thus triggering provisions of the Native American Graves Protection and Repatriation Act (Public Law 101-601, November 16, 1990, 25 U.S.C. para. 3001 et. seq.). While the bill was approved without incident in the Senate, it stalled in the House Committee on State, Federal, and International Relations due to concerns expressed by utilities interests. A substitution bill was voted favorably from the committee and it was set on the House Calendar on May 23, 1995, but it progressed no further (Texas Legislative Service 1995:30).

In 1997, Senator Barrientos stepped up once again to introduce SB 810, *“Relating to the protection of certain unmarked burials and associated human remains or funerary objects and to the creation of certain offenses concerning unmarked burials; providing criminal penalties.”* Representative Elliot Naishtat, also of Austin, joined forces with a companion bill, HB 3425, which was later substituted by the Senate version, reported engrossed from the Senate chamber on April 18, 1997 (Texas Legislature Online, May 12, 1997). The proposed legislation remained pending in the House Committee on State, Federal, and International Relations following two public hearings. Numerous witnesses offered testimony, with opposition deriving primarily from two organizations: the Texas Agri-Women and Texas Wildlife Association. Concerns about private property rights issues hindered the bill and no further progress could be achieved before the session's end.

SB 810/HB 3425 was only one of several bills introduced during the 75th legislative session that related to a host of cemetery and human remains issues. This development likely influenced Chairman Bob Hunter of the House State Federal and International Relations Committee to recommend that an interim study be conducted to explore the need for additional cemetery legislation in the 76th Legislature. Such a legislative charge was authorized and assigned to a subcommittee chaired by Representative Carl Isett of Lubbock. A report of the subcommittee's findings is anticipated in the near future.

IV. Concluding Remarks

According to a 1993 study prepared for the United States Department of Agriculture's Soil Conservation Service, Texas is listed as one of 15 states that does not have specific unmarked graves protection legislation (CEHP, Inc. 1993:47). In fact, each of our neighboring states has enacted such legislation (CEHP, Inc. 1993:9, 21, 31, 36). Future efforts to effect statutory changes in Texas requires careful study and consideration of all facets of the issue, recognition (in as much as it is possible) of known and potential roadblocks and opposition, and productive discussion and cooperation among the individuals, organizations, and public entities that have a place in the process. I am confident that the speakers and panelists that we will hear from today will offer useful observations and insights in this regard. One thing that I can say with confidence is that without respectful dialogue between interested parties, no matter how diverse their ultimate goals, we cannot reach "common ground" as it pertains to the protection of unmarked graves.

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