

Public Encounters with Human Remains In Texas

Daniel Potter and Helen Simons

Abstract

This paper presents data on human remains cases from the files of the Texas Historical Commission (THC), specifically the former Office of the State Archeologist, regarding looting, accidental discovery, uncontrolled movement, destruction, or other adverse effects to unmarked human remains in Texas. Utilizing records kept by the Commission for over 30 years, the paper surveys a range of THC cases and reports the typical types of action taken in handling cases involving human remains.

I. Introduction

The Office of the State Archeologist (OSA), which merged this year into the Archeology Division of the Texas Historical Commission (THC), has extensive experience in the management of human remains from a range of private and public contexts across the state. Historically, this office has been viewed by Texas archeologists and the general public as a source of information and contact for human remains issues. Since its founding by the Texas legislature in 1965, OSA has kept records of human remains cases that document where, how, and when human remains have been encountered by public and private entities. In some cases, these records show that OSA was directly involved in the treatment of human remains (e.g., documentation, excavations, and protection in place). In others, OSA served as an archive for recorded conversations, field notes, photographs, and newspaper articles that recorded what other individuals or organizations had done to treat human remains.

The records housed at the THC constitute a significant resource for those interested in the history of how human remains have been handled in the state. Information on human remains can be found in several areas within the agency, including the "Human Remains files," currently kept by the Texas State Archeologist; the "Texas County files," housed in the Archeology Division of the THC; the photographic slide and print libraries (both indexed by computer database and available for qualified research); and finally, a small library of published and unpublished papers and reports regarding human remains.

Today, the Archeology Division at the THC continues to be involved in cases dealing with both unmarked and marked burial grounds, many of which include some form of treatment of human remains. Furthermore, it appears that the incidence of calls requesting assistance in treating with human remains has increased markedly through time (Figure 1). While we are not familiar with the

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Human Remains Cases per Year from Sampled Counties

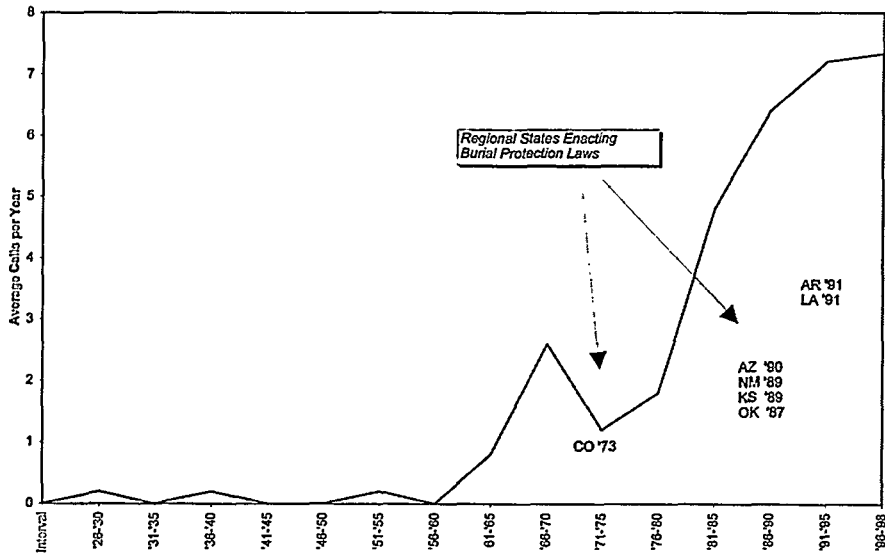


Figure 1. Human Remains Cases per Year from Sampled Counties.

histories of human remains laws in other southwestern and south central states, it is interesting to compare the date of enactment of these laws with the rapidly increasing volume of calls and reports occurring in Texas. Results of this comparison lead us to speculate that the rapid increase in human remains reports in the state (beginning around 1980) was being felt in other states as well and led to the enactment of burial laws in every state in the region except Texas and Mississippi (see Schamel 1997).

It would appear that the incidence of calls continues to increase. The senior author (who serves as coordinator of the THC's Texas Archeological Stewardship Network) has been involved in 14 cases involving human remains in the past year, five of which are active at the present time. The great majority of these cases relate to damage to, or total destruction of, human remains on private land. Most of these cases are being dealt with through reliance on volunteers as well as unallocated THC staff time taken from other ongoing programs and projects. As a result, resolution of human remains cases, including the salvage, analysis, and final disposition of remains is frequently delayed and otherwise inefficient. Lacking a clear public policy, dedicated funding, and statutory standing regarding such cases, THC treatment of human remains cases will continue to be problematic. For this reason, we stress the point that any successful policy, and/or accompanying legislation, designed to protect unmarked graves and human remains in Texas must not be entirely statutory, but should also entail the allocation of sufficient resources to this formidable task.

In all cases addressed by the THC, preservation in place is the preferred policy for human remains. This is also the case for prehistoric and historic sites

that do not have human remains. However, where destruction of human remains is imminent and unavoidable, human remains are excavated with as much care and control as is possible. In some cases, excavation takes place in disadvantageous circumstances due to factors such as tight construction schedules, prior damage to remains, and a lack of THC resources.

It should be noted that unlike its sister agencies in each of the states neighboring Texas, the THC has no statutory authority regarding unmarked burials. This, and the largely unpredictable occurrence of human remains cases, has by necessity placed the agency in a reactive mode, rather than a proactive one. Such will probably remain the case until the passage of legislation that sets a clear and workable policy regarding unmarked remains and that also allocates the resources necessary for the THC to carry out that policy.

II. Currently Active Cases

A review of the cases currently active with the Archeology Division at the THC gives a good sense of the diversity of contexts in which human remains come to light. One case involves a prehistoric cemetery discovered in a sand/gravel quarry in Bexar County, Texas. In late 1995, the OSA was contacted by a landowner and other concerned citizens regarding human remains that had been observed eroding from the upper wall of a commercial sandpit. Fragments of a human humerus (upper arm) had been found by a young child attending a nearby weekend picnic. The child took the bone to a number of individuals attending the picnic before it was tentatively identified as a human upper arm element. In this case, the area where bones were observed was slated for removal by the quarry, and in-place preservation of the remains was not an option. Faced with a choice of either recovering the remains archeologically or having them become incorporated into construction fill, the landowners granted permission for an OSA salvage excavation.

Several weeks of excavation at the site by OSA staff, Texas Archeological Stewardship Network members (henceforth "stewards"), and volunteers from the Southern Texas Archaeological Association revealed a Late Prehistoric unmarked cemetery with at least 24 individuals. Radiocarbon dating of two burned-rock features likely to be associated with the burials suggest that this cemetery was used sometime between A.D. 1250 and A.D. 1400.

Another Bexar County case is that of the historic Young Perry Alsbury family cemetery, near the Interstate 10 crossing of Salado Creek. Young Perry Alsbury was an important figure in the Texas Revolution, having served under "Deaf" Smith, and was one of the seven volunteers who burned the bridge at Vince's Bayou during the battle of San Jacinto. Later in his life, Alsbury was wounded at the 1846 battle of Palo Alto in Cameron County. Alsbury was also notable because his father, mother, and several brothers were members of Stephen F. Austin's original colony.

Following the revolution, Alsbury settled in San Antonio and acquired land there. He and three other family members were buried near his home on the Salado in the late 1800s, and in 1936 a Centennial Commission Marker was placed at the grave site. Unfortunately, the cemetery was apparently never recorded with Bexar County, and this omission, so commonly seen in the cases

of small historic family cemeteries in Texas, left the cemetery without legal protection. In the years following 1936, the small cemetery was gradually abandoned and neglected. During the war years its wrought-iron fence was robbed, probably for scrap metal, and through time it apparently lost all markers except that erected by the Centennial Commission. However, perhaps around 1960, that marker too was likely moved from its original position, and the exact location of the Alsbury plot was lost. It is possible that development in the area has either removed or destroyed the Alsbury family remains. Currently, living descendants of the Alsbury family have been working with THC staff to locate the cemetery and to move the centennial marker to an appropriate public setting.

Another active case is that of looted prehistoric remains in Maverick County, in the vicinity of Eagle Pass, Texas. Here, in October 1998, local residents, apparently through curiosity, disinterred a burial of prehistoric age at site 41MV52. They placed the remains in a cardboard box and then left the box in a place where it came to the attention of a THC archeological steward. In this case, the senior author and the steward were able to determine that the burial had originated on a Maverick County ranch. The ranch was revisited and the location of the burial reestablished. The human remains are currently under analysis to determine the age, sex, cultural affiliation, and cause of death of the individual. Following the discovery of the first burial, it was learned that possibly two additional unmarked graves have been disturbed in the past at this same place. One of these was thought to be stored in the evidence locker of the Maverick County sheriff's office (attempts to relocate these remains have been unsuccessful). The other had been disinterred by looters but was hastily reburied after it was determined that no artifacts were associated with the deceased. We assume that both of these burials were also prehistoric in age, but this is speculative in the absence of the remains themselves or certain knowledge of their immediate archeological context.

Another current case concerns a prehistoric burial in Hunt County, where land modification on a private ranch disturbed a single human interment. In this case, the landowner first called the county sheriff. The sheriff then contacted the Collin County Medical Examiner, and it was the M.E. who took possession of the remains. Due to disturbance of the burial locale by machinery, it was unknown at that time whether a single interment or multiple interments were involved, nor was it known whether the remains were relatively recent or ancient. After preliminary analysis, the M.E. determined that the remains were likely ancient, and he contacted an archeologist employed by the U.S. Army Corps of Engineers, Fort Worth District, for advice and assistance. The remains were also sent to a forensic anthropologist for corroboration. Because there was no obvious ties to federal Native American Graves Protection and Repatriation Act (NAGPRA) jurisdiction, the U.S. Army Corps of Engineers archeologist referred the case to the THC's Archeology Division. After gaining landowner permission and discussing the case with the Collin County M.E., the THC contacted a volunteer steward and asked him to return to the site of the burial and evaluate its context. The steward immediately determined that the remains were from an archeological site and began assessing their age and cultural affiliation. After removing and screening disturbed soil at the site, the steward also determined that portions of the burial remained undisturbed, but that no

other interments could be seen nearby. This suggests that the remains represented an isolated burial within a larger habitation site.

The disparate entities involved in this case and the lack of coordination among them is, in our opinion, typical of the inefficiencies involved in human remains cases when they occur outside of any legal jurisdiction. In this case, the remains were assessed by local law enforcement, a neighboring county's medical examiner, a federal agency, a state agency, and a state university. However, even with the combined involvement of all these entities, the final disposition of these remains has not yet been determined, and no treatment has yet been given to the remaining portions of the undisturbed burial. We are currently awaiting an opportunity to view the burial place and discuss preservation options with the landowner.

The last of our currently active cases came to light between the time this paper was given at the October 31, 1998 Common Ground conference and December 1998. It came to our attention when a landowner on San Antonio Bay in Refugio County observed human remains exposed in a heavily eroded bluff. The bluff had been severely cut as a result of recent flooding of several rivers that drain the central Texas Edwards Plateau region. In this case, the landowner called the Conservation Research Laboratory at Texas A&M University. He was then referred to the state marine archeologist at the THC. Since the remains were clearly not in an underwater context, the case was referred to the State Archeologist. Within 24 hours of that referral, a steward was standing at the burial site, and quickly determined it to be part of a large site complex recorded as 41RF11. Ninety percent of the interment had been washed away, but portions of a mandible and a few other partial elements were recovered. These are now waiting for transport to a forensic anthropologist for analysis to determine age, sex, cultural affiliation, and cause of death.

III. Commonalities

In each of the cases reviewed here, damage had been done to human remains or it was imminent. In all of the cases, landowners, local residents, and in one instance, descendants were deeply concerned about the fate of the remains. In all but one case, this concern was not due to identification with, or even much familiarity with, the ethnic background of the remains themselves. Indeed, in most cases, we have found that such calls are made simply on the basis that observed bones appear to be human and thus should be treated with greater sensitivity and respect than other types of remains that might be encountered in private land contexts.

Another common thread linking these cases is the obvious lack of jurisdiction. As alluded to earlier, this lack of jurisdiction typically leads to callers, who are usually simply trying to "do the right thing," and who end up being bounced between a number of agencies and individuals prior to getting the help they need.

IV. Taking a Wider Look at Public Encounters With Human Remains

The Common Ground conference provided us with a welcome

opportunity to share our experiences regarding the problem of unmarked human remains in Texas. However, the THC has dealt with human remains issues for several decades, and we felt the need to supplement our own experiences with a wider and more systematic look at how the public has brought these cases to the THC and the archeological community.

This wider look consisted of a review of THC files to obtain information on a larger number of cases than those with which we were directly familiar. We had originally intended to review all THC county records for this study, but time limitations prohibited a more complete study. The review of files was primarily conducted by the junior author, with help from the senior author. Eighty-nine Texas counties (Figure 2) were reviewed. The review resulted in information on an additional 155 cases involving human remains from 53 of the 89 reviewed counties. A very rough estimate of the minimum number of individuals represented in these cases, although highly speculative, can be conservatively placed at 1,400 human burials. The earliest of the cases dates to 1926, while the latest is among the currently active cases described above.

Prior to our file review, we constructed a form to be completed for each case (Figure 3), thereby helping us to consistently record certain types of information. Information collected from THC records included the context of the reported remains; the reason reports were made to the THC; whether the report pertained to public or private lands; and the age and cultural affiliation of the human remains. It should be noted that many of the cases included in this review were not requests for assistance from the THC; many were reported in newspapers and were simply filed as part of our ongoing documentation of human remains cases. Other cases record action on the part of other agencies, universities, or professional archeologists that did not require assistance from the THC. Still, these cases illustrate the kinds of assistance the public has received from the larger archeological community and its institutions, including the THC.

V. Ownership

As might be expected in a state where over 95 percent of all land is privately owned, the great majority of cases known to the THC (70 percent) were from private lands (Figure 4). Only 13 percent of the cases were found to be from public lands (note that cases on public lands considered here do *not* include discoveries of burials during archeological projects undertaken under state and federal antiquities laws; only accidental discoveries or reported cases of looting or vandalism on public lands are included). In 17 percent of the cases, it was not clear from our records whether ownership was public or private.

Considering the small extent of public ownership in Texas, the percentage of reports coming from public lands is thought to be significant. We believe this statistic suggests that public lands, even though protected to a greater extent than private lands, are still subject to problems of protection and management of human remains and unmarked graves. Many of these cases were encountered prior to the enactment of NAGPRA or the Archeological Resources Protection Act of 1979 (P.L. 96-95, 16 U.S.C. 470aa-470mm), and it is to be hoped that at least some improvement regarding treatment of unmarked human

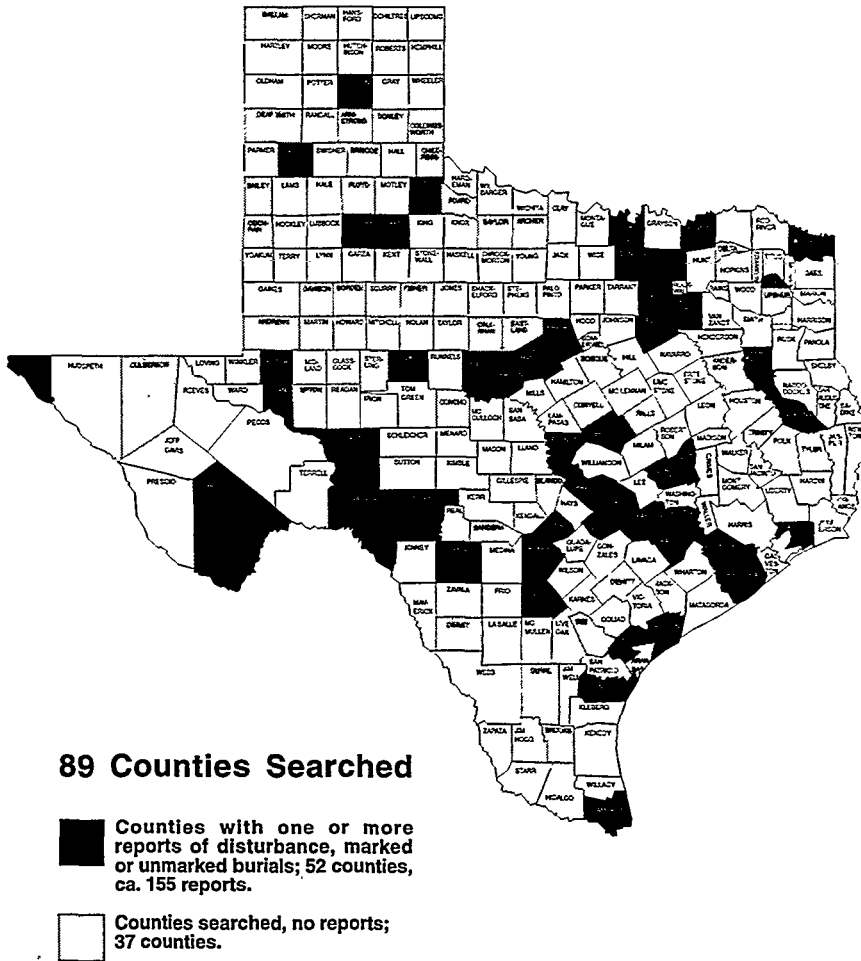


Figure 2. THC County Files Searched for Reports of Disturbances to Marked or Unmarked Burials.

remains has occurred since these federal laws took effect. It is also possible that we hear more frequently about human remains cases from public lands precisely because they are supposed to be better protected by law. Too, it is likely that the actual density of burial sites may be higher on public lands, which are frequently centered on major riverine systems where prehistoric mortuary sites are more common.

VI. Who is Reporting?

We also wanted to know something about what segments of the Texas public were reporting human remains information to the THC (Figure 5). It was not surprising that the majority of our reports came from local sources, including newspaper articles, residents, landowners, law enforcement officials, county historical commissions, and THC archeological stewards. Combined, these groups account for a great majority of our reported cases. We would add

COUNTY _____	DATE REPORTED _____
SITE _____	REPORTED BY _____
<input type="checkbox"/> UNMARKED GRAVE <input type="checkbox"/> UNMARKED CEMETERY <input type="checkbox"/> ELEMENTS <input type="checkbox"/> UNCLEAR <input type="checkbox"/> OTHER CONTEXT	
<input type="checkbox"/> LOOTED <input type="checkbox"/> VANDALIZED <input type="checkbox"/> ACCIDENTAL DISCOVERY <input type="checkbox"/> KNOWN/REPORTED <input type="checkbox"/> DESIGNATION <input type="checkbox"/> OTHER REASON REPORTED TO THC	
<input type="checkbox"/> Private <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown LAND OWNERSHIP	
<input type="checkbox"/> PREHISTORIC <input type="checkbox"/> HISTORIC ANGLO <input type="checkbox"/> HISTORIC BLACK <input type="checkbox"/> HISTORIC HISPANIC <input type="checkbox"/> HISTORIC N.A. <input type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER AGE/AFFILIATION	
<div style="border: 1px dashed black; padding: 5px;"> <!-- Empty space for notes --> </div>	
ACTION TAKEN, RESULTS, COMMENTS	

COUNTY _____	DATE REPORTED _____
SITE _____	REPORTED BY _____
<input type="checkbox"/> UNMARKED GRAVE <input type="checkbox"/> UNMARKED CEMETERY <input type="checkbox"/> ELEMENTS <input type="checkbox"/> UNCLEAR <input type="checkbox"/> OTHER CONTEXT	
<input type="checkbox"/> LOOTED <input type="checkbox"/> VANDALIZED <input type="checkbox"/> ACCIDENTAL DISCOVERY <input type="checkbox"/> KNOWN/REPORTED <input type="checkbox"/> DESIGNATION <input type="checkbox"/> OTHER REASON REPORTED TO THC	
<input type="checkbox"/> Private <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown LAND OWNERSHIP	
<input type="checkbox"/> PREHISTORIC <input type="checkbox"/> HISTORIC ANGLO <input type="checkbox"/> HISTORIC BLACK <input type="checkbox"/> HISTORIC HISPANIC <input type="checkbox"/> HISTORIC N.A. <input type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER AGE/AFFILIATION	
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ACTION TAKEN, RESULTS, COMMENTS	

Figure 3. Marked or Unmarked Burial Disturbance Form.

that certain of these public segments—particularly the THC archeological stewards—are ideally placed to work as knowledgeable intermediaries between state government and local Texas communities regarding the proper management of human remains.

In addition to these reports from members of local communities, nearly a quarter of all cases were reported to the THC by professional archeologists. These were usually either university-based archeologists with their own local contacts, or consulting archeologists who had obtained information regarding human remains.

Several comments can be made about the pattern visible in Figure 5. The high incidence of newspaper reporting of human remains issues suggests that there is a considerable public interest in the issue, or at least that the media feels that there is. This in turn suggests that a large segment of the media (and

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Ownership

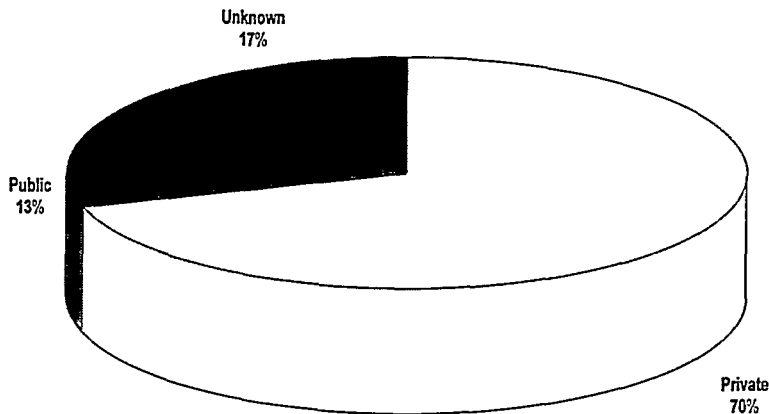


Figure 4. Land Ownership of Marked or Unmarked Burials.

through the media, the public) might be receptive to the concept that graves, marked or unmarked, are significant and deserve respect and preservation. Information regarding our current problems of commercial looting, vandalism, and destruction of human burials might well find a media audience if presented in a “newsworthy” way. However, the job of public education has been an intractable one to date. For many years the THC has attempted, through letters and calls to media outlets by our staff, to discourage, albeit with few positive results, the glamorization of collectors and particularly of burial looting. Accordingly, our future efforts must be both better planned and better executed.

We also note that these cases show a significant proportion of the reporting—about 25 percent of our sample—coming from landowners, local residents, and either developers or managers of local real estate property. While much is made about public distrust of government, we find this statistic suggestive that many Texans hold the opinion that government may have some further role to play in the proper protection and management of human remains in the state. Here, too, a tremendous amount of public education needs to be done. In the early 1980s the OSA produced some 50,000 copies of a brochure promoting the preservation of sites on private land, and 25,000 of these were immediately distributed in Northeast Texas, where looting of prehistoric graves is heaviest in the state (see Pertulla and Nelson, this issue). These kinds of minimal but well-intentioned efforts have been largely ineffective. Similarly, conservation easements, state archeological landmark designations, and effective tax-benefit options are all underutilized in the state. If aggressively marketed to landowners, such preservation tools could be made much more effective than they currently are.

Finally, we would like to call attention to the important tie between

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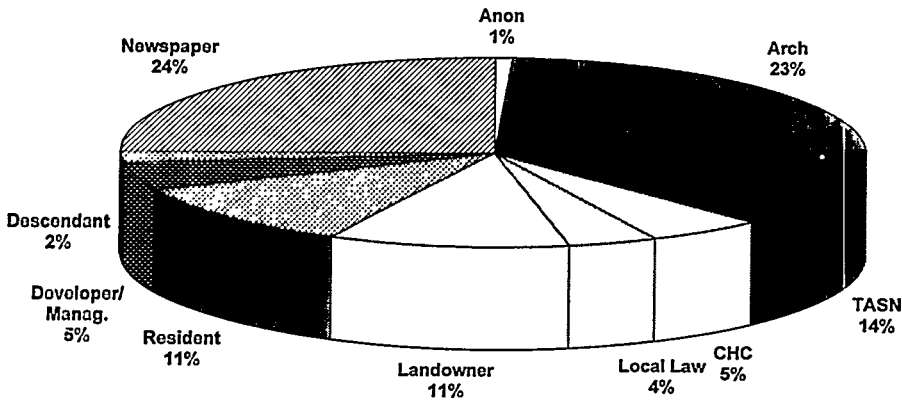
Who Is Reporting

Figure 5. Who is Reporting Disturbance to Marked or Unmarked Burials.

human remains cases and local law enforcement, as it appears likely that this category of cases is under-represented in our review. We suspect that local law enforcement is frequently involved in human remains cases in Texas, due to the fact that upon initial discovery, it is seldom known whether remains represent criminal evidence. We believe that closer communication between the THC and local law enforcement officials would result in better management of human remains that are not related to criminal activity. Another avenue of cooperation that might be explored is the assistance that trained archeologists might offer to law enforcement officials in Texas. For example, several members of the Texas Archeological Stewardship Network, because of their archeological experience and training, are routinely called by county sheriff offices when human remains are encountered.

VII. Context of Human Remains

We also looked for information regarding the context of reported remains (Figure 6). The most common contexts for reported cases were unmarked graves (single interments, 37 percent) and unmarked cemeteries (multiple unmarked graves, 33 percent). Isolated unmarked human skeletal elements accounted for 8 percent of the reports. A category marked "other" (18 percent) consists primarily of the disturbance or vandalism to marked graves and cemeteries. Marked cemeteries should have been included in the design of our study, but we simply did not anticipate the amount of damage being done to marked human remains and cemeteries.

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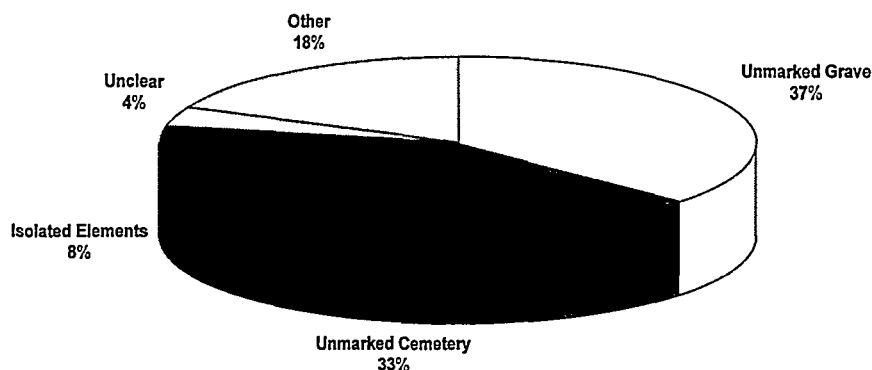
Context of Human Remains

Figure 6. The Context of Human Remains from Disturbed Marked or Unmarked Burial Sites.

VIII. Why Reports Are Made

In addition to knowing who generated the information housed in our case files, we also wanted to know why such reports were being made. As can be seen in Figure 7, the greatest single cause for reports coming to the THC was that human remains were accidentally discovered during projects or events that modified land. Included here are commercial land development, agricultural modification (including irrigation, terracing, and other forms of water control), and other kinds of heavy construction. Also included are instances where significant erosion, for example near streams or lakes, exposed unmarked burials or cemeteries.

Looting is also a leading cause for reports to the THC. Looting is defined here as the exhumation of human or cultural remains for personal economic gain. Looters usually focus on funerary offerings associated with human remains, but looting can also involve the human remains themselves. In all cases with which we are familiar, looting of human remains has led to the removal of all marketable items and the accelerated destruction of the human remains themselves.

In many cases, looting occurs hand in hand with other factors that have first accidentally exposed burials to view. However, the most insidious form of looting occurs when experienced grave robbers seek out unmarked graves for their valuable funerary offerings (see Perttula and Nelson, this issue, and Nelson and Perttula 1997).

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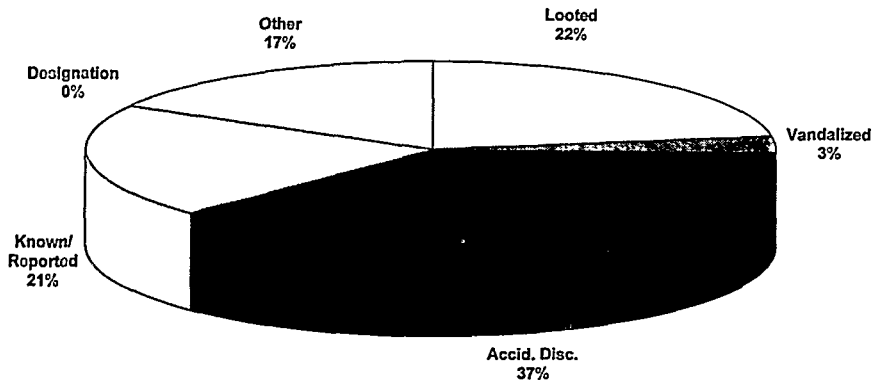
Reason for Report to THC

Figure 7. Reasons for Reporting Disturbances to Marked or Unmarked Burials.

Looting appears to occur predominantly at American Indian burial sites. On the other hand, vandalism was found to be associated predominantly with marked cemeteries, in the form of destruction of headstones and other visible mortuary monuments and facilities.

A significant proportion (21 percent) of reports on file at the THC were simply reports of the existence of a grave or cemetery, both marked and unmarked. Most of these cases reported the existence of human remains that did not appear to be at risk from any perceived adverse impact. Again, this significant proportion of reports suggests that many Texans view cemeteries and graves as important, and they viewed this state agency as an appropriate place to report their information and voice their concerns.

IX. Cultural Affiliation of Remains

Over half of the cases (52 percent) in the THC files pertain to American Indian graves of the prehistoric period (Figure 8). Another 24 percent of the reported cases concern historic Anglo-American grave and cemetery sites. These are predominantly marked, but many are not recorded with county governments. The high incidence of reports pertaining to marked historic cemeteries was surprising to us and indicates that, while grave disturbance is certainly a problem that should be of great concern to American Indians, aspects of the same problem are also being experienced by other ethnic groups. Finally, a very small incidence of reports concerns African-American and Hispanic-American remains (see Figure 8).

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Age and Affiliation of Remains

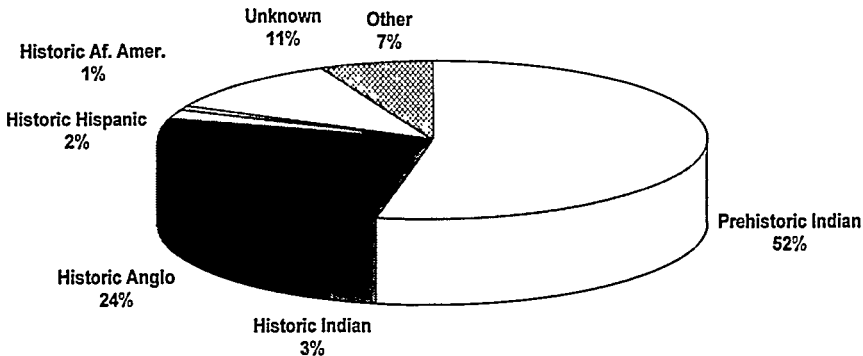


Figure 8. Age and Cultural Affiliation of Human Remains from Disturbed Marked or Unmarked Burials.

X. Summary

This brief survey has attempted to illustrate at least some of the ways in which the Texas public has encountered human remains in the past. It also calls attention to the problems and consequences related to managing such cases in the absence of clear public policy regarding consistent treatment of the dead. While we will never know exactly how many marked and unmarked burial sites have been looted, vandalized, or otherwise destroyed in the state, our review has shown much destruction has occurred throughout Texas and has considerable time depth. Our personal experiences with human remains cases have been consistent with a more extensive look at the problem through file research. Both data sets show that the management of human remains issues has been largely ineffective due to a lack of public understanding and public concern, a lack of statutory authority, and a lack of dedicated resources.

We look forward to a time when improvement occurs in these areas. As public servants, we will continue to work with all concerned to build a policy creating equal dignity in the treatment of all human remains.

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FIGURE CAPTIONS

Figure 1. Human Remains Cases per Year from Sampled Counties.

Figure 2. THC County Files Searched for Reports of Disturbances to Marked or Unmarked Burials.

Figure 3. Marked or Unmarked Burial Disturbance Form.

Figure 4. Land Ownership of Marked or Unmarked Burials.

Figure 5. Who is Reporting Disturbance to Marked or Unmarked Burials.

Figure 6. The Context of Human Remains from Disturbed Marked or Unmarked Burial Sites.

Figure 7. Reasons for Reporting Disturbances to Marked or Unmarked Burials.

Figure 8. Age and Cultural Affiliation of Human Remains from Disturbed Marked or Unmarked Burials.