

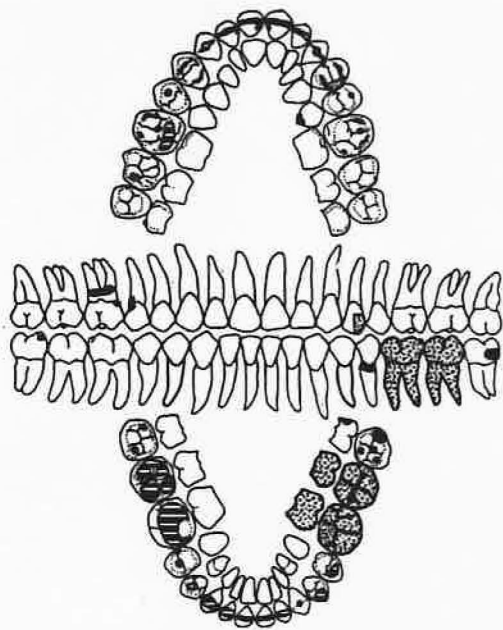
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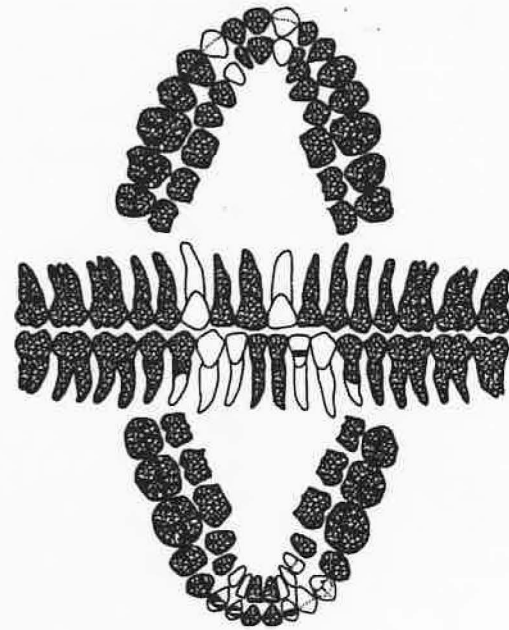
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Burial 3



Burial 4

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AN UPDATED REVIEW OF THE TENNESSEE STATE CEMETERY LAW AND OTHER STATUTES REGARDING PREHISTORIC BURIAL REMOVAL

Michael C. Moore

Substantial changes in the laws and procedures governing the treatment of human remains have been made since 1989. These changes include a significantly revised state cemetery statute, as well as a new law that requires all persons to report the discovery of human remains. The "termination of land use as cemetery" statute is still used to remove graves from one piece of land to another. However, procedures for the removal of human remains have been revised for both private and state or municipal property.

This article is presented as a long overdue update of my previous discussion of the state cemetery law (Moore 1989). Substantial changes in the legislation dealing with human remains have been made since that time, and it is imperative that the archaeological community (as well as the general public) is provided with the most up-to-date facts available. Also, standard procedures for the removal and handling of prehistoric human remains have been established. Rather than review the background information and discussion presented in the earlier publication, this commentary will focus on specific law and procedural changes in effect since 1989.

Changes in the Law Since 1989

One of the most significant changes was a revision of the cemetery statute itself. This modification was part of a much broader revision of the entire criminal code by the legislature to reduce redundancy and make sentences more uniform. The new criminal code went into effect on November 1, 1989, with all previous laws repealed. Thus, the cemetery law cited in earlier articles no longer existed after November 1, 1989 (T.C.A. 39-3-1327; Moore 1989, 1990). An unfortunate complication arose when the new criminal code was found to have excluded a revised cemetery ordinance. This oversight was corrected several months later when

two new sections that dealt with cemeteries and grave robbing, (T.C.A. 39-17-311 and 39-17-312, respectively) were added to the criminal code. The text of these laws is presented below.

T.C.A. 39-17-311. Desecration of a venerated object.

- (a) A person commits an offense who intentionally desecrates: (1) A place of worship or burial; or (2) A state or national flag.
- (b) A violation of this section is a Class A misdemeanor.

T.C.A. 39-17-312. Abuse of corpse.

- (a) A person commits an offense who, without legal privilege, knowingly: (1) Physically mistreats a corpse in a manner offensive to the sensibilities of an ordinary person; (2) Disinters a corpse that has been buried or otherwise interred; or (3) Disposes of a corpse in a manner known to be in violation of law.
- (b) A violation of this section is a Class E felony.

Several other important changes in the manner human remains are dealt with took place in 1990 with a considerable revision of the laws that created the Tennessee Division of Archaeology (T.C.A. 11-6-101 *et seq.*). Included within these changes was an addition to 11-6-107 that requires people to notify the coroner or medical examiner and a local law enforcement agency (in addition to the Division of Archaeology) if human remains are encountered or accidentally disturbed. Farming activity is an important exemption to note. The text is provided below.

T.C.A. 11-6-107(d)

- (1) Any persons who encounters or accidentally disturbs or disinters human remains on either publicly or privately owned land except during excavations authorized under this chapter shall:
 - (A) Immediately cease disturbing the ground in the area of the human remains;
 - (B) Notify either the coroner or the medical examiner and a local law enforcement agency;
- (2) Either the coroner or the medical examiner shall,

within five (5) working days determine whether the site merits further investigation within the scope of such official's duties;

- (3) If the coroner or medical examiner, and law enforcement personnel have no forensic or criminal concerns with regard to the site then the coroner or the medical examiner shall notify the department;
- (4) Human remains and burial objects reported to the division of archaeology shall be treated as provided in Sections 11-6-104 and 11-6-119 and/or title 46, chapter 4, if applicable;
- (5) A person who violates subdivision (d)(1)(A) or (B) commits a Class A misdemeanor;
- (6) The provisions of this section do not apply to:
 - (A) Normal farming activity, including, but not limited to, plowing, disking, harvesting and grazing; provided, that if human remains are discovered or disturbed, a report should be made to the officials specified in subdivision (d)(1)(B); or
 - (B) Surface collecting.
- (7) Nothing in this chapter shall be construed to grant a right of access or occupation to the public without the landowner's permission.

Several other 1990 changes in the Division of Archaeology statutes include: (1) the rights of Native American representatives to be present during the removal of Native graves [11-6-116]; (2) a prohibition against the public display of Native American human remains [11-6-117]; (3) a prohibition against the import/export of human remains, with exceptions [11-6-118], and (4) the amount of time allowed to study exhumed human remains prior to reburial [11-6-119]. The text of these additions is provided below.

T.C.A. 11-6-116. Excavation of areas containing Native American Indian human remains—On-site representatives.

- (a) When a burial ground or other area containing human remains of Native American Indians is excavated, representatives of Native American Indians shall have a right to be present on the site at all times excavation or treatment of such remains is taking place.
- (b) The department shall promulgate regulations governing application procedures for and the number of representatives to be present on sites.

T.C.A. 11-6-117. Display of Native American Indian human remains.—There shall be no public exhibition or display of Native American Indian human remains, except as evidence in a judicial proceeding.

T.C.A. 11-6-118. Import or export of human remains.

- (a) The import into Tennessee or the export from Tennessee of human remains is prohibited except in the following instances:
 - (1) Import or export by hospitals or medical schools for education or research purposes;
 - (2) Import for burial or reburial in Tennessee or export for burial or reburial in another state or country;
 - (3) Import or export for preparation for burial or reburial; or
 - (4) Import or export for use as evidence in any judicial proceeding.
- (b) A violation of this subsection is a Class E felony.
- (c) Any remains so imported or exported shall be confiscated and subject to disposition as provided in 11-6-104 and 11-6-119.

T.C.A. 11-6-119. Reburial of human remains following discovery or confiscation. Any human remains discovered in the course of an excavation or accidentally, and any such remains confiscated under the provisions of 11-6-118, shall be properly reburied following scientific analysis within six (6) months of such discovery or confiscation in accordance with procedures formulated by the advisory council which are appropriate to Native American traditions. Upon request for scientific or medical research, the director of the division may grant an extension of not more than six (6) months before reburial is required.

The regulations referred to in T.C.A. 11-6-116(b) and 11-6-119 were effective November 1991 as Rules of the Tennessee Department of Environment and Conservation, Division of Archaeology under Chapter 0400-9-1 (Native American Indian Cemetery Removal and Reburial). The text of these new rules is provided below.

0400-9-1-.01. Manner of Reburial. The reinterment of prehistoric and historic period Native American Indian skeletal remains shall be done in a manner consistent with original and/or traditional customs.

- (1) When archaeological, tribal, or other

documentation exists that specifies the original manner of burial, reburial of those remains shall be carried out in the same manner.

- (2) When documentation on the original manner of burial is not extant, reburial of individual remains shall be done in subsurface grave pits at such a depth to prevent future disturbance. Remains shall be placed directly into the soil.
- (3) Any religious or ceremonial activities carried out in conjunction with reburial shall not be the responsibility of the state.

0400-9-1-.02. Reburial Areas. All reburial areas should be as close to the original burial area as practicable and must be designated as a cemetery and registered with the county tax assessor's office as same.

0400-9-1-.03. Marking of Boundaries. The boundary of any reburial area must be suitably marked and a permanent record of the location of reinterments kept by the landowner.

0400-9-1-.04. Notification. Anyone carrying out work which involves the removal of Native American Indian human remains must notify the Native American members of the Archaeological Advisory Council, the Chairman of the Tennessee Commission on Indian Affairs, and the State Archaeologist. Notification of the intent to remove such remains must be in writing. Such notification shall be given at the time a petition is filed under T.C.A. 46-4-101 *et seq.*, "Termination of Use of Land as Cemetery", or at the time an application for a permit is filed under T.C.A. 68-3-508.

0400-9-1-.05. Observation of Disinterment by Native American Observers. At least one (1) Native American observer is entitled to be present during removal, excavation or disinterment of Native American human remains. This person shall be a Native American Indian member of the Archaeological Advisory Council or person designated by such member. Additional observers may be present as field conditions warrant with the permission of the project director. Observers must make prior arrangements with the person in charge of

excavation or burial removal. In some cases, such as on-going construction activities, observers may be required to follow special safety procedures.

Procedures for Relocating Prehistoric Human Burials

The procedures to remove prehistoric human remains from one piece of property to another have been refined over the years. To date, separate processes have been established for the relocation of burials on private property as opposed to state or municipal property. One primary procedure that has remained in place since 1989 is the "termination of land use as cemetery" law [T.C.A. 46-4-101-104]. This statute is still used to relocate burials whether they occur on private property or state/municipal property. The text of this termination statute has been provided elsewhere (see Moore 1989:68-71) and will not be reprinted here.

There are several important procedural changes to note from the previously outlined burial relocation process (Moore 1989:69). First, a disinterment order from the State Department of Health is now required prior to the removal of any human remains (T.C.A. 68-3-508 and Rule 1200-7-1-.08). This order is issued by the State Registrar, Office of Vital Records. Another procedural change is that the University of Tennessee, Department of Anthropology is no longer under contract with the Division of Archaeology to conduct osteological analyses of exhumed human remains. Since September of 1990, the Division has had its own physical anthropologist to conduct such analyses.

The removal of human burials today is still an orderly, step by step process (Fielder 1998a, 1998b). Of course, there has been some fine tuning through the years as more cases (involving a broad range of private as well as public interests) were brought before the court. Although the burial relocation process for private vs. state or municipal property is in essence the same, there are several differences between the two. Probably the most important difference has to do with the disposition of associated burial objects retrieved during the burial removal. On private property, such artifacts can be reburied with the skeletal remains in accord with the terms of the court order. This reburial would be preceded by an analysis of the artifacts (by the Division or consultant archaeologist). For state or municipal property, however, associated burial objects are not reburied with the skeletal remains. These artifacts

are inventoried and held for repatriation by the Division in accord with provisions of the federal Native American Graves Protection and Repatriation Act (NAGPRA).

Individual steps in the burial relocation process have been outlined below for both private and state or municipal property. Helpful check lists for persons involved with current or future burial removal projects are provided in Tables 1 and 2.

Burial Relocation Process--Privately Owned Property (see Table 1)

- (1) If human remains or suspected burials are discovered during construction or other ground disturbing activity, notify the local police, medical examiner and Division of Archaeology (DOA) as required by T.C.A. 11-6-107(d). Failure to report discovery is a misdemeanor. To knowingly disturb a grave is a Class E felony. (Provisions for security to protect graves from vandalism must be taken)
- (2) Medical examiner, State Forensic Anthropologist, State Archaeologist or other professional archaeologist will visit site to confirm that remains are human burials and to determine approximate cultural time period. Limits of burial area should be estimated. Medical examiner and police will determine if case has any criminal forensic concerns. If determined to be of archaeological interest only, project proceeds as given below. Note: No human remains can be removed from scene until clearance is obtained from medical examiner and police.
{If property contains previously known burials start the process at Step 3}
- (3) Legal counsel for property owner prepares affidavit by State Archaeologist or other archaeologist as to the facts and observations of the particular burial site. Owner decides on limit of area to terminate as cemetery if entire cemetery is not affected.
- (4) Owner engages the services of a qualified archaeologist that will do the grave removal. A list is available from DOA.
- (5) Owner notifies State archaeologist and Native American representatives in writing of intent to seek termination order as required by T.C.A. 11-6-116 and Rule 0400-9-1. Owner is advised to seek agreement with the Tennessee Commission

on Indian Affairs or representatives of federally recognized tribes on location of reinterment. If an agreement is reached, location should be in termination petition and order. If agreement is not reached, efforts to do same should be documented. State Archaeologist will notify the federally recognized tribes of the pending action.

- (6) Owner's attorney prepares petition, order of publication, and preliminary order for submission to chancery court under provisions of T.C.A. 46-4-101 *et seq.*
- (7) Publication of notice to unknown defendants. Note: In the cases where remains are discovered during construction and if permitted by judge based on project circumstances, four weeks of publication of notice may be done after removal. In this situation, judge will usually issue a preliminary order reserving all matters for further hearing.
- (8) Motion hearing before chancellor.
- (9) Order prepared by attorney for owner and signed by judge.
- (10) Certified copy of order is submitted to State Registrar, Office of Vital Records to receive a disinterment permit pursuant to T.C.A. 68-3-508 and Rule 1200-7-1-.08
- (11) After order is signed and disinterment permit received, consultant archaeologists remove graves in accord with terms of the order. The removal can be carried out under the supervision of the State Archaeologist if so ordered by the chancellor. The work is paid for by the owner.
- (12) After removal is complete, State Archaeologist or project archaeologist will prepare affidavit stating that all graves have been removed. Construction can begin or resume.
- (13) Skeletal remains and any associated burial artifacts are conveyed to Division of Archaeology for scientific analysis for up to 12 months. The property owner does not own any artifacts recovered from the graves.
- (14) Consulting archaeologist usually prepares a report on findings for submission to State Archaeologist.
- (15) Osteological analysis conducted by Division of Archaeology or consultant archaeologist if warranted. All skeletal remains and associated artifacts must be reburied within 12 months of discovery (T.C.A. 11-6-119).

- (16) After analysis, skeletal materials and artifacts are reburied in accord with terms of court order.

Burial Relocation Process--State or Municipal Property (see Table 2)

- (1) If human remains or suspected burials are discovered during construction or other ground disturbing activity, notify the local police, medical examiner and Division of Archaeology (DOA) as required by TCA 11-6-107(d). Failure to report discovery is a misdemeanor. To knowingly disturb a grave is a Class E felony. (Provisions for security to protect graves from vandalism must be taken)
- (2) Medical examiner, and State Archaeologist or other qualified professional archaeologist will visit site to confirm that remains are human and to determine approximate cultural time period. Limits of burial area should be estimated. Medical examiner and police will determine if case has any criminal forensic concerns. If determined to be of archaeological interest only, project proceeds as given below. Note: No human remains can be removed from scene until clearance is obtained from medical examiner and police.
{If property contains previously known burials start the process at Step 3}
- (3) Attorney General or legal counsel for municipality prepares affidavit by State Archaeologist or other archaeologist as to the facts and observations of the particular burial site. Owner decides on limit of area to terminate as cemetery if entire cemetery is not affected.
- (4) Owner (state or municipality) engages the services of a qualified archaeologist that will do the grave removal. A list is available from DOA.
- (5) Owner notifies State archaeologist and Native American representatives in writing of intent to seek termination order as required by TCA 11-6-116 and Rule 0400-9-1. Owner is advised to seek agreement with the Tennessee Commission on Indian Affairs or representatives of federally recognized tribes on location of reinterment. If an agreement is reached, location should be in termination petition and order. If agreement is not reached, efforts to do same should be documented. State Archaeologist will notify the federally recognized tribes of the pending

- action.
- (6) Owner's attorney prepares petition, order of publication, and preliminary order for submission to chancery court under provisions of TCA 46-4-101 *et seq.*
- (7) Publication of notice to unknown defendants. Note: In the cases where remains are discovered during construction and if permitted by judge based on project circumstances, four weeks of publication of notice may be done after removal. In this situation, judge will usually issue a preliminary order reserving all matters for further hearing.
- (8) Motion hearing before chancellor.
- (9) Order prepared by attorney for owner and signed by judge.
- (10) Certified copy of order is submitted to State Registrar, Office of Vital Records to receive a disinterment permit pursuant to T.C.A. 68-3-508 and Rule 1200-7-1-.08
- (11) After order is signed and disinterment permit received, consultant archaeologists remove graves in accord with terms of the order. The removal will be carried out under the supervision of the State Archaeologist using specific procedures. The work is paid for by the owner.
- (12) After removal is complete, State Archaeologist or project archaeologist will prepare affidavit stating that all graves have been removed. Construction can begin or resume.
- (13) Skeletal remains and any associated burial artifacts are conveyed to Division of Archaeology for scientific analysis for up to 12 months. The property owner does not own any artifacts recovered from the graves.
- (14) Consulting archaeologist usually prepares a report on findings for submission to State Archaeologist.
- (15) Osteological analysis conducted by Division of Archaeology or consultant archaeologist if warranted. All skeletal remains must be reburied within 12 months of discovery (TCA 11-6-119).
- (16) After analysis, skeletal materials are reburied in accord with terms of court order. All associated burial objects are inventoried by DOA and will be repatriated in accord with the provisions of the federal Native American Graves Protection and Repatriation Act. (NAGPRA) 25 USC 3001 *et seq.*

A Tale of Two Sites

Two high-profile removal projects recently conducted in the Nashville area serve as good examples of the difference between burials removed on private property as opposed to state or municipal property. Beginning in 1997, a tract of land along the Cumberland River in west Nashville was selected for the private development of a proposed Wal-Mart and Lowe's complex. On this particular tract was an archaeological site (40Dv392) known to contain at least one Mississippian period stone-box cemetery. The developers, in consultation with the Division of Archaeology, reviewed their options for proposed construction within a known cemetery. A private archaeological consulting firm was hired to survey the project tract and identify the exact location of any cultural remains, especially burial plots. Once the survey was completed and all grave areas defined, an attempt was made to redesign the project in order to avoid the burials. Avoidance of the grave areas was determined by the developers to be not feasible, and a decision was made to proceed with the project and legally remove the Native American burials. Despite protests from the Native American community and neighboring landowners, the developers petitioned the court (T.C.A. 46-4-101 *et seq.*) to remove and relocate all Native American skeletal remains within those areas to be disturbed by proposed construction activity. The consulting firm used for the initial survey was employed to conduct the burial removal under the general supervision of the Division (see Table 3). A total of 155 graves (the final individual number will be higher due to multiple burials within the same grave) were removed from 40Dv392 between February and July of 1998. The skeletal remains were delivered to the Division in October of 1998 and are undergoing analysis as this article is being written. Once the osteological analysis is completed, and an examination of the associated burial objects has been conducted, then both the skeletal remains and associated grave goods will be reburied in accordance with the court order.

During the summer of 1997, human remains were discovered during construction of a new library for the city of Brentwood in northern Williamson County. A preliminary examination of the project area by Division of Archaeology personnel determined that the partially built library was located inside the boundaries of a previously unrecorded Mississippian town (designated 40Wm210). Since

the site was found during construction, all work in the suspected burial areas was stopped until a more proper assessment could be made. Division personnel conducted limited investigations of the site during late July of 1997 and identified intact cultural deposits (including stone-box burials, structures, and palisade lines) across much of the construction zone. With this information, Brentwood city officials weighed their options for continuing the project within an area now defined as a cemetery. After some debate, the Brentwood city officials determined that construction was too far along to abandon the project entirely. Despite some revision of the construction plans, this municipal project could not avoid most of the suspected burial plots. A local archaeological consulting firm was hired to locate all Native American burials within the modified project area. Removal of these individuals was initiated upon receipt of a court order (T.C.A. 46-4-101 *et seq.*). The city of Brentwood also allowed the Division of Archaeology to remain on site to record the numerous structures and non-mortuary features that were visible across the site area. A total of 64 burials (representing 77 individuals) were removed from the site area between August and November of 1997. The Division completed osteological analysis of the skeletal remains well within the twelve months provided under state law. These remains now await reburial in accordance with the court order. However, the associated burial artifacts are not scheduled for reburial with the skeletal remains. Since these artifacts were removed from graves on municipal property, they have been added to the Division's NAGPRA inventory and are being held for repatriation.

Closing Remarks

This article has attempted to bring the archaeological community (and general public) an up-to-date look at the laws and procedures that affect prehistoric human skeletal remains. My initial review of the Tennessee state cemetery law (Moore 1989) was rendered obsolete several months after publication due to the 1989 legislative revision of the criminal code. However, the article still has some merit as background information.

The laws and procedures presented in this discussion should not be viewed as finished products that will never change. Native American organizations across the state are continually looking

for improvements to the current reburial process. Recent inquiries from federally recognized tribal governments outside the state may play a crucial role in future reburial issues and laws. For example, several meetings have taken place between state officials and representatives of the Inter-Tribal Council of the Five Civilized Tribes. These representatives stated their desire to have a more active role in the way native graves are removed and relocated in the state. One hot issue to watch in the future is the reburial of associated grave artifacts from state and municipal property.

Notes

Acknowledgments. Thanks go to State Archaeologist Nick Fielder for sharing his knowledge of the current steps for relocating human burials on private and state/municipal property, as well as the checklists used in Tables 1 and 2. Nick Fielder and Suzanne Hoyal provided comments on a draft copy of this article.

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Table 1. CheckList for Prehistoric Indian Grave Removal and Relocation Process for Sites Located on Privately Owned Property. (adapted from Fielder 1998a)

- ___ 1. Owner obtains the services of professional archaeologist to establish that graves are present and to carry out future exhumation. The archaeologist will also determine the boundary of the cemetery area. A list of consultants is available from the Division of Archaeology (TDOA).
- ___ 2. Attorney for owner obtains affidavit from state archaeologist or project archaeologist detailing description of burial site, estimated date of interment, any known relatives and related data.
- ___ 3. Owner decides on the boundary of area to be terminated as cemetery; a legal description or detailed map is attached to court papers. Also location and manner of reinterment is decided by owner in consultation with Native American Indian representatives such as Tennessee Commission on Indian Affairs and federally recognized tribes. (List available from TDOA) If agreement cannot be reached, document attempt to consult.
- ___ 4. Owner's attorney prepares petition, order of publication, draft order for "termination of land as cemetery" in accord with T.C.A. 46-4-101 *et seq.*
- ___ 5. In accord with Rule 0400-9-1-.04, prior to filing petition with the court, attorney sends copy of petition to: (a) Chairperson, Tennessee Commission on Indian Affairs; (b) the three Native American members of the state Archaeological Advisory Council, and (c) State Archaeologist.
- ___ 6. State Archaeologist sends written notice to the Cherokee, Chickasaw, Creek, Choctaw, and Shawnee tribes informing them of the proposed cemetery termination.
- ___ 7. Attorney files petition for removal in chancery court of county where cemetery is located.
- ___ 8. Publication of legal notice to unknown defendants and interested parties for four weeks prior to hearing. Previous court cases have ruled that modern Native Americans are not "interested parties" under the definition given in T.C.A. 46-4-102 since consanguinity (blood relation) cannot be demonstrated. Note: If graves are discovered during construction or if other conditions warrant, owner can request authorization to disinter prior to publication and reserve all other matters such as location and manner of reinterment to be heard after publication.
- ___ 9. Motion hearing after publication, if not waived previously. If approved, the judge signs the order. Order specifies who will do the work, the temporary transfer of remains and artifacts to the DOA for examination per T.C.A. 11-6-119, and where reinterment will take place.
- ___ 10. Owner submits certified copy of order to State Registrar, Office of Vital Records to obtain disinterment permit per T.C.A. 68-3-508 and Rule 1200-7-1-.08. Permit issued to project archaeologist.
- ___ 11. Project archaeologist notifies Native American members of Archaeological Advisory Council by telephone of the proposed schedule for removal. One Native American member of the Council or their designee may be present during removal if they so desire. The project archaeologist, with permission of owner, may allow other observers if conditions warrant. [T.C.A. 11-6-116 and Rule 0400-9-1]
- ___ 12. Project archaeologist disinters remains and associated artifacts in accord with terms of the order. Removal can be carried out under the supervision of the State Archaeologist if desired by owner or specified by the chancellor. Owner pays all expenses except for the State Archaeologist.
- ___ 13. After removal, project archaeologist conveys all human remains and associated burial artifacts to the Tennessee Division of Archaeology for analysis and safekeeping per T.C.A. 11-6-119. Note: Construction may start or resume in the cemetery area after all remains are removed.
- ___ 14. If a preliminary order was issued to allow disinterment prior to publication, then a hearing is held by the court to hear concerns on location and manner of reburial.
- ___ 15. Within a period no longer than 12 months after removal, skeletal remains and associated artifacts are reinterred at the location specified in court order. Reburial will be carried out in accord with Native American Indian Cemetery Removal and Reburial procedures [Rule 0400-9-1].

Table 2. CheckList for Prehistoric Indian Grave Removal and Relocation Process for Sites Located on State or Municipal Property. (adapted from Fielder 1998b)

- ___ 1. Owner obtains the services of professional archaeologist to establish that graves are present and to carry out future exhumation. The State Archaeologist will also determine the boundary of the cemetery area. A list of consultants is available from the Division of Archaeology (TDOA).
- ___ 2. Attorney General or attorney for owner obtains affidavit from state archaeologist detailing description of burial site, estimated date of interment, any known relatives and related data.
- ___ 3. Owner decides on the boundary of area to be terminated as cemetery; a legal description or detailed map is attached to court papers. Also location and manner of reinterment is decided by owner in consultation with Native American Indian representatives such as Tennessee Commission on Indian Affairs and federally recognized tribes. (List available from TDOA) If agreement cannot be reached, document attempt to consult.
- ___ 4. Owner's attorney prepares petition, order of publication, draft order for "termination of land as cemetery" in accord with T.C.A. 46-4-101 *et seq.*
- ___ 5. In accord with Rule 0400-9-1-.04, prior to filing petition with the court, attorney sends copy of petition to: (a) Chairperson, Tennessee Commission on Indian Affairs; (b) the three Native American members of the state Archaeological Advisory Council; and (c) State Archaeologist.
- ___ 6. State Archaeologist sends written notice to the Cherokee, Chickasaw, Creek, Choctaw, and Shawnee tribes informing them of the proposed cemetery termination.
- ___ 7. Attorney files petition for removal in chancery court of county where cemetery is located.
- ___ 8. Publication of legal notice to unknown defendants and interested parties for four weeks prior to hearing. Previous court cases have ruled that modern Native Americans are not "interested parties" under the definition given in T.C.A. 46-4-102 since consanguinity (blood relation) cannot be demonstrated. Note: If graves are discovered during construction or if other conditions warrant, owner can request authorization to disinter prior to publication and reserve all other matters such as location and manner of reinterment to be heard after publication.
- ___ 9. Motion hearing after publication, if not waived previously. If approved, the judge signs the order. Order specifies who will do the work, the temporary transfer of remains and artifacts to the DOA for examination per T.C.A. 11-6-119, and where reinterment will take place.
- ___ 10. Owner submits certified copy of order to State Registrar, Office of Vital Records to obtain disinterment permit per T.C.A. 68-3-508 and Rule 1200-7-1-.08. Permit issued to State Archaeologist.
- ___ 11. Project archaeologist notifies Native American members of Archaeological Advisory Council by telephone of the proposed schedule for removal. One Native American member of the Council or their designee may be present during removal if they so desire. The project archaeologist, with permission of owner, may allow other observers if conditions warrant. [T.C.A. 11-6-116 and Rule 0400-9-1]
- ___ 12. Project archaeologist disinters remains and associated artifacts in accord with terms of the order. Removal will be carried out under the supervision of the State Archaeologist.
- ___ 13. After removal, project archaeologist conveys all human remains and associated burial artifacts to the Tennessee Division of Archaeology for analysis and safekeeping per T.C.A. 11-6-119. Note: Construction may start or resume in the cemetery area after all remains are removed.
- ___ 14. If a preliminary order was issued to allow disinterment prior to publication, then a hearing is held by the court to hear concerns on location and manner of reburial.
- ___ 15. Within a period no longer than 12 months after removal, skeletal remains are reinterred at the location specified in court order. Reburial will be carried out in accord with Native American Indian Cemetery Removal and Reburial procedures [Rule 0400-9-1].
- ___ 16. After analysis, skeletal materials are reburied in accord with terms of court order. Any burial artifacts retained by Division of Archaeology will be repatriated to Indian tribes in accord with provisions of the federal Native American Grave Protection and Repatriation Act of 1990.

Table 3. Procedures for Court-Ordered Removal of Human Skeletal Remains and Associated Artifacts Under the General Supervision of the Division of Archaeology. (Revised January 28, 1998)

- (1) Forms: All burials need to be documented on a standardized burial form. These forms are available from the Division of Archaeology.
- (2) Photography:
 - a) All burial locations must be photographed with black/white film and color slide film before any human remains are exposed. All burials must be clearly labeled on a menu board (or similar device) as to site number, burial number, and date. Additional information may be included as deemed necessary. A north arrow must be used in the photograph.
 - b) Once human remains are exposed, the condition of the remains must be documented with black/white film and color slide film before any remains are removed (even if the remains are severely disturbed). As before, all burials must be clearly labeled on a menu board (or similar device) as to site number, burial number, and date. Additional information may be included as deemed necessary. A north arrow must be used in the photograph.
 - c) After the remains have been removed, the empty stone box, pit, tomb, etc. must be documented with black/white film and color slide film. As before, all burials must be clearly labeled on a menu board (or similar device) as to site number, burial number, and date. Additional information may be included as deemed necessary. A north arrow must be used in the photograph.
- (3) Mapping
 - a) Each burial that contains undisturbed skeletal remains must have a scale drawing. This drawing must include a north arrow, scale, site number, burial number, date, and name of recorder.
 - b) The location of all burials must be mapped on a site plan that is tied to a permanent datum.
- (4) Removal:
 - a) Use of a backhoe to remove overburden must be done with a smooth or toothless bucket. The bucket should be at least three (3) feet wide.
 - b) All attempts must be made to remove the skeletal remains as intact as possible. This reflects due care and decency for the individual being removed and also improves the laboratory analysis.
- (5) Delivery to the Division of Archaeology: All human skeletal remains and associated artifacts must be washed and properly labeled prior to delivery to the Division for curation. All burial remains and associated artifacts must be submitted at one time. The Division must receive the following documents at the time of delivery:
 - a) letter of transmittal;
 - b) all original field notes, maps, and photographs;
 - c) itemized inventory of the number of individual burials and containers holding skeletal remains; and
 - d) a separate itemized inventory of all burial artifacts.

THINGS MY PROFESSORS NEVER TOLD ME: THE LIGHTER SIDE OF ARCHAEOLOGICAL FIELDWORK

Donald B. Ball

The following brief anecdotes of experiences "in the field" are likely neither more nor less than exemplary of those of many professionally kindred spirits across the land. Though we are most likely to share such "war stories" with one another at conferences or while visiting with old friends, seldom do we preserve tales of our won humanity-foibles and follies alike-in the midst of doing our "scientific" studies. Such asides are as much a part of the lasting romance and appeal of archaeology as the finds great and small upon which we labor to study, record, and understand. When charts and graphs and long, detailed reports sometimes weigh heavy, it is wise to remember the lighter side of our profession and the experiences of the present that so enliven our studies of the past.

Approaching at this point in my life almost thirty years of involvement with matters archaeological, I sometimes reflect on the many and varied experiences I have been so fortunate as to encounter-and survive-while conducting fieldwork over the years. Though my teachers valiantly struggled to adequately prepare me for my journey through the byways of the profession, I have come to see that despite their sincere and capable best efforts there were a few situations that were never covered in either class or my numerous reading assignments.

The following brief anecdotes of experiences "in the field" are likely neither more nor less than exemplary of those of many professionally kindred spirits across the land. Though we are most likely to share such "war stories" with one another at conferences or while visiting with old friends, seldom do we preserve tales of our won humanity-foibles and follies alike-in the midst of doing our "scientific" studies. Such asides are as much a part of the lasting romance and appeal of archaeology as the finds great and small upon which we labor to study, record, and understand. When charts and graphs and long, detailed reports sometimes weigh heavy, it is wise to remember the lighter side of our profession and the

experiences of the present that so enliven our studies of the past.

Folks you meet along the way

Now it's a fact that all of us are very different. Never doubt that one of the most interesting aspects of traveling the back roads of the region is the diverse folk you meet along the way. This truism was verified to me during the course of some fieldwork in the mid-1970s of gravehouses, a little known and rather scarce form of grave decoration encountered throughout the region.

While visiting a series of rural cemeteries in Rutherford County, several divergent interactions with "folks" occurred. I vividly recall being greeted by one property owner almost as a long lost relative. The gentleman listened attentively to my remarks about the nature of the study and as I continued speaking with him he grew both more interested and enthusiastic about the topic. Thereafter, I was treated to a breakneck tour of his farm while hanging on to the seat and tow bar of his tractor and he graciously assisted in clearing away weeds and brush to help record the last vestiges of a crumbling structure.

At a second farm, the architectural complexity of the structure located in a down in the heels family cemetery required some time to measure its components, prepare onsite scale drawings, and photograph. During the course of about an hour and a half or so, the property owner, an elderly gentleman who lived with his wife in a mobile home on the farm, made the 300 foot trek from his home to the small cemetery to ask several times just what I was doing. Patiently I explained, and re-explained, the purpose of the study and he would return to the mobile home apparently satisfied with my responses only to return 10 or 15 minutes later to re-ask the same questions yet again. In the course of his last "visit" to the cemetery, I was virtually accused of planning to return to rob and murder (or worse) the farmer and his wife. As expeditiously as possible, I concluded my note taking and returned to my car to exit the property and leave this gentleman to bask in the solitude of the countryside once again. Repeating his accusations of perceived ill will several times, he