



## Archeological Society of Virginia

### End-of-Millennium (Almost) Report on Time Crime

Over three years ago, I offered the first report on the joint effort of the Department of Historic Resources (DHR) and the Department of Criminal Justice Services (DCJS) to train Virginia law-enforcement officers in the investigation of thefts of and vandalism to historic and archaeological resources, dubbed "time crime" (see the fall, 1996, issue of Virginia Archaeologist for the earlier report). Since the time crime program was introduced in late 1995, hundreds of law-enforcement officers have been taught throughout the state in almost 80 presentations at conferences, training classes, and other activities. Not every law-enforcement agency has been represented at a training event or conference, but the effort has slowly gained notoriety. Some collaborations between law-enforcement officers and archaeologists have been covered by the press, and many archaeologists have promoted the time crime program to local history groups, preservationists, cultural resources managers, and to the public generally thus fuelling interest. The purpose of this article is to acquaint archaeologists with highlights from three years of the program, discuss the nature and extent of archaeological looting in Virginia, and meditate on the future. Although the time crime program has proceeded in directions quite unanticipated three years ago, the most persistent problems or questions raised by law-enforcement officers concern human burials (see "Bringing Out the Dead" in this issue).

#### Wythe County

Our most recent achievement, and one of our most important to date, was the resolution of a looting case in southwest Virginia. In July, 1999, a two-year investigation ended in the conviction of three members of the Reed Creek Archeological Society, Larry Price, Arthur Roberts, and Robert Miller. Rather than face a felony prosecution for illegally excavating Native American burials from the Jones site (44WY25) near Austinville in Wythe County, the three entered guilty pleas to the misdemeanor violation of failure to obtain a permit to excavate the burials (Virginia Code § 10.1-2305). As a result, all received 12-month suspended jail sentences, a year of inactive probation, 75 hours of community service, and forfeiture of their artifacts and notes to DHR. Despite Price's contention in court that he "didn't know [that he and his associates] were doing anything wrong," the excavation site, which had been under occasional surveillance by the State Police, had been worked for years with the property owner's permission, and eyewitness accounts attest to the human remains being discarded in the search for artifacts for personal collections and for commerce.

The investigation began with a call from a curator with the Mount Airy Museum of Regional History, North Carolina, to the North Carolina state archaeologist. The curator related that a local collector,

James Lineback of Mount Airy, had brought artifacts from the Jones site to the museum, which in turn exhibited them with labels that clearly stated their origin. Concerned that the artifacts had probably come from human burials, the curator called the NC state archaeologist. The state archaeologist, in turn, contacted both DHR and DCJS. I notified the U.S. Attorney, Western District, Roanoke, of the problem, and an investigation began into a possible violation of the interstate commerce clause of the Archaeological Resources Protection Act (ARPA). Ultimately, a consulting team was created that involved representatives of DHR, the State Police, FBI, Radford University, and, eventually, the Wythe County commonwealth's attorney. The federal investigation came to an end in 1998 when Lineback (the link to the interstate commerce issue) died, and the investigation became a local one. The investigation did not proceed smoothly and some evidence that was sought could not be obtained for various reasons. At one point, for instance, an informant with promising information disappeared for awhile, but later surfaced and behaved in a way that damaged his credibility. At another time, Native Americans who were aware of the digging threatened Reed Creek by stating that they had called the FBI. After this threat, all excavation ceased at the site, making surveillance difficult. Nevertheless, the case was eye-opening for the law-enforcement investigators who had never handled a case involving archaeology before. Further, the case featured a collaboration between state, federal, and local officials, as well as archaeologists and investigators from North Carolina. Despite the convictions, some offshoots of this case stimulated further inquiries which, at this writing, are active.

The Wythe County case represents a considerable victory, even though no felony convictions were obtained. The case put many relic-hunters on notice that law-enforcement interest does exist in southwest Virginia to detect and prosecute grave robbing. Deserving of credit in this case are Tom Klatka from DHR; Cliff Boyd; Ruth Plagenhoef, assistant U.S. attorney, Roanoke, and her staff; Patrick Rutzinski, FBI special agent; Dan Whittemore, State Police special agent; and Mike Davis, assistant commonwealth's attorney, Wythe County.

## **Federal Cases**

Several federal successes merit reporting, although they did not necessarily spring from informed enthusiasm borne of our training program. One of the most significant federal cases to date under ARPA was resolved recently in Virginia. In October, 1997, Jeffrey S. Blevins and John N. Walker, both of Petersburg, entered guilty pleas in federal court for illegally excavating artifacts from the Petersburg National Battlefield. Blevins and Walker had been caught in the act of digging holes for artifacts on the battlefield, and the subsequent investigation revealed that both men had entered the National Park Service property between one and three times weekly for 18 months. Careful processing of the crime scene led investigators to surmise that the men had been visiting the park frequently (contrary to their initial statements), owing to the discovery and analysis of their litter, beer bottles, and cigarettes. The freshness dates on the beer bottles indicated that the recovered ones had to have been deposited within a restricted period of time, meaning that site visits had been more frequent than Blevins and Walker admitted. This discovery led to Walker's and Blevins's confessions. Both men were sentenced to prison terms, which they have since served, followed by electronic monitoring and home detention. Most importantly, each man must pay \$25,467 in restitution, a debt not dischargeable by bankruptcy. These men, both machinists, will be in debt to the government for many years. This case still reverberates through the relic-hunter community. In sentencing the two men, presiding U.S. District Court Judge Richard L. Williams observed that "Civil War buffs are a cult of their own," and declared that "all the buffs who have a craving for artifacts will be tempered in the

future . . . with the consequences imposed."

### **Other federal incidents worth nothing:**

-- In July, 1999, a park ranger encountered Charles Heise and John Berry at the Cold Harbor battlefield (Richmond) as they were walking along the earthworks. Both men had musket balls in their possession, and their metal detectors were on the ground nearby, next to a hole. While the evidence did not warrant an ARPA charge, on lesser charges the men were convicted, fined \$500, placed on probation, banned from all national parks for a year, and their equipment and artifacts were confiscated.

-- In August, 1997, James A. Marion and Clyde V. Burkhart were caught by park rangers at the Chancellorsville battlefield as they were using metal detectors. When caught, the men had an artillery shell and several bullets. Each man was sentenced to home detention, a \$1500 fine in reparation, and their artifacts and equipment were confiscated (note that on federal parks, mere possession of artifacts and metal detectors is a criminal offense). In court, Marion's lawyer observed, "Our ancestors are not going to be real upset if we remove a few Minié balls."

-- In February, 1997, a park ranger saw Randy Griffith and Tom Summers metal detecting on private land adjacent to the Fredericksburg and Spotsylvania National Military Park. The ranger cautioned them that they were near the park boundary. Three weeks later, the same ranger found both men well inside the park (clearly signposted about ARPA) with their metal detectors, but they were not caught digging and only had two bullets in their possession. Nevertheless, both were charged with an attempt to commit a prohibited act under ARPA and each received a \$250 fine, unsupervised probation, and was banned from entering any national parks for two years. Their equipment was also confiscated.

-- In October, 1996, Navy police caught Wallace Mayorga, Robert D. York, and Daniel R. Bell at the Yorktown Naval Weapons Station while they were digging Civil War artifacts. At the time they were caught, the men had recovered 26 bullets and buttons with a commercial value of about \$53. Nevertheless, the men were charged with ARPA violations. Despite a federal damage assessment of \$9000 (based on a legally-defined formula which includes the cost of restoration and repair of the site), each man pled guilty to the misdemeanor of excavating artifacts on government property without permission. Each man received a year of probation and a \$3000 fine as restitution. Interestingly, despite the penalties imposed, the judge, Robert E. Bradberry, described the federal damage assessment as "outrageous" and compared it to "\$500 toilet seats."

### **Diverse Related Matters**

Involvement with looting issues can include the bizarre. Randy Turner of DHR and I investigated an allegation by a Department of Corrections internal investigation that a prison employee at the Greenville Maximum Security Correctional Center near Jarratt might have participated in illegally acquiring Native American artifacts on a prison-operated farm near the Nottoway River. While no wrongdoing was verified, the prison staff received appropriate training.

The investigation of looting can also lead to unforeseen consequences. A report of cemetery destruction in Caroline County on the television news led to a brief investigation that a nineteenth-

century Quaker cemetery had been damaged. While the law-enforcement inquiry yielded no criminal wrongdoing, the problem remained that a cemetery had been inadvertently damaged to an unknown degree. Most probably the cemetery belonged to a Quaker community that disbanded just before the Civil War, possibly because of pressure owing to its abolitionist views. Almost immediately, local historians and Quaker descendants became interested, and some even formed a trust to preserve the site. At this writing, Quaker descendants are trying to establish a case for the existence of the Golansville Quaker community at the site while Caroline County officials have provisionally extended the landowner zoning approval to construct a small business in the vicinity. This remains a volatile situation. To help determine what archaeological resources remain in the vicinity, the landowner permitted DHR to conduct a limited examination of the site through the Threatened-Sites Program. Dave Hazzard of DHR and a volunteer crew (Rich Richardson, John Imlay, and Dale Brown) discovered and mapped several burials. (For further information, consult David K. Hazzard's report, *An Archaeological Survey of a Golansville Cemetery, Site 44CE322, Caroline County, Virginia, June 1998, DHR.*)

Among other noteworthy looting episodes, Cactus Hill, a Paleoindian site on private property owned by the Union Camp Corporation, has endured much site vandalism as reported by Joseph A. McAvoy of the Nottoway River Survey. The remote site has been visited by relic hunters for a long time, so we gave a looting presentation to the Sussex County Sheriff and the local hunt club that uses the land with Union Camp's permission. Unfortunately, looters continue to operate with impunity--none have been caught yet--although on one occasion trespassers were reported, a local deputy responded, but the deputy took no action. As a reminder that violence can accompany looting, McAvoy was threatened by relic hunters not far from Cactus Hill. Clearly, our educational campaign must be vigorous.

One of the more enjoyable offshoots of the time crime program has been the development of a version of the police training for kids (middle school and up). Flowerdew Hundred furnished an opportunity: during the summer, 1998, the site conducted a one-week program in archaeology for bright middle-school students. As a surprise to the students, I entered the classroom and asked if they would help investigate a crime. I described the crime-in-progress as involving a man illegally digging for artifacts on museum property. Roles were assigned to the students (archaeologist, police investigator, crime scene technician, photographer, journalist, and others), and then the students were off to conduct a two-hour role-play which featured processing a crime scene using the same techniques taught to law-enforcement officers. Evidence had to be collected, the suspect interviewed, and casts of shovel impressions made. I have a lesson plan for this children's program and would be pleased to conduct it again upon request. The same program could be adapted to an archaeological field school for college students.

## **Herring Creek Revisited**

In my 1996 article in *Virginia Archaeologist*, I noted that during the summer, 1996, two men were caught looting artifacts from the bottom of a creek, a case that involved the execution of search warrants at the suspects' homes. Cara Metz and Melba Myers of DHR participated in the searches. When the article appeared, the outcome of the case was pending. In December, 1996, Ernest N. Walker and Houston L. Crayton pled guilty in the Charles City County District Court to violation of § 10.1-2214 (unlawful removal of underwater historic property) rather than face additional charges for

their looting of a sunken military barge in Herring Creek. Walker received a suspended 90-day jail sentence, probation, a \$2000 fine, and forfeiture of the artifacts. Clayton received a fine of \$750 and forfeiture. Additionally, each defendant paid the court costs. The case involved excellent work by the Department of Game and Inland Fisheries (DGIF) in collaboration with DHR and the Virginia Marine Resources Commission. Lieutenant Ken Conger of DGIF, who supervised the investigation, had been one of the first attendees at our time crime classes, and he later said that the course materials significantly guided the investigation.

## What's Next?

Space does not permit a recitation of the numerous occasions in which archaeologists have consulted with law-enforcement officers, almost always on burial matters. Disused or abandoned cemeteries, marked or unmarked by visible architecture, are imperiled by land development, vandalism, or relic-hunting. The most severe Virginia statute concerning time crime--§ 18.2-126, violation of sepulchre--makes it a felony to disturb or excavate human remains without a DHR permit or court order, regardless of whether the burial is located on public or private property. At the same time, it is possible, legally, to possess human remains. Old display cases in rural town halls sometimes contain Native American bones, for instance, but current sensitivities have caused Native Americans to complain to appropriate authorities about these displays, and in many cases bones are later reburied and removed from public view. Law-enforcement officers, however, are quick to question where one draws the line of criminality: does the display of an English settler at Jamestown, or an Egyptian mummy at the Virginia Museum of Fine Arts, raise a legal issue? Should a law-enforcement officer do something about Native American human remains in a private collection? A 1990 General Assembly study (Senate Document No. 31, The Problems of Small Community, Family-Type Cemeteries), reinforced by the DHR study concerning the removal of human remains from archaeological sites and abandoned private cemeteries (per House Joint Resolution 106 from the 1998 General Assembly session), both highlight unresolved issues concerning human burials. It has been impossible to satisfy all law-enforcement queries because of legal ambiguities, misunderstandings, and lack of any consistent governmental policy. Further, disagreements among professional archaeologists can exacerbate ambiguities for law-enforcement officers.

Meanwhile, understanding of time crime has become more pervasive in Virginia law enforcement. Officers are acting more confidently in these cases because support and assistance from professional archaeologists is readily available, and we are gradually producing a roster of prosecutorial precedents. If you have any questions or concerns about anti-looting training for law-enforcement officers or any other related matters, please contact me. Also, if you wish to include a short presentation on looting at your field schools or in the classroom, just ask. Documents available on request include a model law-enforcement policy on theft of historic resources, a checklist for archaeologists who work with law-enforcement officers on criminal cases, or a copy of my 1997 article on time crime that appeared in the FBI Law Enforcement Bulletin.

## Bringing Out the Dead

In our time crime classes, we discuss the following Virginia statutes concerning human burials:



- § 10.1-2305, permit required for the archaeological excavation of human remains (Virginia Antiquities Act)
- § 18.2-126, violation of sepulchre
- § 32.1-303, penalty for trafficking in bodies
- § 32.1-289.1, sale of body parts prohibited

Per § 18.2-126, it is a felony to disinter or disturb any human body or body part that has been deposited in any burial. Either a permit from the Department of Historic Resources or a court order is required to move or disturb the burial. As a point of emphasis, the burial site is immaterial to the permit requirement: human burials on both private and public lands receive absolute protection. § 10.1-2305 requires the possession of a permit from DHR to conduct any type of archaeological investigation or recovery of human remains or any associated artifacts from any burial anywhere. If a law-enforcement officer observes an act of burial disturbance or disinterment, or otherwise develops probable cause that a person has caused the disturbance or is committing the act, then the officer can intervene and make an arrest. Per clarification from the Office of the Attorney General (letter from Richard Cullen, Attorney General, to the Department of Criminal Justice Services, December 12, 1997), mere possession of human skeletal material does not give probable cause to arrest for violation of this statute: the officer must have probable cause to believe that the unlawful disinterment occurred, or must have observed the act. Nevertheless, we ask law-enforcement officers to treat cases of possession of human remains with some suspicion and to ask appropriate questions and, if a well-grounded suspicion persists, to confiscate the remains and consult the commonwealth's attorney of the requisite jurisdiction. If the suspicion is resolved in favor of the possessor, then the remains can be returned at a later time. We remind officers, too, that if Native American remains are involved, a federal violation under the Native American Grave Protection and Repatriation Act may apply (NAGPRA, the criminal provision under 18 United States Code § 1170). NAGPRA criminalizes certain acts involving selling, purchasing, or transporting for sale or profit Native American human remains and cultural items (defined under other NAGPRA provisions, 25 United States Code § 3001).

An enforcement complication arises in that a person can legally possess human remains under some circumstances. Biological supply firms supply body parts for lab study, for example. Nevertheless, § 32.1-303 states that any person who buys or sells a dead human body or traffics in the same to any place outside Virginia has committed a misdemeanor. As a related matter, § 32.1-289.1 declares unlawful any commerce involving any "natural body part" (excepting hair, ova, blood, or "other self-replicating body fluids") for any reason except for stated medical or scientific purposes, on pain of a felony. Per the same opinion from the Office of the Attorney General, if an officer has probable cause that a person is offering human remains for sale at a flea market or relic show, for example, the officer may confiscate the remains and charge the suspect with a violation of § 32.1-303. Note that a defense to prosecution is possession of authorization to convey human remains by the State Health Commissioner. The law is ambiguous, though, as to whether the prerogative to authorize transportation of human remains belongs to DHR or the State Health Commissioner in this case. The law-enforcement officer, however, should confiscate the human remains and refer the matter to the commonwealth's attorney.

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