

With any luck, the days are numbered for the Coon Bottom Artifact Militia and others who illegally collect and traffick in artifacts.

Notes

- ¹ Bill Kaczor, "State Getting Touch on Looting at Florida's Archeological Sites," *Tallahassee Democrat* (December 22, 1997): 8B.
- ² Attorney General's Brief at 3-4. On the existing standard for archeological value, see *Cochran v. State*, 724 So.2d 129 (Fla. 1st DCA 1999). As defined in regulations promulgated by the Secretary of the Interior, "archeological value" is the "value of the information associated with the archeological resource" [43 C.F.R. § 7.14(a)(1997)]. This intangible value "shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation."
- ³ *Shearer v. State*, 754 So.2d 192 (Fla. 1st DCA 2000).
- ⁴ *Glaubius v. State*, 688 So.2d 913, 915 (Fla. 1997).
- ⁵ Section 267.13(1)(a)-(c), Florida Statutes.

- ⁶ Kathleen Laufenberg, "The Great Artifact War," *Tallahassee Democrat* (March 10, 1996): 1A.
- ⁷ §267.13, Florida Statutes.
- ⁸ Laufenberg.
- ⁹ §267.14, Florida Statutes.

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"Rescuing" Artifacts A Case Study in Disinformation

The summer of 2000 was exceptionally dry in Georgia, even by the standards of several years of preceding drought. As a result, rivers and tributaries were low in their banks and, in some cases, completely dry. "Protected" archeological sites became exposed, and reports of looting, already on the rise for terrestrial sites, exploded. The southwestern part of the State was especially affected as the Chatahoochee and Flint Rivers were targeted by looters.

In response to the increase in looting, the Georgia Department of Natural Resources (DNR) Law Enforcement Section approached DNR's Historic Preservation Division for assistance in drafting additional protections for consideration by the Georgia General Assembly. A joint committee involving DNR law enforcement

officers, the Office of the State Archaeologist, an avocationalist with interests in riverine sites, and the departmental attorney met several times in late 2000 to draft legislation. A legislator who has preservation interests and is a diver agreed to sponsor the proposed changes. This article recounts what followed, in hopes that other States can learn from Georgia's experiences.

Legal Background

Georgia is home to several major Federal agencies, including the U.S. Forest Service and the U.S. Department of Defense. Sites on these properties are protected by the Archaeological Resources Protection Act (ARPA) and other Federal laws. In addition, the State manages a variety of public lands. Georgia has an award-winning State park system, and large wildlife management areas. However, only about 8 per-

cent of Georgia is protected under Federal or State ownership. This percentage is typical of Southeastern States, where private property rights are highly valued.

In addition to property and trespass laws, the Official Code of Georgia, Annotated (OCGA) includes several statutes that apply specifically to terrestrial and submerged archeological sites. OCGA 12-3-621 is the critical code section that addresses enhancing and protecting archeological sites.

The Legislation

OCGA 12-3-621 et seq., prior to the 2000 Georgia General Assembly, 1) prohibited disturbance of an archeological site without the written permission of the landowner and notification of the DNR (Section 106 actions were exempted), 2) prohibited entering an archeological site posted against trespassing or a site with a lock, gate, door, or other obstruction designed to prevent access, and 3) allowed surface collection of artifacts when conditions 1 and 2 did not pertain.

Because DNR wanted to address both terrestrial and underwater sites, and navigability is a thorny issue on inland waters, DNR approached the problem by clarifying OCGA 12-3-621. There was much internal discussion about the advisability of allowing continued surface collection in cases where property is not posted, fenced, or gated. However, “collecting arrowheads” is an old hobby in the Southern United States as elsewhere and, in the end, this exemption in the law remained. As the legislation made its way through the General Assembly, divers from the southwestern part of the State demanded, and got, changes in the proposed language pertaining to submerged archeological sites. (Note that a stringent law protecting underwater sites in navigable waters was already on Georgia’s books.) The legislation passed both houses of the legislature with strong bipartisan support. A critical theme in committee hearings was that this legislation was intended to help property owners become better stewards of their land, and that the legislation enhanced their control of their property. In fact, the Speaker of the House, a powerful figure in Georgia politics, added language to the bill that supported enhanced stewardship.

To better protect sites on exposed shorelines, the enacted legislation included clear language restricting surface collecting to dry land.

The legislation also made it clear that failure to notify the State archaeologist’s office of intent to dig or disturb a site is a violation of the law. In order to give law enforcement officers an additional investigative tool, the legislation also made possession of artifacts collected after the law took effect prima facie evidence of a violation. Violation of OCGA 12-3-621 remained a misdemeanor, as it had been previously.

In short, the revised law did not allow collecting anywhere except dry land with no barriers. In all other cases, collectors must have written permission of the landowner at a minimum and, in most cases, must notify the State archaeologist.

The Reaction

Adverse reaction to changes in OCGA 12-3-621 was immediate. Several salient facts became evident very quickly —

- Archeological protection laws are widely ignored.
- Divers and metal “detectorists” led the opposition.
- Much of the opposition came from out-of-State.
- Many among the opposition had a direct or indirect monetary interest in the artifact market. Books published by them included pictures of grave goods.
- The major tactic used was a Web-based disinformation campaign.
- The major goal was to scare hunters, fishermen, and responsible avocationalists into signing a petition demanding an “isolated finds” provision for divers or outright repeal.

Because the reaction was orchestrated over Websites and listservs, bad information propagated rapidly and results were immediate. A television feature story included a river diver holding out his hands and offering to go to prison to defend his right to collect in public waters. The senior author of this article was featured on a “most wanted” poster. The governor’s office, the lieutenant governor’s office, legislators, and various policy-makers received lengthy letters. Because the writers got most of their language from Websites such as <artifactsguide.com> and various metal “detectorist” sites, the letters were nearly identical. The letters charged that DNR archeologists were jealous of artifacts sold at shows and didn’t know the rivers as well as the divers, and that the “new” law was an unwar-

ranted intrusion that would “shut down” all collecting. Claims were nearly universal that looters are really just rescuing artifacts that might be lost otherwise.

The Response

Because the primary thrust of the reaction is to insert weakening language to the current law, our overall strategy has been to anticipate and rebut arguments that may arise in a committee hearing in the 2002 General Assembly. First, DNR coordinated with our already extensive network of supporting organizations, including the Georgia African American Heritage Preservation Network, Georgia Council on American Indian Concerns, Society for Georgia Archaeology, and Georgia Trust for Historic Preservation. Each constituent letter was individually answered and copied to the legislator or policy-maker who had requested a response. The State archeologist met personally with concerned legislators, and give periodic updates to policy-makers regarding the facts of the law. Rural legislators with personal collections from their farm fields were encouraged to bring them in so that a member of the Georgia Council of Professional Archaeologists could analyze their collections and prepare a brief report including a State site form. An op-ed piece was distributed Statewide to interested newspapers. This prompted several reporters to write their own stories on the clarifications — all of them reasonably balanced. An information packet with the theme “Clearing Up the Confusion” was prepared and distributed to each legislator. The Georgia Council of Professional Archaeologists and the Georgia Council on American Indian Concerns called committee members. Perhaps most importantly, DNR law enforcement took a reasoned approach to enforcement that was closely modeled on Georgia’s game and fish laws, which are familiar to many legislators and their constituents.

Lessons Learned

First, identify the kinds of criticisms that may be mounted against protection legislation and try to address opposition before launching any legislative initiatives. DNR approached its initiative from a property rights perspective, with the belief that through a combination of long-term education and strengthened law, DNR could provide property owners with additional tools to be good stewards of their resources.

What DNR did not anticipate was the speed with which disinformation propagates through the Web, which acts as an amplifier and confers its own kind of credibility to charges that might appear otherwise ludicrous.

Second, establish personal relationships with legislators and policy-makers. Georgia is largely a rural State, and many legislators from rural districts place a great deal of stock in face-to-face meetings. Making yourself available, and answering every question straightforwardly and nonemotionally goes a long way towards garnering support.

Third, do not assume any archeological knowledge on the part of policy-makers. For instance, while archeologists can easily tell a looter’s hole from an excavation unit, many laymen would not see any difference between the two. Concepts like provenience have to be couched in terms that are not intimidating to folks who do not have specialized professional training and who may distrust those who do.

Fourth, never underestimate the opposition or the kinds of charges that they may use to distract attention from their real agenda.

Finally, establish open and full communication with field law enforcement officers. They are on the front lines partnering with local prosecutors and making the cases before local judges with local constituencies. The best law on the books is only as good as the last case, and making a good case depends in part on wise and reasoned enforcement policies.

While OGCA 12-3-621 does not include everything that DNR would have liked, the revised law is a significant improvement. One unanticipated benefit — perhaps the biggest benefit — is that the revised law has piqued an interest in archeological protection for many of DNR’s uniformed officers.

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