

OVERSIGHT OF CEMETERIES AND OTHER FUNERAL SERVICES: WHO'S IN CHARGE?

HEARING BEFORE THE SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED ELEVENTH CONGRESS

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OVERSIGHT OF CEMETERIES AND OTHER FUNERAL SERVICES: WHO'S IN CHARGE?

MONDAY, JULY 27, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:45 a.m., at the Everett M. Dirksen U.S. Courthouse, Room 2525, 219 South Dearborn Street, Chicago, Illinois, Hon. Bobby L. Rush [chairman of the subcommittee] Presiding.

Present: Representatives Rush, Schakowsky, and Butterfield.

Also Present: Representatives Davis, Cohen, Jackson of Illinois.

Staff Present: Michelle Ash, Chief Counsel, Subcommittee; Anna Laitin, Professional Staff Member; Timothy Robinson, Counsel; Will Cusey, Special Assistant.

Representative Rush's Office: Barbara Holt, District Director; Younus Suleman, Deputy Director; Thyatiria Towns, District Programs Coordinator; Kathryn English, Office Coordinator; Laliq Bearden, Receptionist and Systems Specialist; Zephrairie Buetow, Intern; and Stephanie Gadlin, Press Secretary.

Representative Schakowsky's Office: Ann Limjoco, Suburban Director.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. Good morning. Can you hear me? Is the mics on? The mics are on?

First of all, I'd like to welcome each and every one of you who are present to this Subcommittee hearing entitled, "Oversight of Cemeteries and Other Funeral Services: Who's in Charge?"

Before we begin, I want to thank the chief judge of the U.S. District Court of the Northern District of Illinois, Judge James F. Holderman, for his hospitality in allowing us, the members of Congress, to use this hearing room, this courtroom for this particular hearing. And I'd also like to thank the distinguished gentleman from Israel, Judge Irana (phonetic), for being here with us today to observe this hearing, and his comment to me was that, in Israel, in his country, a hearing would not take place in a facility such as this, in that the distinguishing characteristics of the legislature and the judicial body never allows this type of interaction. And, so, he's amazed, and we certainly are grateful for him for taking the time out to observe this particular hearing.

I'd like to welcome all of you to this Subcommittee Field Hearing on Commerce, Trade, and Consumer Protection. I invited a number of Congressional members, because I strongly suspect that what happened at the Burr Oak Cemetery in Alsip, Illinois is not an aberration. And, with that in mind, I'll yield myself five minutes for opening comments.

If the horrible crimes that were committed at Burr Oak can happen in our district and our city and our state, and even in our nation, they can happen almost anywhere in our beloved country. At a time like this, we especially need to hear from the citizens we represent, and they need to hear from us, and that's why I thought it would be best that we would bring your federal government from Washington, D.C. home to Chicago, to directly hear from the citizens in this community whose lives have been shaken and altered by their horrifying revelations concerning Burr Oak Cemetery.

I generally hope that the extraordinary and extremely disturbing and distressful revelation at Burr Oak can bring better attention to the problems in cemeteries all across this nation. The stories of mass upheavals of sacred grave plots and the desecration of remains at Burr Oak, Menorah Park, in Palm Beach, Florida, and at Tri-State Crematory in northern Georgia are just a few, and they should not vanish into thin air after dominating the news for a few days.

Cemeteries and crematories should not be allowed to continue to abuse grieved customers through fraudulent, shoddy, and sloppy business practices. I've heard from hundreds of constituents, including Ms. Debra Charles. Her father was former heavyweight world boxing champion, Ezzard Charles, was buried at Burr Oak, along with her mother. Ms. Charles said that the hearing about Burr Oak—but, after hearing about Burr Oak, it re-opened old wounds of pain and loss, and that she felt she actually reburied her parents all over again. Another of my constituents, Mr. Tony Burless, a professional genealogist whose two great aunts were buried at Burr Oak, points out that Burr Oak was probably the first African American-owned cemetery in the Chicago area. According to Mr. Burless, in February of 1927, an armed posse of 75 whites interrupted a burial at Burr Oaks, arguing that African Americans could not be buried on the premises. Ultimately, the burial was permitted to proceed under the protection of police guards. This historic landmark, the remains of those buried there, and their living loved ones deserves much better care than they are now receiving.

When cemetery operators fail to keep accurate records of where the deceased have been laid to rest, families and loved ones are prevented from connecting to their past. It hurts families and shatters communities. When cemetery operators weave in and out of trust agreements to escape accountability and regulatory requirements, the quality of the service and upkeep of cemetery facilities is prone to decline to unacceptable levels. The moral fiber that shape our civilized society is forever torn asunder. The simple fact is that many consumers are unfamiliar with the sales practices of cemetery owners and operators because they provide once-in-a-lifetime goods and services. Lacking experience with funeral and burial sectors, these consumers cannot reasonably be expected to re-

spectfully negotiate prices, charges, and contractual terms applied to burial goods and to contracts and leases for land on graveyard property.

I want to say to our witnesses, please listen closely to my following request. As eyewitnesses on the first panel tell us about their experiences with Burr Oak, as we talk about ways to better protect consumers of burial products and services, I would like for each one of you on the second panel to think and briefly answer the following question, when we open the floor to questions from members: Currently, there are no federal minimum standards for the operation of cemeteries. Do there need to be? If your answer is yes, then what are the best ways for us to work together to make this happen?

With that said, I would ask for the Subcommittees' unanimous consent that Representative Danny Davis, who I understand is on his way, Representative Daniel Lipinski, who also is on his way, Representative Jesse L. Jackson, Jr. of the 2nd Congressional District, and Congressman Steve Cohen of Tennessee's—what district?

Mr. COHEN. Ninth.

Mr. RUSH [continuing]. Ninth Congressional District be allowed to make opening statements and participate in witness questioning during this hearing. And I would also like to note the presence of my good friend, Representative Jan Schakowsky, from the 9th District of Illinois, who serves as the Vice Chair of this Subcommittee, who is with us today. And I'm also grateful to the Honorable G.K. Butterfield, the representative from the 1st District of the great state of North Carolina, who is traveling here to spend time with us in our wonderful city.

In addition, I would like to request a unanimous consent to any of the statements that are being submitted by families, loved ones, and friends of those buried at Burr Oak Cemetery in the record of today. This record shall remain open for 30 calendar days from today for the submission of said statements.

Ms. SCHAKOWSKY. No objection.

Mr. RUSH. Without objection, we have unanimous consent request and their entirety are approved. Before I ask Vice Chairman, the Honorable Jan Schakowsky, to present her hearing statement, permit me to say that I'm elated to see so many local, state, and elected officials who also came out to be with us this morning, and I want to thank you for coming. I look forward to hearing the testimony from all the stated witnesses who are here today. Time does not permit all who would like to testify to do so. Again, all witness statements should be submitted within the next 30 days.

In closing, my heart and prayers, as well as my condolences and prayers from my own family, go out to those whose families have been directly affected by the horrible actions performed at Burr Oak. May God bless you and keep you through these painful and challenging times.

I would like, now, to recognize the gentlelady from Chicago, the Vice Chairman of this Subcommittee, our own representative, Jan Schakowsky, for five minutes, for the purposes of opening statements.

**OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLI-
NOIS**

Ms. SCHAKOWSKY. Thank you so much, Mr. Chairman, and thank you for conducting this hearing. This is clearly a situation that cries out for a remedy. Think of the crying, the tears over the deathbeds that were shed at Burr Oak Cemetery as loved ones were put to rest, and then imagine the tears that were shed in finding out about the atrocities that occurred there for the loved ones who were thought to be in their final resting place.

I heard from constituents, as well, particularly the Herd family, Beatrice Herd and her mother, Rose Herd. They contacted our office to inform us that they had multiple family members who were buried there, and that they were trying to find where the bodies were located. They went to the cemetery when the news unfolded and found that the graves of a son, a daughter, and mother were covered by a dumpster. They hadn't been able to find out any information on the location of the children or the mother's body, and our constituents told us that they have children and sisters and brothers and aunts and uncles who are all buried there.

Several years ago, Mrs. Herd went to Burr Oak's to order a headstone for her son and daughter and mother, and, while at the cemetery, a worker looked at the map and said, quote, Someone is buried on top of the others in that grave, unquote. And that day, Mrs. Herd went to see the manager, who said it wasn't true; that the bodies were in separate graves. And to make matters worse, after the headstones were ordered, they were placed in a location that was not where the bodies were originally buried; they were placed on a road in the cemetery. When Mrs. Herd inquired with the manager, the manager said, "Oh, you're mistaken. The bodies were buried by the road." Mrs. Herd states that she knows where her children were buried, and that they were moved. She said, "I would never have buried my children where cars could roll over their grave."

I think the reason that the story has resonated with so many people is that there isn't a family who hasn't experienced a situation in a cemetery, at a funeral, visiting a grave. Is there anything that more deeply impacts families than this kind of situation, and can picture themselves at the burial site, remembering and putting flowers and tending a grave? And, as the Chairman has said, this is not a situation that's unique. The Committee has been provided with examples of other places around the country where similar atrocities have occurred, so it's not just a local or a state problem; it is a national issue.

And, once again, Mr. Chairman, I thank you for bringing this to everyone's attention so that we can, together, seek the appropriate remedy in the law.

I yield back.

Mr. RUSH. The Chairman thanks the gentlelady.

The Chair now recognizes the gentleman from the 7th Congressional—2nd Congressional District, the Honorable Jesse Jackson, Jr., for five minutes, for the purposes of statements.

OPENING STATEMENT OF HON. JESSE JACKSON, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. JACKSON of Illinois. Mr. Chairman, I'd like to keep my remarks unusually brief, but let me first begin by thanking you and the Vice Chairman of the Subcommittee, Jan Schakowsky, for holding this hearing.

Like you, we've heard from hundreds of our constituents who have raised concerns about the quality of care at Burr Oak in light of the recent revelations. The horror is unspeakable, it's unexplainable, and the events that occurred at Burr Oak Cemetery clearly have crossed the line of criminal behavior.

Mr. Chairman, burial rituals are sacred in every major, and even minor, religion. The First Amendment guarantees freedom of religion. That freedom and fundamental right, through courts like this one, have been extended to include the womb. And from the unspeakable and unexplainable things that have occurred at Burr Oak Cemetery, the Committee should consider whether it should be extended to the tomb. A couple of ideas come to mind: An inventory of existing plots at cemeteries all across this country should be taken. And then, once those available plots are sold, cemeteries should be open for visitation and for maintenance only, and that does include the adequate maintenance or monitoring of trust funds, to ensure that cemeteries in perpetuity can have the quality of—and dignity associated with those who buy their final resting place.

And, lastly, Mr. Chairman, I would argue that I hope that this Committee would consider, at the appropriate time, the idea that families who purchase plots should be deeded the land to the burial plot. That is, families who have plans that include monthly payments and insurance are entitled to a deed for the land that they have purchased for the purposes of their loved ones, recorded appropriately at the local level or whatever appropriate level, to ensure that their plots remain their land.

And, so, Mr. Chairman, these are some of the ideas that we have heard from some of our constituents. I thank the Chairman for his time, and I want to offer, in a very special way, to not only my constituents but to all who find loved ones buried at Burr Oak, that this unspeakable tragedy, in part because of the lack of government oversight, has forced your families to look once again at very painful moments in your family's history. The time that it takes to overcome having lost a loved one and to bury a loved one takes time, and for this unfortunate event to occur forces us back into the pain body, into a memory that we had thought we had long since overcome. No words can truly express how members of this panel feel for your families at this hour. My sincerest prayers and hopes are that this will never happen to your family or any other family again.

I thank you, Chair.

Mr. RUSH. Chair thanks the gentleman.

The Chair now recognizes the gentleman from North Carolina, Mr. G.K. Butterfield, for five minutes, for the purposes of opening statements.

OPENING STATEMENT OF HON. G.K. BUTTERFIELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. BUTTERFIELD. Thank you, Chairman Rush and Vice Chair Schakowsky, for inviting us to your hometown of Chicago, Illinois. It's great to be here.

Also want to thank the many witnesses who are waiting in line to testify before us today. Thank you very much for coming, and thank you for your testimony.

Mr. Chairman, as I've told you privately, I've wanted to come to Chicago this weekend to meet these families and hear these witnesses, but, also, wanted to have an opportunity to have dinner with my daughter last night, who lives here in Chicago. She moved to Chicago on the day that the First Family was leaving Chicago, on January 5th of this year. So it's good to be here in Chicago for—

Mr. RUSH. Is she registered to vote yet?

Mr. BUTTERFIELD [continuing]. An invi—pardon?

Mr. RUSH. Did she register to vote yet? That's all right, I—

Mr. BUTTERFIELD. I think she might be in Danny Davis's district, Mr. Chairman. But thank you for this gracious, gracious invitation.

Mr. Chairman, after learning of the horrific acts that have taken place at Burr Oak Cemetery, I find this hearing to be one of the most important hearings that this Subcommittee has conducted in this session of Congress. As you know, Mr. Chairman, in my life before Congress, I was both a trial judge and a practicing attorney. As an attorney, I've represented several funeral homes and one cemetery. As a superior court judge of my state, I presided over many cases involving the occasional misconduct of the funeral industry. And, so, I have somewhat of a working knowledge of this subject matter.

The Federal Trade Commission—and we have a representative here today from the FTC—has limited jurisdiction over funeral homes and the funeral industry. The Funeral Rule, which was created by the FTC, mandates that funeral homes must provide price lists, disclose state requirements regarding embalming, and provide information relating to the purchase of pre-need funeral services. The funeral homes that I have had the pleasure of working with take the federal rules seriously and run their businesses in a respectable and honorable manner. It is unfortunate that the Federal Rule does not—the Funeral Rule, excuse me, does not apply to cemeteries, and it does not apply to crematories and third-party sellers of funeral goods. In fact, the FTC has no jurisdiction over these industries, and that has been to the detriment of consumers across the country.

The illegal exhumation of men and women, of fathers and mothers is perhaps the most egregious act someone can commit, and this happened potentially hundreds of times by five employees of Burr Oak Cemetery, located just outside of the city. The sadness and the anger and heartbreak felt by the families who have loved ones buried at this cemetery must be almost too much to bear. Even those lucky enough to be unaffected by these pitiful grave robbers are forever scarred, always thinking that it could have been—just as easily been their family member.

In less than a decade ago, we were all horrified to learn that the Tri-State Crematory in the State of Georgia had been piling bodies like trash all over the facility, and sending cement to grieving families. That is awful. I pray that these are isolated incidents, and that these activities are not being repeated at any number of unregulated cemeteries and crematories across the country.

Mr. Chairman, I believe a federal minimum standard by which all cemeteries, crematories, and, to a lesser extent, third-party sellers of funeral goods is not only a good idea, but it is necessary. It is important that we give the FTC the tools it needs to expand the Funeral Rule so that loved ones who have passed away can be afforded the respect and care they deserve. I am informed that 25 percent of the funeral contracts that are issued, that are written in this country, arise from pre-need arrangements entered into between consumers and funeral homes. Consumers pay a large sum of money to have the satisfaction of having a pre-paid funeral contract. I am told that states vary in their treatment of these funds. Also, states vary on whether the payments are refundable to the consumer. We need a uniform regulation on this subject, as well.

Mr. Chairman, thank you, and I thank the panelists for being here today. I know how painful it may be and must be for you, but, hopefully, this process can help you feel better, and, hopefully, we can prevent this type of activity from happening again.

Thank you, Mr. Chairman. I yield back.

Mr. RUSH. The Chair thanks the gentleman.

The Chair now recognizes the gentleman from the 9th District of Memphis, Tennessee, Mr. STEVE COHEN, for five minutes, for the purposes of opening statement.

OPENING STATEMENT OF HON. STEVE COHEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. COHEN. Thank you, Mr. Chairman, and I appreciate, certainly, being here with the members of the Committee in this great City of Chicago. The City of Memphis is intimately related to Chicago through the Yellow or Central Railroad and Chicago's Southern Airlines, and, in my personal situation, even more so.

My mother was—lived in Chicago, went to Bowen High School, met my father when he was a resident of Michael Reese Hospital, and this was the first major city I ever visited. When I was seven years old, we came in on the train. We took a cab out at Chicago Art Institute, where I saw those iconic lions where my mother had gone to school. And, on the way there, we saw—I saw a sign on the store, and it said "Memphis Pork," and I felt at home, and I still feel at home in Chicago.

My grandparents immigrated to this country from Lithuania. And, this past year, I had the opportunity to visit Lithuania. One of the issues there is that there was a large area that was a Jewish cemetery for centuries that has been covered by a building built by the communist regime in Lithuania. It's a major issue that those graves have been disturbed and that the communists built a structure over them. No knowledge of what happened to those graves.

When I was there, I thought, "Is it possible that some of my great-, great-, great-grandparents could have been there?" And it bothered me. My mother's mother was somebody who we really

didn't know. My mother was orphaned when she was in Chicago at age six. She never saw her mother again. I researched through the Internet and found out that she had passed in Miami in about 1976, and that she was buried in a pauper's grave in Miami. I know not where it is because there was no marker, but it would bother me to know, even though I never knew my grandmother, that her grave would be disturbed, and, even though it was a pauper's grave in Miami, that there—and there's no marker, that something could happen to that spot.

The desecration of bodies in our past is important and shouldn't be allowed to occur, so it's important that Chairman Rush has this Committee meeting, and what happened at Burr Oak could happen anywhere. I have a constituent, Ms. Rochelle Payne, who has ten relatives at Burr Oak. She is disturbed and was interviewed on the local television about this issue.

The situation in Georgia is right outside the lines of the State of Tennessee, where I was a state senator, and that was a terrible injustice and crime that occurred there. At first blush, you'd think the cemetery industry should be regulated by state laws. And, at one time, cemeteries were local, and, still, there are lots of churches that bury on their properties, and it's a local situation. But, as we become more and more of a national country, and people have moved and commerce has changed, cemetery ownership is so often involved with somebody outside the state, and a for-profit industry. The cemeteries are bought and sold, and, because of the changes in the way that our society operates in commerce, it's important that we have regulation over the cemetery industry and not let somebody from out-of-state, or even in-state, have control over the remains of our loved ones and possibly disinter them or desecrate those graves. So it's an important national issue. I appreciate Chairman Rush calling it.

I want the people of Chicago to know that people all over the country felt this was an injustice, and that remedy should be had, and that what happened here in Chicago has happened in other places, where we've had disturbances at cemeteries and the lack of maintenance at cemeteries, often African American in my city, and this needs to stop. So I thank the Chairman for the opportunity.

I yield back the remainder of my time.

Mr. RUSH. And the Chair thanks the gentleman.

Now, the Chair would like to invite the members of the first panel of witnesses to the witness table: Pastor Don Grayson, Mr. Dwight Robinson, Ms. Roxie Williams, and the Honorable Reverend Jesse Louis Jackson.

It is the practice, the common practice of this Subcommittee that we swear in the witnesses, and I would ask the witnesses to please stand and raise your right hand. Will you please stand and raise your right hand.

[Witnesses sworn.]

Mr. RUSH. Please let the record reflect that all the witnesses have answered in the affirmative.

We will begin with five minutes of opening statement, and I'm gonna ask the families if you will go first, and then Reverend Jackson will complete this panel's testimony.

Mr. Grayson—Dr.—or, Pastor Grayson is the great-grandson of Dinah Washington, and he has other family members who are buried at the Burr Oak Cemetery.

So, Pastor Grayson, we thank you for coming, and we welcome you, and we recognize you now for five minutes of opening statement.

STATEMENT OF PASTOR DON E. GRAYSON, SR., GREAT-GRANDSON OF DINAH WASHINGTON, FAMILY MEMBER OF INDIVIDUALS BURIED AT BURR OAK CEMETERY

Pastor GRAYSON. Thank you, sir.

To the Chairman and the distinguished Subcommittee panel, I am honored to be before you today, and thank you for your invitation. Although it is under the grim and tragic circumstances of the events surrounding the historical Burr Oak Cemetery, I am glad to be here.

My name is Revered Don E. Grayson. I am the pastor of Greater Faith Tabernacle Church in Chicago, Illinois. I'm here today for three reasons: One, as a pastor, I've looked in the faces of those who have buried their loved ones, whether it was from a sudden death or a long, debilitating illness, and walked away from the graveside knowing that their loved—their family members are resting in peace now, only to discover that now there is a possibility that the resting place that many families struggled to pay for has been disturbed and allegedly resold for personal gain. I've counseled those who were emotionally distraught for the second time, because, to them, it is like reliving the loss all over again.

I've prayed and asked God for the words, but what do you say to a mother who has lost her only son and has finally come to have peace with his death, that someone now has re-opened his grave and has taken his remains and just tossed them just like trash? Or a wife who buried her husband and two children in the same year, and is finally beginning to move forward? I tell them what the word of God says: That you don't fear one that can destroy the body, but fear one that can destroy the soul. But there are those who won't hear that, who don't have a pastor to counsel them. They're upset and they're angry because this should not have happened. But I, like many other pastors, have the awesome and difficult task of trying to heal those who have lost faith, and ask the question that so many have asked: Is nothing sacred, and why? And is anyone going to do anything about it?

The second reason is as a professional. As a former law enforcement officer, I realize that the world we live in is filled with those who will take full advantage of the weak, as well as the unprotected, when there is no law in place to protect them, and when those that have rule are not governed and held in accountability for that which has been placed in their hands. We have laws, regulations, and annual, updated reports on everything from animals and the forest to the environment and toxic waste, but they're—but not our dearly departed and their final resting places.

I realize the magnitude of the investigation that Cook County Sheriff Tom Dart and the law, other law enforcement agencies involved have, and he has handled it with professionalism, care, and concern. I know that this type of investigation must be handled

with time and precision, and that the public must be patient so that all of the facts will be in, and that those responsible are brought to justice, and the victims, living and deceased, can have peace and healing.

And, thirdly, my own personal experience; my own family who has patronized the Burr Oak Cemetery for over 60 years. My great-grandmother, Dinah Washington; my great-grandfather, Reverend Dr. S.A. Grayson; my great-grandmother on my mother's side, Ms. Idella Liddell; and great-grandparents, Dan and Ida Sutton; and countless of others of my family, more than I could even name, who have made their final, physical resting place at the Burr Oak Cemetery. I must be honest in telling you that I am emotionally affected, and, to some of the members of my family, this has been devastating and overwhelming, because there are family members who have headstones and can't possibly be located, but there are others with no headstone and, now, almost impossible to locate.

I implore you as a governing body, as the ones who have been made stewards over this great country, that you would look into this matter as if your own family members were involved, as if your parents and ancestry had been disturbed. Put yourself in the place of these families who now have to relive the burden, the pain, the sadness, and the grief of death. I ask that you would regulate laws to govern the cemeteries, and then hold them accountable. I ask that you have annual inspections of all cemeteries and their records, and that you would force them to update their records and modernize them from the first person laid to rest to the last, and that the—even the private facilities have the similar, if not the same, standards.

Mr. Chairman and panel, I thank you for this time.

[The statement of Pastor Don E. Grayson, Sr. follows:]

To the Chairman and the distinguished subcommittee panel,

I am honored to be before you today and thank you for the invitation, although it is under the grim and tragic circumstances of the events surrounding the Historical Burr Oak Cemetery, I am Glad to be here.

My Name is Rev. Don E. Grayson Sr.

I am the Pastor of Greater Faith Tabernacle Missionary Baptist Church in Chicago Il.

I am here today for three reasons,

1) As a Pastor,) I've looked in the faces of those who have buried their love ones weather it was from a sudden death or a long debilitating illness and walked away from the graveside knowing that their family members are resting in peace now, only to discover that Now, there is the possibility that the resting place, that many families struggled to pay for, has been disturbed and allegedly resold for personal gain.. I've counseled those who where emotionally distraught for the second time, because to them it's like re-living the loss over again... I've prayed and asked God for the words. But what do you say to a mother who has lost her only son and has finally come to have peace with his death that someone re-opened his grave, taken his remains and just tossed them like Trash,, or a wife who buried her husband and two Children in the same year and is finally moving forward. I tell them what the Word of God says, (don't fear the one that can destroy the body but fear one who can destroy the Soul). But there are those who won't hear that, who don't have a Pastor to council them, they're upset and angry because this should not have happened. But I, like many other Pastors have the awesome and difficult task of trying to heal those who have lost faith and ask the question that many have asked, "is there nothing secret", Why, and "is anyone going to do something about this"

2) As a Professional). As a former Law Enforcement Officer I realize that the World that we live in is filled with those who will take full advantage the weak, and unprotected when there is no law in place to protect them, and when those that have rule are not governed and held in accountability for that which has been placed in their hands. We have laws, regulations, and annual updated reports on everything from animals and the Forest to the environment and toxic waste, but not our dearly departed and their final resting places. I realize the magnitude of the investigation that Cook County Sheriff Tom Dart and the other Law Enforcement agencies involved have, and he has handled it with professionalism, care and concern. I know that this type of investigation must be handled with time and precision, and that the public must be patient so that all of the facts are in. and that those responsible are brought to justice and the victims, living and deceased can have peace and healing.

3) Personal), My own family; who has patronized the Burr Oak Cemetery over 60years. From my great grand mother Dinah Washington, my great grand father Rev. Dr. S.A Grayson, my great grandmother on my mother's side Idella Liddell, Great Great grand

parents Dan & Ida Sutton. And countless of others in my family more than I could name who have made their final physical resting place at the Burr Oak Cemetery. I must be honest in telling you that I am emotionally effected and to some of the members of my family this has been devastating and over whelming, because there are family members who have head stones and can possibly be located but there are others with no head stone and now almost impossible to locate...

I implore you as a Governing body, as the ones who have been made stewards over this Great Country, that you would look into this matter as if your own family members were involved, as if your parents and ancestry had been disturbed. Put yourself the place of these families who now have to re-live the burden, the pain, the sadness and grief of death...

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And that you would force them to update their records and modernize them from the first person laid to rest to the last.
And, that even private facility have similar if not the same standards.

Mr. RUSH. Thank you very much, Pastor Grayson.

Our next witness is Mr. Dwight Robinson, who has family members buried at Burr Oak.

Mr. Robinson, we welcome you to this Subcommittee, and you're recognized now for five minutes, for opening statements.

**STATEMENT OF DWIGHT ROBINSON, FAMILY MEMBER OF
INDIVIDUALS BURIED AT BURR OAK CEMETERY**

Mr. ROBINSON. Thank you, Mr. Chairman.

Congressman Rush and other distinguished members of the Committee, thank you for this opportunity to speak to you today regarding the ongoing crisis at Burr Oak Cemetery.

My name is Dwight Robinson. I, like thousands of others who have loved ones buried at Burr Oak, were in shock to hear that hundreds and possibly thousands of graves had been desecrated. Both my parents are buried at Burr Oak. My father, Leonard Robinson, in 1983, and my mother, Vivian Robinson, in 1989. At the time of their burials, it was my belief, and that of my sister, that my parents would rest in peace. Unfortunately, this tragedy has caused both of us to have to relive the death experience all over again. This incident has resurrected what should have been comforting memories; have now turned into disbelief, confusion, uncertainty, and unnecessary anxiety. Although I was able to go to Burr Oak prior to the Cook County Sheriff and the FBI temporarily closing it, and although things appear fine on the surface, there is still that element of doubt as to whether what looks fine on the outside is still OK on the inside of my parents' grave. We may never know if the grave sites were actually disturbed. Even if we knew for certainty that my parents' graves were never touched and remain intact, there is still one unsettling emotion; that there are other families that are also re-grieving the past; that there are persons that have shown a callous disregard for the sanctity of the sacred ground where many are laid to rest.

There are so many questions that remain unanswered, not withstanding why anyone would do something like this to the families and loved ones of others. If nothing else, one would believe that something inside of these four individuals would have been triggered. I have to believe that each of them at least has one family member buried somewhere, and that they would never have wanted something like this to happen to their loved ones. One question that remains with me is, what will happen to my parents' remains, as well as those of others, should Burr Oak be permanently closed? Will we have to transfer our parents to another cemetery? If so, how will this be handled? Who would be responsible for payment? Until these and other questions are answered, none of us who remain will have full peace.

We all know that there needs to be better regulation of cemeteries. In fact, most of us have known this for years. However, those that we have put in place to provide such regulations are too entrenched in allowing lobbyists to dictate policies for the public. This should be a painful lesson to everyone to acknowledge; that the acts of violence and indifference to the deceased at Burr Oak were also an act of violence and indifference to those families that are still alive.

Thank you, Mr. Chairman, for your time, and the members of this Committee, for your time and efforts towards this ongoing crisis.

[The statement of Mr. Dwight Robinson follows:]

July 27, 2009

Congressman Rush and other members of the Committee:

Thank you for this opportunity to speak with you today regarding the ongoing crisis at Burr Oak cemetery. My name is Dwight Robinson, I like thousands of others who have love ones buried at Burr Oak, were in shock to hear that hundreds and possibly thousands of graves had been desecrated.

Both of my parents are buried at Burr Oak, my father Leonard Robinson, in 1983 and my mother Vivian Robinson, in 1989. At the time of their burials, it was my belief and that of my sisters that my parents would rest in peace. Unfortunately this tragedy has caused both of us to have to relive the death experience all over again. This incident has resurrected what should have been comforting memories, have now turned into disbelief, confusion, uncertainty and unnecessary anxiety. Although I was able to go to Burr Oak prior to the Cook County Sherriff and the FBI temporarily closing it, and although things look fine on the surface, there is still that element of doubt as to whether what looked fine on the outside is still okay on the inside of my parents graves. We may never know if the grave sites were disturbed. Even if you knew for certain that my parents graves were never touched and remain intact, there is one unsettling emotion; that there are other families that are re-grieving the past; that there are persons that show a callous disregard for the sanctity of the sacred ground where many are laid to rest.

There are so many questions that remain unanswered, not withstanding why anyone would do something like this to the families and loved ones of others. If nothing else, one would believe that something inside of those four (4) individuals would have been triggered. I have to believe that each of them has at least one family member buried somewhere, and that they would have never wanted something like this to happen to their loved ones. One question that remains with me is what will happens to my parents remains as well as those of others should Burr Oak be permanently closed.

Will we have to transfer our parents to another cemetery, if so how will that be handled, who would be responsible for payment. Until these and other questions are answered, none of us who remain will have full peace.

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Thank you,

Mr. RUSH. The Chair thanks the gentleman, Mr. Robinson.

And, now, the Chair recognizes Ms. Roxie Williams, who has family members that are also buried at the Burr Oak Cemetery.

And, Ms. Williams, we want to welcome you to the Subcommittee, and you're recognized now for five minutes, for opening statements.

**STATEMENT OF ROXIE WILLIAMS, FAMILY MEMBER OF
INDIVIDUALS BURIED AT BURR OAK CEMETERY**

Ms. WILLIAMS. I want to thank you, Honorable Congressman Rush, and to the Subcommittee that has taken the time out to hear from the families.

My name's Roxie Williams. And there may be some families here that are not close to the young people in their family. The generations don't know the contributions that the older people in their family have made. That would not be my family. Maybe there are some men who did not look after the development and the education of their children, did not contribute to their communities. That, too, would not be my father. Matthew Williams served this country. Matthew Williams was a king in his community. Matthew Williams served his family. On October 22nd, 1978, Matthew Williams was laid to rest at Burr Oaks. At 11 years old, 11 days after my birthday, I had to deal with the tragedy and hold up a family; a little lion cub trying to roar for a mother who had suffered a mental breakdown after losing the support of her husband; trying to tell children what to do next without having that father there to support the family.

We went through some traumatic times burying my father. As you know, in our communities, even middle class, it came as a financial burden to my mother. My mother worked ER at Cook County, and worked a second job to make sure that things were taken care of. My family rallied around my mother to bring her safely back to a mental state. My grandmother and I picked clothes, selected caskets. We paid a mint to bury my father as the king that he was.

We have a thing that our family does; we don't forget our loved ones. Every year, I would go, on his birthday, and put flowers at the grave site. We had a big to-do when my father died, because he had three different places we could have buried him; one, because he was a veteran; two, because he's the only child to his mother, and they wanted to be buried together; and, three, because the family had prepaid for plots. We decided to bury him with his mother, and she had decided Burr Oaks would be that cemetery that they would lay together at rest in peace. My mother selflessly laid my father next to his mother. She had not passed at the time. She was the only grandmother that pulled me through. For two years, I didn't speak because it was such a traumatic thing for me.

My mother offered to buy a custom-made headstone for my grandmother and my father so that I would have the memories. And my last words spoken to him were the last words put on that headstone. In 1993, after finishing high school and college, I was pregnant and engaged, and I wanted to show my fiancé who my dad was. It's very hard coming up and you don't have a man to present a new man in your life to. We went to the grave site only

to find that my father's headstone was not there. My grandmother, who had passed two years after him, her headstone was there. When I went to the office, they told me perhaps I had the wrong information.

My mother struggled to put a customized headstone for me and my brother and my kids' kids to know where our families lay. We paid through our nose. My mother sacrificed food. She sacrificed. The community came together to make sure a man who had served that community was buried with dignity. And when I got there, all he could tell me is that, "No." I had to go home to my mother's home, dig through death certificates, find a little blue card to tell them where my father was buried. And when I came back, the man who told me he was not there was on vacation. The woman in the office had a—someone take me out to that particular site. All that was there was grass and my grandmother's headstone next to it. I knew then something was wrong.

Being—having a baby, not having the finances to fight a cemetery, to say that I know darn well where we laid my father, and to have to come as an adult and fight with them about a situation, that I came year after year—there is no way I would forget the ground that my father lay on. Then to have them say, "Perhaps we have lost the records." How do you find justice for me, when you've lost the records of my only father? If I had not been birthed and he had not signed that birth certificate, and I needed DNA to prove who I was today, I would be in trouble. How do I tell my son, who is now 16, about a grandfather, and I cannot even take him to his last resting place and know for sure that's where he was?

Can something hurt 31 years later? Absolutely. Can you take this thing lightly? Absolutely not. Because the pain and the wounds are still re-opened. Maybe my father has never meant a thing to any of you. Maybe my grandmother being buried at Burr Oaks may not be significant to anyone in this room, but they meant the world. They were the cornerstones of us being able to come through and be productive and positive human beings in this society right now. We owe them that tribute. And, today, I champion my family again on a tragedy of the same death that we had 31 years ago.

Will I let it rest? No, because you have not let my father rest. You have not let my grandmother rest. And as long as my ancestors don't rest, this girl is not going to rest, until there's something done about the criminal act. You have raped us. You have robbed us. And you have nothing to say, but, "Sorry we lost your loved ones' remains?" It is not appropriate. It is not something that I can take lying down, and, as long as there's breath in me, I will support whatever you all decide to do so that no other family, no other grandchild, no other great-grandchild has to deal with what I'm dealing with today.

And I hope, in my whole heart, if I do nothing else great in my life, I hope that I make a difference for Matthew Williams and Pearl Billips, who made a difference for me. And I thank you today for allowing me that.

Mr. RUSH. The Chair certainly thanks Ms. Williams.
[The statement of Ms. Roxie Williams follows:]

Roxie Williams Testimony

There may be some families that are not close and the younger generation has no knowledge of the many contributions that others in the family make or have made as time goes on. That would not be my family. There may be some fathers that are not Priest in their homes, Kings in their community and fathers who do not contribute to the development and education of their children. That was not my Dad. Matthew Williams was a loving father, a wonderful, committed husband, a strong Alpha male in our family and a gentle giant that touched the lives of all the families connected to ours. He served his country; he served his community and was a servant to his family. On October 22, 1978, eleven days after my 11th birthday my father was laid to rest at the Burr Oaks Cemetery. Just like it was yesterday I will never forget the Man and all the event that happened up to that final moment of rest.

At 11 years old I played a major role in every aspect of helping my mother deal with the sudden death of her mate, the many people pulling at her for this and that and the major decision having to be made in such a short period of time. If ever you have prepared for a death of a love one, you can understand the fears, uncertainty and craziness a widow would go through trying to be strong for the family, addressing her children with the reality of death of their father and the unknown of what the rest of her life would now be like for her as a woman, widow and mother. My mother had a mental breakdown and my paternal and maternal grandmothers rose to the occasion and simply took charge. I lost my mother and father all in the same moment of time. I knew I must live up to the high expectations of my father to pull my mom and the rest of this family through.

I stand before you today saying at 11 yrs old I knew this was the only moment in time that my life would make a difference and my dad would be counting on my brother and I to contribute to the greater good and make my he and my mother proud. Like many times before we were children familiar with being responsible at a young age and taking the things our parent taught us and applying it. This moment was the most difficult because neither was there to direct, protect or guide us. A moment we had not experienced before. As a military man he ran our home with the some of the same principles. My brother very shy became my best friend and protector. I became the Lion roaring and protecting my mother as my dad would have and keeping all the hyenas away from the pride until my mother could recover.

Like any family facing the sudden death of a loved one, money was a huge issue. The parents had paid up the bills, there was not much in the savings and the insurance policy was there but at the worst time ever they wanted to play dumb games with my mother who was so emotionally vulnerable it was unreal. My father's mother, said irregardless of whether they decided to pay or not, her son was going to be buried in a King's manner for the King he was. My mother's mother dealt with the funeral home and the insurance policy hoping they would be better able to get the policy paid out to release the financial burden on the family. My brother kept watch over my mother and the house. I kept all the family foolishness at bay and worked side-by-side with my Grandma Pearl to prepare

the obituary and funeral program, pick daddy's clothes, provide underwear and socks etc, to pick flowers and most important had the final decision with my mother on the casket selection. The bill for all of this was enormous. Nobody complained. While my mother fret about my selection of a casket fit for a dignitary and the top of the line accommodations for the family and repast nobody said they did not feel he was worth it.

The greatest decision we faced as a family was where my father would be laid to his final rest. Our family had plots at three cemeteries. One where my maternal grandmother purchased that would allow my father, mother brother and I to be buried together. Another for my father as a Veteran to be buried with his fellow mates and Burr Oaks, where my paternal great grandmother, grandmother and my father could be all buried side-by-side because they had been pre-purchased. My mother (selflessly) selected Burr Oaks because both she and my father were only children and she felt nothing would be more honorable than for he and his mother to be together in death as they were in life. Everyone agreed and Burr Oaks was selected. I can remember the longest ride of my life through three communities he grew up in, made an impact on and dedicated his life too. I can still hear the 21 gun salute. I can still hear the James Earl Jones voice of the preacher speaking the last words over my daddy. I can still feel what I felt as I threw the last rose over the wooden casket, wanting to just jump down in with daddy and have them lower me too. I remember my mother trying to hold in her sigh and tears as she blew a kiss to her fallen lover, husband, friend, provider and protector. She grabbed our hands so hard and said out Loud, Matthew is the Man I will never forget. As she bellowed that last utterance she grabbed us and quickly we all walked away as I watched the grave men pour dirt. I sat in the back of that Limo sobbing terribly on my mother crying how I wanted my dad and could not live without him. We made it through, had the repast and life silently went on for me.

The trauma of it all did not hit me until after that day. I stopped talking. Many thought I was a mute, I refused to speak again. Therapy and 2 years later I chose to allow the sound of my voice and the brilliance of my spirit to be heard and felt again. My mother, as a way of showing she understood my pain said we would do something as a family to be sure Matthew Williams would always be remembered. My grandmothers and mother pooled their monies together to by a very expensive headstone for my dad and stated that words I spoke last would be the words written on the headstone and daddy and I would again have something special for me to tell me kids and my kids, kids of how much we loved each other. My mother struggling as a nurse in ER at Cook County Hospital and a student at University of Illinois kept her financial end of the bargain to purchase this head stone. We were not middle class without daddy we were poor and it was the first time I had ever seen my mother struggle so hard to provide for my brother and I. She was determined to keep her commitment to keep us in Catholic School as he asked and sacrificed so deeply to make life normal for us. Our whole family and extended family, along with neighbors came together to help my mom. Relationships my father built carried us through some very, very hard times. My brother and I were afraid to loose our mother in the struggle, we got jobs to work and help out every way we could.

I would go with mommy every month to put new flowers on daddy's grave site. We would leave there and go to his mom's house on Sunday to continue to eat and laugh and talk together. We went to visit the grave after I graduated grammar school. Getting ready for Easter went to grandma Pearl's home to alter my dress only to find Grand ma Pearl Billips dead coming out of the bathtub from a massive heart attack. Here we go again. This was a little easier for my mother because Grandma Pearl after dealing with daddy's death made sure my mother knew exactly what she wanted and had everything paid for in advance. Elegant as a Pearl we put my grandmother to rest at Burr Oaks as well. A funeral laid out for a Queen and a resting place next to her only son our family was better able to survive this moment. It was easy for momma and I to go and visit them both for the next two years at the same place.

Over the years we stop going regularly to the grave site. Work, school and responsibilities we just could not find the time. When I graduated from Whitney Young I remember catching the bus and sitting out talking to my dad and granny for hours every once in a while. I took younger family members and friends from the neighborhood who still remembered my daddy over to see the beautiful headstone we had custom made for he and granny and took them for my family tour of the other family members on my grandfather's side buried in Burr Oaks. After college I stop going. It was in 1993 after my only son was born I went to the cemetery wanting to talk to my father and tell him how I had become a productive in so many ways and how I was going to be a wife soon and a mother of his first grandchild. This was a time I first realized that something wen terribly wrong at this place. I went were I had always gone to see my father and the headstone was gone and it was just grass there. I freaked out. I went to the office pregnant and hysterical. The man in the office told me to calm down and asked what the problem was. I gave him my father's name and he looked it up in the computer and walked me over to where the location was. There was no headstone for my father only my grandmother. He then told me I might be mistaken. Although there was a record of him there was not headstone there. I could not believe the words this man was saying. I explained the history and how sure I was he was there. The guy told me to perhaps go back and check my records again. My mother is so well organized. She never throws things important away. I dug through her death records and found the blue card with my father's cemetery location. Got the receipt for his mother's and his headstone and copied it to show they were there.

When I returned and asked for the guy I spoke with they told me he was on vacation. When I explained what happened the lady told me not to worry about it she would look into the incident and give me a call. I refused to leave until she gave me an answer of where my father's headstone was. She said it must be a mistake because although they had a record for my grandmother they did not have a record for my dad. My whole heart sank. Being with child my fiancé' at the time told me to think about the baby and not loose my head or the baby over this matter. Not having extra money with a new baby on the way to get a lawyer or take this matter on myself I felt helpless to advocate for my father's remains, headstone or dignity. Determined not to drop this I went back and got into another argument with the lady and was told if I did not get off of their property she would be forced to call the police on me. She said I was mistaken my father might not

have been buried there and could have been moved, but whatever the case I would have to wait until they looked into the matter and got back with me. Today it is 16 years later and I wait for that return call to come.

Today is my day of real hope. A day I again stand here to champion for my family and the honor of my father Matthew James Williams. Am I hurt almost 31 years later? You believe me when I tell you this hurts to the core of my heart. No one should think to make light of it. I have a feeling about this whole Burr Oaks mess that can not be described. I am and remain confused, how can something like this even happen to a family. What? They say sorry we lost your loved one and everyone is supposed to suck it up, walk away with no real explanation or reason for this kind of tragedy to even have existed in the first place. Recover. How do we recover? To this day from the pain echoed by me my family has cremated the remains of other family members (my mother's mother) although we don't believe in cremation. This has been done to eliminate the hurt, or being raped again by a process that appears to take advantage of families at their most vulnerable time. What do I tell the younger generation about our family tree and their grandfather and maybe great grandfather? Thank God my parents raised a decent woman to know how to channel anger appropriately because this only leaves me mad as hell. To now we went without things to see our family buried with dignity. To know the financial sacrifices made when policies are not in place. Where is the betcha because for years I could not understand how the only remains of my father could simply vanish in a cemetery and no one notify you, say one word or be made to explain. It was just a matter to be forgotten.

Mr. RUSH. And, now, it is my privilege and my honor to recognize one who needs no introduction, in that he is very familiar in all the wards for justice across this nation and across this world. He is someone who I have an endearing relationship with, a loving relationship. For most of my life, he's been a filler in my own life, and he's been a helpful friend in my times of need. So it is my distinct honor to recognize, for five minutes, for the purposes of opening statement, the honorable, the reverend, the leader, Reverend Jesse Louis Jackson, of the Operation PUSH.

**STATEMENT OF REVEREND JESSE L. JACKSON, SR., FOUNDER
AND PRESIDENT, RAINBOWPUSH COALITION, INC.**

Reverend JACKSON. Thank you, Chairman Rush, Committee members—

Mr. RUSH. Will you turn your mic on.

Reverend JACKSON. Thank you, Chairman Rush—

Mr. RUSH. Thanks.

Reverend JACKSON [continuing]. And to Committee Members Jackson and Butterfield, Schakowsky, and Cohen.

Let me make one alteration here. Mr. Cohen said this was the first major city he visited. It is the only one he visited; this is Chicago.

This testimony is presented to this Congressional hearing panel in response to the cemetery crisis at Burr Oak Cemetery in Chicago, in Alsip, Illinois, which we believe may be symptomatic of a national problem arising from the inadequate regulation of cemeteries, casket companies, and grave diggers.

The Burr Oak crisis arose as a result of the State of Illinois' failure to regulate the cemeteries and crematories within its geographic boundaries. In my investigation, I have discovered only one cemetery in the State of Illinois that acknowledged that it has sold all of its available burial space, and, therefore, cannot and will not take any additional bodies. This is in contrast to Burr Oak Cemetery, which, with the acquisition of additional land, the owners and operators have continued to accept burial fees and purchases of pre-need plots for the past several years. The Burr Oak paid-for plot scandal investigation uncovered, so far, more than 300 bodies or remains had been moved. Caskets and vaults have been dug up and arbitrarily discarded to facilitate the resale of graves.

Burr Oak is owned by a holding company known as Perpetua, which also owns and operates two other cemeteries; Cedar Park in Chicago and another cemetery in St. Louis, Missouri. We're not certain that the practices at Burr Oak and Cedar Park are identical, but we do know that both cemeteries are under common management. The owners are responsible, and the workers jailed now could be the fall guys. We need to know.

We realize that the Burr Oak scandal is symptomatic of a national problem that may arise if we continue through the practice of not regulating cemeteries. We made the following observations as a result of our research arising out of the Burr Oak investigation:

The desecration of the moderate remains of Emmett Till's casket further the pain and the humiliation, and the likes of our dear sister, Dinah Washington, and Ezzard Charles and so many more, one

that's been a pattern of desecration of African American cemeteries and burial grounds as evidenced by the African burial ground located on Wall Street in New York City.

Two, there has been a major impact on cemetery expansion in urban areas as a result of the use of eminent domain laws to acquire cemetery property for use in expanding highways.

Three, the failure of state legislatures to appropriate funds to ensure proper and adequate burials of indigent citizens. There's an attempt on this session of budget long—to no longer pay for the burial and funerals of public aid recipients. We have a struggle with that even as we talk today.

Cemetery records are often poorly maintained and managed.

Presently, all states, including Illinois, regulate funeral directors and funeral home owners and embalmers, but do not regulate cemeteries or its owners.

There's no common repository for death and burial records that would permit online searches. To this date, there are 6600 cemeteries in the state, with 900 on regulation. Others have private or religious domain.

Members and directors of RainbowPUSH are therefore calling on this panel to:

One, conduct a review of all state laws and regulate cemeteries to determine similarities and differences in regulatory status.

Two, promulgate national cemetery regulation that results in a national funeral database that includes data on the funeral, the cemetery arrangements by owners, date, and name of the deceased.

Three, initiate uniform cemetery regulation that designates one agency with responsibility for licensing, regulating, and maintaining cemeteries.

Four, enact federal legislation that creates a national uniform death registry that includes the information regarding the funeral and burial services and burial site of the deceased on the death certificate that is readable and accessible online.

Five, enact federal legislation that requires every state to consolidate regulatory oversight in one state agency.

And, six, enact federal legislation that appropriates sufficient funds for the funeral service and burials of indigent persons.

The only modest consolation for all of this painful crisis is that Burr Oak is the resting place, now disturbed bones, of the deceased. The Lord alone has the souls in a vault that cannot be disturbed by thieves. We constantly seek to offer consolation to the bereaved families. Thank you.

[The statement of Reverend Jesse L. Jackson follows:]

Testimony of Rev. Jesse L. Jackson Sr.,

President and Founder, RainbowPUSH Coalition

Before the Subcommittee on Commerce Trade and Consumer Protection

Field Hearing

Monday, July 27, 2009

This testimony is presented to this Congressional hearing panel in response to the cemetery crisis at Burr Oak Cemetery in Chicago, Illinois which we believe may be symptomatic of a national problem arising from the inadequate regulation of cemeteries, casket companies and grave diggers.

The Burr Oak crisis arose as a result of the failure of the State of Illinois to regulate the cemeteries and crematories within its geographic boundaries. In my investigation I have discovered only one cemetery in the state of Illinois that has acknowledge that it has sold all of its available burial space and therefore cannot and will not take any additional bodies. This is in contrast to Burr Oak Cemetery where with the acquisition of additional land the owners and operators have continued to accept burial fees and purchases of pre need plots for the past several years. The Burr Oak scandal investigation uncovered more than 300 bodies or remains had been moved, caskets and vaults had been dug up and arbitrarily discarded to facilitate the resale of graves. Burr Oak is owned by a holding company known as Perpetua, which also owns and operates two other cemeteries, Cedar Park in Chicago and another cemetery in St. Louis, Mo. We are not certain that practices at Burr Oak and Cedar Park are identical, but we do know that both cemeteries are under common management.

We realize that the Burr Oak scandal is symptomatic of a national problem that may arise if we continue the practice of not regulating cemeteries. We made the following observations as a result of our research arising out of the Burr Oak investigation:

1. There has been a pattern of desecration of African American cemeteries and burial grounds as evidenced by the African Burial ground located on Wall Street in New York.
2. There has been a major impact on cemetery expansion in urban areas as a result of the use of eminent domain laws to acquire cemetery property for use in expanding highways etc.
3. The failure of state legislatures to appropriate funds to ensure proper and adequate burials of indigent citizens.
4. Cemetery records are often poorly maintained and managed.
5. Presently all states including Illinois, regulates funeral directors and funeral home owners and embalmers, but do not regulate cemeteries or its owners.

6. There is no common repository for death and burial records that would permit on line searches.

Members and directors of Rainbow PUSH are therefore calling on this hearing panel to:

1. Conduct a review of all state laws that regulate cemeteries to determine similarities and differences in regulatory status
2. Promulgate national cemetery regulation that results in a national funeral database that includes data on the funeral, the cemetery arrangements by owners, date and name of the deceased.
3. Initiate uniform cemetery regulation that designates one agency with responsibility for: licensing, regulating and maintaining cemeteries.
4. Enact federal legislation that creates a national uniform death registry that includes information regarding the funeral and burial services and burial site of the deceased on then the death certificate that is readable accessible on-line.
5. Enact federal legislation that requires every state to consolidate regulatory oversight in one state agency.
6. Enact federal legislation that appropriates sufficient funds for the funeral services and burials of indigent persons.

Mr. RUSH. The Chair thanks Reverend Jackson.

And the Chair now recognizes himself for five minutes—or, for two minutes, for questioning, as we have an amount of time—a limited amount of time. And the Chair wants to ask each and every one of the witnesses. I can't forget the words of your—Pastor Grayson, your grandmother. Is that your grandmother or your great—

Pastor GRAYSON. Yes.

Mr. RUSH [continuing]. Grandmother? Grandmother. The Psalm that she said, "What a difference a day makes."

Pastor GRAYSON. Yes, she did.

Mr. RUSH. And I just want to assure you and all the panelists and all of the witnesses and all the victims today that this day will make a difference. We're not here just for the press. We're not here just for some type of show. We're here to do the people's work, and this Committee will do the people's work. Out of this hearing and additional hearings, we will bring forth legislation, federal legislation, to set minimum standards for the operation of cemeteries all across this nation. What happened at Burr Oak, as you had said, indicated, is just not symptomatic of just one place. It's not—this is something that is occurring across this nation, maybe not to the extent of Burr Oak, but it's certainly happening all across this nation.

Pastor GRAYSON. That's right.

Mr. RUSH. And we intend to look—get to the bottom of it and provide for relief to the families.

Let me just ask you—and I'll ask all the witnesses to chime in on this—do you see a federal role? And do you support a federal role in providing for minimum standards for the operation of cemeteries across this nation? And I'll say crematories across the nation.

Pastor GRAYSON. Mr. Chairman, yes, I do. I do see a significant federal role regulating cemeteries and crematories. I think it would be advantageous on the part—for the community. Situations such as what Ms. Williams has dealt with, situations as to what some of the members of the congregation and some similar others and other pastors have to deal with in reference to trying to relocate, I think it would be a great idea to do that. And I would support it.

Mr. RUSH. Mr. Robinson.

Mr. ROBINSON. Thank you, Chairman Rush. I don't think there's anyone that would not support federal legislation across this country to regulate cemeteries and crematories. I don't see, personally, and being a resident of the City of Chicago and the State of Illinois, I don't see the ability of the State of Illinois to be able to regulate these entities. It is my personal belief that the best that the State of Illinois can do is to license these entities. So, without the ability—in my own personal belief, once again—of the State of Illinois being able to regulate these entities, I think the only way we're going to get across-the-board, sweeping regulations would be through this Committee and through the federal government. Thank you.

Mr. RUSH. Thank you.

Ms. Williams.

Ms. WILLIAMS. It's my opinion that we should regulate the cemeteries and crematories, because they have shown us that they are

not able to handle the enormity of their services without some support, and I think it would be helpful to any individual that would have to interface with this particular industry; that they would have some assurances and ensurances that things would be handled properly. And they would have something tangible at the end of the business transaction that they could also prove, you know, that there was a business interaction with the cemeteries.

So I think that regulation, at this point, is warranted.

Mr. RUSH. Reverend Jackson.

Reverend JACKSON. Mr. Chairman, emotionally, when a loved one dies, people often call their pastor and funeral director. They're connected emotionally to their church, so often, and the funeral director, and they are very publicly accountable. Many of us distinguish between the funeral home and the cemetery, and there is an absolute distinction between the very regulated funeral home—the embalmers are licensed and trained, and the health department and other agencies are involved—and the cemetery. When that gate closes, there's just left family and funeral home. It's that gap that leaves them to their own devices that we saw in this situation.

Also, people often are forced to pay the cemetery to be allowed to be buried, but are not forced the same way to have to pay their funeral home. They may have to rape and scrape money to pay the cemetery for burial right now, and get a late payment, say, from Medicaid or some other agency, on their loved one to run the funeral home and small business into a great deficit. There's one funeral home that's owed a million dollars in late payments, but has to handle and bury the poor.

The other part, of course, is that, without some standard of human dignity regulation, the—within 48 hours, the doctor must sign the death certificate. In 72 hours, the funeral home must sign it. But, then, the cemetery only—it doesn't. It drops. One should be able to go online and see "X" person died on "X" day, death certificate signed by the doctor, signed by the funeral director, cemetery they're buried at, at such-and-such a place. That should be one line, but, right now, that line does not exist.

Mr. RUSH. OK. The Chair now recognizes the Vice Chairman of the Subcommittee, Ms. Schakowsky, for two minutes for statement—for questioning.

Ms. SCHAKOWSKY. I just want to, really, to express my gratitude to this panel. I think everyone presented a very important and helpful perspective, and I wanted to particularly single out Ms. Williams for talking about, in the most eloquent way I can imagine, the anguish of families, and how generations can be affected by this, and I appreciate that.

I wanted to just comment on something that Reverend Jackson said. There are lots of communities that are affected. We were given examples of families with relatives at a Jewish cemetery in Palm Beach, and another Florida cemetery. They were linked by having—by being part of a national chain of cemeteries—of for-profit cemeteries, which I think really does underscore, too, the need for a national resolution, as well as—certainly, would not preclude state and local regulation, as well.

But, again, I am greatly appreciative, and I think the decision to have families first was an important one, Mr. Chairman. Thank you.

Reverend JACKSON. Mr. Chairman, one thing I forgot was, often these huge, conglomerate cemetery homes are now buying up large spots of land, and have the funeral services on the property, and use it to undermine funeral home relationship. So, the bigger they get, the more they push the family away. So we have these services on this unregulated, for-profit territory, which makes it even more difficult to manage.

Mr. RUSH. Thank you.

The Chair now recognizes the gentleman from North Carolina, Mr. Butterfield, for two minutes, for the purposes of asking questions.

Mr. BUTTERFIELD. Thank you, Mr. Chairman.

I, too, would like to thank the four of you for your testimony, and I agree with Ms. Schakowsky that, Ms. Williams, your testimony was very helpful. I've sat in courtrooms and Congressional rooms all of my adult life, and I've never heard testimony more powerful or relevant. I understood every word that you said. Thank you very much for your testimony.

Mr. Robinson, let me direct my questioning to you, if I can, sir. Apparently, you have multiple family members who are interred at this particular cemetery; is that right?

Mr. ROBINSON. Just my mother and my father.

Mr. BUTTERFIELD. OK. Does the family own an assortment or an array of grave spaces, or do you have other grave spaces at your disposal at this moment.

Mr. ROBINSON. No, sir. The plots were purchased at the time of my parents' death. There are no other lots that were purchased at Burr Oak. I don't have a lot out there, and neither does my sister, at this time.

Mr. BUTTERFIELD. Do you recall how you purchased those lots when—at need? What, was it through the funeral home, or did you have to go directly to the cemetery.

Mr. ROBINSON. They were purchased through the funeral home with my parents—the funeral home that we chose, my mother—my father preceded my mother in death, and my mother chose the funeral home where she wanted my father to be buried. And then, once my mother passed six years later, we—my sister and I decided to use the same funeral home for my mother, and to bury my mother alongside of my father.

Mr. BUTTERFIELD. What is the practice now, if you know, in the Chicago area, regarding cemetery sales, plot sales? Are they advertised in the media, or is it generally done exclusively through the funeral home.

Mr. ROBINSON. I really don't know the answer to that.

Mr. BUTTERFIELD. OK. Reverend Grayson, do you have any information on that? Yes.

Pastor GRAYSON. What is the—

Mr. BUTTERFIELD. What is the practice in the Chicago area?

Pastor GRAYSON. Well, thank you, sir.

From my understanding, as a pastor, whenever someone dies, they generally contact the funeral home or a pastor. The pastor, in

turn, would suggest a funeral home in which they might be affiliated with or have association with, and they would send them, actually, to that funeral home.

As Pastor—as Reverend Jackson has said, pastors and funeral homes sometimes work cohesively together.

Mr. BUTTERFIELD. That's pretty clear. That's the same thing in my hometown, but I'm trying to get from the funeral home to the cemetery. Can you illuminate on that for me?

Pastor GRAYSON. Well, from what I understand, as dealing with it, the cemetery would—or, rather, the funeral home would ask the family what cemetery would they like to be buried in? Would they likely have a family crypt or something like that. In that turn, they—the funeral home—I've dealt with Leak and Sons. They would take us out to the cemetery and have the family to deal with the cemetery one on one. The funeral home, to my knowledge, has no dealings with the cemetery as far as pricing or that type of thing.

Mr. BUTTERFIELD. And, so, the funeral director would facilitate the arrangement between the cemetery and the family.

Pastor GRAYSON. They would basically just ask—

Mr. BUTTERFIELD. They basically stay out of the transaction.

Pastor GRAYSON. That's correct.

Mr. BUTTERFIELD. OK. That's generally the practice of Chicago; is that right?

Pastor GRAYSON. Yes.

Mr. BUTTERFIELD. Thank you, Mr. Chairman. And thank you for your time. I'm gonna yield back.

Mr. RUSH. The Chair now recognizes the gentleman from the 2nd District of Illinois, Mr. Jackson, Jr., for two minutes, for the purposes of questions.

Mr. JACKSON of Illinois. Mr. Chairman, I don't plan to use up all my time, but I certainly want to begin by thanking Ms. Williams for the very emotional testimony, and for the way in which it was perceived by this Committee.

I'd like to direct my questions, in furtherance of Mr. Butterfield, to Mr. Robinson and Mr. Grayson. Are you aware of whether or not, when you purchased the plots at the cemetery, whether or not that land was deeded to your family, specifically, as the final resting place of your loved one?

Mr. ROBINSON. Congressman Jackson, in my case, no, it was not. All we received from the cemetery were the location cards as to where my parents were buried. Fortunately, my sister and I maintained all of our records of our parents, and I—when I went to visit Burr Oak and visit my family's grave, we had the burial cards and the locations. And even though there was some damage around the location, it did not appear, to me, visually, that there had been any serious disturbance of my parents' graves.

But we were not given any deeds or anything; only the lot—the cards. As Ms. Williams said, she was given a pink card, and I can only assume that men who are buried are given blue cards, and women who are buried are given pink cards. And, so, my father has a blue card, and my mother has a pink card, and that's what we used for a location.

Mr. JACKSON of Illinois. Mr. Grayson.

Pastor GRAYSON. Thank you, Congressman. As far as I can understand,—I don't really know too much of that, as far as a deed is concerned. I know, in some members of my family, they had pre-arrangements as to their purchasing the plots prior to their death, and I think they received some type of paperwork in reference to that. And whenever someone dies, we take that particular paperwork to the cemetery, and they retrieve that particular plot.

Mr. JACKSON of Illinois. I guess what I'm getting at, Reverend Grayson, is that, a bereaving family, when they purchase a cemetery plot, operates under the assumption that this is the final resting place—

Pastor GRAYSON. That's correct.

Mr. JACKSON of Illinois [continuing]. Of their loved one, and that the purchase of that plot is, essentially, the final resting place of that loved one.

Pastor GRAYSON. That's correct.

Mr. JACKSON of Illinois. That's their land, essentially, for the purposes of that plot in the context of the memorial garden. Is that your understanding?

Pastor GRAYSON. To my understanding, when you purchase that plot, it's your plot. When you purchase that particular—I have family members who have made pre-arrangements and have purchased several plots. The whole Grayson family, next to my grandmother, Dinah Washington, all of them are right in together, along with several other relatives. Those plots were purchased, so that land, assuming they cannot be touched, is not supposed to be touched.

Mr. JACKSON of Illinois. There's no expectation that someone who's buried in a crypt, that somehow, once that crypt space is purchased, buried above the ground, that somehow, underneath that space, you might find additional graves to be sold. You have—

Pastor GRAYSON. I haven't—

Mr. JACKSON of Illinois. You own that land that you bury your loved ones on.

Pastor GRAYSON. That is the assumption; yes.

Mr. JACKSON of Illinois. That's the assumption. And there are documents within the memorial garden, we are arguing, should be maintained to show that that is essentially your family's—

Pastor GRAYSON. Memorial Gardens, or Burr Oak.

Mr. JACKSON of Illinois. A memorial garden.

Pastor GRAYSON. OK.

Mr. JACKSON of Illinois. I'm using the term "memorial garden," not specifically, but Burr Oak, specifically, but the idea of a memorial park.

Pastor GRAYSON. Absolutely. Yes.

Mr. JACKSON of Illinois. I think my final question, Mr. Chairman, to pick up on something that—Representative Butterfield raised the question. The idea of maintaining these plots, is that something that the families maintain, or is the expectation, when you purchased the plot, that, in perpetuity—forever—the grass will be cut, the headstones will be maintained, that there will be a certain amount of dignity associated with the expectation of an undisturbed tomb.

Pastor GRAYSON. Well, to my knowledge, Mr. Congressman, when you purchase that plot or that section where your final rest-

ing place is for your family members, it is the assumption, again, of the family that the cemetery is to maintain the actual grave of land—property, because that's basically what they're getting paid for out of the money that they've received from these cemetery plots. I'm—I don't think I have any assumption or that I'm really thinking that you're supposed to come out there and cut the grass.

Mr. JACKSON of Illinois. Yes. Let me make one final comment, Mr. Chairman. I know my time has expired, but it's something else that Representative Butterfield said; that when these payment plans are made, are they made to the funeral homes, or are the payment plans made to the cemeteries themselves? Or does the payment plan include the burial plot as well as the funeral arrangements themselves.

Pastor GRAYSON. I have no knowledge of that, sir.

Mr. JACKSON of Illinois. Thank you.

Mr. RUSH. All right. The Chair now recognizes Mr. Cohen for two minutes.

Mr. COHEN. Thank you, Mr. Chairman.

I just join Ms. Schakowsky and others who mentioned Ms. Williams' testimony. She brought it to a personal level, and, in my opening statement, I talked about some theoretical things, about relatives I didn't know, and that disturbed me. It bothered me, but, in the personal level, it's much more germane. And the fact is, 200 years ago, when we had our Constitution and we had a Fifth Amendment, and we talked about states having prerogatives over certain issues, cemeteries weren't owned by companies outside of state border; they were generally churches or synagogues or other groups that had the cemeteries and kept them at home, and they were subject to the goodwill of their neighbors. That no longer exists. So this is a time when we need to have federal legislation on cemeteries.

The name of this cemetery company, Perpetua, is so ironic, because there was nothing perpetual in what they did; it was fraudulent, it was a breach of trust, and there should be penalties and some type of appropriate remedy for the relatives.

I yield back the remainder of my time.

Mr. RUSH. Thank you.

Reverend JACKSON. Mr. Congressman.

Mr. RUSH. Reverend.

Reverend JACKSON. Another piece that we—as we began to dig the stuff up, was the—there's a perpetual fund. The cemetery has that fund; use it like a pension fund. And about 12 years or so ago at Burr Oak, they had to change companies because of the violations of the perpetual fund.

Also, distinction between stacking bodies is somehow being permitted, even at, say, Lincoln, down in Springfield; a husband and wife may—they should be buried, too, in that way. The distinction between stacking and desecration, which is not permitted, and we're also finding small print, something like 20-year leases as opposed to deeds, and that's where we wonder the idea of what's the run-out times opposed to the eternity? What's the run-out time before cemeteries can do to bodies; that there is some fine print stuff that we never quite deal with in the grieving state, but it's way beyond—I want to make, again, distinction between funeral home

stops at the gate, and the cemeteries have their own rules. They're licensed to the extent that you can—you have a right to bury in that place, and you can't bury some other place.

Mr. JACKSON of Illinois. Reverend Jackson, let me just say that I—having buried our own loved ones, I don't think any funeral—any plot that we've ever purchased as a family, that there's ever been an expectation that, after 20 years, somehow, it runs out; that this is a leasing arrangement. This is sacred space. Of course, you know that. Your mother and father are in a sacred space. But there was no expectation that, in 20 years, we need to go as a family and research, as Ms. Williams indicated, whether or not the families are there. And, so, I think, Mr. Chair—

Reverend JACKSON. You pick up these cemetery contracts, you're gonna find some stuff that's beyond ordinary imagination/expectation.

Mr. RUSH. Right. The Chair would like to inform all who are concerned that the second panel will delve more extensively into this particular area of the different types of contractual arrangements. There are leasing arrangements that exist that the consumer might not be aware of, the terms of the contracts that the consumer might not be aware of, but they sign them anyway because of the environment in which they negotiate. So, these are the kind of contracts, and this kind of behavior the second panel will undertake and try to inform the Subcommittee of.

The Chair wants to thank the witnesses again for your testimony, but before—wait. I just—please forgive me. The Chair now—before we dismiss these witnesses, the Chair would like to recognize the gentleman from the 7th Congressional District, a man who has shown leadership throughout the years on this and other matters that faces the American people, Congressman Danny K. Davis, of the 7th Congressional District.

Congressman Davis, we'll recognize you for two minutes, for the purposes of questioning the witnesses. And, if you have an opening statement, we will include your opening statement in the record by unanimous consent.

Mr. DAVIS. Thank you very much, Mr. Chairman. And let me, first of all, commend you for calling this hearing, and also commend you for the tremendous leadership that you have provided on a number of issues, especially those related to Consumer Protection.

I also want to thank our colleagues for coming from out of town, Representatives Butterfield and Cohen, to be with us this morning.

The one question that I think I will ask, and it's difficult to find ways to provide additional oversight and ways to look for what could have happened that would have prevented this tragedy from occurring.

Reverend Jackson, I'd like to ask you a question. I know that you have been accused of having the ability to look through muddy water and sometimes see dry land. The question that I wanted to ask you is, can you think of any additional levels of oversight, at either the local or state levels, that might have been able to prevent this tragedy from occurring and would not have necessarily cost the taxpayers a large sum of money?

Reverend JACKSON. Well, they have to keep books consistent with death certificate and funeral home, and that would be—anything could happen, because, maybe that way, family members and funeral directors can serve as, kind of, a check and balance.

Maybe, if it were a federal crime to desecrate bodies in this way, or manipulate remains, that would raise the—you become a terrorist with this kind of behavior. I would think that after you have heard both of these sets of witnesses today and see that Burr Oak just opens up a national wound—we've seen this desecration with the crematory in northwestern Georgia that was mentioned today, the Jewish cemetery in Florida, and I would like to think you would take—that you would run out to the best of your elected officials to try to figure out some remedy. But we do know that the embalmers are licensed, have to go through real training. The funeral directors have to go through hell and all kinds of training, but the cemeteries are largely just land purchasers who let burials take place on their land.

Of course, in this case, you mentioned, Mr. Cohen, there's absentee landlords. They have not surfaced yet. They served a subpoena to all the funeral directors, "Give us all your records. We'll go through them." An order that went back five years. So, the funeral directors have had to take the burden of hiring extra people, digging up records. I mean, the burden shifted back to the funeral directors, but the owners of the cemeteries, so far, have not yet surfaced.

Mr. DAVIS. Thank you very much, Mr. Chairman. And I thank the Reverend Jackson for his answer.

Mr. RUSH. Again—thank you, Congressman Davis.

Again, the Chair thanks the witnesses, and I want to reiterate that the record is open for 30 days. If you have additional commentary that you might want to submit, you have 30 days in order to get that into the record.

Thank you so very much, and God-speed to each and every one of you.

The Chair now calls the second panel to the witness table.

The Chair would now like to introduce the second panel. Beginning on my left, Mr. Chuck Harwood is the Deputy Director of the Bureau of Consumer Protection for the Federal Trade Commission. Seated next to Mr. Harwood is the Honorable Daniel W. Hynes, who is the Illinois State Comptroller and a leader on this particular issue. Next to Mr. Hynes is Mr. Joshua Slocum, who's an Executive Director of the Funeral Consumers Alliance. Seated next to Mr. Slocum is Mr. Harvey Lapin, who's the General Counsel of Illinois Cemetery and Funeral Home Association.

And seated next to Mr. Lapin is the honorable Spencer Leak, Jr., who's the—of the Leak and Sons Funeral Home. He's one of the sons of the Leak and Sons Funeral Home.

I certainly want to welcome each and every one of you here to witness before this Subcommittee, and we will begin with you providing five minutes, for opening statements. You're recognized now for five minutes, beginning with Mr. Harwood.

STATEMENT OF CHARLES HARWOOD, DEPUTY DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Mr. HARWOOD. Thank you, Mr. Chairman. My name is Charles Harwood, or Chuck Harwood. I'm, again, the Director in the Federal Trade Commission Bureau of Consumer Protection. I submitted a written statement to represent the views of the Commission. I bring my whole testimony today, and answer any questions. The views I will express will be my own.

The Federal Trade Commission, first of all, expresses its deep condolences to the families affected by the heartbreaking events of the historic Burr Oak Cemetery. As Ms. Williams has made so very clear, the families and friends of those buried at Burr Oak pain that has dulled has been resharpened, depressed sorrows been rekindled. The FTC understands that, and does, indeed, express serious and deepest condolences for the pain of these people.

On behalf of the FTC, I want to thank Mr. Chairman for convening this hearing and inviting the FTC to testify. We want to work with the Subcommittee in looking for ways in which we can use our law enforcement authority, rulemaking authority, and experience and expertise to respond to this tragedy.

Also, on behalf of the FTC, Mr. Chairman, I want to commend the thorough and rapid response of the law enforcement authorities to the disinterment and desecration at Burr Oak Cemetery. There's ongoing criminal investigation at the Illinois Attorney General's Office and the Illinois Comptroller's Office to file a lawsuit to enforce Illinois consumer protection law. The FTC is prepared to cooperate and assist with these agencies.

Also, Mr. Chairman, to the extent additional relief is called for in connection with these law enforcement actions, the FTC is prepared to investigate and, if appropriate, bring additional actions.

As the Subcommittee well knows, Congress has charged the FTC with protecting the American consumers from fraud, deceit, and other injurious practices. Since the 1980s, the FTC's Funeral Rule has been the center of our consumer protection law enforcement efforts in the so-called death care industry. The Funeral Rule is a cost disclosure rule. For example, when a consumer visits a funeral home, the Rule requires that the funeral director provide the consumer with a general price list, which shows the price of each funeral good and service offered.

Funerals are among the most expensive purchases many consumers make. The Funeral Rule enables consumers to take time in extraordinary stress to make informed purchasing decisions, but the Funeral Rule probably does not, as it's currently written, apply to the awful events at Burr Oak Cemetery. However, I'm here to offer some other options, as we look forward to working with the Subcommittee on how these options can be utilized in the future.

First, as I've already stated, the FTC is ready to investigate the activities at Burr Oak as possible unfair, accepted acts or practices under the FTC Act should that prove warranted in light of the Illinois criminal and civil enforcement actions.

Second, the FTC could address such activities as we've heard about Burr Oak through our Rule. However, because the FTC's rulemaking procedures are cumbersome as they're currently writ-

ten, despite the time-consuming effort, and, to be honest, there are also other problems with using that approach.

Third, the FTC's often used workshops, hearings, and studies to promote better protection for consumers. The FTC may be able to use these same tools to explore problems and solutions to the terrible tragedy we heard about today, including learning more about what state and local authorities are doing with regard to problems such as this, and discussing whether there might be a role for federal government, a role for models, or other kinds of solutions.

Finally, the important part of the FTC's consumer protection program is the education of consumers and businesses. With respect to the Funeral Rule, the FTC has published materials in English and Spanish to help consumers understand their rights and help businesses understand their legal obligations. Better education of consumers about cemeteries and burial options, and address questions such as those that we heard Reverend Jackson raise about looking at contracts and what they mean, there may well be a role here for additional consumer education, and the FTC's prepared to undertake a new consumer education initiative if that appears to be helpful.

Mr. Chairman, the FTC welcomes the opportunity to work with the Subcommittee and its staff on these options. We want to do what we can to ensure others do not experience the profound grief the families with loved ones buried at Burr Oak Cemetery have been forced to endure. Thank you, sir.

[The statement of Mr. Charles Harwood follows:]

**Prepared Statement of the Federal Trade Commission
For the Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection
United States House of Representatives
July 27, 2009**

Mr. Chairman and members of the Subcommittee, I am Charles Harwood, Deputy Director in the Federal Trade Commission's ("FTC" or "Commission") Bureau of Consumer Protection. On behalf of the Commission, I appreciate this opportunity to provide information to the Subcommittee about the Commission's activities and authority with regard to the funeral industry, including cemeteries.¹

The Commission welcomes the opportunity to work with the Subcommittee in identifying ways in which the Commission can usefully deploy its law enforcement authority, rulemaking authority, and outreach experience in connection with the recent grievous events at the historic Burr Oak Cemetery in Alsip, Illinois.

First, however, the Commission commends the thorough and rapid response of law enforcement authorities in Illinois to the desecrations at Burr Oak Cemetery. We understand that there is an ongoing criminal investigation being conducted by a number of law enforcement agencies and we also understand that the Illinois Attorney General's Office and the Illinois Comptroller's Office have recently initiated litigation to enforce the Illinois consumer protection law with regard to cemeteries. The Commission is prepared to cooperate and coordinate with these agencies; and to the extent additional available relief is called for, the FTC is prepared to investigate and bring an action if warranted.

The FTC's Consumer Protection Authority

As this Subcommittee well knows, Congress has charged the Federal Trade Commission with protecting American consumers – including consumers who find themselves in need of funeral goods and services – from fraud, deceit, and other injurious practices. The cornerstone

¹ The views expressed in this statement represent the views of the Commission. My oral statement and responses to any questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

of the Commission's statutory authority in fulfilling this mandate is the Federal Trade Commission Act ("FTC Act").² Using its "unfair or deceptive acts or practices" authority under the FTC Act, the Commission is active in a wide range of efforts to protect the public from unfair, deceptive, and fraudulent practices in the marketplace through law enforcement targeting those who harm consumers, through rules that address prevalent and widespread unfair or deceptive practices, through studies, public hearings, and consultations with other government entities, and through education of consumers and businesses about the laws enforced by the FTC.

Section 5 of the FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce.³ An unfair act is one which causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.⁴ The Commission will find deception if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment. Deceptive acts are those that

² 15 U.S.C. § 45(a). The Commission also has enforcement responsibilities under more than 50 additional statutes, *e.g.*, the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, which governs the privacy, fairness, and accuracy of certain sensitive consumer information; the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*, which mandates disclosures of credit terms; and the Fair Credit Billing Act, 15 U.S.C. §§ 1666 *et seq.*, which provides for the correction of billing errors on credit accounts. The Commission also enforces more than 30 rules governing specific industries and practices, *e.g.*, the Franchise Rule, 16 C.F.R. Part 436, which requires the provision of information to prospective franchisees; and the Telemarketing Sales Rule, 16 C.F.R. Part 310, which defines and prohibits deceptive telemarketing practices and other abusive telemarketing practices.

³ "Commerce" as used here refers to interstate or foreign commerce.

⁴ 15 U.S.C. § 45(n). In determining whether an act or practice is unfair, the Commission may also consider established public policies, but these may not serve as a primary basis for such determination.

involve representations or omissions that are material to reasonable consumers.⁵ The Commission may enforce Section 5 by means of administrative litigation, with the ultimate goal of issuing a cease and desist order, or it may seek and obtain preliminary and permanent injunctive relief (including the full range of equitable remedies, such as disgorgement of ill-gotten gains) in federal district court.⁶ This authority extends to cemeteries, funeral homes, and other entities in this industry.⁷ Note, however, that nonprofit firms are excluded from coverage by the FTC Act.⁸

FTC Efforts in Curbing Abuses in this Industry

Since the 1980s, the Funeral Industry Practices Trade Regulation Rule⁹ (“Funeral Rule”), has been the centerpiece of the Commission’s consumer protection law enforcement efforts in the industry. Based on the facts as currently reported, however, the Funeral Rule is unlikely to apply to the events at Burr Oak. The Funeral Rule is primarily a cost disclosure rule that requires funeral providers to furnish consumers with three basic types of information, which, taken together, enable consumers to select the goods and services they want and to comparison

⁵ FTC Policy Statement on Deception, appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984).

⁶ 15 U.S.C. § 53(b).

⁷ See *In Re Robert Lewis Wilkes d/b/a Barber Funeral Home*, 112 FTC 526 (1989) (administrative consent order in which a funeral director was alleged to have misrepresented burial services, including care of bodies and graves). The order in *Wilkes* included a ban on the funeral director providing further funeral services.

⁸ Section 5 of the FTC Act, 15 U.S.C. § 45, empowers the agency to reach “persons, partnerships, or corporations;” “corporation” is limited by Section 4, 15 U.S.C. § 44, to companies, associations, and the like that are “organized to carry on business for their own profit or that of their members.”

⁹ 16 C.F.R. Part 453.

shop for them. First, if a consumer visits a funeral home in person, the Rule requires that the funeral director provide the consumer with a general price list that itemizes prices of each of the funeral goods and services offered by the funeral home.¹⁰ Second, the Rule requires a specific disclosure on the general price list that a consumer may choose only the items he or she desires. Third, the Rule requires disclosures of certain legal requirements and options available to the consumer, such as the fact that one may use alternative containers for direct cremations, rather than incurring the much greater expense of purchasing a casket.

In addition to ensuring that consumers receive these three basic types of information, the Rule protects consumers by prohibiting specific practices, such as: (1) misrepresenting that embalming is legally required or necessary (when it is not); (2) misrepresenting that a casket is required for direct cremation; (3) misrepresenting that any funeral goods or services have protective or preservative abilities (when this is not the case); (4) embalming without consent; or (5) requiring a consumer to purchase any funeral good or service as a condition of purchasing any other good or service. In sum, the information required by the Rule seeks to enable consumers to make informed purchasing decisions at a time of extraordinary stress. Under the Commission's enforcement approach, which entails an extensive industry self-regulatory system with Commission oversight, there appears to be a good level of compliance with the Rule.

The FTC's Authority to Address Issues Raised by the Burr Oak Cemetery Incident

The FTC has three main tools in its arsenal that could address issues such as those raised by the Burr Oak Cemetery incident: law enforcement, rulemaking, and outreach.

¹⁰ At the beginning of any discussion of funeral arrangements, funeral directors must provide a copy of the general price list for the consumer to keep, and must show the casket price list and outer burial container price list before showing the consumer those items. These requirements apply to both at-need and pre-need situations when funeral arrangements are being made.

First, the Commission stands ready to investigate the Burr Oak Cemetery incident as an unfair or deceptive practice under the FTC Act should that prove warranted in light of the Illinois criminal and civil enforcement actions.

Second, the Commission could address consumer protection problems in this area by rulemaking.¹¹ However, under the cumbersome FTC Act rulemaking procedures, this is likely to be a time consuming effort; many cemeteries would fall outside any such rule because they are non-profits; and promulgation of a rule would require a finding that the practices addressed are “prevalent.”¹²

Third, in preparation for this hearing, the Commission has also considered means, in addition to law enforcement and rulemaking, in which it might, in cooperation with the Subcommittee and others, assist consumers who have the deep misfortune to experience such tragic events, and consumers who are concerned about their choices with respect to selecting funeral services.

In many instances, the Commission has used studies, public hearings, and workshops to advance its consumer protection mandate. We believe some of these strategies may be appropriate here and would like to consult further with the Subcommittee and others about these options.

¹¹ Section 18 of the FTC Act, 15 U.S.C. § 57a, empowers the FTC to “prescribe rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce”

¹² In rulemaking under Section 18, the Commission may not issue a notice of proposed rulemaking unless it has “reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.” 15 U.S.C. § 57a(b)(3). The Commission may find prevalence where available information “indicates a widespread pattern of unfair or deceptive acts or practices.” 15 U.S.C. § 57a(b)(3)(B).

For instance, it may be appropriate for the FTC to initiate a process to explore on a national level the scope of problems in this area, what steps state and local authorities are taking to address them, and perhaps help formulate successful strategies to address the problems.¹³ FTC staff could seek out experts in the field to solicit their views.

Staff could also meet with relevant stakeholders – industry members and consumer groups, as well as state and federal regulators who play key roles in the industry – to identify core problems and best practices. As part of this effort, staff may host a public workshop or other event to obtain a full range of relevant information.¹⁴ A task force with appropriate state officials might serve as a vehicle for assessing record-keeping at cemeteries.

Finally, an important part of the Commission’s consumer protection mission is education of consumers and businesses. With respect to the Funeral Rule, the agency has published materials in both English and Spanish to help consumers understand their rights and help businesses understand their legal obligations. Similarly, it might be helpful, with respect to educating consumer about cemeteries, burial options, and their rights, to start a new consumer and business education campaign, perhaps in partnership with other government entities and industry associations.

¹³ In connection with any such initiative, the Subcommittee may want to consider requesting that the General Accountability Office update its 2003 study of cemetery regulatory practices. It might also be appropriate to approach The National Conference of Commissioners on Uniform State Law (NCCUSL) about a uniform state consumer protection law for cemeteries.

¹⁴ Of course, a vital source of information is consumer complaints, which help define the scope of problems to be addressed. The FTC receives a relatively low number of complaints regarding this industry. For example, during calendar year 2008, it received 241 complaints. In comparison, the FTC received 104,642 complaints about debt collection in 2008.

Thank you again for this opportunity to describe for the Subcommittee the Commission's law enforcement efforts to promote competition and protect consumers in the funeral industry. The Commission will continue to work with the Subcommittee and its staff to explore ways in which FTC can utilize its authority and consumer outreach expertise directly or in support of the Subcommittee's efforts to address the problems highlighted by the terrible events at Burr Oak.

Mr. RUSH. Thank you.

The Chair now recognizes the Comptroller of the State of Illinois, the Honorable Daniel W. Hynes, for five minutes.

Welcome and—Comptroller Hynes, you have—you're recognized for five minutes.

**STATEMENT OF HONORABLE DANIEL W. HYNES, ILLINOIS
STATE COMPTROLLER, OFFICE OF THE COMPTROLLER**

Mr. HYNES. Thank you, Mr. Chairman, members of the Subcommittee. I appreciate the invitation here today, and am very glad that the federal government and this Subcommittee, in particular, is taking a look at this issue, because we certainly have great concern about the lack of oversight and regulation of the cemetery industry. And I also want to express my deepest sympathy for the families and friends who have gone through this tragedy, who had to suffer the loss of a loved one for a second time.

As I went to the cemetery and visited with family members, their grief was overwhelming. Their frustration, their anger, their disappointment—their confusion was absolutely clear, and they're looking for answers, and I think that they're going to be comforted by the fact that this Subcommittee is taking a look at this issue.

The tragic events at Burr Oak Cemetery serve as a touchstone and a focal point for those of us in public office. It provides a perspective and an orientation that has truly reshaped the debate, at every level of government, on the regulation of the death care industry. Thanks to recent media reports, the public and policymakers are now acutely aware of the gaps in the current regulatory system.

Let me begin, first, by describing that system and also some things you may already know. Currently, the federal government exercises very little regulatory authority and oversight of the death care industry. The FTC provides some consumer protections when dealing with funeral homes and door-to-door sales, but, generally, regulation is left to the states.

As members of the Committee explore this issue, you will quickly find that state regulations vary widely from state to state. Consumer disclosures, entrustment requirements, licensing, inspections, recordkeeping requirements, the nature of the real property interests involved, maintenance standards, public health standards, permits, exemptions for certain types of cemeteries are all varying widely state to state and they're handled different ways; sometimes through a statute, sometimes through common law, sometimes through local ordinance. This is a fractured and sometimes even contradictory system of rules.

I do not hold myself out as an expert in comparative cemetery law; however, I can speak to my experience in Illinois in trying to address the very real concerns of consumers dealing with the death care industry.

As Comptroller, my office has limited legal authority over cemeteries, specifically focusing on consumer funds accepted by the cemetery that are held in trust, with trust earnings to be used for the care of the cemetery. The office also licenses funeral homes and cemeteries that sell pre-need arrangements in advance of death. Under those licenses, the pre-need funds are held in trust until

needed, to cover the funeral and cemetery costs at the time of death. The office requires annual financial reporting and conducts audits to ensure financial compliance. Local government, religious, and fraternal organization cemeteries register with the office, but are not licensed or audited by the office because state law specifically exempts them.

Thus, in Illinois, the Office of the Comptroller has a limited role in overseeing entrustment at a limited number of cemeteries and funeral homes.

The state Department of Financial and Professional Regulation issues licenses for funeral directors and embalmers. The state's Department of Health has certain regulations pursuant to the state Vital Records Act concerning permits, death certificates, and the like; however, there is no regulation of most at-need sales, there is no real regulation of cemetery maintenance, and there is, at best, minimal oversight of non-trust fund recordkeeping. In short, there is a regulatory vacuum in Illinois and, I suspect, many other states.

A decade ago, when I was first elected Comptroller, I held hearings around the state about cemetery and funeral home issues. The most common complaint was inadequate and poor maintenance of cemeteries. Thus, when we proposed legislation reforms to address these concerns, we included a minimum maintenance standard upon cemeteries. Unfortunately, that provision did not make it through the legislative process, largely, I believe, because of the influence of special interests in the state Capitol. However, we were able to successfully expand some consumer protections within the limited areas of pre-need sales and care-funded entrustments.

Earlier this month, spurred by the impetus of the tragedy at Burr Oak Cemetery, a broad group of people came together to propose comprehensive legislation to address the regulatory issues involved. Led by our office, we worked with RainbowPUSH, the Cook County State's Attorney, Sheriff, and Recorder of Deeds, individual legislators, staff, and others. Unfortunately, our legislation stalled in the Committee.

Let me share the highlights of this legislation that we proposed:

Number one, we would require all cemeteries and their staff who sell cemetery plots to be licensed. Small cemeteries with fewer than 25 annual burials would be exempted. The Illinois Department of Financial and Professional Regulation, which already licenses a wide range of professions, would issue licenses and rules. Licensees would be required to adhere to a code of conduct and undergo continuing education.

Second, cemeteries would be required to provide reasonable maintenance based on enforceable standards detailed in both statute and agency rules.

Next, cemeteries would be required to keep detailed records and maps, file a copy of those records with the county recorder of deeds, and provide the information to consumers.

Funeral directors would need to provide specific information about burial locations and information that would be available on the death certificate on file at the county clerk's office.

Our legislation would create a consumer bill of rights, including requiring cemeteries to provide consumers with a booklet detailing their rights under law.

Also, our legislation would extend crime victims assistance eligibility to family members of those who are victims of the crimes charged at Burr Oak Cemetery pursuant to the Crime Victims Compensation Act.

And, finally, the minimum threshold for the state's allowance for indigent burials would be increased and provide for a cost-of-living increase every fiscal year.

The text of our legislation is contained in Senate Amendment 1 to Senate Bill 662, and is available on the Illinois General Assembly's Web site.

I realize that criminals are oftentimes not deterred by the laws we pass, but I believe that adequate regulations and consumer protections can reduce the chances that we will ever have to deal with another tragedy on the scale of Burr Oak Cemetery.

Thank you very much.

[The statement of Honorable Daniel W. Hynes follows:]

Chairman Rush, members of the Sub-Committee, thank you for inviting me here today to testify about Oversight of Cemeteries and Other Funeral Services.

First, let me express my deepest sympathy for the thousands of families and loved ones who are affected by the shocking events at Burr Oak Cemetery. As I met with family members and friends at the cemetery, at Operation Push, and again at a prayer vigil outside the cemetery, I was overwhelmed by the emotional damage that has been caused. The criminals who perpetrated these crimes dishonored and disrespected the dignity and sanctity demanded by a civilized society. Words cannot express the horrific impact this tragedy has had on the victims.

The tragic events at Burr Oak Cemetery serve as a touchstone and a focal point for those of us in public service. It provides a perspective and an orientation that has truly reshaped the debate at every level of government on the regulation of the death care industry. Thanks to recent media reports, the public and policy-makers are now acutely aware of the gaps in the current regulatory system.

Let me begin to describe that system by telling you something you probably already know. Currently, the federal government exercises very little regulatory oversight of the death care industry. The FTC provides some consumer protections when dealing with funeral homes or door-to-door sales. But, generally, regulation is left to the states.

As the members of the Committee explore this issue, you will quickly find that state regulations vary widely. Consumer disclosures, entrustment requirements, licensing, inspections, record-keeping requirements, the nature of the real property interests involved, maintenance standards, public health standards, permits, exemptions for certain types of cemeteries. All these issues are handled in different ways by different states through a combination of state statutes and regulations as well as common law precedents and even local ordinances. There is a fractured and sometimes even contradictory system of rules.

I do not hold myself out as an expert in comparative cemetery law. However, I can speak to my experience in Illinois in trying to address the very real concerns of consumers dealing with the death care industry.

As Comptroller, my office has limited legal authority over cemeteries, specifically focusing on consumer funds accepted by the cemetery that are held in trust with trust earnings to be used for the care of the cemetery. The office also licenses funeral homes and cemeteries that sell pre-need arrangements in advance of death. Under those licenses, the pre-need funds are held in trust until needed to cover funeral and cemetery costs at the time of death. The office requires annual financial reporting and conducts audits to ensure financial compliance. Local

government, religious and fraternal organization cemeteries register with the office, but are not licensed or audited by the office because state law specifically exempts them.

Thus, in Illinois, the office of the state's Chief Fiscal Officer has a limited role overseeing entrustment at a limited number of cemeteries and funeral homes.

The state Department of Financial and Professional Regulation issues licenses for funeral directors and embalmers. The state Department of Health has certain regulations pursuant to the state Vital Records Act concerning permits, death certificates and the like.

However, there is no regulation of most at-need sales. There is no real regulation of cemetery maintenance. There is, at best, minimal oversight of non-trust fund record-keeping.

In short, there is a regulatory vacuum in Illinois. And, I suspect, most other states.

A decade ago, when I was first elected Comptroller, I held hearings around the state about cemetery and funeral home issues. The most common complaint was inadequate or poor maintenance. Thus, when I proposed legislative reforms to address concerns about the death care industry, I included a minimum maintenance standard. Unfortunately, that provision did not make it through the legislative process, largely I believe, because of the influence of special interests at our state capitol. However, we were able to successfully expand some consumer protections within the limited areas of pre-need sales and care fund entrustment.

This past spring I proposed, and the General Assembly passed, legislation to further strengthen trust fund regulation by requiring that all trust funds be held by an independent trustee that is a corporate fiduciary. These trustees are, therefore, regulated either at the state level by the Illinois Department of Financial and Professional Regulation or at the federal level by the Comptroller of the Currency or the Office of Thrift Supervision. That legislation is currently on the Governor's desk awaiting his signature.

Earlier this month, spurred on by the impetus of the tragedy at Burr Oak Cemetery, a broad group of people came together to propose comprehensive legislation to address the regulatory issues involved. Led by my office, we worked with Operation PUSH, the Cook County State's Attorney, Sheriff and Recorder of Deeds, individual legislators, legislative staff and others. Unfortunately, our legislation was not called for a vote in committee.

Let me share the highlights of the legislation we proposed:

- We would require all cemeteries and their staff who sell cemetery plots and other goods to be licensed. Small cemeteries with fewer than 25 annual burials or plot sales would be exempted. The Illinois Department of Financial and Professional Regulation, which

already licenses a wide range of professions, would issue licenses and rules. Licensees would be required to adhere to a code of conduct and undergo continuing education.

- Cemeteries would be required to provide reasonable maintenance based on enforceable standards detailed in both statute and agency rules.
- Cemeteries would be required to keep detailed records and maps, file a copy of those records with the county recorder of deeds and provide the information to consumers.
- Funeral directors would need to provide specific information about burial locations and that information would have to be available on the death certificate on file at the county clerk's office.
- Our legislation would create a consumer bill of rights including requiring cemeteries to provide consumers with a booklet detailing their rights under the law.
- Also, our legislation would extend crime victims assistance eligibility to family members of those who are victims of the crimes charged at Burr Oak Cemetery pursuant to the Crime Victims Compensation Act.
- And finally, the minimum threshold for the state's allowance for indigent burials would be increased, and provide for a cost of living increase every fiscal year

The text of our legislation is contained in Senate Amendment 1 to Senate Bill 662 and is available at the Illinois General Assembly's website.

I realize that criminals are often times not deterred by the laws that we pass. But, I believe that adequate regulations and consumer protections can reduce the chances that we will ever have to deal with another tragedy on the scale of Burr Oak Cemetery.

Mr. RUSH. Chair thanks to the gentleman.

The Chair now recognizes Mr. Slocum for five minutes, for an opening statement.

Mr. SLOCUM. Good morning.

Mr. RUSH. Morning.

Mr. SLOCUM. Is this on?

Ms. SCHAKOWSKY. Yes.

**STATEMENT OF JOSHUA SLOCUM, EXECUTIVE DIRECTOR,
FUNERAL CONSUMER ALLIANCE**

Mr. SLOCUM. Thank you very much. I very much appreciate the opportunity to speak to this panel today.

Funeral Consumers Alliance, for those of you who don't know, is a national, non-profit federation of largely volunteer-run educational societies that show people how to shop around for funeral and cemetery purchases, tell them what their legal rights are, show them wise planning that fits their budget, and we act as a repository of consumer complaints and industry practices around the country.

We receive probably 10,000 calls and e-mails a year, just in the small national headquarters office that I work in, from consumers all over the country, and I wish I could say that this was a surprise to me, what happened at Burr Oak, but it is not. And I hope that this will be one of the last times that I am ever invited on behalf of FCA to speak on these issues.

We were involved in the 1970s and '80s in pushing for the original adoption of the Funeral Rule, which is a landmark consumer bill of rights the Federal Trade Commission's Mr. Harwood mentioned. For more than 15 years, we have been asking, both through the media, through our publications, through Congressional testimony, and testimony before the Federal Trade Commission, for the Rule to be expanded to cover cemeteries so that at least consumers had the minimum legal disclosures, the minimum right to printed prices and rules and regulations, and this has fallen on deaf ears, despite the Menorah Gardens scandal, the Jewish cemeteries in Florida, despite the Tri-State Crematory disaster, which sparked Senator Dodd to propose a bill in 2002 and 2004, which we assisted in researching, which went to an unmarked grave, and this bill would have finally codified the Funeral Rule. No, I recognize disclosure rules by themselves are not going to prevent these tragedies, but there needs to be a culture of accountability in cemeteries that is woefully lacking.

Funeral homes have to meet minimums, as many of the other witnesses have said. Cemeteries can get away with these sorts of things with impunity. And I want to give you some examples from other families around the country who don't get a chance to be heard by Congressional Committees or by anyone, really, because, as I was researching the cemetery regulatory agencies around the country, very quickly, for this hearing, I found an absolute hodgepodge. It's ridiculous. In some places, we have the insurance commissioner regulates cemeteries. In other places, the Vital Statistics Department ostensibly regulates cemeteries. In other places, there's a dedicated cemetery board. Some of them audit on site, most of them don't. Some of them audit the burial records against

the sales, some of them don't. Some of them look to see whether the prepaid perpetual care funds are there, some of them don't.

One thing is clear—I'm an expert in researching cemetery and funeral law—your average grieving family has no chance at all, in any state, of figuring out whether there's even an agency to file a complaint with. This is well, well past time for federal regulation. I have heard for many years, "State's rights. This is a state's rights issue." This cannot be a state's rights issue anymore, particularly with so many cemeteries owned by multinational or national chains.

So, let me tell you about a few things, please, that consumers have told us. Problems are far deeper—it's terrible to think of your loved ones being dug up. Nothing could be more shocking. But there are simmering scandals that go on that have to do with taking financial abuse of grieving people, particularly the elderly, the mismanagement and stealing of more than a billion dollars in consumers' prepaid funeral and burial money just in the past three years.

So, the FTC Funeral Rule tells funeral homes they have to give consumers price lists, they have to give them truthful information, and they have to allow them to pick and choose goods and services on their own. Cemeteries don't have to do this, except in a minority of states. So we get situations like Mrs. B, a widow from Virginia, who called about four years ago and said she was shopping ahead of time for a cemetery plot in the metro DC area, and the Jewish form of burial in a plain, pine box without an outer concrete vault appealed to her. And, so, she went to a cemetery and said, "I didn't want a lot of folderol, so I asked the cemetery if I could be buried in the plain, pine box that they used next-door at King David Memorial Gardens, instead of the polypropylene or the concrete grave liners." And the saleswoman at this national chain-owned cemetery, which also owns funeral homes, told her, "The federal government won't let you be buried in a pine box. That's only for the Jews."

Not only is that a deliberate lie—the government does not tell you you can't be buried that way—but had that cemetery been covered under the Funeral Rule, this would have been a violation of the Funeral Rule the FTC could have at least noted.

And just as important—if I can just finish up, please. Thank you.
Mr. RUSH. Sure.

Mr. SLOCUM. There is a national financial scandal going on with prepaid funeral and burial money which must be addressed. We have all had our eyes on Wall Street, and so many regulators are now saying, "We've got to take care of people on Main Street because of the financial shenanigans going on at Wall Street," and it's causing us to rethink the laissez faire attitude that we've taken for so long.

What's going on in the—with prepaid funeral money—it's all over my desk. I have a stack this high of news stories from the past two years, and nobody, nationally, seems to be connecting the dots. We have a company called National Prearranged Services that sold burial and funeral services to consumers in at least 19 states, 200,000 families. They are now in receivership in the State of Texas basically for running a Ponzi scheme, and the Special Re-

ceiver found that they have almost a billion dollars in negative equity. That means a billion dollars that they need to pay out for these eventual funerals and burials, but they're not going to. Seventy million dollars in Michigan, \$21 million in Mr. Cohen's State of Tennessee with Forest Hill Cemeteries, and on and on.

Again, a couple of the other witnesses—and they're right—have said that there is no law that can be written that is going to prevent criminal behavior in every instance, but we can start deterring it and we can start curtailing it. But, respectfully, I must disagree with Mr. Harwood and say a consumer education campaign from the FTC is laudable, but it is nowhere near enough. We have provided the Federal Trade Commission, both in hearings in 1999 and in personal communications, box after box after box of documented cemetery abuses and funeral abuses for more than ten years, and to have the FTC close the Funeral Rule review without extending it to cemeteries in 2008 was shocking to us.

So, what we are asking, please, on behalf of every funeral consumer, every grieving family in America, please bring all death-related businesses under the Funeral Rule and codify the Rule to give it a Congressional mandate; two, create national minimum standards for recordkeeping and state regulation and inspection of cemeteries, to give the states at least a template to begin from; and, number three, please require responsible, complete deposit of all consumers' prepaid funeral and burial money uniformly across the board, and give consumers the right to the transfer of that money or the refund if life circumstances change.

Thank you very much.

[The statement of Mr. Joshua Slocum follows:]



Protecting a consumer's right to choose meaningful, dignified, and affordable funerals since 1963

**Testimony on Behalf of Funeral Consumers Alliance, Inc.
before the House Committee on Energy and Commerce,
Subcommittee on Consumer Protection
July 27, 2009**

Prepared by Joshua Slocum, Executive Director, FCA, Inc.

To the Honorable Representatives:

Once again, a wrenching example of consumer abuse has focused Congress's attention on the one business no American wants to interact with, but that everyone must: the funeral and cemetery industry. The allegations of grave desecration at Burr Oak cemetery in Chicago are shocking to American newspaper readers and television viewers. To consumer advocates, cemetery scandals are par for the course. In 2001, the largest funeral and cemetery chain in the country was accused of digging up bodies and dumping them in the woods at the Menorah Gardens cemetery in Florida. In 2002, investigators found more than 300 uncremated bodies strewn about the property of Tri-State crematory in Georgia. From 2007 through the present, investigators in almost half the states allege that more than \$1 billion in money is missing from funeral and cemetery trust funds¹, money paid in good faith by Americans who wanted to make sure the most painful day for their survivors would go just a little more smoothly.

Funeral Consumers Alliance is a nonprofit federation of nearly 100 educational organizations coast to coast. Since our founding in 1963, we've functioned as the only national nonprofit exclusively dedicated to protecting the grieving public from fraud and abuse in the funeral transaction. During the 1970s and 1980s, our federation helped push for the successful passage of the Federal Trade Commission's Funeral Rule, a funeral consumer's bill of rights. Since then, we've advocated for expansion of the Rule to cover cemeteries, for better enforcement of existing regulations, and for tough nationwide standards to protect all grieving families. We've watched in frustration as death industry scandals rivet the nation, grab the attention of

¹ The financial failure or outright theft of prepaid funeral and cemetery money has been well documented by the press. One of the largest companies, National Prearranged Services, has been put into receivership by a Texas court after investigators alleged NPS was running a Ponzi scheme, and racked up \$987 million in negative equity. Several other cemetery or funeral businesses around the country have been accused of stealing more than several hundred million more dollars from consumers — all within the past several years — who placed their money and their trust with these outfits. FCA will provide Congress with necessary documentation on request.

lawmakers, then fade away. Yet 2.4 million Americans die every year, and their survivors deserve a minimum of protection, even after outstanding abuses leave the front page. Congress may not hear about them, newspapers may not write about them, but Funeral Consumers Alliance does. We call on our lawmakers not to let this opportunity for reform slip away.

It's hard to imagine something more painful for a family than to realize their mother, child or friend, has been pulled from the ground and thrown on the refuse heap. No law can stop outright criminality, but we must enact tougher, consistent regulations across the country to help deter these and other abuses. They are, unfortunately, only the most visible and shocking examples of a long-neglected problem: the lack of any national standards whatsoever for the regulation of cemeteries. There is a patchwork of inconsistent, contradictory laws among the states about what cemeteries may do, must do, and what rights, if any, grieving consumers enjoy. With a handful of exceptions, the states have failed the public.

While the Federal Trade Commission has set minimum standards for truthful dealing for funeral homes, the federal government has turned a blind eye to graveyards. Funeral homes must give consumers truthful disclosures, the right to select what they want, and they may not lie to boost the sale. Cemeteries (except in a few states) are free to hide their prices, make up non-existent laws to push merchandise on the grieving, and force families to buy their overpriced tombstones and grave vaults (or suffer a financial penalty if they refuse).

Senator Christopher Dodd introduced legislation in 2002 and 2004 that would have expanded the Federal Trade Commission's Funeral Rule to cover cemeteries. The bills would have set tough national standards for the safekeeping of consumers' prepaid funeral and cemetery money. Both bills went to an unmarked grave. The meltdown of the financial sector has shown that our laissez faire attitude to regulation has catastrophic consequences for everyday Americans. The hands-off attitude regulators have taken to Wall Street has been just as disastrous for funeral and cemetery consumers. Death arrangements are one of the most costly and emotionally fraught transactions we'll ever encounter, but the death industry flies under the radar until yet another horrible scandal hits the front page.

We respectfully urge Congress to make meaningful change, including:

- **Bringing all death-related businesses under the FTC Funeral Rule, and codifying the Rule.** Consumers see the funeral, cemetery, monument, and casket purchases as one. They have the right expect free choice and truthful sales representations from all funeral-related vendors. Establishing minimum standards and a *culture of accountability* for the cemetery industry will help deter abuse. Making an agency rule into a law with a Congressional mandate will focus needed FTC attention on enforcement.
- **Creating standards for uniform regulation of cemeteries.** There is no consistency among the states². Responsibility for cemetery regulation nationwide is spread among dedicated state

² We have attached a list of the cemetery regulatory bodies in each state we were able to locate in the short amount of time available for research before this hearing. While at least one agency is noted for each state, the level of actual regulation performed by the agency varies widely. Some agencies, such as some state real estate

boards, state real estate commissions, state insurance commissions, and in some cases, doesn't exist at all. Even within some states, different agencies are responsible for licensing cemeteries, monitoring perpetual care funds, or regulating a cemetery's preneed sales. Comprehensive, regular auditing and inspections are spotty or non-existent. The FTC Funeral Rule has been adopted by reference in many states. A similar approach to cemeteries would give states a legal template, and spur state action for rulemaking and enforcement. Including minimum standards for cemetery record-keeping and retention would provide state regulators a place to begin when inspecting cemeteries.

- **Giving consumers the right to a full refund or transfer of their prepaid death services contracts.** Senator Dodd's bill, the Federal Death Care Inspection and Disclosure Act, would have brought all states up to the responsible level of consumer protection found in states such as New York and New Jersey. Families who pre-purchased death services would have had the right to a full refund or transfer if they moved or changed their minds before death. Currently, consumers stand to lose between 5 percent to more than half of their prepaid contract if they change their mind, depending on the state. Requiring this right of refund would force death care businesses to establish sound, responsible accounting practices.

The Death Care Transaction and Federal Remedies for Funeral Home Abuses

In 2002, the last period for which national data is available, Americans spent more than \$14 billion annually³ on funeral and cemetery expenses. The amount is surely higher seven years later. When the Federal Trade Commission promulgated the Funeral Rule in 1982, it recognized the unique potential for abuse in the death transaction:

While the arrangement of a funeral is clearly an important financial transaction for consumers, it is a unique transaction, one whose characteristics reduce the ability of consumers to make careful, informed purchase decisions. Decisions must often be made while under the emotional strain of bereavement. In addition, consumers lack familiarity with the funeral transaction; close to fifty percent of all consumers have never arranged a funeral before, while another twenty-five percent have done so only once . . . This difficulty is exacerbated, however, by several practices used by funeral providers which limit the consumer's ability to make informed, independent choices.⁴

commissions, appear to do little more than register the existence of a commercial cemetery. Others, such as some insurance departments, purportedly oversee preneed transactions, but have nothing to do with auditing or inspecting cemetery records or conditions on-site. Our initial research made one thing perfectly clear: it's next to impossible for consumers in most states to even figure out whether there's even an agency with which they can file a complaint.

³ This data comes from the US Census Bureau's economic survey for 2002. The 2007 survey does not seem to account for death purchases.

⁴ Federal Register, Vol 47, no. 188, September 24, 1982.

The FTC identified the most common “deceptive acts and practices” used by funeral providers:

- **Misrepresenting the law**—claiming, for example, embalming was required by law when it wasn’t in order to pad the bill
- **Bundling goods and services**—forcing consumers to buy a full funeral package, and refusing to reduce the price for families who wanted to forego optional purchases
- **Hiding prices**—refusing to disclose prices by phone, and refusing to give families clear, printed price lists necessary to make an informed, affordable choice
- **Refusing to allow outside merchandise**—refusing to use caskets purchased outside the funeral home, or tacking on a handling fee that would swallow any savings realized by buying a casket from a third party

Cemeteries Exempt from Minimum FTC Standards

Under the Funeral Rule, these practices are barred. But what funeral homes may not do, cemeteries may do with impunity. Except in the minority of states, cemeteries need not give consumers printed price lists. Not only does this frustrate price comparison efforts, it allows unscrupulous cemeteries to charge different prices for the same services depending on how much the salesman believes he can get from each customer. While funeral homes may not refuse to use a third-party casket, consumer complaints to FCA indicate cemeteries routinely tell families they’re required to buy the grave vault or memorial from the cemetery. If the customer balks, these cemeteries penalize the customer with bogus “inspection” or “setting” fees for outside merchandise, negating any cost savings and shutting down price competition in the market.

The daughter of a veteran wrote to FCA telling of how one cemetery exploited her family by refusing to place a temporary marker on her father’s grave pending the arrival of his government headstone:

. . . My father was a veteran of the Air Force and Navy. He was career military. Unfortunately, we did as many people do and did not make burial plans until my father died.

Upon arriving at Pine Ridge, the Manager —Tom— took us into his office to help us make decisions. We asked about the Veteran’s Marker. We were told that they take a very long time to arrive at the cemetery (7 months at the minimum) [the VA reports 90 days] and that we would have to pay extra to have it installed at the cemetery and **that the cemetery would not maintain a veteran’s marker**. Tom told us that if we bought a marker from them that my father’s grave would not go unmarked and that they would place a temporary marker on his grave until the one we selected arrived.⁵

⁵ All consumer complaints cited in this testimony will be provided to Congress on request.

We selected and ordered a Pine Ridge Marker. The cost was over \$4,000 for the interment and Marker. Several days after my father died I visited the grave and it was not yet marked.

Another survivor of a veteran told FCA:

My grandfather died in 1983 and still has no headstone, the 3rd wife never paid for it. So I know he is a veteran (navy) and is eligible for a VA headstone/marker. This cemetery only does flat markers, that's fine. They will not accept the 24x12x4 stone marker but do accept the 24x12x3/4 bronze marker plate. The kicker is that the bronze marker plate requires a stone base of course which would cost additional monies. Keep in mind the plate is the same size as the plain stone without a bronze plate. They insist upon the base being 28x18x4. **My guess is to boost sales of stone through their company.** Sure they accept other bases from outside companies that are 28x18x4 but who would do that? They clearly came up with a way to charge outrageous amounts extra. **Oh and they charge a 83 cent [per square inch] installation fee which is 3x most cemeteries.** Then they charge a lower than normal amount for the stone, so it worked out the same in the end but functions to make it appear cheaper though them.

A Michigan woman called FCA to report that when she went to bury her mother's ashes, the cemetery manager refused to accept the polystyrene "urn vault" she bought direct from the manufacturer for \$50. (Urn vaults are outer boxes into which the urn is placed. They're completely unnecessary, but cemeteries often require them as a way to boost profits, since burying ashes is cheaper than burying a whole casket). The woman reported the manager balked because he wasn't sure the vault was strong enough. But she pointed out it was **the exact same make and model the cemetery was trying to sell her for \$225 more.** I called the cemetery manager on the customer's behalf. He claimed he'd never told her he wouldn't accept the vault, but dismissed the woman contemptuously: "Here's the problem - she's just tryin' to save a little money." The customer was astonished: "He's such a liar. I told him right upfront that I bought a Triple-H polystyrene vault. This is the same one he was going to sell me for \$275? Incredible."

Shockingly, some states actually sanction these practices by law. In 2006, Georgia passed a law allowing cemetery owners to charge customers \$125 if the customer buys a monument from someone other than the cemetery. According to public records, the bill's sponsor accepted thousands of dollars from large cemetery companies. The law characterizes this as "reimbursing" the cemetery for "reasonable costs in assisting in the siting of a monument," and "supervision and inspection of the installation," but this is really just a penalty for smart shoppers who find a cheaper tombstone elsewhere. If a funeral home were to pull this stunt with a customer's third-party casket, the business would be in violation of federal regulations.

The Funeral Rule also prohibits mortuaries from lying to consumers; making up non-existent laws in order to sell unwanted goods and services. Once again, cemeteries are exempt from this minimum standard of honesty. This becomes especially perverse when companies that own both funeral homes and cemeteries—sometimes siting their mortuaries on cemetery grounds—can get

away with deception when selling cemetery services that would be illegal in the funeral parlor. Mrs. B, a 70-year-old widow from Virginia, called FCA in 2004 to relate that a saleswoman for a cemetery owned by the largest funeral home chain in America actually told her the federal government prohibited the kind of burial she wanted:

“I didn't want a lot of folderol,” she said. “So I asked if I could be buried in the pine boxes they used next door at King David Memorial Gardens [instead of the polypropylene graveliners offered at the cemetery she was considering]. They told me the federal government wouldn't let me be buried in a pine box— 'that was only for the Jews.’”

These abuses could be deterred and curtailed by bringing cemeteries under the Funeral Rule. FCA testified before the FTC in 1999 during its regular review of the Funeral Rule. We supplied five boxes of documentation detailing funeral home and cemetery abuses nationwide, yet we heard nothing from the Commission. Astonishingly, the FTC voted in 2008 to close the Funeral Rule Review with **no amendments and no expansion of the Rule**. Unless Congress acts, the FTC does not have to reexamine this issue until 2018. America's grieving families should not have to wait that long.

Desecrated Graves, Double-Sold Plots, Disastrous Record-Keeping

The Burr Oak situation is, sadly, just the latest in a long line of abuses of this kind:

- **Menorah Gardens** — Families with relatives buried at a Jewish cemetery in Palm Beach, Florida, filed a class action lawsuit against Service Corporation International, the largest publicly traded funeral and cemetery chain in the world. The families sued the company for digging up graves, dumping the remains behind the cemetery, and reselling the lots (a claim the company denies). The state of Florida found the remains in woods near the gravesites in 2002, and subsequently pressed company officials with felony misconduct charges. SCI agreed to pay a settlement of \$100 million, which the *Palm Beach Post* reports the company was still paying on as recently as April, 2009.
- **Tri-State Crematory** — Also in 2002, 334 bodies were discovered strewn about the property of Tri-State Crematory in Noble, Georgia. Crematory owner Brent Marsh, whom funeral directors contracted with to perform cremations, offered no explanation for his actions, and state officials were left to explain to an outraged public why current laws didn't require site inspections.
- **Florida Memorial Gardens** — In 2004, the widow of the late Florida state Senator, Howard Futch, discovered someone else had been buried in the plot she'd purchased next to her husband for her future use. Mrs. Futch sued the cemetery (also owned by SCI of Menorah Gardens notoriety) and had her husband exhumed and moved to a new site. This incident prompted some long overdue regulatory reform in Florida, but most states lag far behind.

Funeral Consumers Alliance has received a disturbing number of complaints from families who claim the graves they bought in advance turn out to have been sold to someone else. While these are not restricted to customers from large national chains, a suspiciously high number of these allegations are tied to cemeteries owned by an out-of-state company. In past generations, cemeteries were largely run by churches, towns, and local owners or nonprofit associations. Citizens expected burial grounds to be run as nonprofits offering a necessary public good.

The rise of corporate deathcare—large chains buying up funeral homes and cemeteries from out of state—is fairly recent. During the 1980s and 1990s, companies such as SCI, The Loewen Group (now part of SCI), and Stewart Enterprises, bought mortuaries and cemeteries at a breathtaking pace. We suspect that in their haste for profit, these companies failed to complete due diligence in too many cases. Failing to adequately audit the burial records of the properties they were buying likely led to many of the complaints we see today.

Following are excerpts from complaints sent to or obtained by FCA between 2002 and 2005 from customers of cemeteries in Texas, Oklahoma, and California:

- In 2001, the Fulgham family bought 5 contiguous plots at Forest Park-The Woodlands in Conroe, Texas, in anticipation of the death of Mrs. Fulgham’s mother from terminal cancer. They hoped to bury other family members in that space as the need arose. When Mrs. Fulgham’s mother died in 2005:

“Immediately we encountered the shock of our life. Michelle [the cemetery staffer] asked us why we had purchased 5 plots with 3 in one location and 2 in another. We immediately advised her that we had not and that all plots were in the same location . . . the lots we had identified as the final resting space for my wife and me were sold and one was now occupied . . . Michelle Koonce then added salt to the wound by ‘justifying’ the mistake and proposed plot swap **advising that the chances of our daughters being buried with us would be slim anyway and they would probably be buried with their husbands someday.**”

- In 2004, an Oklahoma woman wrote to FCA:

“My parents purchased companion graves, and being a veteran, they have a granite marker with bronze plaques. My father died 3/12/04, and just the day before yesterday, the manager of the cemetery, which is now a SCI property, informed me my father was buried in the wrong plot; the plots my parents purchased are just west of where my father and his monument are. It should be noted that my parents purchased everything about 10 years ago. They had their marker put there . . . and visited it many times together over the last decade or so.”

- A woman from San Diego, California, wrote about her experience at an SCI-owned cemetery:

“My mother and father were given a certificate of ownership to a cemetery plot by my step-grandfather in 1984. At the time, they were told that it was grave #3 (also on the certificate) and that the grave was ‘double deep’ for both of them. Upon returning to the mortuary years later, my parents and my grandfather were informed their plot was now single deep. When we arrived back at home we realized that the woman that had literally snatched the certificate out of my mother’s hands to ‘check on it’ had actually WHITED out the ‘#3’ and had typed a #2 over it. When we called back, we were told it was always grave #2, as **someone else is in grave #3????**”

FCA has several more complaints of this nature in our files. These outrages aren’t restricted to one cemetery company either. A woman from Louisiana wrote to us in 2005:

“The cemetery where my parents purchased two crematory niches in 1990 has sold one of the niches and interred another person in my mother’s niche . . . We were notified of this situation recently and advised **that they** [the cemetery] **would give her a good deal on another situation.**”

A widower from Virginia wrote to us in 2003 to discover the cemetery had moved his wife’s body at the behest of the woman’s father, but with no notification to the widower:

“My deceased wife was buried in April of 1984. I was two years out of high school; she was one year out. The sudden death shocked us all . . . The cemetery she was buried in donated the burial plot to me, which was a great help to my financial being. I would visit the gravesite often. I was remarried in 2000, and I still visited the gravesite with my new wife, once a year. Well, we went to the gravesite last year and I could not find it anywhere. Jokingly, I said, ‘Someone has moved her.’ After further investigation with the cemetery, her father who lives hours away paid the cemetery to move her. He also purchased additional plots beside her. NO authorization by me was given to anyone to move her, nor was I contacted at any time.”

Prepaid Burials — More Than \$1 Billion Missing and No Federal Oversight

While the nation’s attention has been focused on the Wall Street meltdown and the thousands of Americans who lost their retirement, another financial disaster is chasing some Americans beyond retirement and right into the grave. Between 25 percent and one-third of all funerals performed annually are prepaid. The state of Texas alone has more than \$2 billion in prepaid insurance and trusts, money paid by 840,760 citizens for their eventual burials.⁶

⁶ This information was provided to FCA in 2003 by the Texas Department of Banking. Since the amount of money in prepaid insurance and trust funds has grown almost every year in Texas since the state began tracking this data in 1985, it’s likely the current total is even higher.

Yet there are no federal standards for the safekeeping of prepaid funeral or burial funds. If you live in New York State, the law says funeral homes must deposit 100 percent of your money into an account at a financial institution. If you move or change your mind, you're entitled to a full refund, with interest. New Jersey's laws are very similar. But if you live in Florida, funeral homes and cemeteries need deposit only 70 percent of the money you paid toward *services* and a fraction of what you prepaid for *merchandise* such as caskets and vaults. If you move or change your mind, the company can keep about half of everything you invested for your funeral and burial, even though they've given you nothing. It's legalized robbery. Among the other states it's a crazy-quilt of loose regulations that permit insane accounting practices such as considering coffins "delivered" to consumers, and non-refundable, as soon as the company hands you a receipt for a prepaid box.

Even in states with tougher prepaid deposit laws, scofflaws are robbing the bank and skipping town before regulators know what's happening. More than a billion dollars of Americans' hard-earned money has been stolen or misused by prepaid burial companies in the past three years:

- **National Prearranged Services** — This now bankrupt network of funeral homes, cemeteries, and life insurance companies is in receivership in Texas after regulators charged the companies with skimming funds from consumers' life insurance policies and running a Ponzi scheme to get more prepaid buyers on the treadmill. Special Receiver Donna Garrett found the company had **\$987 million in negative equity**. The NPS breakdown affects more than **200,000** families in at least **19** states, and hundreds of funeral homes.
- **Oil speculator Clayton Smart, owner of cemeteries and funeral homes in Tennessee and Michigan, sits in jail charged with stealing at least \$70 million in cemetery trust funds** — Smart shocked 13,500 Tennessee families by announcing his Forest Hill cemeteries and mortuaries wouldn't honor their original prepaid contracts. "I wouldn't have bought the business if I thought I'd have to honor those contracts," he told the press. Tennessee officials accuse him of failing to report \$21 million in prepaid money to the state. Michigan alleges he stole \$70 million from the trust funds at his 28 cemeteries in that state.
- **The Illinois Funeral Director's Association stands accused of misusing prepaid funeral insurance policies bought by 40,000 Illinois consumers**. Incredibly, the IFDA is alleged to have bought life insurance policies on member funeral directors intended to pay out the cost of prepaid funerals as consumers needed them — provided the funeral directors die fast enough for IFDA to collect the money. The *Springfield State Journal-Register* reports:

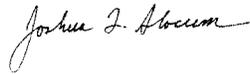
"In short, insured funeral home directors and IFDA insiders had to die before any gains were realized, and plaintiffs in the lawsuit against IFDA say insured parties didn't die fast enough to cover funeral expenses for more than 40,000 state residents who bought pre-need contracts. The fund's value was written down by \$59 million last fall, and funeral home directors who are suing IFDA say Merrill Lynch, which has replaced IFDA as the fund's trustee, is surrendering the policies for cash value, with losses approaching \$100 million."

These are the biggest scandals, but they are hardly the only ones. A week doesn't go by without news of \$100,000 here, \$800,000 there, going missing from prepaid cemetery and funeral funds across the country. For decades, cemetery special interests have called preneed regulation—or any cemetery regulation at all—a “state’s rights” issue. Consumer protection and financial accountability cannot be left to the whim of the states, especially when they’ve demonstrated abject failure in protecting the money our parents and grandparents have put aside for their final arrangements. It’s decades past time for federal standards for cemeteries and prepaid funeral and burial money.

FCA urges Congress to pass meaningful legislation which would, at a minimum:

- **Bring all death-related businesses under the FTC Funeral Rule, and codify the Rule**
- **Create national minimum standards for state regulation of cemeteries**
- **Require 100 percent deposit of all prepaid death service money, and give consumers the right to a full refund or transfer**

Respectfully submitted,



Joshua Slocum
Executive Director
Funeral Consumers Alliance, Inc.

Mr. RUSH. Thank you.

Mr. Lapin, you're recognized for five minutes.

**STATEMENT OF HARVEY LAPIN, GENERAL COUNSEL, ILLINOIS
CEMETERY AND FUNERAL HOME ASSOCIATION**

Mr. LAPIN. Thank you, Mr. Chairman. Thank you for inviting me.

I'm Harvey Lapin. I'm the General Counsel of the Illinois Cemetery and Funeral Home Association, and I'm testifying here on their behalf. As the Association, we strongly condemn the crimes that have allegedly been committed at Burr Oak Cemetery. What the involved employees apparently did violates everything our industry stands for. Their actions were not only horrible and appalling, they were criminal. ICFHA was established in 1928, and we have over 300 members covering the whole spectrum in the different types of cemeteries in this country. We have religious cemetery members, municipal members, fraternal members, and small, family-owned cemeteries, small funeral homes, combination funeral homes, all the way across the board, and that is one of the problems that we have with regulating the industry. There is a broad spectrum of different types of cemeteries, and we can't paint them with the same brush. So that's one of the areas of concern.

As far as Illinois is concerned, I was—we were shocked when it was indicated that there were no laws in Illinois that dealt with this problem, because that is absolutely not true. The Illinois Cemetery Protection Act clearly applies to this situation. And I must say, this is a criminal investigation, and we must be very careful not to do anything to cause a problem with that criminal investigation. However, the Cemetery Protection Act clearly provides any person that willfully destroys or damages the remains of a deceased human being or desecrates human remains will be guilty of a Class 3 felony.

Two, any person that willfully removes any portion of the remains of a deceased human being from a cemetery is guilty of a Class 4 felony.

Three, any person who defaces or vandalizes, injures, or removes a grave marker or memorial is guilty of a Class 4 up to Class 2 felony, depending on the number removed.

This is the current law in Illinois, and I don't think there's any question as to its application. We increased the penalties in that law several years ago, and I think our legislature now wants to increase them again. We have absolutely no opposition to doing so. Each violation would be a separate violation under that law, so you can take the penalties, and they will be great against these people if they are convicted. In addition to that, there are other laws in Illinois that apply.

The Comptroller's here today, and the Comptroller's Office has jurisdiction over cemetery laws and trust laws and other laws that apply to the cemeteries in the state that are covered, and directly told you that there are entities that are exempt from that law. But, basically, the private-operated cemeteries, including Burr Oak, are covered by that law. And those laws can take felony-count penalties for certain acts, which, after the dust has settled in this situation,

it is probable that Burr Oak will be subject to some of these penalties.

We have provided you with a resource memo that has a lot of information about the Illinois laws and also the position of the Association on these issues. In addition, to the specific cemetery laws that were violated, there are other laws of Illinois that apply. We have criminal laws here. These people allegedly engaged in theft of property, and they took the property of other people and used it for some other purpose. They engaged in theft by deception, all under the State's Attorney and Attorney General's Office, and they are investigating on that basis.

In addition to that, they violated, in our opinion, the Unfair Deceptive Practice Law, which ties into the Federal Trade Commission Unfair and Deceptive Practices. There is a national standard, and each state has laws that interrelate with that national standard. The Attorney General's Office of the State of Illinois also administers that law, and if there's a specific violation, the Cemetery Care Act and Cemetery's Pre-Need Sales Act, the Attorney General's Office can incorporate those specific violations under their law.

So, it is our position that there is extensive law in Illinois that was violated here. The Association stands as a resource to this panel and to any other panel, and we are here to assist, because of this terrible problem, in helping the families. And I, too, am very sad when I listened to the testimony from a family member who had this problem.

The Association, we have a consumer complaint vehicle, and you can contact us. ICFHA.org has the form for downloading. We handle many complaints on a yearly basis. The Comptroller's Office has a 800 number for complaints. Many times, they refer complaints over to the Association to handle, because we're able to deal with it better than they can, and deal with the peer pressure. We've been very successful. There also is a national complaint procedure that was established many, many years ago.

[The statement of Mr. Harvey Lapin follows:]

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To: Commerce, Trade, and Consumer Protection
Subcommittee of the House of Representatives
Committee on Energy and Commerce

From: Harvey I. Lapin
ICFHA General Counsel

Date: July 27, 2009

Subject: Background Information

I serve as General Counsel of the Illinois Cemetery and Funeral Home Association ("ICFHA"), and have represented ICFHA for over 40 years. I am a nationally recognized expert in the legal areas related to the funeral, cemetery and cremation segments of what is commonly known as the "death care industry." I have provided legal services to several national trade associations in this industry, including representing them during the extensive hearings in the 1980's and 1990's that resulted in the adoption and later amendment of the FTC Funeral Rule. Throughout my representation of ICFHA, I have provided legal services concerning Illinois legislation and administrative rules of interest to ICFHA. I have also assisted other state associations in the industry in connection with laws enacted in their states.

I. What is ICFHA?

ICFHA is an Illinois State nonprofit trade association whose members consist primarily of companies that engage in the cemetery, funeral home and crematory industry businesses ("the Industry") in the state of Illinois. ICFHA was established in 1928 and currently has over 300 members in the Industry that range from very small family run businesses, municipal cemeteries, religious cemeteries, other non-profit cemeteries, to multi-unit regional companies and subsidiaries of national companies. ICFHA has always been at the forefront of state associations in the Industry throughout the country. Since it was organized in 1928 it has developed and enforced a strong Ethics Code for its members. It has presented educational programs and information for its members, non-members and for consumers.

ICFHA established the first state Consumer Advocate Committee in the Industry in 1975 to provide an avenue for consumers to file inquiries and complaints against members and non-members concerning areas of concern in the Industry. The Consumer Advocate Committee

was the basis for the establishment of a national consumer complaint mechanism ("Cemetery Consumer Council") and similar committees in many other states. The Consumer Advocate Committee receives referrals of inquiries and consumer complaints from the Illinois Attorney General's Office ("Attorney General") and the Office of the Comptroller ("Comptroller"). The Consumer Advocate Committee has successfully resolved substantially all of the complaints filed with it involving its members and non-member since its establishment.

Since its inception, ICFHA has assisted the Illinois General Assembly and applicable state agencies by providing information and providing drafts of proposed legislation involving the industry to promote active competition for the benefit of consumers with the appropriate protections for consumers. ICFHA was the proponent of one of the first Cemetery Care Trust laws in the country and the Illinois Cemetery Care Act (760 ILCS 100, *et seq.*) enacted in 1948 became the basis for similar laws in many other states. ICFHA was also the proponent of the Illinois Cemetery Pre-Need Sales Act (815 ILCS 390, *et seq.*), discussed hereafter, which governs the sale of pre-need cemetery merchandise and services.

ICFHA was also the primary proponent of the Crematory Regulatory Act (410 ILCS 18, *et seq.*) in 1986, and worked with the Office of the Comptroller and members of the legislature in connection with the introduction and enactment of this Act. The Crematory Regulatory Act was the first law regulating crematories on a comprehensive basis in the country. ICFHA also worked with the Comptroller's Office and General Assembly in connection with amendments to the Funeral or Burial Funds Act ("Funeral Trust Act") to remove restrictions in those laws that initially restrained competition and to add administrative provisions for the Comptroller that were not contained in the Funeral Trust Act when it was originally enacted. ICFHA worked closely with the Department of Professional Regulation at the time the Funeral and Embalmers Licensing Act was being reviewed, under the sunset process, to remove restrictions in that law that restrained competition to the detriment of consumers.

The result of these efforts, and those of others, is that Illinois consumers can purchase the needed merchandise and services provided by the Industry from many active competitors at competitive prices. At the present time there is no segment of the Industry in Illinois that has a monopoly over or that is restraining competition on the other segments of the Industry.

II. Preliminary Statements.

The Illinois Cemetery and Funeral Home Association (ICFHA) strongly condemns the crimes allegedly committed by four employees at Burr Oak Cemetery. What these employees allegedly did violates everything ICFHA stands for, and offends a code of conduct that has governed the cemetery industry for centuries.

ICFHA believes that there are presently approximately 14,000 cemeteries in Illinois. Approximately, 6,600 have some type of management and only 800 are privately operated.

III. What Are the Current Laws Governing the Industry?

Illinois already has extensive laws administered covering the cemetery segment of the industry. Most of these laws are under the Office of the Comptroller's jurisdiction.

- Cemetery Care Act (760 ILCS 100) ("Care Act") that applies to cemeteries privately operated that have established care funds;
- The Cemetery Association Act (805 ILCS 320) ("Association Act") that provides for the incorporation and operation of Cemetery Association for the benefit of the lot owners;
- Cemetery Protection Act (765 ILCS 835) ("Cemetery Protection Act") that has general provisions related to the operation of cemeteries;
- The Illinois Cemetery Pre-Need Sales Act (815 ILCS 390) ("Cemetery Sales Act") that primarily applies to pre-need sales by cemeteries; and
- Crematory Regulation Act (410 ILCS 18) ("Crematory Act") that covers the operation of crematories and the authorizations required.

IV. What Laws Apply to the Alleged Crimes?

BURR OAK CEMETERY SITUATION: APPLICABLE ILLINOIS LAW

There are five main statutes that can impose criminal penalties on persons that violate the law in this type of situation:

- (a) the Illinois Cemetery Protection Act (765 ILCS 835, et. seq.) imposes criminal felony penalties and fines for persons that willfully damage, destroy or desecrate human burial remains and markers without proper legal authority;
- (b) the Illinois Cemetery Care Act (760 ILCS 100, et. seq.) and the Illinois Pre-Need Cemetery Sales Act (815 ILCS 390, et. seq.) impose criminal felony penalties and fines for persons that steal monetary deposits to be used for cemetery maintenance purposes and for the preneed sale of cemetery merchandises and services;
- (c) Article 16 of the Illinois Criminal Code imposes criminal felony penalties and fines for various types of property theft that may be applicable;
- (d) the Pre-need Cemetery Sales Act (815 ILCS 390, et. seq.) imposes criminal felony penalties and fines for persons that steal monetary deposits to be used for cemetery maintenance purposes and for the pre-need sale of cemetery merchandises and services; and
- (e) the Consumer Fraud and Deceptive Businesses Act (815 ILCS 505, et. seq.) may also be applicable regarding deceptive business practices.

A. ILLINOIS CEMETERY PROTECTION ACT (765 ILCS 835, et. seq.)

Section 1 of the Cemetery Protection Act specifically provides that:

"(a) Any person who acts without proper legal authority and who willfully and knowingly destroys or damages the remains of a deceased human being or desecrates human remain is guilty of a Class 3 felony."

“(a-5) Any person who acts without proper legal authority and who willfully and knowingly removes any portion of the remains of a deceased human being from a burial ground where skeletal remains are buried or from a grave, crypt, vault, mausoleum, or other repository of human remains is guilty of a Class 4 felony.”

“(b-5) Any person who acts without proper legal authority and who willfully and knowingly defaces, vandalizes, injures, or remove a gravestone or other memorial, monument of marker commemorating a deceased person or group of persons, whether located within or outside of a recognized cemetery, memorial park or battlefield is guilty of a Class 4 felony for damaging more than 1 and not more than 4 gravestones; a Class 3 felony for damaging more than 5 and not more than 10 gravestones; a Class 2 felony for damaging more than 10 gravestones and shall provide restitution to the cemetery authority or property owner for the amount of the damage caused.”

**B. ILLINOIS CEMETERY CARE ACT
(760 ILCS 100, et. seq.)**

The Burr Oak employees allegedly resold cemetery spaces in an undeveloped mausoleum without making the deposits required by the Act failed to maintain the required records.

Section 2a of the Cemetery Care Act provides for the record keeping requirements of deposits by cemetery authorities and the information that has to be provided to the public.

Section 4 of the Cemetery Care Act provides the deposit requirements for the designated amounts received for care from purchasers in connection with sales on an at need or pre-need of cemetery spaces, crypts and niches.

The failure to provide this information or make the required deposits is a violation of the Act and could lead to Felony 4 and other penalties and fines. Section 24 of the Act specifically states the following:

“Whoever intentionally fails to deposit the required amounts into a trust provided for in this Act, intentionally and improperly withdraws or uses trust funds for his or her own benefit, or otherwise intentionally violates any provision of this Act (other than the provisions of Section 23 and subsections (b), (c), (d), and (e) of Section 2a) shall be guilty of a Class 4 felony, and each day such provisions are violated shall constitute a separate offense.”

“If any person intentionally violates this Act or fails or refuses to comply with any order of the Comptroller or any part of an order that has become final to such person and is still in effect, the Comptroller may, after notice and hearing at which it is determined that a violation of this Act or such order has been committed, further order that such person shall forfeit and pay to the State of Illinois a sum not to exceed \$5,000 for each violation. Such liability shall be enforced in an action brought in any court of competent jurisdiction by the Comptroller in the name of the People of the State of Illinois.”

“In addition to the other penalties and remedies provided in this Act, the Comptroller may bring a civil action in the county of residence of the licensee or any person accepting care funds to enjoin any violation or threatened violation of this Act.”

“The powers vested in the Comptroller by this Section are additional to any and all other powers and remedies vested in the Comptroller by law.”

**C. ILLINOIS PRE-NEED CEMETERY SALES ACT
(815 ILCS 390, et. seq.)**

The Burr Oak employees allegedly sold crypts in undeveloped mausoleum (Emmet Till Mausoleum) without making the deposits required by the Act.

Section 23 of this Act specifically states the following:

“(a) Any person who fails to deposit the required amount into a trust provided for in this Act, improperly withdraws or uses trust funds for his or her own benefit, or otherwise violates any provision of this Act is guilty of a Class 4 felony.”

**D. ILLINOIS CRIMINAL CODE
(720 ILCS 5, et. seq.)**

The Burr Oak employees allegedly took the grave spaces belonging to others and resold them, as well as taking money from their employer.

The following portions of Article 16 of the Illinois Criminal Code (Theft and Related Offenses) may apply:

“Sec. 16-1. Theft.

(a) A person commits theft when he knowingly:

- (1) Obtains or exerts unauthorized control over property of the owner; or
- (2) Obtains by deception control over property of the owner; or
- (5) Obtains or exerts control over property in the custody of any law enforcement agency which is explicitly represented to him by any law enforcement officer or any individual acting in behalf of a law enforcement agency as being stolen, and

(b) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or

(c) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit.

(b) Sentence:

(5) Theft of property exceeding \$10,000 and not exceeding \$100,000 in value is a Class 2 felony.

(6) Theft of property exceeding \$100,000 and not exceeding \$500,000 in value is a Class 1 felony.

(6.2) Theft of property exceeding \$500,000 in value is a Class 1 non-probationable felony.”

(7) Theft by deception, as described by paragraph (2) of subsection (a) of this Section, in which the offender obtained money or property valued at \$5,000 or more from a victim 60 years of age or older is a Class 2 felony.”

E. CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT (815 ILCS 505, et. seq.)

The Burr Oak employees allegedly sold grave spaces without disclosing to the purchasers that the grave spaces had been used before or that a second casket and human remains were under the new interment. This is in addition to the specific laws violated above and reference in this Act as also being covered by this Act.

Section 2 of the Act specifically states:

“Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5 (a) of the Federal Trade Commission Act.”

In addition, Section 2Z of the Act states (emphasis added):

“Any person who knowingly violates the Automotive Repair Act, the Automotive Collision Repair Act, the Home Repair and Remodeling Act, the Dance Studio Act, the Physical Fitness Services Act, the Hearing Instrument Consumer Protection Act, the Illinois Union Label Act, the Job Referral and Job Listing Services Consumer Protection Act, the Travel Promotion Consumer Protection Act, the Credit Services Organizations Act, the Automatic Telephone Dialers Act, the Pay-Per-Call Services Consumer Protection Act, the Telephone Solicitations Act, the Illinois Funeral or Burial Funds Act, **the Cemetery Care Act**, the Safe and Hygienic Bed Act, **the Pre-Need Cemetery Sales Act**, the High Risk Home Loan Act, the Payday Loan Reform Act, the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax Act, the Payday Loan Reform Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the Internet Caller Identification Act, paragraph (6) of subsection (k) of Section 6-305 of the Illinois Vehicle Code, Section 18d-115, 18d-120, 18d-125, 18d-135, or 18d-150 of the Illinois Vehicle Code, Article 3 of the Residential Real Property Disclosure Act, the Automatic Contract Renewal Act, or the Personal Information Protection Act **commits an unlawful practice within the meaning of this Act.**”

ICFHA believes that the current laws in effect adequately cover the alleged crimes by the employees of Burr Oak Cemetery. ICFHA would be pleased to continue to assist the Subcommittee and will timely respond to any additional questions or request for information.

FOR IMMEDIATE RELEASE

Contact: Harvey Lapin
General Counsel, ICFHA
847-509-0501

Illinois Cemetery & Funeral Home Association Condemns Burr Oak Crimes

HOMEWOOD, IL (July 10, 2009) – The Illinois Cemetery and Funeral Home Association (“ICFHA”) strongly condemns the crimes committed at Burr Oak Cemetery.

“What these employees did violates everything we stand for, and offends a code of conduct that has governed our industry for centuries,” said Vickie Hand, Treasurer of the ICFHA. “What happened is not only abhorrent and appalling, but it is clearly criminal. It violates laws and regulations that we have helped to craft over decades, and that we have worked hard to enforce.”

“Everyone wants to know how this could have happened,” said Harvey Lapin, General Counsel for the ICFHA. “There is no easy answer, except that, sadly, criminals break laws. These employees appear to have broken many laws – laws that our association helped put in place precisely because we understand the pain and horror that these actions cause.

“There seem to be a number of major laws that were broken,” Lapin added. “The Illinois Cemetery Protection Act makes it a crime to willfully damage, destroy or desecrate human remains and grave markers without authorization. Both the Illinois Cemetery Care Act and the Illinois Pre-Need Cemetery Sales Act make it a crime to steal people’s deposits on funeral and cemetery merchandise and services. These are in addition to crimes of property theft and deceptive business practices.”

A full list of the laws that ICFHA believes govern this situation is posted on the home page of ICFHA: www.icfha.org.

“The core of our business is providing people with the comfort that we will care for their loved ones and maintain their trust,” added Hand. “We are committed to doing everything we can as an association to help the victims and to ensure that this never happens again.”

ICFHA is an Illinois State nonprofit trade association whose members consist primarily of companies that engage in the cemetery, funeral home and crematory industry businesses in Illinois. ICFHA was established in 1928 and currently has more than 300 members. In 1975, ICFHA established the first state Consumer Advocate Committee in the industry. This committee was the basis for the establishment of a national consumer complaint mechanism (“Cemetery Consumer Service Council”) and similar committees in many other states.

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The Illinois Cemetery & Funeral Home Association

The Illinois Cemetery and Funeral Home Association (ICFHA) is an Illinois state non-profit trade association whose members consist primarily of companies that engage in the cemetery, funeral home and crematory industry businesses in the state of Illinois. ICFHA was established in 1928 and currently has over 300 members in the industry. These members range from very small family run businesses, municipal cemeteries, religious cemeteries, other non-profit cemeteries, to multi-unit regional companies and subsidiaries of national companies. We have members that do less than 25 interments a year and some that perform up to 3,000 per year.

ICFHA has always been at the forefront of state associations in the Industry throughout the country. Since it was organized in 1928 it has developed and enforced a strong Ethic Code for its members. It has presented educational programs and information for its members, non-members and for consumers.

There are approximately 14,000 cemeteries in Illinois, of which approximately 6,600 are active cemeteries. There are different categories of cemeteries, including:

- religious cemeteries which are owned by churches or religious organizations;
- there are locally owned cemeteries which are owned by a cities, townships or counties;
- there are private cemeteries which are owned by business owners;
- there are fraternal cemeteries, such as those for organizations like the Elks or Jewish fraternal burial associations; and
- there are veterans' cemeteries, which are dedicated to veterans and their families.

Approximately 800-900 of Illinois' cemeteries are privately owned. Some of these are owned by small family-owned enterprises which may operate one or two cemeteries, and some are subsidiaries of national corporations. The industry is not a high-profit or high-margin industry. Maintenance costs are ongoing. For any given cemetery in any given year, maintenance costs may exceed revenues. Municipal cemeteries may receive some ongoing operational support from property tax revenues, although these funds are subject to annual appropriation and may be constrained by other needs. Religious cemeteries may receive ongoing funds from contributions and donations, although these funds too are variable and voluntary.

Since its inception, ICFHA has assisted the Illinois General Assembly and various state agencies by providing information and providing drafts of proposed legislation involving the industry. ICFHA was the proponent of one of the first Cemetery Care Trust laws in the country, the Illinois Cemetery Care Act. ICFHA was the proponent of the Illinois Cemetery Pre-Need Sales Act, that governs the sale of pre-need cemetery merchandise and services, and the Crematory Regulatory Act. ICFHA has worked with the Comptroller's Office and General Assembly in connection with amendments to the Funeral or Burial Funds Act (Funeral Trust Act) to remove restrictions in those laws that initially restrained competition and to add administrative provisions for the Comptroller.

The History of ICFHA and State Regulation

Since its inception, ICFHA has assisted the Illinois General Assembly and various state agencies by providing information and providing drafts of proposed legislation involving the industry. ICFHA has worked hard to promote active competition for the benefit of consumers with appropriate protections for consumers.

ICFHA was the proponent of one of the first Cemetery Care Trust laws in the country. This law, the Illinois Cemetery Care Act (760 ILCS 100 *et seq.*), was enacted in 1948 and subsequently became the basis for similar laws in many other states. ICFHA was also the proponent of the Illinois Cemetery Pre-Need Sales Act (815 ILCS 390 *et seq.*), that governs the sale of pre-need cemetery merchandise and services.

ICFHA was also the primary proponent of the Crematory Regulatory Act (410 ILCS 18 *et seq.*), which was enacted in 1986, and it worked with the Office of the Comptroller and members of the legislature in connection with the introduction and enactment of this Act. The Crematory Regulatory Act was the first law in the country to regulate crematories on a comprehensive basis.

ICFHA has worked with the Comptroller's Office and General Assembly in connection with amendments to the Funeral or Burial Funds Act ("Funeral Trust Act") to remove restrictions in those laws that initially restrained competition and to add administrative provisions for the Comptroller that were not originally contained in the Funeral Trust Act. ICFHA worked closely with the Department of Professional Regulation at the time the Funeral and Embalmers Licensing Act was being reviewed, under the sunset process, to remove restrictions in that law that restrained competition to the detriment of consumers. ICFHA will continue to be a resource to the General Assembly for cemetery, cremation and funeral laws that benefit consumers and promote competition in the industry.

ICFHA established the first state Consumer Advocate Committee in the Industry in 1975 to provide an avenue for consumers to file inquiries and complaints against members and non-members concerning areas of concern in the industry. The Consumer Advocate Committee was the basis for the establishment of a national consumer complaint mechanism (the Cemetery Consumer Council) and similar committees in many other states. The Consumer Advocate Committee receives referrals of inquiries and consumer complaints from the Illinois Attorney General's Office and the Office of

the Comptroller. The Consumer Advocate Committee has successfully resolved substantially all of the complaints filed with it involving its members and non-members since its establishment.

The annual report of the complaints filed with the Cemetery Consumer Council indicate that many of the complaints deal with maintenance issues where the consumer expectations exceed the ability of the cemetery to respond. There may often be difficulty in responding because of weather conditions or limited funds. Very few if any of the complaints deal with law violations or deceptive sales practices. The Federal Trade Commission periodically issues summaries of the complaints filed with it and it should be noted that there have been virtually no complaints filed against cemeteries before the FTC for many years.

ICFHA is a recognized continuing education provider. It continues to provide opportunities to members and non-members alike for the maintenance of professional hours or for their own benefit. ICFHA was one of the first state associations to establish a Crematory Certification Program in the nation. This program was approved by the Office of the Illinois Comptroller when the Crematory Regulatory Act provided for the establishment of such programs in 2003. Classes are held once a month for the certification of member and nonmember crematory operators.

ICFHA will continue to be a resource to this commission and to the General Assembly for cemetery, cremation and funeral laws that benefit consumers and promote a healthy, responsible and competitive industry.

BURR OAK CEMETERY SITUATION: APPLICABLE ILLINOIS LAW

There are five main statutes that can impose criminal penalties on persons that violate the law in this type of situation:

- (a) the Illinois Cemetery Protection Act (765 ILCS 835, et. seq.) imposes criminal felony penalties and fines for persons that willfully damage, destroy or desecrate human burial remains and markers without proper legal authority;
- (b) the Illinois Cemetery Care Act (760 ILCS 100, et. seq.) and the Illinois Pre-Need Cemetery Sales Act (815 ILCS 390, et. seq.) impose criminal felony penalties and fines for persons that steal monetary deposits to be used for cemetery maintenance purposes and for the pre-need sale of cemetery merchandises and services;
- (c) Article 16 of the Illinois Criminal Code imposes criminal felony penalties and fines for various types of property theft that may be applicable;
- (d) the Illinois Pre-Need Cemetery Sales Act (815 ILCS 390, et. seq.) imposes criminal felony penalties and fines for persons that steal monetary deposits to be used for cemetery maintenance purposes and for the pre-need sale of cemetery merchandises and services;
- (e) the Consumer Fraud and Deceptive Business Act (815 ILCS 505, et. seq.) may also be applicable regarding deceptive business practices.

I. ILLINOIS CEMETERY PROTECTION ACT (765 ILCS 835, et. seq.)

Section 1 of the Cemetery Protection Act specifically provides that:

“(a) Any person who acts without proper legal authority and who willfully and knowingly destroys or damages the remains of a deceased human being or desecrates human remain is guilty of a Class 3 felony.”

“(a-5) Any person who acts without proper legal authority and who willfully and knowingly removes any portion of the remains of a deceased human being from a burial ground where skeletal remains are buried or from a grave, crypt, vault, mausoleum, or other repository of human remains is guilty of a Class 4 felony.”

“(b-5) Any person who acts without proper legal authority and who willfully and knowingly defaces, vandalizes, injures, or remove a gravestone or other memorial, monument of marker commemorating a deceased person or group of

persons, whether located within or outside of a recognized cemetery, memorial park or battle-field is guilty of a Class 4 felony for damaging more than 1 and not more than 4 gravestones; a Class 3 felony for damaging more than 5 and not more than 10 gravestones; a Class 2 felony for damaging more than 10 gravestones and shall provide restitution to the cemetery authority or property owner for the amount of the damage caused.”

II. ILLINOIS CEMETERY CARE ACT (760 ILCS 100, et. seq.)

The Burr Oak employees allegedly resold cemetery spaces in an undeveloped mausoleum without making the deposits required by the Act failed to maintain the required records.

Section 2a of the Cemetery Care Act provides for the record keeping requirements of deposits by cemetery authorities and the information that has to be provided to the public.

Section 4 of the Cemetery Care Act provides the deposit requirements for the designated amounts received for care from purchasers in connection with sales on an at need or preneed of cemetery spaces, crypts and niches.

The failure to provide this information or make the required deposits is a violation of the Act and could lead to Felony 4 and other penalties and fines. Section 24 of the Act specifically states the following:

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“If any person intentionally violates this Act or fails or refuses to comply with any order of the Comptroller or any part of an order that has become final to such person and is still in effect, the Comptroller may, after notice and hearing at which it is determined that a violation of this Act or such order has been committed, further order that such person shall forfeit and pay to the State of Illinois a sum not to exceed \$5,000 for each violation. Such liability shall be enforced in an

action brought in any court of competent jurisdiction by the Comptroller in the name of the People of the State of Illinois.”

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IV. ILLINOIS CRIMINAL CODE (720 ILCS 5, et. seq.)

The Burr Oak employees allegedly took the grave spaces belonging to others and resold them, as well as taking money from their employer.

The following portions of Article 16 of the Illinois Criminal Code (Theft and Related Offenses) may apply:

“Sec. 16-1. Theft.

(a) A person commits theft when he knowingly:

- (1) Obtains or exerts unauthorized control over property of the owner; or
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- (5) Obtains or exerts control over property in the custody of any law enforcement agency which is explicitly represented to him by any law enforcement officer or any individual acting in behalf of a law enforcement agency as being stolen, and

(b) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or

(c) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit.

(b) Sentence:

(5) Theft of property exceeding \$10,000 and not exceeding \$100,000 in value is a Class 2 felony.

(6) Theft of property exceeding \$100,000 and not exceeding \$500,000 in value is a Class 1 felony.

(6.2) Theft of property exceeding \$500,000 in value is a Class 1 non-probationable felony.”

(7) Theft by deception, as described by paragraph (2) of subsection (a) of this Section, in which the offender obtained money or property valued at \$5,000 or more from a victim 60 years of age or older is a Class 2 felony.”

V. CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT (815 ILCS 505, et. seq.)

The Burr Oak employees allegedly sold grave spaces without disclosing to the purchasers that the grave spaces had been used before or that a second casket and human remains were under the new interment. This is in addition to the specific laws violated above and reference in this Act as also being covered by this Act.

Section 2 of the Act specifically states:

“Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and

the federal courts relating to Section 5 (a) of the Federal Trade Commission Act.”

In addition, Section 2Z of the Act states (emphasis added):

“Any person who knowingly violates the Automotive Repair Act, the Automotive Collision Repair Act, the Home Repair and Remodeling Act, the Dance Studio Act, the Physical Fitness Services Act, the Hearing Instrument Consumer Protection Act, the Illinois Union Label Act, the Job Referral and Job Listing Services Consumer Protection Act, the Travel Promotion Consumer Protection Act, the Credit Services Organizations Act, the Automatic Telephone Dialers Act, the Pay-Per-Call Services Consumer Protection Act, the Telephone Solicitations Act, the Illinois Funeral or Burial Funds Act, **the Cemetery Care Act**, the Safe and Hygienic Bed Act, **the Pre-Need Cemetery Sales Act**, the High Risk Home Loan Act, the Payday Loan Reform Act, the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax Act, the Payday Loan Reform Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the Internet Caller Identification Act, paragraph (6) of subsection (k) of Section 6-305 of the Illinois Vehicle Code, Section 18d-115, 18d-120, 18d-125, 18d-135, or 18d-150 of the Illinois Vehicle Code, Article 3 of the Residential Real Property Disclosure Act, the Automatic Contract Renewal Act, or the Personal Information Protection Act **commits an unlawful practice within the meaning of this Act.**”

How to Choose a Cemetery in Illinois

There are thousands of cemeteries in Illinois. Most of them have operated for generations and some of them for centuries. Nothing like the events at Burr Oak has ever happened in Illinois before. If you have a loved one in an Illinois cemetery other than Burr Oak, then you can be assured that the cemetery must maintain a record of your loved one's location.

How do I choose a cemetery?

Usually a family considers to bury loved ones where other family members are already located. Consider the location of the cemetery: is it convenient for family visits? Consider whether it meets the requirements of your family's religion. Consider what, if any, restrictions the cemetery places on burial vaults, the type of monuments or memorials it allows, and whether flowers or other remembrances may be placed on graves and when.

Finally consider the care of the cemetery. Does it look well-maintained? What kind of impression do you get from the staff? Are the graves, roads, offices and fences in good shape?

Cost may be a consideration. Interment rights can be expensive, especially in metropolitan areas. At most, but not all, cemeteries you are required to purchase a grave liner, which will cost several hundred dollars. There are typically charges to open and close a grave for an interment. Verify if a cemetery is licensed for future care when you purchase your interment rights. These cemeteries are audited and monitored by the Illinois State Comptroller's Office.

Are all cemeteries alike?

No, there are different kinds of cemeteries. There are religious cemeteries, which are owned by a church or religious organization; there are locally owned cemeteries which are owned by a city, township or county; there are private cemeteries which are owned by business owners; there are fraternal cemeteries, such as those for organizations like Masonic or Jewish fraternal burial associations; and there are veterans' cemeteries, which are dedicated to veterans and their families.

What products and services do cemeteries offer?

Cemeteries offer a number of different arrangements. Interment rights, the traditional in-ground grave, are the most typical product, but there are also lawn crypts, columbarium niches and mausoleums.

Some cemeteries offer more affordable arrangements. One such option, that has been offered for generations, is multi-level burial. In this kind of interment, the deceased are buried in a row, one after the other. The cemetery still maintains the records, forever, and the marker remains at that grave, forever. Because less maintenance and labor is involved, this arrangement is for those who want an alternative to cremation.

What can I do to make sure things are ok at my loved one's cemetery?

Visit your loved one's grave site. If you didn't buy a memorial, buy one to make it easier for you to find your loved one. Ask to see a copy of the cemetery's rules and regulations. If it is a condensed set, feel free to request and review the entire set.

Be patient. Everyone is very worried right now, and cemetery offices are responding to a flood of inquiries. Cemetery operators and their staffs are caring people who want to be as helpful as possible, but it takes time to respond to all the calls and questions they are receiving.

What if something looks wrong when I visit my loved one?

Ask at the office. Understand that cemeteries are works in progress; every time there is an interment, there will be some disturbance to the landscape. Sometimes the cemetery will temporarily move a marker to prevent damage; the marker may not be replaced for a time until the ground conditions allow.

How can I check out a cemetery to see if there have been problems in the past?

Contact the office of the Illinois Comptroller; this office has responsibility for consumer complaints about cemeteries. Their web site is <http://www.ioc.state.il.us/office/ccbt/> and Consumers within Illinois can call the consumer hot-line toll-free at 1.877.203.3401. If you are calling outside Illinois, please call the general number at 312.814.2451. If consumers prefer, they can e-mail the staff at ccbt@mail.ioc.state.il.us.

Resources

The Federal Trade Commission offers a funeral guide for consumers: <http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro19.shtm>

SOUTHTOWNSTAR

Law already says no grave robbing

July 16, 2009

The issue: Officials are calling for strict new regulations mandating how cemeteries do business - and creating new government layers to carry out this task.

We say: We don't need more bureaucracy. We need prosecution of this crime.

Decaying bodies dumped in a jumbled heap. Grave robbery. Desecration. Injustice and greed.

The Burr Oak Cemetery scandal is the stuff nightmares are made of.

So ... there ought to be a law, right?

There ought to be rules and regulations and someone with a clipboard to enforce them.

That's what some state officials are proposing.

Illinois Comptroller Dan Hynes calls for a plan to give the state new and needed oversight concerning cemeteries. Plenty of legislators are clamoring for the same.

Translation: "This is appalling. This is bad. The public is calling for heads on a pike. We should ... DO SOMETHING!"

Let's create new offices! New officials! New documents and processing systems! Let's pay for it all with new taxes and proudly proclaim we're leading the charge against this moral assault on our dearly departed, dead citizenry.

Except of course, grave robbing is already illegal.

It's time to step back here.

Such a stupid, likely isolated crimi-

nal scheme simply must not be allowed to create an entire squadron of cemetery functionaries - wandering with global positioning units to track the mostly peaceful, mostly quiet, grave sites of hundreds of thousands of Illinoisans.

Indeed, it's this kind of misguided thinking that has led Illinois state government into the bloated, fetid bureaucracy it has become.

"No one regulates, licenses or oversees the operations of a cemetery, how bodies are buried, what type of people are allowed to handle bodies," Hynes told the Chicago Sun-Times.

And that is true.

And that is because we do not cede our bodies to Cook County or the State of Illinois when our last breath is drawn.

Be it a church or a private corporation, most of us deposit our bones on private land - with no expectation that some sort of taxpayer guarantee is backing our eternal rest.

It's a hard thing to face for a politician: Sometimes they can't fix our problems. Sometimes they just need to stick their noses back where they belong.

Yes, officials have a role here - to prosecute wrongdoers.

Act immediately and decisively on tips of future or past cemetery crimes.

Set a clear example that illegal acts will be punished.

And last but not least - let the rest of the dead rest in peace.

(<http://www.southtownstar.com/news/opinion/editorials/1668259.071609editcemetery.article>)

Cemeteries Field Worried Calls

Families Across Midwest Make Sure Body-Dumping Scandal Is an Isolated Incident

July 18, 2009

By DOUGLAS BELKIN and
CARRIE PORTER

Cemetery directors across the Midwest have been bombarded with anxious callers worried that a ghoulish scandal in a suburban Chicago burial ground isn't an isolated incident.

Authorities recently arrested four employees at Burr Oak Cemetery, alleging they dug up and dumped as many as 300 corpses to resell the used burial plots. The gruesome details have unnerved families as far away as Milwaukee and Kansas City, who have then flooded cemetery directors with concerns. So far, no other deception has turned up.

"We've been inundated with visitors trying to find loved ones that are buried here," said Vickey Hand, president of Washington Memory Gardens outside Chicago. "People are walking in here, one after the other, who haven't been here in 40 or 50 years, with this look of apprehension on their face."

Cook County Sheriff Tom Dart learned of the alleged grave-reselling scheme about two months ago, when his office was contacted by Perpetua Inc., the Arizona-based owner of Burr Oak, saying that the company was concerned about financial irregularities there.

Sheriff Dart said that when detectives initially went to the cemetery, they discovered a pile of bones from more than 100 bodies decomposing above ground in a fenced, overgrown area. He said

the corpses were dug up so that their plots could be reused. He estimates the scheme generated about \$250,000.

Burr Oak, founded nearly a century ago, was one of the first predominantly African-American cemeteries in the Chicago area. Among the historic figures buried there are civil-rights icon Emmett Till, blues legend Dinah Washington and heavyweight boxing champion Ezzard Charles.

On Friday, sheriff's deputies continued to scour four sections of the cemetery, which holds about 100,000 graves. They are searching for additional remains and trying to match discarded headstones to burial plots. Disintegrating and incomplete interment records and maps have slowed the process.

Since news about the cemetery broke, Sheriff Dart said he has been flooded with more than 55,000 requests from families looking for information about loved ones buried there. He said he isn't optimistic all the human remains will be identified.

"That will be very, very difficult," Sheriff Dart said Friday. He compared the process to identifying victims of a plane crash, but without the passenger manifest. "We don't even know who the universe of people is."

Illinois lawmakers this week considered additional regulation to require the exact location of interments on death certificates. But the legislative session expired before any action was taken.

Elsewhere in the Midwest, a De-

troit Memory Gardens employee said there has been a small influx of people who have come by to inspect their family plots. In St. Louis, Richard Lay of the Bellefontaine Cemetery said he has "heard a couple of comments that were joking in an offhand way, and I took it offensively," he said. "There are a lot of upset families, and I take it very seriously."

Harvey Lapin, general counsel of the Illinois Cemetery and Funeral Home Association, said cemetery owners around the state have been peppered with calls from different parts of the country asking, "You're not doing anything like this, are you?"

Linzy Kelly, an amateur genealogist in Houston with relatives buried in Burr Oak, said he has been concerned that something like this might happen for some time.

"There's just a panic out there that this isn't the only place this was happening," said Mr. Kelly, who has unsuccessfully tried to track down the graves of several family members who died in the 1940s and were buried in Illinois. "I've been to cemeteries where entire sections aren't there. It makes you suspicious."

Paula Everett, president of Mount Greenwood Cemetery, which isn't far from Burr Oak, said she has received about 150 calls and visits from anxious relatives since the news broke on July 8. "I can understand why people are nervous," she said. "I tell them to come down, we have every record back to day one in 1879."

Biography of Harvey I. Lapin

Harvey I. Lapin is a principal in the Northbrook, Illinois law firm of Harvey I. Lapin, P. C. He specializes in the areas of funeral, cemetery, cremation, tax and corporate law. He is a member of the Illinois, Wisconsin and Florida Bars, and is a Certified Public Accountant. He was born and raised in St. Louis, Missouri. He graduated from Northwestern University in 1960 with a Bachelor of Science degree, with a major in accounting. He graduated from Northwestern Law School in 1963.

He was employed at the Office of Chief Counsel of the Internal Revenue Service in Washington, D. C. from 1963 through 1968. He worked in the National Office of Chief Counsel of the IRS for three (3) years and thereafter served as a trial attorney in the Washington D.C. Office of the District Counsel. He worked extensively in the tax-exempt cemetery area and also received a Masters in Tax Law degree from Georgetown Law Center in 1967 while working for the Internal Revenue Service. Thereafter he was employed by and became a partner in a law firm in Chicago, Illinois, and subsequently established his own firm. He conducted his own practice until January 1, 1992 when he joined a 65-lawyer firm located in Chicago, Illinois. In October of 1993, that firm dissolved, and he re-established his own firm in Northbrook, Illinois.

He was a founding member of the Cemetery Advisory Board to the Comptroller of the State of Illinois and served on that Board for over 20 years. He is general or special counsel to numerous for-profit and not-for-profit cemetery corporations and profit funeral corporations throughout the country. He is General Counsel to the Illinois Cemetery and Funeral Home Association and several other state trade associations in the cemetery and funeral home industry. He was General Counsel to the Cremation Association of North America for over 30 years and has been Special Counsel to the International Cemetery, Cremation, and Funeral Association. He is a nationally recognized expert in the areas of Cemetery, Cremation and Funeral Law and during his legal career has been the primary draftsman or involved in drafting industry related legislation

in over 40 states. He has also been involved in the drafting of federal tax legislation and FTC Funeral Rule regulations in connection with industry related matters. He was a consultant on cemetery, funeral and cremation legal areas for Ann Landers and has provided the same assistance to the authors of the "Dear Abby" and "Ask Amy" columns. He has represented clients in over two hundred and fifty transactions involving the purchase and sale of funeral homes, crematories and cemeteries, both profit and tax exempt.

He has been a member of the faculty of the John Marshall Law School in Chicago since 1969 and is presently teaching the subject of Tax Exempt Organizations in the Masters in Taxation Program. He was involved in the establishment of the Lawyer's Assistant Program at Roosevelt University in Chicago and served as the Chairman and member of the Advisory Board for that program. He is the First Chairman and now serves as a member of the Tax Exempt Subcommittee of the Section of Taxation of the Chicago Bar Association and presently is a member of the Tax Exempt Organization Committee of the Section of Taxation of the American Bar Association. He is a member of the TE/GE Council advisory group to the Great Lakes Region of the Internal Revenue Service.

He has been a lecturer for the Practicing Law Institute and chaired a seminar on the subject of tax-exempt organizations for them. He has been a speaker on various topics of interest to members of National, State and Local Funeral, Cemetery and Cremation Associations on numerous occasions during his legal career. He has written numerous articles on the subject of taxation, cemetery and funeral law for National, State and Local Death Care Industry Associations and is presently the primary contributor to the "Cemetery and Funeral Business and Legal Guide" published by CB Legal Publishing Corporation in Northbrook, Illinois since 1972. He has been selected to be included in Who's Who in American Law, 1st through current editions, Who's Who in the Midwest, Who's Who in America, and Who's Who in the World.

Mr. RUSH. Thank you, Mr. Lapin.

The Chair now recognizes Mr. Leak for five minutes, for an opening statement.

**STATEMENT OF SPENCER LEAK, JR., LEAK AND SONS
FUNERAL HOME**

Mr. LEAK. Thank you, Mr. Chairman.

First of all, my heart goes out to all of the families affected by the Burr Oak situation. Again, to Congressman Rush, to your distinguished panel, Mr. Cohen from Tennessee, I'm a cousin to Harold Ford, Jr. I know you know his family very well.

As an African American funeral director, I'm appalled at the crimes that have taken place at the historical Burr Oak Cemetery. In addition to the number of people that meant so much to so many, such as Emmett Till, Dinah Washington, and members of the Negro League Baseball Team, my grandparents and great-grandparents are buried there, as well.

How this happened, we hope to find out soon, as the investigation continues. Why this happened, we may never know. But, more importantly, could this have been prevented? My answer is yes.

As a licensed funeral director and embalmer, I have gone to and graduated from Mortuary Science School, passed the national board examination, participated in a summer's internship, as well as a year of apprenticeship. I have now been practicing for almost 20 years; however, those who work at cemeteries in Illinois and maybe even across the country are required to have no formal educational training in the funeral service field at all.

When someone makes their transition, a licensed funeral director has to remove them from their place of death. If my firm does otherwise, I can be fined and disciplined. When one sits down to make funeral arrangements, they must be licensed, or I can be fined and disciplined. If I don't give the family an itemized price list, as required by the FTC, I can be fined and disciplined. When a deceased is to be embalmed, one must be embalmed by a licensed embalmer, or my firm can be fined and disciplined. Finally, when a loved one is driven to the cemetery, the deceased must be taken by a licensed funeral director. If this does not happen, the funeral home can be fined and disciplined.

So, why does the cemetery, then, have no regulated responsibility? Funeral homes across the country are highly regulated. Cemeteries should be, as well. Had Burr Oak been under some type of regulatory responsibility, then I feel this tragedy would never have taken place.

Thank you.

[The statement of Mr. Spencer Leak, Jr. follows:]

Testimony of Spencer Leak, Jr.

As an African American funeral director I am appalled of the crimes that have taken place at the historical Burr Oak Cemetery. In addition to the number of people that meant so much to so many, such as Emit Till, Diana Washington and members of the the Negro League Baseball Team, my grandparents and great grandparents are buried there as well.

How this happened, we hope to find out soon as the investigation continues. Why this happened, we may never know. But more importantly, could this have been prevented? My answer is yes.

As a licensed funeral director and embalmer, I have gone to and graduated from Mortuary Science School. Passed a national board examination, participated in a summer internship as well as a year of apprenticeship. I have now been practicing for almost 20 years. However those who work at cemeteries in Illinois and maybe even across the country are required to have no formal educational training in the funeral service field at all.

When someone makes their transition, a licensed funeral director has to remove them from their place of death. If my firm does otherwise, I can be fined and disciplined. When one sits down to make funeral arrangements they must be licensed, or I can be fined and disciplined. If I don't give the family an itemized price list as required by the F T C, I can be fined and disciplined. When a deceased is to be embalmed, one must be embalmed by a licensed embalmer or my firm can be fined and disciplined. Finally, when a loved one is driven to the cemetery, the deceased must be taken by a licensed funeral director. If this does not happen the funeral home can be fined and disciplined. So why does the cemetery then have no regulated responsibility.

Funeral homes across the country are highly regulated. Cemeteries should be as well. Had Burr Oak been under some type of regulatory responsibility, then I feel this tragedy would never had taken place.

Spencer Leak, Jr.
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Mr. RUSH. We thank all the witnesses for their opening statement. The Chair recognizes himself for two minutes, for the purposes of questioning the witnesses.

Mr. Slocum, your testimony provides a vivid description of many abuses that have taken place at cemeteries across the country, and you make it crystal clear that the incident at Burr Oak, while particularly horrendous, may not be an isolated event. And if we are to start reforming our laws to curb some of the abuses and injuries we've witnessed at Burr Oak and elsewhere, where do you think we should start?

And let me ask you if you would direct your remarks, beginning with the issue that was raised by the previous panel, in that there are different contractual arrangements for different lengths of time. Most of the consumers think and operate on the—either their illusion or this is the fact—that, when they purchase a plot, then that plot is theirs for—

Mr. SLOCUM. Correct.

Mr. RUSH [continuing]. For eternity. Can you address that concern, with the different types of contracts that are now in practice by cemetery associations?

Mr. SLOCUM. Yes, sir. Before I was informed by a reporter that there were these term contracts, or it was—there were alleged to be these term contracts, where the grave would be, in a sense, rented for a period of time, I had not heard of that in the United States. That practice is not uncommon in many European countries—the Netherlands, Greece—but this is known. It's part of the culture. People can decide whether or not they wish to rent a grave for a certain amount of time or have it in perpetuity. I had not heard that here, so that was a surprise to me. I can tell you that I have never—and I've spoken to thousands and thousands of consumer families—I have never talked to one who would make anything other than the assumption that that grave was a permanent resting place. No one.

Mr. Chairman, you asked me where would I start in terms of regulation. I think reasonable people can disagree about the details, or hash them out, but I think some broad, general guidelines that would be reasonable would be: Number one, starting at the bottom and bringing cemeteries up to the same minimal standards of disclosure and written disclosures to consumers, written disclosures about prices, about their rights to pick and choose goods and services, and what those mean, like Mr. Leak said. He's absolutely right; funeral directors have to abide by these things, and, yet, regulatorily, we look at cemeteries as if they are something else entirely.

The consumer sees the death-care transaction as all of a piece; the cemetery, the funeral home, the crematory, the third-party casket seller.

Secondly, state regulation of funeral homes is better than that of cemeteries, but it is not so great, either. One of the major problems for regulation of death care is the absolute dominance by industry insiders. States where there are funeral or cemetery boards that adjudicate consumer complaints and set rules, they are stacked to the gills with industry. North Carolina, for example, Mr. Butterfield, I believe that there are eight or nine seats on the fu-

neral board in North Carolina, and, by statute, two of the largest funeral trade associations, the lobbying groups, can appoint a total, I believe, of six of those, and the governor has to choose from those appointees.

This sort of insider dealing is not serving families, and that's not the only—I don't mean to single out North Carolina, and, certainly, you, sir, are not personally responsible for that.

Mr. BUTTERFIELD. I appreciate that.

Mr. SLOCUM. But we see this all over the place. In fact, in Georgia, where the Tri-State Crematory disaster happened in 2002, Georgia's response to this—to a consumer advocate's perspective was nonsensical. What they said was, "OK. We'll say that crematories now have to deal only with funeral homes, and we will achieve oversight, because funeral directors themselves are regulated." There's nothing to say that crematories who serve the public or cemeteries that serve the public can't do so and be licensed and regulated on their own terms.

And, in fact, political dealing has stopped cemetery regulation from really getting to the place where consumers can use it. Much of the oversight of cemeteries in Georgia used to happen in the Secretary of State's Office, but political maneuvering put a bill through in 2006 which took a lot of that away from the Secretary of State and gave the regulation of these cemeteries to a newly created cemetery board dominated by cemetery owners. And, in fact, some of the things that funeral homes could be fined by the FTC for doing—bundling goods, saying, "I won't give you a funeral service unless you buy my casket in-house—states like Georgia say it's absolutely fine for cemeteries; they can charge consumers \$125 penalty for buying a less expensive monument to save money on a loved ones' funeral from outside the cemetery.

So we need some national standards, we need at least disclosures, and we need some guidelines for the states that would give them minimums on what to look for in recordkeeping and auditing, both financially and in terms of the location of graves. And it would be awfully nice if the federal government would address the problem of regulatory capture so that consumers had someplace to go to complain that wasn't a panel of business owners representing the industry they have a complaint against.

Thank you.

Mr. RUSH. The Chair now recognizes the gentle lady from Illinois, Ms. Schakowsky, for two minutes of questioning.

Ms. SCHAKOWSKY. Mr. Lapin, is your association that you—is the association you represent the same as the one referred to in Mr. Slocum's testimony, the Illinois Funeral Directors Association?

Mr. LAPIN. No.

Ms. SCHAKOWSKY. No. That's a different—

Mr. LAPIN. This is a separate association, and we represent a different group of individuals, and we have nothing to do with the IFDA problem.

Ms. SCHAKOWSKY. OK. And are you suggesting, though, that there is no more need for regulation because the industry is sufficiently regulated? The cemeteries are sufficiently regulated?

Mr. LAPIN. I am not suggesting that. I am indicating that there is a problem of regulation. Our Association represents a very broad

spectrum. The Comptroller indicated that a proposed law was introduced into the senate of Illinois, and it got held up. It was not held up by our association; it was held up by a very large religious cemetery in the City of Chicago, because they had not had an opportunity to review it.

So, this is part of the problem that you're going to be dealing with, is you have a lot of varied interest. And I was at a hearing for the Federal Trade Commission where the Arch Dioceses cemeteries came in and basically said, "You have no right to regulate us." And that was their position, and it is basically a separation of church and state that they're taking that position. So this is the problem.

We actually worked on the bill that the Comptroller's Office put in.

Ms. SCHAKOWSKY. OK.

Mr. LAPIN. We got it late one night, and we went over it, we made some technical changes, and we were ready and willing to support it the next day in the senate.

Ms. SCHAKOWSKY. Thank you.

Mr. Harwood, first of all, let me say that, you know, you began by congratulating the prompt response, and I would say, in this particular instance, I would agree with that. But what we're hearing is that this has been a lingering problem, and that it needs to be addressed.

You had mentioned, as one of the possible ways, rule-making, but you stated that it is a very cumbersome process, and we keep running into that; this Committee—this Subcommittee does. And I wondered if you would comment on the burdens of the Magnuson-Moss Rule, in terms of, I mean, consumers might think, "Well, why doesn't the FTC just deal with it?" Can you describe the difficulty?

Mr. HARWOOD. Thank you, Representative Schakowsky.

The rule-making process the FTC currently operates under requires us to go through multiple steps before we can write a new rule or amend a rule. Last time we amended the Funeral Rule, for instance, it took us about four years to do it. Presumably, we are talking about something along that line again if we attempted to do it again. It's simply not what most people think of as a quick process; it requires hearings, testimony, input from people. It also requires us to conclude that there is a widespread problem, and it's a prevalent problem facing us.

Ms. SCHAKOWSKY. Thank you.

Mr. Leak, we had a conversation before the hearing, where you were saying that, while you have no control, at all, over any cemetery, that you are now being swamped by calls of recordkeeping that's not within your hands. So, would you recommend that—how—what is your answer to that problem that you face?

Mr. LEAK. Thank you. When Reverend Jackson was here earlier, he mentioned about death certificates having the plot numbers and grave numbers on them. That was my idea that I gave to him and to the Board—to the panel that the Governor has set up.

In Illinois, the death certificates have now gone electronic. The doctor has to go online and take care of certain items. We, as the funeral home, have to go online and file the death certificate. If, maybe within two weeks or so after the burial of a loved one, the

cemetery would be required by law to go online and amend that death certificate with the plot number, with the grave number, with the section number on the death certificate, then, had this been happening already, this problem wouldn't have come around.

Ms. SCHAKOWSKY. What do you think, Mr. Slocum? Or, is there another way to handle the issue of information and disclosure of where the plot is.

Mr. SLOCUM. Well, I'd have to think about it. I know that, in many states, the death certificates have required—there's a—I don't know what—you know Illinois' better. It says "Place of final disposition."

Mr. LEAK. Only the cemetery—

Mr. SLOCUM. It should—it says, "Only cemetery."

Mr. LEAK. Right.

Mr. SLOCUM. I would wonder, technically, how feasible that would be, because what I've seen is—

Ms. SCHAKOWSKY. Well, let me ask you this then: How would one assure that people could find out that information?

Mr. SLOCUM. Well, I think the recordkeeping needs to start with the cemetery, and it needs to go with the state, as well. I think there need to be requirements that are verified by random audits and inspections by the state that the property has been surveyed, the grids are proper, the numbering system is consistent, that the number that is—perhaps, a number could be assigned to a death certificate, or it could be, in some way, correlated so that when somebody has a bill of sale for a grave that says, "Grandma is in E-1234," that there is a record back in the cemetery office, possibly, that is also kept with the state regulatory office, where that can at least be cross-checked.

Ms. SCHAKOWSKY. So, in any case, you feel that the state or some regulatory agency should also have that number, so that we're not just relying on the—

Mr. SLOCUM. Oh, absolutely.

Ms. SCHAKOWSKY [continuing]. Cemetery. OK.

Mr. SLOCUM. The recordkeeping in cemeteries, even those with good intentions, is in absolute shambles. We're talking about paper filing cards, you know, from years and years ago that people may not even know exist in some cases.

Ms. SCHAKOWSKY. I read, in some of the materials provided, that Burr Oak had nothing, at all—zero—for the year 2005, for example.

Mr. Hynes, so what's the prognosis on legislation in Illinois?

Mr. HYNES. Well, Representative, if I may just add to the previous comments about recordkeeping, our legislation would have many layers of disclosure required; the cemetery would be required to keep accurate books and records of burial locations. They would be required to give a copy of that to the consumer. The funeral director would be required to put the exact location of the burial plot on the death certificate. It would be filed with the county clerk's office. And then, ultimately, the burial plot would be also filed with the recorder of deed's office.

So there would be, you know, multiple levels of public record-keeping, which I think is important.

Ms. SCHAKOWSKY. Are you finding the opposition that—of the kind that Mr. Slocum described?

Mr. HYNES. Yes. I mean, throughout my ten years in office, we have met with great resistance on many of our reform proposals by the industry. And I also would probably add that there—part of it is the fact there's just—you know, they're strong institutions, very locally based, where every legislative district has many cemeteries, many funeral homes, and the owners of those are, you know, very well connected in a lot of ways.

And then, there's also a significant representation in the general assembly itself of people in the industry, and they're very widely working behind the scenes in resisting our legislation.

Ms. SCHAKOWSKY. Just to know, the media might be interested in a picture of some of the files that were taken at Burr Oak, which are all moldy—we can show them to you after—that are all moldy and clearly unusable, really.

Thank you all. Mr. Lapin.

Mr. LAPIN. I'd like to clarify the record here, because you're showing a file of a cemetery that is not necessarily the norm. Many of the private-operated cemeteries have computer records, they have backups in another location of their computer records, and they have all the information that can be provided.

Where the problem, as I'm indicating, is there are different types, and you have small, rural cemeteries that really have volunteer people on their staff or don't even have a staff, and if we propose a requirement on these small, rural cemeteries, many of them will now go to the municipalities and say, "Here are the keys. We can't handle this anymore." So, that is the problem. The modern, for-profit cemeteries are maintaining these records.

I'd also like to say something; in Illinois, the burial right is an easement. The Supreme Court of Illinois determined, in 1919 that it is an easement in real estate; it is not a fee title to the property. The reason it isn't is that the cemetery has to come in and take care of the property per whatever contract it enters into with the consumers for the care, and if it was a fee simple, they'd have to enter into a separate agreement with each consumer. They have the overall responsibility for the—taking care of the cemetery to the extent that they agree to do it.

Mr. RUSH. The Chair thanks you.

Ms. SCHAKOWSKY. My time has expired.

Mr. RUSH. Your time has expired.

The Chair now recognizes the gentleman from North Carolina, Mr. Butterfield, for two minutes.

Mr. BUTTERFIELD. Thank you very much, Mr. Chairman.

Some of my friends who are funeral directors and morticians are telling me that cemeteries are getting into the funeral business; that, as a condition of the sale of a plot of land, that they're requiring consumers to purchase their products, meaning that they're required to purchase their headstones and the markers directly from the cemetery. And even some are requiring that the caskets be purchased from the cemetery. Tell me about that, Mr. Leak, if you're aware of it.

Mr. LEAK. Yes, that is happening here in Illinois and across the country.

Mr. BUTTERFIELD. Tell me quickly. We only have a two-minute lead, you know.

Mr. LEAK. We——

Mr. BUTTERFIELD. Yes.

Mr. LEAK. We find, every day, that, when a family comes to us and we begin to hand them the price list for the caskets and other items, that they tell us they've already purchased the casket. It will be here on such-and-such a day. The headstone is done. The gravist had already been paid for. The only thing that they want from us is our professional service.

Mr. BUTTERFIELD. But are cemeteries selling these products.

Mr. LEAK. Cemeteries, yes, are selling caskets here in Illinois. I don't know about across the country, but——

Mr. BUTTERFIELD. Cemeteries that are not morticians, that are not licensed as morticians.

Mr. LEAK. That is correct, but I understand these cemetery—the owners also own funeral homes, as well.

Mr. BUTTERFIELD. I see. Mr. Slocum, you want to illuminate on that.

Mr. SLOCUM. Yes. I think the problem here is tying and bundling. First of all, no one should be alarmed that somebody other than a mortician is selling a casket. You don't need a license to sell—basically, to sell a casket.

Mr. BUTTERFIELD. Should you have a license to sell a casket?

Mr. SLOCUM. Pardon? A license? No, sir. I don't believe you should have a license to sell a casket. I think, if you're going to be a seller of funeral goods and services, that you need to be subject to the same disclosure rules that the FTC rule already has for morticians. But, no.

Mr. BUTTERFIELD. Let me get a rebuttal from Mr. Leak.

Mr. LEAK. Well, I disagree. I'm thinking that especially outside casket companies should—well, there should be a licensed funeral director that works for the casket company for this one reason—just an example—a family orders a casket from a casket company before coming to us. The casket is sent to the funeral home. The person will not fit inside of the casket. Had there been a licensed funeral director at the outside casket company, that licensed funeral director would have counseled the family directly at letting them know or asking the question, "Do you"——

Mr. BUTTERFIELD. It seems——

Mr. LEAK. "Do you think"——

Mr. BUTTERFIELD. It seems——

Mr. LEAK [continuing]. "Your loved one will fit in this casket?"

Mr. BUTTERFIELD [continuing]. When you purchase a casket, that's a very sensitive and delicate time in the life of a family, and you need a professional——

Mr. LEAK. Yes.

Mr. BUTTERFIELD [continuing]. Someone who's taken an oath, who understands what it's all about.

Let me turn your attention—and I only have one minute left—to the terms of the contract, when a consumer purchases a plot of land. Are there price disclosures? Does the cemetery say, "This is Section B, and the plots in this section are \$1200?" Is there a price disclosure, Mr. Leak?

Mr. LEAK. See, that's another problem here in Illinois. Had families been required to actually go out to the cemetery, talk to the cemetery personnel about what they're purchasing, Burr Oak wouldn't have taken place, as well.

Families come to us and they expect us, the funeral home—funeral director, to order the cas—or, I'm sorry, order the grave over the phone. Now, had the family been required to go out to the cemetery, show them the actual grave location that they're going to purchase, had been given an itemized price list of how much the opening and closing is, how much the concrete liner is, if they were purchasing a so-called select single, what that's all about—we, as funeral homes, are now answering, as we are today, cemetery questions.

Mr. BUTTERFIELD. But you have to disclose your prices.

Mr. LEAK. Yes, sir.

Mr. BUTTERFIELD. Cemeteries do not have to disclose their prices.

Mr. LEAK. No, sir.

Mr. BUTTERFIELD. All right. That's a problem. All right.

All right. Are your clients given deeds to the property here in Chicago?

Mr. LEAK. If they purchase a deeded grave at a certain cemetery, they're given a deed.

Mr. BUTTERFIELD. And what is expressed in that deed, and what is implied in that deed? Is it perpetual care.

Mr. LEAK. Well, from what I understand, in some cemeteries, you have sections that have perpetual care. In those same cemeteries, you may have a section that doesn't have perpetual care.

Mr. BUTTERFIELD. Is that included in the contract?

Mr. LEAK. That, I don't know, because I don't see the contracts.

Mr. BUTTERFIELD. All right, Mr. Lapin. You're responding. Is that in the contract.

Mr. LAPIN. Yes. It's required by the Cemetery Care Act that, if you're providing care, you have to give the consumer a certificate indicative of the care that you're providing on that space. If you're not providing care, then there would be no requirement. Most cemeteries would indicate that these spaces are being sold without care; however, this would be a section of the cemetery. You can't say one space and say, "That one's got care. This one doesn't."

Mr. BUTTERFIELD. Finally, Mr. Lapin, are any of the cemeteries, that you're aware of, requiring the consumer to use their products, especially headstones?

Mr. LAPIN. That would be an illegal tie-in under the State of Illinois Antitrust laws and the federal antitrust laws, and the Funeral Rule prohibits tie-ins, also, so—

Mr. BUTTERFIELD. Without penalty to the consumer.

Mr. LAPIN. No, you cannot tie in products and services, and that is why we have some independent sellers. And I agree with Mr. Slocum; you may not be aware, but Castro is a seller of caskets—

Mr. BUTTERFIELD. Yes.

Mr. LAPIN [continuing]. In the states that it legally can. So, yes.

Mr. BUTTERFIELD. I think my time is in the red. Thank you.

I yield back.

Mr. RUSH. The Chair thanks the gentleman.

The gentleman from the 7th Congressional District, Congressman Davis, five minutes—two minutes, rather.

Mr. DAVIS. Thank you very much, Mr. Chairman.

Let me, first of all, commend you, Mr. Leak. I had the occasion yesterday, as a matter of fact, to visit the 79th Street and Congress Road Chapel of Leak and Sons, and I saw this long line of records that were out in the open so that individuals who wanted to try and see if they could find them, could come in, have access to them without any fanfare or difficulty, and I was very pleased to see that, and I commend your family for doing that.

The one question that I have is to you, Comptroller Hynes, since you deal with distributing money. I must confess that I did some research relative to federal statutes, and it seems to me that—and I also went to the Justice Department, as well as the Congressional Research Service, and kind of looked into the issue. And it seems like they both imply that it's pretty difficult to get additional federal regulations. I mean, they both sort of implied that.

They implied, also, that there are also some federal activities that already exists if one carries it through to its conclusion, you know, with the U.S. Attorney. And all of this becomes kind of complex, in a sense. If we talk about additional regulations, are we going to end up talking about additional costs that the consumer ends up having to pay, or does it become so cost effective in relationship to government? In, you know, practically every state that I know, and every county that I know, every local government that I know is crying about its budget and whether or not it can pay for anything beyond what it's currently paying for.

So, how would you see that as—you know, in terms of the impact on the consumer?

Mr. HYNES. Well, I think that the proposals we put forward at the state level could be implemented with minimal cost additions, both in terms of, you know, costs incurred by state regulatory authorities, as well as, I believe, cemeteries themselves. So, for example, in terms of the burial record and maintaining good public records, we spoke with the Recorder of Deeds office, and they felt that it would be pretty simple to expand their systems to incorporate the recording of cemetery plots and individual burial plots, as well. There may be some marginal costs in terms of implementing that, but they felt pretty comfortably they could do it.

The Department of Professional Regulation would probably see some costs in terms of having to take over or sort of regulating the cemetery industry, but, you know, I'm confident that they would be able to do that within their existing budget.

The cemeteries themselves will always say that they're going to be—this is going to drive up costs. When we proposed, years ago, a maintenance standard for cemeteries, where, you know, people could be—could expect the lawn be mowed and there to be no flooding and the roads be paved, we were told by cemeteries that this would just drive costs through the roof, and I just don't think that makes any sense. I mean, I think that there's just some expectation already on the consumer's part that these things would be done.

And we also exempt—you know, Mr. Lapin mentioned about these small, community, ma-and-pa cemeteries. We exempted our

legislation to any cemetery that has 25 or fewer burials per year so that they wouldn't be overwhelmed with these types of costs.

So, I think the cost would be very minimal.

Mr. DAVIS. Thank you very much, Mr. Chairman. This has been very informative. I certainly, again, want to thank you for holding this hearing.

Mr. RUSH. OK. The Chair would like to inform the members that we—and the witnesses, that we will have one additional question per each member. So, any additional—we're approx—we are gonna adjourn at 12:15, so we're ahead of schedule. So we got one more additional question, and the Chair recognizes himself for one more question.

In this area of separation within the cemetery industry between for-profit cemeteries and not-for-profit cemeteries, how significant is that problem, in terms of additional federal regulation, and how would you suggest that we overcome that particular problem?

Mr. HARWOOD. Mr. Chairman.

Mr. RUSH. Mr. Harwood.

Mr. HARWOOD [continuing]. With respect to the—yes. Thank you.

Mr. RUSH. Go ahead.

Mr. HARWOOD. The—under the FTC Act, there's a provision that precludes us from regulating not-for-profit entities; Section four of the FTC Act. We looked at this issue in connection with expanding the Funeral Rule to cemeteries and found that a substantial number of cemeteries are, in fact, not-for-profit entities.

Thus, for us to extend the Funeral Rule, it would be difficult to reach those under that—as, currently, no law for them exists, it would be difficult to reach those.

As to how you get around that problem, you know, ideally, the easiest answer I can see is simply to change the law, but there may be other solutions.

Mr. RUSH. OK. Comptroller Hynes, do you see that, and how would you advise us to move beyond the separation between not-for-profit and for-profit.

Mr. HYNES. Well, I think that, certainly, there are historic obstacles or just presumptions that carve out exemptions for religious and fraternal cemeteries. But I think it's something that has to be contemplated going forward. You know, we try to start with a broad reach and work from there in the legislative process. You know, you will find, you know, that there are concerns raised by religious entities, and then, even in the case of small, family cemeteries I mentioned, we had to carve out the exemption because there are some very small cemeteries that just couldn't keep up with these types of costs.

So I would say that, you know, it's just something that we have to keep in mind, both at the state and federal level.

Mr. RUSH. Do any other witnesses want to chime in on that.

OK. The Chair recognizes the gentle lady from Illinois for one minute. One additional question, though.

Ms. SCHAKOWSKY. Yes. I just, actually, wanted to know, in the audience, are there other family members who had people at Burr Oak?

I just wondered. Looks like we have people here. Thank you. I overused my time, I think, before, so I will yield back. Thank you.

Mr. RUSH. All right. Mr. Butterfield.

Mr. BUTTERFIELD. Are there any other funeral directors in the audience.

All right. Thank you.

Mr. Leak, I'm intrigued with your suggestion that somehow the grave location can very easily be placed on the death certificate.

Mr. LEAK. Yes.

Mr. BUTTERFIELD. Would that present any unusual problem or challenge for funeral homes to include that data, if it's provided on the form?

Mr. LEAK. Not at all. With the new system, the way it is now, the doctors have a password to go into the Internet and file their information. We then have a password to go into the Internet and file the death certificate. The cemeteries could then have a password to go in and amend the final death certificate that we have already—

Mr. BUTTERFIELD. I think it's a wonderful idea. I'm going to encourage the legislature in my state to take up the idea. In fact, I just sent an e-mail to my state legislator, who happens to be my ex-wife, suggesting that she might want to consider offering that as a bill in the North Carolina House.

Mr. LEAK. You can make it the Spencer Leak, Jr. Funeral Rule.

Mr. BUTTERFIELD. All right. Thanks to all of you.

Mr. RUSH. Yes. The Chair thanks all the witnesses. You have greatly made an enormous contribution to the members of this Subcommittee. Again, I want to assure you that we will be proceeding under the permits, and there will be a federal standard, a federal legislature that will be introduced into the Congress in the near future, and we expect to pass it into law, we expect to see the President sign it. It will be something like the Bereaved Consumer Bill of Rights for the nation's bereaved citizens.

So, thank you so much, and we appreciate your testimony. Again, I want to tell the Committee, those who come from near and from afar, the Chair really appreciates your involvement, your time, and thank you again, and safe travels back to our nation's capital.

The Committee stands adjourned.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]



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Post-Hearing Comments by

International Cemetery, Cremation and Funeral Association

On the Matter of Burr Oak Cemetery and Related Issues

Before the Committee on Energy and Commerce

Subcommittee on Commerce, Trade and Consumer Protection

United States House of Representatives

Held on July 27, 2009 in Chicago, Illinois

August 17, 2009

Chairman Rush and Members of the Subcommittee:

We appreciate this opportunity to submit comments regarding your field hearing on cemetery oversight conducted in Chicago on July 27, 2009, which we respectfully request to be made part of the permanent hearing record. The International Cemetery, Cremation and Funeral Association (ICCFA) was founded in 1887 and represents approximately 7,200 industry members including nonprofit, for-profit, religious and municipal cemeteries, funeral homes, crematories, monument retailers, and related professions including architects, attorneys and accountants. The ICCFA is the only trade association representing all segments of the death care industry.

The members of the ICCFA are shocked and dismayed over the reports of illegal disinterments, mishandling of human remains, and the fraudulent reselling of burial spaces at the historic Burr Oak Cemetery in Alsip, IL, and we applaud your leadership for investigating the issues involved. To place the Burr Oak atrocity into perspective, references have been made to other cases of the desecration of graves elsewhere in the United States. However, we believe that the Burr Oak case is singular and unique among all cases of grave desecration. Previous cases of illegal disinterments involved third parties breaking into a cemetery and rifling graves either for purposes of vandalism or as a cult activity. Where cemetery personnel have been involved, burial spaces were opened in the belief that they were empty. The misconduct occurred when personnel discovered the previous burial or an encroachment on the burial space by an adjacent gravesite, and sought to "correct" the situation through unethical and illegal means. The Burr Oak allegations indicate that the accused deliberately opened graves they knew contained

human remains, removed the remains and discarded them in order to resell the spaces. We repeat that this heinous misconduct is unprecedented to the best of our knowledge.

It has been well-settled in American law that graves should not be disturbed absent exceptional circumstances. In other words, there is no “right” to disinter and the law favors “requiem in pacem” or rest in peace. Authorized disinterments occur for a number of reasons including a police investigation where the deceased is a suspected victim of foul play and an autopsy needs to be performed, or through government imminent domain action where, for example, a highway is to be widened and a cemetery encroaches on the right of way. The affected remains will be disinterred and buried elsewhere with due respect and notice to the families involved. The law also provides that cemeteries may perform authorized disinterments in order to correct a mistake, typically burial in the wrong grave. Of course, none of these circumstances were present in the Burr Oak case.

In the United States, there is no time limit on the ownership of burial spaces, regardless of whether the grave is ever used. Once a space has been sold, the cemetery cannot resell the space because the owner has not used it. Some states do allow cemeteries to reclaim unused burial spaces that appear to be abandoned by their owner after a period of several decades, usually 50 years. By “unused” burial spaces, we mean spaces that have never received the interment of human remains at any time. This is widely viewed as an excellent means of land conservation and can extend the “life” of many cemeteries that otherwise may run out of space. A legal process must be followed

by the cemetery that generally includes the notification of the owner by registered mail at the last known address, and publication in newspapers. Even after the burial space has been reclaimed by the cemetery, a legitimate claimant who subsequently appears will be given equivalent spaces in the cemetery.

Due to the fact that there are many types of cemetery entities – mainly nonprofit, but also for-profit, religious and municipal – operating standards will vary as well as whether a particular cemetery entity is subject to state cemetery laws and regulations. Typically, religious and municipal cemeteries are not covered under cemetery regulations but some may voluntarily comply, for example, in funding a maintenance care trust. It is in a cemetery's own best interest to preserve and update comprehensive records of burials and spaces sold. However, some cemeteries regard their mission as a charitable one and not a "business." Indeed, the burial of the dead is one of the corporal works of mercy. However, in characterizing their work as charitable, some of these cemeteries tend not to employ standard business principles in recordkeeping, accounting, and other areas. Also, it is questionable whether such cemeteries can be regulated by state or federal law to adopt sound business principles due to their nonprofit status.

The ICCFA has developed and published over twenty-eight Model Guidelines for State Law and Regulations, including guidelines on disinterments, recordkeeping, trust funds, prepaid contracts, written price disclosures, and many other aspects of cemetery and mortuary operation. All of our guidelines can be accessed on our website at

www.iccfa.com and several guidelines relevant to the Burr Oak investigation are attached here as a convenience to the Subcommittee.

The ICCFA believes that cemeteries and funeral homes are most efficiently and effectively regulated at the state level. These entities operate locally in their communities and therefore it makes sense to hold them accountable locally. During the Chicago hearing, we understand that one witness suggested that there may only be ten states with cemetery laws. That is not at all accurate. All fifty states have cemetery laws and regulations although some are more comprehensive than others. To assist the Subcommittee in its research, we are pleased to provide the following link to our website (<http://www.iccfa.com/files/StateLawsandRegulations2009.doc>) for a listing of all state cemetery and funeral home laws and regulations, which printed out, totals nearly 300 pages. There are also hyperlinks within the document to read the actual statutes and regulations. We have previously provided the Subcommittee staff with this data.

On the federal level, there is no law that specifically governs cemetery operations. However, cemeteries must comply with literally dozens of federal statutes and regulations that affect their operations from the Departments of Labor, Treasury, Justice, Veterans Affairs, the Environmental Protection Agency, the Equal Employment Opportunity Commission, the Federal Communications Commission, the Federal Trade Commission, even the Federal Reserve Board. (A listing of many of the agencies and their regulations is attached with hyperlinks). In particular, it is important to note that

Section 5 of the FTC Act gives the Commission regulatory authority over businesses engaging in unfair or deceptive practices, which includes cemeteries.

Chairman Rush stated that he wanted to explore whether federal minimum standards for the operation of cemeteries should be adopted. We respectfully suggest that federal regulations already address most aspects of cemetery operations including sales and marketing practices. Illinois state law in the Burr Oak investigation provides a case in point at the local level because the four individuals apprehended are facing multiple charges involving substantial criminal penalties if convicted including incarceration. We understand that civil lawsuits are also being filed to seek substantial monetary damages against the owners of Burr Oak. The issue confronting both the Government and the industry is how to prevent another Burr Oak atrocity from happening again. Given the innate lawlessness of the offenses, this quest is not unlike trying to stop a bank from being robbed. While grave desecrations are infrequent, and such misconduct committed by cemetery personnel is almost unheard of, we believe the best practical measure to reduce if not eliminate such incidents is by imposing substantial deterrents.

Federal law at 18 U.S.C. Sec. 1369 currently makes the willful injury or destruction or attempts to injure or destroy any veterans' memorial on public property, i.e., a national cemetery, a federal crime punishable by fine or imprisonment of not more than ten years, or both. The ICCFA recommends that this statute be amended to include veterans' memorials on private property, and all cemetery memorials and monuments whether commemorating veterans or non-veterans. Also, the ICCFA asks the

Subcommittee to give serious consideration to making unauthorized disinterments in any cemetery punishable as a federal crime. We believe that the most effective way of preventing this terrible misconduct is to impose substantial penalties on violators. Finally, the ICCFA looks forward to working with the Subcommittee and its staff to ensure that cemeteries will always be regarded as "Guardians of a Nation's Heritage." Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Fells", written in a cursive style.

Robert M. Fells
External Chief Operating Officer
and General Counsel

Attachments

- 1.) ICCFA Model Guideline: "Disinterment"
- 2.) ICCFA Model Guideline: "Record Keeping Requirements"
- 3.) ICCFA Model Guideline: "Identification of Human Remains in Conjunction with Final Disposition"
- 4.) ICCFA Model Guideline: "Prepaid Contracts"
- 5.) ICCFA Model Guideline: "Written Price Disclosures Prior to Purchasing"
- 6.) List of Federal Regulations Affecting Cemeteries and Funeral Homes

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Model Guidelines for State Laws and Regulations

These guidelines are advisory in nature and set out general concepts rather than precise statutory language. The ICCFA is not recommending that the guidelines be codified into law as a whole. Instead, the guidelines are intended for consideration as a series of options to be selectively chosen by interested parties to address particular concerns.

Disinterment

Developed in 1998 by the Government and Legal Affairs Task Force of the International Cemetery and Funeral Association

BACKGROUND

General policy of law does not favor disinterment, absent compelling reasons. However, a cemetery authority may occasionally receive a request for interred human remains to be disinterred and reinterred within the cemetery or removed from the cemetery. Before the cemetery authority proceeds to honor a disinterment request, it should be assured that all required parties have provided authorization or that disinterment has been ordered by the court.

Disinterment procedures should protect the wishes and intent of the decedent and the respective interests of interment right owners, the next of kin of the decedent, cemetery authorities, and the general public. A cemetery authority should establish procedures to protect the health and safety of those involved in the disinterment process.

PRINCIPLES

1. Human remains interred in a cemetery may be disinterred, reinterred, or removed from the cemetery with the permission of the cemetery authority and written consent from the interment right owner or successor-in-interest and the person(s) who are lawfully authorized to control the final disposition of the human remains, hereinafter referred to as the "authorizing agent."
2. The statutory order of priority to control final disposition should apply to disinterment. The individual(s) with the highest order or priority would serve as the authorizing agent(s) for the disinterment. If there is more than one individual in the same degree of kindred, then all adult parties having the same degree of kindred should consent to the disinterment.
3. The order of priority for an authorizing agent could be as follows:
 - a. The person who was designated by the decedent prior to death as the authorizing agent to control final disposition;
 - b. The surviving spouse;
 - c. The decedent's surviving children 18 years of age or older;
 - d. The decedent's surviving parents;
 - e. The decedent's surviving siblings 18 years of age or older.
4. Prior to performing a disinterment, a cemetery authority should have received authorization for final disposition of the disinterred human remains.
5. The person(s) requesting and authorizing a disinterment should assume financial responsibility for any fees charged by the cemetery authority for performing a disinterment and for any resulting repair or replacement of merchandise that is damaged during the process.
6. The cemetery authority should be held harmless against subsequent claims for decomposition of interred human remains or deterioration of the casket, outer burial container, or other merchandise. A lawful disinterment should not be considered desecration of the interment or of the human remains.
7. The cemetery authority should be held harmless when acting in good faith in connection with the authorized disinterment when relying upon the disclosures and instructions provided by the interment right owner and the authorizing agent.
8. Where a dispute exists among any of the interested parties, a cemetery authority should not be held liable for refusing to disinter the human remains until it receives a court order or other formal notification signed by each of the disputing parties that the dispute has been resolved or settled.

9. If consent to disinter cannot be obtained, the human remains may be disinterred by order of the court having jurisdiction where the cemetery is located.
10. Consent for disinterment should not be required under the following circumstances:
 - a. Disinterment and reinterment by the cemetery authority within the cemetery to correct an error;
 - b. Relocation of human remains from a temporary storage area to a place of permanent interment within the cemetery;
 - c. Repositioning of an outer burial container that encroaches an adjoining grave space.
11. Consent for each disinterment and reinterment should be obtained when raising and lowering human remains to accommodate multiple interments within a single interment space.
12. A cemetery authority, or person designated by the cemetery authority, should be responsible for performing any disinterment or reinterment in the cemetery it owns due to the cemetery authority's care and maintenance obligation.
13. Permanent records should be kept by the cemetery authority concerning any disinterment, reinterment, or removal from the cemetery.
14. If a cemetery authority needs to take action to correct any errors that might be made in making an interment, disinterment, or reinterment in an incorrect location, the cemetery authority should have the right to transfer the human remains to the correct location or to a similar location of comparable value, as might be selected by the cemetery authority. The cemetery authority should have no liability as a result of any error of this type, other than the obligation to correct it.
15. The cemetery authority should be allowed to adopt reasonable rules and regulations for procedures relating to disinterment and reinterment providing that such rules and regulations conform with relevant statutes.

Model Guidelines authorizing agent cemetery authority disinterment human remains [Login or register to post comments](#)

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Model Guidelines for State Laws and Regulations

These guidelines are advisory in nature and set out general concepts rather than precise statutory language. The ICCFA is not recommending that the guidelines be codified into law as a whole. Instead, the guidelines are intended for consideration as a series of options to be selectively chosen by interested parties to address particular concerns.

Record Keeping Requirements

Developed in 1998 by the Government and Legal Affairs Task Force of the International Cemetery and Funeral Association

BACKGROUND

The necessity to retain documentation relating to funeral and final disposition transactions will vary according to the type of facility, the nature of the transaction, and the type of information involved. For example, cemeteries open with the intent of lasting forever. Accordingly, permanent records should be retained for interment spaces and interments performed. Records of interment right ownership and final disposition should also be kept permanently, as should those records relating to the cremation process. However, records relating to at need funeral arrangements, prepaid contracts, or prepaid contract trust fund activities need only be retained for a limited time period following performance or termination.

This guideline is limited to record keeping considerations arising from funeral service and cemetery transactions specifically related to contracts and final disposition.

PRINCIPLES

1. Permanent records should be kept for:
 - a. Each interment space sold, including information such as the specific location, interment right ownership, and the endowment care trust fund contribution;
 - b. Instructions for final disposition of human remains;
 - c. Authorizations for cremations;
 - d. Each interment performed; and
 - e. Data on each memorial installed in the cemetery.
2. In the case of a transfer of interment rights between owners, information should be retained permanently pertaining to such transfer.
3. Copies of all prepaid contracts and a record of prepaid contract trust fund deposits and withdrawals should be retained for a specified time period following performance or termination of the prepaid contract.
4. At need contracts should be retained for a specified time period following performance.
5. Records may be kept on paper or in a machine-readable form including, but not limited to, computer disks, magnetic tape, microfilm, microfiche, or digital imaging.
6. The regulatory authority should have reasonable access to examine required records to determine compliance. Records should be maintained in a secure location, which may be separate from the selling location, provided that the regulatory authority is notified of such location.
7. Information that the regulatory authority receives from examinations including, but not limited to, financial, accounting, and transactional records, should be kept confidential, except as required in a legal proceeding.
8. The cemetery authority, crematory authority, direct disposer, funeral establishment, or similar business should be allowed to adopt reasonable rules and regulations for record content and retention, providing that such rules and regulations conform with relevant statutes.
9. The cemetery authority, crematory authority, direct disposer, funeral establishment, or similar business should not be held liable for relying upon erroneous information that has been provided to them by third parties.

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Model Guidelines for State Laws and Regulations

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Handling of Human Remains In Conjunction With Final Disposition

Developed in 1998 by the Government and Legal Affairs Task Force of the International Cemetery and Funeral Association

BACKGROUND

All aspects of the final disposition of human remains should be handled with dignity, observing standards of decency, and in accordance with applicable laws.

Final disposition can be in the form of burial, entombment, inurnment, burial at sea, scattering, dispersion into space, shipment, or delivery of cremated remains to a designated person. The steps included in the preparation process for final disposition include, but are not limited to, removal, autopsy, embalming, cleansing, dressing, viewing, visitation, ceremony, cremation, and the selection of merchandise, services, and interment rights. The care and preparation of human remains is a process where, due to issues of privacy, respect, and safety, access during certain procedures should be limited to authorized individuals, and on occasion, immediate family members of the deceased.

At all times, human remains should be treated with dignity. Intentional misconduct in handling the human remains should not be tolerated. Accordingly, penalties for such actions should be sufficiently severe to discourage the activity and punish those who engage in it.

PRINCIPLES

- 1.) Upon taking custody of the human remains, the entity in charge of the final disposition should verify that the container which encases the human remains bears identification of the deceased and is accompanied by the proper documentation.
- 2.) The cemetery authority, crematory authority, direct disposer, funeral establishment, or related businesses should be held harmless in connection with the authorized final disposition, when relying upon the identification and disclosures provided by the authorizing agent and acting in good faith upon the instructions of the authorizing agent.
- 3.) If there is a delay in the final disposition, human remains that have not been embalmed or cremated should be held in a refrigeration unit until such time as final disposition occurs.
- 4.) In the event that the cremated remains are unclaimed for a stated period of time, the crematory authority should send a letter by registered mail to the authorizing agent. If the cremated remains are unclaimed for a specified period of time after such written notification is mailed, the crematory authority should dispose of unclaimed cremated remains in any proper manner, and be held harmless for this action.
- 5.) The choice of the entity in charge of the final disposition should be left to the authorizing agent of the deceased. It should be considered unethical and illegal conduct to engage in Astoering@ practices, where the human remains are directed to a specific cemetery authority, crematory authority, direct disposer, funeral establishment, or related businesses for payment of a referral fee.
- 6.) Persons employed in the proximity of either the deceased or the next of kin should conduct themselves in a manner consistent with the solemnity of the occasion. Unlawful conduct should include physical contact with human remains for purposes unrelated to the preparation process and final disposition, mutilation, concealment of human remains that have been illegally disinterred, and the acquisition or sale of human remains or body parts. This would not apply to any act performed for a bona fide medical purpose or for any other lawful purpose.

See Also: [HANDLING OF HUMAN REMAINS IN CONJUNCTION WITH THE CREMATION PROCESS](#)

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Model Guidelines for State Laws and Regulations

These guidelines are advisory in nature and set out general concepts rather than precise statutory language. The ICCFA is not recommending that the guidelines be codified into law as a whole. Instead, the guidelines are intended for consideration as a series of options to be selectively chosen by interested parties to address particular concerns.

Prepaid Contracts

Developed by the Government and Legal Affairs Task Force of the International Cemetery and Funeral Association

The nature of contracting for cemetery and funeral merchandise and services on a preneed basis is different from most other consumer transactions because it involves paying for something today which isn't expected to be received for some period of time--perhaps decades. Therefore, it is important to have safeguards to protect the consumer's interests.

The transaction is further complicated by the fact that it is designed to be completed only when one of the parties, the purchaser or a third party beneficiary, has died. Consequently, the relatives or close friends of the deceased are the ones who will actually know whether the transaction was completed as specified in the prepaid contract. This combination of factors creates the potential for misunderstanding about what the deceased wanted or expected. The risk of misunderstanding can be substantially reduced by the use of clearly-worded, detailed prepaid contracts between sellers and purchasers.

Since the proliferation of preneed sales is a fairly recent development, there has been little statutory guidance about what provisions should be specifically included in the prepaid contract. Certain guidelines should augment general contract disclosures to better inform consumers of the nature of the prepaid contract transaction.

PRINCIPLES

1. Prepaid contracts should conform to all applicable state and federal statutes and regulations.
2. Prepaid contracts should be written in plain English, and clearly state the merchandise and services that purchasers are buying and their prices. Use of legal or industry-specific jargon should be avoided, to the extent possible.
3. Charges should be itemized. The itemization should be in greater detail than just a recitation of prices. It should include a complete description of the services to be rendered and an unambiguous description of the merchandise to be delivered.
4. When prices of merchandise or services to be delivered in the future are not guaranteed, or an additional payment may be required in the future, a statement to that effect should be included in the prepaid contract and initialed by the purchaser.
5. There should be an explanation of how the purchaser's funds will be protected to assure the seller's performance in compliance with the prevailing prepaid contract law.
6. The contract must clearly state what happens if merchandise is not available at delivery time and substitution is necessary. In the event of a manufacturer's discontinuation of a model, the description of the merchandise should be sufficiently complete for the authorizing agent to make a decision, based upon objective criteria, about the comparability of a needed substitution.
7. No substitution should be possible without the consent of the purchaser, or upon his or her death, the authorizing agent who lawfully controls the final disposition of the remains. However, the authorizing agent should not be allowed to initiate a material change which is inconsistent with the purchaser's wishes, for the purpose of obtaining a refund, based upon the statutory requirement to adhere to the directions of the deceased. In this regard, the prepaid contract could contain a provision, which is initiated by the purchaser, either prohibiting any changes, or alternatively, specifying what instructions could be modified and by whom.
8. The seller may enter into a written agreement with the purchaser of a prepaid contract providing for payment of a finance charge on any amount due to the seller. The prepaid contract should conform to all other applicable state and federal statutes and regulations governing

imposition of finance charges.

9. There should be a clear disclosure of any applicable law allowing for cancellation by the purchaser within the first few days of entering into a prepaid contract. The prepaid contract should clearly explain whether and under what terms the prepaid contract may be cancelled, after that initial cancellation period, if any.
10. Regulatory authorities should be encouraged to allow placement of all required disclosures together as an addendum to the prepaid contract, rather than requiring disclosures on the face of the prepaid contract. The following should be required when an addendum to the prepaid contract is allowed:
 - a) The seller should be required to obtain a signature of the purchaser on the addendum, in addition to prepaid contract;
 - b) The addendum should be in an easy-to-read format with pages the same size as the prepaid contract;
 - c) The type size should be no smaller than 10 points and the printing should be high contrast for easy readability;
 - d) Subheadings to identify groupings or types of disclosures should be provided for clarity.
11. The purchaser of a prepaid contract may irrevocably waive and renounce his or her right to cancel the prepaid contract. This is essential to purchasers trying to satisfy eligibility requirements for Medicaid and Supplemental Security Income benefits. The waiver and renunciation may be included as a provision of the prepaid contract or made as an addendum, providing that it is signed by the purchaser. The irrevocability of the prepaid contract should not affect the right of the purchaser to change the provider of the prepaid contract.
12. Copies of the prepaid contract and supplemental material, such as information on credit life insurance and transfer or exchange plans, should be provided to the purchaser at the time of the preneed sale.
13. Copies of the prepaid contract and at need documentation should be provided to the authorizing agent at the time of making at need arrangements to ensure that the merchandise and services match those specified in the prepaid contract. A list of items substituted should be a written part of the at need documentation.
14. Copies of all prepaid contracts and at need documentation should be retained by the seller for a specified period of time after performance.
15. Upon performance, or cancellation of a prepaid contract by mutual agreement between the seller and the purchaser, or upon unilateral cancellation by the seller by reason of default of the purchaser, or other valid cancellation by reason of transfer to another provider, or otherwise, the seller should submit sufficient documentation to the trustee to enable withdrawal of all funds contributed, and all earnings attributable to the prepaid contract.

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Model Guidelines for State Laws and Regulations

These guidelines are advisory in nature and set out general concepts rather than precise statutory language. The ICCFA is not recommending that the guidelines be codified into law as a whole. Instead, the guidelines are intended for consideration as a series of options to be selectively chosen by interested parties to address particular concerns.

Written Price Disclosures Prior To Purchasing

Developed in 1998 by the Government and Legal Affairs Task Force of the International Cemetery and Funeral Association

BACKGROUND

When consumers consider contracting for cemetery and funeral merchandise or services, whether on a preneed or an at-need basis, important information that may influence purchasing decisions should be available. Chief among this data are truthful and accurate prices given in written form prior to a purchasing decision being made.

Although the Federal Trade Commission (FTC) Funeral Rule mandates certain written price disclosures by funeral establishments, many related entities including cemetery and crematory authorities, and memorial and casket retailers are generally not covered. As a practical matter, many volunteer, municipal, religious, and fraternal entities organized under various state laws would continue to be excluded from the Funeral Rule due to the FTC's limited jurisdiction over such organizations. However, state regulatory authorities would not be similarly restricted in their coverage.

PRINCIPLES

1. Sellers of funerals, interment rights and related merchandise or services, including cremation, should provide a written price list of all such items offered for sale to a potential purchaser where the purpose of the discussion pertains to the sale of any of these items. Where a large number of items are offered for sale in a category, a range of prices may be used.
2. The potential purchaser should be allowed to retain a copy of the price list for future reference, which may be combined with other required disclosures.
3. The price list should be provided at any location where the meeting between the seller and potential purchaser occurs, not solely at the seller's place of business.
4. The price list should contain the name, address, and telephone number of the seller, and contain the effective date of the prices.
5. Price information should be provided over the telephone when requested by the caller.
6. For enforcement purposes, a warning should be issued by the state regulatory authority for an initial violation. Subsequent violations by the same seller should be assessed based on a graduated scale of monetary penalties.

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**FEDERAL REGULATIONS
AFFECTING CEMETERIES FUNERAL HOMES**

29 CFR Part 1625	ADAA Age Discrimination in Employment Act	http://www.usdoj.gov/eo/1625/1625-main_02.html	
29 CFR Part 1630	ADA Title I Employment	http://www.usdoj.gov/eo/1630/1630-main_02.html	
U.S. ENVIRONMENTAL PROTECTION AGENCY			
	Citation	Regulation	Link
42 U.S.C. 6901, et seq.	Resource Conservation and Recovery Act		http://www.epa.gov/air/raa/raa.html
42 U.S.C. 9601, et seq.	Comprehensive Environmental Response, Compensation, and Liability Act of 1980		http://www.epa.gov/ceq/ceq.html
40 CFR Parts 280 and 281	Underground Storage Tanks		http://www.epa.gov/ust/ust.html
42 U.S.C. 6901, et seq.	Medical Waste Tracking Act of 1988		http://www.epa.gov/medwaste/medwaste.html
42 U.S.C. 7401, et seq.	Clean Air Act Amendments of 1990		http://www.epa.gov/air/aaa/aaa.html
40 CFR Part 239	Medical Waste Standards		http://www.epa.gov/medwaste/medwaste.html
FEDERAL TRADE COMMISSION			
	Citation	Regulation	Link
15 U.S.C. § 45	Unfair and Deceptive Business Practices		http://www.ftc.gov/bureaucracy/ftc.htm
15 U.S.C. § 13	Price Discrimination		http://www.ftc.gov/condocondo/1313.html
15 U.S.C. § 1692	Fair Debt Collection Practices Act		http://www.ftc.gov/condocondo/1692.html
16 CFR Part 453	Funeral Industry Practices Trade Rule		http://www.ftc.gov/condocondo/16453.html
16 CFR Part 429	Cooling-off Period for Door-to-Door Sales		http://www.ftc.gov/condocondo/16429.html
16 CFR Part 433	Preservation of Consumers' Claims		http://www.ftc.gov/condocondo/16433.html
16 CFR Part 310	Telemarketing Sales Rule		http://www.ftc.gov/condocondo/16310.html
16 CFR Part 238	Bait Advertising Guide		http://www.ftc.gov/condocondo/16238.html
16 CFR Part 251	Use of the Word "Free"		http://www.ftc.gov/condocondo/16251.html
16 CFR Part 233	Deceptive Advertising of Guarantees		http://www.ftc.gov/condocondo/16233.html
16 CFR Part 433	Deceptive Pricing		http://www.ftc.gov/condocondo/16433.html
16 CFR Part 255	Mail or Telephone Order Merchandise		http://www.ftc.gov/condocondo/16255.html
16 CFR Part 444	Guide Concerning Use of Testimonials and Endorsements in Advertising		http://www.ftc.gov/condocondo/16444.html
16 CFR Part 444	Credit Practices		http://www.ftc.gov/condocondo/16444.html
FEDERAL TRADE COMMISSION			
	Citation	Regulation	Link
16 CFR Part 701	Disclosure of Written Consumer Product Warranty Terms and Conditions		http://www.ftc.gov/condocondo/16701.html
16 CFR Part 702	PreSale Availability of Written Warranty Terms		http://www.ftc.gov/condocondo/16702.html
15 U.S.C. § 1681	Fair Credit Reporting Act; Fair and Accurate Credit Transactions Act, 2003 Red Flag Regulations		http://www.ftc.gov/condocondo/151681.pdf

**FEDERAL REGULATIONS
AFFECTING CEMETERIES FUNERAL HOMES**

U.S. DEPT. OF VETERANS AFFAIRS	
Citation	Regulation Link
National Cemeteries Act of 1973	http://ascode.house.gov/download/9124CT.04
38 U.S.C. 2301, et seq.	Burial Benefits
38 U.S.C. 2401, et seq.	National Cemeteries
38 U.S.C. §901	Allowment for Penalties for Destruction of National Cemetery Property
18 U.S.C. §1369	Penalties for Destruction of National Cemetery Property

FEDERAL COMMUNICATIONS COMMISSION	
Citation	Regulation Link
47 U.S.C. 227	Telephone Consumer Protection Act of 1991
47 CFR Parts 64 and 68	Telemarketing

FEDERAL RESERVE BOARD	
Citation	Regulation Link
15 U.S.C. 1601, et seq.	Truth in Lending Act
12 CFR Part 226	Regulation Z

STATUTES ALSO PROVIDING PRIVATE ENFORCEMENT	
Citation	Regulation Link
15 U.S.C. 107	Sherman Antitrust Act
15 U.S.C. 12-27	Clayton Act
17 U.S.C. 101, 500	Copyright Act of 1978
42 U.S.C. 12101, et seq.	Americans With Disabilities Act
42 U.S.C. 21	Civil Rights Act

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National Funeral Directors Association

August 5, 2009

Chairman Jon Leibowitz
 Federal Trade Commission
 6 and Pennsylvania Avenues
 Washington, D.C. 20001

RE: Protecting Consumers of Death Care Services

Dear Chairman Leibowitz:

This letter is being written on behalf of the National Funeral Directors Association ("NFDA"), its 20,000 funeral director members, and the hundreds of thousands of families that they serve. In light of the horrendous practices revealed at the Burr Oak Cemetery, NFDA is renewing its request that the Federal Trade Commission ("FTC") carry out its mission to protect consumers by extending the Funeral Rule over all sellers of death care goods or services, including the nation's cemeteries and crematories.

Since the first review of the Funeral Rule back in 1989, NFDA has petitioned the FTC to expand the Funeral Rule to cover all death care providers such as cemeteries and crematories. Joined by AARP and other consumer interest groups, NFDA renewed this request in 1999 when the FTC reviewed the Funeral Rule for the second time. In addition, during annual meetings with FTC compliance staff, NFDA has emphasized the need to protect consumers of death care services by placing all sellers of death care goods or services under the consumer protection requirements of the Funeral Rule. To date, this 20 year effort by NFDA on behalf of the nation's consumers has been to no avail.

During this 20 year period in which cemeteries and crematories have been able to operate without any federal oversight, the following major scandals have occurred:

- **Burr Oak Cemetery, Alsip, Illinois.** In July, 2009, Illinois authorities and the FBI investigate the illegal exhumation of hundreds of bodies that are allegedly dumped in a mass grave so that cemetery plots could be resold. Authorities report that thousands of dead remain unaccounted for by their families.
- **Robert Nelms-Indiana, Michigan, New Jersey and Tennessee.** In 2008, authorities in Indiana, Michigan, New Jersey and Tennessee investigated Robert Nelms and his wife, Deborah Johnson-Nelms for stealing up to \$200 million from cemetery trust funds. Nelms and his wife are currently charged with 9 felony counts of theft, fraud and conspiracy by Indiana authorities who alleged that they embezzled more than \$20 million from trust funds in Indiana cemeteries.
- **Clayton Smart Michigan Cemetery Embezzlement.** In April, 2007, Michigan authorities charge Clayton Smart with 39 felony counts in connection with the alleged embezzlement of up to \$70 million in cemetery trust funds affecting 28 cemeteries throughout Michigan.
- **Bayview Crematory, Seabrook, New Hampshire.** In 2005, authorities closed down a New Hampshire crematory where numerous bodies were misidentified, cremated with other bodies, and improperly disposed of.

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- Tri-State Crematory, Noble, Georgia. In 2002, over 300 bodies were discovered at the Tri-State Crematory in Noble, Georgia. The bodies had not been cremated, but instead were dumped throughout the wooded property of the crematory.
- Menorah Gardens, West Palm Beach, Florida. The Menorah Gardens Cemetery chain is accused of desecrating vaults, removing bodies from cemeteries in Florida, and dumping their remains in wooded areas. The scandal results in a \$60 million settlement against the owners of Menorah Gardens.

The partial listing above covers only those notorious cemetery and crematory scandals that have grabbed nationwide headlines in the past ten years. Numerous other scandals on a smaller scale have occurred without nationwide publicity. Yet, the FTC continues to ignore the need to protect consumers who purchase death care goods and services from these largely unregulated sellers.

The standard response that NFDA, AARP, and other consumer interest groups receive when citing these scandals is that the FTC Funeral Rule would not have prevented any of these atrocities from happening. While it is true that the Funeral Rule does not outlaw grave desecration, mishandling of bodies, or wholesale looting of cemetery trust funds, the argument overlooks the umbrella impact of government regulation, accountability and enforcement.

When the FTC decided to regulate the nation's funeral homes, but not cemeteries, NFDA properly pointed out to the FTC that most states already license, inspect and regulate funeral homes on a regular basis. The same was not true and is not true with cemeteries. With the Funeral Rule, the FTC was applying a level of federal oversight over a profession already heavily regulated by state authorities. NFDA argued that it was illogical to apply another level of regulation on the only segment of the death care industry that was already regulated, while allowing cemeteries and crematories to avoid government accountability.

Any time the government extends regulation over sellers in an industry or profession, it has the effect of curtailing the opportunity for abuse. If a seller is not licensed, not inspected, and not regulated by federal, state or local governments, it operates in a free-for-all world where there is no accountability for any transgression. Operators who may toe the line when subject to some level of government oversight will be tempted to commit unscrupulous acts if they see little or no risk of detection. The mere fact that a government agency has oversight over certain practices, such as unfair and deceptive pricing schemes, serves as a deterrent to other abusive practices.

NFDA, AARP and other organizations have documented the harm that consumers have experienced from unlawful tying arrangements imposed by cemeteries and unwanted purchases of cemetery goods and services. The FTC has refused to even investigate these complaints by arguing (without any support or evidence) that the practices are not pervasive throughout the industry. As a result, cemetery and crematory consumers continue to suffer from these reoccurring scandals.

On behalf of NFDA and the families served by our members, NFDA once again petitions the FTC to expand the Funeral Rule to cover all sellers of death care merchandise and services.

Sincerely Yours,



Christine Pepper
NFDA Chief Executive Officer

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**Statement of
Thomas J. Dart
Cook County Sheriff**

**For the Committee on Energy and Commerce
Subcommittee on Commerce, Trade and Consumer Protection
United States House of Representatives**

July 27, 2009

Introduction

Mr. Chairman and members of the Subcommittee, I thank you for the opportunity to provide information to the Subcommittee. I look forward to assisting you.

I also wish to express my sympathies to the thousands of families who have been impacted by the Burr Oak tragedy. I have met with many of them personally and more than 50,000 people have contacted my office. I thank them for their patience and support during this difficult time.

I would like to provide a brief summary of the Sheriff's Office investigation at Burr Oak and then offer a couple of suggestions on where we should go from here.

Criminal Investigation

As everyone knows, four suspects have been arrested for their involvement in alleged criminal conduct at Burr Oak cemetery. In short, they have been charged with illegally unearthing existing graves and re-selling the plots to unsuspecting mourners who came to Burr Oak to bury their family members.

The investigation was started by the Sheriff's Police Financial Crimes Unit after we were contacted by the Burr Oak management regarding financial irregularities at the cemetery.

Because there is a pending criminal investigation, I am limited in the amount of details I can provide this Subcommittee.

We believe this criminal scheme has been in place for at least four or five years, and the information we have gathered indicates those responsible for the criminal conduct have netted tens-of-thousands of dollars.

For nearly a month, Burr Oak Cemetery has been closed to the public while the Cook County Sheriff's Police and the FBI conducted evidence recovery efforts in connection with this investigation. During this time, Sheriff's Police Officers and F.B.I. Agents have been at the cemetery 24-hours a day collecting evidence and securing the crime scene.

More than a thousand pieces of evidence have been recovered during this four-week effort, including bones, pieces of burial vaults and headstones. We may never know exactly how many

graves were illegally disturbed. In addition, the majority of individuals interred at Burr Oak were buried without headstone markers.

Release of Burr Oak to Court Appointed Receiver

On Friday, August 7, 2009, I joined Robert D. Grant, Special Agent-in-Charge of the Chicago Office of the Federal Bureau of Investigation (FBI), in announcing that the crime scenes at the cemetery had been released to the court-appointed Receiver, Roman Szabelski. After conferring with the Cook County State's Attorney's Office, we are confident there is sufficient evidence to proceed with their criminal cases.

The Sheriff's Office continues to support the Receiver in a massive effort to document and catalog photographs of headstones. Approximately 10,000 headstones have already been posted on the designated web site: www.burroak.net. As of mid-August, our office was in the final stages of cataloging and uploading the few thousand remaining photographs of headstones.

We have asked the public to keep in mind that routine maintenance at Burr Oak has been neglected for many years. If a gravestone photo does not appear on the www.burroak.net site, it may be because Sheriff's Police were not able to locate the headstone due to overgrowth of grass or other maintenance issues. The inability to find a headstone is not necessarily an indicator of criminal activity.

Legislative Changes

Since news of the Burr Oak scandal first broke, many have called for new regulations on cemeteries in Illinois.

Having personally spent the better part of the last five weeks at the cemetery, my officers and I can personally attest to how badly new regulations are needed.

Many of the problems we've seen at Burr Oak – missing gravestones, overgrowth of grass, open holes in the ground, and poor records keeping – are not necessarily the product of criminal conduct. Rather, they are the product of mismanagement and neglect.

State regulatory authority must be extended beyond auditing cemetery trust accounts. Tough new consumer protection laws need to be put in place, and the physical conditions of cemeteries must be monitored.

As long as cemeteries are allowed to operate in shoddy and dilapidated conditions, the message to cemetery managers and workers is clear – no one is watching.

And if no one is watching, criminal conduct is sure to occur.

In addition to the need for a new cemetery regulatory process, there is also a need for changes to the criminal code that will make it easier for police and prosecutors to arrest and convict those who disturb gravesites.

The state should increase felony penalties for unearthing remains and desecrating or removing gravestones.

And I support efforts to amend the Crime Victims' Compensation Act to include the relatives of deceased persons who are illegally disinterred from graves.

On the federal level, I support this Subcommittee's efforts to determine the need for legislation that would, at a minimum: bring all death-care businesses under the FTC Funeral Rule and codify the rule; create national minimum standards for state regulation of cemeteries and require 100% deposit of all prepaid death service money, and give consumers the right to a full refund or transfer on demand.

Historic Preservation

From the outset of our investigation, the Sheriff's Office recognized the need to respect and preserve the historic significance of Burr Oak cemetery.

Burr Oak is a Chicago landmark. The story of Burr Oak is the story of the African-American community in Chicago, Illinois, and beyond.

As we all know, it is the final resting place of Emmitt Till, Dinah Washington, Willie Dixon, many Negro League baseball stars, and a number of other prominent African-Americans.

But it is also the resting place of life's unsung heroes. Policemen, firefighters, and war veterans. Laborers, doctors, and teachers. Mothers and fathers, grandparents and children. These unsung heroes touched thousands of lives and shaped our history.

In order to honor that history, the Sheriff's Office reached out to leaders in the African-American community. We participated in meetings at the DuSable Museum of African-American History where we began to discuss how closure can be brought to the many victims of the crimes at Burr Oak. Those meetings led to the formation of the Chicago Burr Oak Cemetery Historical Society, a charitable organization made up of African-American historians, genealogists, and museum presidents, all of whom have family members buried at Burr Oak.

My office is committed to working with the Historical Society as they seek to find the best way to memorialize the lives of the people who are buried at Burr Oak.

It is horribly unfortunate that many of the questions people have regarding the scandal at Burr Oak may never be answered. But I believe this Subcommittee can help ensure that what happened at Burr Oak will not happen again.

My office stands ready and willing to help you reach that goal.