

Funeral Ethics Organization

Winter Newsletter 2005



Hinesburg, Vermont

Coroner: Conflicts of Interest

by Z. G. Standing Bear, Ph.D.

Over the past ten years, research was undertaken after reviewing several graduate student and faculty research papers conducted on the death investigation systems in Georgia and Florida during the period 1987-1994. In several instances, this research pointed to several recurring and disturbing themes concerning conflicts of interest in questioned death investigation systems. The two most alarming studies involved south Georgia counties where, in one county a twenty year study was made of all coroner case reports. The purpose of the study was merely to review the reports to determine if, in the opinion of the researcher and her faculty advisor, investigations were being conducted in a professional manner. In this study, a clear pattern emerged where it became apparent that obvious suicide cases (e.g., contact gunshot wounds to the head) were routinely being classified as accidental deaths for white decedents (but not for blacks). In another study, which involved interviews of former Georgia coroners, complaints were raised by one former coroner that the present coroner, a mortician, used to badger the former coroner to find out how much money a decedent had so that an appropriately-priced funeral could be arranged. In a more recent study of the Georgia coroner system, significant resistance was met in even *disclosing* the primary occupations of Georgia coroners. The Georgia Coroner's Association would not respond to requests for this information, and individual coroners who were licensed morticians would frequently respond with "Why do you want to know?" or "What business is it of yours?" Over half refused to provide the information. For those counties where the information was refused, the occupation of the county coroner was determined through other sources, such as police or sheriff's offices.

In broadening the scope of potential conflicts of interest in the matter of questioned death investigation, three themes emerged as suitable for inquiry, as follows:

a. Coroners or medical examiners engaged in these public positions as part-time practitioners that steer business into their full time occupation for profit. Examples include medical examiners that are patholo-

gists operating pathology laboratories that contract tests to their own laboratories and coroners that are morticians steering mortuary service business to their firms.

b. Coroners that may agree to present "findings" of a certain manner of death (accident rather than suicide) if the family of the decedent uses the coroner's funeral home for services or, in the case of one study that included inquiries in three states (Georgia, Alabama, and Kentucky) opts for a more costly casket and funeral in appreciation for collecting accidental death insurance benefits (versus no money in a suicide finding).

c. Coroners that may mask the cause and manner of death to serve to the advantage of their full-time practice or organization. Examples include the sheriff-coroner investigating a county jail inmate death, the emergency department nurse-coroner investigating an emergency department death or a paramedic-coroner investigating a death in an ambulance.

In beginning a wider set of inquiries, interviews were conducted in several states between 1993 and 1999 concerning these issues. In many states, the types of questions generated by this research could be summarily answered at the state level, but in others, decentralization of policy is so complete that a detailed county-by-county and even city-by-city inquiry was required.

This study concentrated only upon coroner systems in the United States. Twenty eight states use coroner systems in the U.S.A., while all others and the District of Columbia use the medical examiner system. Eleven states use a form of coroner system exclusively, while 17 have a combination of coroner and medical examiner systems.

Generally, during the research, the potential conflict of interest generated by a death in an emergency department or ambulance where the coroner is an emergency department nurse or paramedic was largely dismissed by those interviewed because of the nature of the job, which is to preserve and save life. Respondents unanimously stated that if a questioned death situation arose at the facility where the coroner was employed as a nurse or paramedic, it would be ethical and logical to bring an a disinterested coroner (e.g.

from another jurisdiction) to investigate. In fact, this procedure is policy in several states.

The conflict concerning morticians serving as coroners, however, generated considerable controversy. Most state representatives interviewed acknowledged that the role of coroner and mortician is clearly an ethical conflict. In addition to the above cited reasons, an additional conflict of interest issue also emerged from the national interviews: Mortician-coroners will tend to avoid having an autopsy performed because of pressure from the survivor-customer of the mortician and/or because an autopsy makes embalming difficult.

Morticians as Coroners

When focusing upon the potential for conflicts of interest of morticians as coroners, first in Georgia and then throughout the United States and Canada, it was interesting to note that about half of the Georgia elected coroners were morticians. Georgia has the highest number of counties among all US states except Texas (Texas has 254 counties, Georgia 159). Further research disclosed that of the just over 3,100 counties in the USA, some 2,076 counties (more often than not rural) use elected coroners and among those, about 500 (24%) are also licensed morticians.

My contention was and is that being a practicing mortician AND a government officiator of death is a conflict of interest. As one coroner put it, "It's like being the only mechanic in town with a wrecker." This conflict of interest takes several forms. First is the issue of competition. If a coroner is at a death scene as the official public investigator, s/he is also "handy" as a private business operator in the event the survivors do not have a mortician in mind. California apparently recognized this when its Attorney General issued an opinion that a mortician could not be a coroner unless s/he was the sole funeral home in the county. This seemed to address the "competition" angle. A Federal lawsuit was filed by a mortician in Worland, Wyoming against the other county funeral home (which employed the county deputy coroner) in a civil rights action claiming that the competitor funeral home/coroner was steering more wealthy clients to his funeral home, among other things.

Other conflict of interest issues also emerge where survivors may enter into a conspiracy of silence with a mortician/coroner. For example, in a suicide by handgun, the coroner may declare the death an accident on the death certificate (the revolver accidentally discharged as the decedent was cleaning it). This may have important survivor's insurance outcomes, as well as emotional, public reputation and religious issues. In gratitude, the survivors may opt for the deluxe funeral package, etc. A few states simply forbid morticians from serving as coroners, such as Washington State. Wisconsin does not preclude morticians from serving as elected coroners, but does prohibit anyone serving as a coroner from entering into any contractual arrangement with the family of a decedent where the coroner

is involved as an officiator of death. Needless to say, there are no mortician coroners in Wisconsin. There are other issues as well, such as the coroner having access to the financial records of a decedent in the furtherance of a death investigation.

When sharing the findings of this research on one occasion before the American Academy of Forensic Sciences, I was approached by a coroner who was also a mortician and an amazing exchange took place between us. He cited a case where a man committed suicide with a handgun. The man was an abusive batterer and an alcoholic, regularly beating his wife and children. His wife bravely put up with this behavior for almost 20 years "for the sake of the family and the children." Now that this creep killed himself, the wife gets no life insurance due to a suicide clause and being a stay-at-home Mom with four children, has few job skills outside the home. She will become a ward of the state and will lose her home to foreclosure. However, if he died of an accident, she would get a double indemnity insurance payment of \$200,000, which is enough to pay off the

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mortgage and other bills. This means she can be self-sufficient and not get evicted. The coroner told me that after putting up with all that abuse for twenty years, she deserved some relief. He told me that “that big ol’ insurance company can afford it.” He called the ruling of an accidental death “contextual justice” and that the sheriff agreed with him, as did other community members that knew of this woman’s situation. Now, this exchange does not speak directly to the coroner being a mortician but does raise some fascinating ethical issues concerning the role of the coroner.

Although a few states (four) using coroner systems acknowledge in their policies (statutes or Attorney General opinions) that it is a conflict of interest for a practicing mortician to also serve as a coroner, the vast majority do not. However, both intuitively and as a result of research, it appears clearly the dual role of practicing mortician and public officiator of the cause and manner of death are conflicting roles to the detriment of the public good.§

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Coroner /ME’s Role in Tissue and Organ Donation

Coroners and medical examiners are often involved with a body that is an ideal tissue or organ donor. But the hot market for body parts may raise some ethical issues, as reported by the *Boston Herald* and the *Orange County Register*. Questionable practices included: short-changing autopsy procedures to facilitate harvesting; financial incentives such as staff, equipment, and other perks; breach of confidentiality; inadequate disclosure that body parts may be going to for-profit entities; priority or quotas to supply certain companies that might divert skin from burn victims.

The U.S. Department of Health and Human Services did a study in 2003 on the role of coroners and medical examiners with regard to tissue and organ donation with the aim to improve communications and protocol that might increase the donor factor. While it didn’t address some of the ethical issues that might arise, it’s quite extensive and can be found on-line at:

<http://www.cdc.gov/epo/dphsi/mecisp/>

States with medical examiner systems only: 22 + DC (AZ, CT, DE, FL, IA, ME, MD, MA, MI, MS, NH, NJ, NM, NC, OK, OR, RI, TN, UT, VT, VA, WV)

States with coroners: 28

States with statutes prohibiting practicing morticians from being coroner: 1 (WA)

States prohibiting coroner from conducting mortuary business with deaths investigated: 1 (WI)

States with Attorney General Opinions barring morticians from serving as coroner unless that mortician has the only funeral home in the jurisdiction: 2 (CA, ID)

States with coroner-chief of police: 1 (HI)

States requiring coroners to be physicians: 4 (MN, KS, LA, OH)

States having county attorney/coroner or magistrate/coroner: 2 (NE, AK)

States having sheriff-coroners(in addition to CA): 1 (NV)

States requiring physician as coroner in counties over 8K population: 1 (ND)(Note: 34 Counties have populations under 8K, 18 coroners in these small counties are MDs)

Other states with little practicing mortician presence: 1 (CO-7 morticians)

Total = 14 states with few or no mortician-coroners

States with unknown numbers of morticians as coroners: 2 (NY-county may set rules; TX-little data to date on the 857 justices of the peace)

States with limited mortician coroners: 1 (MT-where 45% on the 56 counties have sheriff-coroners)

States permitting mortician coroners with large numbers of morticians serving: 11 (AL, AK, GA, IL, IN, KY, MO, PA, SC*, SD, WY)

*SCs Attorney General has ruled that it is unethical for a practicing mortician to hold office as a coroner.

Point ~ Counterpoint

Should families be required to read a description of the cremation process prior to authorizing cremation?

by Beacham McDougald, CFSP

Two years ago when the home mortgage rates were bottoming out, we elected to refinance our home at an almost unreal rate of 4.25%. Three months after the initial application, our loan was approved and we were called into the bank office to finish the paperwork.

The paperwork was more like a book. Multiple documents were stacked almost an inch thick. They required our initials in some locations and our signature in others. Legally, by initialing and signing we are agreeing to all of the terms set forth in the mortgage agreement. Realistically, it would have taken days to read the entire document and longer to fully understand the legal language.

We did what 99% of people do. We trusted our banker and our attorney to warn us of any yellow flags or red lights. Of course we hired the attorney to assure us that all of the papers were in proper order. Having an attorney present rarely occurs when the next of kin is signing the cremation consent.

In a similar fashion we do the same when purchasing an automobile, although most likely without the assistance of an attorney. The title transfers, bills of sale, warranty information, and disclosures are thrust before you awaiting your signature. With little more than the shuffling of papers, your signature goes where the auto dealer asks you to sign.

Crematorium operators and funeral directors are faced with the same dilemma on a regular basis. What do we disclose and how do we disclose it in a tactful manner? Should we force the authorizing agents to read every word of the cremation consent or would a brief description be enough to warrant initials and signatures?

A mortuary college student recently reported that he was taught to disclose the gruesome details of the cremation process to families who have selected cremation as an effort to change their choice. This may be factual or a partial misunderstanding. Such disclosures are tactless and unethical. Why would an ethical person disclose the changes of a body being cremated and not do the same for a body being arterially and cavity embalmed?

by Harvey Lapin, P.C.

Yes and in most states, it is probably legally required that this information be provided and be acknowledged before a cremation authorization is signed.

Since the first comprehensive cremation law was enacted in 1986 in Illinois approximately 40 states have passed similar laws or regulations. Most of these laws and regulations are based on the Model Cremation Law drafted by the author and published by the Cremation Association of North America in 1984 after it was reviewed and commented upon by the other major associations in the industry. The current version of the Model Cremation Law was published in 1999 and is available on the CANA website at www.cremationassociation.org. Section 4 of the Model Cremation Law sets out the requirements for the information to be contained in Cremation Authorizations. Most of the states passing cremation laws have adopted this section verbatim.

For example Section 4714.24 (A) of the Kentucky Statutes provides a Cremation Authorization must contain certain information that has to be certified by the family members that are authorizing the cremation. Some of this information is required because of what occurs during the cremation process. For example, the family is required to confirm the decedent did not have pacemaker, defibrillator, or any other mechanical or radioactive device or implant that poses a hazard to the health or safety of personnel performing the cremation. Other items are the authority to pulverize the cremated remains, if there are to be witnesses, whether foreign material is to be removed from the cremated remains, whether any valuables have been left with the human remains and other similar statements or representations.

Since the authorizing agents have to certify the information and statements, it is important that they understand the cremation process and the reasons for some of the requirements. The reasons are usually explained in an explanation of the cremation process. See for example the CANA brochure on its website titled "The Cremation Process: Step By Step."

Legally, funeral directors and crematorium operators should disclose certain details of the cremation process in written form. Both, North Carolina's and CANA's model cremation forms give written tasteful descriptions of the cremation process.

Such descriptions may tell the consumer that valuables left with the body prior to cremation will be unrecoverable, the temperature in the retort during cremation, that cremations are done only one at a time, that it is impossible to recover 100% of the cremated remains, and the pulverizing process. They do not give graphic descriptions of the cremation process.

An attorney studying the cremation consent asked what kind of consents had to be signed when embalming was to occur. Does the embalming consent give a detailed description of the embalming procedure as the cremation consent does for cremation? If it doesn't, he stated, then he could argue in court that forcing a family to read about the cremation process and remaining silent on the embalming process may unjustly discourage cremation.

According to the same attorney, presenting the cremation consent from to the authorizing agents for their initials and signatures while giving a brief description of the major points is sufficient protection for the crematorium operator; provided he/she gives the authorizing agents a copy of their signed consent. Whether they chose to read about the cremation process is entirely up to them.

Obviously, all statutes and laws are open to court interpretation in certain situation, and crematorium operators are advised to fully understand their liabilities. Discouraging cremation by disclosing gruesome details of the cremation process may open one for litigation, while failure to make information on the cremation process available to the authorizing agents may also leave the crematorium operator open for litigation. The middle ground is to provide the information in a tactful, ethical manner that allows the authorizing agents to read or not to read the details of the cremation process. §

Beacham owns McDougald Funeral Home and Crematorium in Laurinburg, NC. His crematory is built in the Scottish and British tradition, inviting family attendance.

Please feel free to suggest a topic or to submit an article for this section.

The brochure is easy to understand with sections on "Before Cremation Takes Place", "The Cremation: Processing of the Remains," and "After the Cremation Has Been Completed." The brochure contains a removable postcard that asks the arranging individual to sign it, signifying that the contents of the brochure has been read and understood. The card is then to be returned to the cremation service provider.

In addition, other rules and opinions issued by the FTC indicate that it is a misrepresentation not to disclose important information to a consumer. Most of the state laws are similar to the FTC Regulation Act and by reference adopt the FTC Rules.

Almost every state has funeral director licensing laws. Typically, these laws provide that funeral directors can lose their license if they engage in certain types of practices. Typically these laws will provide that violating other laws and making misrepresentations could be the basis for revoking or suspending a license. The Indiana legislature n IC 25-15-8-4 (6) has made it a violation if a funeral director fails to explain casket and alternative container requirements in connection with cremation.

The whole consumer movement is based on the concept of disclosure. The failure to disclose important information can be considered consumer fraud. You usually do not get sued for what you disclose, but there are numerous violation cases involving the failure to disclose important information. One Illinois industry regulator starts out every presentation at consumer and industry trade association meetings with the statement "an informed consumer is a good consumer." This certainly should be the objective in connection with the cremation process. §

Harvey I. Lapin is an Attorney from Northbrook, Illinois. He specializes in the Mortuary, Crematory, Cemetery, Tax and Corporation legal areas. He is the General Counsel to the Illinois Cemetery and Funeral Home Association and has provided legal services to numerous other state, local and national associations in the industry. He was the General Counsel of the Cremation Association of North America (CANA) for over 30 years. He presently is special cremation counsel to the International Funeral and Cemetery Association.

Ethical Challenge

The following question was put to a number of cemeterians. If you have a question that you would like to see discussed (including issues that involve cemeteries, monument dealers, law enforcement, hospice, etc.), please drop us a line — news@funeralethics.org

Your cemetery is running a veterans' special for Memorial Day with free plots for veterans and half price for spouses. You are expected to meet a sales quota by the end of May but haven't sold much so far this spring. The total cost for two after opening/closing and monument expense is about \$4,000. With one of your promotional brochures in hand, Mr. and Mrs. Z arrive at your cemetery to ask about arrangements. You quickly learn that the Zs are living on a total of \$800 social security each month and are intimidated by the cost because their children probably cannot help. Do you let the couple know that, while it may not be quite so nearby, that the VA cemetery in your state has burial space and markers that are free to both?

The challenge with ethical dilemmas is that the responder never really knows the "whole" scenario and what may seem like a simple, connect the dot type answer may be totally wrong if viewed from other perspectives.

As a cemeterian, I would have to make some assumptions that may or may not be accurate according to your scenario. First, I would not automatically assume this was a family I had never met or served before. They may have been in on a previous burial service at one time or another and already have other family members or friends buried in our cemetery. If that is the case, they may want to be buried next to or near their relatives. Which points out a major difference between us and a vet cemetery.....and that is families get NO CHOICE on their space or location, or who they are next to!

While some cemeteries may not be as strict on explaining all of the options to a family and giving them all of their choices, we do, so I can only answer from that arena. We make it our job to educate consumers on all of their options and how their immediate choices might affect future burial choices of their family and friends. Most children at least want the option to be buried next to mom and dad or near by [something a vet cemetery does not offer]. The vet cemetery also does not allow prearrangement to the point of getting all of their wishes and desires accommodated if they choose to be with family or friends or [even pets] upon their death.

I have never met a Veteran that does not know about their VA rights to burial spaces in a national cemetery or equivalent. But if they appeared to want my cemetery, I would emphasize that the husband also gets a free headstone and we could save them some money by purchasing a like stone for the MRS. at a reduced price.

Also, VA cemeteries are getting more widespread, but most were not convenient to allow frequent visitation after the burial like a local cemetery, which puts

extra travel burdens on families. Especially, if the wife is left alone. And on Veterans Day, Memorial Day, etc., the wife may have several cemeteries to visit and graves to decorate.....planning a trip to the VA cemetery may be extra stressful, if other cemeteries were local.

Finally. If they choose my cemetery, there are ways to make it more affordable for them. Many times this includes accepting an insurance policy upon death so their immediate finances [\$800 in this case] are not put in jeopardy. We do not have quotas, so I do not know how to respond to that.

If we can not make their choices work for them to their satisfaction, then we would most assuredly recommend the VA cemetery for both. We like *satisfied* customers that come to visit our cemeteries to "remember a life"not remember a pushy salesperson and a debt they can not pay.

É

As part of my service to a family, my responsibility and obligation to them is to share a variety of options with them, including making them aware that a VA cemetery, whether nearby or not, has burial space that is free for both. The scenario also includes opening and closing and monument expense, so I might suggest to the family that if they prefer my cemetery to the National Cemetery option, they could pay on their spaces first, followed by the other items.

It is absolutely imperative that our industry not be "afraid" to tell the truth about options that families have, even if that family winds up using a free cemetery. As far as the quota issue is concerned, to me, it is a non-issue. I have always believed that if I respond ethically to families, the revenue my cemetery will take in will allow for me to operate my cemetery and have a fair and reasonable profit for future growth and development.

É

The answer is "Yes". Your "quota" and your poor performance in the previous months should have no

bearing on this situation. You need to do whatever the "right thing" turns out to be, which should be easily determined upon further discussion with the client family.

As a professional cemetery counselor, you are (supposedly) trained to provide the family with all the appropriate information and all the options, including a synopsis of VA benefits available, so that the family can make the choice that is right for THEM. The family, however, may have important reasons for wanting to have their cemetery arrangements at your cemetery, rather than at the VA cemetery.

In a case like that, one of these options would be to let the family know that they can begin a program at your cemetery by starting with the spaces only (the vet's free, and the spouse at half-price, as advertised), on a payment program, and that the spouse's memorial, and both opening closing fees can be handled in a similar fashion after the spaces are paid out.

Counselors need to tailor a program to fit the family's budget. To do otherwise creates a problem if the family becomes unable to make the monthly terms. If the family cannot afford arrangements at your cemetery on the basis discussed above, then they should be advised that the VA cemetery is their better option. §

The Politics of Death

It probably comes at no surprise (if you ever thought about it) that the reported number of people killed in the big earthquake of 1906 (99 years ago) in San Francisco was underestimated intentionally, at 4 hundred and some. The report is that the coroner, when asked for the death toll, knew there were 3 hundred and some brought into his morgue, so he added 100 and gave out that number. The politicians had cause to want the number low in order to make the city's recovery more likely, so they went along with it, knowing that it was an underestimate. The present city's historian, figuring them up laboriously from individuals surviving the quake, thinks that the number should be more like 3000, so today the Board of Supervisors voted to correct the number in history books.

I guess politics has always been weasely.

W. L. (Bill) Warner
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Avoiding a
Conflict of Interest

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We Can Do Better

(Some funeral homes have separate price lists for “cremation caskets” and “alternative containers” even though the FTC guidelines say all caskets should be listed together on the main casket price list. More troubling are the funeral homes that tell a family they may not use a “cremation casket” for burial. Such a restriction is a blatant violation of the Funeral Rule. One of the early required disclosures on a GPL tells consumers, “You may choose only those items you desire.” Funeral directors need to remember that it’s the consumer’s right to choose.

(IRS take note? Catholic parishioners in the Los Angeles area are receiving preneed solicitations from one major funeral conglomerate, embellished with the seal of the diocese. The prices at that company’s funeral homes are considerably higher than at many of the independent funeral homes that have served Catholic families in the past. One has to wonder if an independent funeral home would be given equal access to the church’s mail list along with a diocesan seal to copy,

too. Does the church have a financial benefit in any of these arrangements? If so, it is certainly at risk of losing its nonprofit IRS status.

... And Some Do!

(The new American Society of Embalmers is making an effort to educate its members on how to prepare a body for private family viewing without embalming. This would also include preparation for identification viewing.

(Although there is no similar fund in any state to guard against cemetery bankruptcy, nine states have a guarantee fund to replenish prepaid funeral money if the funeral home defaults: Florida, Indiana, Iowa, Missouri, North Carolina, Oregon, Texas (limited), Vermont, and West Virginia.