



FUNERAL CONSUMERS ALLIANCE

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

Spring, 2006 A Federation of Nonprofit Funeral Information Societies Volume 10, no.1

The Watchdog Sleeps Federal Trade Commission Goes Easy on Industry

by Joshua Slocum, Exec. Director

Staff at the Federal Trade Commission are fond of saying the agency's acronym, FTC, stands for "For The Consumer." If the agency's record on funeral regulation is any indication, there's an ocean between what ought to be and what is. The FTC seems more interested in accommodating the funeral industry than in protecting the public.

The Commission has outsourced much of its Funeral Rule compliance duties to the largest advocacy and lobbying organization for funeral directors — the National Funeral Directors Association. As part of this "partnership," the FTC promised NFDA not to tell the public which funeral homes are violating consumer protection regulations. The FTC also agreed to forego collecting fines that could deter scofflaws, fines that just might be able to pay for more staff to actually enforce the Funeral Rule.

The latest disappointing encounter with the FTC came in Dallas in April at the agency's first Funeral Rule Compliance Conference, a workshop to help funeral homes comply with the Funeral Rule. FCA national board member Jim Bates and I attended. I informed the FTC weeks before the conference that I had serious concerns about their Funeral

Rule "sweeps" — unannounced shopping surveys to check on funeral home compliance. I challenged the FTC's recent claim (in a press release) that nine out of 10 funeral homes in Tyler, Texas, were in "substantial compliance" with the Funeral Rule. I reviewed the same price lists and found the opposite — nine out of 10 showed Funeral Rule violations.

The FTC's industry-serving interpretation of the facts is not an anomaly. I recently tabulated nine reports I completed between 2003 and 2006 that evaluated the level of Funeral Rule compliance in 272 funeral home price lists from five states. Eighty-six percent of the price lists had at least one Funeral Rule violation, and most had more. FCA President Gere Fulton has found similar violation rates in his price list evaluations.

But no one from the FTC returned my calls or emails prior to the April 6 meeting, except a lawyer in the SW Regional Office — after he accidentally sent me the following email destined for his boss in Washington:

"I will defer to you regarding contact with Josh Slocum. However, we don't have caller ID here, so I could possibly answer his call without knowing . . . given the apparent sensitivity of his issues, I'd rather he be dealt with 'officially.' I sincerely hope we don't

have a 'scene' on Thursday when he arrives or during the meeting. We have worked so hard down here to plan a wonderful conference, and I am disappointed with the controversy he has stirred up. What do you think we should do?"

The only "scene" that took place in Dallas was the FTC's attempt to eject a volunteer consumer advocate from a public meeting. At 8:30 that morning, FTC attorney Janette Gosha informed FCA board member Jim Bates that he didn't register early enough, and would have to leave. Bates reminded her this was a public meeting, put on by the federal government with taxpayer dollars. Well, there aren't enough chairs, Gosha said (at least six seats stayed empty throughout the conference). So, Bates offered to stand. There wasn't

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enough food, Gosha countered. She only relented when Bates produced a receipt for the \$20 paid for the day's lunch buffet.

Gosha later approached both of us to ask if we'd like to accompany her on speaking engagements to offer a consumer perspective, but she'd made her hostility clear.

From the start of the conference, it was obvious the FTC wasn't going to get tough. Thomas Carter, Senior Staff Attorney for the SW Regional Office, opened with, "The good news is Texas funeral homes are doing a great job following the Funeral Rule, based on our investigations." Carter then described the "partnership" between the FTC and NFDA.

"The old 'gotcha' system wasn't working," he said. "So we put on our thinking caps and came up with the Funeral Rule Offenders Program. FROP is one of the most successful public/private partnerships in history."

Just what is FROP? Think of it as mostly-carrot, not-much-stick. Back in 1996, the NFDA struck a deal with the FTC to create FROP. Under the deal, Funeral Rule violators can enroll in the program, which is administered by NFDA. In exchange for fees paid to NFDA and a "voluntary" payment to the U.S. Treasury — instead of the \$11,000 per-violation fine the FTC could levy — errant funeral homes undergo three years of remedial training and testing by NFDA. The icing on this sugary cake is that the FTC agreed to keep the names of Funeral Rule violators out of its press releases.

As if this weren't bad enough, the FTC is also distributing funeral industry promotional material at government functions. In the information packets handed out at the April conference in Dallas, tucked inside folders bearing the FTC name and seal, appeared:

- A four-color brochure from NFDA touting the benefits it offers to funeral homes, including "two full-time

lobbyists in Washington, D.C." and "NFDA's Political Action Committee; critical to electing members of Congress who recognize and support funeral service businesses and consumers . . ."

- A promotional folder from the Cremation Association of North America, advertising "CANAs Cremation Marketing Seminar" at "Caesar's Palace, Las Vegas," The folder also included a "consumer brochure" advising families that "arrangements should be made for establishing a permanent memorial to serve as a focal point for remembrance."

This is so contrary to the idea of government for the public good that it would be laughable if it weren't so harmful. There's nothing funny about a federal regulatory agency acting as the public relations arm of a \$20 billion per year industry, and striking a Faustian bargain with the industry it's supposed to regulate at the expense of the public.

This conference could have been great — there's certainly a need for more Funeral Rule education. But the Dallas meeting turned out to be a tepid series of lectures that left most guests with more questions than answers. Every speaker bent over backwards to tell the 60 – 80 funeral directors gathered that *we're sure we're preaching to the choir, and that all of you here follow the Funeral Rule, but just in case, maybe this is a refresher.* While staff attorneys lectured on the Rule's major provisions — consumer disclosures, the consumer's right to select only what he wants — they glossed over at least a dozen other major requirements. When attendees asked for examples of potential violations, or their consequences, FTC attorneys offered such lawyerly evasions as "I won't get into too much detail about our enforcement techniques or our various partnerships."

FCA and its nationwide volunteer

consumer groups lobbied for 10 years to get the FTC to enact the Funeral Rule. We've testified before Congressional committees. In 1999, former FCA executive director Lisa Carlson, and national board member (now President) Gere Fulton testified at FTC hearings to review the Funeral Rule, backing up our testimony with five boxes of documentation showing the continuing abuse grieving families face. Seven years later, the FTC has done nothing.

Since becoming FCA's executive director in 2003, I've reviewed price lists from across the country. I've provided the FTC's Funeral Rule Coordinators (they're going on their third since 2003) with reports of the violations I've found. I've sent letters asking for official opinions on funeral home activities that I believe are violations of the regulations. Like all the others, the latest letter from September 2004, has never been answered.

The relationship between industry and government needn't be adversarial, but neither should it be as fraternal as this one. When the first reaction of the FTC is to bemoan the attendance of consumer advocates at a public meeting, and then to try to eject them, something's wrong. Sadly, it's the consumer — the American family — who pays the price.



The FCA Newsletter

Vol.10, no. 1

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Published quarterly by Funeral Consumers Alliance

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Legislative Watch

Alabama — An attempt to bring tighter control to prepaid funeral funds failed in Alabama. **HB 405** would have required funeral homes and cemeteries to deposit consumer's money more quickly into trust accounts. The bill would also have established trust funds to pay back consumers who lost money in preneed scams, and to pay for more inspectors and enforcement by the state. Current law offers consumers no protection — sellers don't have to deposit consumers' prepaid money in trust until the contract is "paid in full." So, some funeral homes and cemeteries are using contracts that state "final payment due at death," which lets them avoid depositing consumers' money altogether. After the state insurance department took over 15 funeral homes and cemeteries last year for spending \$2 million of customers' prepaid money, one would think Alabama lawmakers would feel some sense of urgency to protect constituents. Apparently not.

California — **AB 2796** would change California's requirement for cemeteries to post the address of the state Funeral and Cemetery Bureau on conspicuous signs. The bill would allow cemeteries to merely note that the address of the bureau is "available," and we don't think that's a sufficient consumer disclosure. In addition, the bill would change the current law requiring endowment care cemeteries to post signs wherever sales take place notifying consumers of the endowment care fund. The Bureau of Consumer Affairs asked for FCA's opinion, and we suggested more consumer-friendly amendments.

Colorado — The only state in the union that doesn't license or regulate funeral homes is taking small steps toward consumer protection in **HB 06-1348**. As of this writing, the bill is indefinitely postponed in committee, which we suspect means "dead." It would have

required funeral directors and embalmers to be licensed, it would have empowered the Department of Public Health to regulate and inspect funeral homes, and it would have beefed up educational requirements. The bill needed a lot of work, though. Among other failings, the bill had no clear complaint process for consumers, and it gave far too much influence to the Colorado Funeral Direc-

You Can Be In the Money!

If you don't belong to our free email discussion list, you're missing out on a lot of good advice from FCA affiliates around the country! Tris Ozark, administrator for the **Funeral Consumers Alliance of Western Pennsylvania**, posted a question about fundraising and soliciting donations a few months ago. Several sister FCA's chimed in with their success stories, and Tris sent out the following report (edited for length). Take note — Tris's plan helped with two problems so many FCA affiliates face: donations and getting new board members:

We do two newsletters a year, spring and late fall, and mail to about 3,000 member households. We've always included an appeal and a form to fill out and send in with a check. In fall, 2004, we received about 40 donations, down from about 70 from each of the previous two fall newsletters. Partly because of your encouragement, we tried putting in a remittance envelope [an envelope with the affiliate's address pre-printed] in the fall, 2005 newsletter. So far we've received 109 donations.

Two other factors might have contributed to the increase. Our treasurer put in a nicely worded appeal titled "Be An Angel," and we mailed the newsletter a little later than usual (early December). I believe, though, that the envelope was the biggest factor . . . it cost a little more for the envelope and printing, but saved us space in the newsletter for more informative copy.

One more item might be of interest. We always include on the donation form and in our membership registration materials a box to check, indicating that the donor wishes to have memorial contributions made to FCAWP. We get just a few — maybe four or five — donations with this option each year. It's also a nice indicator of the member's dedication to the cause. We've occasionally used that, along with the donation itself, as a clue that a member might be interested in serving on the board, and it's worked a couple of times.

Tris' success story is a great argument for joining the online discussion. It's free, it's instantaneous, and it puts you in touch with FCA affiliates around the country who can help you solve problems. To join, send an email to:

join-deathcare@lists.listmoms.net

tors' Association (and none to the public) over funeral rule-making and investigating misconduct.

Hawaii — Despite the fact that the state is investigating island funeral company RightStar for taking more than \$20 million in customers' prepaid money and diverting it to investment schemes, the Legislature failed for the second year to tighten Hawaii's prepaid deposit laws. At only 70 percent, Hawaii's trusting

requirements are tied with Florida as the lowest in the nation. In addition, current law apparently permits preneed sellers to keep all of a customer's money (with no refund) if the customer misses payments and goes into "default." **FCA of Hawaii** again offered testimony and comment, but lawmakers apparently had better things to do.

Kentucky — Consumers lost a round in Kentucky after **HB 232** was signed into law by the governor. Despite a letter-writing campaign from the members of **FCA of Greater Louisville** and testimony from **FCA National**, the legislature outlawed lower-cost funeral homes from serving the public. Under the new "regulatory scheme," funeral homes will have to be "full service establishments," with embalming rooms and a host of other expensive facilities, if they want to do business with the public. Lower-cost, limited service businesses would have to be owned by a "full-service" funeral home. The Kentucky Funeral Board (four undertakers and one "public member" — whose wife works for a funeral home!), with the blessing of the state undertakers trade association, convinced lawmakers to "protect consumers" with new laws that will drive up prices and narrow choices. The bill was a blatant and successful attempt to protect old-timey "traditional" funeral homes from competition by the ever more popular storefront establishments. How sad that state lawmakers sold out grieving families to line the funeral industry's pockets.

Mississippi — Astoundingly, the (former) worst state in the union for consumers when it comes to prepaid funerals has taken a step forward. **HB 1064** increased the state's abysmal 50 percent trusting requirement to 85 percent. This means that funeral directors now have to deposit at least 85 percent of a customer's prepaid funeral money in a trust. But prepaid funeral law is still so full of loopholes we'll continue to warn Mississippi consumers not to take the risk.

Missouri — **SB 1012** would bring Missouri in line with about three-quarters of the nation by giving citizens the right to decide the disposition of their bodies after death, and to assign an agent to carry those wishes out. This combined personal preference/designated agent bill would clear up an ambiguity in state law

that leaves funeral directors and families without clear guidance on who can make funeral arrangements. As of this writing, the bill is still in committee. In other news, the state's funeral board has finally recognized it doesn't have the right to tell families they have to pay a funeral director to care for their dead. The board has redrafted regulations to clarify that families, the next-of-kin, and religious groups have the right to care for their own dead without paying a funeral home. It took a lot of pressure from **Funeral Consumers Alliance** and the law firm the **Institute for Justice** to make this happen, and we're glad to see it.

New York — **The FCA of Long Island and New York City** persuaded an Assembly member to sponsor a bill requiring cemeteries to give customers printed price lists and printed copies of the cemetery's rules and regulations before the sale. Because the Federal Trade Commission's Funeral Rule applies to funeral homes but not cemeteries, citizens have to look to the state for this basic protection. The bill is a good step forward, but unfortunately, it doesn't include any guidelines for price lists or consumer disclosures. We'll track its progress.

Predictably, **Service Corporation International (SCI)** is at it again, trying to bring "Dignity" to the Empire State. New York prohibits the sale of packaged, all-in-one funerals, instead requiring all funerals to be offered a la carte (the FTC Funeral Rule permits packages, so long as they don't replace itemized selections). **SB 04209** would change that. Unfortunately, we know all too well what that would mean for NY families — SCI's own financial reports indicate the company makes up to \$2,800 more per family for every "Dignity Memorial" package they sell. Consumer complaints indicate SCI isn't offering the packages — they're forcing them on families who don't know they have any other choice.

Ohio — **HB 426** would give Ohio citizens the right to appoint an agent to

control the disposition of their remains at death. Aaron Shank, attorney and board member of the **Funeral Consumers Alliance of Central Ohio**, has worked hard on the bill with the legislature. The bill differs from others of its kind: it's purely a designated agent law; it doesn't give citizens the right to decide on the disposition of their own bodies, only the right to appoint someone to make that decision. It would also allow the designated agent to alter prepaid funeral arrangements the citizen had made. While that could create problems, some observers note the bill would give needed flexibility to a person's agent, which might outweigh any drawbacks.

Virginia — Virginians should look sharp in 2007 for the reemergence of two bills that didn't make it this year. **HB 1300** would weaken current standards for continuing education courses for funeral directors. The current law doesn't allow "continuing ed" courses that are sales pitches designed to get funeral directors to buy products or services. **HB 1300** would change that; a serious mistake when mortuary continuing education in much of the country is largely an excuse for undertakers to get a state certificate for shopping at sales conventions.

HB 1299, though, has our backings. The bill would create a "preneed recovery fund" to pay back consumers who've lost money when funeral directors don't deposit their prepayments or they go out of business. Unfortunately, the bill sets an absurdly low minimum balance for the fund, \$50,000. That paltry sum would only pay back 7.5 families if they bought an "average-cost" full-service funeral at \$6,500. Maybe the state ought to consider tightening its prepaid trust laws so a recovery fund wouldn't be so necessary.

Wisconsin — We're glad to say pressure from **FCA National** and **FCA of Greater Milwaukee** resulted in amendments to **AB 485**, which became law in Wisconsin this spring. Originally, the bill would have outlawed lower-cost storefront funeral homes from operat-

ing in Wisconsin. AB 485 would have made it illegal for funeral homes to rent affordable space in shopping centers, and would have required each funeral home to be able to seat at least 50. After an outcry in the media, the bill's sponsor struck those two protectionist provisions. Unfortunately, AB 485 does prohibit churches, synagogues, and organizations "operating under a creed" from operating a funeral home, which strikes us a constitutional case waiting to happen.

Unfortunately, **AB 984**, which would have given citizens the right to control the disposition of their bodies after death, and the right to appoint another person to carry those wishes out, never got out of the legislature.



GOING GREEN AROUND THE COUNTRY

Green burial — natural burial without embalming, metal coffins, or vaults — continues to spread in the U.S., and the **Funeral Consumers Alliance of Maine** will be the first nonprofit funeral consumer group to offer it. FCA of Maine voted to accept the gift of a parcel of land from a couple who are members of the organization. The group plans to open a green cemetery eventually, but the board will spend the next year working on logistics and legalities. We'll bring you more details as they become available.

New York State's first green burial ground is now operating near Ithaca. The Greensprings Natural Cemetery Association is offering graves for \$500 each, with a \$350 fee for opening and closing. Vaults, graveliners, metal caskets and embalming are not permitted. Their Web site is an example of what a truly consumer-friendly cemetery can be. All costs, rules, and regulations are clearly posted on the site at www.naturalburial.org. Greensprings is having a dedication and open house on May 21, 2006. Dr. Billy Campbell from the Ramsey Creek Preserve will speak.

Lawmakers Aim to Bust Body Brokers

On April 7, Senators Chuck Schumer (D. NY) and Patrick Leahy (D.VT) introduced the Safe Tissue Act, a bill that would close some of the gaping loopholes that allow the unfettered sale of donated body parts and tissue for all sorts of activities, from legitimate medical uses to high-priced medical implants and products that enrich Wall-Street traded biotech companies.

The Safe Tissue Act, S. 2609, would:

- **Require the Food and Drug Administration (FDA) to inspect tissue banks at least every two years**

- **Require the FDA to audit Tissue Banks to make sure tissue was obtained with proper consent from donors and families**

- **Require Tissue banks to offer donors (on request) the details of the harvesting process and the specific uses to which the tissue will be put**

- **Require the Secretary of Health and Human Services to develop a model informed consent document**

- **Require the Secretary to define "reasonable payments" for processing and procuring tissue**

This bill is a great start, but it could use some additions — full disclosure to families if a for-profit company will be using the tissue; a triage system to ensure those in the most dire medical need get tissue before all others, and maybe an opt-out for those who don't want their donation used for profit. Heather Langdon, a member of Schumer's staff, contacted FCA several months ago for our input, and we look forward to work-

ing with lawmakers to suggest improvements.

The Problem

Way back in 2000, the Orange County Register published an investigative series called "The Body Brokers" detailing how tissue procurement companies — some operating for profit — were obtaining tissue from donors and making a tidy profit selling it to biotech firms. Meanwhile, burn victims and other critically ill people were not always getting the tissue they needed. The Register also found \$500 million was being made every year off donated tissue, and biotechnology companies were profiting handsomely from these humanitarian gifts. Press reports today say the field has grown to \$1 billion annually.

In October 2005 press reports emerged about a black market in illegally harvested tissue. The Brooklyn district attorney has charged a former dentist, Michael Mastromarino, owner of the now-defunct BioMedical Tissue Services, and Joseph Nicelli, a Brooklyn funeral director, with more than 100 counts of stealing bones and tissue and selling them to transplant centers. The DA said the two were paying up to \$1,000 to funeral directors to get access to bodies without the family's permission, which were then cut up and sold off.

Meanwhile, thousands of body parts were implanted in the living all around the U.S. and Canada, and the FDA is worried some of these were not properly screened for HIV, syphilis, and hepatitis, though the agency says the risk of patients getting sick from implants is low.

Aside from the blatantly illegal and unethical act of harvesting body parts without permission, there's an awful lot wrong with what is legal. While the law

prohibits the outright sale of donated parts for transplant, it doesn't prohibit the sale of parts for research. What's more, even in situations where outright sale is prohibited, companies are allowed to recover their costs in the form of "reasonable payments" for procuring and processing. As Annie Cheney writes in her recently released book, *Body Brokers*:

Whereas the Uniform Anatomical Gift Act . . . prohibits buying and selling dead bodies, the law allows companies to recover their costs, which makes life very easy for the brokers. By inflating the amount they spend on labor, transportation, and storage of bodies, they can easily hide their profits.

This has allowed fly-by-night "tissue banks" (some are little more than back room outfits that dissect bodies and sell them) to set up shop with legitimate-sounding names like Bio-Tech Anatomical. These businesses often entice the public with soothing pamphlets that sound noble and humanitarian, while the donor has no idea that his gift may end up being used to make profitable medical products that are sold outright, or used by doctors practicing the latest face-lift techniques at posh resort conferences. What's worse, Cheney found several legitimate medical schools had obtained bodies or parts through shadowy brokers, or had used these brokers to redistribute bodies that were donated but not usable by the institution. In addition, several biotech companies have nonprofit arms that function as conduits for donations to the for-profit medical device company. Just because a donation organization is nonprofit, that doesn't mean your donation won't make someone else a nice chunk of change.

FCA sounded the alarm in 2003, petitioning the National Conference of Commissioners on Uniform State Laws to reopen the Uniform Anatomical Gift Act. We asked the NCCUSL to address

the problems with a lack of true informed consent, the loopholes allowed by undefined terms such as "reasonable payments," and other issues. The results have been extremely disappointing. The various drafts of the new Act have failed to address these problems. Then again, the UAGA is only a model that states can choose to adopt, or not. The best solution to this problem is a bill like Schumer's that would have the force of federal law.

The Reality

Nothing that happens to dead bodies is pretty, whether it's decomposition, embalming, cremation, or anatomical donation. Many people are shocked to learn what research is done with cadavers — legs being blown up in land mines to test military protective gear, cadavers used in car crash tests, disembodied knees poked around by doctors in training — but the problem isn't grotesqueness. Most people would concede these are legitimate, life-saving uses for the dead.

The real problems are illegal harvesting, misleading donors into believing the gift will be used altruistically, and profiting obscenely off a humanitarian gift. As bioethicist Arthur Caplan told the Rochester Democrat and Chronicle, "It seems odd that somebody has to donate their ligaments or skin and wind up seeing someone driving around in a big Ferrari."

That isn't to say the for-profit biotech industry is all bad. For-profit companies have brought lifesaving and life-enhancing products to the market. The issue is whether it's done honestly, and with consent. Body parts are badly needed for a variety of medical uses. We hope Congress acts quickly to correct these problems before the public stops being willing to donate their bodies to help humanity.



REGULATORY CAPTURE

When Boards Put Profits Ahead of the Public

It is well known that we can never have an educated profession of funeral directors unless we compel it by legal enactments as a sanitary measure . . . I would have a law regulating the care and burial of the dead the same as there is for medicine"

— Hudson Samson, President of the National Funeral Directors Association, addressing NFDA's fifth annual convention in 1886.

President Samson would be pleased with the progress funeral trade associations have made these past 120 years. They have compelled by legal enactments all sorts of regulations for the care and burial of the dead, often under the banner of sanitation and public protection. All 50 states have laws licensing the business of funeral directing. Some are so detailed they prescribe in feet the length of the room in which the dead are embalmed, or proscribe the use of profanities or "unprofessional" language in the presence of the dead.

In addition, the country is full of licensing boards dominated by those who are supposed to be regulated. Many states require that the majority of members be licensed funeral directors. North Carolina law actually mandates this conflict of interest by requiring the governor to appoint six of nine board members from nominations made by two state undertakers associations.

There's a term for this incestuous relationship between the government and the governed: regulatory capture.

"It's a perfect storm," said Professor Morris Kleiner, an economist at the University of Minnesota who's studied business licensure for 30 years. "You

\$ Tightwad Tips \$

Everyone who runs a nonprofit knows you have to pinch your pennies. Wayne Derrick of the Funeral Consumers Alliance of Houston shared these tips that saved his group money:

- We changed from a business phone line costing \$62 per month to a prepaid cell phone costing \$9 per month (plus minutes) from T-Mobile. Sign up for a T-Mobile prepaid phone account. You'll have to buy your phone, and the cheapest is \$50 after a mail-in rebate. Then, immediately buy a \$100 prepaid calling card, which then gives you 1000 minutes at 10 cents per minute. It's good for one year, unless you use the 1000 minutes sooner. We have gone 11 months on 1000 minutes in Houston. After 12 months, you must renew, but unused minutes roll over.
After you start the T-Mobile cellphone, arrange to transfer your FCA number to the cell phone. FCC regulations require that you have this right; but you may have to persist to get it done. Then, discontinue the business phone line. In Houston, an AT&T line cost us \$62/month, so reducing cost to about \$9-10 per month is quite a savings.
- With a cell phone, you can keep your white pages listing in the phone book for about \$6 per month. Check your local telephone directory's policies and prices. We've found the yellow pages listings are too expensive and we get few calls from them anyway.
- For long distance calling, we use a flexible plan found at www.OneSuite.com. If they have a local access number in your area, calls to any US city except Alaska/Hawaii are 2.5 cents per minute. If you must use an 800 number, calls are 2.9 cents per minute. You must prepay by MasterCard or Visa, and there is a \$10 minimum. You'll need to renew your account every six months, but you don't lose any minutes that you haven't used.
- We get free folding and labeling of newsletters, through high schools. We found that some high schools have classes for special education students, and they do folding, labeling, rubber-stamping return envelopes, etc. at no cost. They are not allowed to charge, but are happy to accept cookies, brownies, scotch tape, etc.

have the occupations who are interested in restricting entry and increasing their earnings. They then lobby the legislators, who can both get more money for their campaigns and [gifts] from the associations."

According to Kleiner, the funeral industry's successful project to create monopolies is not unique or new. He notes that occupations such as medicine and law organized and got licensure passed in the late 1800s.

Clark Neily puts the system's origin much further back and farther away.

"A lot of people don't know this, but it goes way back to English Common Law," said Neily, a lawyer with the Institute for Justice, a libertarian firm

that fights nonsensical licensing laws. He cites the business monopolies English monarchs used to bestow on favored courtiers. "These were little presents, essentially, that the monarchs handed out . . . it's very much playing out all over again."

This closed system has serious consequences for consumers. Six states (IN, NY, LA, NE, CT, WI) have laws that in some way prevent families from burying their own dead without paying a funeral home. In these states, their dead become hostages to the funeral industry.

Worse still is the self-serving lobbying funeral boards often engage in along with trade associations. In 2005, the Tennessee Funeral Directors Asso-

ciation and the state funeral board worked on a bill that would have outlawed lower-cost funeral homes with minimal facilities and services. The bill only died after its funeral director sponsor was arrested by the FBI for allegedly taking bribes to influence unrelated legislation.

Families with funeral-related complaints often have little chance for a fair hearing. The FCA national office is working on a complaint from an elderly man in Georgia. He complained to the state board 14 months ago about a funeral director who substituted a cheaper casket at the time of death than the family had paid for in advance. The funeral director in question happens to be a member of the board — is it any wonder the

complainant hasn't received any response from the board in more than a year?

Sometimes, even the "public" representatives on state funeral boards don't do much good. In many cases, this minority of board members is suggested to governors by other board members (read: funeral directors). These members will often defer to the judgment of their "professional" colleagues, leaving families without a disinterested advocate.

In the worst case we've seen, the "public" member of Kentucky's five-member funeral board is married to a woman who works part-time at a funeral home, even though state law prohibits the public member from having any interest or affiliation with the funeral industry. The Attorney General's office actually defended his appointment, claiming his domestic situation was "not the kind of conflict of interest" the law was written to prevent.

What can be done? Kleiner suggests replacing the current licensing schemes with a system of certification. Such a system would allow anyone to open a business, but only those who met certain professional qualifications, set by an independent agency, could advertise that they were certified. But such a system wouldn't allow for one of the best parts of licensing laws — the state's ability to shut down operators who abuse consumers.

Kleiner said licensing schemes could work properly if there were more "public members on the boards" and if the system were "weighted in such a way that the public's concerns were given sufficient attention."

According to Neily, what's needed is a wholesale change in the way the courts have viewed these laws for the past 80 years.

"There is a presumption that any law the government passes is a valid law, and that the burden is on the citizen to overcome this," he said.

Neily should know. The Institute for Justice sued the state of Oklahoma

on behalf of a business that wanted to sell caskets to the public, contrary to the state's law restricting casket sales to funeral directors. Even though the court ultimately upheld the law, one justice stated in his opinion that "Consumer interests appear to be harmed rather than protected by the limitation of choice," the law imposed.

"There's this incredible irony in

the casket sales case," Neily said. "Funeral directors that we have just shown, in a trial, are marking up caskets 500 to 600 percent, have the gall to claim the law is about consumer protection. What they're really saying is, 'We should be the only ones permitted to rip consumers off. They're our sheep and we don't want anyone else fleecing them.'"



Get On Boards

State funeral boards need real consumer representatives, and FCA affiliates are the perfect source. Former FCA National President Ernie Marriner sits on the Maine board, and Phyllis Rowe of the FCA of Central Arizona and Dave Grundy of the FCA of Vermont serve on their state boards. While every state has different laws, here are some general tips:

- Attend your state's funeral board meetings (you are doing this anyway, aren't you?). Phyllis Rowe says "a lot of business goes on at these meetings that the public doesn't know about. Just your presence in the room helps keep the business transparent."
- Go to your state legislature's Web site and read the law to find out how board members are chosen. In most states, there is a process to nominate board members, who are then appointed by the governor.
- When the next round of appointments comes up, have your FCA board nominate one or more members to the consumer slots on the state board.
- Start a letter-writing campaign among your membership — maybe through your newsletter — to show the governor that real constituents want true consumer representation. Remember, the squeaky wheel gets the grease — you've got to squeak louder than the state funeral trade group.
- If you don't get a nominee appointed, keep trying. You might also do some research on who was appointed to the slot instead of an FCA member, and why. This might be a good story to pitch to your newspaper's government affairs reporter.

A Funny Thing Happened on the Way to the Morgue. . . A Q&A between author Mary Roach and FCA Exec. Director Josh Slocum

We've told you about what's wrong with the body parts trade, and it's serious business indeed. But there is a lighter side to the story. *Stiff: The Curious Lives of Human Cadavers*, was a runaway bestseller in 2003. Mixing irreverent humor with fascinating stories of the real-life uses medical science has for donated bodies, Mary Roach's book is a well-researched romp. **Fair warning** — if you're uncomfortable with graphic descriptions and dark humor, you won't like this book:

By and large, the dead aren't very talented. They can't play water polo, or lace up their boots, or maximize market share. They can't tell a joke, and they can't dance for beans. There is one thing dead people excel at. They're very good at handling pain UM 006 is a cadaver who recently journeyed across Detroit from the University of Michigan to the bioengineering building at Wayne State University. His job . . . is to be hit in the shoulder with a linear impactor.

— From Chapter 4, Dead Man Driving

Roach's tongue-in-cheek approach is not everyone's cup of tea, but it sure is mine.

JS: In researching the book, you went to morgues, medical conferences, crematories, and crime labs. What's a nice girl like you doing in places like these?

MR: I have a short attention span, I

STIFF: THE CURIOUS LIVES OF HUMAN CADAVERS by Mary Roach. W.W. Norton, 2003. 204 pages.

Available from FCA for \$13.95 plus \$3.50 for shipping. To order, call:

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think. I get bored easily and I keep pushing out to the fringes more and more, whatever subject matter I'm into. It takes a lot to get me to "Wow, this is great stuff, I've gotta write about this, people need to hear about this."

JS: Did you enjoy your field research as much as it seems reading the book?

MR: Oh yes, absolutely. I never had this sense of "Oh, how am I going to process this emotionally? Oh, it's so gruesome." It never occurred to me. It's not like going to the scene of an accident and seeing the effects. It's a laboratory

setting — it's fascinating.

JS: Where did you get the idea for *Stiff*?

MR: I was doing a column for Salon.com. I sat next to this guy on a plane who worked in the car crash-test business, and he told me about the early days when they used to use cadavers to calibrate the tests. So, I wrote a column about it, and it got very good ratings. Then I wrote another, and that led to a discussion about doing a book.

JS: You're pretty saucy with the people you interview; you ask things they don't

want you to ask. Like when you were interviewing Arpad Vass, a researcher at the Body Farm in Tennessee where they study human decay. You kept asking him exactly how big certain parts of the anatomy become under certain conditions. You wrote, 'Arpad Vass is a man with infinite reserves of patience, but we are scraping the bottom of the barrel.' Yet you get away with it.

MR: (laughing) I am. . . I'm not pushy. I'm just unrelenting and irritating. Arpad was a very nice man, and I had the sense I could needle him endlessly. But there are people that if you needle them, they'll clam up, so it's a very delicate dance. Some of them are very jargony, and they're not going to tell you what you really want to know.

JS: Hmm. Were there any questions that you just couldn't ask?

MR: When I was at the mortuary college in San Francisco, there were a couple of students who showed me a practice embalming. The question everybody wants to know when it comes to mortuaries is, "Do people get into this because they're necrophiliacs?" Obviously, that's a tiny percentage of people. It was something I was curious about, but I just felt these people get that question all the time, they're sensitive, and a little paranoid, and I just thought I wouldn't go there.

JS: Though I can't imagine what it might be, was there anything that didn't make it into the book?

MR: I heard about this military use of dead people called Operation Mince-meat. The title makes it sound much more gruesome than it is. The story goes that the good guys were on a war ship, and they were trying to foil, trying to confuse the enemy about where they'd be landing. So they took this dead guy, dressed him up in a uniform, put bogus intelligence papers on him, checked the

tide table, and launched his body. It went ashore, and the enemy found him and made their plans based on the phony papers. Apparently, the family found out years later and they were kind of proud he'd been a warrior.

JS: You reviewed Annie Cheney's new book, *Body Brokers*, in the New York Times. Did you know about the scandals in the body parts trade when you wrote *Stiff*?

MR: I had no idea of the scope of it—I thought there were a few bad apples out there. I was not at all aware that it was happening everywhere. It sounds really head-in-the-sand, but I was glad I couldn't read [*Body Brokers*] when I was working on *Stiff* because *Stiff*, in my mind, is a really upbeat book. So for me to find out that these sleazeballs have profited so immensely and illegally, it's depressing for me. I wanted to be able to say, "Yes, I support people donating their bodies to science, and yes, I want to donate my own." I mean, I still support medical research, and all the things I researched in the book, but [the scandal] does put a tarnish on it.

JS: It's obvious you had a great reverence for the dead you studied—you thought of them as silent heroes. But did you take any flak for your humorous approach?

MR: I anticipated getting flak from mortuary people, from the research entities I visited with, from readers who lost a loved one. I anticipated piles of hate mail, but I don't think I got a single negative letter or email. But bear in mind, when people hate a book, they're not compelled to track down and write to an author the way they do when they



Gallows Humor

Three friends from the local congregation were asked, "When you're in your casket, and friends and congregation members are mourning over you, what would you like them to say?"

Artie said, "I would like them to say I was a wonderful husband, a fine spiritual leader, and a great family man."

Merle commented, "I would like them to say I was a wonderful teacher and servant of God who made a huge difference in peoples lives."

Don said, "I'd like them to say, 'Look! He's moving!'"



Dead - adj. (1) to be dead.

From a mortuary student who corresponds with FCA:

"I thought I'd share this with you, because I found it extremely amusing. I had my first class in funeral service management today, which was the class formerly known as "mortuary law." One of the things we learned were the requirements for being dead! One of the requirements - go figure- is 'must be without life.'"

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A full report on the FCA Biennial Conference in Austin Texas, featuring speakers on:

- ◆ Green Burial
- ◆ Home Funerals
- ◆ Taking on Wall Street 'Deathcare'
- ◆ Consumer Lobbying

... and more!



Spring, 2006

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People from around the country — FCA volunteers, board members, the public, and even some funeral directors — participate in this email discussion. Many post funeral and death-related news articles several times weekly. Join today!

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