

# PRENEED BURIAL SERVICE

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON FRAUDS AND MISREPRESENTATIONS AFFECTING THE ELDERLY  
OF THE  
SPECIAL COMMITTEE ON AGING  
UNITED STATES SENATE  
EIGHTY-EIGHTH CONGRESS  
SECOND SESSION

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MAY 19, 1964

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Printed for the use of the Special Committee on Aging



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1964

34-829

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## PRENEED BURIAL SERVICE

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TUESDAY, MAY 19, 1964

U.S. SENATE,  
SUBCOMMITTEE ON FRAUDS AND  
MISREPRESENTATIONS AFFECTING THE ELDERLY,  
OF THE SPECIAL COMMITTEE ON AGING,  
*Washington, D.C.*

The subcommittee met at 2:10 p.m., in room 4200, new Senate Office Building, Senator Williams (chairman of the subcommittee) presiding.

Present: Senator Williams.

Staff members present: William E. Oriol, professional staff member; Gerald P. Nye, minority professional staff member; Patricia Slinkard, chief clerk; Mary Keeley, staff assistant; Marion Keever, minority chief clerk.

Senator WILLIAMS. Today we are fortunate to have with us two witnesses with firsthand knowledge of mail-order preneed burial insurance plans. The subcommittee has just begun its studies in this area, and we know that we still have much to learn about the overall situation.

During staff visits to two States, however, we learned enough to warrant our concern, so we have asked these two witnesses to begin our inquiry today with their statements.

First, we will hear from Mr. Richard N. Carpenter, special assistant attorney general of the State of New Mexico. We have certainly drawn highly on New Mexico today.

And, of course, we have a return visitor, Mr. W. Dan Bell.

Gentlemen, we are looking forward to this. This area has been a new one to me, so I will learn something about it.

**STATEMENTS OF RICHARD N. CARPENTER, SPECIAL ASSISTANT ATTORNEY GENERAL OF THE STATE OF NEW MEXICO, AND W. DAN BELL, MANAGER, ROCKY MOUNTAIN BETTER BUSINESS BUREAU, DENVER, COLO.**

Mr. CARPENTER. Senator, we do have independent testimony, and we have not discussed this matter together, and Mr. Bell and I have thought it best if I proceed with my statement first.

You requested the attorney general of the State of New Mexico to present a discussion concerning these preneed burial plans, insofar as the frauds and misrepresentations in connection therewith affect the elderly.

The law enforcement officials in our State have been concerned with investigating into the affairs of, and prosecuting abuses of and il-

legal conduct in connection with, this subject for the past several years. In the past several months the New Mexico Superintendent of Insurance, the office of the attorney general, and the State board of embalmers and funeral directors have joined together and expended several hundred man-hours and thousands of dollars in pursuing this pertinent and sometimes emotional subject, and the effects it has upon the elderly.

The testimony I am about to give is based upon the findings of the above three agencies. Assistant Attorney General James E. Snead, who has directed the coordinated quest, should be your witness, but in his absence I shall testify as special assistant attorney general, though I am privately employed. I shall attempt to summarize the principal conclusions of our current efforts.

*Refined*  
Basically, "preneed" or "prearranged" plans are promotional contracts providing for the furnishing of funeral services or for the furnishing of funeral merchandise, such as caskets or vaults, with or without accompanying funeral services, which service and/or personal property are not immediately required, but, in the usual course of business and in the contemplation of the average purchaser, are to be performed or delivered, as the case may be, subsequent to and contingent upon the death of the person for whose benefit the preneed or prearrangement plan is made.

Such plans are usually called preneed because they involve the paying by the purchaser, often on the installment basis, of sums of money, often several hundred dollars for each elderly couple, years or months, or hopefully, decades in advance of death, the time of "need."

Senator WILLIAMS. Hopefully, from the same man's standpoint?

Mr. CARPENTER. Well, hopefully, also, from the purchaser's standpoint.

Senator WILLIAMS. I see. I missed that.

Mr. CARPENTER. The acute and pressing problem is the disposition of these funds prior to the time of need.

Over two-thirds of our sister States have statutes authorizing preneed plans under stipulated conditions. Most of these States require that 100 percent of payments made in advance of need be placed in State supervised trust funds.

The State of New Mexico enacted legislation in 1957 to attempt to protect the purchasing public by declaring preneed plans to be the transaction of insurance business and requiring that they be regulated by our superintendent of insurance for the protection of the public in the same manner as the business of life insurance; the State board of embalmers and funeral directors followed the same approach by regulation.

Now there are many cases in the common law holding that the furnishing of funeral merchandise and funeral services are funeral insurance, so what New Mexico sought to do is to codify the common law, by enacting the statute.

Many other States regulate it by 100 or 75 percent trust fund. It is readily apparent that preneed plans are of the nature of insurance, and many judicial decisions so hold.

As we view the difficulties and examine nationwide literature on the subject of funeral service, we believe that the principal object of

public criticism, and the real subject of Miss Mitford's book, are promotive entrepreneurs from outside the funeral profession and, in our State, for the most part from without New Mexico, who prey upon, or seek advantage from, elderly persons seeking security concerning their last rites on this earth.

A 1963 pamphlet by the Association of Better Business Bureaus entitled, "The Prearrangement and Prefinancing of Funerals," aptly describes the situation:

In recent years a growing number of individuals, firms, and groups have sought to stimulate public interest in prearranged, prefinedanced funeral plans. Among them have been sales organizations and promoters outside the funeral profession who seek to interpose themselves as third parties in the traditional personal and confidential relationship between the funeral director and the survivors of the deceased.

Grievous disappointments and severe financial losses have resulted from some unsound promotional schemes, foisted on a credulous public by armies of high-pressure salesmen. There are dangers in any plan for prepaying funeral expense unless it is surrounded with proper safeguards.

The Supreme Court of Illinois has stated:

In the long interval between full receipt of the purchase price and contract performance, the opportunities for fraud are great and risk of insolvency, with consequent inability to perform, apparent.

These dire predictions have, unfortunately, often become fact in New Mexico. The sales are in the hundreds of thousands of dollars and contract purchasers are at the mercy of the selling groups to perform at a time of grief. None of the nonprofessional groups selling preneed in our State have complied with the above statutory regulation, despite vigorous attempts by our superintendent of insurance and office of the attorney general to enforce the law.

The sellers of these preneed plans use the type of hard-sell tactics so vividly shown in recent issues of national magazines. Our State is very much concerned that these vendors, usually based outside of New Mexico's territorial jurisdiction, have sole, unregulated control of vast sums of our citizens' money.

Now as to the facts as developed through our investigations and administrative and court hearings:

In terms of volume, the largest vendor of these preneed plans is a Denver, Colo., based group operating under the corporate name of Consolidated Industries, Inc., and which is headed by a gentleman named Dallas J. Dhority. This vending organization purchased two funeral establishments in New Mexico—Our Chapel of Memories in Clovis and Roberts Funeral Home in Hobbs and operates in New Mexico through a myriad of corporate entities.

It foists upon the public in our eastside region adjoining Texas preneed plans under the names of "Our Chapel of Memories—Praying Hands Division," "Order of Praying Hands," and "Lawn Haven Memorial Gardens."

Senator WILLIAMS. Wait a minute. I missed that. Is that in the statement?

Mr. CARPENTER. That is on page 3, Senator.

The sales are made door to door and are upon the installment basis. The purchaser signs a promissory note, is given a packet of IBM cards and envelopes and is requested to mail his payment directly to Consolidated Industries in Denver.

Once the funds leave New Mexico, our authorities can offer only minimum protection and we have no concrete knowledge of how the funds are disposed of once they leave our territorial limits. Preliminary investigation has uncovered only minimal assets in New Mexico, under whatever corporate names this group deigns to use at a given moment.

No matter what corporate name is used upon the written contractual instruments, the term "escrow plan" usually accompanies the "sales pitch." Preliminary investigation has uncovered a bank account with a small deposit which was entitled an "escrow account" but which was, in truth and in fact, a mere savings account under the signature of Mr. Dhority and an associate.

This group's written contracts purport only to furnish caskets. The contracts' total purchase price has usually been \$637.50 per plan, or what professional statistics show is approximately the regional average for complete funeral services, including the casket.

Evidence introduced in a trial on this matter tended to show that purchasers believed that these so-called "casket" contracts included complete funeral services, and it is no wonder that some purchasers believed the contracts provided for the furnishing of services in addition to the casket, in view of the customary practice of funeral directors to quote only an integrated price for both the casket and accompanying professional services, which price is usually displayed upon the casket.

In October 1961, after numerous complaints and inquiries from purchasers of these preneed plans, the superintendent of insurance instituted injunctive proceedings against further sales until our statutory requirements were met and to require an accounting of all previous such insurance business.

The following month, a consent decree was entered by which the defendants—Mr. Dhority and his local corporate entitees and employees—were required to render an accounting and were enjoined from certain acts in connection with such preneed funeral matters.

In September 1962, our attorney general, at the insistence of the superintendent of insurance, instituted contempt proceedings for violation of the consent decrees by a continued sales program based upon outright and unequivocal violation of New Mexico law.

Mr. Dhority, the president of Consolidated, Consolidated Industries, Inc., Our Chapel of Memories, and two New Mexico employees of the sales organization were adjudged in contempt and given partially suspended fines and suspended jail sentences.

On April 6 of this year, the Supreme Court of New Mexico affirmed the contempt judgment. State officials now will attempt to coerce compliance by enforcing the terms for suspension of part of the fines and jail sentences.

But, Senator, unfortunately, even this action has not begotten compliance. The Denver-based group continues to operate from its out-of-State base, in conflict with the statutes and public policy of the State of New Mexico and contrary to the best interests of the investing public.

Before leaving this foreign vending organization, let us relate what its president and chief stockholder, Mr. Dhority, testified was

the cost of the casket delivered—hopefully, again—under their praying hands escrow division contract: \$96.50.

Even if our elderly citizens believed they purchased merely caskets and not professional services, we were astounded at the margin of profit claimed by the vending group at the expense of elderly consumers, many of whom are on limited retirement incomes.

The second group operates from El Paso, Tex. Until the approximate time New Mexico authorities became interested in this group's activities, it sold funeral services, presumably including the casket, under the name of Memorial Trust Corp. of New Mexico.

It presently exists under the name of Memorial Management Association, Inc. The records of our corporation commission indicate that this group is headed by Mr. Norman Anderson of El Paso, Tex. Under its new name, the so-called Anderson group openly advertised in newspapers in Carlsbad, Clovis, and Tucumcari that it is selling complete funeral services, claiming that its instruments will be honored throughout the United States and Canada. As far as we know, the funds collected under these contracts are transported to Texas and kept without our jurisdiction. There are no substantial, or even insubstantial, assets left within our control.

One of the several affidavits on file may illustrate to this subcommittee how this preneed operation served the public. On or about November 28, 1962, a Carlsbad married couple, with one adult son, and the husband working for the Potash Mines Transportation Co., was approached by a salesman for the Memorial Management Association and was told by the salesman that the funeral service agreement was good anyplace in the United States and Canada.

The family entered into two contracts for \$1,324 each, payable \$29 monthly upon the express representation that the services covered could be performed by the funeral home of this family's choice.

After becoming suspicious 6 months later, the family inquired whether the benefits would be available at the funeral establishment of their preference, but, after they had already paid in \$145 on the two contracts, were told by a representative of the Memorial Management Association that another funeral home, not of their choice, would be used at contract price and asked if it would be worth \$400 or \$500 more for the family to use the establishment of their choice. This conduct resulted despite the express contrary representation of newspaper advertising and of the salesman.

In truth and in fact, at the time the contracts were sold, the Anderson group had contracts with only three New Mexico funeral homes to furnish services, and these contracts have since been terminated.

Again, the personal story is rooted in the misrepresentation and fraud perpetrated upon real life citizens of New Mexico in the course of making the sale. But the larger picture must include the query of where all the moneys collected under these contracts have gone. Our State authorities do not know and our worries should become those of all the citizenry and of this subcommittee.

The third large vending group was again actively operated by non-funeral service practitioners. This group operated in Roswell, N. Mex., under two corporate names—the Mason Funeral Home, Inc., and Memorial Foundation, Inc. The outfit was headed by a gentleman by the name of H. K. Holland, who, incidentally, when charged



with fraudulently obtaining licenses from the State board of embalmers and funeral directors, surrendered the same for cancellation, later invoking his constitutional privilege to refuse to testify when asked at an administrative hearing about the alleged fraud.

In February 1964, the New Mexico State Board of Embalmers and Funeral Directors held 3 days of hearings in Roswell. These Roswell hearings emphasized the precarious position of holders of preneed contracts not complying with New Mexico law.

In the case of Memorial Foundation, Inc., the evidence shows that purchasers had paid in by early February of this year, on the installment basis, \$32,923.40 and the testimony demonstrated that not one single cent had been deposited in any escrow or trust account with the local banking institution which purchasers testified was to be the depository of certain of the moneys collected under these preneed contracts.

In fact, the evidence showed that Memorial Foundation, the corporate entity itself, actually owed money to its president and controlling stockholder, the same H. K. Holland. The hearing record also shows that the sum of \$800 only had been deposited in the form of certificates of deposit by the Mason Funeral Home and that, as of last February, these funds earned a total of \$32 interest, when the corporation had collected in excess of \$18,000.

Both corporations sold preneed contracts and the total face value was in excess of \$200,000. These were promoted in the southeastern portion of our State.

The State board of embalmers and funeral directors revoked the licenses of its two licensees involved. The State board, after the 3-day hearing, found that these organizations had participated in a plan whereby the public was defrauded and had used misleading and inaccurate advertising. It found that both corporations had sold preneed and that the unsound promotional scheme was foisted on a credulous public by a virtual army of high-pressure salesmen, was illegal, and was accompanied by numerous misrepresentations and frauds.

Basically, there were two separate plans. The first was carried forth under one name, until local law enforcement officials became aware of that name. Thereafter, the plan was sold under a different corporate name. The first plan was sold under the name of the Mason Funeral Home Corp., and obtained 119 contract purchasers.

As in the first group's contract, the written contract was limited to the furnishing of caskets only and the total purchase price—\$625—"mysteriously" approximated the regional average for full funeral services, including the casket. The caskets, incidentally, cost the corporation \$167.50. A few examples of this promotion may be helpful.

Representation: The manager for the Mason Funeral Home Corp., H. K. Holland, testified that there was in reserve in an escrow account funds sufficient to pay for caskets to be delivered under the Mason casket contracts.

Fact: While over \$18,000 had been collected, the corporation had deposited only \$800 under any type of security arrangement, which sum had earned \$32 interest. The corporation also had separate checking accounts containing a total of \$572.98. The sum in escrow

was insufficient under New Mexico law, the written contract itself, and the salesman's representations to purchasers.

Representation: Mr. Holland testified that credit life insurance was obtained for purchasers of Mason contracts.

Fact: In an affidavit to the superintendent of insurance, Mr. Holland swore that only 46 credit life insurance policies had actually been purchased and that on September 8, 1962, the insurer had informed Mason Funeral Home that they were terminating the creditor's group life.

Mr. Holland testified that the purchaser would have had to be under 65 years of age and in good health in order to qualify for coverage, even if it were extended.

Representation: No solicitation or misleading advertising was used in connection with this program.

Fact: A letter was mailed to the public describing the preneed contracts as being a "trust plan which is not insurance" and, in truth and in fact, the sale of the Mason casket contract was the transaction of insurance business under the laws of the State of New Mexico and not a trust fund, except as to the \$800 actually deposited in trust, which the president of the corporation testified was inadequate under the terms of the agreements themselves. In addition, the sales were accomplished, or at least in part, by a door-to-door solicitation program.

Three examples will show how these discrepancies misled the public.

Case 1: Mr. and Mrs. X, of Ruidoso, N. Mex., each purchased a Mason contract for a total of \$1,287.50, being represented that 75 percent of these payments were to be placed in escrow at a named bank and that credit life insurance was being purchased.

Mr. and Mrs. X are 73 and 66 years of age, respectively. Mr. and Mrs. X paid in \$460 before becoming alarmed. Immediately before the hearings in February of this year, Mr. X became suspicious and talked to the vendor's then manager who told him the money was on deposit and insurance was carried upon the balance and that the money would be refunded upon request. Subsequent to the hearing, Mr. X requested a refund and was refused.

Case 2: After receiving letters through the mail, Mr. and Mrs. Y purchased two contracts under the representation that the approximately \$1,300 paid in would be kept intact and invested until the time of need. Mr. and Mrs. Y were in their 70's and lived in Roswell upon retirement income from the Santa Fe Railway.

Case 3: Mr. and Mrs. Z, of Roswell, N. Mex., each purchased a Mason contract. The salesman represented to them that each payment would be kept in a bank, that the profit to the vendor would be the interest on the amount deposited, and that credit life insurance would cover the unpaid balance. At the time of the above hearings, Mr. and Mrs. Z had paid in \$420.

The February hearings of the State board of embalmers and funeral directors, as stated above, also involved the approximately 160 preneed contracts of Memorial Foundation, Inc. An examination of the transcript in this regard is most revealing.

Representation: The Memorial Foundation, Inc., contracts provided for the furnishing of complete funeral services.

Fact: Such written agreements contained no covenants to provide funeral services, a fact which purchasers did not discover until they had read the contract which most purchasers did not do until State officials investigated the matter.

Representation: Mason Funeral Home would perform the funeral services provided by the preneed contracts.

Fact: Mason Funeral Home claimed to be an entirely different business enterprise from Memorial Foundation, Inc., and denied any obligation under these contracts to perform funeral services.

Representation: The unpaid balances on these preneed arrangements were covered by creditor's life insurance.

Fact: No master contract existed with an insurer; only 16 applications were ever received by the insurer which issued only 8 policies; and Memorial Foundation, Inc., had not even paid for these 8 policies at the date of the board's hearings. There was no reference to creditor's life insurance in the written contract.

Representation: A letter sent through the U.S. mails represented that this preneed plan was a "trust plan which is insurance."

Fact: This preneed contract has been declared by statute to be the transaction of insurance business and, although a trust fund was opened, no moneys were ever deposited therein.

Representation: These preneed contracts were sold on behalf of Mason Funeral Home.

Fact: Mason Funeral Home denied responsibility for the agreements and for any representations made during the course of sale thereof.

The hearings produced some vivid examples of actual or possible fraud and misrepresentation affecting the elderly. Keeping in mind the above differentiation between fact and fiction, consider the following:

Case 1: After being solicited through the U.S. mails Mr. and Mrs. A, of Roswell, talked to a salesman and agreed to pay \$120 as a down payment and \$30 monthly, upon the representation that once the down payment was made, both husband and wife were covered to the extent that if one died, the policy would be automatically paid up for both members of the family.

When asked about this insurance coverage, which did not appear in the written contract—as did not any mention of funeral services—the salesman asked if Mr. and Mrs. A were in good health. Mr. A was in a wheelchair at the time, suffering with muscular dystrophy, and Mrs. A informed them she had a medical history.

Upon the salesman's representation that they were "pretty sure" that Mr. and Mrs. A would be allowed to continue the plan, Mr. and Mrs. A made a few more monthly payments, until, as Mr. A expressed it, "I felt I was being had somewhere along the line."

Case 2: Mr. and Mrs. B, also of Roswell, N. Mex., after telephone solicitation, purchased a contract for \$2,050, paying \$120 down, upon the representation that Mason Funeral Home was the real party in interest and would perform the funeral services which the salesman represented were to be performed under the contract.

As in all other cases, the representation that funeral services would be performed, no matter by whom, did not appear in the written instrument. It was only when Mr. B became ill with cancer and the

monthly payments became difficult because of mounting medical bills that Mr. and Mrs. B inquired into the plan and found that Mason Funeral Home claimed no responsibility and that the written contract had no provision for the furnishing of funeral services.

Case 3: Mr. and Mrs. C lived in Tularosa, N. Mex., and signed up for a \$1,725 contract, after being solicited through the U.S. mail and being approached by a salesman who represented that funeral services would be provided by Mason Funeral Home.

Even though the written contract only provided for the furnishing of caskets, Mr. and Mrs. C believed they had purchased complete funeral services because the salesman had told them—

that funeral directors use the word "caskets" to include all the costs of the funeral and when we bought a casket we bought the whole service.

Mr. and Mrs. C were also told that the money was to be placed in a bank account with the interest being allowed to accumulate.

Case 4: Mr. and Mrs. D resided about 5 miles outside Roswell, N. Mex. Mr. D, 76 years old, testified that he believed that he had purchased a contract for the furnishing of caskets and complete funeral services from Mason Funeral Home and that his money was to be placed in an escrow account. Mr. and Mrs. D signed a promissory note for \$1,765.

Case 5: Mr. and Mrs. E, of Roswell, N. Mex., purchased a contract calling for the total payments of \$1,836.75, upon the representation that funeral services by Mason Funeral Home were to be furnished, the unpaid balance was covered by a credit life provision, their money was to be kept in escrow, and the agreement would be honored even if Mr. or Mrs. E should die in California.

The record is saturated with more heart-rending testimony of how people—usually elderly and of limited means—had purchased contracts, the terms and provisions of which had been misrepresented to them or concerning which they were misled because of the subject matter.

Memorial Foundation has no substantial assets and no banking trust account as promised, the 160 contracts—save 8—were not covered by creditors' life insurance, the written contracts had no provision covenanting the furnishing of funeral services, and Mason Funeral Home disclaimed all responsibility for the contracts, as this corporate entity did not even have the escrow funds called for by its own preneed contracts.

Only our continued efforts to enforce the law will determine what losses have occurred to the budgets and emotions of these deserving citizens.

This is not the entire story of New Mexico's experience with unregulated preneed funeral plans, but should be sufficient to point out to this subcommittee the abuses possible even under a regulated system. We shudder to think what is happening in other States where preneed may be sold and where the citizenry has not been alerted and regulatory laws have been neither enacted nor vigorously enforced.

From our practical experience in New Mexico, it is our opinion that even if these contracts and the accompanying oral promises of funeral services are ever performed, these preneed instruments—as sold today in New Mexico—do not offer substantial savings as compared with the purchase of funeral services at the time of need.

The 1963 Foran report for the National Funeral Directors Association represents that the average funeral service fee—including casket—for the eight-State mountain region was \$513 for all services and \$666 for regular adult services only; the foregoing report indicates that the corresponding national average was \$616 and \$755.

As you have heard today, most of the preneed contracts described above approximated or exceeded these regional or even national average fees even when the contracts provided for the furnishing of a casket only, at a cost as little as \$96.50.

The Legislature of the State of New Mexico has enacted legislation to attempt to regulate and control preneed sales and the disposition of funds collected thereunder. Depending upon the success of the current efforts of the New Mexico superintendent of insurance, office of the attorney general, and State board of embalmers and funeral directors to enforce our present law, we shall attain a better position to recommend if legislation by Congress is warranted.

At the present time we can only offer ourselves as a practical laboratory for your and the public's observation of the actual operation of preneed funeral plans, and we hope and trust that this subcommittee may hereby become better acquainted and knowledgeable concerning this one very important field affecting the elderly, where frauds and misrepresentations are not only possible but are many times an unpleasant reality.

We can assure this honorable subcommittee that the State of New Mexico will continue to make our land of enchantment as safe from fraud and misrepresentation as humanly possible. The great many of the elderly who retire to pleasant lives in our climate and environment are living proof as to the success of the State of New Mexico in providing for its citizens.

The foregoing small but provocative exception is but temporary and we hope the information both you and we have gained from our experience will assist all of us in preventing and protecting against such unfortunate happenings in the future, not only in New Mexico, but in your States and all States of the Union.

We must append a very significant footnote to our testimony. The funeral service practitioners of our State have long combated unregulated, preneed funeral plans on the basis that the purchasing public lay at the uncontrolled mercy, or lack of the same, of the vending person or group.

Our experience has proved their beliefs were well taken. It is a tribute to the funeral service profession that 99 percent of funeral service practitioners dutifully obey the law and faithfully devote their lives to serving the public. Only a miniscule fraction of the funeral service practitioners in New Mexico have been even remotely involved.

The operations have been largely conducted by nonfuneral service practitioners and by persons and entities from without New Mexico. We, and we believe the general public, are grateful to the remaining members of the profession and our testimony as to preneed funeral plans should not reflect upon them. It is only through the trust and confidence of the funeral director and his professional colleagues that we have been able to uncover and, together, to take action to rectify the situation.

On behalf of the New Mexico attorney general and the State board of embalmers and funeral directors, we thank you for inviting us to give testimony on this matter, and we will try to answer any questions you may have.

Senator WILLIAMS. Thank you very much, Mr. Carpenter. We are very interested to go carefully through the cases here you cite.

Do people, or do families, when the hour of need arrives, come to you? How do you get these complaints?

Mr. CARPENTER. We have basically gotten them when the hour of need has arisen to a family who is a friend of a purchaser, who happened to attend that funeral, or hear about it, tell us about it, and tell their own story.

Now, what has happened in our State in the last 8 or 9 months is that there has been front page publicity on this subject on an average of once a month, and our citizens have become increasingly aware of the problem, and we have been flooded with pretty complete affidavits and documentary evidence concerning these plans, so we have been fortunate.

We have found the basic problem is getting people interested. One problem any investigation has in this field is that this is an emotional subject, and is a very private subject, and many times, when people get defrauded in this field, or think they have been defrauded, they don't dare say anything about it, because they don't want anybody to think that they have been taken, or have been defrauded or misrepresented to in such a personal field.

The second thing in this matter is that most of the people they sell to are elderly people, and when they read their contract and find out their contract is not what they had been ordinarily told they had bought, they, many times, feel that, of course, they were too old, and they must have misunderstood the salesman, and it's their fault, and they are not in a position, of course, at their age and their limited budgets, to enforce their own views.

Senator WILLIAMS. What is the formal method of solicitation? We know you have an example here of solicitation through the mail. Newspaper ads?

Mr. CARPENTER. Well, each group has operated separately here. The last group, Memorial Foundation and the Mason Funeral Home group, which most of the examples are of in the prepared statement, mainly start out through the mail. In these hearings we did have the testimony of two salesmen who sold these plans, who went into details on how they were instructed to sell them.

Their method was generally this: The corporation would send out a solicitation letter through the U.S. mails, asserting certain representations which we say in our statement were false. Within a 2 or 3-day period after the letter reaches the purchaser, a salesman is assigned, and he has a followup telephone call, and he asks if he can visit these people and talk about this plan.

Most people are interested in the subject, and a good share of them do invite the man into the home, and before the man leaves on that first visit, he has usually sold two contracts, one for the husband and one for the wife.

As to the Texas group operating in our State, they started operating through ads, advertisements in newspapers, and all these newspapers

are around the border and are all interstate commerce. They followed up through door-to-door solicitation.

The Consolidated group, the one from Colorado, is the wisest, and they are very much aware of our Federal laws, and they do no newspaper advertising, and they do no initial solicitation through the mail. Their initial contact is through personal representatives.

Then, from thence forth, all the instruments, notes, money, are carried through the mail.

Senator WILLIAMS. Have these companies been honoring their obligations, at least to the extent of the casket? Or have there been any defaults there?

Mr. CARPENTER. Well, where we have a difficult time is finding out when they have honored it, because then we don't get the complaint. Of course, most of these people, at the present time, we anticipate honoring all these so-called casket contracts for 2 or 3 years in New Mexico, because they are still trying to sell them, and they will not be dishonoring their policies while at the same time they are still trying to foist them on the public.

But what we are anticipating is somebody 60 or even 50 years old buying one, and we have to look forward to what's going to happen 30 years, or if they are lucky enough, even 40 or 45 years from now, but in the immediate future, we believe that they will perform them.

Senator WILLIAMS. This is more difficult of solution than some of the land frauds, for example. We have some pretty good State laws, and some other ideas. We have the mail fraud statute.

Mr. CARPENTER. Well, we do, Senator, have a law on this. The problem is trying to enforce it, with a lot of people from out of State.

Senator WILLIAMS. What this requires is the same kind of financial responsibility of an insurance company.

Mr. CARPENTER. Yes, sir; that is exactly the way of New Mexico, which is the only State in the Union which has handled it that way; but that is what it is considered, it is insurance.

Senator WILLIAMS. Mr. Bell?

#### STATEMENT BY MR. BELL

Mr. BELL. I have two apologies, Senator, one to you for not having my homework done, and this in written form, but I will submit it to the committee in this form; and to my associate here, I apologize for some Denver firms that apparently are causing problems to neighboring New Mexico. We will try to take care of this situation.

Senator WILLIAMS. Well, we won't hold you responsible for that outfit, and I am sure that you are as pained by its existence as he is.

Mr. BELL. You are right.

The preneed selling is not exactly new. It is not a new scheme. It has been condemned as a promotional type of activity by the National Funeral Directors' Association, and it parallels in its operation that of the preneed sales of cemetery lots that have been going on for many years.

It is, however, developing some new techniques, and the promotional people are moving back into it. The professional sales type of promoter, who has no mortuary, or actually little financial responsibility, but does have a glib tongue, and the technique of getting people to sign contracts.

We note in the newspapers and from other sources that this is a growing problem in the State of Missouri, in Kansas, in Colorado. It is creeping up into Wyoming, over into Utah, and, unfortunately, there seem to be two bases for this operation, one out of Denver, and one out of Kansas City.

The Colorado law, the new law that has been passed, requires that 100 percent of the money that is deposited with any seller for a funeral plan, a prearranged funeral plan, must be put in trust, under the supervision of the State banking department. The mechanics are that the seller of a prearranged plan has 45 days to deposit any money paid to him, and must report to the State banking commission where he is keeping this money and certify that it has been placed in an escrow account.

The State banking commissioner then is supposed to supervise this by making of audits and so forth.

In Colorado, in the past year, there is an estimated \$8 to 10 million in prearranged funeral contracts that have been sold. Of this money, much of it is sold on an installment contract, and it seems to be a little bit cloudy under the law as to whether it is necessary for the promoter, No. 1, to deposit the money until the contract has actually been paid out, and No. 2, if his contract calls for the sale of a casket or the providing of a funeral plan, whether he needs to put this money in trust on that portion which is applied to the sale of the casket, which he may write in as \$300 or \$400 for the casket alone.

The methods of doing business vary in our State. We have some that advertise, as for instance, this advertisement that reads:

Do you qualify for these U.S. Government death benefits? U.S. Social Security, maximum, \$255, United Memorial's answer to the ever-increasing cost of funeral services, the united plan. The preneed plan that costs \$10.

Now, their actual contract that they write up calls for the purchase of a casket, and a representation that the funeral service will be given by whatever mortuary they choose. They have what they call the endorsed mortuaries, who are any mortuary that they so desire to say, "you are endorsed."

We had a complaint a couple of weeks ago, a party died who had bought one of these plans—an elderly man—from this company, and had designated a certain mortuary in the Denver area as the one to handle his services. When his relatives went to this mortuary, the mortuary refused to handle the service because the man had contracted under this plan, and the only amount of money that the mortuary would get would be the social security benefit that the man had coming.

The mortuary did not have any prior agreement with this united memorial service to perform this service, and therefore, refused it. According to the complainants, they tried then several other mortuaries in town, and were turned down on all of them except finally they found a smaller mortuary who agreed to perform a \$225 service.

So that this illustrates that a professional promoter in this field who does not have an assured place to which the service can be referred can sell a lot of contracts, but the people may not even get their funeral services that they paid for, or contracted for.



Senator WILLIAMS. Well, I don't think it is any secret. The funeral director's return and profit, to a good degree, depends upon the sale of the casket, his sale of the casket.

Mr. BELL. He prices the service on the price of the casket. The casket may, oh, say, cost \$114, but it's what the costs of the services are, as I understand it, that gears the price of the funeral. You can buy a higher priced casket, but actually, the normal casket that is sold, again, as I understand it, is a 20-gauge steel casket that normally sells for somewhere, oh, between \$100 and \$125 wholesale, to the funeral director.

Another operation that is of a similar character that is soliciting our elderly people comes from out of Kansas City, and it was initiated by two men who had been recently expelled from the livestock business. They had been caught shipping cattle, misrepresenting cattle, and the Department of Agriculture barred them from the livestock business, for, I believe, a period of 10 years.

They apparently had a little money, so they started a company they called "American Mausoleum Service Co.," and this is another preneed promotion, in that they tied up with your friend, Mr. Dhority, in Denver, on a contract to build mausoleums on Mr. Dhority's cemeteries, and they immediately had a large sales crew go out and work through churches, and got some of the churches to give their lists of their members.

They did some advertising. They developed their sales leads, and they sold people crypts in mausoleums that have not yet been built, and there may be a question as to whether they ever will get built.

They also started a business of selling plastic caskets, which they claim had more merit than those being sold that were made of steel. This whole activity, at least again in our area, seems to be geared toward what Mr. Dhority told me, getting 100 percent of the death dollar.

The competition that is occurring is an effort to capture the bodies of the future. A mortuary or anybody in this type of business depends upon one of two things: Either waiting until he gets a customer, or going out and getting customers for whom he will then be able to perform the service in the future.

I recall back in Cleveland, Ohio, when I was much younger, that the cemetery lot promoters moved into Cleveland during the depression, and they sold cemetery lots on the basis of trading the elderly people out of their passbooks, their savings passbooks, and at that time, they sold more than—well, they sold enough cemetery lots in the city of Cleveland to bury all of our dead for a period of 200 years based on the tremendous amount of volume that they did. This in a great many respects parallels that, because the money that you pay on a prearranged funeral plan is put in, if it is legitimately handled, a trust, and the promoter or the mortuary gets the interest off that. That is his, and you get nothing but the possible appreciation of the service that may be rendered to you.

If, for instance, they represent in the sale of these contracts, an \$800 funeral for \$695, you are saving \$105 right now. But if inflation keeps up the way it has in the past, 10 years from now this funeral will be worth \$1,200. So you are supposed to be making an investment by buying your funeral now.

On the other hand, the money that you put in, you pay in 100 percent. That, then, the interest on that, can go to whoever is the trustee or the mortuary that is promoting that activity.

We feel that the idea of a person arranging their funeral now in theory is good. This means there is no emotion, you can select your price, you can make your arrangements, and this sort of thing. But in practice, we think it's terrible. We think that the present legal measures are not effective.

Our law, in spite of it being a new law, is not controlling the situation. We feel that many of these people who have gone into the business, so to speak, will be out. They will have used this money, they will have dissipated it, and generally, the victims in this sort of thing are not people who will complain to the point of prosecuting, and so forth.

So that this, as I say, as it develops through the States, it looks to us——

Senator WILLIAMS. Has this reached the east coast? The west coast?

Mr. BELL. Yes; in fact, much of it is still being done in many areas. I don't know whether you have gone through the laws, but the funeral people, the legitimate and honest people in the national field, are very much concerned about this tendency to promote these prearranged funeral plans.

There is one other facet to this that we have noticed in the fast-buck operations. Under the law, again, if a holder of these contracts defaults, and doesn't pay it out, or if he moves from the State, the trustee need only return 75 percent of the money.

In other words, the trustee can hold 25 percent of the total contract price, so that it is to their advantage, actually, to discourage the complete payment of these contracts. If a person has a \$600 contract, and pays in \$300, the promoter can then retain \$200 of that, or 25 percent, and refund only \$100.

Senator WILLIAMS. Have you had many direct complaints, Mr. Bell?

Mr. BELL. I didn't hear the question.

Senator WILLIAMS. ~~Have you had many direct complaints?~~

Senator WILLIAMS. Well, this is our opening round on this discussion. We are very grateful to both of you. You have given us a lot to think about. This is entirely a new area. I don't believe it is very prevalent in New Jersey, where I come from.

Mr. BELL. You find that the 80 percent of the solicitation is done to people that are 60, 70 years old. Generally, again, you wouldn't be a good prospect for them. You look too healthy.

Senator WILLIAMS. I have got a few gray hairs. But in a metropolitan area of high density population, the undertakers, the funeral directors, are close to you, in communicating with you. I don't think they would let this happen to people. I would judge that this is probably in rural areas, and it is somewhat more remote from centers of population.

Mr. CARPENTER. Senator, as some of my prepared statement indicates, in our State, it is not the funeral profession that is doing this.

Senator WILLIAMS. Oh, I know.

Mr. CARPENTER. I think Mr. Bell agrees it is people who are usually—

Senator WILLIAMS. That is what I say. The funeral director wouldn't let this happen where he can communicate to people easily.

Mr. CARPENTER. In New Mexico, probably the main backstay of law enforcement is the funeral director also trying to protect people there. The problem is that our news media are probably not so effective as they are in urban areas, and there are always people who can be had, some place along the line.

Senator WILLIAMS. In a metropolitan area, if one of these plans came into the spotlight, it would affect the undertaker, the cemetery, you would go into the church, and one isolated case would sweep through the area like wildfire, and people would be alerted.

It would arise. If they thought they had a full funeral contract, and they didn't, why this would be communicated.

Mr. BELL. Actually, Senator, in Denver, which is the 22d largest city in the United States, and not quite a rural area, the three largest mortuaries in our city who do approximately 70 percent of the total business in town are promoting actively the funeral plan prearranged

MR. BELL. In Colorado, Mr. Dhority's escrow in his own so-called Realty Trust Co., and in this, of course, Mr. Dhority has more or less defied our laws, too, because there is a question if his operations are proper under this new law.

MR. CARPENTER. Mr. Dhority's financial statement shows that he invests most of these trust funds, even if they are trust funds, in mortgages on his own property.

Senator WILLIAMS. I wish I could talk with you gentlemen further. I am due downtown, 20 minutes ago. I would like to discuss it with you further.

Thank you very much, and as we develop further inquiries, maybe you could communicate with us, keeping us abreast of developments.

MR. CARPENTER. Thank you, Senator.

Senator WILLIAMS. We will recess until 10 tomorrow, when we will continue our hearing on mail order land sales.

(Whereupon, at 2:55 p.m., the subcommittee recessed, to reconvene at 10 a.m., Wednesday, May 20, 1964.)

STATEMENT OF HOWARD C. RAETHER, EXECUTIVE SECRETARY, NATIONAL FUNERAL DIRECTORS' ASSOCIATION OF THE UNITED STATES, INC., MILWAUKEE, WIS.

The National Funeral Directors Association is an affiliation of funeral director groups consisting of all States and the District of Columbia within the continental limits. The organization also has members at large in Alaska, Hawaii, and Puerto Rico. Membership totals more than 14,000.

We welcome the opportunity to submit this statement because of the many problems as to the prearranging and prefinancing of funerals especially among the aged or those about to reach their ranks.

There have been for many years some people who have made some sort of arrangements for their own funeral. Most times these individuals are alone or are separated from their family by distance or way of life. And sometimes they have had what some would call eccentric ideas as to what kind of funeral they should have and how they should be buried. Whatever problems existed as to these individuals were minor indeed compared to those inherent in present day plans, promotions, and "philosophies" which go beyond thinking about or making certain preparations to trying to make definite "arrangements" sometimes many years before death takes place. The arrangements are made binding by the payment of some or all of the costs involved.

Testimony before this committee on May 19 by Richard N. Carpenter, special assistant attorney general of New Mexico, and W. Dan Bell, of the Rocky Mountain Better Business Bureau of Denver, can be summed up in the statement that

tors. That when an individual is interested in a prearranged funeral contract it is proper and appropriate for the funeral director to accede to the desires of the client. That when such a contract is entered into, the funds which the client provides for such preneed service should be kept intact and if possible, deposited in a trust company in the community in which the client resides, stating the purpose of such deposit, and reserving to the client the right to withdraw the funds or to change the person to whom the funds should be paid in case of his or her decease or the decease of those for whom the contract was created. That we severely condemn representations by persons who take substantial sums from these deposits that they can or will provide these services for the public for less cost than can ethical funeral directors."

Before getting into some of the many examples of how people are being fleeced (in supplementation of the testimony of Messrs. Bell and Carpenter), it must be stated that unless a person knows when, where, and under what circumstances he is going to die and who will be responsible for his funeral, arrangements made in advance of death create problems instead of avoiding them.

Americans are becoming more mobile every day. About 10 percent of them die now at a place other than where their funeral is held. And often, even though the funeral takes place in the city where death occurred, burial is at a distant point. Contingencies which often arise cannot be foreseen to be included in plans made in advance of death.

Then too, specifics cannot be set forth in accordance with the wishes of the person whose funeral is being arranged with the assurance they will be followed. Besides the possibility of death occurring at a place other than where anticipated, how can anyone be sure the clergyman selected, the funeral home with whom the "contract" is made, and the merchandise chosen will be available. Or, the funeral firm may still be in existence but have moved out of the neighborhood and the new location is not convenient to the survivors.

There also is the matter of the rights and sensibilities of those who survive. Whatever plans are made may not be legally binding on the survivors if they do not wish to observe the deceased's wishes. Early this year courts in New Hampshire (including the supreme court) refused to enjoin the funeral services arranged by survivors against the expressed wishes of the deceased who was the well-known author, Grace Metalious.

Finally, there is the matter of the "handling" of the funds paid in advance. The Association of Better Business Bureaus' booklet "The Prearrangement and Prefinancing of Funerals" offers this advice to those so interested:

"What assurance do you have that the funds deposited will be intact when the time for their disbursement arrives or that they will be available to you if you want them? Who will receive the interest on your money during the many years which may intervene between the date of deposit and the date of death? Will such interest revert to you? Will you be better off by depositing the money in your own bank where you will get the benefit of all interest earned? You also are free to withdraw your funds in any emergency.

"The matter of interest is an important item. Every cent paid to someone other than the purchaser as part of a prefinanced plan actually increases the cost of the funeral. For instance, with the interest compounded annually, money at 3 percent doubles in 24 years; at 4 percent it doubles in 18 years; at 5 percent in 15 years; and, at 6 percent it doubles in 12 years."

One of many examples of what the purchase of a "funeral" and/or "funeral merchandise" can needlessly cost is the Julesburg, Colo., contract calling for the advance purchase of two caskets, two vaults, and a gravestone for \$1,650. In 10 years if this money were placed in a savings account at the rate of interest paid in Julesburg (compounded semiannually) it would earn \$810.44. Therefore, if the merchandise was not needed for 10 years—it would cost not \$1,650 but \$2,460.44. And, no matter when death occurred whatever the cost for the merchandise might be, no services are included. Someone would have to be called to care for the body and provide the facilities, equipment, and personnel for the funeral service.

A couple other examples of the many plans not in the public interest are these. They also supplement those given in the previous testimony before you.

A man and wife living in Coffeyville, Kans., were sold a plan by a Kansas City, Mo., "preneed" organization. After paying in an amount of money, they decided they did not want the plan and sought a refund. The following paragraphs from a letter sent a representative of the "preneed plan" by an assistant attorney general of the State of Missouri gives some facts and draws a conclusion with which few will disagree.

"Mr. and Mrs. (name of party) have again written this office, this time to advise you have offered them \$220 as the 'cash value' of their preneed plan. (Name of party) claim they have paid \$440 into your plan, but, even if your claim that they have paid only \$390 is accepted, I find your proposal that (name of plan) retain \$170 of this amount to be rather distressing.

"My view of the matter is based upon the simple fact that (name of plan) has performed no service for the (name of party) but to accept their money. I do not have a copy of your contract, but prior experience in this area causes me to believe that it clearly provides that the estate of the individual is bound for any unpaid balance existing at the time of death. Hence you have risked nothing and done nothing, yet claim \$170."

A funeral home in Pierce City, Mo., allegedly caused a card to be sent from Kansas City, Mo., to people in the community it serves announcing a "plan to eliminate funeral bills." Actually the idea is not to eliminate the bills but rather to pay for them in advance. The "announcement" says the plan is good anywhere in the United States and Canada and it is not insurance.

In fact, the plan is not good anywhere in the United States and Canada. Furthermore, the Office of the Attorney General in Missouri says either the "company must operate as an insurance company in conformity with the insurance laws of this State or persons coming under the plan will not receive the benefits the advertisement promises."

Because the card advertisement was sent by a preneed organization in Kansas City through the mails containing what supposedly is fraudulent and misleading advertising, the Post Office Department is making an investigation to determine if there is a violation of the postal fraud statutes.

The opportunities the prefinancing of funerals offers promoters for a fast profit has resulted in a number of "consultants," "exchanges," and other individuals and groups being setup to hit a community, milk it as fast as they can and go on to other area.

One of these groups "offers" its services to funeral directors in Missouri. It goes out pushing doorbells to sell a plan for \$95. For this sum the buyer is supposed to get \$95 off of his funeral from the funeral firm the consultant represents plus an added discount. A case we know of calls for a 15 percent discount.

The \$95 is split three ways: \$30 to the salesman making the sale, \$40 to the consultant, and \$25 to the funeral director employing the consultant.

Now for this \$25 what does the funeral director have to do? First he is supposed to reduce the price of the service selected \$95. Then he should give an added 15 percent discount. That means that on a \$695 funeral the funeral director would subtract \$185 (\$95 plus the discount of \$90).

When asked what funeral director will deduct \$185 on a \$695 funeral to get \$25, the promoter suggests the funeral cost be padded. Or, by the time the person has died his survivors will have forgotten the details especially as to the

discount. Then he adds that the funeral director on 1,000 such deals has \$25,000 to use as he sees fit. He doesn't mention that the funeral director undoubtedly will still be in the community with his liabilities as to the plan while the salesman and his \$30,000 and the promoter and his \$40,000 will be long gone.

Testimony before your committee has dealt primarily with operations stemming from Colorado and Missouri. But the promotions and schemes are not limited to these States. They have been or are in most States west of the Mississippi. And as near saturation points are reached where the area has been productive, said promotions are moved into other States. Some of the groups cited in testimony presented before you have tried to establish themselves in States east of the Mississippi.

In addition to plans emanating from Missouri and Colorado cities, there also are some based in Arizona, Nevada, and Texas. And while people of all age brackets are vulnerable to the misrepresentations of these plans, the elderly often are the most gullible while being least able to bear the losses and disappointments inherent in such schemes.

In conclusion may we recommend the reading of the previously mentioned booklet of the Association of Better Business Bureaus. And, may we suggest your committee urge the various States to pass and enforce laws to protect the public against the opportunities for fraud and the risk of insolvency with subsequent inability to perform.

NATIONAL SELECTED MORTICIANS,  
Evanston, Ill., June 3, 1964.

HON. HARRISON A. WILLIAMS, Jr.,  
Special Committee on the Aging,  
U.S. Senate, Washington, D.C.

DEAR SENATOR WILLIAMS: I have read with great interest the testimony of Mr. Richard N. Carpenter, special assistant attorney general for the State of New Mexico, and Mr. Don Bell, manager, Rocky Mountain Better Business Bureau, Denver, Colo., at hearings conducted by the Subcommittee on Frauds and Misrepresentations Affecting the Elderly on May 19, 1964. I want you to know that National Selected Morticians, a trade association composed of approximately 800 funeral directors located throughout the United States, supports and endorses the important work being done by your subcommittee, especially in the area of funeral preneed and prearrangement plans.

It is indeed in the public interest for the subcommittee to explore ways and means to bring to a halt the practices of those persons who deceive and defraud the elderly in the promotion and sale of these plans. I suggest to you the possibility that the instances outlined by Messrs. Carpenter and Bell may well fall within the enforcement jurisdiction of the Federal Trade Commission's present statutory authority to prevent false and deceptive advertisement and selling methods, and that the subject matter might be suitable for an industry-wide trade practice rules issued by the Federal Trade Commission. Certainly, the misleading representations of promoters who prey upon the elderly, or any member of the public, should be stopped.

However, it would be unfortunate from the point of view of the public interest if your committee were to conduct a line of inquiry which in effect would serve as a blanket condemnation of the whole concept behind the solicitation and sale of preneed or prearrangement plans.

Honest preneed or prearrangement planning can and does serve a useful purpose to the elderly and the public at large. Funeral arrangements made in advance of death generally are unaccompanied by factors of stress which make arms-length dealing more difficult. The purchaser is able to give effect to his own preferences and to select with care the type of funeral service which meets his budgetary and other requirements. Lawyers and trust officers, as well as funeral directors, can render the public, as well as the elderly, invaluable counseling service in matters of this kind.

It is my belief that preneed or prearrangement planning, whether it is effected by will, contract or otherwise provides the public and particularly the elderly a greater measure of protection against the unethical funeral director or cemetery operator who exploits the bereaved. It is important, however, especially in the case of so-called preneed trusts, that there should be wholly adequate procedures to safeguard deposited funds; that in all instances the purchaser should receive precisely what he believed he was buying; that receipt of full value by him

should not be made dependent upon his place of residence at the time of death; and that fraudulent and deceptive promotional and selling methods should be effectively prevented.

Your committee has rendered a valuable service in bringing to public attention significant instances in which promoters have chosen to disregard the foregoing principles. However, it is hoped that the committee will recognize that properly administered preneed and prearrangement plans today are meeting a growing public need.

Sincerely yours,

W. M. KRIEGER,  
*Managing Director.*

NATIONAL BETTER BUSINESS BUREAU, INC.,  
*New York, N.Y., June 3, 1964.*

SUBCOMMITTEE ON FRAUDS AFFECTING THE ELDERLY,  
*U.S. Senate, Washington, D.C.:*

Thank you for your letter of June 1 and the enclosed statement regarding the prearrangement and prefinancing of funerals.

Since these activities take place on the local level, we do not have any information in our files. However, I am enclosing a booklet which the Association of Better Business Bureaus, 405 Lexington Avenue, New York, N.Y., issued on the subject.

Another good source of information would be the National Funeral Directors Association, 135 West Wells Street, Milwaukee, Wis.

Sincerely yours,

ALLAN E. BACHMAN,  
*Executive Vice President.*

#### FACTS YOU SHOULD KNOW—QUESTIONS YOU SHOULD ASK ABOUT—THE PREARRANGEMENT AND PREFINANCING OF FUNERALS

In recent years a growing number of individuals, firms, and groups have sought to stimulate public interest in prearranged, prefinanced funeral plans. Among them have been sales organizations and promoters outside the funeral profession who seek to interpose themselves as third parties in the traditional personal and confidential relationship between the funeral director and the survivors of the deceased. Grievous disappointments and severe financial losses have resulted from some unsound promotional schemes, foisted on a credulous public by armies of high-pressure salesmen. There are dangers in any plan for prepaying funeral expense unless it is surrounded with proper safeguards. As the Supreme Court of Illinois stated in upholding the constitutionality of a statute creating such safeguards in that State:

"In the long interval between full receipt of the purchase price and contract performance, the opportunities for fraud are great and risk of insolvency, with consequent inability to perform, apparent."

From the standpoint of promoters, most schemes succeed because their victims are not equipped with sufficient information to identify a dubious venture as such. Ignorance and misunderstanding about funerals and the service performed by funeral directors and allied groups is widespread among the general public. Helpful information in this connection will be found in a better business bureau bulletin, available upon request, entitled "Facts Every Family Should Know About Funerals and Interment." However, the prearrangement and, particularly, the prefinancing of funerals create special problems. The following pages will outline basic facts to be considered and important questions to be raised before investing in such proposals.

#### PREARRANGEMENT OF FUNERALS

Most people do not attempt to prearrange their funerals. They rely on their survivors, with the cooperation and guidance of an ethical funeral director, to make suitable arrangements. Many people may give considerable thought to the kind of funeral they would like to have. They may discuss their wishes with other members of the family or even with the funeral director for whom they have formed a preference. One of the best safeguards against the solicitations of the small minority of unscrupulous funeral directors who engage in dishonest sales tactics, price gouging and other unfair treatment of bereaved families is to



form a preference for a reputable funeral director in advance of need. However, there is a big difference between thinking about or discussing a funeral and undertaking to make complete, final arrangements with a specific organization or funeral director—arrangements which may prove to be impractical or impossible of fulfillment when the need arises at some indeterminate future date.

People wishing to have a particular type of service conducted by the funeral director of their choosing arrange their funerals in advance of need for a variety of reasons. Prearrangement appeals to eccentric folk who wish to make bizarre arrangements for funeral service or for the disposal of their remains. In some cases, there are family difficulties and an aggrieved individual hopes to assure getting the kind of funeral he wants by prearrangement. Some people think, or are led to believe, that they can save money by arranging and paying for their funerals in advance but, as will be seen, the supposed savings often prove to be illusory. Other people believe that funeral planning is in the family interest and should be conducted with as much attention to detail as in any important business transaction.

There may be special advantages in intelligent prearrangement in the case of elderly persons, or others living alone, with no close relatives to supervise details. However, there are certain practical considerations to be faced.

#### *Prearrangement may create problems*

The prearrangement plan may not be legally binding on the survivors if they do not wish to observe the deceased's wishes. Generally, and under the common law, the surviving spouse or closest relative has the right to determine when, in what manner, and by whom the body shall be disposed of. In some States, these absolute rights may be limited by statute notably those containing "anatomical provisions" which declare that it is legal for a person to bequeath his body or any part thereof for medical science purposes. However, the wording of the several statutes differs and some specifically retain the right of the surviving spouse or family to ultimate burial of the body. The individual to whom funeral prearrangement or the disposal of his body is of vital importance should therefore consult an attorney to determine what may or may not be done under the law of the particular State in which he resides.

Even though there be no conflict of interests, the individual still cannot be completely certain that the funeral service will be conducted exactly in accordance with the prearranged plans. According to the American Medical Association, the average American today can expect to live beyond his 70th birthday. If you prearrange a funeral at age 40 or 50, for example, how sure can you be that the minister selected, or even the merchandise chosen, will be available at the time of your death, 20, 30, or more years hence? What certainty can you have that the contracting funeral director will not precede you in death or the firm pass out of existence in the interim? Then, too, in the minds of some, the location of a funeral home seems to play an important part in the selection of a funeral director. How can you be sure the funeral home selected will be in the same location or in the same neighborhood when death occurs?

Sometimes, belief that a funeral has been fully prearranged and paid for can create a false sense of security in survivors. For example, a man in a mid-western State prearranged and prepaid his funeral expenses. He died in a distant city while visiting a daughter who made the arrangements for the funeral of her father so that not only friends in his home city could pay their respects but also those at the place of his death. This made for two funeral services instead of one and called for the expenditure of additional funds. The man's widow was very distressed at the additional charges because she had been led to believe that her husband's funeral had been paid for. Such incidents are not uncommon. The United States is a mobile Nation. More than 10 percent of our people die in communities other than those in which the funerals are conducted. The difficulties in making funeral plans by prearrangement, not knowing where or when one will die, are obvious.

#### PREFINANCED FUNERALS

The simplest way to prearrange a funeral is to leave written instructions for those who will make the arrangements. If advance payments are involved under a contract which does not permit the individual to alter the prearrangements to meet changing circumstances, the possibilities cited above can lead to serious problems. What assurance do you have that the funds deposited will be intact when the time for their disbursement arrives or that they will be available to

you if you want them? Who will receive the interest on your money during the many years which may intervene between the date of deposit and the date of death? Will such interest revert to you? Will you be better off by depositing the money in your own bank where you will get the benefit of all interest earned? You also are free to withdraw your funds in an emergency.

The matter of interest is an important item. Every cent paid to someone other than the purchaser as part of a prefinanced plan actually increases the cost of the funeral. For instance, with the interest compounded annually, money at 3 percent doubles in 24 years; at 4 percent it doubles in 18 years; at 5 percent in 15 years; and at 6 percent it doubles in 12 years.

The National Funeral Directors Association, which represents more than 14,000 of the Nation's funeral directors, has a wise policy on this subject which is distinctly in the public interest. The association believes that if a client voluntarily applies to a funeral director for a preneed burial contract, it is proper and appropriate for the director to accede to the wishes of the client. However, it is suggested that when such a relationship is entered into, any funds the client provides for such preneed service be kept intact and if possible deposited in a bank in the community in which the client resides, under an instrument stating the purpose of such deposit and reserving to the client the right to withdraw the funds or to change the person to whom the funds are to be paid. The National Funeral Directors Association discourages preneed burial contracts which are not surrounded by these safeguards.

#### *Promotional sales plans*

Many prefinanced funeral "plans" are promoted to the public by organizations who contract for the future delivery of prearranged funerals through "participating" funeral homes. Read the sales contract carefully before signing to determine whether it contains the safeguards outlined above. Compare the verbal promises of the promoter's salesmen with what the contract actually provides. In Detroit, salesmen offered complete, prepaid funerals when actually all the company had for sale was a casket plus a promise that "any funeral director" would conduct the funeral for an additional sum of money such as \$250. There is much more to a funeral than the purchase of a casket. The promise of a "bargain" funeral by the Detroit promoters was worthless because the Michigan mortuary science law made it illegal for any funeral director to enter into such an arrangement with any sales organization.

Savings claims and promises of "bargain" rates are stressed in selling many of these promotional plans. Weigh carefully any representation that a "plan" will give you adequate services for less than you can obtain them from other funeral directors against the fact that the sales commissions and costs must be added to the cost of the funeral under the plan. Such sales costs commonly run to 25 percent, 30 percent, or even more of the purchase price. Under the arrangement between one sales organization and "participating" funeral homes the latter are required to represent that a designated funeral, available to customers of the "plan" at the "reduced price" of \$595, is "regularly" priced at \$795. The actual price to the company selling the plan is only \$420. Do you believe that a funeral home can afford to sell services and merchandise honestly priced at \$795 for little more than half that amount and still make a profit? Studies conducted in the past have indicated that the average and normal overall profit of reputable funeral directors is less than 15 percent—that only within this narrow margin could they reduce charges without operating at a loss.

Less value or actual losses have resulted instead of so-called savings being experienced. In a couple of midwestern cities a sum was paid for the casket as part of a package deal. There no longer are participating funeral homes and the cash amount allowed in lieu of the casket is less than 45 percent of that paid for the merchandise a number of years ago. A recent New Mexico case showed the casket value in a prefinanced plan was about one-half of that in funerals of the same price provided "at need."

Claims of savings also should be tested against the existence of escalator clauses, found in many contracts, which provide that if at time of need, the cost of the services, facilities, and merchandise has increased, the survivors must pay such excess to the funeral home or the quality and type of service, facilities, and merchandise may be reduced by a corresponding amount. It should also be noted that some contracts may enable the seller to substitute merchandise. Does your contract assure that you will get exactly what you paid for? In this connection, it is important to recognize that the designated merchandise is not usually in the possession of the sales organization or funeral home on the contract date.

It may not even be in existence then, or when the time for delivery arrives in the possibly distant future.

How stable is the funeral home which is to perform the service? Will it be available when you need it? Will a funeral service be rendered as pre-arranged or will pressure be put on the survivors to purchase "something better"? Will the contracting funeral home meet the wishes of the survivors? Consider all these questions in appraising the suitability of a prefinanced funeral plan in the light of your particular needs.

#### *Time-payment contracts*

Most of the contracts are promoted for purchase under time-payment plans, requiring further study of contract provisions.

What happens if death occurs before all payments have been completed? Some contracts are sold with credit life insurance to provide for payment of any balance remaining unpaid at the time of the purchaser's death. Other contracts declare that if the purchaser dies before the entire contract is paid, the balance becomes immediately payable in full and the "participating" funeral home is under no obligation to perform any service until full payment is made.

What are the penalties for failure to make all payments when due? Some contracts provide that, if you are more than 30 days late in paying any installment, the seller has the right to declare your contract null and void and keep all payments you have made.

Consider what costs may be involved. Some contracts are very vague on this point, while others indicate that a definite amount, such as 25 or 30 percent of the total contract price will be used to absorb sales and administrative costs. In certain cases a "service charge" is added to each installment. Some funeral directors offer time-payment plans providing for a loan by a finance company to the purchaser in an amount equal to the agreed cost of the prearranged funeral. This sum is deposited to the purchaser's account in a savings institution but the passbook is delivered to the funeral director as beneficiary. The purchaser repays the loan plus interest, plus the cost of credit life insurance in regular monthly installments over a stipulated period of time. In a typical case, these charges would add \$138.60 to the cost of a \$765 prearranged funeral financed over 36 months. The financing cost would be reduced by whatever interest or dividend payments were made on the \$765 savings account during the 3-year period. Two contracts are used in some promotions. Payments under the first contract, amounting to 30 percent of the total obligation, cover sales and administrative costs. Under the second contract, the remaining 70 percent of the money is to be used to create a "reserve" to pay for the funeral. However, no payments are credited to this account until the first contract has been fully paid.

#### *Trust funds*

Deduction of sales commissions and administrative costs before any payments are placed in trust or otherwise allocated toward eventual delivery of funeral services and merchandise is a distinguishing feature of most time-payment plans. In promotional literature and sales talks the "security" and "guarantees of performance" purportedly provided by trust fund provisions of many sales contracts are highly touted. However, while these provisions furnish purchaser appeal, they are often vague and you should examine the contract carefully to determine whether it provides the protection to which you are entitled. For example, some contracts provide that payments shall be placed in trust only "after first deducting reasonable sales and administrative costs," or after deduction of expenses "as determined by cost and company policy from time to time." Similar provisions often give the promoter wide latitude in determining how much of the money is to be placed in trust and under what circumstances.

In many cases, the seller is not obligated to place any amount in trust until all installments are paid in full; meantime, the money remains under his control. Subsequently, many contracts permit the sales organization to divert all income from the trust to its own use or split it with the "participating" funeral homes.

#### *Cemetery promotions*

Trust funds are also often a part of "package" plans for the preneed purchase of cemetery lots and/or vaults, markers and certain burial services. Not long ago, in Illinois, it was discovered that more than 65 percent of the money collected from preneed installment sales of a package including a vault, a memorial, or

marker, and services in connection with the opening and closing of graves was being spent for sales commissions and operational expenses. Well publicized provisions for setting aside a trust fund from the payments were characterized by the court which enjoined further sales as "vague" and "illusory."

Leading representatives of the cemetery profession believe that a saving can be afforded and a better decision made through selection of a cemetery lot or burial facilities in advance of need. However, there are speculative risks involved in the purchase of lots in a promotional cemetery. Valuable information on this subject appears in another Better Business Bureau bulletin, "Questions You Should Ask About Cemetery Lot Promotions," which is available upon request. Some cemetery lot promoters have offered elaborate and expensive preneed package plans providing for the purchase of a "complete" funeral in addition to a lot, vault and burial services. The more elaborate the offering, the more speculative are the aspects involved. All the questions suggested above should be raised in relation to these promotions and sales contracts should be subjected to particularly severe scrutiny before signing.

#### *Legal requirements*

As an additional precaution, before participating in any prepayment plan for the purchase of funeral or burial services or merchandise, you should determine whether it is in conformity with the applicable laws of your State. If there is no such statute, should you be satisfied with any contract which affords you less protection than is required by law for the citizens of other States?

#### STATE LAWS FOR YOUR PROTECTION

Twenty-two States, i.e., Arizona, Arkansas, Colorado, Idaho, Illinois, Indiana, Kansas, Maine, Michigan, Minnesota, Montana, New Jersey, New York, North Dakota, Ohio, Oregon, South Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin enacted laws since 1953 which require that whenever funeral merchandise or services are sold in advance of need all moneys paid in advance for such merchandise and services must be placed in trust by the individual or organization selling the preneed program.

Under a Pennsylvania law, only licensed funeral directors are authorized to accept money for a preneed contract for professional funeral service. Pennsylvania funeral directors then must place 100 percent of such money in trust.

A Georgia law demands that 85 percent of all such funds shall be so entrusted. In Iowa, the figure is 80 percent and in Florida 75 percent.

Another Pennsylvania law requires that cemeteries and other persons selling merchandise and service on a prearranged basis for the interment of human remains place 70 percent of all money collected into a merchandise trust wherein a bank will act as trustee.

In Florida, Washington, and Wyoming, the legislatures have placed all preneed funeral programs under the jurisdiction of the insurance departments of these States.

An Oklahoma law prohibits funeral directors from soliciting funerals. The Nebraska law relating to funeral directors gives as one of the definitions of unprofessional conduct: "Such applicant or licensee contracting with or performing any service for an individual, firm, or corporation engaged in the preneed solicitation or sale of funeral merchandise such as, but not limited to vaults, caskets, markers, and related merchandise or service."

The above box lists 29 States which now have laws regulating the sale of prearranged funeral contracts to the public. Most of these statutes require that all moneys, or a major share of all moneys, paid in advance for funeral merchandise or services must be deposited in trust with an approved financial institution until the need for disbursement arises. In most of these States moneys paid in advance for burial vaults must also be entrusted. In some States, amounts paid for markers and mausoleum space sold in advance of death must also be placed in trust.

A West Virginia law was held to be unconstitutional but the constitutionality of the Illinois and Texas statutes has been upheld by the supreme courts of those States. The district court case cited herein was appealed. The Supreme Court of Colorado, without getting into the merits of the law, called it vague and the regulation of the insurance commissioner a nullity. A new law has since been passed.

Some promoting prefinanced funerals object to putting in trust or reserve 100 percent of moneys paid in advance for funeral merchandise and services. In the Illinois case previously cited, one of the suggestions made was that a lesser amount be deposited. The supreme court of the State in its decision pointed out that the plaintiff cemetery entered the "prearrangement business by choice" and that its procedures invite "regulation of a stringent nature." The matter was appealed to the Supreme Court of the United States which refused to further consider the case.

#### *Insurance plans*

Some advocates of prepaid funeral plans have compared them to Blue Cross-Blue Shield and other forms of health insurance but there are important differences involved. Hospital and medical expense insurance policies do not insist that the benefits provided can be obtained only by using the facilities of a single designated hospital or the professional services of a single named physician. Nor do these policies attempt to specify what drugs or other forms of treatment shall be prescribed when the need arises, possibly many years hence. Furthermore, the private and community health insurance plans filled a void by providing a means which had not previously existed for meeting soaring hospital and medical costs. The same void is not present in the funeral field where in addition to veterans' burial allowances, social security death payments and the benefits paid by many fraternal and labor groups, there are already in existence millions of standard life insurance policies, a major purpose of which is to provide funds to defray the expenses which come with death. These policies do not limit or deny freedom of choice to the survivors in the selection of a funeral director or funeral services and merchandise.

#### *Funeral insurance*

Some companies sell special "funeral insurance" policies. These companies operate according to the laws regulating legal reserve life insurance companies with the distinguishing feature that the proceeds are earmarked for the payment of the funeral bill. In some States, when an individual buys funeral insurance he may at the same time prearrange his funeral service naming a specific funeral director as second beneficiary. Insurance of this type pays in cash to a named beneficiary just as regular life insurance is paid to a named beneficiary. An "order" may be attached to the policy instructing the named beneficiary as to the wishes of the insured in respect to choice of funeral director and funeral services. The funeral director submits his bill to the insurance company and is paid direct, any cash balance being turned over to the next of kin or other beneficiary named in the policy. Policies naming the funeral director as beneficiary are legal in a few States.

In some States, funeral directors are prohibited from becoming involved in any way in an insurance operation. In 1949 the Supreme Court of the United States decided that it was proper for the State of South Carolina to prohibit domestic insurance companies, owned, managed, and directed by South Carolina funeral directors, from writing life insurance through funeral directors as agents, with premiums payable at funeral homes and benefits payable through funeral directors. Other States have similar statutes.

#### *Burial insurance*

In the same decision, the Supreme Court observed that "for many years South Carolina has prohibited the payment of insurance proceeds in merchandise or service," and added, "possibilities of fraud, misunderstanding in valuation, and the comparatively useless character of the merchandise delivered or services rendered make respondents readily concede the desirability of this ban." The Court had reference to "burial insurance" plans which became popular during the depression in some Southern States, the policies providing for the payment of benefits in funeral services and merchandise rather than in cash. The operation of some burial associations, which promised elaborate rites but provided the very minimum upon the death of the "insured," were the subject of widespread complaint. Often benefits could be obtained only from a specified

firm or firms. If a "member" died in a State other than the one in which he was "insured," the contract provided for a cash settlement which was seldom more than a fraction of the alleged value of the funeral service contemplated. These unsatisfactory situations led to the passage of various laws regulating the operation of such associations. "Burial insurance" providing for the payment of benefits in any manner other than in cash is prohibited by many State insurance laws.

By the end of 1963 it is expected there will be \$725 billion in life insurance in force in the United States. Many of the policies in the lower brackets are purchased with the intent that the proceeds will be used for funeral and burial purposes. In others, proceeds help pay "estate or final" expenses including those for the funeral, cemetery, and monument. Before purchasing any specialized form of insurance purporting to pay funeral expenses in accordance with a prearranged plan, you should fully investigate the merits of the offering and the reliability of the company behind it. Determine exactly what is offered by the policy, including loan values, cash surrender values, etc. Then compare these benefits and the rates charged with the cost of a standard life insurance policy providing equal benefits. Any reputable life insurance agent will be glad to give you this information without charge.

#### BEFORE YOU INVEST—INVESTIGATE

A primary purpose of this bulletin has been to suggest questions you should ask before investing your savings in prearranged, prefuneral funeral plans and related offerings. Regardless of how alluringly a particular plan may be presented, your own protection demands that you obtain valid answers to these basic questions. Do not allow yourself to be high pressured into making a hasty decision. Act only after due deliberation and with full knowledge of the available facts. Within their area of service, Better Business Bureaus in 125 cities in the United States, Canada, Mexico, Puerto Rico, Venezuela, and Israel will gladly assist you in getting the facts about any plan and its sponsors without charge.

[Rocky Mountain News, Denver, Colo., May 21, 1964]

#### BURIAL PLAN TESTIMONY CALLED UNTRUE

W. Dan Bell didn't have his facts straight when he testified about burial plans before a U.S. Senate investigating subcommittee, an official of a Denver-founded mortuary and cemetery firm said Wednesday.

Bell, general manager of the Rocky Mountain Better Business Bureau, told the Senators in Washington Tuesday that Consolidated Industries, 1544 Lincoln Street, is defying Colorado law because it is not licensed to operate a prearranged funeral plan in the State.

Gerald W. Parrott, vice president and director of the firm, Wednesday charged Bell with an "outright untruth" in the Senate testimony. The subcommittee is looking into fraud affecting the elderly.

"We are licensed by the State banking commissioner. Bell could have saved himself a great deal of embarrassment by checking this fact," Parrott said.

Bell criticized the business because of the hard-sell tactics used by burial plan salesmen to sell space in a nonexistent mausoleum.

"However, the whole theory behind the cemetery business is to sell space in undeveloped areas at a lower price and then develop the gardens," Parrott explained.

Bell's testimony decried burial plans being represented as an investment.

But Parrott said preneed plans are a hedge against inflation, and persons signing these contracts protect their estate against higher funeral costs.

"Preneed prices are about 50 percent less than at-need costs," he said.

"We are at a loss to explain why Bell deliberately singled us out in his testimony when other respected firms in this area use the same general procedures we follow in arranging preneed burial plans," Parrott said.

Dallas J. Dhority of Englewood is president of Consolidated, which operates Chapel Hill Memorial Gardens, 6601 South Colorado Boulevard, Littleton, Highland Memory Gardens at East 104th and Valley Highway, Northglenn, and Our Chapel of Memories Mortuaries at each location.

Parrott said the 13-year-old Denver firm has served 25,000 Colorado families. It has assets of over \$6.5 million and owns 15 cemeteries, 8 mortuaries, and 3 vault manufacturing plants in 5 States.

[Rocky Mountain News, Denver, Colo., June 8, 1964]

## SUIT NAMES TWO AREA CEMETERIES

A Kansas City, Mo., mausoleum firm Monday filed two breach of contract suits totaling \$1.6 million against the operators of Highland Memory Gardens, East 104th Avenue and Valley Highway, and Chapel Hill Memorial Gardens, 6601 South Colorado Boulevard, Littleton.

In complaints filed in Denver U.S. District Court, Mono-Lythic Mausoleum Builders said it had contracted with Consolidated Industries, Inc., 1544 Lincoln Street, on November 27 to provide design and sales services for the two cemeteries.

The suits said Consolidated's president D. J. Dhority, repudiated the two contracts on April 16 and caused the Highland Memory and Chapel Hill Memorial Gardens also to repudiate the contracts.

The Missouri firm sought \$1.4 million in actual damages and \$200,000 in exemplary damages.

Named as defendants were Consolidated, Dhority, Highland Memory Gardens, Inc., and Sunset View Corp., which owned the land on which Chapel Hill is located.

[Rocky Mountain News, Denver, Colo., July 9, 1964]

## DENVER COMPANY PAYS UP FINE IN NEW MEXICO SALE OF FUNERAL PLAN

SANTA FE, N. MEX.—Payment of a \$6,000 fine in Santa Fe district court may have put an end to a 3-year dispute between the State of New Mexico and a Denver firm over sale of preneed funeral plans in the Clovis, N. Mex., area.

A check for the amount was received by the court clerk this week, in payment of a fine for contempt of court imposed in October 1962. The fine, levied by District Judge James Scarborough, was against Consolidated Industries, Our Chapel of Memories of New Mexico, Inc., of Clovis; Dallas J. Dhority; J. L. Bressette, and R. L. Runyan.

Dhority was the principal stockholder and officer and director of Consolidated Industries of Denver. Bressette was the president of Our Chapel of Memories in Clovis.

The fine resulted from the group's violation of a consent decree entered into November 8, 1961. The recent payment represented unsuspended portions of fines imposed on the firm's officers.

Scarborough suspended portions of the fines and jail sentences imposed against Runyan, Dhority, and Bressette.

The decree originally restrained the organization from selling preneed funeral services in the State. It also was forbidden from selling group life insurance policies without State regulation, and from selling any type of contract where death benefits were to be paid to a funeral establishment.

The organization was charged by State Insurance Superintendent Ralph Apodaca in July 1962 with violating the decree orders, and a contempt conviction was handed down that October. The New Mexico Supreme Court later upheld the conviction.