

PUBLIC HEARING

on

SENATE BILLS NOS. 365 and 429
[Revising the New Jersey Cemetery Act]

before

SENATE COMMITTEE ON BUSINESS AFFAIRS

Held:
August 31, 1966
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator A. Donald Bigley [Chairman]
Senator Maclyn S. Goldman
Senator Thomas J. Hillery
Senator Matthew Feldman

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SENATOR A. DONALD BIGLEY [Chairman]: Ladies and gentlemen, I'm sorry I was late and I apologize to the members of the Committee and to you witnesses. I notice that our official staff has placed a list here of witnesses who desire to testify this morning and we will follow our usual order and call them. I would hope that the admonition that we gave last session would be borne in mind by the witnesses. We have had extensive hearings now on these two bills and unless you have something new to add or something you think should be clarified for the Committee, I would ask you to confine your remarks to new testimony or to hitting the highlights that may be emphasis of testimony that has gone before, but I don't think we want to build a record and just repeat matters that we already have heard and that we will be able to read when the transcript has been typed up and all the Committee can sit down and read it at their leisure.

With that we will call Michael Lytwyn.

M I C H A E L L Y T W Y N: Thank you very much, Senator Bigley, for the opportunity of testifying here at this hearing today. My name is Michael Lytwyn and I am from Irvington, New Jersey. I have been a funeral director for approximately 22 years. I have been Chairman of the Cemetery Committee of the New Jersey State Funeral Directors Association for approximately the last nine years. I think I am a little familiar with the legislation we are discussing here today.

I am here today, and every other funeral director is here today, in the public interest. We would not have to be

here today if only we would have compromised away the public interest and adopted the philosophy of the memorial parks - "The Public Be Damned."

The Cemetery Association on January 17, 1963, with their counsel Judge Leap as their spokesman, volunteered a compromise. This was at a meeting attended by a Deputy Attorney General, the Cemetery Committee of the New Jersey State Funeral Directors Association, of which I am Chairman, and a Committee of the Cemetery Association. The compromise offered by Judge Leap and the Cemetery Association was that there be inserted in 8A:5-1 a specific prohibition against cemetery companies engaging in the mortuary business or in the sale of caskets or vaults, if we, the funeral directors, would have supported the rest of their legislation. We did not buy the Cemetery Association's compromise. Instead we chose to stand up and be counted as being in favor of the public and the public interest. Our answer to them was - what most of these cemeteries need may be better management, proper management, which means management which is proper both from ethical and business standpoints and to find a solution without going to the extremes permitted by the enactment of their proposed legislation.

I am concerned about enough revenue being put in a perpetual care fund for minimum maintenance and preservation funds. Let us assume that a purchase of a single grave for \$150 is made and it's three feet by eight feet with a single bronze marker having a base of twenty-eight inches by fourteen inches. Under Senate Bill 429 a total

of \$31.60 will be put into the minimum maintenance and preservation fund. Under Senate Bill 365 a total of \$67.10 will be put into the minimum maintenance and preservation fund. The Cemetery Committee of the New Jersey State Funeral Directors Association tried to establish the amount going into this fund at 40 per cent of the purchase price of the grave, which would have put \$89.60 into the minimum maintenance and preservation fund.

This was a very serious compromise on our part. It will be up to your Committee to determine if any of these plans are indeed enough. There is a need for a reserve fund to replace sold burial space. Unsold burial space is to a cemetery as merchandise purchased wholesale is to a department store. A department store does not dismiss its wholesale cost in figuring prices nor distribute as profit the money from each sale which represents the wholesale cost of the item, nor can a cemetery. One must not treat as income that portion of each sale which represents the wholesale value of the burial space. But that is exactly what the memorial park promoters are doing.

In February 1955 we purchased our family plot consisting of 12 graves for \$1800 in the Evergreen Cemetery, which is on the Elizabeth-Hillside and Newark lines. I consider this one of our model cemeteries both in beauty and fine ethical management. It is not a memorial park. For the past 25 years the Evergreen Cemetery has been putting 25 per cent of the purchase price into their perpetual care fund, plus 25 per cent of the purchase price into the general maintenance

fund, and the remaining 50 per cent or \$900 into their operating fund. Evergreen Cemetery has never had any salesmen. Evergreen Cemetery has never paid any commissions. Evergreen Cemetery has never sold graves for speculation and Evergreen Cemetery has never sold bronze memorials, monuments or vaults. If Evergreen Cemetery ran out of grave space or stopped selling graves this very moment, there would be enough money in their perpetual care fund and the general maintenance fund and their operating fund, the interest from which would be sufficient to keep the Evergreen Cemetery in its present state of beauty forever. That, gentlemen, is proper management of a public trust.

The memorial park promoters have been conducting a campaign of misrepresentation and fraud both at this hearing and in the conduct of their cemetery business. They are in a completely indefensible position and know it - otherwise why the vicious campaign against the funeral directors instead of speaking on the merits of the proposed legislation.

Now here we have a brochure or circular used by the cemetery - pre-need sales and in selling for the promoters a million dollar promotional scheme. In the lower right-hand corner in large bold print is the price of a GM garden vaultorium - \$250. "Vaultorium" is a new term here. You won't find it in the dictionary. This is what the memorial park promoters have been calling a vault. The price of \$250 they tell their prospect is what the funeral directors charge you. They say we will sell it to you at

its wholesale price of \$150. This is the vault that Mr. Welshons of Hollywood Memorial Park told this Committee that he used in Hollywood Memorial Park, and he quoted you a price he paid for it. Isn't this misrepresentation and fraud on the public?

I have here a copy of the vault prices charged by the Hauck Burial Vault which is here in Trenton. They have one price for the cemeteries and they have another price, 50 per cent higher, for the funeral directors. If you want to see it, it's available.

Now we come to the contract, Senator. It is there if you want to avail yourself of one. Here is a contract used by the promoters in selling this package. They sell this package in the name of Hollywood Park Company, a separate corporation but with the same officers and the same address as Hollywood Memorial Park. Their executive suite is at 60 Park Place, Newark. This is another scheme for the promoters of Hollywood Memorial Park that they have for draining the cemeteries and getting richer while the cemeteries get poorer. Hollywood Park Company gets the income from this package but Hollywood Memorial Park pays the bills. This can be verified by the financial statement of Hollywood Memorial Park that you gentlemen probably have in your records that Mr. Stern has made available to me, and I want to thank him very much.

I don't know if I got that point across, but Hollywood Memorial Park pays the bills and Hollywood Park Company gets the revenues. Hollywood Park Company sold this promotional

package, as Mr. Welshons stated, for \$604.00. The contract you have here is dated November 15, 1955, and is for \$604.00.

I have here a similar contract, also sold by the Hollywood Park Company, dated June 11, 1956, about seven months later, and it is for \$622.00. You don't have that contract. This is the same package that you have there. Mr. Welshons stated, if I remember correctly, that he was doing these people a favor because of what he said was a saving to these people. The family that purchased this other package for \$622.00 have changed their minds and have been trying to get their money back. I ask Mr. Welshons to do this family one more favor - give them their money back - they need it - \$622, plus \$310 for the grave they purchased in 1948 - or sell them to this family as stated in your contract.

This is a Catholic family and the church won't permit burial in Hollywood Memorial Park. In their contract they promised the family that they will resell the graves whenever the family so desires. They have never done it yet.

SENATOR BIGLEY: This memorial agreement, isn't this what was outlawed in Mr. Stern's case?

MR. LYTWYN: I'm sorry, sir, I didn't hear you.

SENATOR BIGLEY: Correct me if my understanding is wrong, but Hollywood Park or Hollywood Memorial can no longer sell these memorials, can they?

MR. LYTWYN: No. I'll get to that. They can't sell them because of a Supreme Court ruling in 1961.

SENATOR BIGLEY: So that while this contract of 1955 might have been good, they couldn't enter into a contract such as this today, could they?

MR. LYTWYN: No, they couldn't. But they are.

SENATOR BIGLEY: They are still doing it?

MR. LYTWYN: Well, I'm coming to that, yes -
something similar.

With the sale of graves, the family receives a deed and this certificate. I only have one extra copy. It looks like a stock certificate but isn't worth the paper it's printed on. It reads: "The One Who Cares Prepares. Guaranteed 24-hour Emergency Service. As you are a member of the Hollywood Family Security Plan, it is our endeavor to be of constant service to you. Therefore, the Family Security Plan has established a 24-hour emergency service devoted to servicing our member families in time of need. Dedicated to preserving the security and peace of mind of the family in their hour of bereavement, Hollywood Memorial Park Family Security Plan, Union, New Jersey."

Another Hollywood Protective Benefit - No fee, no charge - 24 hours a day service.

I have called the telephone number listed on the certificate many times at the request of families we were serving and I called again a few days ago to see if the situation was the same. It was. The phone is answered by a telephone answering service. They know nothing of any guaranteed 24-hour emergency service offered by Hollywood Memorial Park and they ask you to call back in the morning. Isn't this misrepresentation and fraud?

MR. TOOLAN: May I have the date on that?

MR. LYTWYN: There isn't any date on it.

SENATOR BIGLEY: The certificates are undated.

MR. LYTWYN: The ones I have here were given out as late as 1963, I believe.

There are many families that would like to get a refund on this promotional scheme and on the graves they have purchased, but the promoters will not willingly return this money on demand. But the Funeral Director, with a pre-arranged funeral, will return the money on demand and with interest.

On October 29, 1963, a Mrs. X made prearranged plans for her funeral with our firm for the sum of \$445., to include everything. On June 23, 1966, she called me up saying she needed some money. I told her she could have it all if she wanted to, plus the accrued interest. She stated that I could keep the interest, but I did not. I returned to her by check \$489.84, which included \$44.84 interest. She left very happy. This I say is in the public interest. Do the memorial parks operate this way? Absolutely not.

Former Senator Jamieson at the last hearing of this Committee said many things in his prepared statement, too many of which were not true. One of his remarks stated that that the funeral directors have bought large sections of these memorial parks and were attempting to take them over. He can not possibly believe what he read to this Committee.

I show you copies of advertisements in the Newark paper, classified section, for the months of June, July and August 1966. There are 123 separate ads on 56 separate

days under "Cemetery Memorials." These people want their money back and can't get it even though their sales contract with Hollywood Memorial Park reads as follows: "After payment in full as provided herein, the purchaser may list said lots with Hollywood for sale to immediate-need users at the then prevailing prices for immediate needs. Hollywood further covenants and agrees that it will not sell any lots in the above-described section for immediate-need use until every lot in the said section listed for sale by purchasers has been sold." They have never done it.

Now, I won't go through it, but I think you have almost every Memorial Park in Essex and Union County area listed there and you can buy graves for as low, I think, as somewhere around \$50 apiece. This includes Hollywood, Graceland, Restland, Beth Israel, Rosedale and Linden - not to be confused with the Rosedale and Orange which is one of our better cemeteries.

Many of these graves were sold by these Memorial Parks for speculation purposes. I read to you from a payment book. On the outside cover it reads: "Hollywood Park Company." On the inside cover it talks about "Hollywood Memorial Park." "Two things Hollywood Memorial Park offers you - protection and investment opportunities. Hollywood Memorial Park is a sound financial investment. Profits can be made in a reasonable period. Prices will continue to rise as development proceeds." Hollywood Memorial Park promises these people that they will resell their graves for them when they are ready but they never do. Instead they tell their people to

see their funeral director and he will sell them for you.
Are the funeral directors trying to take over the cemetery?
Is this what Mr. Jamieson meant?

Mr. Braverman, the certified public accountant for Hollywood Memorial Park, stated that 54,000 graves have been sold since 1939. In 27 years, 54,000 graves. That comes to 2,000 graves sold per year by the Hollywood Memorial Park with a perpetual care fund of \$300,000. They have been putting less than \$6.00 per grave into their perpetual care fund. To advertise perpetual care and set aside this meagre amount is perpetrating a fraud on the public. Mr. Braverman, C.P.A., stated that his firm has 90 years experience in the cemetery field. He stated that Hollywood Memorial Park has 4900 unsold graves, but Mr. Welshons, the president, stated there are 4900 plus 5000 unsold graves. It seems that Mr. Welshons is holding out on his accountant, but more important the public. This could amount to one million dollars at two hundred dollars per grave to the promoters.

I have here some very interesting literature that I have kept over the years. Graves for sale - it shows that they are sold for speculation. Here we have someone who has 28 graves for sale and willing to sell at a substantial reduction. If you want to see these - they are only copies.

SENATOR BIGLEY: What cemetery?

MR. LYTWYN: Hollywood Memorial Park. Twenty-eight graves, at a substantial reduction. It doesn't state the price.

Here we have an attorney - "As trustee I have been

designated to dispose of 40 grave units, 80 interments, in the Olive Section of Graceland Memorial Park in Kenilworth for \$1,000. If interested, kindly advise." That's \$25 per grave. "They are now selling for \$185. "

Here we have something interesting. "It's a 30-acre cemetery which will accommodate 33,000 graves located in the New Brunswick area." If anyone is interested, I will give it to him. "With the population of New Jersey growing by leaps and bounds, we will soon have a shortage of cemetery space. This will make an excellent investment for you, priced at \$300,000 with terms arranged." That comes to approximately \$9.00 per grave. They don't state the name of the cemetery. It's from a real estate agent.

Here we have another letter of someone offering to sell 133 plots at \$57 a plot in Graceland Memorial Park. He will sell them all or in small numbers. If you are interested - Here's a better one yet. "In the past, no doubt, you have heard of many deals regarding cemetery plots. But I don't think any would have matched what I am about to offer. Through a private purchase I have acquired some 2800 plots in Graceland Memorial Park, Kenilworth, New Jersey, and have an offer that might be of real interest to you along with the chance for you to share in the profit. If you could buy them as you need them, plots valued at \$185 to \$350 at a price of \$65 each net, would you consider it?

SENATOR BIGLEY: What's the date of that?

MR. LYTWYN: February 26, 1959. Here's someone else from Newark, New Jersey, willing to sell 64 graves in Hollywood

Memorial Park for slightly over \$50 per grave, now selling for \$175 per grave.

MR. TOOLAN: Do you have a date on that?

MR. LYTWYN: There is no date on it. They are still available.

"We represent an estate which is the owner of crypts in Hollywood Memorial Park as follows: Row 3, Units A, B, C, section 110; Row No. 1, Units C and D, section 101; Row 1, No.C, D, Section 102, and are desirous of selling the same." It doesn't mention the price. That is dated 1964.

Here's someone else who has two crypts for sale in Hollywood Memorial Park. "It is necessary for me to dispose of these two crypts within the next few months. Hollywood Memorial appraises the valuation at \$3,000. I am willing to sell them for \$2200 which would include 10 per cent commission for your efforts in this transaction."

Then we go on and on. There are many more but I don't think it's necessary to take your time. If you want to see them, they are available.

A very interesting question to be answered to the public and this Committee which deserves the answer is how a CPA manages to intermingle the funds of Hollywood Memorial Park, a charitable public trust, and Hollywood Park Company, a business corporation.

I have here an Annual Report of the Somerset Hills Memorial Park with a summary of receipts and disbursements. Here is another example of the promoters getting richer while the cemeteries get poorer. Let us, as an example, take

a grave selling for \$150. This is the breakdown for the sales company selling graves for Somerset: 69 per cent of the \$150 purchase-price of the grave goes to the sales company as commission. This comes to \$103.50. Ten per cent of \$150 goes to the improvement and building fund, which amounts to \$15.00. Ten per cent of \$150 goes for claims and old liens, which comes to \$15.00. Five per cent of \$150 goes for operations or the general fund - \$7.50. And a big 6 per cent of \$150 goes into the perpetual care fund - \$9.00 - for a total of \$150. That's how it is distributed. But when the 10 per cent that goes into the improvement and building fund reaches \$200,000, this 10 per cent also goes to the sales company. When the 10 per cent that goes into the claims or old liens pays off the claims, the sales company also gets this ten per cent. The sales company will then be getting a total commission of 89 per cent of the sale of the graves.

You will find this typical of the operation of memorial parks. The injunction against Hollywood Memorial Park from selling markers, the pre-need law of New Jersey that all money must be put in trust, and the Supreme Court decision that cemeteries can only sell graves have been violated by Hollywood Memorial Park for the past few years. The most recent case is a Mrs. X - I won't mention her name - of Summit. A few months ago she was solicited by the Gene Lee Memorial Service Company of Rahway. It's one of these new promoters that have moved into the State from Maryland. They were acting in a sales capacity for Hollywood Memorial Park.

They are pre-need volume builders. That's what they came here for. This Mrs. X owned four graves in Hollywood Memorial Park which were paid for. They took these four graves as a trade-in for a single grave in Hollywood Memorial Park and for a bronze marker and for a double interment crypt, plus \$705. The present value placed on four graves by Hollywood Memorial Park is \$700. So we can see that she was charged \$1,405 for the package. Do we really need this type of pre-need selling? Isn't this what the memorial parks really mean when they talk about pre-need?

We need S-365 or another bill with more teeth in it before the tidal wave of promoters comes into this State and gets much worse.

I want to read three ads here from the latest issue of the American Cemetery Magazine: June 1966 - "Cemeteries wanted. Will pay cash for your cemetery if it is located in New York, New Jersey, Pennsylvania or Connecticut and fits into our plans. Send for information." August 1966: "Salesman wanted. The Camden, New Jersey, area has a Negro population of 40,000 and one cemetery for their burial worthy of a name. The area is ready for a harvest by a salesman experienced in selling to members of that race. Interested, write so and so." August 1966: "One of the finest memorial parks in the East located in New Jersey. One million potential prospects are in the highest earning brackets in the country - practically no competition. Draw and override if you are the man we are looking for. If you can hire and train you can earn \$25,000 per year. " That is this month, 1966.

I have an ad of the Gene Lee Corporation. I think you have that.

Just one more item and I will be concluding, gentlemen.

I have here a letter sent out by Hollywood Memorial Park, dated August 22, 1966, signed by President H. A. Welshons, Hollywood Memorial Park. It says:

"Dear Friend:

"Perhaps you have seen the publicity in the newspapers on the cemetery legislation herein before a Senate Committee. The hearing was requested by the Cemetery Association to bring before the Senate facts concerning the cemetery and funeral field. We feel the Senators should have facts directly from you, the family, in order to pass the laws that will protect the public as well as their cemeteries.

"Since our records show that you had an interment within the past few years, we urge you to please cooperate by taking a few minutes and filling out the enclosed survey form as completely as possible and mailing today."

Now the survey reads: "Name, address, name of deceased, relationship, number of graves purchased, price paid, total cost of funeral paid to undertaker, total cost of memorial paid to monument dealer." And down below two questions:

"Should cemeteries be permitted to advertise and sell plots in advance?- yes or no.

"Should a family be permitted to buy a monument from a cemetery as well as from any other source? Yes or no."

They left out one important question: Should cemeteries be permitted to use misrepresentation and fraud in a pre-need selling?

I have here a breakdown or an estimate breakdown of Hollywood Memorial Park since they opened up in 1939. Mr. Braverman stated that they sold 54,000 graves - I estimate \$100 per grave, which I think is low - and that comes to \$5,400,000. They had 10,862 grave openings at \$100. That comes to \$1,086,200. I approximated 9,000 foundations at

approximately \$75 apiece - they are more now; they've been less. That comes to \$675,000. In that pre-need package plan - the context of which you have - we have estimated that they have sold 1200 vaults and markers at \$604 - although they sold for more. That comes to \$724,800 - for a grand total and estimate which I think is low of \$7,886,000 since they opened up in 1939.

Now what did these things cost? To develop the 54,000 graves, we estimate \$20 a grave which is high - it comes to \$1,080,000. Twenty-seven years of operating expense of \$50,000 comes to \$1,350,000. Twelve hundred vaults which they sold, and they paid \$55, which Mr. Welshons stated, come to \$66,000. Twelve hundred marker combinations - and I think this is high - at \$200 comes to \$240,000. Notes of indebtedness which they say they paid off - \$600,000; and they have in the perpetual care fund \$300,000. That comes to \$3,636,000. Now they've got a gross profit here of \$4,250,000. Is this in the public interest?

This is the only copy I have of this. You may have it.

I think that concludes my testimony, Senator.

Thank you very much.

SENATOR BIGLEY: Are there any questions of Mr. Lytwyn?

SENATOR GOLDMAN: Mr. Lytwyn, do you feel that cemeteries should be able to sell pre-need graves?

MR. LYTWYN: Should they be permitted to sell pre-need? Absolutely. We never opposed that.

SENATOR GOLDMAN: How far should they be permitted in the promotion thereof?

MR. LYTWYN: Well, I think - as the old-line cemeteries are doing - they use a superintendent. If anyone comes on the grounds, the superintendent handles him and he makes the sale of the grave; the same example I made with Evergreen Cemetery. That's how they operate. They don't have salesmen.

SENATOR GOLDMAN: You would confine it to walk-on?

MR. LYTWYN: At the present time until, I would say, we get the Cemetery Commission operating in such a way that we feel that we can control the promoters.

SENATOR GOLDMAN: Would you suggest or go along with the theory of a percentage of the sale for promotion purposes?

MR. LYTWYN: No, absolutely not. I am against that.

SENATOR BIGLEY: How about advertisement in the newspapers of the graves?

MR. LYTWYN: Well, I don't see too much harm in that, although I have an advertisement - I should have brought it. I think it was a Memorial Park in Paterson. They advertised in the Newark News. They spent about \$250 for an ad - "Buy now before the price increases. There will be a price increase of \$35 to \$50," I think it was. Is that the type of selling that they have to be doing?

SENATOR GOLDMAN: In addition to "walk-on," you would permit them to advertise?

MR. LYTWYN: Legitimate advertising, yes.

SENATOR GOLDMAN: And you wouldn't fix a maximum of what they could spend?

MR. LYTWYN: Oh, certainly. You would certainly have to control that.

SENATOR GOLDMAN: What would be the maximum that you would permit them to spend?

MR. LYTWYN: Well, that would be hard to judge. I haven't studied it. It shouldn't be very much.

SENATOR GOLDMAN: How do you feel about the minimum set aside in the Minimum Care Fund? Do you feel fifty cents is fair, a dollar is fair, or a dollar and a quarter is fair? Are you familiar with that?

MR. LYTWYN: Yes, I'm familiar with it.

SENATOR GOLDMAN: What sum do you think is fair?

MR. LYTWYN: Well, as I stated in my prepared text, originally the Cemetery Committee of the Funeral Directors was in favor of a forty per cent of the purchase price put in a Perpetual Care Fund, plus these other charges if necessary. I think the Cemetery Commission has a right to levy these other charges. Forty per cent of the purchase price of \$150 would be \$60 put in a Perpetual Care Fund. I don't think that's taking too much away from the cemetery.

SENATOR GOLDMAN: I just want to get some of your ideas. Have you any idea what that break down is of that? Is it per square foot?

MR. LYTWYN: Yes.

SENATOR GOLDMAN: Roughly.

MR. LYTWYN: Under Senate Bill 429, I think \$31.60 or \$31.70 goes in the Perpetual Care Fund. Under Senate 365 we would have \$61.70, I believe, going in the Perpetual Care Fund. But I believe it should be higher.

SENATOR GOLDMAN: Well, you have a dollar and a quarter

in Senate 365 per square foot and you have fifty cents in Senate 429. Now do you think the figures should be in between there?

MR. LYTWYN: I think those figures maybe shouldn't be made adjustable. Leave them as they are and let's give the Cemetery Commission authority to raise or lower them later.

SENATOR GOLDMAN: How do you feel about the makeup of the Board? Should it be seven or six or five?

MR. LYTWYN: I don't think the number is too important, whether it's six, seven or five, as long as the promoters are kept off the Board or kept to a minimum of one. I don't think the promoters belong on this kind of a Board.

SENATOR BIGLEY: Would you favor the New York Board where it's just State officials on the Board?

MR. LYTWYN: Yes, as Mr. Adler pointed out. I would be in favor of a board like that in preference to S-429. I'm certainly against 429.

SENATOR BIGLEY: Thank you.

[Discussion off the record]

SENATOR BIGLEY: I will ask the question, Senator Toolan, so we will have it on the record.

How many acres and what is the amount in the Perpetual Care Fund of Evergreen Cemetery?

MR. LYTWYN: I don't know the acreage. It's a very large cemetery. I would say it's slightly larger than Hollywood Memorial Park. I spoke to the secretary, Mrs. O'Neil just about a week and a half ago and I asked that very same question - How much in the Perpetual Care Fund? -

and she either wouldn't tell me or she didn't know. But she said it was sufficient to maintain the cemetery forever.

SENATOR BIGLEY: In other words, you didn't have a dollar amount; is that correct?

MR. LYTWYN: Well, they've been putting 40 per cent of the purchase price for the past 25 - no, 50 per cent of the purchase price for the past 25 years into the Perpetual Care Fund. Fifty per cent is nothing to laugh about, Mr. Toolan.

SENATOR BIGLEY: All right. Thank you.

Mr. Braatz.

C L A Y T O N B R A A T Z: My name is Clayton Braatz and I am Manager and Vice President of Fairmount Cemetery in Newark. I have a statement signed by Mr. Gustave E. Wiedenmayer who is President of our Board of Managers. He is also President of the National Newark and Essex Bank with assets of over five hundred and forty million, and currently he is president of the New Jersey State Bankers Association. This is the statement: [Reading]

As president of the Board of Managers of Fairmount Cemetery of Newark, New Jersey, I represent a non-profit association of cemetery lot owners that was organized in 1855.

During our 110 years of operation, we have made approximately 90,000 interments. The individual members of our Board of Managers have a deep and sincere responsibility to the families of those interred in our cemetery. In our considered opinion, it is in the best interest of the general

public that traditional cemeteries such as Fairmount have both the right and the opportunity to grow in a healthy, economic climate so that our lot owners may be protected today, tomorrow, and for the years to come.

In the case of Fairmount Cemetery, the best interests of the cemetery are identical with those of its lot owners because the latter, in fact, are the owners of the cemetery. In operating the cemetery, our Board of Managers follows one basic precept: Fairmount must be operated and maintained as effectively and efficiently as can be done within reasonable financial limitations. Equally important, our Managers must make every effort to increase the cemetery's endowment funds as rapidly as possible so that in the years ahead, our successors can discharge their responsibilities as effectively and efficiently as we are trying to do today.

With respect to the regulation of cemetery operations, the Board of Managers of Fairmount favors legislation which would promote and safeguard the healthy growth of cemeteries such as ours, and we favor legislation to correct demonstrable abuses of the public interest. We emphasize, however, that Fairmount Cemetery has no such problems.

We have considered the provisions of Bills 365 and 429. In our judgment, Bill 365, by omission or commission, fails to provide the answers to the basic problems which face cemeteries in this State today. By way of illustration, we call your attention to the following provisions of Bill 365:

8A:1-4, in effect, places the responsibility for care and maintenance of private mausoleums and memorials erected

by affluent lot owners on all the remaining lot owners in the cemetery. On the other hand, 8A:4-9 of Bill 429 makes realistic provisions for the care and maintenance of private mausoleums; whereas 8A:4-5 in Bill 365 is completely inadequate.

Both bills provide for a Cemetery Board. We feel that the numerical difference in the two boards is immaterial. We feel strongly, however, that conflict of interest should be eliminated by exclusion of representatives of allied trades and professions. In our estimation, 8A:2-2 of Bill 429 achieves this end.

The long-term survival of cemeteries becomes virtually impossible under 8A:3-10 of Bill 365, which dangerously restricts the ancillary activities permitted a cemetery company. On the other hand, 8A:5-1 of Bill 429 will permit us to engage in traditional and related cemetery activities that would produce reasonable revenues necessary to build up our essential trust funds and to offset continually increasing expenses.

By prohibiting a cemetery's management from soliciting or voting proxies, 8A:3-12 of Bill 365 impugns both the personal integrity and the management ability of those individuals who are members of cemetery boards of directors. It also mitigates against continuity and stability in management.

8A:7-14 in Bill 429 will help protect all lot owners in our cemetery by providing for the creation of individual trusts for the maintenance of cemetery lots which have not

been used for a minimum of 25 years and whose owners have not provided funds for their continuing care. 8A:4-6 of Bill 429 also provides for maintenance of lots and graves where no provision for endowed care has been made. Bill 365 completely ignores these problems.

The restrictions on advertising and pre-need selling and the stringency of the licensing provisions in Chapter 8 of Bill 365 are illogical and unjustified.

Much the same criticism could be levelled against other parts of Bill 365. For example, there is a particularly conspicuous absence of logic and justification in 8A:3-6, 8A:3-7, 8A:5-6, 8A:6-11, 8A:7-1.

In conclusion, the Board of Managers of Fairmount Cemetery greatly appreciates the opportunity afforded by the Committee to express its views. We reiterate our interest in progressive and sound cemetery legislation and pledge to the Committee our cooperation in achieving this goal.

Signed Gustave E. Wiedenmayer.

SENATOR GOLDMAN: Mr. Braatz, you subscribe to this statement, I assume, although it was, I see, prepared in the name of Mr. Wiedenmayer. Is that correct, sir?

MR. BRAATZ: That is correct.

SENATOR GOLDMAN: Will you tell this Committee why you think it is necessary for a cemetery to have to sell monuments or any other fringe or ancillary sales? When you do answer that question will you try to be specific?

MR. BRAATZ: I'll try. The one statement which

Mr. Adler made at the last hearing, and the only one with which I could agree, was that cemeteries or each cemetery has an individual problem and, when we look at the total cemetery problem, we are looking at a number of cemeteries that have been started ten or fifteen years ago versus cemeteries that were started well over a hundred years ago. And I don't think we can develop one easy pat answer for all cemeteries and that is why this bill, S-429, has been in the works for about ten years. Specifically, if there is a cemetery that was developed over a hundred years ago and sold much of its land without any provision for care on the part of the cemetery, that cemetery has a tremendous financial problem.

Second, if that cemetery has very little land to sell, it must gain revenue from other sources in order to maintain the cemetery today and to establish good, sound perpetual care funds.

SENATOR GOLDMAN: You also state, or at least this statement says, that restrictions on advertising and pre-need selling and the stringency of the licensing provisions in Chapter 8 of Bill 365 are illogical and unjustified.

We have heard considerable testimony during these hearings with regard to abuses of promotion. Don't you think that there should be some specific methods outlined just how far cemeteries can go in the promotion of these pre-need sales?

MR. BRAATZ: I can speak here only for Fairmount. If, as I understand Bill 365, these provisions were followed

it would be impossible for any person in our office - there are four of us - to sell cemetery goods or service without taking out a license and being subject to all the rules and regulations contained in the bill. This to me is completely illogical.

SENATOR GOLDMAN: With regard to that, how far do you think cemeteries should be permitted to go in the selling of pre-need plots?

MR. BRAATZ: Let me illustrate by example: When I first came with the cemetery, I went out with the Assistant Superintendent. A lady came in with a young daughter. She wanted to buy a cemetery grave and her first statement was, "I want to buy the cheapest grave you have available in Fairmount Cemetery. My husband, at age 40, just passed away. I don't know anything about his business. He worked in New York; he had his own business; I don't know how much money he had, and I don't know what to do." I urged her to reserve the adjoining single grave for her use and said, "It won't cost you any money. We'll hold this for a couple of months until you have been able to settle down and make up your mind." The lady flatly refused. She was upset, understandably so. About three months later I happened to be in the office and she came back and she said, "I want to buy the adjoining single grave." It was sold and, in effect, she bawled me out for not forcing her to buy the single grave.

Now, pre-need selling - and this is illustrated by hundreds of articles - to us, although we don't have a sales

force, we don't have an active selling campaign - pre-need selling is vitally important for the protection of the widows who appear almost every day in our cemetery.

SENATOR GOLDMAN: There has been much testimony adduced here this morning and at the other hearings that pre-need selling is all right. One gentleman at first testified that he would confine it to "walk-on" and then later he also would permit some advertising. Do you have any ideas? What I am trying to find out is how far shall any bill provide the needs or the necessities of cemeteries to sell with regard to pre-need selling. Shall they be permitted 20 per cent, 10 per cent, 5 per cent? Shall it be all types of advertising? Do you have any thoughts on the subject?

MR. BRAATZ: No, I don't, Senator, but there is another aspect to the problem I think, which should be recognized. In our particular case, and here again I can speak only from my own personal experience, pre-need selling to us is not only important as far as the individual is concerned - and that is vitally important - but it is important for us to obtain revenue from sales which, incidentally, we put in our Care Funds. No one makes a profit in Fairmount Cemetery. It's important for us because the land has been developed, laid out, and must be maintained, and if we have to sit and hold that land and maintain it for many, many years - I have forgotten my high school mathematics, but, as I recall, money compounded at six per cent doubles itself in 15, 16, or 17 years. If we had to hold that land for, say, 17 years, we

could afford, as far as the cemetery is concerned, to pay 50 per cent commission today instead of selling it 17 years from now.

SENATOR BIGLEY: How large is Fairmount?

MR. BRAATZ: We have just short of 100 acres.

SENATOR BIGLEY: How much do you have in your Perpetual Care Fund?

MR. BRAATZ: With the market fluctuations I can't give you an accurate figure but -

SENATOR BIGLEY: Your last statement.

MR. BRAATZ: It's well over two million dollars.

SENATOR HILLERY: Through you, Mr. Chairman. Would you consider a Board having the authority to control the type of advertising and reviewing it that would be permitted cemeteries to sell plots?

MR. BRAATZ: Would I personally?

SENATOR HILLERY: Yes.

SENATOR GOLDMAN: Through you, Mr. Chairman: Mr. Braatz, one of these bills sets up a Minimum Care Fund at 50¢ a square foot and one of them sets up a minimum at \$1.25 a square foot or 25 per cent of the selling price, whichever is greater. Which do you think - you are a Vice President of this cemetery and I am sure you are familiar with the care funds - which do you think is a better figure?

MR. BRAATZ: From our standpoint neither one nor the other would affect us and again I emphasize I can speak only for Fairmount. We exceed both figures at the present time. I can't speak for other cemeteries.

SENATOR BIGLEY: You are putting more in your Perpetual Care Fund than either one of the bills provides.

MR. BRAATZ: That's right.

SENATOR BIGLEY: How long have you been doing that, sir?

MR. BRAATZ: I don't know. I have not gone back in the record.

SENATOR BIGLEY: Your certificate holders are all paid off?

MR. BRAATZ: We never had any. The land was purchased and paid for from, I was told, back in the old days,- from the sale of land and then more land purchased.

SENATOR FELDMAN: Mr. Chairman, may I ask a question?

SENATOR BIGLEY: Surely.

SENATOR FELDMAN: Do you agree that there have been abuses by the cemetery industry in the sale of plots, cemetery plots?

MR. BRAATZ: I don't know. I don't operate cemeteries that have been accused of -

SENATOR FELDMAN: Generally. I'm talking generally now; I'm not talking about Fairmount. But have there been abuses?

MR. BRAATZ: I don't know.

SENATOR FELDMAN: You read the papers. You read the ads. You are involved in this business, and you feel that there have been no abuses when it comes to the sale of cemetery plots?

MR. BRAATZ: I read the papers but I don't necessarily believe everything that appears in the papers.

SENATOR GOLDMAN: Not even in the Newark Evening News?

MR. BRAATZ: Not even in the Star Ledger. If there have been abuses - and there can be abuses, and this is in Mr. Weidenmayer's statement - I think they should be corrected.

SENATOR BIGLEY : Let me ask you this, sir. How close are you to saturation in your hundred acres?

MR. BRAATZ: We calculate that at our present sales we have about enough land for the next forty or perhaps fifty years. Of course, that can change drastically overnight. The cemetery - and I say this advisedly - the cemetery business must change to keep up with the times - new products, new methods, new machines, perhaps new sales techniques - I don't know, but at our present rate of sale we have enough for forty, maybe fifty years.

SENATOR GOLDMAN: Mr. Chairman, through you: In view of the apparent excellent financial situation of your cemetery, why should you want to have the right to sell, I believe you call it, ancillary - or engage in ancillary activities? Why should you have the right to sell monuments? Why do you need them? You're in good shape.

MR. BRAATZ: Well, there we might debate, Senator, whether any cemetery is in good shape or not. There are lots of things that we would like to do today if we had unlimited funds. Certainly my successor will want to do more things than I am doing today and we must have the right to engage in other activities. Let me illustrate:

No. 1 - We are unionized. No. 2, our Union contract called for 52 weeks of pay per year to each regular employee. We must staff for the maximum and the maximum can be ten or eleven funerals on Monday and none on Tuesday. People don't die at our convenience. And I'm not being facetious, believe me. We can't plan our work. We are the last to hear about an interment. The average family goes to the funeral director or its rector, pastor, priest, or whatever, and arranges for the funeral and then we are told, "We'll be in at nine o'clock, ten o'clock or eleven o'clock next Monday morning." So we must staff for the maximum and at the same time we must pay these men 52 weeks per year. So with a radical daily shift in work load, we must have something to do which hopefully brings in some revenue.

SENATOR GOLDMAN: But despite the fact that you have to be staffed 52 weeks or 365 days, and you don't use that help all the time - despite those facts, your cemetery is in good shape financially. Isn't that true?

MR. BRAATZ: I think that's more your opinion than mine, Senator. As I said, I would greatly love to have more money to work with than we have at the present time because there are many improvements we could make.

SENATOR GOLDMAN: How do you feel about permitting the transfer of large plots of graves?

MR. BRAATZ: In what sense?

SENATOR GOLDMAN: Well, one bill calls for permitting large plots of graves to be transferred and the other bill prohibits the transfer of large plots of graves at bargain

rates to insiders.

MR. BRAATZ: Well, we have done that. I have never studied the problem and, frankly, I am not equipped to answer it.

SENATOR GOLDMAN: Do you believe that S-429 scorns the public?

MR. BRAATZ: S-429, in my opinion, is a vicious attack against all cemeteries in the State of New Jersey. I'm sorry, I mean 365. 429 comes closer to meeting the needs of cemeteries, our type of cemetery, than does 365.

SENATOR GOLDMAN: In what way?

MR. BRAATZ: I think you will find that outlined reasonably well in Mr. Wiedenmayer's statement.

SENATOR GOLDMAN: Well, your statement refers to criticism of 8A:3-6, 3-7, 8A:5-6, 8A:6-11, and 8A:7-1, but you don't say where or how or in what manner there is conspicuous absence of logic.

MR. BRAATZ: As I understand it from Mr. Wiedenmayer and I didn't write his speech. If I had, I would have put words in there that I could pronounce. Mr. Wiedenmayer was attempting to conserve the Committee's time. If I may make a suggestion, I would suggest that the Committee consider the duplicate provisions of 365 and 429 with respect to those that are not described.

SENATOR BIGLEY: Thank you very much.

If we are going to allow questions to be asked from the audience we will be here all day. Through me - I'll ask the question - one question - I'll ask it for the record.

VOICE IN AUDIENCE: Well, Fairmount has apparently over the years sold graves pretty much in accordance with the prosective provisions of 365; that is, no sales force and no sales campaign. Now the question is, is it not true that Fairmount has nevertheless succeeded in selling enormous numbers of pre-need graves? In other words, without a sales force, without outside salesmen, is it not true that Fairmount has sold many, many - or a great proportion of their graves are pre-need sales.

SENATOR BIGLEY: All right. Have you had a lot of pre-need sales?

MR. BRAATZ: We had a very active pre-need sales campaign in the late twenties and early thirties when we built a public mausoleum - very, very active sales campaign. To my knowledge, we have not had salesmen actively selling grave space. We would like again for the good of the public, because we have had many, many distressing cases where families came in - mainly widows - not knowing what to do next, trying to buy grave space that was adequate, either overbuying or underbuying, and one in our opinion is just as bad as the other. We have sold some pre-need but in my opinion not nearly enough.

SENATOR BIGLEY: Thank you. Mr. Braverman, please.

For the benefit of the Committee, this is Mr. Braverman, the accountant who prepared the Hollywood Memorial Park statement. I hope, Mr. Braverman, you will bear in mind that we have heard your testimony before and, of course, the transcript will be available for those members who

haven't had the opportunity to hear you in person.

Now you probably have something to say.

R I C H A R D B R A V E R M A N: Yes. I and my firm prepared the projection - I won't call it a statement because it's a projection of how Hollywood would fare under S-365 - it is not a statement of historical years such as 1962, which was introduced by Mr. Stern. I want today, since all my previous testimony has already been recorded in the transcript, to confine my remarks to new material and a comment on other witnesses where they have, I believe, made false statements of a material significance, and that's about it.

I would like, since Mr. Lytwyn was here this morning and his testimony is fresh in the minds of the Committee, to make a few remarks about his testimony because, based upon what I heard here this morning, the whole thing should be discredited completely, and I will present just a few of the more important parts.

First of all, Mr. Lytwyn went to great trouble to describe the financial operation of Hollywood Park Company. I think it is of importance to mention to the Committee that Hollywood Park Company has not been even in existence for several years and, therefore, everything he said should be discredited.

Now, so far as my projection is concerned, we showed that about 100 lots would be sold for the next 40 years at the present rate. Now, we have 4925 spaces that are unsold, so that after 40 years there would still be some of them left. Yes, there are five acres of undeveloped land

but we wouldn't even get to them for 40 or 50 years, and I thought it was a waste of time to try and carry a projection through for the next hundred years.

Since the losses are so great for the next 40 years under the S-365, the country would long ago have, before the 40 years elapsed, ~~been~~ in bankruptcy and it would cost \$100,000 to develop these five acres just at today's rate. Hollywood has spent over a million dollars since its inception, putting in developments and improvements, many of which were made years ago when construction costs were one-third or one-quarter what they are today. So there is no holding out on the accountant and no holding out on the Committee. We would never reach that point under S-365, which is all that this is purported to be, a projection under S-365.

I suppose the only other point of importance Mr. Lytwyn made, although there were minor errors which we won't go into, is that he came here with estimates of what Hollywood received over the 28 years of its existence. I don't know where he got the figures from, any of them - they are all false. We have been auditors of that cemetery for 28 years and how he was able to conjure up these things remains a mystery to me, unless perhaps he just guessed at it. But Hollywood has not taken in anywhere near that amount of money. But so far as I'm concerned, his testimony was completely false.

Now, so far as Mr. Stern is concerned, I will just pause a second because I don't want to slander him as he has me and my firm, Touche, Ross, Bailey and Smart, which has an international reputation. We audit companies that are

household words all over the world. Our firm stands behind the report. It is not a Braverman Report; it's a Touche, Ross, Bailey and Smart Report. I did a lot of work on it.

Now, it seems very curious that in all this time so few facts have been presented by Mr. Stern and his proponents for S-365. The only fact that I heard last time was the statement that we had made of three years ago. That was his introduction of facts. Well, I see nothing wrong with the 1962 Report but I do with Mr. Stern's interpretation of it. First of all, he said that since 1961 Hollywood had doubled the charges for foundations. That is false and he should have known or did know that it was false. Up through 1961 Hollywood was able to sell markers, and in the Twilliger case that was prevented. Up to 1961 the installation was included in the selling price of the marker and there was no special charge to the monument dealer for that. After the case, Hollywood did not sell markers and all the markers that were installed were installed by outside monument dealers and, as a result and because there were more interments in 1962 the foundation and installation income did go to twenty to forty-two thousand. Quite right, but it was not because of a doubling of charges, and that is a complete misstatement of fact.

Then he said that I had enormous problems in preparing the projection. There were no problems at all. It was very simple to prepare and, as we pointed out, the receipts were limited to the openings and closings and to the "at-need" sales, which is all that you would get under S-365. If

there are to be other receipts, let them specify them in their statute. They did on page 14 where it states that by appealing to the Cemetery Board a charge could be made for installation to go into the Perpetual Care Fund, but it did not say that any charge could be made to go into the General Operating Fund where the need is great.

As a matter of fact in the Twillinger case, Stern maintained and argued that the only source of revenue that a cemetery should have should be from interments, from burials, and although the courts permitted Hollywood to continue to charge for installations this has not been embodied in their bill.

Now he says that I fooled around with the payroll because it's \$54,000 in 1962 and \$62,000 in 1965. Well, that is the actual figure and it's taken right off the books. There is no fooling around; there is no problem. The payroll has gone up \$8,000, which is around 15 per cent in four years, or 3 per cent a year, which is certainly within the President's guidelines and is to be expected.

He then said that in 1962 to sell lots of around eighty-four or eighty-six thousand dollars, there were selling costs of \$123,000 attributable to the selling of those lots. Ridiculous. The biggest item was cemetery maintenance of \$54,000 and it didn't have anything to do with sales and it isn't so described on the 1962 statement if you look at it. He puts administrative salaries in there as the selling cost, of \$15,000. Administrative

costs are not selling costs. It costs money to maintain the records, the interment records and all the bookkeeping and other sales contracts of the people who are constantly calling and making their installment payments and to operate the cemetery. There isn't a dime in there for selling expense.

As to the rent, if he had taken the trouble to look at the rent, it has been reduced to \$4,000 on Schedule B, page 3, which I certainly think is reasonable for a cemetery if they don't have their own building.

He put in the telephones as a selling expense. Part of it may be, say half of it. He put in office expenses as selling. He put in printing and stationery, and then he adds these things up. Well, when you really add up the selling costs, it is only around \$40,000 and they were very high that year for \$86,000 of lots which threw off a profit of \$46,000, and without those lot sales primarily made on a pre-need basis there wouldn't have been any so-called net income, which is really nothing more than an excess of receipts over disbursements, but I won't indulge in semantics, you would have had a loss, and without the foundations you would have had a bigger loss.

We took 1962, which hasn't been typed up yet, but I intend to send it to the Committee, and under S-365 their loss would have been over over \$40,000. So far as I am concerned, he has dragged a red herring here; he has made misstatements of facts, erroneous interpretations, and I

think may be had better hire an accountant if he wants to refute our figures instead of Mr. Lytwyn who conjures them up out of his own addle-pated brain.

He then makes a big point about \$30,000 of advances. They did not go into the operations that year. They were not expenses. They had accumulated over a number of years, some of them going back over ten years - many of those people still with the company and some of those items collectible. At the end of 1961, there were total advances on the books of \$28,103, so the total advances to sales personnel during 1962 were \$24,080, not \$30,000, as Mr. Stern maintained.

SENATOR BIGLEY: You say that your 1962 report of \$30,000 is not correct?

MR. BRAVERMAN: The 1962 Report is correct. However, Mr. Stern implied that these were advances made in the year 1962. At the close of 1961, we had studied the books and the advances were \$28,103, so that the total advances in the year 1962 for sales personnel were only \$24,080 and this \$30,000 has arisen over a ten to fifteen year period. Some of it is charged off from time to time as it becomes uncollectible. The rest of it stays on the books and is collected from salesmen as sales are made.

SENATOR BIGLEY: You have one there - Mr. Welshons, I think he said the \$15,000 figure in his opinion was uncollectible.

MR. BRAVERMAN: Yes. In subsequent years that was charged off, but that \$15,000 arose over many years that Mr. Branston was with Hollywood.

Now, so far as the mausoleum is concerned - quite right - I did not show it in here. I wanted to take a cemetery and find the essence of it. I did not have the time to study twenty or thirty cemeteries. As Mr. Braatz said, there are old ones, there are new ones, there are memorial parks, there are old-time cemeteries, there are combinations. One cemetery will not tell the answer, but it tells the answer if you use your imagination and if you use the other facts that have been presented here. I eliminated the mausoleum. That was a losing proposition. It lost \$2,000 that year and in the 1962 Report it has always been shown separately, as it has been a separate self-balancing group of accounts. But in the tax return it has been combined for tax purposes. This 1962 Report was intended for Management purposes. It is not our exhibit. It is Mr. Stern's exhibit, so that the trustees and directors who look at it are intimately aware of what these figures mean. Mr. Stern gives his interpretation of it. It's a wrong interpretation and I am trying to clear that up.

The mausoleum cost of sales on the 1962 statement is not selling commissions. The trustees and directors and officers know what it is. I want you to know what it is. Seventy per cent of that cost of sales is construction cost that is paid to the constructor of the mausoleum which was constructed many years ago. Hollywood paid 70 per cent of the receipts as it collected them so that 70 per cent of the \$13,000 went to the contractors. It did not line the pockets of anyone connected with Hollywood. The contractor

was Frank Brisco, one of the largest building contractors in the State. The other 10 per cent and the other part of the cost of sales is 10 per cent that went into the Perpetual Care Fund pursuant to a court decree. That is not lining the pockets of anyone. That is going to the public. So the 80 per cent cost of sales is really a detailed cost of construction and perpetual care. These are costs against any sales that Hollywood makes on the mausoleum. The commissions on the mausoleum, \$2400, are not to be computed on the gross selling price, less cost of sales. They are always and in every business computed on the gross selling price, and in this case, by Mr. Stern's own exhibit, there is less than 15 per cent commission paid on the mausoleum. The rest is depreciation of equipment connected with the mausoleum and some general expense - \$695. I defy anyone to show me any figure in this statement showing that anything has gone to any insiders or people connected with Hollywood. And this is Mr. Stern's exhibit and not ours, and I think that disposes of him. As far as I'm concerned, the only facts he had were those in our report and they were completely misconstrued and insinuations made about the fraudulent quality of them. Our report is not fraudulent. None of our reports are fraudulent. There's only one thing that's fraudulent here and that is the accusation of the proponents of S-365.

Now, so far as Mr. Adler is concerned, just commenting briefly on him, and of course he came out for pre-need sales too - he said Hollywood should put all its money into a Perpetual Care Fund. Well, that's fine. They would like to. But what would they use to meet all their operating expenses?

How would they pay the payroll? You get income on your Perpetual Care Fund for that but they are getting around \$12,000 on their fund now and they have a payroll of \$62,000. I'm all for perpetual care funds. I think they are woefully inadequate in this State. I thought that both bills went a long ways toward correcting that situation but you certainly can't put everything in there. You have to have operating reserves. You have to take in more money than you pay out in order to get the hundred thousand to develop the last five acres, in order to pay the mausoleum contract, in order to create a reserve so that after all the lots are sold there is money to draw on, rather than just the income of a perpetual care fund. The principal and corpus must forever remain intact.

Mr. Adler also stated that a cemetery costs twelve hundred to two thousand dollars an acre to maintain. Well, I won't argue with those figures. Let's take twelve hundred dollars; let's take the minimum; let's take Hollywood - about 65 acres - then they would need, even under Mr. Adler's figures, just to maintain the cemetery, \$80,000 a year. Now if you are going to have \$80,000 a year after all your costs are accounted for and all your sales are made and there is no more income, then you have got to have a perpetual care fund of two million dollars at four per cent, not \$300,000.

We all wish that Hollywood had two million dollars in there. They don't. Now yesterday I was over to the Banking and Insurance Department. They have some actual figures there - not accusations. I went through the Perpetual Care Fund and I talked to the people over there. They are charged

with examining the Perpetual Care Funds in the State to see that they are invested in authorized investments and are handled properly. Now they've made a survey of how many cemeteries are in the State. They have been working on this for several years and their work is almost completed now. How many cemeteries are there in the State? I don't think anyone in the room knows but I'll tell you how many there are. And they made a very conscientious survey. Their survey concluded that there were 1350 cemeteries in the State. That's all there are and this includes every type of cemetery - abandoned, church, government, general corporations - every conceivable type and however incorporated. Now what did they do with these 1350 cemeteries. Up to 1958, they only had 75 cemeteries that they were examining the perpetual care funds, and the then Attorney General said, "From now on we are going to examine every cemetery that has a perpetual care fund however it was incorporated, however it was formed, whether it's a hundred years old or what statute it came in under." And they proceeded to do just this. They wrote to all 1350 cemeteries and do you know how many even took the trouble to answer? Six hundred and seven of them. The rest didn't answer the State of New Jersey. There were a lot of them that came back from the post-office marked, "No address known." That gives you a key if you want to know how many are abandoned. They are now currently examining 210 cemeteries that have perpetual care funds. Of the 210, I went through the folders yesterday with their complete approval and cooperation and, of the 210 cemeteries that they were examining,

I found 173 reports filed for the year 1965. Some of them are a little late or are being worked on. I wondered just how big are these funds. Is Hollywood worth its \$300,000 - a small one? How big are the funds of cemeteries in New Jersey. And I made an analysis of it. Those I broke into perpetual care funds under \$25,000 - \$25,000 to \$50,000; \$50,000 to \$100,000; \$100,000 to \$250,000; \$500,000 to \$1,000,000; and \$1,000,000 to \$2,000,000. I looked at every report and tabulated it. Under \$25,000 - 67 reports; \$25,000 to \$50,000 - 32 reports; \$50,000 to \$100,000 - 22 reports; \$100,000 to \$250,000 - 31 reports; \$250,000 to \$500,000 - 11 reports; \$500,000 to \$1,000,000 - 8 reports; over \$1,000,000 - 2 reports, one of which was Fairmount which, incidentally, was the largest perpetual care fund in the State of New Jersey that was in the folder there. So we have only 21 perpetual care funds over \$250,000.

Now let's deal with the realities. Hollywood is not a small one. It's not the biggest but it's not the smallest. It's in the top one or two per cent of all the cemeteries in the State and yet Adler says that they should be condemned for what they did and that 50 per cent or all the proceeds should be put in the perpetual care fund. Among these big perpetual care funds, there were many memorial parks - out of all proportion to their number. Of course, they only started thirty some years ago, so I think they've done well.

Now this has all been on a voluntary basis so far as most of these cemeteries are concerned. Sometimes the Attorney General, of course, has made cemeteries put moneys into the care fund, but there has been no law in the State

requiring this. As a result, the perpetual care funds are very weak in this State, although on a voluntary basis I think they've done pretty well.

Now this is one of the reasons why additional revenue is needed. These funds cannot become one or two million dollars overnight. You can't by passing a statute create a two million perpetual care fund. It takes time and it takes sales in order to get the percentage or the price per grave or the vault or the marker to put in there. That is the big reason why additional revenues are needed, not to line the pockets of anyone. They are needed for the perpetual care fund. They are also needed to meet the current maintenance costs which are far greater than the income in S-365, and that is the crux of the matter. Those are facts and they are not opinions. And I asked the Department of Banking and Insurance do they have any objections if I bring these points out. No. They are the facts.

Now I do want to comment on this whole idea of non-profit charitable trust, not from a legal idea but purely from an accounting standpoint. First of all, before going into that, there has been a lot of talk here today about a tax exemption. Well, I agree with you, most of the cemeteries have a tax exemption, but I think the Committee should know that Hollywood has since its inception paid over \$144,000 in property taxes to the Township of Union, and I think that's of interest because that didn't go to line pockets either. Perhaps if they didn't have that tax exemption, part of that might have found its way into the

perpetual care fund or at least into the operating reserve of the cemeteries to provide for developments and other costs that are needed. I know that is different from most of the cemeteries but I think it should be brought out.

Now as to the charitable trust concept, I realize that that is deeply imbedded in the law as it now stands. However, our firm audits many scores of nonprofit corporations and foundations and charitable trusts, and I will say almost without exception more cash receipts must be taken in than are disbursed. There must be a net of receipts over expenses to be used as an operating reserve, and I don't care whether you take the Sloane Foundation or the Ford Foundation or a Union or a PTA or a Pension or Welfare Fund or a Social club or any number of nonprofit organizations - and there are dozens of them - they all have to take in more cash than they spend. And I think that's a law of life. You can't survive regardless of what industry you are, whether you're a general corporation or a nonprofit or a charitable trust, and our Supreme Court of the United States says that it is not the source of income that is important, it is the destination of the income. It is where the income goes. Does it go to line pockets? We have heard a lot of accusations. Or is it being used to build up the operating reserve to maintain the cemetery or the other charitable trust entity of a nonprofit organization. Where is the income going? Not the source. So I say for these reasons we have got to have more in the perpetual care fund; we have got to have more additional revenue in the cemeteries. This is a fact of life - not to inure to the profit of any individual. That's what non-profit

means - not that you don't take in more money but that the profit does not get drained out, does not inure to any individual or relatives with preferential deals.

Now most of these cemeteries are nonprofit and are so organized under the law. They are examined by the Internal Revenue Service. They go over all these things with a fine-tooth comb. If they were not going along with their charter and if they were not truly nonprofit cemetery associations, their status as a nonprofit company would be revoked and they would lose that tax exemption. Many of them don't have it and never did have it because they are general corporations. But if they were siphoning out money they would have lost this exemption, and that is not the case in most instances.

Now we will not plead the cemeteries are in a sad way here in this State. I don't care about New York. I don't have their figures, but I know there are not enough cemeteries for 200 years because 65,000 people die every year in the State and that means that in the next two hundred years we will need 13 million graves and I didn't see any studies showing how many lots there were. We made a study. We made a study of a lot of things, but I don't see any studies at all on the other side, and I say the revenue should come into the cemeteries to the charitable trust to be used for the charitable purposes, that that is where the revenue belongs - not to line the pockets of monument dealers and vault dealers and funeral and florist people.

I don't want to elaborate on anything else because I think that's the crux of the matter and I think all those charges are phoney and I think that these are the facts and

that they will be so shown in time. Thank you.

SENATOR BIGLEY: Thank you, Mr. Braverman.

SENATOR FELDMAN: Through you, Mr. Chairman. It has been said that no cemeteries in New Jersey run on an operating profit basis at this time. In fact, it has also been said that most cemeteries are run on a slight deficit including capital sales as a part of operating income. In your opinion, Mr. Braverman, is this correct?

MR. BRAVERMAN: I have not seen the financial statements of all cemeteries in the State. I don't think anyone has. The Banking and Insurance Department will not have these figures either. They only have the Perpetual Care. Now, so far as speculating on whether some of them make a profit or not, I think it's probably safe to say that very few cemeteries in the State take in more receipts than what they expend. So far as making a profit is concerned, it depends on what we mean by profit. Do we mean that they take in more receipts than they expend? Is that what we mean by profit? If so, some are certainly taking in more receipts than what they expend, but I think they need to build up their reserves. Or do we mean that, after providing for all future costs of maintenance and present costs of maintenance, there is something left over to pay out to individuals. I have never seen anyone in New Jersey who is able to do that, and Fairmount, which is probably one of the strongest, needs to spend more, as Mr. Braatz said, for improvements. You need to put in new roads; there are always repairs after 20 or 30 years; there are new things

that have to be put in. These cemeteries have to kept up perpetually and costs are rising all the time, and I don't think there is one cemetery in the State that is in sound financial shape, and I don't think that they could get that way even with foundation income and pre-need lot sales. They need additional revenue.

SENATOR BIGLEY: Thank you.

Judge Leap.

S. R U S L I N G L E A P: I was first engaged by the State Cemetery Association in the fall of 1957 to prepare a bill revising the cemetery law, Title 8, which had not been revised at the time of the general revision of 1937, which was a compilation.

We had a number of meetings with the different groups of the Association. We found the following types of cemeteries as members:

- a. Traditional - granite and marble memorials
- b. Park Lawn - bronze memorials
- c. Jewish - not classed as religious under Title 15
- d. Protestant - religious under Title 15
- e. Cemeteries chartered by special act of the Legislature.

The Association had for several years been attempting to reconcile the differences of the five types of cemeteries.

Our task was to prepare a bill that would meet the problems of the different groups. At no time was the proposed revision prompted or inspired by the litigation of the monument dealers. And it was not dictated by any one group. The sole purpose was to prepare a much needed revision of Title 8.

After the Frank decision we did include the right to sell certain items.

Senate Bill 429 represents 9 years work in an effort to produce an act that will protect the public and at the same time permit the different types of cemeteries to exist.

Senate Bill 365 is copied in most part from a Bill prepared by the Cemetery Association in 1963. There is included in this Bill provisions that will make it impossible for cemeteries to continue. Following is a comparison of Senate 365 and Senate 429.

Senate 365 8A:1-4, Page 1, Line 1,2 and 3, a definition provides: Minimum maintenance and preservation means the maintenance of a cemetery and of the lots, graves, crypts, niches, mausoleums, family mausoleums, memorials and markers therein including cutting and trimming of lawns, etc.

Senate 429 8A:1-1 Line 54, Page 3 provides: "Maintenance and Preservation" means the maintenance of a cemetery; of public mausoleums and columbariums owned and operated by a cemetery company; including cutting of lawns, etc. to the extent of the income. Line 59 But excluding the repair and replacement of any memorial and also excluding the care and replacement of planting on individual lots or graves.

Senate 365 8A:1-4 By the words in line 2 & 3 and of the lots xxxxxx family mausoleums, memorials and markers therein. Makes the cemetery company the insurer of all graves, memorials, mausoleums, while S 429 not only omits this provision but page 3, line 59, 60 and 61 specifically excludes the repair and replacement of such memorials.

The reason for this exclusion, many times vandals overturn and wreck hundreds of monuments and markers, lightning several years ago struck a family mausoleum completely wrecking it, this had to be rebuilt.

Unless all memorials in a cemetery are insured the cemetery is unable to obtain insurance. Also the memorials and family mausoleums are not owned by the cemetery but by the family erecting them. With this provision as in S 365 a cemetery could not permit any memorials to be placed therein unless covered by perpetual insurance.

Chapter 2 S 365 8A:2-1 For a State Board of 7. Providing 2 public members.

S 429 8A:2-1 Provides for 6 with 1 public member. The Attorney General and Commissioner of Banking and Insurance represent the public in both bills with 3 members with cemetery experience.

The cemeteries believe that experienced cemetery members will be better qualified to pass upon the problems presented to the State Board.

Few of the other Boards even are graced by the inclusion of the Attorney General and the Commissioner of Banking. As I recall only one Board has a public member. It must be remembered that in Bill S 429 members are to serve without compensation. S 429 8A:2-2 Line 23. Although S 365 8A:2-8 Line 16 Page 5 Provides: "Members of the Board shall be reimbursed for necessary traveling and other expenses incurred in the performance of their official duties." No mention is made of compensation, however, the inference is no compensation.

The thought occurs to me how long are uncompensated members going to be sufficiently interested to attend meetings where they have no personal concern.

S 365 8A:2-11 Page 7 Provides that every cemetery shall pay a tax of \$1.00 per interment (of) meaning to the Treasurer of the State; Constitution Article 4, Section VI provides as follows:

1 All Bills for raising revenue shall originate in the General Assembly; in 1964 there were 64,596 deaths in New Jersey. (a tax is revenue)

Chapter 3 organization of cemetery corporation. Senate 429 requires all new cemeteries to be organized under Title 15 (as non profit Associations). 8A:3-6 Page 8 - this avoids the complicated procedure of Title 8.

S365 8A:3-10 Attempts to limit cemeteries to 6 specific activities.

This limitation permits:

- a. Holding of lands to be used exclusively as a cemetery.
- b. To bury the dead.
- c. Operate a crematory.
- d. To operate a mausoleum.
- e. To operate a columbarium for deposit of ashes.
- f. The care and preservation of lands and structures.

While 8A:3-10 applies to new cemeteries. However 8A:3-11, Page 10 provides that "Any cemetery company shall have 90 days from the effective date of this act to apply (to the Board) for the issuance of a certificate of authority. Lines 4 and 5 The Board shall take into consideration the same criteria as applied, pursuant to this act to the application of a newly formed corporation. State Board can order change in any organization. Failing in this no burials will be permitted in the cemetery.

429 8A:3-9 Grants a certificate of authority to any cemetery company which has been engaged in the operation of a cemetery. All charter rights are preserved.

Title 8:2-28 Exempts all cemeteries from the seizure and sale of all lands by Judicial process. This precludes the financing by bond and mortgage and the only method available for financing is issuance of certificates of interest or indebtedness.

S 429 RS 8:2-8 S429 8A:4-10, 8A:4-18, 8A:6-3
S365 8A:6-3

S429 8A:3-10 In order to give a measure of security to the holders of certificates of interest (by d line 12 page 9) gives to a holder of such certificate one vote for each \$500.00 value in the annual meeting or lot holders meeting.

S429 8A:4-18 page 17 Grants protection to all certificates of interest.

No such protection is given in S365.

S365 8A:3-12 If any plot is owned by more than one person all the owners shall decide among themselves which of them shall cast the vote.

S429 8A:3-10 a. page 9, line 5

a. If a lot is owned by more than one person then a majority shall decide who shall cast the vote.

Experience shows that usually in the 3rd generation there may be 5 or more owners by descent.

The present law 8:1-10 permits the majority of joint owners to designate their representative to vote.

It is not unusual after a cemetery lot has been in a family for 3 generations that some members of a family will disappear completely.

Result, if S365 is passed the joint owners of the lot may have no vote.

S429 8A:3-10 e. It is the practice for groups of members of a congregation to purchase block of lots in cemeteries for burials of members of the group. No graves or lots are conveyed to the family of the deceased. For this situation it was provided that an organization shall have one vote for each lot owned, except that it shall not have more than 100 votes.

In some of the largest Jewish Cemeteries on many days over 10,000 people will visit the cemetery, this is on a single day. Regular buses are scheduled from the Port Authority Bus Terminal in New York for the accomodation of the visitors.

8A:3-18 Throughout S365 a violation of Title 8A. No matter how slight, the proponants have provided for the suspension or re- vocation of the certificate of authority. They overlook the fact that there may be 5000 lot owners in a cemetery who are entitled to use the cemetery.

All of the provisions of this section are covered in 8A:2-9 of S365 or 8A:2-6 of S429.

Chapter 4 - Trust Funds

In the preparation of S429 Hearings were conducted with the different types of cemeteries and this Bill and chapter represents the plan best suited to all cemeteries for raising money for their care fund. There is no provision in the existing Law requiring the establishment of a Perpetual Care Fund.

The real purpose of such a fund is to provide funds for the care and maintenance of a cemetery after the lots and graves are sold and normal operation has ceased, in order that the cemetery shall not develop into a nuisance or a disgrace to the community.

8A:4-5 In both Bills provide the money for Perpetual Care. The plan in S429 represents the best judgment of the different types of operations. The charge of \$1.25 per square foot in a. of S365 will cause many persons to go to the old church burying grounds, few of which have any perpetual care and are not re- quired to have such under either of these Bills.

RS 8:2-11 Proceeds from sales of lots shall first be appropriated to the payment of the purchase price, the residue for the preservation, improvement and embellishment of the grounds.

Many cemeteries have no such fund.

Most of the provisions of Chapter 4 of S365 were copied from an earlier draft of the Association Bill.

However S365 8A:4-5 has failed to take into consideration the fact that in the past little or no care funds have been provided in the cemeteries. To rely chiefly on the future sale of lots. As provided in a. will require all cemeteries to apply to the State Board for permission to resort to b., c. and d.

Also to charge \$1.25 per square foot for each grave would cost about \$28.00 or \$112.00 for a 4 grave lot under S365.

Under S429 22 square feet per grave is average @ 50¢, \$11.00 per grave or \$44.00 for 4 grave lot.

To secure funds where lots have been sold in the past you must resort to the interment charge in all cases.

Where a monument or marker is installed these constitute an additional problem, trimming around them, the square inch foundation charge will never fully compensate the cemetery.

S365 8A:4-10 Requires that $\frac{1}{2}$ of proceeds of sale be first appropriated to payment of purchase price.

8A:4-11 requires that $\frac{1}{2}$ of proceeds after deduction of the expense of sale. S429

S365 is copied from old Title 8. The source was the revision of 1877 before it was necessary to have salesmen or to even have expenses of sale.

S429 8A:4-10 Also provides page 15, line 7 - Monies directed by this act to be set aside for the maintenance and preservation fund shall not be considered as proceeds of sale for this or any other purpose.

S365 omits this - the reason for its inclusion is to save the cemetery from paying a commission to a salesman on this item.

S429 8A:4-15 and S365 8A:4-14 cover the same situation.

S429 constitutes a failure to act as a violation of the Act.

S365 provides for the removal of the cemetery officials.

Throughout entire S365 one has the idea that cemetery officials are criminals. "Suspicion always haunts the guilty mind", Shakespere

S429 8A:4-18 Protects the holders of outstanding certificates of interest. S365 Omits this provision.

Chapter 5

S429 and S365 differ in this respect:

S429 Would permit cemeteries to sell monuments, markers, memorials, vaults, structures, adornments, embellishments, sods and plantings to its lot owners. While S365 limits the activities of a cemetery to the sale of lots, digging graves and cutting grass.

S429 8A:1 h. Reserve to the cemetery the exclusive right to open and fill graves, furnish equipment deemed necessary to install all foundations, set and seal vaults, seal crypts and niches and install all memorials, this is omitted from S365.

As to sale of monuments, markers and memorials and vaults 80% of the cemeteries in New Jersey are unable to collect enough money from sale of lots, burials and foundations to do other than pay regular expenses, leaving little for beautification of the grounds. The average traditional cemetery is operated by residents of the locality, most of these in South Jersey average from 100 to 150 burials a year. Average interment charges are \$80.00. There can be no uniformity of charges, in some cemeteries rock is encountered, others gravel, others hard clay, others sand. Foundations, monuments \$1.75 (cubic foot), Marker \$20.00 to \$25.00. Care charge on memorials 5¢ per square inch. In a traditional cemetery usually the only officer receiving pay is the secretary who lays out the grave and handles the paper work and money. \$2500.00 per annum would be average pay.

As to right to sell. Before the event of bronze memorials an average of 25% of the graves were marked. A bronze marker sold and installed in the small cemetery for \$125.00 to \$150.00 brought this average up to 60% of marked graves.

Cemeteries would like to be able to sell memorials and vaults as this would help pay labor costs during slack periods.

Concerning flowers. The situation is different. Many cemeteries have hot houses where they raise flowers for the beds throughout the cemetery. The sale of flowers makes possible more and better flower beds and helps to beautify the cemetery. There is a more serious problem with flowers. Lot holders contact Florists on holidays and special events for flowers. At some of our larger cemeteries four or five Florists will deliver between 50 and 100 floral pieces at the cemetery office which cemetery help must place on the proper graves or several men must be taken away from some other work and show the Florist the location of the grave. True, some Florists are sufficiently well acquainted with the grave locations that they may proceed without help in the smaller cemeteries. Unfortunately most flowers are delivered at the office.

Then five days later the cemetery help must go into the cemetery and remove the dead flowers which must be burned or taken to a dump.

Flowers at the best are a nuisance. In the winter when there is no grass to cut men are retained on the payroll by making blankets of greens, placing them on graves as ordered. A large part of our work is seasonal.

S365 8A:5-6 The trust funds of any cemetery company shall be exempt from taxation and assessment.

8A:5-6 of S429 Also contains the following: Seizure or sale by execution or otherwise on any judgment against the cemetery company (which exemption is absolutely necessary.)

Chapter 6

S365 8A:6-1 Limits acreage not to exceed 125 acres.
S429 8A:6-1 Limits acreage to 250 acres.

The limit of 125 acres was contained in the revision of 1877, 89 years have passed since then and in 1880 the population of New Jersey was 1,131,116, in 1960 it was 6,066,782. Unless sufficient space is provided cremation is the only answer.

I might say that in Japan now, because of lack of space, cremation is required by law.

8A:6-5 in both bills provide that before a cemetery may be established or enlarged in any municipality the consent of the municipality must be obtained.

Both Bills 8A:6-6 provides that not more than 5 cemeteries shall be located or placed in any one municipality.

When you consider that all cemetery property is exempt from taxation or assessment, I doubt very much that any Municipal Governing body will ever grant permission to open a new cemetery. In addition to the requirement to obtain Municipal consent 8A:4-3 of both S365, page 12, and S429, page 10, as a condition for the issuance of a certificate of authority to a new cemetery, it must deposit the sum of \$25,000.00 in trust in a Bank in New Jersey, the income therefrom is to be paid to the cemetery, to be used for maintenance and preservation. Within 1 month after issuance of the certificate of authority a second trust fund must be established in a New Jersey Bank which shall be called the maintenance and preservation fund and shall be augmented from time to time as set forth in this Act.

Line 12, page 11 S429 - After the second trust fund reaches \$50,000.00 the \$25,000.00 in the initial fund will be returned to the cemetery company establishing the fund.

8A; 4-3 was inserted in the Associations Bill several years ago at the direction of the Attorney General; that is, about the \$25,000.

From my association with the cemetery business since 1944 I have serious doubts that any new small cemetery association will ever be formed as the income will not be sufficient to interest or attract investors. This is even aside from the slight possibility of obtaining Municipal consent.

By the way exemption from tax; assessment and execution is by no means a privilege or special benefit granted to a cemetery the exemption was granted to secure the "uninterrupted last resting place of our dead". If taxes were assessed or improvement assessed against the cemetery how could the tax or assessment be collected?

Chapter 7

There are very few changes. The provisions of S365 and S429 are similar.

Chapter 8

S365 8 A:8-2 Limits a cemetery to make sales of lots only to a prospective purchaser who communicates to the cemetery company his desire to make such a purchase. Also prohibits solicitation or advertising media of any type.

A salesman can only sell on the lands of the cemetery.

The person drafting chapter 8 has done everything possible to put cemeteries out of business. We are at a loss to understand their purpose. Page 34, line 16 A salesman is prohibited from even using a telephone to contact a prospective purchaser.

Chapter 8 of 429 has two very necessary provisions that were omitted from S365.

8A:8-15 Permits a corporation, a partnership and an association to secure a salesman's license under certain restrictions.

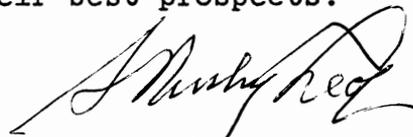
8A:8-16 Cemetery salesmen licensed under this act shall not be required to obtain a license from any Municipality.

Chapter 9

Religious cemeteries. At the insistance of various religious groups no attempt has been made to include them in this Act.

This chapter is a compilation, only where mistakes were found has there been any attempt to change the language.

Without an attractive cemetery, funeral directors, monumental dealers and florists would lose their best prospects.



Thank you, gentlemen. Are there any questions?

SENATOR BIGLEY: I note that of the remaining people who have requested that they be permitted to testify, we have heard from at least three of them, possibly four of them - I'm not sure of the fourth - but we are going to go on and with the hope that those of you who have testified before are going to limit your remarks to answering any criticism, etc., because I think, after three days of hearings, I know there is still backwards and forwards and I am sure that my fellow committee members are in the same boat. So, bearing that in mind, we will go on and try to finish up by lunchtime.

James Cowen.

J A M E S C O W E N: Mr. Chairman, at the outset - let me say that I am James Cowen, Executive Vice President of the West Hudson-South Bergen Chamber of Commerce in Kearny. I will say at the outset that my statement will be refreshingly brief.

After three days of public hearings on this matter, one conclusion is obvious to us, and it is that there is a very definite need for legislation in the cemetery field.

We have a legislative committee that has studied both bills.

It is the feeling of our Chamber of Commerce that S-365 is a necessary and desirable bill provided certain amendment is made regarding restrictions of advertising and promotion by cemeteries.

The general public which is, of course, of paramount concern must have the maximum amount of protection and we feel that S-365 will provide that. The cemetery board, as

would be constituted in S-365, is more complete and better suited, we feel, to handle the problems that would inevitably come before it for action. Representing a number of florists, monument dealers, funeral directors and so on in our area, and also there are four hundred or more other businessmen in the West Hudson/South Bergen area, in discussing it with many of them we feel that the best situation for the consumer would be to prohibit cemeteries from engaging in the sale of markers and monuments, etc. The normal channels of business allow the public to purchase goods or avail itself of merchandise in a way that provides the best return for the money spent. Obviously, this is an American concept of a free competitive market and is known to everyone.

Because of the highly unique nature of the cemetery field, allowing cemeteries to sell markers and monuments on a commercial basis would in effect create some sort of a captive market - a situation which we think is undesirable - not to mention the fact they would be competing with taxpaying enterprises. All in all, this kind of practice would create an unfavorable environment for the consumer public.

With regard to amendments of the concept of pre-need purchase of cemetery plots which we think is commendable and should exist, and prohibiting cemeteries from engaging in advertising and promotional practices would in a sense be self-defeating, it would be advisable in our opinion to write the legislation so that some reasonable limits and bounds are placed on such promotional practices with the idea of consumer protection, of course, in mind.

So in summary members of our chamber and our committee and our officers look forward to the enactment of legislation that contains the provisions of S-365 and amending that area I just mentioned. We feel it is very much needed by the people of New Jersey.

That's all that I have.

SENATOR GOLMAN: Mr. Cowen, you say you talked to the various businessmen in your area that your Chamber of Commerce takes care of, that you talked to florists, funeral directors and monument sellers, and they all agree that S-365 is the better bill. Is that right?

MR. COWEN: Yes, that's correct and this would apply to businessmen who are not engaged in those industries as well.

SENATOR GOLDMAN: You didn't talk to any cemetery operators?

MR. COWEN: No, we did not.

SENATOR BIGLEY: What would the answer be?

MR. COWEN: It might be different.

SENATOR BIGLEY: Thank you, Mr. Cowen.

Mr. May, please.

B E R T R A M H. M A Y: My name is Bertram H. May and I am the corporate secretary of ABRA-MAY Cemetery Sales Co, Inc., a corporation of the State of New York. I was present at the open hearing on Wednesday, August 17, 1966, and received from the Division of Legislative Information and Research a complimentary copy of each of S-365 and S-429 on August 22nd.

ABRA-MAY owns approximately 3.5 acres of land located within a cemetery located in Middlesex County, purchased in 1943 from our founder-president who had purchased the same less than a year earlier. The parent cemetery is owned now by a group of individuals who, we understand, operate a total of four cemeteries, all contiguous, under four corporate names, as one cemetery holding. The total area of the four is approximately 350 acres. There is but one cemetery superintendent on the grounds, but one office manager on the grounds, and but one set of machinery for various maintenance chores on the grounds.

ABRA-MAY and its founder-president AMBRAMOWITZ, now deceased, bought this land on the following terms: There is no annual assessment against its plots, 492 in number, each measuring 16 ft. x 20 ft. ABRA-MAY has the responsibility of caring for its own land, care meaning precisely the trimming of hedges, care of bushes, cutting of grass. ABRA-MAY is currently caring for its own land.

We, therefore, look with horror on that provision of S-429 which will allow the parent cemetery to levy an annual assessment against us of "X" dollars per plot for general upkeep, whereas our deed includes no such provision. Moreover, the parent cemetery does not have the right to amend any part of our deed.

ABRA-MAY has never made a sale to date and currently is suing for a declaratory judgment against the parent cemetery, since they are preventing us from endeavoring to sell and effect a transfer of title.

We feel that such an assessment, if legislated into existence, is grossly unjust and un-American and will allow the cemetery owners throughout the State of New Jersey to doubly enrich themselves at the expense of the very people they appealed to for funds during depression days, 23 to 24 years ago in our case, when they found themselves financially embarrassed and in need for funds to continue the operation of their cemeteries and maintain the public trust.

A generation ago they entered into such contracts avidly but today evidently find that these contracts are no longer favorable for them and, therefore, seek to prevail upon the State Legislature to breach these contracts for them legislatively. We feel that this is unjust and un-American.

ABRA-MAY has no figures on the extent of selling that took place during depression days and perhaps even good times to buyers who stepped in to take a businessman's risk and who put up their money in good faith, but the practice must have been rife. These people placed their reliance solely in the contract and the deed to the property they bought, and if the provisions of their deeds are preempted by legislative action, they will be wiped out by the passing of time. In the case of ABRAMOWITZ, we know he was encouraged to make such an investment by the parent cemetery, and in fact the parent cemetery continued to hold out the lure of speculative capital gains to buyers after him. Who knows what the situation is this very day!

Isn't it safe to say that on the day a deed was made, some 24 years ago, money was set aside or should have been

set aside by the parent cemetery itself to care for the general upkeep of same in the form of a fund? Prudent businessmen would have done this, and undoubtedly did. So what are we faced with now? - a demand that we be assessed, in effect, a second time to pay for the same thing?

ABRA-MAY states here and now that every sale made with any assessment per plot for the general upkeep of the cemetery intentionally omitted, going back to the year 1900, should be resurrected and a percentage of the original sale be calculated, say 50 per cent, and carried forward with interest compounded annually at the historical rate of return for legal investment, and that this resultant sum of money be placed into the Maintenance and Preservation Fund by the cemetery within 60 days after the new cemetery bill shall go into effect. This per centage may be considered high by some, but we feel it is necessary to maintain the public trust.

On resales, ABRA-MAY states that only filing fees should be charged - there is no need to make contributions to the Maintenance and Preservation Fund again, since the initial contributions should be made sufficient for the purpose intended.

Since a cemetery is a nonprofit enterprise and tax free, the bondholders must be paid off first at the rate of 50 per cent of sales. After they are paid off, 100 per cent of initial sales should go into the fund. The fund is the cemetery itself and is the fountain of all cash flow for every expense imaginable.

To clear land and improve same, adequate capital should be supplied by the promoters who should receive bonds, to be paid off as the land itself is paid off.

If the cemetery management cannot or will not raise the money to set aside a percentage of the original sale, with interest carried forward, they should be forced to enter into a state of technical condemnation and a receiver appointed to step in and take over and clean house. A statement of the financial condition should be prepared, based on a uniform system of accounting to be required of all cemeteries in the State. Then the receiver should put the cemetery up for sale to any person or syndicate who would be willing to take it over, pay off the people who don't want to put money back into their own setup, and also put in the required capital to cover for any sales in the "old days" with the assessment for general upkeep intentionally omitted.

At this point I am reminded of the New York City Urban Renewal Program wherein the city condemns property which is mis-managed and then sells it off to people who will put in the necessary capital.

I can only underscore the remark of Mr. Stern, the attorney for the group sponsoring S-365, when he said on the 17th that "the only reason why a cemetery is in financial embarrassment today is because the owners took out money." They should be forced to put it back into the cemetery.

ABRA-MAY also wishes to take exception to that part of S-365 which allows the cemetery to buy back the property

owned by any of its transferees, at a "reasonable price," after the transferee has located a business prospect who is willing to pay the "going" rate for interment space. What are we to assume - that the going rate is unreasonable? Why should the owner be forced to re-sell his land? Why should the transferee be forced to sell back his land to the cemetery? The cemetery is a nonprofit entity. To allow the parent cemetery to buy back anything it ever sold, on their terms, is eminently unfair and, therefore, ABRA-MAY believes that this provision can safely be omitted from any cemetery bill. The reverse process will only damage the financial liquidity of the cemetery and make less certain or secure the public trust.

ABRA-MAY believes that pre-need sales should be allowed. This will allow the cemeteries to maintain their sales organizations. They must have sales organizations so long as they are in business. By allowing pre-need sales, with resultant income at an earlier date, you make more certain the maintenance of the public trust.

ABRA-MAY believes that a six-man cemetery board may result in too many deadlocks and stymie any and all progress. But we can understand the reticence of the Cemetery Association to put all the power into the hands of a single "swing" vote. Perhaps a nine-man Board should be considered, with the bulk of the board's responsibilities in the hands of a working corps of six men and with the upper three to be called in only when there is a deadlock or recommendations are needed, or under certain circumstances where there is

a vote of 4 to 2 and the minority wish to appeal.

Referring to Chapter 8 of S-365 relating to cemetery salesmen, we find this to be contrary to our interests. We own land purchased by our founder-president who purchased it from the parent cemetery. We feel that a license should be issuable to us upon the payment of a nominal fee and upon the presentation of facts relating to our good standing in the community, and that this license should cover all officers of our corporation.

ABRA-MAY is for legislation which is just and equitable and stands ready to cooperate with the proper authorities such as this Committee at all times.

Thank you for the opportunity to speak here today.

SENATOR BIGLEY: What's the name of this cemetery?

MR. MAY: The Degel-Yahudo Cemetery Corporation of New Jersey.

SENATOR GOLDMAN: One question, Mr. May. On page 2, the fourth paragraph, you say that "every sale made with any assessment per plot for the general upkeep of the cemetery intentionally omitted, going back to the year 1900, should be resurrected and a percentage of the original sale be calculated, say 50 per cent, etc." Do you think that's very practical or realistic? Do you know how much money this would mean?

MR. MAY: I have no idea how much money is involved. I think the Attorney General can find out the facts.

SENATOR BIGLEY: Thank you. Senator Toolan?

J O H N E. T O O L A N: Mr. Chairman and Members of the Committee: Having attended these meetings, I could sit here and I suppose I could occupy the rest of the day in comment. However, if I did, I am equally positive I would have no listeners. I am going to try to epitomize the situation as I see it. I am going to skip an awful lot of material that I have accumulated during the past several weeks in talking with people whom I represent and in listening to these various witnesses.

You know, I think that Mr. Adrian Foley, who appeared here on behalf of the funeral directors, really put his finger on the issue. He stated it in a certain way. I would state it in a reverse way, but I assure you that I am in accord with his point of view. He said this: "Senate 365 is designed to perpetuate the present state of the law and the court decisions under that statutory law." I think that that is evidenced also by Mr. Lytwyn's statement here this morning when he said that some years ago he had a meeting with Senator Leap and some people representing the cemeteries, and he presumably was speaking for the funeral directors. And at that meeting, he said that it was suggested that the cemeteries would introduce a bill which would bar any cemetery owner or official from going into the funeral director business and would also bar the cemeteries from selling vaults. And Mr. Lytwyn said, "We rejected the proposal," and he argued from that that they could not be seduced into going along even with that type of legislation. You know, I think he spoke truer than he

knew, because it merely demonstrates what I stated here the first day I addressed you that the only people here before you who are really interested in legislation are the cemetery people. The funeral directors, as indicated by the statement of Mr. Foley and as indicated by the statement of Mr. Lytwyn, are satisfied with the status quo.

To paraphrase a political idiom of a few years ago, "they never had it so good." And they want to perpetuate it.

Now, let's take a look at the cornerstone case that made it impossible for cemeteries to sell either markers or vaults, the case of Frank vs. Cloverleaf, 29 N.J. Law. Now in that case, Justice Francis, speaking for the Supreme Court, pointed out clearly what the present state of statutory law is in this State with reference to cemeteries, and I am going to ask you to listen to this quotation. It's a rather long paragraph and there are certain things I want to point out about it. He said: "In our view the fundamental problem presented is whether the defendant has the authority to engage in the business of sale and installation of bronze memorials. Its corporate life and field of operation stems from N.J.S.A. 8:1-1, etc." Under section 1 of that statute the incorporation is - and this is the language of the statute: "for the purpose of procuring and holding lands to be used exclusively for a cemetery or a place of burial." Now this whole case turns upon that one phrase. In other words, Justice Francis held that all a cemetery can do is be a repository for the interment of the dead.

Now, he went on, and this is very significant also: "After the purchase money and cost of surveying and laying out the lands are paid and the proceeds of all future sales of plots or lots are directed 'to be applied to the preservation, improvement, embellishment of the cemetery of the association and for the incidental expenses and to no other purpose or object so long as such embellishment is incomplete.." Now remember this - up to this point, unless the land is paid for and unless the improvement and the embellishment of the cemetery is completed, the cemetery can't put one quarter into the permanent care fund.

Then he goes on: "Surplus funds from the sale or from any other source may be invested in designated securities subject to a mandate that the income therefrom shall be used for the maintenance and improvement of the grounds."

Now "surplus" is here defined. It means that which is left over after you have paid for the land, after you have completed its improvement and its embellishment, and only then if you have something left over.

Now that decision is the product of the state of the statutory law, nothing else. Mr. Foley also said, well, the cemeteries want to change that law. He's certainly right. We want to change that law - both statutory and decisional - and the only place we can come to to get a change in that law is to the Legislature. Let the Legislature write a different law and the Supreme Court will write a different decision. That's what we're here for, to have the Legislature do just that.

Now, in fairness to the cemeteries, what should the Legislature do? And when I say the cemeteries, I mean the cemeteries in the sense of being a public charitable trust and taking the public welfare into account. Under the existing statute and under both S-365 and S-429, the cemetery must, No. 1, acquire land, must develop and embellish that land, and then if it has anything left over, under the old law, it would put it into the surplus, but under S-365 and 429, they each provide for mandatory contributions into the Perpetual Care Fund.

Now, gentlemen, the best exhibit that the cemeteries of this State has for their cause is the state of the cemeteries in New Jersey today. You heard Mr. Braverman here today testify that the Department of Banking and Insurance has discovered that there are approximately 1350 cemeteries in this State. When they wrote letters to those cemeteries asking them to submit reports, something slightly in excess of 600 cemeteries made no reply whatsoever and many of the letters addressed to them were returned unopened. I don't have to tell you what the state of those cemeteries is. Now, out of the other 600, there were about 150 or 160 - no, 207, I believe the figure was, had Perpetual Care Funds. And he went down that list and his statement to you confirms what I said on the opening day that not a single cemetery in the State of New Jersey today has adequate perpetual care funds.

You may think that's a little bit shocking in view of the fact that Fairmount Cemetery now has two million dollars

in its Perpetual Care Fund. Is that adequate? I say to you, gentlemen, it is not an adequate fund. Why do I say it? Let's take their expert, Mr. Adler from New York, and just by passing comment, when I got through listening to Mr. Adler and Mr. Adler's opinion of Mr. Adler, I couldn't understand how and why it was that Mr. Adler was not re-appointed at the expiration of his term in New York.

Mr. Adler said that it requires a minimum of \$1200 and up to \$2000 a year per acre to maintain a cemetery. Now, let's see what those figures mean. Thirty thousand dollars invested at four per cent - that would be a good substantial return prior to the current mad money market - \$30,000 would produce \$1200 a year. If you wanted to produce \$2,000 a year, you would have to have \$50,000 invested at four per cent. That would mean on the lower figure, in order to maintain a cemetery of a hundred acres, you would need three million dollars in the Perpetual Care Fund. And if it cost \$2,000 for a hundred acre cemetery, you would need five million dollars in the Perpetual Care Fund. Now they are his figures. That's the product, I assume, of his experience in New York. And, incidentally, I want to say to you that I have heard these figures spoken about and they were so shocking to me that I was afraid to use them on the opening day when I addressed you, because I couldn't believe that it would take that much money. But this appears to be the experience of men who know something about the operation of cemeteries.

Now, the present law, the present statutory law, and the case law of this State has produced a condition where only about 207 cemeteries out of all the cemeteries in the State have any Perpetual Care Funds at all. The Perpetual Care Funds that all of the cemeteries have other than two - or in the 1 to 2 million dollar category are woefully inadequate and it simply means this, that the responsibility for that condition is upon the law of the State of New Jersey. Now great effort has been made here and wild statements have been thrown into this record about cemetery operators running off with the funds, and so forth and so on. I spoke in my opening about the little scandal sheet that the triumvirate put out before there were any hearings, and reference was made to the millions of dollars that were made on cemeteries in this State and about the "fast-talk" operators, the hit and run guys who stole moneys from the cemeteries and put in their pocket. We have had three days of hearings, members of this Committee, and not one finger has been pointed at anybody or any single instance of anybody in the State of New Jersey ever getting rich in the operation of cemeteries or of anybody ever stealing any money, or of anybody in the cemetery business ever being indicted, or of anybody in the cemetery business ever being convicted. Now it's about time we asked these people who have slandered the cemeteries of this State by these scandalous charges, by these scandalous generalities, to take a little different look at this thing.

I still cannot understand why the undertakers of this State, or the funeral directors as they prefer to be called,

are on the other side here. I really don't know. I have never yet had any funeral director give me a valid reason why their interests and the interests of the cemetery shouldn't be the same, except that they have such a situation now that is so favorable to them in the way of selling vaults, etc., they don't want to change.

Now there are many details I could talk about but there is one thing about which we are all in accord - that there must be legislation, and I assume now that there will be legislation. If that legislation imposes upon cemeteries the obligation to create Permanent Care Funds, then that legislation also must write into that bill the source from which the cemeteries can get that money.

Now the funeral directors and the monument dealers and the florists, etc., they object to cemeteries competing with them. Well, members of this Commission, New Jersey is one of the few states in the Union that bars cemeteries from selling these allied products, and the monument dealers and the vault dealers and the florists have not gone out of business in all the other States of the Union where it's permitted. Now they object to the cemeteries having the right to sell vaults and to sell markers or monuments. The alternative, members of this Commission, or members of the Legislature, is this - to impose the burden of the perpetual care of cemeteries upon everybody who is allied or associated with the interment of human remains, and that would include the cemetery, the monument dealer, the undertaker, and the florist. Let's suppose we write into this legislation a

provision that every funeral director, every monument dealer, every florist, shall put into the permanent care fund of the cemetery - put it right in there as trust money - 10 per cent of the invoice cost of the items that he sells in connection with a particular interment, and I want to tell you right here and now, you just start thinking along that line and you will have all these people running to you and pleading with you to put this S-429 into law.

Now if they have an interest on behalf of the public, they must recognize that somebody has got to pay the cost of perpetual care. Oh, they say, let the cemetery do it even though they don't have enough money to do it, even though the history and record of the cemeteries of this State demonstrate that this has not been done. Then, too, you know, they're so glib, these funeral directors, in talking about public representation on the cemetery board, Why shouldn't we have public representation on the funeral director's board? Why shouldn't the funeral directors be required, under their law, to give an itemized statement to the family of the deceased as to what the charges are? Why shouldn't the funeral directors, as a matter of public interest, be required to publish a list of their charges, so that somebody coming into the business would know what each item was going to cost before they get this package deal that is sold them?

They have a great public interest in the operation of the cemeteries but they are not willing to contribute one quarter of any of their revenues toward their care, and if

public members are good for cemeteries, then I want to tell you public members are also good for the Funeral Directors Board. Let them get a taste of their own medicine. They think it's good - all right, let's have it all the way along the line.

There's been some talk here about the sale of large blocks of cemetery lots. Those bills prohibit that in the future. You can't do anything about what happened in the past.

Incidentally, all the talk about Hollywood Cemetery - just remember this in reference to Hollywood Cemetery - Hollywood Cemetery, as I understood from Mr. Welshons, was under the direction and supervision of the Court of Chancery from about 1931 to about 1961. Now, if all these horrible things happened, it seems that the Court of Chancery never found them out during all that period.

One other thing: There is no effort on the part of the cemeteries to get away from being a public charitable corporation. Both bills provide for that and we want it. Now, of course, there is a lot of talk about profits, that cemeteries should be entitled to make profits. And here again you get into semantics - what's meant by a profit? Well, under the cemetery act they can't distribute any surplus of any kind; in other words, the money cannot go into anybody's pocket. But to say that cemeteries today ought to be operated as they were operated at the turn of the century is to turn your back on all experience of recent years.

Now, there was a gentleman who testified here the other day about some cemetery in Monmouth County, and I have

forgotten whether he was just opposed to our bill or to both bills, but his cemetery, he said, - incidentally, he was a monument dealer too and he was on the Board of a cemetery - they had in their Perpetual Care Fund \$60,000. I think they had a sixty-acre cemetery. And he was satisfied with the way they were operating. Well, maybe he was, but he wasn't operating under the law; he wasn't complying with the law and I want to tell you that all these sleepy cemeteries that have failed to discharge their public responsibility and create a Permanent Care Fund ought to be awakened and alerted to the fact that they owe an obligation to the people who are in their cemeteries now and for all time in the future.

You see we've gone along in this dopey, sleepy way as if anybody connected with a cemetery shouldn't have wits enough or sense enough or intelligence enough to put into the operation of that cemetery modern, intelligent, business methods. Merely because a corporation is a public charitable corporation doesn't mean that you shouldn't have alert, keen, intelligent business management and, as has been pointed out here, the tendency is toward these monumental parks and is going to continue, because the public wants it, the public buys it, and it costs money to develop those cemeteries.

I have here a booklet that I'd like to have returned to me and I would just like to hand it to the Committee to look at, with some picture of one of the good operations in this State. Now it costs a lot of money to do these things and people want to be buried, I think, today in

nice-looking surroundings.

One other thing: There's been a lot of talk here about salesmen and commissions of salesmen. May I say this: The portion of S-429 with reference to salesmen, I think I can claim credit for the draftsmanship of a substantial part of that portion of the bill, and I wrote into that bill provisions which would make it impossible for any salesman who had any respect for himself to carry on or conduct any unfair or unconscionable conduct because, if he did, his license would be lifted, and our bill, we think, protects against what has been presented here as some of the abuses of the past. Our legislation will take care of that.

I think that's about all I have, gentlemen. Thank you very much.

SENATOR BIGLEY: Mr. Boorstein, do you have anything to add?

MR. BOORSTEIN: No.

SENATOR BIGLEY: Mr. Stern?

H O W A R D S T E R N: Mr. Chairman, I think at the outset a redefining of "pre-need" might be appropriate, although I believe that the members of the Committee do have an understanding of it. When I asked Mr. Braatz, for example, whether it was not true that Fairmount has sold a substantial number of its graves on a pre-need basis without "benefit" of sales forces or outside solicitation, his response rather indicated that he defined pre-need as involving salesmen. Now S-365 in no way prohibits pre-need sale of graves. The example presented by Mr. Braatz where the woman came to the cemetery, for example - there is nothing in 365 which would

prevent Mr. Braatz or anyone else within the cemetery from consummating or encouraging such a sale. And we want to make that clear. S-365 would, of course, prohibit outside solicitation.

Now there have been statements made here about wild charges, slander, and all kinds of fancy expressions. I want to say this, that if you will go back to the original statement that I presented to this Committee in writing, you will find not generalities but the specific names of specific cemeteries and the specific charges which were made. Now it's interesting that the cemetery people have presented Hollywood as something of a guideline - if you want to recall that it was they who brought Hollywood to your attention. We did suggest at the outset that there is indeed something sinister about the way in which S-429 is being advocated by the very limited group that is advocating it.

I think this Committee is entitled to know something about the people who have come before it. Mr. Welshons from Hollywood was presented to the Committee as something of an expert and he lectured this Committee on the need for a change and modernization, so to speak. Mr. Braverman, of the reputedly very large accounting firm - and I have no doubt of it - specializing in cemetery work, was also brought before the Committee as an expert. There seemed to be perhaps some embarrassment with the financial statement which Mr. Braverman said was prepared for the eyes of management and it is our exhibit and not theirs. Well, we are very proud of that exhibit and we are fortunate to have it and no amount of recrimination or argument is going to change the figures

in that exhibit. He did say this morning that I had improperly suggested that the installation charges were doubled. What I said to the Committee was that there was significant doubling in receipts from installation charges.

Now, it seems they go from the frying pan into the fire. His explanation is that when they were selling markers they didn't make an installation charge. That's mighty interesting. They sell a package and they pay a salesman a percentage commission including a percentage of the cost of installation by the cemetery. This is another indication of what we're talking about when we say when they go into these collateral business enterprises it's the individuals who make the money and not the cemeteries.

Now let's examine into the story of Hollywood just a little bit so we can find out who we are talking about and who you are being asked to rely upon. I place before the Committee two pieces of paper. One has pictures of four men on it and the other is a reprint of a portion of an article which appeared - I'm sorry I can't find the original article; I am sure that library research would produce it - Collier's, unfortunately, is out of business. There are two pieces of paper. Now the first one with the four pictures on it is a photo taken out of this book which I have before me. I have only one copy. The book is entitled "The Story of a Wonderful Idea." Those four pictures are on one of the pages in the book. The booklet deals with four cemeteries being operated by the four people pictured on the one page

reprint,- Hollywood Memorial Park in New Jersey, Rosedale Memorial Park in New Jersey, Maple Grove in New York, and George Washington Memorial Park in Pennsylvania. Now, Mr. Ostrow was here. The Colliers article tells us a little bit about Mr. Ostrow who, at the time of the New York upheaval, was quite an investigator and, as a matter of fact, Colliers said that Goldstein, the Attorney General, appointed a staff of three of his top ~~probers~~ headed by Assistant Attorney General Theodore D. Ostrow, a brilliant young lawyer who had helped break up the Ku Klux Klan and fake charity rackets in New York State. And Mr. Ostrow dug up enough information to fill a 29-page booklet. That booklet is here and if you want to classify something as being scandalous or slanderous - and slander, of course, only applies, as the attorneys here know, when it's not the truth - this booklet is practically the same as the script that I gave you except we had the New Jersey cemeteries to fit the script.

Now they point out three particular situations which were unusually terrible over in New York, three of the worst situations. It is interesting that two of the three situations pointed out involve Mr. Welshons' close associates. Now we have to get oriented here. You'll see that in the short biography of Mr. Welshons, in the reprint prepared by Mr. Welshons' company, it says that Mr. Welshons was the co-founder, with Mr. Lavoie, of Hollywood and he was at that time Sales Director of all four properties - all four, including two in New Jersey - Hollywood and Rosedale - Maple Grove in New York State and George Washington in Pennsylvania. Now,

let's look at what they say in Collier's about Maple Grove, of which the same Mr. Welshons, who was here before you, was the sales manager, according to the biographical material provided by Mr. Welshons.

Case No. 3, at the bottom of the column, the first column, last paragraph: "In Case Number Three, Goldstein brought action against the Maple Grove Cemetery on Long Island. This corporation made a deal with a high-g geared sales organization headed by one Edward Lavoie" - that's the fellow who started Hollywood with Mr. Welshons - "whereby Lavoie's outfit would sell graves to the public at double the regular price, turning over half of the money to the cemetery and pocketing the other half itself (less minimum expenses.) The sales organization, which started with a capital of \$200, eventually peddled \$3,300,000 worth of graves by calling people on a battery of telephones and making door-to-door pitches.

"Hundred of investors were lured by the promise that the graves could be sold later at a tremendous profit without paying any taxes on the property in the interim. Goldstein put a halt to this...etc, etc." He put a halt to that in 1949. In 1959, when I took Mr. Lavoie's testimony,(he died, unfortunately, by the way, two or three or four years ago)- in 1959, when I took his testimony, the same Mr. Lavoie, the associate of Mr. Welshons, was still the president of Hollywood and the president of Rosdale here in New Jersey and he also had an interest in still another memorial park in Pennsylvania, and he had had an interest in another one up in Maine.

Now these are the people who brought to the people of New Jersey "The Story of a Wonderful Idea." It was a great idea.

Now let's look at Case Number One. These are the three outstanding cases which led to the legislation over in New York. "In Case Number One, Goldstein charged Kensico Cemetery in Westchester County with selling 73 acres of land to a Dr. Andrew M. Stannard for \$15,000 an acre. This seems all right on the face of it. But Stannard planned to resell the land at \$100 a grave. And since there are, on the average, 1,000 graves to an acre, he stood to make a personal profit of no less than \$6,205,000 out of property that is tax-exempt and supposedly nonprofit-making. The attorney general won this case against "Profiteering in Sorrow" in the Court of Appeals, and the deal was declared null and void."

Who is Mr. Stannard? He is another member of the quartet that we have here running the four cemeteries and including the two in New Jersey, one of which is Hollywood. Mr. Lavoie told us in his testimony that he came to Hollywood in 1937. Mr. Braverman testified this morning that his accounting firm had handled Hollywood's books since 1938.

Now I think it's rather important that we have this type of background. I know of no slander actions that were instituted in the State of New York or in the State of New Jersey as a result of the publication of the article "The High Cost of Dying" in 1951 in Collier's Magazine.

Now you may recall that I asked Mr. Ostrow whether the New York legislation didn't come about after some pretty dramatic detective work. Remember now that Mr. Ostrow

was the chief investigator, and we read on in Collier's Magazine. A cemetery law was drawn up. "The cemetery lobby was so powerful, however, that four days before the 1949 session of the legislature was scheduled to end, the bill's sponsors - Republican Majority Leaders...so and so and so and so...were convinced it didn't have a chance to pass. Then Governor Thomas E. Dewey came to the aid of the measure with a special message.... Finally, Goldstein" -obviously acting through his special investigator, Mr. Ostrow, who is here - "pulled a Hollywood thriller trick. He slipped one of his agents into a meeting of the cemetery operators at the Syracuse Hotel in Syracuse, New York. Then he made public the identity of the ringleaders opposing the bill. He revealed to the newspapers their plans to sabotage the measure, and he reported verbatim speeches insisting on 'the right to make as much profit as possible on the cemeteries without regard for the fact that the public grants tax exemption and other benefits.'"

Now, we say and we charge very specifically that the leopard has not changed its spots. You are not dealing with the 1300 cemeteries of this State and you are not dealing with the 2000 cemeteries of this State, you are dealing with a portion only of the 40 commercially-g geared memorial parks in the State who are apparently powerful enough to give themselves the appearance of being the cemeteries of this State. We wonder, for example - where do charitable trusts get the funds with which to send out questionnaires to their lot owners in connection with these hearings, such as Hollywood

has done and Beth Israel has done. What account do they chalk that up to when they solicit the responses of several thousands of people? Whose trust moneys are they using?

Now, just a couple of other very specific points. At the last hearing there were some questions regarding certain unpaid advances or loans to people in Hollywood. We note in the 1962 financial statement that Mr. Welshons himself had borrowed a substantial amount of money from Hollywood. That appears there and we had no explanation of it. We again invite the Committee to look at the nature and category of the so-called expenses in the 1962 financial statement of Hollywood and see whether or not Mr. Braverman didn't indeed have trouble in trying to repeat them before the Committee.

Now, Frank v. Cloverleaf - just a word on that, and we think a very important one. All of the advocates on all sides have said to you members of the Committee that they intended by both of these bills to retain the charitable trust concept. What did the Supreme Court say with respect to charitable trusts and was the Supreme Court addressing itself to a particular statute?

At another place, in the same opinion of Judge Francis, in Frank v. Cloverleaf, and having in mind the fact that their bill 429 also calls for a charitable trust - Justice Francis, speaking for a unanimous Supreme Court, said: "An acute awareness of the quasi-public nature of this charitable trust" - it would have the same status under each bill here - "as well as its tax exemption and other privileges and immunities is necessary to a solution of

the problem." All right. So Justice Francis is now looking at the problem in terms of do you have a charitable trust? - and nothing more.

"Manifestly," and I am now quoting, "in entering the market for the sale of memorials to lot owners in competition with private enterprise, these factors give the association a decided competitive advantage and it has been said the advantages enhance psychologically through the close contact with the family of the deceased before, at the time of, and after the burial. These factors are preferred economic positions, and ease of access to prospective customers in promoting sales, in our judgment, make necessary a strict construction of the statute and the charter emanating therefrom in appraising the claim of implied power, etc."

And now of importance: "The sale of markers is not necessary to the procuring, sale, holding and use of land exclusively as a burial ground, nor can it be said reasonably that authority to sell them exists by implication as needful, suitable, or proper to the effectuation of the purpose of the grant" - being the grant for special privileges.

"Accordingly, we conclude that the defendant's independent enterprise of sales of memorials is ultra vires as well as contrary to the public interest and must be discontinued."

Now, what is the court saying? The court is saying that so long as this is a charitable trust with special grants and immunities, if you permit this charitable trust to go into competition with taxpaying enterprise you have an unfair competitive practice which is contrary to the public interest, and we believe that should this legislature

make the mistake of permitting a tax exempt charitable trust to go into and engage in this unfair competitive practice, such legislation would be found to be improper and unconstitutional, and we, therefore, call upon this legislative Committee to recommend to the full body of the Legislature that these cemetery associations not be granted the right to go into competitive, collateral, unnecessary business enterprises.

Thank you very much for your patience.

SENATOR BIGLEY: Thank you.

One more and that will be the end. Marvin Mann.

M A R V I N M A N N: Mr. Chairman and members of your Committee: My name is Marvin Mann. I am going to tell you gentlemen what may sound like a nightmare. It is all documented truth and sworn to under oath and it is all recorded in the court's record.

My father, in the time of his sorrow, was harassed by a monument dealer to accept a monument which he did not order in his contract. Now a contract containing fraud was forced on my father by the monument dealer and his lawyer and the court.

First, I want to place into evidence the contract which my father entered into. I have been hearing a lot this morning how honest all these gentlemen are but I believe what I shall present to you in black and white will give you a different opinion. I have the contract here, sir.

This contract was made on December 31, 1963. It was made between my father, Harry Mann, and Litwin Newark

Memorial. My father made a contract in writing which promised to deliver to him White, Rock of Ages, from Barre. The contract was for \$1775. My father at the time gave a deposit of \$450. Shortly thereafter the monument arrived. It arrived chipped above the family name and we requested that the monument be sent back to Barre, Vermont, but, instead, the dealer felt he was going to look for a cheap way out and, in violation of the contract, he sent it to Paterson, New Jersey.

The contract contains many guarantees. It contained a guarantee from the manufacturer, from Newark Memorial, from the Barre Guild. I want to say again that this contract was made in the year of 1963. Today, 1966, this gravestone is still not on the cemetery. My father has been harassed by the monument dealer, by the court, by the attorney who represents the monument dealer.

I want to place into evidence right now, sir, this contract which was made on December 31, 1963, which would amount to \$1775., which shows that there was a \$450. deposit and also I want you to specifically note that the dealer says he shall deliver to my father "white, Rock of Ages."

I have a letter from the Rock of Ages Corporation which I would like to read to you gentlemen, which will show that the dealer committed fraud.

SENATOR BIGLEY: Mr. Mann, I am sure you can document your case, but I am just curious as to what this has to do with these two particular bills.

MR. MANN: What this has to be with this hearing,

gentlemen -

SENATOR BIGLEY: That's what I would like to know.

MR. MANN: I plan to recommend to you that both of these bills that are before you should be denied and instead I want to ask of you to set up a Commissioner over Cemetery Matters. I feel we need in the State of New Jersey a Commissioner over cemetery matters.

SENATOR BIGLEY: And you would include the monument people in the cemetery category?

MR. MANN: Yes, the monument people.

SENATOR BIGLEY: How about the funeral directors?

MR. MANN: Funeral directors, the florists, the vault men, and anyone who has any dealing with cemetery matters, I feel they should all be included. I feel in the State of New Jersey there are a lot of unethical practices going on. I feel, as I was sitting here today listening to all these men speak, that in the back of their mind there is only one thing - they are looking for the dollar bill. If this Committee approves of one bill and not the other bill, one group will benefit by it. But I believe this Committee has the public interest at stake and I would like to inform the Committee that my father looked for aid from the Attorney General's Office and he wrote a letter to the Chief Executive; he also went to the courts and a trial was held in the court at which he was not present. His home was placed up for sale. This dealer also used the Sheriff's Department to advertise his home. And I want to bring out that fraud is being committed and there is no one in the State of New Jersey who is taking any interest in this matter. I feel it is more important to have a Commissioner over cemetery

matters, a man similar to the man you have in ABC, because they respect a man of that sort, a man similar, you might say, to the Commissioner Over Banking, where a person who has a problem goes to the Commission and they don't have to wait three years for a decision to be rendered for a gravestone to be erected. That's why I recommend to this Committee that both of these bills, which have a dollar bill behind them, should be turned down and instead there should be set up in the State of New Jersey a Commissioner Over Cemetery Matters. Gentlemen, the minute you pass either one of these bills, there will be a lot of problems. But if you set up a Commissioner who is an honest man, who has no relationship to the monument dealer, who is not interested in the funeral director, who is only interested in justice - if you have a man of that sort in the State of New Jersey, I believe all the problems that are being discussed here today - he will see who is the honest individual involved and he will give a just decision. The decision can be in favor of the public, the decision can be in favor of the monument dealer, or could be in favor of the funeral director, but I believe this State has been lacking for a long time a Commissioner where the people can go.

I was waiting here last week. I saw a woman come here crying to you with her problem, and I would like at this point to just explain to you what is going on, where we have letters from the Rock of Ages Corporation which is one of the largest granite corporations in the United States, and I would like you to hear what they have to say.

In February, I contacted the Rock of Ages Corporation because I found out my father, who could not read or write, entered into a contract in which fraud was committed. On February 17th of the year 1966, the Rock of Ages Corporation sent my father a special delivery letter because he inquired to find out if he received the monument that he contracted for. And this is what they informed him: "This will advise you" - This is to Mr. Harry Mann. "Dear Mr. Mann: This will advise you that none of the four grades granite quarries in the Barre, Vermont, area which are owned by Rock of Ages Corporation and operated by its quarrying division, provides a rough stock granite that is known as 'White Rock of Ages.' We definitely do not sell any of our grade rough stock granite under that name. "

That in itself informs you that this contract that my father entered into is a fraud, because they cannot deliver white Rock of Ages with a seal upon it to my father.

They also sent another letter in which they informed us that this dealer is not allowed to advertise in the telephone book or any other publication that he is a Rock of Ages dealer.

First, I would like to hand you gentlemen the contract my father entered into. Secondly, the letter which I just read which proves that that contract is a fraud and I want you to note the date on it, because my father is still waiting for an unveiling. It is almost three years since that occurred, since that contract was made. I would like to inform you also how much my father has given toward this

monument. When he made the contract, he gave a deposit of \$450 which you will note in the contract. Shortly thereafter, a trial was held in the court, at which my father was not present; there was no attorney to represent him. I went to inform the court that my father was ill and could not be present, and default was entered against him.

We had to deposit with the court to show good faith \$150, which brought the amount up to \$600 that my father gave. Shortly thereafter, the monument dealer placed our home up for sale, up to the Sheriff of Essex County. My father was harassed in his home because all types of real estate men and people came, knocked on the door and said, "We see that Litwin's Newark Memorial has this home for sale, and we would like to buy it before the Sheriff sells it." Well, we had to pay the Sheriff \$1,077.79 so he should not sell our home. Already we gave toward this monument, which is for \$1775, \$1677.79.

Now, a few weeks ago - about two weeks ago - I received a letter from the attorney that he is selling our gravestone. He says he wants another \$350, which would bring this gravestone which we ordered up to \$2002.79. Then we just found out they want also storage charges. The storage charges, I understand, will run roughly another \$200 plus interest.

Now, the thing is that there is no Commissioner around that the public can appeal to. I have been appealing to everyone and even the Attorney General sent me back a letter which I would like to read to you.

SENATOR BIGLEY: I think your main point is that you feel that all segments -

MR. MANN: I would like to bring out many of these facts, sir, because I feel you should have knowledge of this and then you will realize why the State of New Jersey needs a Commissioner.

SENATOR BIGLEY: I appreciate that but I think the Committee would assume that everything you have said is factual.

MR. MANN: Everything here is notarized and I would like to present it to you.

S T E L L A M A N N: Well, I think the most important factor that the people we brought the stone from is the firm of Newark Memorial and we ordered a Rock of Ages stone and we got a Barre Guild. Do you understand? Litwin Newark Memorial sold us the stone and this is what it said. We got a letter from the Rock of Ages dealer and they said: "For your information the firm of Newark Memorial, Root and Whitney Streets, in Newark, New Jersey, is not now and never has been an authorized Rock of Ages dealer" and he sold it under that premise and, therefore, he is not in a position to supply retail customers with genuine Rock of Ages.

We went there with that intention because we saw it advertised in the newspaper and in the telephone directory and everything else. And now we got a damaged stone and it's over four years since it was erected, and \$2,000 interest; they are selling our home again the second time because we

will not accept this stone, and it's not right. We've got two different colored stones - the base is one color and the top is another - but that's not the thing that bothers us. The thing that bothers us is right above where our name is written it is damaged and they won't correct it.

SENATOR BIGLEY: What you are asking this Committee though is - we've been discussing two particular bills, and neither one of the bills would encompass your problem.

MISS MANN: And they are both void in our estimation. What you should get is what my brother told you - someone over all this nonsense. They're a bunch of liars and robbers and stealers - pardon me for being so crude in saying it. They are only out for the almighty dollar and we haven't gotten any satisfaction. We've been losing money and now they are selling our home for the second time, and all because of fraud, and no one is coming to our aid. Who are we going to come to? Who can we come to but to you?

MR. MANN: I would like this Committee also to see from the telephone directory that Newark Memorial advertises to the public Barre Guild, which is not a granite - it's the name of the Guild in Barre, Vermont - and Rock of Ages. Rock of Ages is the name of a corporation in Barre, Vermont. It does not advertise in the telephone directory - Rock of Ages granite, which is the granite - he advertises Rock of Ages. Now, we or the public, when we look in the phone book for a Rock of Ages dealer, we presume he is an authorized Rock of Ages dealer. And that is what I consider fraud.

He also advertises in journals and I would like to read to you what it states. It says - Newark Litwin Memorial -

MISS MANN: [Addressing member of audience] Don't laugh. You didn't buy a gravestone and haven't suffered yet like we did. He's laughing -

SENATOR BIGLEY: Now, all right -

MISS MANN: We've suffered too much humiliation and heartache. We've been to court and no one has helped us out at all. And we want to do something for the people so no one else will suffer.

SENATOR BIGLEY: We appreciate your problem, the Committee, and the Committee is the one that will have to make the decision. But I would like to point out - I think you've made your point.

MR. MANN: We have a lot of facts and we -

SENATOR BIGLEY: Let me continue. I think you've made your point because all you are going to do now is to document it and I think the Committee is aware of the point that you have made. I don't think there is any purpose in going further with your testimony.

MR. MANN: I believe there is a purpose because this is a public hearing, sir.

SENATOR BIGLEY: Well, this is not a public hearing on all frauds, etc. This is a public hearing on two bills.

MR. MANN: It's on two bills and I am here as a private citizen requesting that both bills be rejected. I was here last week and I sat while the same men continuously were called on -

SENATOR BIGLEY: We appreciate that but -

MR. MANN: I want to inform you who we went to in seeking aid. We went to the Attorney General's Office, we went to the Fraud Bureau of the Attorney General's Office, we went to the Chief Justice of the State of New Jersey, we went to the courts, we went to the Superior Court and the Superior Court kept giving restraining orders to stop the sale of our home. I believe this Committee should have knowledge of what is going on, because the men here, they are all nicely dressed up, are only interested in one thing - how they can make more money. One thing is this: The cemetery should be a nonprofit organization but the men who are coming here are trying to instill fear in all you men's minds that sooner or later, if you don't allow them to make more money, there won't be any cemeteries around. I hope if the time comes that the State takes over the cemetery business if they feel there aren't going to be any more cemeteries around, because then I believe the people will have something similar to the Public Utility in the State of New Jersey instead of a bunch of men who are trying to get rich quick over people's sadness -

SENATOR BIGLEY: Well, all right -

MR. MANN: It appears to me that this Committee doesn't want to hear what I have to say.

MISS MANN: That's all right. You've made your point.

SENATOR BIGLEY: Thank you very much. The Committee stands adjourns.

[HEARING CONCLUDED]

THE HERALD-NEWS

988 Main Avenue, Passaic, New Jersey

31 Aug. 1965

Senator A. Donald Bigley
State House, Trenton

Dear Senator:

Enclosed is a letter which may be helpful to your Business Affairs Committee in its consideration of legislation concerning the funeral and burial business. The letter originally was directed to The Herald-News "Speak UP" service, a feature column in which the newspaper answers questions from readers.

Yours truly,
/s/ Edward J. Mullin

Speak Up
Herald News, Passaic, N. J.

Dear Sir:

Last evening our family were discussing the death yesterday of a friend when our phone rang at 8:30. The caller was a woman selling cemetery lots, who, when I interrupted saying I wasn't interested, kept right on with her speech until I hung up on her.

Another time (while awaiting a N. Y. call from a doctor regarding the result of a very serious operation on my husband) just such a call was received at 10 P.M., almost sending me into hysterics.

Last evening, recalling this experience and my emotions, I thought of other people receiving such calls - perhaps even the family we were discussing.

Realizing that telephone sales are a necessary form of work to some people (shut-ins, etc.) and annoying as they may be - the calls representing charities, encyclopedias, etc. - it is still not as shattering to the recipient as a call selling a cemetery lot.

Besides the poor taste and the hours of such calls, I cannot erase from my mind the emotional upsets these calls leave on with.

Isn't there some way such calls can be stopped?

Yours truly,

/s/ Evelyn Grenier
(Mrs. Walter P. Grenier)

95 Spring Street
Passaic, N. J. 07055

SELMA BRANDWEIN
60 Sutton Place South
New York City 10022
PL 8-0303

October 1, 1966

Secretary to the Senate
New Jersey Legislature
Trenton, N. J.

Dear Sir:

I am aware that the Legislature has during the past several months been investigating the practices of cemeteries and funeral parlors in their dealings with the public.

I would like to call your attention to a matter which I feel is sufficiently important for the consideration of the Legislature, since it may be that others have had similar experiences and received similar treatment from this particular cemetery.

Enclosed is a copy of a letter, which is self-explanatory, to which I have not even had the courtesy of a reply, although a month has elapsed.

I trust the Legislature will see fit to look into this matter and perhaps be able to obtain appropriate relief for my family.

Very truly yours,

Selma Brandwein

COPY

SELMA BRANDWEIN
EVELYN VESELL
60 Sutton Place South
New York City 10022

August 31, 1966

Cedar Park Cemetery
P. O. Box 329
Westwood, N. J.

Re: Jaffe Plot - Block 6, Lots 68,69,70

Gentlemen:

On June 24, 1965, we sent you, enclosed in a letter signed by our late father, Pinkus Jaffe, two checks, one for \$105, the other for \$1500. Photocopies of the cancelled checks are available to you if required. According to the receipts in our possession, H12951 (\$90) covered sodding and J7159 (\$15) covered lowering of footstone. This work, your Mrs. Kuss had previously advised, was a prerequisite to obtaining perpetual care which we wanted and which was paid for by the \$1500 check mentioned above. Your Trust Fund Receipt #512, dated June 28, 1965, makes reference to this perpetual care.

Since the death of our father, the plot, under his will, which your records will confirm, is now owned by us.

Since his death last November, we have on several occasions, particularly since early this summer, visited the graves and each time found that no work had been done by you that would constitute any care of the plot, even to simple weeding and mowing the lawn. Following each visit and complaint to various members of your office staff (most recently the manager, Mr. Levy), some slight effort was made to perform the "care" which the contract for "perpetual care" contemplated.

Inasmuch as it is obvious that you have failed to carry out your agreement during its first year, we have no confidence that your performance in the future will be any different, and have decided to care for it ourselves hereafter and pay whatever the usual annual charge is for this service. The lowering of the footstones has not been an improvement in the appearance or condition of the plot, but was eventually intended solely to serve your own purpose of making perpetual care a simpler labor operation.

Accordingly, we demand the cancellation of the perpetual care contract, the immediate refund of our \$1605 and the return of the footstones to their original elevated position. We trust that a complaint to the State authorities or resort to litigation will not become necessary.

Very truly yours,

(Sgd) Selma Brandwein
" Evelyn Vesell

