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Ryan M. Seidemann<sup>2</sup> Christine L. Halling<sup>3</sup>

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**WHOSE JOB IS IT ANYWAY? RECOVERING LOUISIANA'S DEAD AFTER A DISASTER**<sup>1</sup>**I. INTRODUCTION**

Often lost in the human calamity that is caused by natural disasters is the impact that such catastrophic events have on the dead. This reality makes logical sense: it should be the immediate concern of governments and first responders to minister to the sufferings of the living. However, as has been seen time and again in Louisiana, part of the suffering of the living that results from the impacts of these events--often tropical cyclonic activity-- results from worry and concern over the damage done to the final resting places of the dead.<sup>4</sup> In the immediate wake of Hurricane \*2 Laura, these problems are apparent again.<sup>5</sup> What is often unclear in the aftermath of such events is whether and to what extent the government has any role in the response and recovery efforts related to such psychologically-troubling occurrences. This paper examines a shallow history of this problem and identifies and analyzes the existing legal framework in Louisiana for answers.

One thing is important to bear in mind with this paper. This paper is not concerned with the management of those individuals who die as a result of a disaster event. Fatalities from a disaster event in Louisiana are wholly within the province of parish coroners--a reality that is clear and undisputed.<sup>6</sup> Because this category of disaster dead is so clear, it is not reviewed further here.

Most significant in the minds of most Louisiana residents today are the impacts of Hurricanes Katrina and Rita in 2005. These storms wrought colossal damage across the Louisiana coastal zone and also disrupted cemeteries from Cameron Parish in the west to Plaquemines Parish and St. Bernard Parish in the east.<sup>7</sup> In those events, the recovery of the bodies of those who predeceased the storms and were dislodged from their final resting places was handled by the federal government through the Disaster Mortuary Operational Response Teams ("DMORT").<sup>8</sup> DMORT is a federal response entity that is composed of law enforcement, first responders, funeral directors, anthropologists, pathologists, and dental experts who are often deployed to mass fatality locales to undertake the task of human remains identification when such work is on a scale insurmountable by local medical examiners (e.g., 9/11).<sup>9</sup> While DMORT has worked in Louisiana on responses such as Hurricanes Katrina, Rita, and Ike, its primary mission is not the recovery and identification of those \*3 who predeceased a particular disaster.<sup>10</sup> Furthermore, they generally do not manage such tasks as casket and burial vault recovery that are so emblematic of Louisiana's disaster aftermaths in favor of deploying for mass fatality incidents resulting from disaster events.<sup>11</sup> Thus, following the responses to these storms in 2005 (Katrina and Rita) and 2008 (Ike), DMORT began to resist activation for disaster-related cemetery disruptions.<sup>12</sup>

The problem of DMORT's inactivation was acutely felt in Louisiana in 2012, when the state was hit with Hurricane Isaac, a storm that resulted in cemetery disruptions in Plaquemines Parish.<sup>13</sup> In both of these instances, without federal assistance, state and local governments were left to fend for themselves to deal with body recovery, identification, and reburial.<sup>14</sup> Such a scenario was not insurmountable in West Baton Rouge, where Hurricane Gustav had caused trees to fall on five above-ground tombs, exposing the remains of those buried within. In this case, the local coroner's office collaborated with anthropologists from the Louisiana Department of Justice ("LDOJ") and parish public works crews to quickly secure the exposed remains and

to ensure that they were respectfully returned to their original resting places.<sup>15</sup> Much of the materials needed to accomplish this task were donated by local funeral homes and other death care industry entities and the work required by the public entities was chalked up to storm response work.<sup>16</sup>

\*4 Hurricane Isaac's storm surge in Plaquemines Parish presented a much larger problem. In that event, dozens of caskets and concrete burial vaults were pushed out of place by the storm surge from the Gulf of Mexico that extended to the Mississippi River levees along the west bank of the parish.<sup>17</sup> In this event, the massive push of water from the surge deposited the vaults and caskets, in many cases, along the levee and the levee served as the final blockage that kept the deceased Louisianans from washing into the Mississippi River and out to sea.<sup>18</sup> Because of the large numbers of displaced individuals from Hurricane Isaac, a simple Gustav-style gathering and reinterment was not possible.<sup>19</sup> Many of the displaced bodies had no associated identification.<sup>20</sup> In part, this lack of identification was a factor of the separation of the caskets and vaults from their grave markers.<sup>21</sup> Prior to 2006 (i.e., in the wake of Hurricanes Katrina and Rita), bodies in Louisiana were not required to be interred with any actual identification on the external or internal casket.<sup>22</sup> When DMORT was faced with hundreds of unidentified and unidentifiable deceased following the 2005 hurricane season, the Louisiana Legislature mandated that minimum identifying information be interred with every deceased person in the state.<sup>23</sup>

Theoretically, then, all post-2006 burials in the state should, if disinterred, have associated identifying information that makes their return to their final resting place simple. Unfortunately, beginning in 2012 with Hurricane Isaac and continuing through \*5 the 2016 floods, fieldwork revealed that many funeral directors--those charged with affixing such legally-mandated identification-- had not done what the law required.<sup>24</sup> In the absence of meaningful identifying information, the Isaac response was substantially complicated.<sup>25</sup> A collaboration among Plaquemines Parish, the Louisiana Department of Health, and Louisiana State University's Forensic Anthropology and Computer Enhancement Services Laboratory ("FACES") resulted in the implementation of the state's first, albeit temporary and ad hoc, version of DMORT.<sup>26</sup> These three entities, with legal assistance from LDOJ, established a temporary morgue in Plaquemines Parish and undertook identification work to return the Isaac-displaced dead to their former resting places.<sup>27</sup> Though not all remains were able to be positively identified, they were at least able, with the assistance of funding from the Federal Emergency Management Agency ("FEMA") and the state, to be returned to their original cemetery of interment.<sup>28</sup>

Following four relatively quiet years in the world of disaster-related body recovery, 2016 brought unprecedented challenges to a state with no existing legal or practical structure in place to deal with such problems.<sup>29</sup> Over the course of four days, south central Louisiana was relentlessly pounded by rain that caused rivers and streams to rise and flood their banks.<sup>30</sup> The sustained presence of flood waters impacted burials in many cemeteries in a manner similar to that of a storm surge.<sup>31</sup> In 2016, the saturated ground, coupled with standing flood waters, caused air-filled caskets and concrete vaults to float out of their "final" resting places and to settle wherever they were when the waters went back down.<sup>32</sup> Mercifully, most of the caskets and vaults remained within the bounds of the cemeteries in which they were originally interred, \*6 thus meaning that the job of reinterment was one of identifying who was who within discrete cemeteries.<sup>33</sup>

Despite the seemingly manageable reality that most disrupted caskets and vaults remained in or near their original cemetery of interment, the tallies were sobering: 74 impacted cemeteries; 801 damaged or disturbed graves; the declared disaster area spanned 20 parishes (with 13 parishes incurring cemetery disruptions); was 13,139 mi<sup>2</sup> in size; and the response team for this event was comprised of only four people.<sup>34</sup> Although Louisiana's dead have floated away before, this time was different. This time, the coastal parishes were largely spared in the Great Flood of 2016.<sup>35</sup> The 20 impacted parishes were inland--the parishes that usually receive the evacuees and provide assistance to the coastal parishes during tropical cyclone events.<sup>36</sup> The emergency responders and local governments in the affected parishes were not prepared for hundreds of previously-deceased residents leaving their final resting places and the law was inadequate to provide them with clear direction.<sup>37</sup> Thus, the initial reaction from most parish officials was to ignore the problem or attempt to shift the responsibility to someone else.<sup>38</sup> Another complicating factor was the opportunism that began to appear, including the church that insisted on being paid \$400 to bless each grave before reinterment (a request flatly rejected by state and federal operatives) and the funeral director who insisted on being paid \$1,200 per displaced individual for "identification" work that included eyeballing the casket and making a guess


at who was entombed within (once confirmation of incorrect identification occurred, and also stopped by the state and federal governments).<sup>39</sup>

The reaction of the local governments and emergency managers that initially ignored the problem was not completely without precedent. In some prior events--Katrina, Rita, and Ike-- \*7 this was a viable option. As noted above, those events were effectively "federalized" when DMORT was activated to lead the effort to recover caskets and restore cemeteries.<sup>40</sup> As happened following Hurricane Isaac in 2012, this time there would be no DMORT activation.<sup>41</sup> Thus, again, something else was required to fill the void that DMORT's absence created.

Although local governments have the manpower and physical resources necessitated for this type of initial recovery work (i.e., public works teams and equipment), they are often busy clearing debris and attending to other matters. However, they do not typically have the experience or equipment needed to complete full repair of the cemetery disruptions.<sup>42</sup> Moreover, such entities do not have specific statutory authorization to undertake casket recovery or cemetery repairs, potentially jeopardizing their compensation for such work under FEMA's Public Assistance ("PA") program (the primary source of funding for disasters for public entities).<sup>43</sup> Further, most cemeteries, despite their use by the community and generally open access to visitors, are located on private property.<sup>44</sup> Under *La. Const. art. VII, § 14(A)*, the use of public resources to benefit or work on private property is subject to substantial restrictions.<sup>45</sup> Thus, in 2016, while many local governments bickered over how to handle the problem, the Louisiana Department of Justice and the Louisiana Department of Health, as they had done following Isaac, took the lead with response and recovery efforts under existing--if not perfectly analogous--legal authority to protect the public health and to ensure against the theft and disturbance of human remains.<sup>46</sup>

\*8 This work began as on-ground assessments of the damage, organizing assistance from FEMA, coordinating with cooperative local governments, and reaching out to community groups.<sup>47</sup> Among the myriad problems encountered when dealing with such a large-scale disaster are the logistical nightmares of attempting to locate families for the 801 displaced dead and their damaged graves, identifying the scores of individuals who had no grave marker or other obvious identifying information, and repairing and replacing destroyed caskets and vaults.<sup>48</sup> Further, unique legal issues arose in these circumstances related to who had the right to authorize such repair work to be done.<sup>49</sup>

Louisiana law, until very recently, did not contemplate the legal implications of human remains displaced by natural disasters.<sup>50</sup>

In the past, the law, through  [Louisiana Revised Statutes \("La. R.S."\) section 8:655](#), contemplated which people were authorized to control human remains for the purposes of burial or cremation. Specifically, this law provides:

A. Except as provided in Subsection F of this Section, unless other specific directions have been given or the designation of a specific person to control disposition has been made by the decedent in the form of a notarial testament or a written and notarized declaration, the following persons, in the priority listed, have the right to control and authorize the interment of a deceased person, as defined in [R.S. 8:1](#):

(1) The person designated to control disposition by the decedent in the form of a notarial testament or a written and notarized declaration.

(2) The surviving spouse, if there is no pending petition for divorce filed by either spouse prior to the death of the decedent spouse.

(3) A majority of the surviving adult children of the decedent.

\*9 (4) A majority of the surviving adult grandchildren of the decedent.

(5) The surviving parents of the decedent.

(6) A majority of the surviving adult siblings of the decedent.

(7) A majority of the surviving adult persons respectively in the next degrees of kindred as established in [Civil Code Article 880 et seq.](#)

B. (1) Notwithstanding the provisions of Subsection A of this Section, if the decedent died in a manner described by [10 U.S.C. 1481\(a\)\(1\) through \(8\)](#) while serving in any branch of the United States Armed Forces, the United States Reserve Forces, or National Guard, and the decedent executed a United States Department of Defense Record of Emergency Data, known as DD Form 93, or its successor form, the right to control interment for the decedent shall devolve upon the Person Authorized to Direct Disposition, also referred to as the PADD, as indicated on the DD Form 93 or its successor form.

(2) There shall be no liability for a cemetery authority, funeral establishment, funeral director, crematory authority, or the employees or agents of any of them to whom a copy of a DD Form 93 is presented, purportedly executed by the decedent for conduction of the interment or other disposition of the decedent's remains, pursuant to the instructions of the PADD as indicated on the DD Form 93, or for relying on the representation of the PADD that the decedent died in a manner described in Paragraph (1) of this Subsection.

C. (1) In the event that the decedent has made multiple notarial testaments or notarized declarations pursuant to Subsection A of this Section, the testament or declaration, whichever is dated last, shall control.

(2) In the event that the decedent has made one or more notarial testaments or notarized declarations pursuant to Subsection A of this \*10 Section, and the decedent executed a DD Form 93 and died in a manner described in Subsection B of this Section, the testament, declaration, or the DD Form 93, whichever is dated last, shall control interment of the decedent's remains.

D. Notwithstanding the provisions of Subsection A of this Section, in the event that the coroner releases the remains of the decedent to an interested person pursuant to [R.S. 9:1551\(A\)\(1\)](#), such person has the right to control the disposition of the remains of the decedent.

E. In the absence of specific directions given by the decedent, if the authorization of the person or persons with the right to control disposition cannot be obtained, a final judgment of a district court shall be required.

F. No person shall have any right to control the disposition of the remains of a decedent when a warrant or a judicial determination of probable cause for a homicide enumerated in [La. R.S. 14:30](#), 30.1, or 31 has been issued for his arrest for the death of the decedent.

As is evident from the language above, [La. R.S. 8:655](#) provides ample guidance for the legal processes for handling the interment or cremation of human remains once that individual has died. Although not provided for in [La. R.S. 8:655](#), the law also provides ample guidance for the disinterment and reinterment of human remains through [La. R.S. 8:659](#). That law provides:

A. The remains of a deceased person may be moved from a cemetery space to another cemetery space in the same cemetery or to another cemetery with the consent of the cemetery authority and the written consent of one of the following, in the order named, unless other specific directions, in the form of a notarial testament or a written and notarized declaration, have been given by the decedent:

(1) The surviving spouse, if there is no pending petition for divorce filed by either spouse prior to the death of the decedent spouse.

\*11 (2) A majority of the surviving adult children of the decedent.

(3) A majority of the surviving adult grandchildren of the decedent.

(4) The surviving parents of the decedent.

(5) A majority of the surviving adult siblings of the decedent.

B. If the required consent cannot be obtained, a final judgment of the district court of the parish where the cemetery is situated shall be required.

At the time of the 2016 floods, the above provisions were the only legal provisions in Louisiana that provided for the authority to inter and to reinter human remains. No law contemplated a scenario when natural events (as opposed to anthropogenic activity) caused a disinterment of human remains, caskets, or burial vaults and who, if anyone, had the authority to manage those things for recovery purposes. Certainly, provisions existed criminalizing unlawful disinterment or disturbance of graves as well as authorizations for disinterments for further forensic analyses of human remains.<sup>51</sup> However, none of these laws applied to the analysis, recovery, and reinterment of human beings whose mortal remains had been forcibly ejected from their final resting places by natural forces.

Other potentially implicated Louisiana laws were found to provide no authorization or guidance for the sort of recovery work being undertaken in 2016. Simply, although portions of Louisiana law are dedicated to cemetery operation and management<sup>52</sup> and cemetery preservation,<sup>53</sup> none of these provisions come any closer than do [La. R.S. 8:655](#) and [La. R.S. 8:659](#) to

providing the authorization needed to manage disaster response and recovery. This problem was managed in the aftermath of Hurricane Ike in 2008 when numerous formerly living Louisiana residents floated across the state line to Texas by the issuance of an executive order \*12 authorizing their return to Louisiana.<sup>54</sup> The complexity of the 2016 storms required more legal authority than could reasonably be provided by an executive order that required constant reissuance.

Further complicating the 2016 response was the reality that, even when the identities of displaced individuals were known based upon information on or in the casket, the requisite family members under [La. R.S. 8:655](#) and [8:659](#) could not be located or were unwilling to participate in the reinterment process (in the latter case, often believing that this was simply a problem for the government or for the cemetery owner to handle--neither of which is supportable under the law).<sup>55</sup> In such cases, "good Samaritans" were identified (some members of the community were willing to step up and speak for the unidentified or unclaimed dead; some government employees volunteered to sponsor these wayward bodies) who would take on the obligation of applying to FEMA for funeral assistance to ensure the reburial of such individuals and to speak for the necessary moving, identification, and reinterment of these people, should it ever be determined that [La. R.S. 8:655](#) or [8:659](#) applied to this scenario.<sup>56</sup> Though the only option available to support recovery activities in many of the impacted cemeteries, this process was not ideal, as these altruistic acts by the "good Samaritans," while good-intentioned, could carry liability should the actual family members later decide that the reinterment decisions made by these volunteers were not what they would have done in the same circumstances.<sup>57</sup> In order to limit this liability, LDOJ, along with several parish governments, filed protective lawsuits seeking court authority to undertake the reinterment work.<sup>58</sup>

\*13 For the location of descendants and good Samaritans, local governments, churches, and news outlets were pressed into service in order to bring in hundreds of people who could speak for the known dead.<sup>59</sup> FEMA assisted in this process by providing dedicated teams to register these families for 100% coverage of the federal funeral assistance that would fund the reinterments.<sup>60</sup> Teams of anthropologists from various entities, including LSU's FACES Laboratory, were supervised by LDOJ staff and provided assistance in the identification process.<sup>61</sup> Many local funeral homes and some local governments donated time and manpower to assist in the collecting and housing of wayward caskets and vaults.<sup>62</sup> All of these people needed to be authorized to undertake this work under federal and state law and to be protected from liability for the work that they accomplished.<sup>63</sup>

Lawsuits in each parish with cemetery disruptions were filed to accomplish these ends.<sup>64</sup> The basic theory behind these suits was to take advantage of the portions of [La. R.S. 8:655](#) and [La. R.S. 8:659](#) to obtain court authority to move any impacted human remains, thus eliminating potential liability for the volunteers acting in the place of the authorized parties under those laws.<sup>65</sup> To date, no challenge has been mounted to any of the actions taken to effectuate these recovery efforts. The need for these suits lay in the lack of positive law on situations such as this. As noted above, at the time of the 2016 floods, there was no specific direction under Louisiana law for what government entity, if any, had the jurisdiction or authority to manage cemetery disasters. Even once an entity or group assumes control of such a situation, as LDOJ and LDH did in 2016, there was no law that ensured the protection of these agencies or provided them with instructions for managing the needs and resources of the public, the federal government, the local governments, and the nonprofit and private entities that provided assistance in the recovery efforts. Thus, \*14 these unique lawsuits sought to fill this legislative void, but they could not be long-term solutions to this problem.

Because of this series of legal loopholes, and based upon the realistic expectation that all of Louisiana--not just the coastal areas--was at risk of disaster-related cemetery disruptions (and a lack of federal response teams), it was clear that legislation was necessary to ensure proper chains of command, authorizations for work, and liability protection in the event of future such impacts. These loopholes have now been largely plugged and are reviewed below. Before reaching the current solution to the above-identified problems, it is also critical to understand why those traditionally charged with the management of the dead--coroners--are not the authorized governmental entity to respond in such disasters in Louisiana. This is important, as it likely has implications for other states in which the coroners or medical examiners operate under legal schemes similar to that in Louisiana. In other words, other states should beware the problems and pitfalls identified in Louisiana and should check their own laws to ensure that they are ready to face such challenges when they come-- as they will.

## II. CAN'T THE CORONERS JUST DEAL WITH THIS?

Under the Louisiana legal system, parish coroners are generally charged with the obligation to manage initial matters when someone dies in their parish.<sup>66</sup> These constitutionally-established offices<sup>67</sup> have been determined by the Louisiana Supreme Court to possess broad powers to accomplish their statutory obligations.<sup>68</sup> While it is logical to think that coroners would be the proper people to manage disruptions of the dead, a close examination of their statutory powers reveals that their authority and jurisdiction over the dead extend only to inquiries into the causes of their death.<sup>69</sup> The relevant law, [La. R.S. 13:5713](#), provides:

\*15 A. The coroner shall either view the body or make an investigation into the cause and manner of death in all cases involving the following:

- (1) Suspicious, unexpected, or unusual deaths.
- (2) Sudden or violent deaths.
- (3) Deaths due to unknown or obscure causes or in any unusual manner.
- (4) Bodies found dead.
- (5) Deaths due to suspected suicide or homicide.
- (6) Deaths in which poison is suspected.
- (7) Any death from natural causes occurring in a hospital under twenty-four hours of admission.
- (8) Deaths following an injury or accident either old or recent.
- (9) Deaths due to drowning, hanging, burns, electrocution, gunshot wounds, stabs or cutting, lightning, starvation, radiation, exposure, alcoholism, addiction, tetanus, strangulation, suffocation, or smothering.
- (10) Deaths due to trauma from whatever cause.
- (11) Deaths due to criminal means or by casualty.

(12) Deaths in prison or while serving a sentence.

(13) Deaths due to virulent contagious disease that might be caused by or cause a public hazard, including acquired immune deficiency syndrome.

B. (1) The coroner may perform or cause to be performed by a competent physician an autopsy in any case in his discretion. The coroner shall perform or cause to be performed by a competent physician an autopsy in the case of any death where there is a reasonable probability that the violation of a criminal statute has contributed to the death.

(2) The coroner or the district attorney may order the disinterment of any dead body within his jurisdiction under the direction or supervision of the \*16 person ordering the disinterment or his designee, and may authorize the removal of such dead body to a place designated by the person ordering the disinterment for the purpose of examination and autopsy and, when such is completed, order the reinterment of the body.

(3) The coroner may hold any dead body for any length of time that he deems necessary. However, the coroner shall expedite any investigation at the scene of an accident involving a fatality so as not to unduly delay the removal of the dead body from the accident scene. However, if a bodily substance sample for a toxicology screen is extracted at the accident scene, the extraction procedure shall be performed outside of public view.

(4)(a) He may remove and retain for testing or examination any specimens, organs, or other portion of the remains of the deceased that he may deem necessary or advisable as possible evidence before a grand jury or court, subject to the limitation set forth in [R.S. 32:661\(A\)\(2\)](#).

(b) The coroner may also remove and retain any specimens or organs of the deceased which in his discretion are necessary or desirable for anatomical, bacteriological, chemical, or toxicological examination, subject to the limitation set forth in [R.S. 32:661\(A\)\(2\)](#).

C. (1)(a) The coroner shall perform or cause to be performed by a competent physician an autopsy in all cases of infants under the age of one year who die unexpectedly without explanation.

(b) The autopsy shall include microscopic and toxicology studies.

(c) The coroner shall furnish a death certificate based upon his autopsy with his statement, to the best of his knowledge, of the cause and manner of death.



(2) If the coroner finds that the cause of death was Sudden Infant Death Syndrome, he shall notify \*17 the director of the parish health unit within forty-eight hours after such determination.

(3) In preparing the certificate of death, the coroner may not, in lieu of an autopsy, rely on statements of relatives, persons in attendance during the last sickness, persons present at the time of death, or other persons having adequate knowledge of the facts, even if such data may be permitted in other cases in this Section.

(4) The coroner shall not perform an autopsy if the parents of the infant provide to the coroner their objection in writing, unless the coroner finds that the facts surrounding the death require that an autopsy be performed in the interest of the public safety, public health, or public welfare.

D. If the family of the deceased objects to an autopsy on religious grounds, the autopsy shall not be performed unless the coroner finds that the facts surrounding the death require that an autopsy be performed in the interest of the public safety, public health, or public welfare. In such cases the coroner shall provide the family his written reasons for the necessity of the autopsy.

E. (1) The coroner shall furnish a death certificate based on his examination, investigation, or autopsy, and he shall state as best he can the cause and manner of death.

(2) If it appears that death was due to accident, suicide, or homicide, he shall so state.

(3) The cause of death, and the manner or mode in which the death occurred, as incorporated in the death certificate as provided in the Vital Statistics Laws, [R.S. 40:32 et seq.](#), filed with the division of vital records of the Louisiana Department of Health, shall be the legally accepted cause of death, unless the court of the parish in which the death occurred, after a hearing, directs otherwise.

(4) In the case of a death without medical attendance, if there is no reason to suspect the death was due to violence, casualty, or undue means, the \*18 coroner may make the certificate of death from the statement of relatives, persons in attendance during the last sickness, persons present at the time of death, or other persons having adequate knowledge of the facts.

F. The coroner or his designee shall examine all alleged victims of a sexually-oriented criminal offense. The coroner may select the hospital or healthcare provider named as the lead entity for sexual assault examinations in the regional plan required by [R.S. 40:1216.1](#) as his designee to perform the forensic medical examination.

G. (1) Notwithstanding any provision of law to the contrary, when the coroner is required to furnish information for the issuance of a death certificate by the office of vital statistics, the coroner shall do so within ten working days after the receipt of all test and investigation results or information associated with the investigation into the cause and manner of death.

(2) If the coroner is unable to furnish the information required pursuant to Paragraph (1) of this Subsection within ten days after taking charge of the case, upon request, the coroner shall issue a written statement attesting to the fact of death, which shall constitute proof of death for all purposes, including but not limited to, any claim under any policy of insurance issued on the life of the deceased individual.

H. In deaths investigated by the coroner where he is not able to establish the identity of the dead body by visual means, fingerprints, or other identifying data, the coroner shall have a qualified dentist or forensic anthropologist or forensic pathologist carry out a dental examination of the dead body. If the coroner, with the aid of the dental examination, is still not able to establish the identity of the dead body, the coroner shall prepare and forward the dental examination and other identifying records to state and local law \*19 enforcement agencies. When the dead body may be that of an individual under the age of eighteen years, the coroner shall send this information to the Missing and Exploited Children Information Clearinghouse within the Department of Public Safety and Corrections, office of state police.

I. (1) Liability shall not be imposed on an elected coroner or his support staff based upon the exercise or performance or the failure to exercise or perform their policymaking or discretionary acts when such acts are within the course and scope of their lawful powers and duties.


(2) The provisions of Paragraph (1) of this Subsection are not applicable to any of the following:

(a) To acts or omissions which are not reasonably related to the legitimate governmental objective for which the policymaking or discretionary power exists.

(b) To acts or omissions which constitute criminal, fraudulent, malicious, intentional, willful, outrageous, reckless, or flagrant misconduct.

(3) The legislature finds and states that the purpose of this Subsection is not to reestablish any immunity based on the status of sovereignty but rather to clarify the substantive content and parameters of application of such legislatively created codal articles and laws and also to assist in the implementation of Article II of the Constitution of Louisiana.

J. Upon request, the Department of Children and Family Services shall be entitled to obtain at no charge the name, age, preliminary diagnosis, and manner of death of a deceased minor or any other findings of abuse or neglect of the minor from the office of the coroner conducting the autopsy while the final autopsy is pending. If the coroner finds that the cause of death of a minor child was due to abuse or neglect or finds evidence of any other abuse or neglect of the child, he shall notify the Department of Children and Family Services. The \*20 coroner shall provide the department with his findings in a timely manner, or immediately when requested to protect any other minor child.

The entirety of the above-quoted law has as its theme and purpose one thing: determination of the cause of death. Coroners are also charged with the management of human remains until their final disposition or transfer to parties authorized by  La. R.S. 8:655.<sup>70</sup> Two provisions of La. R.S. 13:5713 bear closer scrutiny for the purposes of understanding the scope of a coroner's authority over human remains: La. R.S. 13:5713(A)(4) and La. R.S. 13:5713(B)(2).

The former of those provisions provides that “[t]he coroner shall either view the body or make an investigation into the cause and manner of death in all cases involving the following: ... [b]odies found dead.”<sup>71</sup> At first blush, this provision would appear to grant coroners some authority over “[b]odies found dead” who are ejected from their final resting places. However, a close read of this law reveals that, with respect to “[b]odies found dead,” which could certainly apply to certain cemetery disaster disruptions,<sup>72</sup> coroners' authority only authorizes them to, “... either view the body or make an investigation into the cause and manner of death ....”<sup>73</sup> This provision of law does not create any authority for a coroner to take charge of the human remains (i.e., a “[b]ody”) that have been displaced from a cemetery as a result of a disaster. There is no doubt that this provision mandates that a coroner take charge and determine the cause of death of any individuals within their geographic jurisdiction who die as a result of a disaster. But to read La. R.S. 13:5713(A)(4) as authorizing an extension of a coroner's authority from his primary charge to determine the cause of death to managing disaster disruption response is simply unsupported by the plain language of the law. Moreover, there is no logic in interpreting La. R.S. 13:5713(A)(4) as mandating a \*21 coroner's involvement in the analysis of any human remains dislodged from their final resting places as a result of a disaster, as the coroner's inquiry under La. R.S. 13:5713(A) is aimed specifically at identifying the cause of death of an individual and not at identifying a long-dead individual whose cause of death is irrelevant for disaster recovery purposes. Such a read of the law would result in absurd consequences that are disfavored under Louisiana law.<sup>74</sup>

The latter provision of interest in La. R.S. 13:5713 is subpart (B)(2), which reads,

[t]he coroner or the district attorney may order the disinterment of any dead body within his jurisdiction under the direction or supervision of the person ordering the disinterment or his designee, and may authorize the removal of such dead body to a place designated by the person ordering the disinterment for the purpose of examination and autopsy and, when such is completed, order the reinterment of the body.

Although the authority to analyze human remains and to reinter them appears to be subsumed within the coroner's authority to order the disinterment of human remains under La. R.S. 13:5713(B)(2), under the maxim of *omne majus continet in se minus* (the greater includes the lesser), such is not the case under this provision. The reason for this is that, pursuant to this provision of law, the purpose for ordering a disinterment is for the conduct of an examination and autopsy. In disaster scenarios, the remains are disinterred by a force majeure event and not at the direction of a coroner pursuant to La. R.S. 13:5713(B)(2). Thus, none of the authority that flows from a coroner's order under this provision is applicable to disaster-caused disinterments. Again, the law here contemplates that a coroner will be directing a disinterment for the purposes of cause of death or identification inquiries and not for the purpose of moving disinterred remains to their former final resting places.

Further complicating a coroner's role in cemetery disaster response is the reality, as discussed above, that many of the \*22 disrupted cemeteries are located on private property.<sup>75</sup> Because a coroner is a public official with a specifically-designated scope of authority that does not include conducting casket retrievals or reinterments in private cemeteries, any such activity exceeds not just a coroner's statutory powers, but also the limits on the use of public funds to benefit private property under La. Const. art. VII § 14(A). Moreover, coroners, as public officials, are reimbursed in federally-declared disaster events through FEMA's Public Assistance program.<sup>76</sup> That program's reimbursement scheme is strictly construed to apply only to the explicit scope of a public official's legal duties and the funding cannot be used to benefit private property.<sup>77</sup> For this reason, even if coroners had the authority to deal with cemetery disaster response scenarios, their funding source only authorizes them to operate on public property. Thus, once any recovered remains have been delivered to the gates of a private cemetery, the coroner has no legal authority to expend public resources (i.e., time or expenses) to reinter those remains in a private cemetery. The limits of this problem have been on full display since Hurricane Katrina in 2005 at Merrick Cemetery in Violet, Louisiana, where FEMA funding limitations kept remains from being reinterred once they arrived at the cemetery and they remain uninterred now--15 years after the event.<sup>78</sup> The consequences for coroners acting to assist their communities in cemetery disaster response by taking charge over the response and reinterment activities are not insignificant. As alluded to above, such work could constitute

a misuse of public funds under \*23 La. Const. art. VII § 14(A) and the *Cabela's* case.<sup>79</sup> Such misuse may result in censure or penalties from the Louisiana Legislative Auditor or from the Louisiana Inspector General.<sup>80</sup> Moreover, because FEMA PA reimbursement is only authorized for work done by public officials operating within their authorized sphere of authority, parishes will likely lose any reimbursement claims associated with coroners acting in this capacity.<sup>81</sup> Such a reality is not insignificant when considering the extreme costs incurred by local governments in disaster response and the reliance of such governments on federal reimbursements to remain solvent.<sup>82</sup> Finally, coroners acting as good Samaritans to reinter the displaced former citizens of their parish are exposed to liability for acting in an *ultra vires* manner.<sup>83</sup>

The combination of these risks make untenable the simple assignment of cemetery disaster response to coroners under some misfounded argument that, because such people typically deal with the dead, they should also do so during a cemetery disruption event. For this reason and for the reasons articulated in the prior section, the Louisiana legislature has provided for a specific mechanism to remedy all of these problems.

### III. WHAT OTHER OPTIONS EXIST?

The above analysis necessarily begs the question: If the coroners--those generally tasked with managing the dead in Louisiana--are not authorized to respond to disaster-caused displacements of caskets and remains, then who is? In Louisiana, there are several different entities with authority to manage \*24 certain aspects of death: funeral directors, the Louisiana Board of Embalmers and Funeral Directors ("LBEFD"), cemeterians, the Louisiana Cemetery Board ("LCB"), the Louisiana Division of Archaeology ("the Division"), the Louisiana Department of Health ("LDH"), Louisiana State University's FACES Lab ("FACES"), and the Louisiana Department of Justice ("LDOJ").<sup>84</sup> Each of these actors merits a brief review in the interest of answering the above question.

Funeral directors are private individuals whose assistance in the recovery of the dead following a disaster is often essential. However, no specific law exists authorizing these private individuals to manage or control such recovery efforts. Funeral directors, while often possessing the financial and logistical wherewithal to respond to such events--at least on a small scale--do not have any obligation to do so and do not have any protections from liability for such action (with some exceptions set forth below). Further, funeral directors usually have no real interest in the underlying property of the cemetery, and, therefore, are not cemetery authority. Similarly, the LBEFD is the Louisiana agency charged with the regulation of embalmers, funeral directors, funeral homes, and crematories.<sup>85</sup> This agency has no jurisdiction over cemeteries and has no role in disaster response.

Cemeterians are a bit different, also being private individuals/entities. These people are generally owners or operators of the actual property that is impacted by disasters. If these people operate properly-licensed cemeteries pursuant to [La. R.S. 8:70, et seq.](#), then they have the inherent authority to manage their own affairs with regard to disaster recovery. Moreover, when these individuals are the beneficiaries of insurance policies that cover their cemeteries, they are often obligated under the terms of those policies to undertake necessary repair and recovery work.<sup>86</sup> \*25 Beyond this sort of work, cemeterians are also not authorized to manage disaster response recoveries and, beyond the borders of their own cemeteries, they have no authority to so act and no immunity protections if they do act (and are subject to a below-discussed exception that resulted from the enactment of La. Acts 2018, No. 713 and the creation of the Statewide Cemetery Disaster Response Task Force ("CRTF")).

It is important to note that such things as perpetual care trust funds are not available for disaster recovery work in cemeteries. Perpetual care trust funds are monies charged by a cemetery at the time of sale of a grave space, which are to be used to assist in the maintenance of the cemetery over time.<sup>87</sup> The use of these funds are highly regulated and only interest generated from the trust accounts can be used to maintain a perpetual care cemetery.<sup>88</sup> Moreover, because the use of these funds are only for regular maintenance activities, they are not authorized for use in disaster recovery situations.<sup>89</sup>

The LCB is the Louisiana agency charged with the regulation of operating cemeteries.<sup>90</sup> Among its major duties are ensuring that operating cemeteries are properly licensed and that they are keeping the records of interments required by law.<sup>91</sup> Moreover, the LCB is charged with monitoring, auditing, and regulating the perpetual care and merchandise trust funds of Louisiana's operating cemeteries to ensure compliance with the law.<sup>92</sup> Although the LCB is generally charged with the enforcement of most

of Louisiana's cemetery laws,<sup>93</sup> that enforcement authority does not include (subject to the CRTF \*26 exception discussed below) the board or its staff to undertake disaster response efforts.

The Division, with the State Archaeologist at its helm, is the state agency charged with permitting impacts to unmarked and inactive historic cemeteries in Louisiana.<sup>94</sup> Although this agency possesses authority to authorize certain disturbances to cemeteries, none of its authority includes the ability to respond directly to disaster-related cemetery disruptions. Certainly, if burials in an unmarked or inactive historic cemetery might be impacted by rebuilding efforts in the wake of a disaster, then the Division's permission may have to be sought. However, this agency is not authorized or equipped to manage disaster response that includes the recovery of caskets, vaults, grave markers, and human remains that have been dislodged from their original resting places.

LDH is mentioned here only because that agency possesses some jurisdiction over matters related to the dead. Specifically, LDH is charged, among other things, with ensuring the public's health and tracking statistics related to death and its causes in Louisiana.<sup>95</sup> It is this function as the agency charged with protecting the public's health that has, historically, placed LDH in the position of responding to disaster-related disruptions of cemeteries following such events as Hurricane Isaac and the 2016 floods.<sup>96</sup> However, as with the other agencies discussed above, LDH has, with one exception discussed below, no direct authority over disaster response as it relates to cemeteries.

According to its website, FACES' function is to "provide[] forensic anthropology and forensic imaging services to agencies within Louisiana."<sup>97</sup> Although this entity has assisted with several cemetery disaster response efforts, its involvement has always been ad hoc.<sup>98</sup> As with the other entities discussed above, FACES has no formal jurisdiction in such efforts and has historically provided its assistance when requested. FACES primarily serves \*27 the role of assisting law enforcement in identifying unknown human remains in a criminal context.<sup>99</sup> FACES also, pursuant to *La. R.S. 15:653, et seq.*, is charged with maintaining the state's database of DNA for missing persons. Although FACES is intimately involved with the identification of deceased humans, subject to the single exception discussed below, it has little role in the recovery from and response to cemetery disaster related disruptions.

Finally, LDOJ sits in a unique position with respect to cemeteries and human remains in Louisiana. From a legal standpoint, its attorneys are statutory counsel to the LCB for all matters under that entity's jurisdiction and to the Division for matters under the purview of the Louisiana Unmarked Human Burial Sites Preservation Act and the Louisiana Historic Cemetery Preservation Act.<sup>100</sup> Although these laws provide broad civil prosecutorial authority over violations of these provisions of law and a familiarity with the subject matter, they do not provide any enforcement authority to LDOJ nor do they provide LDOJ with criminal prosecutorial jurisdiction.<sup>101</sup> LDOJ's initial involvement in matters related to cemetery and human remains disaster response for Hurricanes Katrina, Rita, Gustav, and Ike derived from its legal representation of the LCB, the latter of which was called upon on several occasions to respond to cemetery problems resulting from those storms.<sup>102</sup> The response work undertaken by LDOJ during Hurricane Isaac in 2012 was, in large part, in a legal advisory capacity to LDH pursuant to its general legal situation as the chief legal officer for the State of Louisiana.<sup>103</sup>

By the time of the 2016 floods in central Louisiana, LDOJ had become more relevant as an organizational entity for human \*28 remains and cemetery disruptions generally through the passage of the Louisiana Human Remains Protection and Control Act of 2016.<sup>104</sup> This law, largely passed in response to research and enforcement actions demonstrating that cemeteries in Louisiana were being plundered for human remains to be sold in various illicit markets, vested LDOJ with considerable civil enforcement and investigatory authority for cemetery damage and wayward human remains.<sup>105</sup> Specifically, this law provides that:

The legislature hereby finds that Louisiana law has never permitted, recognized, or sanctioned ownership rights in human remains and that such materials are explicitly exempted from property concepts under both common and civil law. The legislature further finds that the trade in or commodification of human remains fosters the looting and desecration of cemeteries and other sacred sites. The legislature further finds that existing state laws do not adequately protect against the illicit trade in human remains and that such trade needs to be stemmed in order to minimize looting and desecration of cemeteries. The legislature also finds and declares that there is a need for a central state entity to manage the enforcement of human remains laws and that, because the attorney general is already the statutory counsel to the Louisiana Cemetery Board, as well as being charged with civil enforcement of

the Louisiana Unmarked Human Burial Sites Preservation Act and the Louisiana Historic Cemetery Preservation Act, the attorney general is uniquely qualified to enforce and police all illicit transactions in and commodification of human remains contemplated by this Chapter.<sup>106</sup>

Clearly, this law is aimed at stemming the tide of illicit human remains sales. However, the reality is that many human remains \*29 that appear in the stream of such illicit commerce derive from damaged graves in which such remains are exposed; the exposure of such remains by disaster damage makes for easy access to materials for the illicit market. Because this law provides LDOJ with primary authority to police this market and the problems leading to such commodification, that agency's authority was the closest fit for disaster response by 2016.

Moreover, through the passage of *La. R.S. 8:663*, LDOJ was also placed in this position of assisting with the legal aspects of management and possibly analysis and curation of wayward human remains in the state's cemeteries. Relevant to this article, this law provides, in pertinent part, that:

The legislature hereby finds that exposed human skeletal remains in cemeteries, while harmless from a public health perspective, are nonetheless disrespectful to those interred in the cemetery and are susceptible to being looted. Accordingly, the legislature finds that the collection and reburial of these remains, in a controlled, scientific, and respectful manner, is in the best interests of the public.<sup>107</sup>

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If written permission of the relevant cemetery authority cannot be reasonably obtained and the exposed human skeletal remains are at risk of being looted, the attorney general may apply to the district court in which the cemetery is located for an order to safeguard the human skeletal remains.<sup>108</sup>

\*\*\*

The attorney general may collect the exposed human skeletal remains or may delegate that authority to a qualified party under this Subsection.<sup>109</sup>

\*30 Moreover, in the event that the collection of human remains from a cemetery site is necessary, “[a]ny collection activities shall be conducted under the direction of the attorney general or a full-time faculty member from an accredited college or university in the state of Louisiana”<sup>110</sup> and these activities “... shall be supervised by a person with a minimum education level of a master's degree in one of the enumerated fields of study ...”<sup>111</sup> of “... anthropology, archaeology, biology, and mortuary science ....”<sup>112</sup>

Though not a perfect fit for disaster response, these laws were, at the time and as is demonstrated above, the closest thing to legal jurisdiction under Louisiana law for problems involving cemetery damage and wayward human remains. Thus, along with LDH, through its charge to ensure the protection of public health, LDOJ co-led the ad hoc cemetery disaster response team for the 2016 floods.<sup>113</sup> Nonetheless, disputes with local governments over jurisdictional control and logistical problems of managing resources, combined with the true lack of direct authority for either of these agencies to manage such a response left a gaping legal hole in the chain of command for such responses that needed to be filled by subsequent legislation.

#### IV. WHAT THEN, IS THE SOLUTION?

With the foregoing limitations in mind, and following the logistical experiences of the 2016 flood response, GOHSEP, along with State Representative Jerome Zeringue, added language to a legislative overhaul of that emergency response agency's organic legislation during the 2018 regular legislative session to provide for a formal legal structure within which to respond to cemetery damage caused by disasters.<sup>114</sup> That law, codified as [La. R.S. 29:726.4](#), provides, in its entirety, as follows:

A. The Statewide Cemetery Response Task Force is hereby established to assess response and \*31 recovery needs related to cemeteries during any emergency declaration by the state or any parish thereof.

B. The task force shall be composed as follows:

(1) One representative from the Louisiana State University's Forensic Anthropology and Computer Enhancement Services (FACES) Laboratory.

(2) One representative from the Louisiana Department of Health.

(3) One representative from the Department of Justice.

(4) One representative from the Louisiana Cemetery Board.

(5) One representative from the Governor's Office of Homeland Security and Emergency Preparedness.

(6) One representative appointed by the Louisiana State Coroner's Association.

C. The task force shall appoint a chairperson from among its members. Each member may appoint a designee who shall have all of the rights and privileges as a member of the task force when acting in such capacity.

D. The task force shall be activated at the request of the director of the Governor's Office of Homeland Security and Emergency Preparedness when the state or a parish has issued an emergency declaration and there is evidence that damage has occurred to a cemetery.

E. Upon activation, the task force shall complete and submit within seventy-two hours a preliminary assessment of the known impacts to cemeteries as a result of the emergency event to the director of the Governor's Office of Homeland Security and Emergency Preparedness.

F. The Statewide Cemetery Response Task Force shall have the following powers and duties:

(1) Determine whether response and recovery efforts related to cemeteries is necessary.

**\*32** (2) When a response is necessary, make recommendations for the nature of the response.

(3) Provide subject matter expertise as requested during the response.

(4) May direct available parish and local resources for the response.

(5) Coordinate with any relevant federal agencies on cemetery impacts response and recovery.

(6) Coordinate with any impacted parish or local governments on the cemetery impacts response and recovery.

(7) Coordinate with any non-governmental organizations, funeral directors, monument and vault companies, churches, cemetery authorities, associations, and vendors involved in the cemetery impacts response and recovery.

(8) Advise the director of the Governor's Office of Homeland Security and Emergency Preparedness of any public health or other concerns related to disinterred remains for which the person responsible for disposition cannot be located.

G. Members of the task force shall be entitled to be reimbursed for actual expenses for travel consistent with allowances for state classified employees and approved by the director of the Governor's Office of Homeland Security and Emergency Preparedness, if funding is available.

H. The task force, acting pursuant to its authority provided in this Section, may not supplant the authority of an individual cemetery authority that seeks to manage its own disaster response and communicates that desire in writing to the task force.

Simply, this law created a single statewide entity in Louisiana with the explicit authority to control and direct the response and recovery efforts deriving from impacts to cemeteries resulting from disasters. The composition of the Statewide Cemetery Response Task Force ("CRTF") largely mirrors those **\*33** entities discussed above with some authority over cemeteries and the dead: LCB, LDH, coroners, FACES, and LDOJ and also includes a representative of GOHSEP to ensure continued coordination with the broader emergency response agency in Louisiana. <sup>115</sup>



While the CRTF has the clear jurisdiction to lead efforts to recover from disasters that impact cemeteries, the above law also recognizes that this entity, which is activated only upon the occurrence of a declared disaster and the report of cemetery damage resulting from that disaster, is not a standing government agency with staff or funding of its own. Thus, the CRTF is authorized to direct the use of other state and local government resources (e.g., the Louisiana National Guard and local emergency management and public works resources) to accomplish its response and recovery goals.<sup>116</sup> With the enactment of this law, combined with the jurisdiction conferred by La. R.S. 25:951, et seq., and La. R.S. 8:663, both of which are exercised by a member entity of the CRTF--LDOJ--it is clear that, in the context of disaster response efforts for the recovery of those individuals who have been displaced from cemeteries or in the rehabilitation of the cemetery sites themselves, jurisdiction and authority to respond to such events have been consolidated and that all of the entities reviewed here act only through authority granted to them through a delegation from the CRTF.<sup>117</sup> In other words, coroners no longer have any authority to unilaterally respond to such events. While assistance from such individuals or entities will seldom be turned \*34 down, any response actions by these parties must be accomplished in accordance with CRTF protocols and with CRTF authority. Such a reality ensures continuity of response efforts both within a single event and among multiple events over time.

One exception to the CRTF's authority and jurisdiction is important to note. Private operating cemeteries may opt out of the CRTF's recovery efforts.<sup>118</sup> This ceding of some jurisdiction and control is a nod to the rights of private property owners to manage their own affairs. Even in the event of a disaster, private landowners should have the right to direct their own recovery and, if requested, the CRTF will step back from disaster recovery when a private cemetery requests to manage its own rebuilding efforts.

As was learned in the 2016 floods, this single point of authority for cemetery disaster response is crucial when attempting to organize federal funding support for such work. When such cemetery damage occurs, the first inquiry should be whether there is insurance to cover the necessary repairs. In many cases in Louisiana, especially with rural or abandoned cemeteries, such insurance is not available.<sup>119</sup> Thus, while governmental assistance should be considered a last resort, it is often the only source of funding for such recovery work and the organization of the assistance works well when a governmental entity is managing the response. Whether such governmental assistance exists is beyond the scope of the CRTF. This assistance derives from entities such as the Federal Emergency Management Agency (FEMA), and the funding's availability depends on political decisions and declarations from local, state, and federal officials.<sup>120</sup> FEMA funding is only authorized in presidentially-declared disasters.<sup>121</sup> For all other disaster events for which the CRTF may be activated, its role is limited to efforts to document the damage and to make efforts to assist the impacted families to rebuild without having the ability to direct federal disaster aid to the damage.<sup>122</sup>

\*35 If insurance is insufficient or lacking, then the next inquiry is what sort of government assistance is available. If the cemetery is publicly-owned property, then necessary response and repairs are generally to be borne by the relevant public entity.<sup>123</sup> That public entity, in a declared disaster, is then eligible to seek reimbursement from FEMA at a percentage (usually 75%) of actual response and repair costs through the Public Assistance (PA) program.<sup>124</sup>

Most uninsured cemetery damage is going to be subject to FEMA's convoluted and often counterintuitive Individual Assistance (IA) program. In Louisiana's recent disasters, this program has been used to accomplish restoration and reinterment work in small religious, family, community, and abandoned cemeteries. What is counterintuitive about this program is that FEMA cannot pay groups, corporate entities, or associations that may own the impacted cemetery.<sup>125</sup> Rather, IA funeral assistance (the mechanism for funding such repairs under the IA program) is only available to individuals.<sup>126</sup> In other words, specific individuals must apply to FEMA for relief for individual graves; such relief cannot be granted on a cemetery-wide basis. Before jumping to the conclusion that this assistance, which is issued in the form of grants (as opposed to the more common FEMA loans), is only available to statutory descendants of the deceased, it must be borne in mind that the federal government does not follow such logic. Instead, all FEMA requires to receive IA funding is that a good Samaritan step up and agree to use federal money to repair someone's grave.<sup>127</sup> That someone may be a relative or a friend of the deceased, or, as was the case in many instances recently in Louisiana, a complete stranger to the deceased.<sup>128</sup>

\*36 In severe disaster events, such as the 2016 floods, the use of the IA program to repair cemetery damage is often complicated by the inability to identify displaced remains within the time limitations to register applicants for IA.<sup>129</sup> Further complicating the identification problems is the reality that the process does not and cannot progress as it does on television. In particular,

DNA testing for identification purposes is not available.<sup>130</sup> Current FEMA regulations do not authorize funding for DNA testing (Hurricane Katrina and 9/11 are notable and extreme exceptions to this rule) of unidentified remains.<sup>131</sup> What FEMA will compensate for when identification is necessary is basic anthropological examinations, and then only at minimal amounts (generally on the order of less than \$100 per individual).<sup>132</sup> Even when such work is done, the process of identification is only as good as the antemortem information available from cemetery professionals and family members who know the identities of the individuals interred in the cemetery.

## V. CONCLUSION

In Louisiana, the process of recovering from mass disasters is an all-too-common theme and one that, as locals are aware, takes much time and effort. The lengthy process of cobbling together legal and logistical authority to assist with the recovery efforts as it relates to cemeteries has resulted in an often confusing patchwork of authority. What is clear today is that the Louisiana Statewide Cemetery Response Task Force is the primary state agency tasked with responding to such disasters. Unlike the ad hoc efforts by many of its members and designees from Hurricanes Gustav and Isaac through the 2016 floods, the clear jurisdiction and legal charge of this entity authorizes the use of a range of expertise necessary for this unique problem to bring peace of mind to the living descendants of those whose loved ones were displaced by disaster.

\*37 Unfortunately, the CRTF was put to the test twice in the year after its creation for Tropical Storm Barry and the devastating tornado that crossed the central part of Louisiana. Fortunately, the cemetery damage documented from these events was minimal. However, as the recovery efforts from Hurricane Laura are underway as of the writing of this article, it is clear that Louisiana's cemeteries did not escape substantial damage and this first real test of the functionality of the CRTF will benefit from the largely dry runs of Tropical Storm Barry and the 2019 tornado. Whether Louisiana has resolved its cemetery disaster response issues with the creation of the CRTF will likely be answered by the response to Hurricane Laura.

## Footnotes

- 1 The views and opinions expressed herein are solely those of the Authors and do not necessarily represent the position of the Louisiana Department of Justice or the Attorney General. The Authors are indebted to the many people who have assisted them in past and current cemetery disaster response efforts. These people include, but are not limited to, Arbie Goings, Henry Yennie, Carol Walker, and Lucy McCann.
- 2 Ryan M. Seidemann holds a B.A. from Florida State University and M.A. from Louisiana State University in anthropology, as well as a B.C.L. and a J.D. in law from Louisiana State University. He is currently enrolled as a doctoral student in the Department of Planning and Urban Studies at the University of New Orleans. He is the Section Chief of the Lands & Natural Resources Section, Civil Division, Louisiana Department of Justice, as well as being an adjunct professor of law at Southern University Law Center in Baton Rouge, Louisiana, and a death investigator for the West Baton Rouge Parish Coroner's Office. He is also a Registered Professional Archaeologist.
- 3 Christine L. Halling holds a B.S. (Minnesota State University, Mankato) in Anthropology and a M.S. (University of Indianapolis) in Human Biology. She is currently employed as the Anthropologist of the Lands & Natural Resources Section, Civil Division, Louisiana Department of Justice. She is a Registered Professional Archaeologist and has trained in forensic anthropology, bioarchaeology, and human biology. Prior to her current employment, she taught anatomy and physiology coursework and was the lab director for the Kampsville Human Osteology and Bioarchaeology Field School.
- 4 Ashley Joseph, *Hurricane Laura Causes Caskets to Float Away in Cameron Parish*, KPLC (Sept. 15, 2020, 10:29 PM), <https://www.kplctv.com/2020/09/15/hurricane-laura-causes-caskets-float-away-cameron-parish/> (last accessed Sept. 21, 2020).
- 5 *Id.*
- 6 LA. REV. STAT. ANN. § 13:5713 (2020).

- 7 Lily Koppel, *Coffins and Buried Remains Set Adrift by Hurricanes Create a Grisly Puzzle*, THE NEW YORK TIMES (Oct. 25, 2005), <https://www.nytimes.com/2005/10/25/us/nationalspecial/coffins-and-buried-remains-set-adrift-by-hurricanes.html> (last accessed Sept. 21, 2020).
- 8 *Id.*
- 9 DMORT, Disaster Mortuary Operational Response Teams, <https://www.phe.gov/Preparedness/responders/ndms/ndms-teams/Pages/dmort.aspx> (last accessed Sept. 21, 2020).
- 10 *Id.*
- 11 Christine L. Halling, Arbie Goings, Henry Yennie, Ryan M. Seidemann, Disaster Response in Cemeteries: Lessons Learned from Louisiana and Recommendations for the Future, presentation to the North American Death Care Regulators Association Annual Meeting, New Orleans, LA (2018) (hereinafter, “Disaster Response”).
- 12 *Id.*
- 13 E.g., Benjamin Alexander-Bloch, *Hurricane Isaac's Unearthed Coffins and Tombs Continue to be Examined*, NOLA.com (Nov. 16, 2012, 4:58 AM), [https://www.nola.com/news/weather/article\\_59676eb8-18c2-5d50-b33a-aca38193a8bc.html](https://www.nola.com/news/weather/article_59676eb8-18c2-5d50-b33a-aca38193a8bc.html) (last accessed Dec. 19, 2020). A similar situation was experienced in 2008 when Hurricane Gustav hit Louisiana. (see e.g., Keitha Nelson, *Cemetery Repaired Following Damage to Tombs After Gustav*, WAFB (Dec. 23, 2008, 2:00 PM), <https://www.wafb.com/story/9570511/cemetery-repaired-following-damage-to-tombs-after-gustav/> (last accessed Sept. 21, 2020)).
- 14 Disaster Response, *supra* note 11.
- 15 *Id.*
- 16 *Id.*
- 17 Benjamin Alexander-Bloch, *Hurricane Isaac Plays Havoc with Plaquemines Cemeteries*, NOLA.COM (Sept. 16, 2012, 4:45 PM), [https://www.nola.com/news/weather/article\\_cff3ec6d-f06b-5a80-90fa-f9cbca9aa1a1.html](https://www.nola.com/news/weather/article_cff3ec6d-f06b-5a80-90fa-f9cbca9aa1a1.html) (last accessed Sept. 21, 2020).
- 18 Disaster Response, *supra* note 11.
- 19 *Id.*
- 20 *Id.*
- 21 *Id.*
- 22 *Id.*
- 23 LA. ADMIN. CODE tit. 46, § 1109(A) (2020) (provides, in pertinent part, that: ... all licensed funeral establishment shall, in order to assist in the identification of caskets and/or the identification of human remains, utilize the recommendations of the individual casket manufacturer whose casket is used as the container into which the human remains are placed, in preserving and displaying the mandated information regarding the name of the decedent, their date of death, and the funeral home involved in the service).
- 24 Disaster Response, *supra* note 11.
- 25 *Id.*
- 26 *Id.*
- 27 *Id.*
- 28 *Id.*

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.*

36 *Id.*

37 *Id.*

38 *Id.*

39 *Id.*


40 *Id.*

41 *Id.*

42 *Id.*

43 *Id.*

44 *Id.*

45 See generally  Bd. of Dir. of the Indus. Dev. Bd. of the City of Gonzales, La., Inc. v. All Taxpayers, Property Owners, Citizens of the City of Gonzales, et al., 938 So.2d 11 (La. 9/6/06) (the *Cabela's* case”).

46 See generally Ryan M. Seidemann and Christine L. Halling, *Caring for the Displaced Dead: The Logistical and Legal Complexities of the Great Flood of 2016 on Louisiana's Cemeteries*, 315 BATON ROUGE BAR J. 12 (2017) (hereafter, “Caring for the Displaced Dead”); Ryan M. Seidemann and Christine L. Halling, *Louisiana's Great Flood of 2016: What Cemetery Owners and Operators Need to Know to Prepare for the Next “Big One,”* AMERICAN CEMETERY 20 (Aug. 2017).

47 Disaster Response, *supra* note 11.

48 *Id.*

49 *Id.*

50 *Id.*



51 LA. REV. STAT. ANN. § 14:101 (2020); LA. REV. STAT. ANN. § 13:5713 (2020), respectively.







52 LA. REV. STAT. ANN. § 8:1 (2020), et seq.


53 LA. REV. STAT. ANN. § 8:671 (2020), et seq.; LA. REV. STAT. ANN. § 25:931 (2020), et seq.

54 Exec. Order No. 102 BJ (2008) (Emergency Authority for Transportation and Handling of Human Remains Disinterred as a Result of Hurricanes Gustav or Ike).

55 Disaster Response, *supra* note 11.

- 56 *Id.*; see also *Caring for the Displaced Dead*, *supra* note 46.
- 57 *Id.*
- 58 See, e.g., *Petition to Authorize Reinterment Under La. R.S. 8:659 and to Designate Authorized Stand-In to Apply for Individual Assistance from the Federal Emergency Management Agency, In re: 2016 Flood Damaged Cemeteries in Ascension Parish*, Docket No. 117253, Twenty-Third Judicial District Court, Parish of Ascension (filed October 24, 2016).
- 59 *Disaster Response*, *supra* note 11.
- 60 *Id.*
- 61 *Id.*
- 62 *Id.*
- 63 *Id.*
- 64 *Disaster Response*, *supra*; *Caring for the Displaced Dead*, *supra* note 46.
- 65 *Id.*
- 66 LA. REV. STAT. ANN. § 13:5701 (2020), et seq.
- 67 LA. CONST. ANN. art. V § 29 (2020).
- 68 La. Att'y Gen. Op. No. 90-247 (June 8, 1990);  *Mullins v. State*, 387 So.2d 1151 (La. 1980).
- 69 Coroners certainly have other obligations under the law, including, but not limited to assessing mental competency for questions of commitments as well as administering programs related to sexual assault.  LA. REV. STAT. ANN. § 28:53 (2020); LA. REV. STAT. ANN. § 13:5713(F) (2020). However, their authority over the dead is limited as discussed herein.
- 70 LA. REV. STAT. ANN. § 13:5715(A)(1) (2020).
- 71 LA. REV. STAT. ANN. § 13:5713(A)(4) (2020).
- 72 Christine L. Halling and Ryan M. Seidemann, *Opportune Testing of Human Skeletal Analysis Techniques on the Remains of a Known Individual Unearthed in East Baton Rouge Parish by the Great Flood of 2016*, 43 Louisiana Archaeology 37 (2017).
- 73 LA. REV. STAT. ANN. § 13:5713(A) (2020).
- 74 LA. CIV. CODE ANN. art. 9 (2020).
- 75 *Disaster Response*, *supra* note 11.
- 76 FEMA, PUBLIC ASSISTANCE APPLICANT HANDBOOK, FEMA P-323, 7 (2010), [https://www.fema.gov/pdf/government/grant/pa/fema323\\_app\\_handbk.pdf](https://www.fema.gov/pdf/government/grant/pa/fema323_app_handbk.pdf).
- 77 *Id.* at 6.
- 78 Kristin Pierce, *Families Find Coffins Exposed, Graves Broken in Cemetery*, WWL (July 10, 2017, 6:27 PM), <https://www.wwltv.com/article/news/local/st-bernard/families-find-coffins-exposed-graves-broken-in-cemetery/289-455600524> (last accessed Sept. 22, 2020). Although this article was written in 2017--12 years after Hurricane Katrina--the authors of this article have visited Merrick Cemetery in 2020 and found its condition unchanged.

- 79 *See generally*  Bd. of Dir. of the Indus. Dev. Bd. of the City of Gonzales, La., Inc. v. All Taxpayers, Property Owners, Citizens of the City of Gonzales, et al., 938 So.2d 11 (La. 9/6/06)
- 80 LA. REV. STAT. ANN. § 49:220.24(B) (2020) (Inspector General's authority to investigate waste or fraud in the use of public funds);  LA. REV. STAT. ANN. § 24:513 (2020) (Legislative Auditor's authority to audit use of public funds).
- 81 Ryan M. Seidemann, Megan K. Terrell, and Christopher D. Matchett, *How Do We Deal With This Mess? A Primer for State and Local Governments on Navigating the Legal Complexities of Debris Issues Following Mass Disasters*, 61 UNIV. OF MIAMI L. REV. 1135, 1139 (2007).
- 82 *Id.*
- 83 *West Monroe Mfg. Co. v. Town of West Monroe*, 83 So. 881, 882 (La. 1920) (noting that a governmental entity acting in an ultra vires manner is a component of finding liability for such actions).
- 84  LA. REV. STAT. ANN. § 37:831 (2020), et seq. (funeral directors and the LBEFD); LA. REV. STAT. ANN. § 8:1 (2020), et seq. (cemeteries and the LCB); LA. REV. STAT. ANN. § 8:671 (2020), et seq., and LA. REV. STAT. ANN. § 25:931 (2020), et seq. (the Division);  LA. REV. STAT. ANN. § 36:251 (2020), et seq. (LDH); LA. REV. STAT. ANN. § 15:653 (2020), et seq. (FACES); LA. REV. STAT. ANN. § 25:951 (2020), et seq. (LDOJ)
- 85  LA. REV. STAT. ANN. § 37:831 (2020), et seq.
- 86 FEMA, Individual Disaster Assistance, <https://www.fema.gov/individual-disaster-assistance> (last accessed Dec. 19, 2020) (“We cannot provide money to individuals or households for losses already covered by insurance, but you do not need to wait to apply for FEMA assistance.”). See also FEMA, INDIVIDUAL ASSISTANCE PROGRAM AND POLICY GUIDE (IAPPG), 50-52 (2019), [https://www.fema.gov/sites/default/files/2020-07/fema\\_individual-assistance-program-policy-guide\\_2019.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_individual-assistance-program-policy-guide_2019.pdf) for a general discussion of the interactions of insurance coverage and FEMA's individual assistance.
- 87 LA. REV. STAT. ANN. § 8:454.1 (2020).
- 88 LA. REV. STAT. ANN. § 8:454.1(A) (2020).
- 89 LA. REV. STAT. ANN. § 8:454.1(B) (2020).
- 90 La. Att’y Gen. Op. No. 08-0135 (Nov. 30, 2009).
- 91 LA. REV. STAT. ANN. § 8:61 (2020), et seq.
- 92 LA. REV. STAT. ANN. § 8:451 (2020), et seq.; LA. REV. STAT. ANN. § 8:501 (2020), et seq.
- 93 LA. REV. STAT. ANN. § 8:66 (2020).
- 94 LA. REV. STAT. ANN. § 41:1603 (2020).
- 95  LA. REV. STAT. ANN. § 36:251 (2020), et seq.
- 96 Disaster Response, *supra* note 11.
- 97 LSU FACES Laboratory, <https://www.lsu.edu/faceslab/> (last accessed Sept. 18, 2020).
- 98 Disaster Response, *supra* note 11.
- 99 LSU FACES Laboratory, <https://www.lsu.edu/faceslab/> (last accessed Sept. 18, 2020).

- 100 LA. REV. STAT. ANN. § 8:69 (2020); LA. REV. STAT. ANN. § 8:679(D) (2020); LA. REV. STAT. ANN. § 25:938(D) (2020).
- 101 LA. REV. STAT. ANN. § 8:69 (2020); LA. REV. STAT. ANN. § 8:679(D) (2020); LA. REV. STAT. ANN. § 25:938(D) (2020).
- 102 Indeed, some of the LDOJ's involvement in these matters derived from its debris response efforts on behalf of DEQ and GOHSEP, as human remains often find their way into the post-disaster debris stream.
- 103 LA. CONST. ANN. art. IV § 8 (2020).
- 104 LA. REV. STAT. ANN. § 25:951 (2020), et seq.
- 105 LA. REV. STAT. ANN. § 25:952 (2020).
- 106 LA. REV. STAT. ANN. § 25:952 (2020).
- 107 LA. REV. STAT. ANN. § 8:663(A) (2020).
- 108 LA. REV. STAT. ANN. § 8:663(D)(3) (2020).
- 109 LA. REV. STAT. ANN. § 8:663(D)(4) (2020).
- 110 LA. REV. STAT. ANN. § 8:663(E)(2) (2020).
- 111 La. R.S. 8:663(E)(3).
- 112 La. R.S. 8:663(D)(2).
- 113 Caring for the Displaced Dead, *supra* note 46.
- 114 Act. No. 713, 2018 La. Acts.
- 115 LA. REV. STAT. ANN. § 29:726.4(B) (2020).
- 116 LA. REV. STAT. ANN. § 29:726.4(F)(4) (2020).
- 117 LA. REV. STAT. ANN. § 29:726.4(F)(6) (2020). It is important to note that another 2018 legislative enactment--that of LA. REV. STAT. ANN. § 8:660(5) (2020)--which exempts from prohibitions on the moving and relocating of human remains, “[t]he moving, identification, and reinterment of caskets, coffins, vaults, other outer burial containers, remains, and associated burial artifacts, displaced by a force majeure event and undertaken by the cemetery authority or its designee or any authorized government entity or its designee following a municipal, parish, or state declaration of emergency” provides additional authority to the CRTF for disaster response purposes. Because the CRTF is the “authorized government entity” for disaster response work in cemeteries under La. R.S. 29:726.4, its agents are exempt from prohibitions on disturbing human remains when such work is necessary to secure, identify, or reinter those remains following a disaster.
- 118 La. Rev. Stat. Ann. § 29:726.4(H) (2020).
- 119 Disaster Response, *supra* note 11.
- 120 *See generally*  42 U.S.C.A. § 5174.
- 121 *Id.*
- 122 *See generally* LA. REV. STAT. ANN. § 29:726.4 (2020).

123 *See generally* FEMA, PUBLIC ASSISTANCE PROGRAM AND POLICY GUIDE, VERSION 4 (FP 104-009-2) (2020) (available online at [https://www.fema.gov/sites/default/files/2020-06/fema\\_public-assistance-program-and-policy-guide\\_v4\\_6-1-2020.pdf](https://www.fema.gov/sites/default/files/2020-06/fema_public-assistance-program-and-policy-guide_v4_6-1-2020.pdf)) (last accessed Dec. 19, 2020) for a discussion of the functionality of the PA program.

124 42 U.S.C.A. § 5170b(b).

125 Disaster Response, *supra* note 11.

126 *Id.*

127 *Id.*

128 *Id.*

129 *Id.*

130 *Id.*

131 *Id.*

132 *Id.*

48 SOULR 1

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