

Caring for the displaced dead:

The logistical and legal complexities of the Great Flood of 2016 on Louisiana's cemeteries

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"Show me the manner in which a nation cares for its dead and I will measure with mathematical exactness the tender mercies of its people, their respect for the laws of the land and their loyalty to high deeds." — This quote is often attributed to William Gladstone, former Prime Minister of Great Britain. A similar statement has also been attributed to Benjamin Franklin.



The tallies are sobering: 12 parishes; at least 70 impacted cemeteries; at least 758 compromised graves — numbers that will likely continue to rise. It has happened time and again. In fact, Louisiana is famous for its floating caskets.² This time was different. Despite such familiarity, this time the coastal parishes — the locus of most floating-casket problems in the past — were largely spared in the Great Flood of 2016. The impacted parishes are inland. These parishes usually receive the evacuees and provide assistance to the coastal parishes during tropical cyclone events.

One would think that handling displaced caskets after bad storms in Louisiana would be old hat and long-ago-trod legal ground; however, the emergency responders and local governments in the affected parishes were not prepared for hundreds of deceased residents leaving their final resting places, and the law is inadequate to provide them with clear direction. Thus, the initial

reaction from these parties was to ignore the problem or balk at the responsibility to care for the deceased and shift the obligation to someone else. This response is understandable when there are suffering live individuals to deal with, and the dead do not complain.

The reaction of the local governments and emergency managers that initially ignored the problem was not completely without precedent. In some prior events (think Hurricanes Katrina, Rita and Ike) this was a viable option. The Disaster Mortuary Operational Response Team (DMORT) was activated following those events and effectively “federalized” the effort to recover caskets and restore cemeteries. However, as happened following the devastation to several cemeteries in lower Plaquemines Parish during Hurricane Isaac in 2012, this time, there would be no DMORT activation. Thus, to fill the void where DMORT would typically operate, rather than to abandon local governments and the hundreds of

impacted deceased individuals and their living relatives, a cemetery response team had to be established. Although local governments have the manpower and physical resources (*i.e.*, public works teams and equipment), they were often busy clearing debris and attending to the living individuals affected by the disaster. Following the Great Flood of 2016, while the 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 Hurricane Isaac, took the lead with response and recovery efforts. Immediately, these two agencies responded by verifying and documenting the extent of flood damage, organizing assistance from the Federal Emergency Management Agency, coordinating with cooperative local governments and reaching out to community groups for the first stage of the re-interment process.

Through the LDOJ/LDH leadership that ultimately initiated and oversaw the reinterment process, the combined efforts of multiple entities to begin the process of reinterment were brought to bear. Local government personnel, church officials and news outlets were pressed into service to locate and communicate with hundreds of people who could speak for the deceased — a tremendous and underrated effort considering many of the family members had been displaced by the flood themselves. FEMA directly assisted the family members in this process by providing dedicated teams to register these families. It was significant in this case to have knowledgeable and sympathetic FEMA representatives present, all of whom helped answer questions and concerns of the general public and reassure families that they were indeed going to receive 100 percent coverage for the reinterments under the federal funeral-assistance program. Teams of anthropologists from various entities, including LSU's FACES Laboratory, were supervised by LDOJ staff and provided considerable assistance in the identification process. Many local funeral homes and some local governments donated time and manpower to assist in the collection and housing of wayward caskets and vaults. Because these undertakings by so many entities are complex, coordination and cooperation are vital to the success of the reinterment process.

Despite these combined government/private efforts to remedy the problem, LDOJ was also confronted with some opportunistic parties who viewed the disaster as a time to earn extra money. Additional costs ranging from \$400 to \$1,500 (for such things as graveside blessings and "identification" work most closely resembling divining) were added to families' bills from church officials and unscrupulous funeral directors. These individuals attempting to profit from this traumatic incident threatened to saddle families with additional costs that would have to come out of their pocket. Indeed, these unessential and spurious requests were flatly rejected by state and federal operatives. Though it is doubtful

that these actions ever reached the level of fraud, they were nonetheless troubling and added additional layers of complexity to an already complicated and sensitive matter.

In addition to the logistical issues encountered when dealing with such a large-scale disaster such as attempting to locate families for the 758 displaced deceased individuals, identifying the scores of individuals who had no grave marker or other obvious identifying information, and repairing and replacing destroyed caskets and vaults, there are also complex and unique legal issues that arise in these circumstances. Despite the recurrent nature of these cemetery problems in Louisiana, there is currently no legal scheme within which to operate. Although portions of Louisiana law are dedicated to cemetery operation and management,³ cemetery preservation⁴ and emergency response,⁵ there is no area of existing law that combines all of these disparate matters. Indeed, by way of illustration of the oddity of the law in this area, following Hurricane Ike in 2008, when numerous deceased Louisiana residents floated across the state line to Texas, an executive order was required to authorize their return.⁶ Even more legal authorization was required after the 2016 Flood. Louisiana Revised Statutes 8:655 and 8:659 set forth which people are authorized to control the final disposition of human remains and who can control moving human remains. No provision of law exists for reinterment or identifying human remains that have been disinterred by acts of nature. In many cases this year, even when the identities of individuals were known based on 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, family members often believed that this was simply a problem for the government or for the cemetery owner to handle — neither of which is supportable under the law. In such cases "good Samaritans" were identified — members of the community who were willing to step up and take control of the fate of the unidentified or unclaimed dead. These individuals took 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. Because these altruistic acts, while good-intentioned, could carry liability should family members later decide that the reinterment decisions made by these volunteers were not what they would have done in the same circumstances, the State and several impacted parishes filed lawsuits seeking court authority to undertake the reinterment work.

The need for these suits lay in the lack of positive law on situations such as this. As noted above, there is no specific direction under Louisiana law for what government entity, if any, has primary jurisdiction in

cemetery disasters. Even once an entity or group assumes control of such a situation, as LDOJ and LDH did in this case, no law ensures the protection of these agencies or provides 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 provide assistance. Thus, these unique lawsuits sought to fill this legislative void, but they should not be seen as long-term solutions to this problem. Knowing the scope of the problem now — that all of Louisiana is subject to cemetery destruction on the order of a catastrophe like Hurricane Katrina, even if the impacted area is well inland — legislation is needed to create a clear government leader that is activated in such times, and to provide for the coordination of state and local resources. In addition, a directive as to the scope of the leader's powers is necessary to ensure that there is no longer a question as to entity responsibility, thus allowing for quick and efficient disaster response. Legislation in Louisiana should address cemetery problems stemming from natural disasters to meet the needs of our communities. This time, good Samaritans, local officials, funeral directors and state agencies were able to triage and create *ad hoc* solutions for the Great Flood of 2016's cemetery impacts. However, without clearer legislative direction, our

state's ability to live up to the high standards expected for cemetery protection by Prime Minister Williams Gladstone and Benjamin Franklin is left to chance. Our loved ones deserve better. ■

¹ The authors are one-half of the State cemetery reinterment team—the half from the Louisiana Department of Justice. They are indebted to the other half of their team: Henry Yennie (Louisiana Department of Health (LDH)) and Arbie Goings (contractor to LDH) as well as to the scores of parish, municipal, federal and volunteer individuals that have assisted in responding to this massive undertaking, including, but not limited to Oscar Joseph, John Nelson, Ginesse Listi, Branch Isbell, Teresa Wilson and the LSU FACES staff. Thanks also to S. “Beaux” Jones and Ericka Seidemann for reviews of previous drafts of this article.

² Melinda Deslatte, *Reburying the Dead a Grim Task in Ike's Wake*, Abilene Reporter-News, 10/27/08; Matthew Brown, *Disturbed Rest: They Are Hurricane Katrina's Other Victims: The Coffins Washed Away by the Storm's Floodwaters*, Times-Picayune, 1/22/06.

³ La. R.S. 8:1, *et seq.*

⁴ La. R.S. 8:671, *et seq.*; La. R.S. 25:931, *et seq.*

⁵ La. R.S. 29:721, *et seq.*

⁶ 102 BJ 2008. This executive order was necessary to avoid restrictions on the transport of human remains within and between states under La. R.S. 17:2279-2280; La. R.S. 37:848; R.S. 40:4; LAC 51:XXVI.101; and LAC 51:XXVI.107.

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