

# Conservation Cemetery Celebrates Court Victory, Prepares for Appeals

By Tony Russo

As we [reported earlier this year](#) Peter and Annica Quakenbush met all the requirements for opening a cemetery on the 20-acre plot they bought but were thwarted by the Not in My Backyard brigade in their attempt to start one. A recent court decision went their way, but the town has vowed to appeal.

To say Corey Nelson is a little miffed at the way things have gone in Brooks Township, Michigan, regarding the proposed conservation cemetery, doesn't quite get at the town supervisor's frustrations. Since the town passed a law banning cemeteries, Nelson said criticism and name-calling from hundreds of non-residents who support the project has beset him and other members of

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**what's inside?**

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## This Week on FSI: The Podcast



This week, we speak with Shawn'te Harvell, the 69th president of the National Funeral Directors and Morticians Association. Discussing his meteoric rise in the funeral service industry, Harvell shares insights on the changing landscape of funeral service, the effect of having younger generations in leadership roles, and the importance of relationships and mentorships.



Join us as Harvell talks about his personal journey, which includes a career opportunity to help a funeral director retire with the knowledge that the business she built would remain in good hands. Plus, the crucial role of support and mentorship, and his hopes for the future of the profession.

Here are some interview highlights:

**First Generationers in the Funeral Industry:** "If you look at the industry as a whole, there are a lot of first-generationers. When you look at the makeup of mortuary schools, the classes now versus when I was in mortuary school, first generationers are pretty much the majority of that class, if not all of it."

**Becoming President of a 100-Year-Old Association:** "Here we are at the end of my vice presidency, moving up to the president's role and running again unopposed as the national president of the organization. And I take nothing for granted, especially being at the helm of a 100-year-old association. That's an honor in and of itself to be able to lead an association that's been around that long."

**The Impact of Social Media on Funerals:** "Our seasoned funeral directors didn't have that component when they were developing and growing their business. They didn't have to worry about social media. They were just doing the newspaper."

In upcoming episodes, we'll have different takes on mortuary school instructors, so be sure to [click here to listen](#) and then subscribe to get show notifications as soon as they're available. Also, check out our ["In Case You Missed It"](#) video series.

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# Editor's Desk

## A Labor Day Question

As Labor Day approaches, it puts me in mind of our our annual compensation report. We've been doing it for a long time, and earlier this year we compiled and published a [decade's worth of data](#) and analysis for a pretty round snapshot of how the industry sees itself, compensation-wise.



Tony Russo

This week, we're kicking off a [smaller survey project](#), just a couple of questions to get a sense of whether new federal compensation rules had a significant effect on funeral service operations.

As you may recall, nonexempt employee salaries had a minimum compensation increase in July to \$844 per week, or about \$43,888 per year, with a scheduled bump in January to \$1,128 per week, or about \$58,656 per year. Many of the funeral directors I've spoken with have told me they're already in pretty good shape, but we'd love to hear from more.

We will keep the survey open for a couple of weeks and report on the results here. One question we've asked is whether you would be interested in sharing your opinion and experience regarding the changes. It reminded me I haven't invited you to respond to me directly in a while, but if there's a story you think we need to cover or if you would like to share your views on our coverage, shoot me an email here, and I'll look into it.

As long as we're doing housekeeping here, I'd again like to invite you to activate your web account at [kates-boylston.com](http://kates-boylston.com). As I mentioned previously, this week's fingerprint feature was breaking news we published on the website. Since many of you prefer to download and read the weekly email, I thought it was important to include it this week, so you didn't miss it. Still, if you find yourself with time on your hands, consider taking full advantage of your subscription by registering. If you have any trouble, you can [email customer service here](#).

Tony Russo

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the town's governing board.

"We got 300, 400 letters ... we had our brains beat out in the media," he said. "That court case is over now, so I can open my mouth."

Full disclosure: This was one of the media outlets that beat their brains out. It's worth repeating that the town would not comment on pending litigation at the time. That litigation ended Aug. 15, when a judge declared the ban unconstitutional. The town had requested a summary judgment, expecting an immediate decision in its favor, and was roundly defeated. It was [an embarrassing loss](#).

It did, however, free Nelson to speak on the matter. He had just finished an interview with a [local television station](#) when he spoke to Funeral Service Insider, providing the town's version of the events that led to the suit. Nelson's greatest frustration was having to stay quiet as the Quakenbushes made the rounds, telling the story of how NIMBYs were trying to thwart their attempts to open a conservation cemetery. He felt ill-used by the Quakenbushes' characterization of the town and the process.

"They were essentially going out and lying," he said.

According to Nelson, the Quakenbushes contacted the town on the eve of their land purchase and were told that they wouldn't be allowed to have a cemetery. Nelson said there was no provision in the R-2 residential zone and the property was "only for residential." The zoning administrator told them the town wouldn't approve a cemetery on that parcel.

"They were told don't buy it, and they bought it anyway," he said.



Annica and Peter Quakenbush planned to open a 20-acre forest conservation cemetery in Brooks Township, Michigan, until the town changed its mind and banned all cemeteries.

*(Photo courtesy of the Institute for Justice)*

The Quakenbushes appeared before the town planning commission in February 2022, he said, and could not answer all the board members' questions. Nelson said Peter became combative and only wanted to argue, and that the issue was set to be revisited in March, but the Quakenbushes never showed.

Peter said the town told him to come back once he had the backing of a conservancy with the power to list the land. Nonprofits often help states manage conservation land and are empowered to designate conservation property.

The Quakenbushes were making the media rounds at the time, though, and that set the town off. Nelson said the couple continued to do interviews saying they were working with the town, or trying to work with the town, which is untrue, according to him. They were continuing to behave as if they could

open a cemetery that they knew wouldn't be approved.

In June 2023, the town pulled the trigger on the cemetery ban law. In January, with the help of the Institute for Justice, the Quakenbushes filed suit.

The town claims that there are no studies proving that the decomposing bodies won't poison the aquifer and there will be too many cars coming to the area, putting an unreasonable strain on the infrastructure.

Environmental Health Sanitarian John Ringler notified the Quakenbushes in February 2023 that soil samples and other tests had come back fine, and the cemetery was approved environmentally.

Nelson said the county didn't do sufficient environmental testing, and they don't have the right to approve zoning changes.

He cited the fact that Wisconsin enacted a green burial ban, but the



primary objection in that state was that wolves would dig up the Christian corpses. Jewish and Muslim cemeteries are exempt from the law as well as, one supposes, the wolves.

Minnesota State Sen. [Jason Rarick](#) pushed the two-year ban through the legislature at the Carlton County Board of Commissioners' request. This was after county attorney Lauri Ketola refused to draft the very kind of legislation that Brooks Township enacted. Ketola said at the time that if the town passed a ban to prevent a business from opening, it would be sued and it would lose and that she couldn't responsibly let them.

It's advice Nelson wishes he had gotten from the Brooks Township attorney. In hindsight, he said, he wishes they hadn't enacted the ban.

"We should have changed the language," he said.

Still, he feels sure the Quakenbushes would have found a reason to sue anyway.

"No matter what happens they're going to sue," he said. "That's just how they roll."

Nelson characterized the suits and media appellations as distractions from the real issue of the town's right to make laws as it sees fit.

## Language is Everything

During the interview, we asked Nelson repeatedly why the town acted so extravagantly when they could simply have let the issue drop. After all, the fact the Quakenbushes had stopped going to the meetings meant that they could never get the zoning rules changed. Without a change in the zoning, there would be no cemetery.

Except that, when Nelson said the R-2 designation was "only for residential," he wasn't, strictly speaking, correct.

Part of the language the town could have changed rather than enacting a ban was the zoning ordinance allowing cemeteries in R-2 zones. At this writing (and contrary to Nelson's claim) the **Brooks Township Zoning ordinance** lists cemeteries among the special land use exemptions that "shall be approved" for "institutional or public use."

Speaking of the Quakenbushes' financial stress, Nelson said he was truly sorry that they were still paying a mortgage on land they wouldn't be able to use. He expressed genuine disappointment when, late last month, the judge assigned to the case was [recused at the last moment](#).

Still, Nelson said that the town would appeal as many times as needed on principle. He added that there are many other state and local rules that should prevent the cemetery from being allowed. He also said he measured the groundwater depth and believes it isn't sufficient to accommodate a cemetery.

Groundwater contamination concerns are a perennial go-to for groups opposing cemeteries, funeral homes, crematories, and aquamation facilities. Still, the town isn't arguing that burying people without a vault and casket is unsafe. It's arguing that it can ban anything it wants, anytime it wants.

According to Katrin Maquez, one of the Quakenbush's attorneys, it may be the only legitimate argument they have left.

"Assuming the government loses all its appeals, Peter and Annica will go through the special use permit application process," she wrote in response to emailed questions. "And because they have done everything aboveboard and have complied with all requirements, the special use permit should be granted."

FSI will continue to follow this story.



# Understanding What the Illinois Memorial Fingerprint Suit Means to You

By Tony Russo

On Aug. 2, a group initiated a [class action](#) against Legacy Touch and three Illinois funeral homes. That same day, the legislature (coincidentally) [took the teeth out](#) of the BIPA, lowering the stakes but bringing into sharp relief the rising question of taking fingerprints for eventual memorialization.

Florida also has taken up the issue of [biometric data](#), and other states are likely to as well. What makes the issue all the more salient is it directly addresses the crux and difficulty at the center of funeral service – merchandise sales.

Tied up in that is the question of who, if anyone, owns a deceased person’s fingerprints and, indeed, whether they are biometric data.

## The Illinois Complaint

According to Poul Lemasters of Lemasters Consulting, the Illinois suit wasn’t a “shock” insofar as the contingent of lawyers who filed it has been looking for class action participants for a while in an effort to build up interest among potential members of the class. Think of the “have you been injured?” television commercials.

Part of filing the suit is getting visibility, so others who potentially have been harmed know there’s an effort at restitution being made. This is a generalization. The plaintiff lawyers didn’t respond to



“I think it’s just egregious. I think it’s a shame, I think it’s an abuse of the law.” – Poul Lemasters of Lemasters Consulting on the class action suit.

our interview requests. As of this writing, there are three complainants. To certify as a class-action lawsuit there generally need to be about 40 complainants, so the filing is also part call to action.

“So, what they do is they say, ‘Hey, we’ve got three, that’s enough to start,’” Lemasters said. “Now in discovery they’re going to poke at Legacy Touch and say, ‘You have to give us records because we think you’re hiding people (who have complained) and we think there are more people.’ It’s a bit of a game.”

As it turns out, there was a [huge piling-on](#) in Illinois following its biometric law passage, with varying results and sometimes-questionable rulings in the interest of the public good.

“I think it’s just egregious. I think it’s a shame. I think it’s an abuse of the law,” Lemasters said. “And the reason I say that is there

are so many lawsuits in Illinois right now over the BIPA, this has become a whole little niche area of lawsuits in Illinois. Specifically, there’s a reason that this isn’t happening in any other state. It’s only Illinois, and the reason is because of that law.”

BIPA suits have become a minor industry there, so going after memorial fingerprinting was practically a logical choice.

Lemasters explained that, because of the way the law was written, there has been a lot of ambiguity in interpreting damages. In 2020, Facebook settled for \$650 million for allowing facial recognition as a login option on their app. Under the law as written, they were potentially held liable for \$1,000 every time a user logged in.

Then, last year, the White Castle restaurant chain was sued for \$17 billion for having employees

clock in and out with thumbprints without getting written consent first. That's \$1,000 to clock in and out, or \$4,000 (assuming one break per shift) per employee per day.

"At one point, the Illinois Supreme Court said, 'Yes, we agree that the way the law is written this can continue to accumulate,' and (when White Castle responded), the term they're using in Illinois annihilated damages," Lemasters said.

The White Castle case could be said to be when the biometric protections in Illinois jumped the shark and prompted the legislature to act. On Aug. 2, Governor JB Pritzker signed into law a measure that caps damages at \$1,000 for common violations and \$5,000 for grievous violations (as opposed to instances).

Under those terms, for instance, in the example above, White Castle might be on the hook for \$1,000-\$5,000 per employee, but not per employee per instance. It's still a prohibitive sum, but not a business-destroying one.

For the Legacy Touch case, for example, with three plaintiffs, the amount likely would be \$1,000 per violation, which may make it less attractive to people interested in cashing in but still feel just for those who believe their rights were violated. Whether the dead have biometric identification rights is another story.

### **The Key Word Remains the Same**

"Biometric information" is data (such as fingerprints or retinal scans) that can identify a specific

person. Lemasters and others have argued that keepsake fingerprints aren't biometric data because they can't be used to positively identify anyone.

"I will argue, and I believe, the law doesn't apply. A fingerprint is 'biometric data.' The problem is what the law really protects is what's called a biometric identifier. We're dealing with a law that was written for one thing, and now they're applying it to something else," Lemasters said. He said biometric privacy laws (Illinois, Texas, New York, Vermont, and Washington have them on the books already) were written to make it so the person being tracked by those identifiers has consented to that tracking.

"So, when you scan that fingerprint or facial recognition like Facebook, I know it's Tony Russo. That's a biometric identifier and what the definition says," Lemasters said. "It's an identifier used to identify an individual."

Memorial fingerprinting doesn't (and can't) behave that way. If it did, it would also be useful for tracking and identifying bodies as part of the chain of custody.

"Actually, they tried it many, many years ago, and it didn't work, so nobody does it anymore," Lemasters said. "You can't use that print to identify Tony anymore. It's no longer a biometric identifier. It's an image. It's a piece of jewelry. I can't take somebody's necklace, rip it off and scan it, and be able to say, 'Hey, that was Tony.'"

He said it makes more sense to think of them as pictures of

fingerprints. They're not sufficient to open a telephone, let alone positively identify a person. Still, the rise of these suits and their potential to create ill will is an issue funeral homes would do well to address.

### **Appealing or Appalling**

From asking for Google Reviews to basic aftercare, some families are going to feel put upon by follow-up calls from a recently used funeral home. No one has a 100% success and satisfaction rate. What seems to set fingerprint memorialization apart is the very thing that makes it appealing. People recognize that a "part" of their loved one is still "out there."

Many are happy and grateful, but some are appalled that a funeral home would "take" a part of their loved one without permission and try to sell it back to them. Some people decided it's an offense worth suing over. Some (such as [happened in Florida](#)) feel it is so invasive that they appeal to their representatives for legislative relief.

One of the biggest reasons Facebook was liable enough that a settlement made sense is that the Illinois law discounts terms of service as notification. Every time you take someone's biometric data there you need a "pen and ink" signature. Virtual isn't sufficient.

"I know for a fact that Legacy Touch, as well as other print-memorialization companies, all recommend the same thing. Tell the family about the print, tell them about the services and, basically, be transparent, disclose it, and get consent," Lemasters said.



From his perspective, it is more important to get consent to delete the fingerprints than it is to get consent to take them, because taking them can be undone, deleting them after the person's disposition can't.

Whether funeral homes are following the recommendation is another issue altogether, but if they aren't, suits like this should be a wake-up call. Including the fact that you take prints in your signed contract can hedge against

surprise, anger, and litigiousness from families. Requiring a signature to delete the fingerprints is a similar hedge. In a world where anyone can sue over anything, it may be the closest to protection you can get.

## First Black, Woman-Owned Funeral Home in Jefferson Davis Parish Opens

Chaisity Shay Paddio-Owens, a native of Jennings, Louisiana, fulfilled her lifelong dream recently when she opened her own funeral home.

Paddio-Owens is now the first Black woman mortician and funeral home owner in Jefferson Davis Parish, [according to American Press](#).

A Milnor High School member of the Class of 2006, Paddio-Owens attended the Commonwealth Institute of Funeral Service in Houston. Upon returning to Jennings, she faced challenges finding work in a field that was not always open to female morticians, especially those who were not part of a family-run

### IN CASE YOU MISSED IT

business.

Paddio-Owens eventually worked at two funeral homes in Lake Charles: Combre Funeral Home and later at Hixson Funeral Home, where she gained experience in embalming, funeral directing, and managing grieving families. After years of managing funeral homes and working in various capacities, she eventually left to focus on her family and develop a business plan.

In April 2024, Paddio-Ow-

ens opened Mortuary Center of Southwest Louisiana in a renovated church building on four acres of land just north of Jennings. She serves as an embalmer, funeral director, and insurance agent. Her funeral home offers diverse and affordable services, welcoming people of all races and religions.

Paddio-Owens also aims to train young people for careers in the mortuary business and has plans to expand her services to the Lake Charles area.

She wants to make funerals more accessible and reflective of the lives they honor, while challenging the traditional, male-dominated norms of the industry.

## First Nation Group to Open Funeral Home

Peepeekisis First Nation will build a funeral home in Lorie, Saskatchewan, aiming to provide a culturally sensitive space for residents of the Qu'Appelle Valley region. Construction should start in Spring 2025, with the facility expected to open in 2026, [according to the CBC](#).

Blain Pinay, a tribal headman

of Peepeekisis First Nation, emphasized that the funeral home represents an investment for future generations in the Treaty 4/File Hills area. He said using external funeral services has been challenging for community members, as many facilities do not accommodate the Peepeekisis traditional protocols.

Pinay expressed frustration with existing funeral service providers, citing issues with rigid practices and high costs, which often include hourly or overnight fees for wakes. The new funeral home, owned by the First Nation, allows families to mourn without rushing while allowing them the latitude to celebrate with all their

traditions.

The project was developed with input from Peepeekisis management, elders, and youth. Allan Bird, another tribal headman, explained that the group initially considered purchasing an existing funeral home but ultimately built their own. After securing funding

and partnerships through Steel River Group, the project is nearing the construction phase.

The new facility will feature a hall with a capacity of 350 to 400 people, eliminating the need for school gyms for large gatherings.

Keegan Montgrand, CEO of Peepeekisis Developments Ltd.,

highlighted that the funeral home will welcome all cultures, religions, and denominations. The construction will create nearly 100 jobs, with 10 to 15 permanent positions once the facility is operational, offering new career opportunities in the funeral industry.

## Utah Municipal Cemetery Considers Conservation Section

Summit County is exploring a proposal for a conservation cemetery on 20 acres of city-owned land in Oakley, Utah, sparking both interest and concern among East Side residents, according to [The Park Record](#). The Summit Land Conservancy introduced the idea during a meeting Aug. 14, emphasizing the cemetery’s potential to preserve open space, provide a revenue source, and protect the environment.

However, some community members raised concerns about the cemetery’s impact on neighboring properties, water quality, and local resources.

The proposed site is part of a broader effort to conserve around 140 acres near Pinion Lane and Weber Canyon Road, an area already known for its recreational opportunities. Cheryl Fox, CEO of the Summit Land Conservancy, envisions the cemetery as a natural, serene space – a “living memorial” that honors those buried there without the trappings of traditional cemeteries. The conservation cemetery would eliminate the use of concrete vaults, embalming, and lacquered caskets, offering instead what Fox described as “pioneer burials.”

This would be Utah’s first conservation cemetery, designed to preserve Oakley’s rural character while protecting the land from future development. The cemetery would feature no formal lawns, sprinklers, or headstones, and a portion of burial fees would support ongoing conservation efforts.

Despite overall support, some residents complained about potential water contamination from green burials. Fox assured them that a site analysis would determine the land’s suitability, and the Summit County Health Department would ensure compliance with health standards.

The Oakley City Council plans to hold a public hearing on the proposal by early September before making a final decision.

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