The Uniform Anatomical Gift Act: Is the Right to a Decent Burial Obsolete?

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The Uniform Anatomical Gift Act: is the Right to a Decent Burial Obsolete?

Richard C. Groll*
Donald J. Kerwin**

Men have been phantastical in the singular contrivances of the corporal dissolution.

Sir Thomas Brown

**DUST TO DUST**

In the first century, B.C., a Roman probably thought infrequently of his own death, and in this respect he was similar to a twentieth-century American. When a Roman did contemplate death however, the laws of his time granted great latitude in prescribing the conduct of his funeral. He was permitted to designate a friend or relative to bury him according to instructions set forth prior to his death. In Caesar's day, a man could choose from a wide spectrum of possible types of burial. There was a choice between burial in the earth or cremation, and the pre-burial activities could take almost any form, the styles being limited only by wealth. Democrates wanted his body embalmed in honey, and so it was done. Lycurgus desired his corpse cremated and the ashes thrown to sea, and that was done. "Let the dead bodies be laid out in the house according as the deceased gave order," was Solon's funeral law.¹

The laws of burial in the United States, as with most of our laws, were derived not from Rome, but from England. Christian England did not look with favor upon the imaginative burial techniques of the Romans. Until the reign of King Henry VIII, the place and manner of burial in England was governed by the Ecclesiastical Courts—the church courts.² The body, according to law and custom, was buried in the

¹ P. Jackson, THE LAW OF CADAVERS, at 48 n.71 (1936).
² Jackson, supra note 1 at 24-28; See also, Comment, The Law of Dead Bodies:
earth in the community churchyard, and disinterment was a crime. An Englishman contemplating his own death was not free to direct a different manner of burial. In fact it was not until the nineteenth century that daring individuals were successful in challenging long-established custom and legal restraints in order to revive the ancient ritual of cremation. Even though cremation was ultimately allowed, it was only one of few permissible deviations from the legally enforced rule that a corpse was to be covered with earth in a churchyard. Just as English law provided that appropriate disposal of a dead body meant burial in the earth, so did American law. Adherence to this manner of burial was every bit as strong in the United States as in England.

The restraints placed upon the English burial modes caused a limited amount of frustration as England was a monolithic society with strong, popularly supported traditions, long held and not easily shaken. The American of today differs, though, from his earlier English counterpart in that there is no dominant group-custom in this country—religious or ethnic. We are a people with as many diverse customs and traditions as there are major countries in the world. The twentieth-century American may envision, as did the ancient Roman, many variations on burial procedures. He may wish to adhere to a variety of burial practices or to avoid all of the trappings. But while a modern American may foresee having his funeral conducted in a number of ways, we must ask what the law allows. The laws governing burial today are not much different from those guiding a nineteenth-century Englishman.

The question of permissible variations in burial practices have generally received very little attention. Most men would rather not dwell on their deaths and therefore, do not make elaborate plans. Many families, when faced with the death of a loved one, follow established practice and most do so without thinking about it. Others are loathe to alter the set pattern since they do not know what the loved one desired and assume that he or she would have wanted "the usual". Further-

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Impeding Medical Progress, 19 Ohio St. L.J. 455 (1958); Note, Donation of Dead Bodies and Parts Thereof for Medical Use, 21 U. Pitt. L. Rev. 523 (1960).
3. Jackson, supra note 1 at 93-96.
4. See Williams v. Williams, L.R. 20 Ch. D. 659 (1882) (Eng.) and a discussion of the case infra at 283-284.
5. With very few exceptions, man has traditionally buried his dead in the earth. Because of the Judeo-Christian concept of "dust to dust" and the hope of a future resurrection, the covering with earth has been considered the proper method of disposing of a dead body. See, Comment The Law of Dead Bodies: Impeding Medical Progress, supra note 2 at 456. See also, Matter of Johnson, 169 Misc. 215 (1938); In re Widening of Bukman St., 4 Brad 503 (N.Y., 1857).
6. See Jackson supra note 1 at 48.
more, some of our oldest institutions, the venerable undertakers and the omnipresent florists, press for blind adherence to the customary routine. How would we arrange funerals without undertakers? Because there has been little furor about burial practices, why should we be concerned? If a man is “dead and buried,” what difference does it make how he got there?

New factors, nonetheless, have most recently entered the scene. We now are confronted with the staggering scientific development of organ transplantation and an overwhelming demand for cadavers and their parts to be used in medical research and education. When a man dies, parts of his body may be used to help the living. His heart may be one which is transplantable to save a life. His corpse may be the subject of clinical experimentation in the research laboratory of a hospital or university. Today our thoughts regarding the disposition of our bodies is not limited to the wake, the shroud, the casket and the funeral. We might consider making donations of our corneas so that others, otherwise blind, may see. Or we might think about donating our hearts so that others need not be buried with us. And, if we choose not to consider making donations of our body parts, others may make donations that could save our lives; after all, we may be those able to survive only if someone else donated his heart or other spare parts.

And how has the law responded to these scientific developments and needs? If, by law, an individual’s body must be buried in a churchyard, and if that individual cannot alter this manner of burial, can he donate his organs for experimentation or transplantation? In our time, the latitude granted a person dictating the manner of his burial can make a difference—the difference between life and death. In many respects, American law has yet to reach the enlightenment of Solon’s
The legal ramifications stemming from human organ transplantation and the realm of anatomical gifts are new to the courts, and there exists no long line of established cases to guide them. Faced with the novel demands and developments, the courts will be forced to resort to analogy. Donation of human organs, for whatever purpose, is actually only a new method of disposing of a dead body, (and thus, the question becomes: To what extent can a man today prescribe what will be done with his body after death?). This article will examine how current law views burial; how burial practices are determined; and who has the authority to decide how an individual’s body is to be treated. Finally, the Uniform Anatomical Gift Act will be examined in the light of these common law decisions and how it attempts to change them.

**Burial Laws—The Issue of Decency**

In England and in the United States, the laws relating to burial became fixed and certain, a legally recognized right to a *decent* burial developed. Tradition and custom dictated what the courts considered a decent burial. These dictates made it clear that a body was to be interred or cremated as soon as possible after death. A corpse was also to be buried intact; that is, it was to be laid to rest in the same condition that it was in at the moment of death.

The New York courts in 1917 were called upon to evaluate the decency of Clement B. Finley's burial. The Atlantic Transport Company operated a steamship line between England and the United States, and on June 28, 1913 Finley, of Chattanooga, Tennessee, purchased first-class passage from London to New York aboard the steamship Minneapolis. He boarded the steamship and it proceeded to New York with a scheduled docking there on July 7. On the morning of July 2, during the course of the voyage, Finley died. Immediately upon his death, the steamship employees took possession of his personal property and effects, including $750 in cash. Shortly after Finley's death, the crew had the body embalmed. They took all necessary steps to keep the remains in a perfect state of preservation, making sure that substantial decomposition did not occur. Even though the dead man’s effects contained letters indicating the name and address of his son, and al-

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11. See generally, Jackson, *supra* note 1, Ch. 1-5.
though there was sufficient money to cover the cost of a radiogram, no one notified Finley's family about his death.

The steamship carried Finley's body until approximately 5:00 o'clock in the afternoon of July 6 at which time the ship approached tidal waters near Nantucket Shoals, Massachusetts. Although the corpse had not suffered serious decomposition, the crew cast the body into the sea. The next day the ship reached New York.

Finley's relatives sued the Atlantic Transport Company, claiming that they had suffered mental anguish owing to the Company's insensitive action, and the relatives prevailed. The court declared the steamship company had deprived the body of a decent burial and was therefore liable in damages:

At common law it is the duty of an individual under whose roof a poor person dies to carry the body decently covered to the place of burial and to refrain from doing anything which prevents in any wise a suitable burial. The body cannot be cast out so as to expose the same to violation or to offend the feelings or injure the health of the living.15

What would the decision have been if one of the members of the Finley family, instead of the steamship company crew, had cast the body into the sea? Would the court have found the burial at sea consistent with the traditional concept of a “decent burial” because family members carried it out? Would the burial have been deemed decent if Finley had expressed the wish to be buried at sea? And, would the court have demanded burial at sea if Finley had made clear that desire during his lifetime?

In another case, Maine's judiciary was forced to deal with the strange case of Mr. Frank Bradbury.16 Bradbury lived with his unmarried sister, Harriet, on Maine Street in the city of Saco. Both Frank and his sister were elderly, and they had no other family. On June 9, 1938, Harriet suffered an injury as a result of a fall, and that night she did not go to bed, but remained in a reclining chair in the living room of the home. About 4:00 a.m. the next day, Harriet died. Upon discovering his sister's death, Bradbury built a substantial fire in the basement furnace. He tied a rope around Harriet's legs and dragged the corpse down the basement steps, shoving it into the burning furnace. However, the whole body would not all fit at one time. Harriet's brother, undaunted, waited until the head and shoulders were consumed

15. Id. at 255, 115 N.E. 717.
and then forced more of the body into the firebox until the furnace door could be closed.

Rev. Ward Clark lived next door to Bradbury. On the morning of June 10, he recounted that he had seen a heavy, dark smoke, giving off a most disagreeable odor, pour from the chimney of the Bradbury house. On Rev. Clark's complaint, the authorities investigated, and Bradbury was asked to produce his sister's remains. Escorting the local police to the basement and taking a crank used for shaking down the furnace, Bradbury turned over the grave, shovelled out the ashes and said, "If you want to see her, there she is."\(^{17}\)

During the course of criminal prosecution, Bradbury's attorney argued that cremation was a well recognized method of disposing of a dead body. The court found Frank Bradbury guilty, basing its findings on the conviction that the "feelings and natural sentiments of the public would be outraged"\(^{18}\) by the manner of body disposal the old man had undertaken. The rationale seems consistent with Finley v. Atlantic Transport Co., which also stated that a corpse cannot be so disposed as to "offend the feelings . . . of the living." However, these cases do not comment on the possible effects of the decedent's wishes for his own burial. One might speculate as to the results of this action if Harriet had wanted her remains cremated. What if Harriet has specifically requested that type of disposal? It seems that the courts are more concerned with the feelings of the community.\(^{19}\)

\(^{17}\) Id. at 349, 9 A.2d 658.
\(^{18}\) Id. at 351, 9 A.2d 659.
\(^{19}\) Whether explicit or implicit, the opinions and needs of the community are often overriding. Although burial in a cheap wooden box in a wood lot, lack of religious services, or the absence of relatives and friends do not deprive a burial of its decency, acts such as casting a corpse into a stream or stuffing a dead body into a burning furnace, which actions are extremely repugnant to community sentiments, do violate the right. Seaton v. Commonwealth, 1499 Ky. 499, 149 S.W. 871 (1912). In Kanavan's Case, 1 Maine 226 (1821), the court made the following remarks:

Kanavan was indicted for that he counselled and advised M.E., then pregnant with a bastard child, to bring it forth alone and in secret, which child afterwards, by reason of the advice and procurement of the defendant, was born of said M. alone and in secret, and afterwards was found dead, concealed in the Kennebec River.

The second count stated that the defendant unlawfully and indecently took the body of said child from said M. and threw it into the river against common decency, etc.

The defendant being convicted on the second count, a motion was made in arrest of judgment, on the ground that the offence charged was not indictable at common law.

By the Court, We have no doubt upon this subject, and do not hesitate a moment to pronounce the indictment to be good and sufficient, and that there must be sentence against the prisoner.

From our childhood, we all have been accustomed to pay a reverential respect to the sepulchres of our fathers, and to attach a character of sacredness to the grounds dedicated and enclosed as the cemeteries of the dead. Hence, before the late statute of Massachusetts was enacted, it was an offence at
In *Seaton v. Commonwealth* the Kentucky Supreme Court suggested a possible minimum of care to be taken for a body that would be considered "decent" and not offensive to the community. In that case Dolph Seaton was charged with the crime of failing to provide a Christian burial for his infant child. The child was born prematurely and survived only about two weeks. On the evening of the child's death, some neighbors, John Bobo and his wife, went to the Seaton home and sat up with the corpse all night. The next morning, without a burial permit, Seaton solicited the services of several acquaintances in digging a grave. At a place selected by the grieving father, a grave about two feet deep was dug, and the baby's corpse was brought from the house in a small paper box. When the grave was completed, the box containing the body was placed inside a crude wooden crate constructed of rough-hewn boards which Seaton had made, and was lowered into the shallow pit. Afterwards, the grave was filled to the level of the surrounding earth, and leaves were raked over so as to conceal its locale.

Mr. Seaton failed to notify any relatives, and none were present when the burial took place. No religious service of any kind was conducted. In explaining his reasons for keeping the location of the grave a secret, Seaton said that if his wife knew where the grave was, she would weep and grieve over it. Dolph Seaton was a poor man, but he had sufficient money to purchase a coffin, if he had so desired. It was also pointed out at trial that Seaton had lumber around his farm which could have been used to construct a better box; but Seaton responded that he did not propose using his good lumber for that purpose.

The common law to dig up the bodies of those who had been buried, for the purpose of dissection. It is an outrage upon the public feelings, and torturing to the afflicted relatives of the deceased. If it be a crime thus to disturb the ashes of the dead, it must also be a crime to deprive them of a decent burial, by a disgraceful exposure or disposal of the body, contrary to usages so long sanctioned, and which are so grateful to the wounded hearts of friends and mourners. If a dead body may be thrown into a river, it may be cast into a street;—if the body of a child, so the body of an adult, male or female. Good morals—decency—our best feelings, the law of the land, all forbid such proceedings. It is imprudent to weaken the influence of that sentiment which gives solemnity and interest to every thing connected with the tomb.

Our funeral rites and services are adapted to make deep impressions and to produce the best effects. The disposition to perform with all possible solemnity the funeral obsequies of the departed is universal in our country; and even on the ocean, where the usual method of sepulture is out of the question, the occasion is marked with all the respect which circumstances will admit. Our legislature, also, has made it an offence in a civil officer to arrest a dead body by any process in his hands against the party while living. It is an affront to a virtuous and decent public, not to be endured. It is to be hoped that punishment in this instance will serve to correct any mistaken ideas which may have been entertained as to the nature of such an offence as this of which the prisoner stands convicted.

The prisoner, having been in close confinement four months, was sentenced to a further term of four months' imprisonment. *Id.* at 226, 227. 20. 149 Ky. 498, 149 S.W. 871 (1912).
These facts being presented, the Kentucky court made clear in the Seaton case that there existed no hard-and-fast rule as to how a corpse should be dressed or what the character of the coffin must be. Such matters should be left to the family, the court said, so long as the manner of burial did not create a nuisance or was not offensive to the community's sense of decency. The court held that the child had received a "decent burial" stating:

The custom of the country imposed upon appellant (Seaton) only the duty of decently burying his child. That is, it must be properly clothed when being taken to the place of burial, and then placed in the ground or tomb, so that it will not become offensive or injurious to the lives of others. He may not cast it into the street, or into a running stream, or into a hole in the ground, or make any disposition of it that might be regarded as creating a nuisance, be offensive to the sense of decency, or be injurious to the health of the community.

The possibilities for disposing of a dead body are only limited by the imagination. But in light of the cases we have surveyed, most courts would hold that unless the method of disposal is burial in the earth or cremation in a recognized manner, the burial would not be considered "decent." Prescinding from the totally bizarre, the question becomes: to what extent can an individual, during life, dictate the mode of disposition of his body after death? One way of insuring that there will be organs available for transplantation and experimentation is to permit a person to specifically donate his body after death. Does an individual possess such a right? Are his burial desires legally enforced?

While a number of American courts announce that the wishes of a deceased are paramount, they really listen to three voices in deciding how burial should be conducted, and the requests of the dead man represents only one of those voices. The desires of his surviving relatives and the mores, customs and traditions of the community must also be heard and weighed. The difficult situation may then occur when a

21. "There is no rule of law defining how a corpse shall be dressed for burial, or the character of coffin or casket in which it shall be enclosed, or the material out of which the box, in which the coffin is to be placed, shall be made, or the depth of the grave. These matters are left, as from the very exigencies of the case they must be, for determination by relatives, friends or persons having the matter in charge." Id. at 501, 149 S.W. 872.
22. Id. at 502, 149 S.W. at 873.
23. See, Sanders v. Dukeminier, supra note 8 at 395-402.
24. "The litigated questions concerning the right to be buried decently are comparatively few and revolve around the manner and place at burial. These resolutions always depend upon a balancing of the interests of the decedent, his relatives and the community." Comment, The Law of Dead Bodies: Impeding Medical Progress, supra note 2, at 457. Cf. Seaton v. Commonwealth, supra note 20.

Normally an equity court gives great weight to the wishes of the deceased, but
decendent's family may attempt to veto his announced burial arrangements—arrangements which are consistent with the community's view of a proper burial.

President Dwight D. Eisenhower, before his death, outlined and approved the manner in which his funeral was to take place. The project was so detailed that he went so far as to specify the type of casket—an $80, government-issue coffin. Apparently, the President's plan was carried out to the letter. Those surviving are indeed likely to honor the wishes of a former President of the United States. Or are they?

President Franklin D. Roosevelt enunciated, in a four page letter, precise instructions for his interment arrangement. Mr. Roosevelt demanded that "the casket be of absolute simplicity, dark wood, that the body not be embalmed or hermetically sealed, and that the grave be not lined with brick, cement, or stones." In spite of this plain pronouncement, the President's body, after embalming, was placed in a bronze casket and lowered into a cement vault. Does the law enforce a man's desires or does it ignore them? The question then becomes, does the deceased have a property right in his own body?

This question was decided very early in English law, in the now classic case of Williams v. Williams. In the Williams case, the deceased executed a will in which he directed that upon his death his body was to be turned over to one Miss Williams. She was to have the corpse cremated and the ashes placed in a certain Wedgewood vase which the dead man had, among other things, given to Miss Williams. Upon the deceased's death, his widow had his remains laid in the earth following a traditional, Christian burial ceremony. Thereafter, Miss Williams sought legal authority to disinter the body in order to carry out the provisions of the will.

The English judges had to determine what legal effect the will provi-
sion had, and the court came to a simple conclusion: it held that there were no property rights in a dead body.29 This meant that while an individual has a property right in his home, and thus, can name the person who is to receive it in his will, he cannot effectively dictate the manner of his body's disposal in his will as there are no property rights in a dead body. The decedent's direction in the will to have his remains turned over to Miss Williams was not legally enforced and was held to be void.30 If we may assume that cremation does not offend the community's sense of decency, shouldn't we be able to assume that a man can specify the way in which his "decent" burial will take place? The Williams case simply said "no."31

A variety of explanations, each one unique, have been molded by courts refusing to follow a man's expressed burial desires. Almost invariably jurists have first announced that, as a general rule, an individual has the right to outline his post-death plans but then inevitably proceed to scour the record in an effort to discover any excuse which would permit them to disregard the general rule in the case before them.32

In a New York case,33 Angela Kaufman provided in her will that one Frank McCarthy was to be employed as soon as practicable to take charge of her remains after cremation. Here ashes were to be scattered "from an airplane proceeding in the direction of mountainside."34 Disregarding this provision, her sister seized possession of the corpse after death and had it buried according to the rites of the Roman Catholic Church. Learning of the death, McCarthy presented himself and expressed his willingness to follow the will's instructions. The confused court, reluctant to come to grips with the issue, simplistically stated that "because the deceased had already been buried, it was, of course, impossible to comply with her wishes."35 The tribunal did, however, allow a claim against the woman's estate. Her directions were not fol-

29. The court decided in the Williams case that "after the death of a man, his executors have a right to the custody and possession of his body (although they have no property right in it) until it is properly buried. It follows that a man cannot by will dispose of his dead body. If there be no property in a dead body, it is impossible that by will or any other instrument the body can be disposed of." Id. at 603.
30. "It follows that the direction to the executors to deliver over the body to Miss Williams, who is not one of the executors, is a direction which, in point of law, could not be enforced, and was void. She had no right of property in the body under that direction, nor could she enforce the delivery of the body by the executors." Id.
31. The cases which form the basis of the American view that there is no property right in a dead body are: Larson v. Chase, 47 Minn. 307, 50 N.W. 238 (1891); and Mensinger v. O'Hara, 189 Ill. App. 48 (1914).
32. See footnote 24.
34. Id. at 378.
35. Id.
ollowed, but the amount of money that might have been expended in following those directions was withdrawn from her estate and paid over to McCarthy. Carrying the reasoning of this court to its logical conclusion, if the family gets the body into the ground quickly enough in the manner they wish, there is no legal recourse, and the family may countermand projected desires of the deceased.

How and why the courts may reverse a testator's explicit wishes is exemplified by *Herold v. Herold*, an early Ohio case. Before the body was interred, two rival family factions requested that the undertaker turn the body over to them, and when he refused, each filed suit. Ernest Herold, the deceased, had written the following a day before his death:

In the name of the Benevolent Father of all, I, Ernest Herold, of sound mind and memory, and believing myself in imminent danger of death, hereby direct and authorize my father, Henry Herold, to have absolute control and disposition of my body after my death. It is my wish to be buried in Greenwood Cemetery, Hamilton, Ohio, and I so direct.

This document was drawn in the same manner as a will and in the presence of witnesses. Having an abundantly clear expression of Ernest Herold's wishes before it, the bench was forced to decide whether the body should be released to Henry Herold for burial in Greenwood Cemetery as requested, or whether the remains should be given to Ernest's widow who wished to inter the body in Lakeview Cemetery in Cleveland. The court decided in the widow's favor, summarily setting aside Ernest's last, dying request.

The fact that Ernest had a three-year-old daughter living in Cleveland weighed heavily with the court hearing the case. Although the child was only three years of age and barely knew her father at his death, the court felt that after a time she would inquire about him and would want to know where his body rested. Typically, guided more by expediency than judiciousness, the judge made this comment:

If her father's body is interred in the city of Hamilton, she cannot go to the grave and pay the tribute of respect and affection that she would like to pay, but if the body rests in the city of Cleveland, this little girl can visit that grave and can plant her flowers there, and show that she loves her father, even though she was only three years of age when he died.

Albeit the wishes of Herold could not have been made more clear, they

36. 16 Ohio Dec. 303, 3 Ohio N.P. (N.S.) 405 (1905).
37. 3 Ohio N.P. at 406.
38. Id.
were ignored. The decedent recognized as well as the court that he had a young daughter; but he desired burial in the family plot alongside his mother who had pre-deceased him by some six years. In a highly mobile society like ours, it is not always possible to have our loved ones buried near our residences. Even if the dead are placed nearby at the time of burial, the living may move away. Should the desires for proximity really be stronger than the desires of a man as to how and where he wants to be buried? It seems that *Williams v. Williams* has retained much of its diginal impact.

Occasionally, a man's design is accorded legal effect by the courts and is found to be superior to that of his family; it is rare, but there are some cases. One such case, *Faller v. Universal Funeral Chapel, Inc.*, involved an inter-family dispute, and again the undertaker did not know to whom to turn with the dead body. Stephan Tanburn provided in his will that his corpse was to be placed in a family mausoleum in Salem Falls Cemetery. It seemed, though, that Tanburn's widow and daughter had a different scheme. Tanburn's preferences were implemented only after a court had analyzed the relationship between Tanburn and his wife and a thorough character analysis of his daughter had been completed.

After finding that the dead man and his widow had lived separately for three years prior to his death in accordance with the terms of a separation agreement, the court discounted the widow's desires. Then, turning to Tanburn's daughter, the jurists discovered that there had been a strained relationship between father and daughter. The child had not approved of Tanburn's living with a mistress, nor apparently had she condoned many other aspects of her father's lifestyle. In rejecting the daughter's right to amend her father's burial plan, the court said that when a normal filial relationship does not exist between father and daughter, the child is not granted the right to dictate the place and manner of her father's burial. Moreover, the daughter was judged not to have been properly respectful. "She was unmindful of the Fifth Commandment and sought to determine for herself, a privilege reserved only to those claiming omniscience, the standard which would justify her recognition of her father." Her manner was haughty, and therefore, "it surely cannot appeal to the conscience of the court."

Evidently, these legal authorities were so reluctant to recognize Tan-

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40. *Id.* at 551.
41. *Id.*
burn's wishes that an elaborate character study was necessary. Why not simply allow a man to be buried as he wished as long as his plan was not bizarre—not shocking to the sensibilities of the community? Using this case as precedent, it can be said that if you are a good and proper child, one who measures up in terms of filial responsibility, you may have the legal right to cancel and cast aside your father's requests.

Another interesting distortion of legal reasoning was employed to suprervene the burial arrangements of a woman who had died in 1936, leaving a will incorporating explicit instructions that her body be transported to Palestine and buried there. Despite these instructions, her children had her remains interred in a cemetery in New York state. In examining these circumstances, a New York court discovered that at the time the deceased executed the will, she had been living with her second husband in Palestine and had been making payments on a burial plot in that country. Later, she became estranged from her husband, returned to the United States, and discontinued the payments on the gravesite. Her children explained to the judges that their mother had hoped to be buried in New York. The children convinced the court that the New York burial plot was appropriate.

The approach taken by the New York court escapes logic. A man, through the proper execution of a will, can effectively designate those who shall take his property after his death. Because the law allows a piece of paper to hold sway over the manner in which property passes, certain formalities are required to insure against fraud. The will must be in writing and attested by several witnesses, who will later be called upon to testify that the piece of paper is, in fact, the will of the dead man, and that at the time it was executed, he was of sound mind and memory. The law does not permit property to be distributed according to an informal declaration by the family as to how the deceased said he wanted it to pass. Fraud would run rampant, for example, if we transferred title by virtue of mere oral statements made by those who survive. Should we give the dead man's home to George merely because George claims, "He said I could have it"? This type of process would encourage fabrication as the deceased obviously cannot testify regarding his actual intent.

Based on this simple idea, legislatures throughout the United States demand formality. Moreover, once a will is drawn, it governs. A

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42. In re Scheck's Estate, 14 N.Y.S. 2nd 946 (1939).
43. See generally, Atkinson, HANDBOOK OF THE LAW OF WILLS, ch. 7 (1953).
44. Id.
dead man's estate passes according to the provision of his will even though there is informal evidence that the deceased had "changed his mind." If after a will is completed, the individual wishes to modify the dispository scheme, he may. Such a modification must also be made, nevertheless, with requisite formality.45

The law sets forth an explicit outline governing how a will may be executed. Once it is executed, the instrument acquires legal sanctity, and it stands, unless modified, in compliance with strictly interpreted legal standards. No oral statements that "he changed his mind" will be entertained by a court in permitting a deviation from the distributive plan set down in the document.

In the New York case just reviewed, the woman had, in accordance with the applicable statute, drawn her will, specifying Palestine as her final resting place, and she never formally withdrew that command. But the directive was not acted upon.

It goes without saying that if every court followed this manner of thinking, an individual could design his own burial plans only if his family agreed. The family's wishes and desires, and their version of what the man wanted, would be more important than what he commanded in his will. Are they? Why would the family lie?

The New York woman provided in her will that $1,200 be spent on transporting her body to Palestine and on the costs of burial there. Actually, her family spent less than $200 burying her in New York. Who gets the difference? Who is lucky enough to win the $1,000 bonus? Was this the motive?

Clouding all American law relating to burial is an understandable policy against disinterment. A majority of courts under most circumstances refuse to allow a body, once buried, to be exhumed. The policy was colorfully enunciated by Justice Benjamin Cardozo of the Supreme Judicial Court of New York. In a controversy before him,46 a husband had died and had been duly buried in a Roman Catholic Cemetery. Up to that point, all was rather routine, as the man had been a member of the Catholic faith his entire life. On his deathbed, at his own request, he had received the last sacraments of the Church. After his death, his wife left the faith, purchased a grave site in a non-Catholic cemetery and sought to transport her husband's body there.

In refusing to permit disinterment Justice Cardozo said:

45. Id., see chapter 10 generally.
The wishes of wife and next of kin are not always supreme and final though the body is yet unburied. . . . Still less are they supreme and final when the body has been laid at rest, and the aid of equity is invoked to disturb the quiet of the grave. . . .

Refusing permission to disinter has been a tactic used to countermand announced desires regarding body disposal. In England, a Grave Robbing Statute made it a crime to remove a dead body from its grave. It was no defense to charge that the removal was conducted in order to carry out the longings of the dead. From this background grew the concept that the priorities of the dead were not automatically to be followed. Adding the factor that courts feared that men might make macabre and unnatural requests, certain to shatter the tranquility of the community, the courts moved even farther away from permitting a man to dictate the mode of his own funeral and burial.

Life in the last third of twentieth-century America is radically different from that which England survived in the 1700's. The extremely diverse tastes and values of the populace are in sharp contrast with the rigidly dictated life patterns of England in that time. Just as some individuals living in the "now" generation may want to live in a high-rise cubicle and drive a Porsche while others thirst for a suburban split-level and a station wagon, there is no justification for the law to rigidly adhere to a monolithic burial pattern. Now as before, Solon's funeral law should govern, and the body should be laid out "according as the deceased gave order."

Prohibitions and restrictions on pre-designed burial arrangements should only act to curtail the completely bizarre, preventing post-death rituals which would truly traumatize the conscience of the urbanized American. Practices which would have been abhorred by the Englishman of old must not be forbidden today simply because our inflexible jurists have based their decisions on values, beliefs and thought patterns hundreds of years old. Courts must revitalize their thinking to reflect current and positive values formulated in our time.

Yet, problems arise if we accept the rational concept that a man should have the power to dictate his own burial plans. Envision, if you will, the trouble enforcing the dead man's wishes. Obviously, the surviving family may choose to ignore the decedent's explicitly announced arrangements, and if no one brings this to the attention of a court, the pre-death pronouncements will be wrongfully frustrated.

47. Id. at 402, 152 N.E. 128.
When and if a judicial body is called upon to hand down a decision, however, the dead man’s desires should logically be enforced.

**THE UNIFORM ANATOMICAL GIFT ACT**

As we have mentioned, two new factors have, however, come upon the scene and must be dealt with: the urgent need for human organs for use in transplant medicine and the overwhelming demand for cadavers, and their parts, to be utilized in medical research and experimentation. The dizzying effects of the transplant tumult, not to mention the cries from the medical schools for cadavers, can be seen to sharply conflict with the established, though theoretical and often unenforced right to a decent burial. Faced with this conflict, the law was hard put to devise a solution; but would the answer lie in overturning with one fell swoop all the laws relating to the notion of a decent burial? Apparently, that is where the answer lay, for those summoned to solve the puzzle, the doctors and the lawyers, conjured and drafted an expedient uniform law which was to override the precedent of the solid right to be buried decently—the law of which we speak is the Uniform Anatomical Gift Act (referred to hereinafter as the U.A.G.A. or the Act).49

In relation to the concept of the right to a decent burial, which theoretically may be desired by each of us, the U.A.G.A. shatters this concept and leaves feeble the possibility of receiving one in the absence of

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clear, expensive and altogether unnecessary steps taken by the decedent who wishes "the usual."

A Decent Burial and the Act

At the outset, the motives and merits must be questioned of those who drafted the Act with reference to the absence of a clear, unequivocal enunciation of the right to a decent burial. Why is there no statement that an individual, by virtue of the case law on the matter, possesses the power to dictate the precise method in which his or her body will be disposed of after death? To answer that question, the drafters could not push themselves to make such a statement owing to the weighty considerations prompting the legislation in the first instance, i.e., the unusual demands for human organs for use by transplantationists and medical researchers. So it can be seen that the decision to omit the pronouncement of the right was calculated and thus, in no way puzzling. In a statute which was designed to facilitate transplantation, and make available sorely needed cadavers, one could barely expect that such self-defeating language, or even a hint of it, would be included. The drafters did not forget to incorporate the statement—they simply didn't want to deal with it.

Recalling the review of the case law concerning decent burial, we have seen that, although there exists the theoretical prerogative to designate one's post-death disposal arrangements, the courts have failed to implement the desires of the dead. Because of this judicial inaction sophisticated individuals in showing their wills may choose to omit any plans for their burials, as they and their legal advisers realize the past impotence of the courts in enforcing such plans. They may feel it more appropriate and effective to simply say nothing, trusting their silence to carry more weight than their spoken dreams.

If we now live in the sophisticated world in which transplantation of organs takes place, it should be time to allow a man not only the prerogative of donating his heart to science but also the right to design his own burial scheme. There should be enacted a statute which would allow a man complete power to have his body buried, cremated, or given to science in whole or in part.

Before delving into the many attendant difficulties spawned by the U.A.G.A., it would be helpful to set out its first important provision. Section 2(a) of the Act states:

Any individual of sound mind and 18 years of age or more may
give all or any part of his body for any purpose specified in Section 3, the gift to take effect upon death.\textsuperscript{50}

In simple terms, the Act purports to allow an individual of 18 years or older to make a donation of all, or a part of, his body. This section is replete with problems of definition and inadequate standards.

Notwithstanding the incorporation of the phrase “sound mind” with respect to the mental competence of the donor at the time of donation, the Act for all purposes does not demand or require that state of mind or competence. That “sound mind” is a hollow admonition can be culled from the fact that the U.A.G.A. fails to provide a test or examination by which to establish that the donor is of sound mind. Devoid of criteria for investigation of the donor’s mental state, the Act, through the inclusion of the innocuous phrase, lulls one into believing that all donors will surely be in the proper mental frame. Without an impartial and stiff test, though, that belief is impossible.

In dealing with general, ordinary assets owned by an individual at his death, the process of distribution is well established. If a man dies without having made a will, the laws of intestate succession govern.\textsuperscript{51} The property is then distributed according to a pre-determined pattern. If the individual did draw a will, the probate procedure affords the test for determining soundness of mind. The court then holds a hearing at which evidence is presented as to the testamentary capacity of decedent.

Obviously, probate would defeat transplantation. Most organs must be transplanted within minutes of death. If a test period were built into the Act the very purpose of the Act would be defeated. Section 4(a) of the Act moves in the opposite direction. It reads:

A gift of all or part of the body . . . may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.\textsuperscript{52}

Similarly, the Act provides for the execution of a non-testamentary document, so long as it was signed by the donor “in the presence of two witnesses who must sign the document in his presence.”\textsuperscript{53}

By virtue of the enactment of the U.A.G.A., which aims to expedite anatomical gifts, all thoughts of probate—indeed, any test of mental capacity—have been suspended because the aims of the Act would not be

\textsuperscript{50} See Appendix A. The Uniform Anatomical Gift Act, Section 2(a).
\textsuperscript{51} Supra, note 43.
\textsuperscript{52} Supra, note 50 at Section 4(a).
\textsuperscript{53} Id. at Section 4(b).
served thereby. In fact, it is fair to say that those who drafted the Act really didn’t care whether the donor had a legally sound mind. The total emphasis was to give just enough to insure passage of the Act, so that the transplantationists would have the legal authority to harvest the organs they want and need.

The U.A.G.A. attempts to establish a new societal value. In the past, the value was a decent burial. It was revered by society and enforced by law. The Act, however, is the first step toward establishing anatomical donation as the routine, thereby making other disposal forms (e.g., burial) exceptional.

If one were to proceed on a traditional footing, it would not be unfair to state that a man expects a decent burial, and there should be a positive showing of any contrary desires.

A serious question is whether the public really agrees with the value system reflected by the Uniform Anatomical Gift Act. The writers suggest the answer is probably no.

A further, and ultimate, question is: Should we care? Does it truly matter that an individual’s heart may be removed from his body when he would not have wanted that done? If, at times of mental soundness, a person anticipates a decent burial, should his real expectations be defeated by an act performed without mental capacity?

There are safeguards which could have been built into the U.A.G.A. Perhaps, the execution of a physician’s affidavit, asserting capacity at the time of execution of the donation; even the execution of affidavits by laymen would guarantee some measure of protection.

MORTMAIN PROVISIONS

While Mortmain statutes have almost disappeared from the scene, perhaps they should be resurrected in the area of organ donation. Underlying these statutes is the theory that a dying man may not donate a disproportionate part of his estate to charity. As one lays dying, he may feel compelled to donate to charity to the exclusion of his wife and family. Mortmain provisions placed a limit on the amount which may be devised in favor of charity when the will is executed within a specified time period prior to death. Out of fear that the gift might not truly reflect a testator’s desires, by way of example, we may say that a testator may not give more than $5,000 to charity in a will executed within six months of death.

This then might provide a safeguard in the area of organ donations.
The inclusion of Mortmain type language in anatomical gift statute would rest on a rationale that as a man approaches closer to death, he may be persuaded, against his true desire, by the attending doctor or others to make a donation of his organs. Therefore, the statute would prevent a donation from being made within six months of death. The statute could further incorporate a penalty clause where a physician extracts an organ under the authority of a donation document executed within the prescribed six months.

Thus, if an individual executes a donation document at a time when he does not face imminent death, it is more probable that it reflects his true feelings.

Since organs for transplant must be removed immediately upon death and since no precise prediction can be made as to when an individual will die, the validity of a gift, judged by a Mortmain provision, could be ascertained only after death. All gifts made prior to our hypothetical six month cut-off point would be valid; those made thereafter would be of no effect.

It does not seem too much to ask that legislation, such as the U.A.G.A., include provisos safeguarding individuals in the midst of death-throes from what might be persistent and coercive demands for their body parts.

**OTHER PERSONS AND DONATION**

In addition to granting an individual the right to donate his body, the Act bestows upon survivors the authority to make such a donation. While a decedent may not have had the forethought or the desire to execute an anatomical gift, at his death those who survive may make the donation. The pertinent provision of the U.A.G.A., Section 2(b) provides:

(b) Any of the following persons, in order of priority stated, when persons in proper classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent, or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body of any purposes specified in Section 3.

(1) the spouse,
(2) an adult son or daughter,
(3) either parent,
(4) an adult brother or sister,
(5) a guardian of the person of the decedent at the time of his death,
(6) any other person authorized or under obligation to dispose of the body.\textsuperscript{54}

This simple provision manufactures a plethora of baffling problems. As discussed earlier, there is no test under the Act for the mental capacity of the donor should he make a gift. And what of the soundness of mind of those other than the donor permitted to donate the decedent's body to science? There is not even a whisper of the degree of competence these people must possess; and further there is no mechanism by which inquiry could be made into that competence under the Act.

Taking a further step, the Act continues:

Any gift by a person designated in Section 2(b) shall be made by a document signed by him, or made by his telegraphic, recorded telephonic or other recorded message.\textsuperscript{55}

On this basis, an individual may face death and silently anticipate that his body will receive a decent burial upon his death. A situation could occur where his estranged and indifferent "spouse," his senile "parent" or mentally disturbed "adult brother" would donate his body. They may even effectuate the gift by telephoning their desires.

Again, it must be emphasized that the Act builds in no machinery by which to gauge the mental capacity of a donating survivor. In fact, the recipient need not even be visually exposed to the donor. Further, the recipient is under no duty to inquire into the competence of the donor, his relationship with the decedent or the like. Why even bother with consent? The Act appears to be a pronouncement of the only saleable variation of mandatory, routine donation. Why not merely maintain that when a person dies, his body belongs to science?

\textbf{PREVENTING AN ANATOMICAL GIFT}

In order for an individual to prevent an anatomical gift of his body by one of the other authorized persons under Section 2(b) of the Act, he must take definite and affirmative action. However, the nature and extent of the action to be undertaken is unclear.

In retrospect, we have seen cases where persons have conceived and set down formally in their wills detailed burial arrangements, and have seen at the same time, those wishes fall on the deaf ears of courts and surviving relatives. Further, we have examined cases in which illustrious and powerful men, of the likes of President Franklin D. Roosevelt,\textsuperscript{54} For a summary of Mortmain Statutes see Rees, \textit{American Wills Statutes}, 46 Va. L. Rev. 856, 867-871 (1960). \textsuperscript{55} See supra note 50 at Section 4(e).
have spoken their minds and formalized their wishes, and have those
wants wholly ignored or the plans so radically altered so as to have
been completely derogated by the schemes of families and courts alike.\textsuperscript{56}
What can take place if an individual presumes that his corpse will re-
ceive a decent burial, but says \textit{nothing} in that regard during life?

\textbf{SILENCE AND "CONTRARY INDICATION"}

Any of the following persons . . . \textit{in the absence of actual notice of}
\textit{contrary indication by the decedent} . . . may give all or any part
of the decedent’s body . . . (Emphasis added)\textsuperscript{57}

Following the general rule extracted from the cases examined earlier,
an individual although silent, would still be entitled to expect and to re-
ceive a proper, decent burial. However, if he has remained \textit{in silentia}
about his desires, theory flies and practically rushes in to fill the void.
If our hypothetical individual has spoken his mind, he still has not made
a “contrary indication” as is required under the U.A.G.A., Section 2(b),
to effectively prevent any movement toward an anatomical gift by the
persons designated by the Act to make such gifts.

Most men and women do not make wills. Moreover, very few of the
poor people of this society draw formal documents indicating their
wishes following death, which is attributable in no small part to the fact
that very few have much, if anything, to leave behind. How do these
people, then, make known a “contrary indication?”

Total silence and a mere presumption or belief that a decent burial
will follow death will not operate to defeat the privilege of donating
a dead man’s corpse made available to those specified by the statute.
The designated persons may exercise full discretion and control where
silence was the medium of the message.

\textbf{“CONTRARY INDICATION” PER SE}

We may assume, although the phrase is nowhere defined, that the
“contrary indication” of which the Act speaks involves an indication or
pronouncement by the decedent, during life, that his plans for post-
death disposal are contrary or opposed to the notion that an anatomical
gift will be made of his body, or any of its parts. The first question to
be struggled with, before that of content, is that of form. May this
“contrary indication” be oral, or must it be in writing?

\textsuperscript{56} See Mitford, \textit{The American Way of Death} at 9.
\textsuperscript{57} See Appendix A, \textit{The Uniform Anatomical Gift Act}, Section 2(b).
Uniform Anatomical Gift Act

With the knowledge in hand that one is precluded from effectively making oral dispositions of his property, and of his body, which are to take effect post mortum, it would seem clear, by analogy, that the "contrary indication" alluded to in the Act would also, of necessity, have to be in writing. The problem, of course, lies in the possibility that fabrication and fraud would abound if men during life were permitted to orally dispose of property after death, as dead men are not available to impart to us the true nature of their wishes. And that is precisely the type of thing the Statute of Wills sought to avoid.

So, even where it is known that an individual orally expressed a "contrary indication" while alive, there is nothing in the Act to dissuade one of the designated persons who may make an anatomical gift from proceeding to effectuate it.58

Prescinding from our predicament involving the ineffective, oral contrary indication, we should examine the more solid, written statement of a decedent's expressed burial plans. We find still that there are problems.

Assume that an individual declares in a properly drawn and attested will that he wishes to be buried "in Bridelworth Cemetery." We must conclude, initially, that this statement, albeit in writing, is still insufficient on its face to constitute the "contrary indication" required by the U.A.G.A. to defeat an anatomical gift.

First of all, even though the individual has made an affirmative and definite statement, it might not be construed as contrary to a donation of his body to science. He has not said that he does not wish a gift to be made of his corpse; he has merely said that he wishes to be buried "in Bridelworth Cemetery." He has made no statement specifically precluding the possibility of donating his body or its organs or parts for scientific research after death.

Furthermore, what would prevent the removal of certain portions of the individual's body by virtue of the anatomical gift, followed by an interment, of what was left of the corpse, in Bridelworth Cemetery? After all, he did fail to indicate what condition he hoped his corpse would be in at the moment of burial in Bridelworth!

If this was the untoward situation in which a decedent might find himself, his burial would not be one which could be termed "decent", as one of the crucial criteria is interment "intact." Either manner of

58. A discussion of the "actual notice" requirements of Section 2(b) of the Act will be undertaken presently.

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looking at the picture in this case produces the same impression—no provision of a decent burial after the removal of organs or tissues.

**Actual Notice of Contrary Indication**

Two other curious requirements of Section 2(b) of the U.A.G.A. involve "actual notice." In one instance, "actual notice of contrary indication by the decedent;" in the other, "actual notice of opposition by a member of the same or prior class." We will deal with the former first.

We have just discussed "contrary indication" at some length and have noted the manifold difficulties in the phrase and in its application; and now we add a further requirement, integrally linked to contrary indication. To simply state the gist of the requirements together, we may say that any of the designated persons, in order of priority, may effect the anatomical donation "when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indication."

Assume, for example's sake, that an individual draws a will stating a contrary indication as is called for by the Act. Note that we are assuming a proper contrary indication; not an instance of reticent desire, nor a case where one merely mentioned to friend that he loathed anatomical gifts.

It is highly questionable whether any of the persons listed in the Act as capable of performing anatomical gifts would have knowledge of the will itself, let alone the document's contents. Thus, it would be of doubtful persuasion to argue that those persons could ever possess actual notice of the decedent's contrary indication.

Granting the benefit of the doubt for a moment, presume one or more of these people did know of the existence of the will and did know, generally, its provisions. Would any of them be able to recognize or appreciate a contrary indication? We do not think so.

Even more important, nowhere in this Section or in the balance of the Act for that matter, can there be found the imposition of a duty, upon anyone, to search for or seek a document or record of the decedent's contrary indication if he had indeed made one. This leads to the startling realization that since no one works under an affirmative duty to seek out a contrary indication by a decedent, there is little likelihood that anyone will be actually notified of the contrary indication, and, con-

59. See supra note 57.
sequently, no one will be in a position to arrest the making of the anatomical gift.

As mentioned earlier, the catalytic element giving rise to the spate of problems we have found with the Act in relation to the right to a decent burial is the press of time. The transplanters cannot wait for a search for a contrary indication or for a probate test. The organs are needed immediately. These exasperating problems are not upon us by dint of poor drafting. They owe their existence to the unwillingness of those who wrote the U.A.G.A. to grapple with the press of time inherent in transplant operations and cadaver donations. Precious time cannot be wasted in determining the mental capacities of the donor himself or of the designated persons when the decedent's corpse must be put to use immediately. The crush of time is overwhelming in the transplant theatre, and it must be courted.

**Actual Notice of Opposition**

The second actual notice requirement is now ripe for examination, and involves actual notice of opposition by a member of the same or prior class of designated persons to prevent the gift. Retracing our last steps, we have said that there is no duty whatsoever, on anyone's part, to search for a contrary indication, so as to almost totally preclude actual notice of that indication. While the provision allowing the opposition by a class member seems superficially to be an adequate buffer against rash action by others in contravention of dead men's wishes, it cannot be held so; for, once again, no one is duty-bound to ascertain whether any opposition members exist. This being the pitiful case, we experience yet another instance wherein the U.A.G.A. can be seen to be feckless legislation, incapable of protecting few individuals who would diametrically oppose any gift to science of any portion of their corpses.

**A Search for the Family**

But one further statement with respect to Section 2(b) must be made, and its ramifications bode ill for any presumption that the U.A.G.A. is a statute affording even meagre protection for those who wish to avoid an anatomical donation and be buried decently and intact.

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60. Dr. Harold M. Schmeck, Jr., in a recent book surveying the realm of organ transplantation, made this remark: "Every minute spent in seeking permission from each responsible relative, or futile telephoning across the country, means another million dead cells. Here is a field where we need help from legislators and lawyers, so that previous intent of the patient, his family and his next of kin may remain binding after death." Schmeck, *The Semi-Artificial Man* (1965) at 137-138.

61. See supra note 57.
The Act does not require anyone, at any time, to seek out members of
the decedent's family or his guardian, if there be one, to determine what
plans they have envisioned for body disposal. Without the presence of
family members, those designated to make an anatomical gift of the de-
cedent's corpse, at a time so crucial as that of death, we cannot realisti-
cally expect that the decedent's decent burial arrangements will be paid
any attention at all.

It is truly frightening to imagine the consequence of the error in not
providing a search mechanism for family members within the statute.
No one need be consulted; consent to the anatomical gift need not be
extracted from anyone close to the decedent; no bothersome opposition
need be heard; no attention need be given the decedent's desires; and
time need not be wasted.

CONCLUSION

Because of the leaps made in the transplant area, and owing particu-
larly to the strides of the DeBakeys, Cooleys and Shumways in implan-
ting the human heart, legal principles entitling one to a decent burial
were relegated to a position inferior to that of the demands of science.
Time was of the essence in the scenario surrounding the anatomical
gift, and time in which to ascertain what it was, exactly, the deceased
wanted done with his corpse could no longer be spared.

What the writers have said here, in essence, is that although the Uni-
form Anatomical Gift Act is widely touted as protecting the wishes of
the dead by supposedly requiring familiar consent to an anatomical gift,
the consent concept under the Act is, in reality, no more than a sham,
foisted upon an unsuspecting public so as to ensure the steady advance-
ment of almighty science. Firm, loyal precepts, derived from the nu-
merous cases involving the prerogatives of men to dictate their burial
modes, have been precipitously and shrewdly cast to the winds, to fall
upon the fields of pre-transplant oblivion. And hardly anyone is the
wiser; especially those unfortunates who have suffered the post-death
scalpel in the face of all their pre-death admonitions and pleas.
Appendix A

UNIFORM ANATOMICAL GIFT ACT

An act authorizing the gift of all or part of a human body after death for specified purposes.

SECTION 1. [Definitions.]

(a) "Bank or storage facility" means a facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof.

(b) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(c) "Donor" means an individual who makes a gift of all or part of his body.

(d) "Hospital" means a hospital licensed, accredited or approved under the laws of any state and includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

(e) "Part" includes organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of a human body, and "part" includes "parts".

(f) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

(g) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(h) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

SECTION 2. [Persons Who May Execute an Anatomical Gift.]

(a) Any individual of sound mind and 18 years of age or more may give all or any part of his body for any purposes specified in Section 3, the gift to take effect upon death.

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent, or actual notice of opposition by a member of the same or a prior class, may give all or any the decedent's body for any purposes specified in Section 3:

(1) the spouse,
(2) an adult son or daughter,
(3) either parent,
(4) an adult brother or sister,
(5) a guardian of the person of the decedent at the time of his death,
(6) any other person authorized or under obligation to dispose of the body.

c) If the donee has actual notice of contrary indications by the decedent, or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by this subsection (b) may make the gift after death or immediately before death.

d) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

e) The rights of the donee created by the gift are paramount to the rights of others except as provided by Section 7(d).

SECTION 3. [Persons Who May Become Donees, and Purposes for Which Anatomical Gifts May be Made.]

The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) any hospital, surgeon, or physician, for medical or dental education, research advancement of medical or dental science, therapy or transplantation; or

(2) any accredited medical or dental school, college or university for education, research, advancement of medical or dental science or therapy; or

(3) any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

(4) any specified individual for therapy or transplantation needed by him.

SECTION 4. [Manner of Executing Anatomical Gifts.]

(a) A gift of all or part of the body under Section 2(a) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if its declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under Section 2(a) may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor, in the presence of 2 witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence, and in the presence of 2 witnesses who must sign the document in his presence. Delivery of the document of gift during the donor’s lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as
donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) Notwithstanding Section 7(b), the donor may designate in his will, card or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation, or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(e) Any gift by a person designated in Section 2(b) shall be made by a document signed by him, or made by his telegraphic, recorded telephonic or other recorded message.

SECTION 5. [Delivery of Document of Gift.]

If the gift is made by the donor to a specified donee, the will, card or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The will, card or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts them for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

SECTION 6. [Amendment or Revocation of the Gift.]

(a) If the will, card or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

(1) the execution and delivery to the donee of a signed statement, or

(2) an oral statement made in the presence of 2 persons and communicated to the donee, or

(3) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee, or

(4) a signed card or document found on his person or in his effects.

(b) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (a) or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (a).

SECTION 7. [Rights and Duties at Death.]

(a) The donee may accept or reject the gift. If the donee accepts a gift
of the entire body, he may, subject to the terms of the gift, authorize embalm-
ing and the use of the body in funeral services. If the gift is of a part of the
body, the donee, upon the death of the donor and prior to embalming, shall
cause the part to be removed without unnecessary mutilation. After removal
of the part, custody of the remainder of the body vests in the surviving spouse,
next of kin or other persons under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who attends
the donor at his death, or, if none, the physician who certifies the death. The
physician shall not participate in the procedures for removing or transplant-
ing a part.

(c) A person who acts in good faith in accord with the terms of this Act,
or under the anatomical gift laws of another state [or a foreign country] is
not liable for damages in any civil action or subject to prosecution in any
criminal proceeding for his act.

(d) The provisions of this Act are subject to the laws of this state pre-
scribing powers and duties with respect to autopsies.

SECTION 8. [Uniformity of Interpretation.]

This Act shall be so construed as to effectuate its general purpose to make
uniform the law of those states which enact it.

SECTION 9. [Short Title.]

This Act may be cited as the Uniform Anatomical Gift Act.