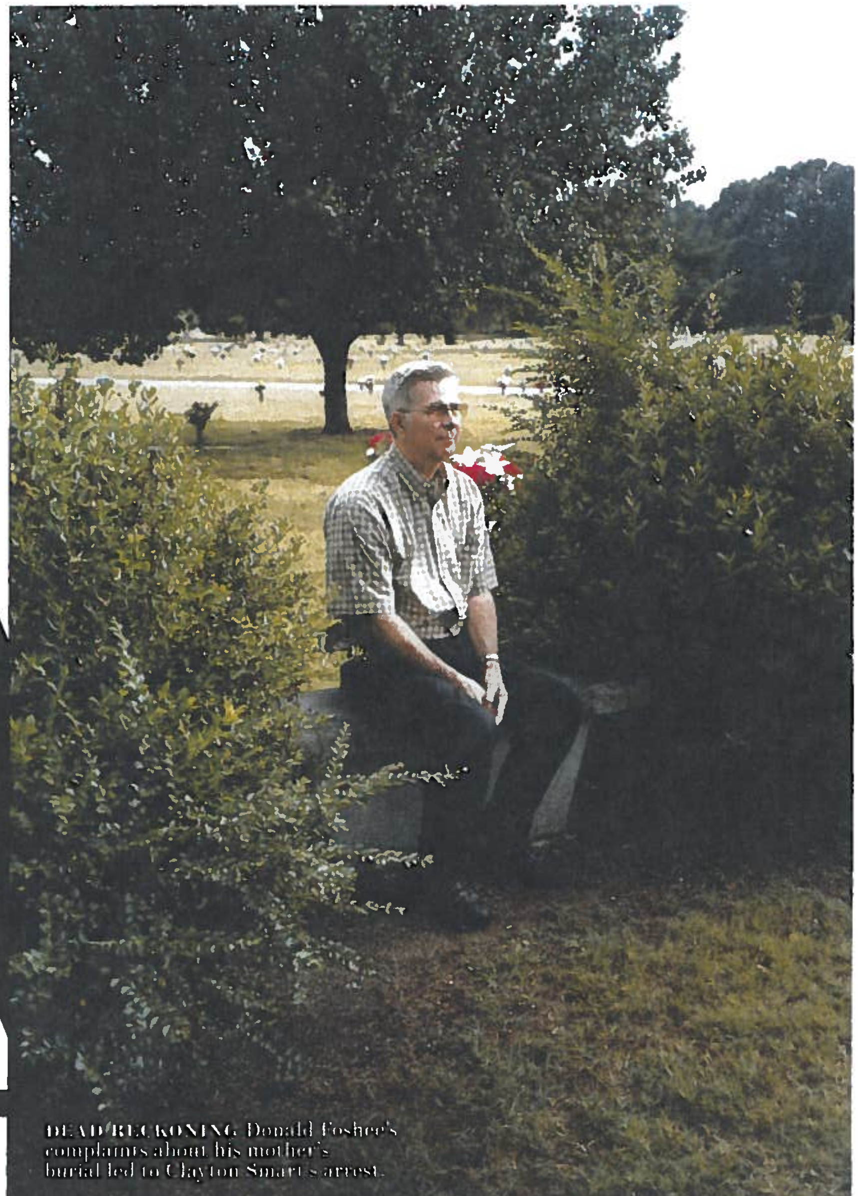
A Swindle to Die For

*How an audacious scam allegedly turned cemeteries into buried treasure and cheated tens of thousands of frail and elderly people out of up to **$80 million***

BY KURT EICHENWALD



DEAD RECKONING Donald Foshee's complaints about his mother's burial led to Clayton Smart's arrest.

AUGUST 2006. The dark gray sedan turned onto Fairgrounds Road off Highway 75, the main artery through Okmulgee, Oklahoma, a flyspeck south of Tulsa. Inside, Trey King, an investigator with the Tennessee attorney general's office, readied himself for his ambush interview with Erma Huckstep, president of Quest Minerals & Exploration, reportedly a multimillion-dollar company. He hoped she could provide the answers he needed.

Suddenly, things seemed off—the car rumbled over railroad tracks to the poorer part of Okmulgee. Construction equipment littered the side of the road; cars and rusted junk were strewn across some yards. The sedan took a

PHOTOGRAPH *by* MAUDE SCHUYLER CLAY

FALSE FRONT Erma Huckstep's trailer in Okmulgee, Oklahoma, photographed on June 21.

"These people literally cheated the dead. It's absolutely despicable."

left at North Morton Avenue and pulled to a stop at Huckstep's residence. King glanced at the place. This was no lavish estate built from the proceeds of an energy empire; it was an aging, yellowish mobile home.

He knocked on the door. Hinges creaked as it opened, and an elderly woman dressed in jeans and a button-up shirt, looking all of her 78 years, stared back at him. King identified himself and asked for Erma Huckstep.

"That's me," she replied.

That was all he needed to hear. At that moment, King knew that the state of Tennessee—and worse, many of its citizens—had been swindled.

His discovery of the truth about Erma Huckstep—a near-penniless former Sunday school teacher who maintains she was tricked into serving as a front for the man who controlled Quest—was a key to unraveling a bizarre scandal that is still confounding investigators in at least four states and that has cheated tens of thousands of the elderly and frail out of as much as $80 million.

This was no typical scam, like a penny-stock swindle or telemarketing fraud; rather, these audacious hucksters found their booty in the staid business of burials. Indeed, this multilayered fraud may prove to be history's first large-scale white-collar grave robbery.

"These people literally cheated the dead," said Mike Cox, the Michigan state attorney general whose office is among those investigating the case. "It's absolutely despicable."

At the center of the scheme, investigators say, was Clayton Smart, a portly, volatile, churchgoing 67-year-old who was barely able to finagle a living in the Oklahoma oil business before realizing in 2003 that his future might be in burial plots. Law enforcement officials say he was aided in his truly grand larceny by financiers, including an executive at Deutsche Bank and, later, Citigroup, and unknowingly by regulators who were apparently captivated by the rumors (spread by Smart and his cohorts) that he had a personal fortune of millions. But it was all an illusion; in August, Smart, who declined a request for an interview, sat in a Tennessee jail, held without bail.

THE HOWS OF the scheme sound more akin to the Enron scandal than something you'd find in the burial business: There were off-the-books entities, hidden ownerships, Cayman Islands investment funds, and scores of improper wire transfers. But the actual crime, as alleged in court documents, was simplicity itself. Cemeteries are often flush with millions of dollars collected from customers who prepay for their burials. The money from these pre-needs contracts, along with cash for the maintenance of grave sites, is supposed to be held in trust, protected from mismanagement and pilfering. But in this case, law enforcement officials say, Smart and his partners looted the trusts for dozens of cemeteries, laundering cash with such skill that some investigators are concerned they'll never find all the money.

It's not just the stolen cash that is so troublesome; victims fear that their dreams of a final resting place may have been dashed. Mercedes Villada Gray, 80, and her husband, Blaine Wilson Gray, 84, planned to be buried side by side in Woodmere Cemetery, near their home in Detroit. Mercedes earned little as a hotel cook but 20 years ago managed to buy pre-needs contracts and cemetery plots. "I paid off our funerals so that our children wouldn't have to think about it," she says. "And then these folks come around and steal the money?"

She pauses, then sighs. "I don't even want an elaborate funeral. All I want is a place to be buried."

THE ROOTS OF this scramble for buried treasure go back to the early 1990s, when Wall Street was swooning over corporate funeral-home chains. Combine enough of these assets, the reasoning went, and a few giant players would dominate a business that

PHOTOGRAPH BY BRANDI SIMONS

most Americans will use at least once.

One beneficiary of this enthusiasm was the Loewen Group, a publicly traded funeral-home behemoth outside Vancouver, British Columbia. Loewen went on a buying spree, snapping up smaller competitors across North America. A collection of 28 cemeteries in Michigan caught Loewen's fancy in the mid-1990s, but state law presented a problem. To protect consumers from self-dealing firms, Michigan prohibited funeral-home owners from purchasing cemeteries, and Loewen already owned funeral homes in the state.

But this was an era of financial legerdemain, when ownership could be—and often was—hidden. So Loewen's lawyers went to work, setting up three shell corporations. Loewen bought the 28 cemeteries for $90 million, then sold them to its shells for 10 percent of the purchase price, with the rest owed through a balloon note.

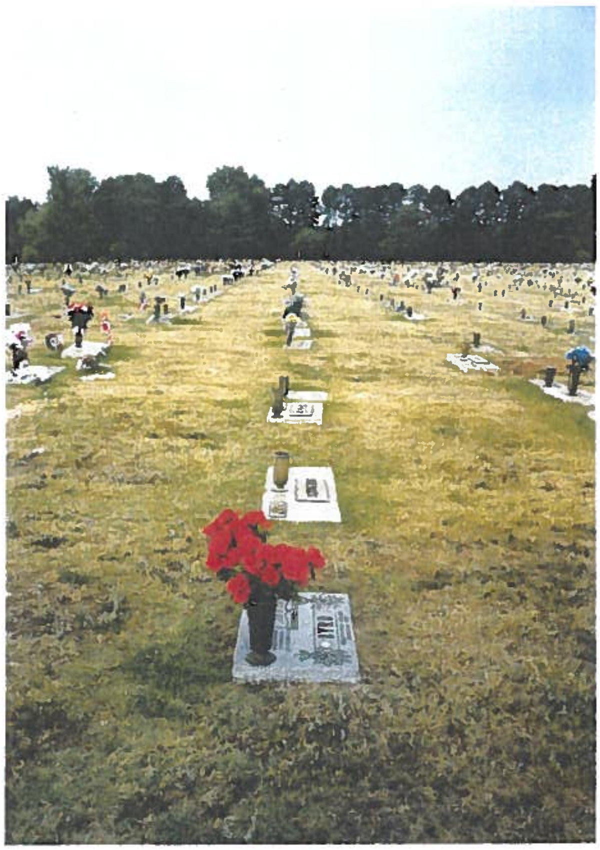
Things seemed to be going well until 1999, when years of overbuying (coupled with a $178 million settlement in an unfair-trade-practices suit) caught up with Loewen, putting its survival in question. With things looking bleak, one of the company's in-house lawyers, Craig Bush, apparently spotted an opportunity: In January, he bought out the man Loewen was paying to run the three shells. Bush now owned cemeteries worth millions of dollars.

Five months later, Loewen filed for bankruptcy. When creditors demanded those Michigan cemeteries, Bush refused to hand them over. Loewen sued, but the law was on Bush's side. Through its seemingly clever scheme to hide ownership, Loewen had outsmarted itself—or had been outsmarted by one of its own lawyers.

Not that Bush wanted to run the cemeteries. Once the lawsuit was resolved, he planned to sell them to a competitor, Cornerstone, and pocket millions.

In August 2001, Loewen struck a deal with Bush, who agreed to pay $22 million to sever any remaining financial obligations. With that, Bush was ready to sell.

Then, trouble. Loewen terminated its contract with the provider of the cemeteries' accounting system, which left Bush blind; he had no means of assessing the financial performance of the cemeteries, and no access to information a buyer would want if the Cornerstone deal fell through. And fall through it did.



BATTLE GROUND Forest Hill East Cemetery in Memphis, photographed on June 26.

Bush's dream of easy money turned into a nightmare. He was taking on debt. The cemeteries needed upkeep, and he also had to manage the millions in those pre-needs trust funds. What fool would ever take over this mess?

CLAYTON SMART WAS no stranger to trouble. His first high-profile run-in with the law was in 1981, when he beat up his son's soccer coach, breaking the man's jaw because he thought his 11-year-old deserved more playing time.

The altercation fit with Smart's volatile personality, according to people in Oklahoma who know him. Whether on the playing field, in the oil field, or just over his regular breakfast at Little Cattleman's Restaurant in nearby Morris, Smart was a man who, fellow residents said, smashed through all obstacles to get what he wanted.

The son of a shipbuilder, Smart first went into the oil business as a drilling engineer. Later, he set out on his own, forming numerous ventures, including Smart Drilling. None of those enterprises were particularly lucrative, though, and Smart soon demonstrated a willingness to walk away from his companies' debts.

By late 1997, he was staggering through a swing-from-the-heels divorce, with his wife claiming in court papers that he had tried to choke her to death. The two were now haggling over financial terms. Smart insisted that money was tight; he claimed he earned only $2,800 a month, all from his oil leases. His soon-to-be ex claimed that Smart was hiding assets and demanded alimony. The court ordered him to pay just $1,000 a month for 84 months. Smart, who was proud of his status as an active member of Trinity Baptist Church, was allowed to retain ownership of his plaque of the Ten Commandments.

In 1999, he founded an oil-lease company called Quest Minerals & Exploration, but that was a dry hole. According to its tax return, Quest had total revenue in 2003 of about $25,000, with expenses of more than $32,000.

Smart, it seemed, was never going to get rich in the oil business. But investigators say he came up with an easier way to extract money from holes in the ground. He had heard about a guy desperate to unload some cemeteries in Michigan. All Smart and his cohorts had to do was convince a few people that Clayton Smart was an oil millionaire. To create that illusion, somebody somewhere had to put up some serious cash. He was about to meet the perfect mark.

PHOTOGRAPH BY MAUDE SCHUYLER CLAY

ANYBODY WHO DID BUSINESS with David Strauss could easily figure out his philosophy: Don't lie, don't break commitments, don't get greedy. Simple rules, and since 1995, they had guided his accounting and finance company in Houston, Partners in Funding. The firm never rained profits, but it brought in enough to keep Strauss happy.

In 2003, though, he began to sense that his business was on the verge of a financial breakthrough. He had heard through the grapevine about an under-the-radar Oklahoma oil millionaire looking to do some big deals. This Clayton Smart sounded like the type of person Strauss wanted to work with.

Strauss first learned of the mystery man from a wheeler-dealer named Andrew Armstrong, whom he had met through another client. Armstrong told Strauss he was working with Smart and that Smart was itching to buy coal-mining operations, steel-fabrication companies, and even cemeteries. All of that would require a crackerjack accounting and finance team, and Armstrong dangled the possibility that Strauss might be the lucky guy selected to provide those services.

The financial opportunity wasn't the only thing that attracted Strauss. He liked that both Smart and Armstrong were churchgoing men; why, Armstrong even kept the Ten Commandments posted on his front lawn, a sure sign to Strauss, a devout Christian, that these were honorable folk.

They weren't. Armstrong, who could not be reached for comment, was under investigation for diverting money from the pension fund of an Iowa company; he'd eventually be locked up for that crime, but not until long after he'd helped Smart take Strauss for millions.

THE PRIVATE JET cut smoothly through vast stretches of deep blue, winging Clayton Smart, Andrew Armstrong, and David Strauss toward Lansing, Michigan, for a meeting with Craig Bush. When the plane landed at a private airport, Bush was waiting for them, along with Mark Singer, who worked with Deutsche Bank's brokerage division. Strauss says that Smart introduced him as a member of the transition team for the cemeteries deal. Then, everyone except Strauss, who had apparently served his purpose, went off to negotiate.

Months of haggling followed, and the pressure to sell weighed on Bush. The cemeteries were drawing bad press and the ire of state regulators. Lax maintenance had led to leaking mausoleum roofs, and presold mausoleums weren't being built. Bush wanted out.

Another adviser for Smart emerged in the negotiations: William Leyton, who presented himself as president of Strategic Bancorp in Beverly Hills. But Leyton, who could not be reached for comment, was another con artist, a man who had just been part of a $35 million fraud in Florida.

There were plenty of reasons for Bush to wonder about the legitimacy of this potential deal, according to testimony by his former attorney, Sherry Katz-Crank. For one thing, Smart conducted no due diligence; he just wanted information about the trust funds. Then there was the elusive nature of his financing. Despite repeated requests for proof of ability to pay, Smart ducked and stalled. Once, he proposed writing a personal check for $12.5 million to finance the deal—a comical offer in the high-finance world of corporate acquisitions.

As negotiations dragged on, Smart and his cohorts kept up their appearance of wealth, in part by helping themselves to cash loaned to them by the still-trusting David Strauss. Over several months, Smart, Armstrong, and Leyton obtained loans for about $6 million from Strauss, purportedly for use in a propane-trading business. The first loans went like clockwork, but then the three men stopped repaying; ultimately, they took almost $3.7 million from Strauss.

As security on the loans, Smart had

In Fraud We Trust

FRAUD IS UNDER-INVESTIGATED: According to David Burnham, co-director of a governmental watchdog group at Syracuse University, the number of prosecutions is dropping as the F.B.I.—the major investigative force in fraud—shifts its resources to counterterrorism. No federal agency keeps track of all the different kinds of fraud or the amount of damage caused, but here's a sampling of the more creative scam artists and how much they pocketed. —*George Quraishi*

GREGOR MACGREGOR

$22 million[1]

The Scot sold land in the fictional country of Poyais in the 1820s to "industrious and honest" Britons. MacGregor was clearly industrious, but not honest—which two boatloads of would-be settlers learned when they landed on an inhospitable stretch of the Mosquito Coast.

NOTE: [1]Adjusted for inflation.

JOHN G. BENNETT JR.

$100 million

The Foundation for New Era Philanthropy promised to double investments; by adapting the Ponzi scheme to charities, Bennett became the anti-Robin Hood. By 1997, he'd clipped the Red Cross, the United Way, Laurance S. Rockefeller, and former Treasury Secretary William Simon, among many others.

MISS CLEO

$505 million

Her clairvoyance remains an open question, but there's no doubt that the advertising, billing, and collecting methods of her psychic hotline were deemed fraudulent by the F.T.C. in 2002. The divining Miss C.'s adherents might ask why she didn't foresee having to pay more than half a billion dollars in penalties.

REED SLATKIN

$593 million

Slatkin, a former Scientology minister, began his Ponzi scheme in the mid-'80s and pumped millions into organizations affiliated with the religion—and into his own wallet. If his release date in July 2014 sticks, he'll miss—by six weeks—the chance to celebrate Scientology's annual Integrity Day.

FROM LEFT: SAMUEL WILLIAM REYNOLDS (MACGREGOR), TIM SHAFFER (BENNETT), given Strauss the $12.5 million check made out to Bush—to hold but not cash—as well as paperwork on a $40 million certificate of deposit supposedly held for him at Leyton's financial institution.

These financial documents not only bought Smart and the others time with Strauss' money, they also won Smart something potentially even more valuable: a written statement from Partners in Funding stating it was holding $52.5 million for Smart. This flurry of paper created millions of dollars where none existed. The only person with any real money in the game was Strauss—and he didn't know it.

PLOT TWIST Mercedes and Blaine Gray paid for plots in Detroit's Woodmere Cemetery, but fear they won't be buried there because of Smart.

JUST AFTER 3 in the afternoon on April 14, 2004, a three-page document scrolled out of a fax machine in a Lansing law firm. The papers—sent to Bush's lawyer, Sherry Katz-Crank—were supposed to prove once and for all that Clayton Smart had the money to buy the cemeteries.

Katz-Crank studied the papers. The first page was a letter from Hillcrest Capital stating that it was liquidating a Federal Reserve note—simply a formal term for any U.S. paper currency—ostensibly to finance Smart's acquisition of the cemeteries.

The next page of the fax was a photocopy of a $100 million bill. Katz-Crank checked online and found that no such bill had ever been printed. It was obviously a forgery—and a lame one at that. It blended portions of a $1,000 bill issued in 1934 with bits of a recent $1 bill. Thousand-dollar bills are no longer in circulation, but pictures can be found on the internet. Whoever put the facsimile together was sloppy; the word *dollar* at the bottom appeared to have been lifted from a $1 bill, so that it read ONE HUNDRED MILLION DOLLAR.

When Bush learned of the deception, he was furious but nevertheless agreed to meet with Smart again, according to Katz-Crank's testimony. This time, Bush was told, solid proof of ability to pay would be presented.

The hows of the scheme are akin to the scams in the Enron scandal.

PHOTOGRAPHS BY MAUDE SCHUYLER CLAY

The two parties gathered in a conference room of a law firm in Ann Arbor, Michigan, in May 2004. Smart and Leyton were there, but Armstrong couldn't make it: Months before, he had been indicted for that fraud in Iowa. Leyton, sitting at the head of the table, spoke first. "We don't have the $12 million."

The room went quiet until Katz-Crank asked, "Then why are we here?" The meeting grew increasingly acrimonious until, after more than 30 minutes, Leyton sidled up to Bush and said, "Let's take a walk outside."

Katz-Crank was sure the negotiations would end up in litigation; a discussion without witnesses would haunt them later. "I don't think it's a good idea that you go out for a walk with Mr. Leyton by yourself," she told Bush.

Bush thought for a moment, then replied, "It'll be fine."

The two men left for 10 minutes. When they returned, nothing was said. Bush said his goodbyes and left. Soon it became apparent that, somehow, the deal was back on.

ABOUT THREE MONTHS later, on August 19, the deal for the sale of the Michigan cemeteries was signed. The looting of their trust funds commenced almost immediately.

The purchase price was $31 million, but Bush had agreed to accept nothing at signing. He gave Smart immediate authority to conduct the business of the cemeteries. For Smart to finalize the deal, he had to transfer millions to Bush—but the cash couldn't be paid out directly from the trusts. Moving the money took a few steps: Some of the cash was transferred to a Smart-controlled entity called Summerfield, which then "loaned" $20 million to Quest Minerals & Exploration. In exchange, Quest provided a 5 percent note, with no interest or principal due for 10 years.

Under state law, such self-dealing was illegal, but—on paper, at least—Smart did not control Quest. Even though he had signed the most recent tax return, Smart was no longer the president of Quest; his new wife's elderly aunt, Erma Huckstep, says she had been persuaded by Smart some time before to sign papers bestowing that title on her.

A few weeks after the sale, Singer moved from Deutsche Bank to Smith Barney, a unit of Citigroup, and rapidly took the final steps to pay Bush. He established accounts for Smart, Bush, Quest, and related entities. Acting under instructions from Smart, Singer transferred $11.5 million from the Quest account to Bush on September 13. An additional $500,000 followed five days later. Investigators now say that $20 million was wired to Bush's personal accounts over a period of weeks. Through a lawyer, Singer declined an interview. Bush, in court papers, denied wrongdoing, maintaining that he was tricked by Smart and his pals. Bush's attorney did not respond to phone calls.

Once Smart got his hands on the trust funds' millions, investigators say, he was able to kick open the door to millions more. Singer helped him obtain a $24 million credit line from Citigroup. Money flowed from the trust funds in many directions. Financial records show that $25 million was invested with Fondren International, a purported investment firm run by Carter Green, whose other company, Hillcrest Capital, had faxed the bogus $100 million bill. Green did not respond to repeated calls.

By early October 2004, David Strauss, who had unwittingly put up the money Smart had apparently used to help set up the deal for the cemeteries, was frantic. He had tried cashing Smart's $12.5 million check, but it was no good. The $40 million C.D., he was told, had been canceled. With that, Strauss finally came to the painful and embarrassing realization that he had been duped. He wrote to Michigan state officials, stating that Smart was in default on loans that might have financed the purchase of the Michigan cemeteries. He wrote to Bush about the $12.5 million check. And he wrote to Singer, informing him of Smart's defaults.

The only guy with money in the game was Strauss—and he didn't know it.

The letters were greeted with nearly universal silence. Singer, for one, was not likely to take action against Smart. By then he had arranged for some $7 million of trust fund money to go to a hedge fund in the Cayman Islands called the Topiary Trust, an investment far riskier than any allowed under state law but one that paid handsome commissions.

Trust fund cash went everywhere. Investigators say Smart and his team even used Michigan trust fund money to help finance the acquisition of more cemeteries, this time in Tennessee. Cash quickly began to drain from those trust funds as well.

But Smart's shenanigans were starting to attract attention. Katz-Crank, now working with Smart on his cemeteries, was summoned to a meeting in Indiana at Community Bank & Trust, which held some of the trust fund money. As she later testified, a bank auditor told her that state regulators had raised concerns about how the trust funds were being handled. The auditor was particularly puzzled by a loan to Quest that moved up and down based on whatever amount the bank told Smart's advisers was missing. If Community Bank indicated that trust fund accounts were short $9.5 million, a document showing a $9.5 million loan to Quest arrived. If it said there had been an error, and the shortfall was $10.5 million or $11.5 million, new documents with the increased amounts showed up as proof that nothing was amiss.

Not long after the meeting, Katz-Crank resigned as Smart's lawyer and reached out to state officials. She told them she was concerned that crimes may have been committed.

AT 13 MINUTES past midnight on July 1, 2006, in a small town just outside Memphis, 99-year-old Vesta Foshee passed away.

That morning, her son Donald called the local cemetery where his mother had arranged for her burial and relayed the sad news that she was ready to use her pre-needs contract. But the representative said she had more sad news for Donald: The cemetery's new owners had decided, effective that very day, that they would no longer honor contracts purchased by some 13,000 people because there wasn't enough money in the trust funds. Foshee was told he would have to cough up an additional $3,100 to bury his mother. "I had just lost my mother," says Foshee, a retiree who lives on Social Security. "I was shocked, drained already with grief."

This, he decided, was something the media should hear about. He called the newsroom at WREG, a TV station in Memphis, and met a news crew at the cemetery that same day.

The report on the evening news set off panic in Memphis. Calls from contract holders flooded Forest Hill Funeral Home and Memorial Park, which ran the Tennessee cemeteries owned by Smart. When no good answers were provided, people began contacting state authorities, who were already concerned about Smart's cemeteries. Audits of the trust funds had uncovered suspicious transactions, particularly loans to Quest. Investigators had already questioned Smart; he assured them that he had no relationship with Quest or with the company's president, Erma Huckstep.

The Tennessee investigators found that money from the Michigan trust funds appeared to have been used to purchase cemeteries in the two states. They alerted the Michigan attorney general, who launched an investigation.

Amid the conflagration, investigators say, Singer—who had helped Smart and Bush shuffle millions in trust fund money—transferred ownership of his multimillion-dollar home in New Hope, Pennsylvania, to his wife for a dollar, the type of move typically done in anticipation of a lawsuit. Singer had reason to be concerned. Millions of dollars of trust fund money had been wired to him—including a $2.5 million transfer to an account at Goldman Sachs that investigators believe he controlled.

As the walls closed in, Singer and his wife, along with a New York lawyer specializing in malpractice cases, created a new pocket in which to apparently stash trust fund cash: a hedge fund called Kinglier Capital. (According to the draft-offering memorandum, Singer's wife was qualified for the job because she managed her own money and was working toward a degree in psychology.) Under the terms of the fund, the managers would be rewarded for investing in high-risk instruments and would be allowed to assign prices to any investment without a clear valuation. Those assigned valuations, the document says, would then be used to determine management fees.

GRAVE CONSEQUENCES Smart waived extradition to Tennessee at a hearing in Oklahoma on May 24.

PHOTOGRAPH BY BRANDI SIMONS

Once Smart got the trusts, he was able to kick open the door to millions more.

Although Kinglier appears never to have been fully operational, records suggest that more than $6.3 million of trust money was being readied for transfer there. But it was too late. By early 2007, the scam allegedly constructed by Smart crashed down. Prosecutors went to court, arguing that the trusts had been pilfered and asking to end Smart's control over the cemeteries; courts named receivers for the cemeteries in both Michigan and Tennessee. As much as $80 million appeared to be missing.

NOT ALL OF THE victims were holders of pre-needs contracts. David Strauss was never repaid the millions he lent to Smart and his associates. His business filed for bankruptcy, and he now spends his days figuring out how to pay off creditors. Strauss has little hope that he will ever be repaid.

On April 24, Smart; his personal lawyer, Stephen Smith; and Singer were indicted in Tennessee on charges of theft, conspiracy, and money laundering. Smart faces additional charges in Michigan for racketeering and embezzlement.

Smith drove to Tennessee in April and turned himself in; he was released on $20,000 bail. Police arrested Singer at his—check that: his *wife's*—New Hope home on April 27. He appeared in a Memphis courtroom, wearing a prison jumpsuit, where he pleaded not guilty.

Smart was arrested and held at the Okmulgee city jail, where he awaited a decision by the court on whether he would be sent first to Michigan or Tennessee.

On May 24, a hearing on Smart's extradition took place in a cramped ground-floor courtroom at the Okmulgee courthouse. Reporters packed the room, along with a handful of defendants facing drug, assault, and check-fraud charges. A few locals showed up—friends and acquaintances of Smart's who knew him from church and around town.

Just past 9:30 in the morning, Smart was led in. He was handcuffed, shackled, and wearing a gray-and-black-striped prison jumpsuit. Sitting in the jury box while awaiting the judge—no other chairs were available because of all the spectators—Smart grumbled to the guard sitting beside him, cursing about the assembled reporters. As the hearing proceeded, Smart told the judge he would not fight extradition to Tennessee.

The hearing over, Smart was led out of the courtroom. He glanced over at a local cattle rancher he knew who had come to see the hearing. Smart nodded his head, waved from below his waist, where his hands were chained, and disappeared through the courtroom door, perhaps never to return to Oklahoma until the day of his burial. ®

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