

# The **Estate Analyst**<sup>®</sup>

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## **Midsummer's Madness — 2014**

### *The Tragic Case of Casey Kasem*

### **Plus: New York's "164%" Estate Tax, Slayers Inherit from Victims, and John Wayne's Heirs Sue Duke University**

By Robert L. Moshman, Esq.

Once more into the breach as we embark on what has become our annual journey to Crazy Town in a quest to cover inexplicable developments that strain reason, challenge credulity, and burst free from the shackles of logic. Once again, there is an abundance of material fitting this description.

This collection reviews the recent developments in the estate of Casey Kasem, a 164% estate tax hazard inside New York's new estate tax law, slayers successfully suing their victims, a lawsuit by the estate of John "Duke" Wayne against Duke University, and some surprising potential hazards of using a software program for writing a will.

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## Reach for the Stars

Casey Kasem was the nation's top disc jockey and the voice of Shaggy on the cartoon show *Scooby Doo, Where Are You?* for about 40 years. At its peak, his *American Top 40* show was broadcast on 1,000 stations in 50 countries. He bid adieu to broadcasting for the last time in 2009 with his signature sign-off, "Keep your feet on the ground, and keep reaching for the stars."

In recent years, Kasem's health had declined. He suffered from Lewy Body Dementia. His second wife, Jean Kasem, publicly feuded with Kasem's adult children from his first marriage. They claimed that Jean habitually prevented them from seeing their father and hastened his death with neglect and elder abuse.

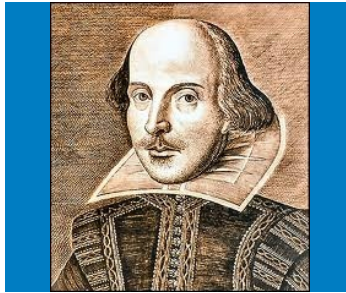
In May, the children were granted visitation rights, but Jean promptly moved Casey out of a nursing home and took him on what one family member described as "Mr Toad's Wild Ride," from California to Las Vegas to Arizona, back to Las Vegas, and then to Washington state.

The children tracked their father down in Washington and obtained a court order to have him taken to a hospital. They arrived at the house on June 1, 2014, with an ambulance and were not allowed in, prompting a call to 911. A fire engine and a second ambulance arrived, at which point Jean, appearing to quote scripture, threw a pound of raw hamburger meat at her husband's daughter Kerri Kasem in the name of King David. She later elaborated that it was "in exchange for my husband to the wild, rabid dogs."

A Los Angeles judge allowed the children to have a Washington hospital withhold nutrition, hydration, and medications and simply provide for comfort. This followed a brief period when Kasem's body had rejected artificial nutrition and was causing discomfort comparable to drowning.

A dispute over the administration of nutrition followed between Jean and Kerri, but the Court ultimately relied upon a 2007 advance directive signed by Casey Kasem, which indicated that he did not wish to be kept alive "in a mere biological existence, devoid of cognitive function with no reasonable hope of resuming normal functioning."

Casey Kasem died on June 15, 2014, at the age of 82. The death certificate, bearing information provided by Jean, identifies Kasem's residence as Jerusalem.



**"Why, this is very midsummer madness!"**

—William Shakespeare, from *Twelfth Night*

Although Kerri was her father's Conservator during his lifetime, custody of Kasem's body reverted to his wife at his death. The children then obtained a temporary restraining order from Judge Ronald Culpepper of the Pierce County Superior Court barring anyone from cremating or moving the body from the Berkley East Convalescent Hospital until an independent autopsy could be performed to investigate elder abuse.

It was suspected that moving Kasem from a nursing facility against doctors' advice hastened his death. To move Kasem, his feeding and hydration tube had to be disconnected, and the hospital staff advised Jean that doing so could result in Kasem's death.

When the attorney for Kerri attempted to serve the court order against moving the body on the Washington state funeral home, the body had already been removed.

A private investigator was then hired and apparently tracked the body to Montreal, which is the hometown of a man suspected of being Jean's lover, who was living in Kasem's Malibu house. However, Kasem's

children do not know if the body is still there or where it may be buried.

Casey Kasem indicated that he wished to be buried at Forest Lawn Park in Glendale, California. Jean is named as the Executor in Kasem's will. Kerri has stated that Jean wrote a letter to the attorney administering Casey Kasem's will, which indicated that she is "coming after the irrevocable trusts" (i.e., to revoke the trusts that Kasem set up for his children 30 years ago). This represents "the only thing our dad left us," said Kerri.

## Bring the Crazy

Let's organize this rampant madness into categories.

First, as a threshold observation, the debacle of Casey Kasem's poor treatment is bad enough without sophomoric journalists trying to tie in *Scooby Doo* references in their reports of these events. The fact that numerous publications referred to the private investigator as a "gumshoe" in this day and age is also an inexplicable anachronism.

Second, the chopped-meat-throwing incident, complete with King David reference, is clearly the irresistible star turn moment of this narrative. Is this about David slaying Goliath? Or his attempt to cover his infidelity with Bathsheba by having Uriah go home and "wash his feet" (and then the orchestration of poor Uriah's demise in battle when he declined



to “wash his feet”)? We must resist the temptation to further digress here, and this reference is just too crazy anyway.

Third, you can’t make up stories like the ones from real life. The moving of Kasem during life and then spiriting away his body after death to hide it from his children is incredible, illogical, possibly felonious elder abuse, and certainly heartbreaking.

And finally, what makes an Executor think she can violate irrevocable trust funds? Is it the fact that she has animosity or conflict with the beneficiaries? If anything, she will be disqualified from exercising any influence over such trusts...if she even had any role over those trusts at all.

### ***Kasem’s Estate Plan***

Judging only from what can be gleaned from media reports and without the benefit of actual knowledge of the documents and assets involved, the broad strokes of the Kasem estate plan actually seem appropriate.

Kerri was the Conservator for her father and, armed with a 2007 living will or advance directive, she was able to have a court and hospital provide her father with comfort and care that was consistent with his wishes.

Casey Kasem had children from a previous marriage and provided irrevocable trusts for them. Hopefully, he revisited that arrangement throughout his life and contributed additional assets to those trusts, if that was warranted. If the trusts were established properly, they will not be broken by those with an axe to grind against the beneficiaries.

While reserving judgment on the content of the will and how it addresses intellectual properties, including the exploitation of Kasem’s name, image, and fame—which will be critical to the value of the estate—suffice it to say that it is a good sign that a will exists, and it is understandable that Kasem would name his wife of 34 years to be his Executor. However, if Kasem was aware of the conflict between his wife and his children during his lifetime, before he was incapacitated, and if the will affects his children in any way, other arrangements (such as lifetime gifts, lifetime gifts to the trusts, and naming a neutral party as the Executor) might have been helpful.

If the will contains pour-over provisions for the additional funding of such trusts, there may be a conflict of interest that results in an attempted disqualification of Jean as the Executor.

Similarly, if Jean were found guilty of felonious elder abuse, that might also be utilized as a basis for her disqualification as a fiduciary of the estate, particularly if she is not the sole beneficiary.

If the will directs the Executor to bury Kasem at Forest Lawn in Glendale, California, and he has instead been cremated in Montreal, that would be a violation of the Testator’s wishes. It remains to be seen what happened to Casey Kasem’s body and what the will actually says.

**“When he shall die,  
Take him and cut him out in little stars,  
And he will make the face of heaven so fine  
That all the world will be in love with night  
And pay no worship to the garish sun.”**

—William Shakespeare, *Romeo and Juliet*

### ***Where Things Went Wrong***

Ultimately, there is no amount of planning that can prevent a previously rational fiduciary or spouse from implementing irrational plans to thwart visitation by other family members. Revisiting existing documents periodically may help identify potential family conflicts or fiduciaries who are no longer suitable for their roles.

It can be anticipated to some degree that a second spouse may want to isolate a spouse from children from a previous marriage to prevent the spouse from changing a will or giving away assets. Establishing clear estate plans with objective fiduciaries and utilizing irrevocable trusts can limit such concerns, though such usage did not improve relations for the Kasem family.

Recent legislation introduced in California with an effective date of January 1, 2014, addresses the mechanics of controlling visitation. California Assembly Bill 937 requires a Conservator to obtain a court order to be able to control visitation, phone calls, and mail of a Conservatee.

Another bill directly inspired by the Casey Kasem saga, and several other high-profile cases, is now under consideration. AB 2034 is now before the California Senate Appropriations Committee. The bill would require Conservators to notify adult children of a Conservatee when their family member has been hospitalized or has died. The bill also would provide a procedure for adult children of infirm patients to petition the court for visitation with their parents.

### ***New York’s 164% Estate Tax***

New York has an estate tax rate of 16% that, prior to April 1, 2014, applied to estates exceeding an exemption amount of \$1 million. For decedents dying on or after April 1, 2014, the

exemption amount has risen to \$2,062,500, more than double. And the exemption will continue to rise until it is phased in fully with the Federal exemption level, which is currently at \$5.35 million.

But there is a catch. Estates that exceed the exemption amount by 5% will be fully taxed at the top rate. The New York State Society of CPAs recently wrote a comment letter to the New York legislature in which they posited that in 2017 and 2018, when the exemption level is \$5.25 million, an estate with 5% more, i.e., \$5.52 million, would be subject to tax on the entire estate.

In fact, there would be an estate tax of \$430,050 on what is essentially \$262,500 more than the exemption amount. The CPAs concluded that the effective estate tax rate would therefore be 164%.

## Slayers Suing Victims

Slayer statutes bar murderers from inheriting from their victims in most jurisdictions. Yet an exception to this rule recently arose. Joshua Hoge killed his mother and his brother in 1999 but was found not guilty by reason of insanity. The Hoge family recovered \$800,000 from a lawsuit against a clinic that failed to provide Hoge with antipsychotic medication. Hoge now seeks those funds.

This case has been remanded for additional consideration. It is not, however, the only case in which difficult reasoning is being applied. In a Utah case, Susan Powell was missing and foul play was suspected, but her husband, Josh Powell, was not convicted and moved away with his two sons. A few years later, Josh Powell killed his two sons and himself. He was suspected of killing his wife, but no body or crime scene was discovered.

Shall Powell inherit insurance proceeds from his wife's estate? Who will inherit from his estate, his parents or the parent of Susan Powell? [A follow-up to these and other cases will be provided in a future issue.]

## The Mark of Duke

At first blush, a lawsuit against Duke University brought by the heirs of legendary actor John Wayne via John Wayne Enterprises over the use of the nickname "Duke" on liquor products might seem ill advised. After all, the University is named after real people named Duke, and they had the name first, while John Wayne is only

called "Duke" as a nickname that was derived from his childhood dog's name.

But there is more going on here than meets the eye. To begin with, John Wayne Enterprises, which is headed by John Wayne's son, is not trying to stop Duke University from utilizing the name Duke as it has for more than 100 years.

Wayne's son wants to trademark a bourbon bearing his father's nickname, signature, and an image of a shell casing. But the Wayne merchandizing effort correctly anticipated Duke University's opposition and brought them to court to cut to the chase.



John Wayne Enterprises previously clashed with Duke University over the use of "Duke" on a John Wayne-themed restaurant, as well as celebrity licensing services. This time around, the use of "Duke" has been combined with images of John Wayne, his signature, and guns to

make it unmistakable which Duke is selling bourbon.

"Duke University does not own the word 'Duke' in all contexts and purposes," states the complaint. For its part, Duke University maintains its standard position that any use of the word Duke would confuse the public and tarnish its image.

## EZ Soft Will

A Florida resident utilized an EZ Soft Will to devise every separate asset in her estate but failed to address after-acquired property and residuary property. The Supreme Court of Florida recently ruled upon this estate in *Aldrich v. Basile*.

Ann Aldrich used the EZ Soft Will to leave her assets to her sister. When she was predeceased by her sister, she then hand-wrote a codicil to the will that named her brother as the beneficiary. But the codicil was not drafted in compliance with the standards required of wills in Florida and was deemed invalid.

Ms. Aldrich was bequeathed her sister's assets, but her own will failed to name a residuary beneficiary to receive those assets, and the codicil she had intended to create was not valid. As a result, the assets she inherited were distributed via intestacy. The Court observed that these compounded errors could have been avoided by retaining an attorney.

"Penny wise and pound foolish," concluded the Court.

**I want to believe we are  
unaware of God's eternal  
recompense and sadness. That we  
cannot see His truth. That that which  
is born still lives and cannot be buried  
in the cold earth. But only waits  
to be born again at God's behest...  
where in ancient starlight  
we lay in repose.**

— Agent Fox Mulder, *X Files*