Sweet & Maier , S.C.

Inns of Court Building
114 N. Church St.
PO Box 318
Elkhorn, WI 53121
262-723-5480
www.wisclaw.com

What's Inside

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Legal Bytes

THE NAMING OF O'HARE AIRPORT

A real life story of Al Capone's attorney, murder, corruption, redemption, and bravery above and beyond the call of duty

By John L. Maier

Even though O'Hare Airport did not receive its current name until 1949, the tale of how the name came to be began during the late 1920's, when Al Capone virtually ran Chicago. Capone wasn't famous for anything heroic. He was notorious for involving the Windy City in everything from bootlegged booze and prostitution to murder.

Capone had a lawyer and business partner nicknamed "Easy Eddie". This is where our story starts. Easy Eddie was Capone's lawyer, partner and business manager, for a good reason. Eddie was very good! In fact, Eddie's skills, and legal maneuvering, kept Big Al out of jail for a long time, and made him rich as well. Eddie was particularly adept at running the horse and dog track operations in Chicago that he and Al were partners in.

To show his appreciation, Capone paid him very well. Not only was the money big, but also, Eddie got special dividends. For instance, he and his family occupied a fenced-in mansion with live-in help and all of the conveniences of the day. The estate was so large that it filled an entire Chicago city block.

Eddie lived the high life of the Chicago mob and gave little consideration to the atrocities that went on around him. Eddie did have one soft spot, however. He had a son that he loved dearly. Eddie saw to it that his young son had clothes, cars, and a good education. Nothing was withheld. Price was no object. And, despite his involvement with organized crime, Eddie even tried to teach him right from wrong. Eddie wanted his son to be a better man that he was. Yet, with all his wealth and influence, there were two things he couldn't give his son – he couldn't pass on a good name, and he hadn't been a good role model.

One day, Easy Eddie reached a difficult decision. He decided to make a "sea change" in his life, and begin to rectify some of the wrongs he had done. He went to the authorities, became an informant for the Internal Revenue Service, and began to tell the truth about Al "Scarface" Capone. Some say that he wanted to clean up his tarnished name, and offer his son some semblance of integrity. Others say it was to save his own neck. In reality, it was probably a bit of both. One thing was for sure, though -- to accomplish having Big Al convicted, Eddie would have to personally testify against The Mob, and he knew that the cost would be great!

So, he testified. And, according to Frank J. Wilson, the Treasury Department investigator who worked on the case (and later Chief of the US Secret Service between 1937 and 1946): "On the inside of the gang, I had one of the best undercover men I have ever known." For it was Easy Eddie who helped break the code used in the ledgers by Capone bookkeepers. And, at the start of Capone's trial in the court of Judge James Wilkerson, it was Easy Eddie who tipped off the government to the fact that Capone and his henchmen had "fixed" the jury. Thus alerted, Judge Wilkerson switched juries with another federal trial before the Capone trial began. For those of us movie buffs, this is the very incident depicted on film in the 1987 movie *The Untouchables,* starring Kevin Costner and Sean Connery. [Incidentally, a great film if you haven't seen it.]

Stripped of the protection he thought he had bought by bribing the jury, Capone was found guilty, and sent to prison in 1933.

On November 8, 1939, just as Al Capone was getting ready for early release from Alcatraz prison, Easy Eddie's life ended in a blaze of gunfire on a lonely Chicago street. He was only 46. Soon after he left his office at Sportsman's Park racetrack in Cicero, and drove away in his black Lincoln Zephyr coupe, at the intersection of Ogden and Rockwell, two shotgun-wielding gunmen drove alongside and fired a volley of big game slugs. Easy Eddie died instantly, his car crashing into a roadside post, while the killers continued east on Ogden. No arrests were ever made.

Eddie was dead, but in his eyes, he had given his son the greatest gift he had to offer, at the greatest price he could ever pay.

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Some reports say that when Eddie's body was examined, police removed a rosary, a crucifix, a religious medallion, and a poem clipped from a magazine, from his pockets. The poem read:

> *The clock of life is wound but once, and no man has the power to tell just when the hands will stop, at late or early hour. Now is the only time you own. Live, love, toil with a will. Place no faith in time. For the clock may soon be still.*

But wait! Easy Eddie died in 1939, and it is still ten years prior to the renaming of O'Hare. So, our tale continues, on into the dark days of global war.

World War II produced many heroes. One such man was Lieutenant Commander Butch O'Hare. He was a fighter pilot assigned to the aircraft carrier Lexington in the South Pacific. On February 20, 1942, his ship had penetrated enemy waters and had been repeatedly attacked by enemy aircraft. Late in the day, the entire squadron had been sent on missions other than the two Navy Wildcats piloted by Butch and his wingman. Suddenly, the Lexington's radar picked up a formation of enemy planes approaching. The Japanese attack force was completely unopposed. As the Lexington's only protection, Butch O'Hare, and his wingman, Duff Dufilho, launched, raced eastward, and spotted nine Mitsubishi G4M "Betty" bombers. Just as he prepared for the attack, Difilho's guns jammed, and wouldn't fire, leaving only O'Hare to protect the carrier.

There was only one thing to do. Butch must attack, and somehow divert them from his ship and the rest of the fleet. Laying aside all thoughts of personal safely, he dove into the formation of Japanese planes. Wing-mounted 50 caliber's blazed as he charged in, attacking one surprised enemy plane and then another. Butch wove in and out of the now broken formation, and fired at as many planes as possible until all his ammunition was finally spent. Undaunted, he continued the assault. He dove at the planes, trying to clip a wing or tail in hopes of damaging as many enemy planes as possible and rendering them unfit to fly.

Finally, the exasperated Japanese squadron took off in another direction. Deeply relieved, Butch O'Hare and his tattered fighter limped back to the carrier. Upon arrival, he reported in and related the event surrounding his return. The film from the gun camera mounted on his plane told the tale. It showed the extent of Butch's daring attempt to protect his ship. He had, in fact, destroyed five enemy aircraft, and damaged a sixth.

By shooting down five bombers, Butch became the Navy's first Ace of W.W. II, and the first Naval Aviator to win the Congressional Medal of Honor. The Medal of Honor citation reads, in part: "For conspicuous gallantry and intrepidity in aerial combat, at grave risk of his life above and beyond the call of duty. . . Having lost the assistance of his teammates, Lieutenant O'Hare interposed his fighter between his ship and an advancing formation of 9 twin-engine heavy bombers. Without hesitation, alone and unaided, he repeatedly attacked the enemy formation, at close range and in the face of intense combined machine gun and cannon fire . . . As a result of his gallant action -- one of the most daring, if not the most daring, single action in the history of combat aviation -- he undoubtedly saved his carrier . . ."

Sadly, a year and a half later, on the night of November 26, 1943, and during the first-ever Navy nighttime fighter attack from an aircraft carrier, Butch was killed in aerial combat. It was a mission he had characteristically volunteered to lead, and for which he was awarded the Navy Cross (Posthumously). In part, the Navy Cross citation, reads: "When warnings were received of the approach of a large force of Japanese torpedo bombers, Lt. Commander O'Hare volunteered to lead a fighter section of aircraft from his carrier, the first time such a mission had been attempted at night, in order to intercept the attackers. He fearlessly led his three-plane group into combat against a large formation of hostile aircraft and assisted in shooting down two Japanese airplanes and dispersed the remainder . . . He gallantly gave his life for his country." When he died, Butch O'Hare was 29, and left a wife (Rita) and baby daughter (Kathleen).

His home town would not allow the memory of this WW II hero to fade, and on September 19, 1949, O'Hare International Airport (formerly known as Orchard Depot Airport) received its new name, in tribute to the courage of this great man.

So, the next time you find yourself at O'Hare, give some thought to visiting Butch's memorial, which includes his statue, and his Medal of Honor. It's permanently located between Terminals 1 and 2. A F4F Wildcat, similar to the one flown by Butch, was restored, and is also currently on display.

So what do these two men – the attorney known as Easy Eddie, and the Naval hero Butch O'Hare -- have to do with each other? The answer is that Butch O'Hare was Easy Eddie's son.

And now, as Paul Harvey says: You know the rest of the story!

DO IT YOURSELF?
WHERE OUR CLIENTS GO WRONG WITH PLANNING THEIR OWN ESTATES

When it comes to "do it yourself" as estate and business planning attorneys, we often find that what our clients think is "a simple solution" often turns out to cause the biggest problem for their estates. The type of mistakes we see usually involve title to assets, and ways of holding property, that our clients feel will serve to avoid probate. Here are some of the most widely-committed mistakes that can lead to unintended consequences.

1. Converting financial accounts to joint ownership. In this scenario, most often an elderly parent will decide to have one or more financial accounts (such as a bank account or mutual fund) held jointly with an adult child. But, the creation of the jointly-held account often results in problems. Since the jointly-held account is subject to the claims of creditors of either co-owner (you or your child's), your assets could end up in someone else's hands if your adult child divorces, loses a lawsuit, or runs up big debts. Also, it unfortunately isn't unusual for adult children to start using such joint accounts to fund their own lifestyles. Once a person is listed as a joint tenant, regardless of whether they ever put money into the account, they could empty it out completely if they wanted to, without permission of the person who actually worked for the funds, and deposited them to the account.

2. Naming only one child beneficiary as a perceived convenience. Here, the parent decides to "keep things simple" by naming only one adult child as beneficiary of life insurance or a bank account, including an IRA. The parent's intent, which often was expressed to the children before the parent died, is that the child who is named as beneficiary will use it to pay expenses, such as their funeral expenses and final medical bills, and then "split" the account or insurance evenly with the other children, thus making it "simple" and easy to administer. But "the law" doesn't necessarily allow this to be as "simple" as it sounds. Once one child takes title to the property, the asset becomes subject to the claims of any of his or her creditors. So, you don't want to do this with anyone who might have credit problems. Also, there are likely to be tax consequences if that child does split the property with the other children. Finally, the child has no legal obligation either to pay bills, including the funeral bill, or to share the property with the others.

3. Failure to name a beneficiary, or to update the designated beneficiary. Failing to name a beneficiary for an IRA or other retirement plan means the estate will be treated as the beneficiary. That eliminates the potential for having a "stretch" IRA in which tax deferral can be maximized over the life expectancy of a designated beneficiary. Instead, the entire account must be distributed and subject to income taxes within five years. Failing to name a beneficiary might also mean that an asset that normally would avoid probate must go through the time and expense of a probate process, and be distributed according to the terms of either the will or state law. For these, and many other, reasons, you need to keep beneficiary designations up to date. Too many people select beneficiaries when they open an account or buy a policy and never review the decision after marriages, divorces, deaths, and other events.

4. Not naming contingent beneficiaries. The contingent beneficiary receives the property when the primary beneficiary already passed away or declines the property. When there isn't a contingent beneficiary, then most of the time the consequences are the same as if no beneficiary were named. But sometimes state law or the rules of the account custodian might dictate a strange result. Don't leave it to chance.

5. Naming trusts as IRA beneficiaries. We do not often recommend that a Trust be named beneficiary of a client's IRA. This is because in most cases, when a trust is named IRA beneficiary, required distributions from the IRA are accelerated. The ability to "stretch" out the distributions, and maximize tax deferral amongst the family beneficiaries is lost. If a Trust is to be used, a carefully drafted document is required. Not just as an "easy out".

6. Naming multiple co-beneficiaries to inherit assets as co-owners. Too often this strategy leads to unintended problems. Often beneficiaries can't agree on how to manage the property or how to split it. It can be a major problem with real estate, because they all have to agree on everything. If they agree to sell, then they must agree on a broker, the offering price, and how to respond to each offer. They also might have to contribute equally to property taxes and other expenses until the property is sold. A better structure is to split the property now or allow the children to benefit equally from the property but have one person manage it or handle the sale. For example, the property can be inherited by a trust or an LLC. The children receive all the income and gains. But only the trustee or the managing member of the LLC makes decisions about the property. That person can be one of the children or it can be an independent professional.

7. Naming an inappropriate beneficiary. This happens more than you would expect. For example, a minor should not be named the direct beneficiary of property or life insurance. If he or she is, then the child will receive full title and control of the property upon turning 18. Rather than have that happen, when minor children are involved, you need to consider setting up a trust that manages the assets and distributes income and principal either on a schedule you set up, or at the trustee's discretion. In addition, you don't want to give property directly to someone who might waste it, including someone with a history of financial mismanagement, substance abuse, or gambling issues. Property also probably shouldn't be given directly to someone who might be divorced, subject to liability lawsuits, or is in a risky business. Such loved ones can benefit from the property if you have it managed and distributed under the terms of a trust. Finally, "special needs" individuals shouldn't receive property directly. This could disqualify them from receiving government benefits or other help. Instead, we can discuss how a special needs trust or supplemental needs trust could be used to benefit your loved ones.

All in all, whereas one might think that estate planning is just a matter of listing "who gets what" when you die, it is a lot more complicated than that. We are trained to help you get where you want to go, accomplish what you want for your loved ones, avoid the problem areas, and do it all as economically as we can manage.

For more information, see the expanded version available on our website: ***www.wisclaw.com***

TAX TIPS AND QUIPS

1. Is there any limitation on changing your tax withholding midyear?

Question: I already changed my tax withholding once this year, and now I want to change it again. Can I ?

Answer: Yes. There's no limit on the number of times you can change a Form W-4, *Employee's Withholding Allowance Certificate*, during the year. What's more, you have wide latitude to increase or decrease the withholding amount listed on your current W-4, although you technically can't exceed the number of allowances you're entitled to. Go through the work sheet. There's no expiration date on the form either, so your tax withholding remains in effect until you change it, if ever.

2. Are there any rules when making loans to family members?

Question: Our son is just getting started in business, and my wife and I would like to help him out by loaning him the money he needs to buy a machine he needs. Can we lend him the money without charging interest? We don't need it.

Answer: Yes, you can loan him the money, but you must follow the tax rules for intrafamily loans. Essentially, that means if the amount of the loan exceeds $10,000, you have to charge interest at a reasonable rate. If you don't charge any interest, or the interest rate is a below-market rate, the IRS may "impute" interest income to you. This is another way of saying that the IRS requires you report interest even though the payments are supposed to be all principal. This is a worst-case scenario because you're paying tax on "phantom interest income" that you never actually received. Families run into this problem as well, when parents want to help their kids by loaning money for their child's first home. The way to solve the problem is to charge an interest rate that at least equals the Applicable Federal Rate (AFR) on the loan. That rate will automatically be considered reasonable, and the IRS won't bother you. AFR rates are dependent on the term of the loan, and are published monthly. Just do a google search.

3. Can one deduct expenses associated with serving on a non-profit board?

Question: I serve on the board of directors for our local food pantry. Can I deduct my expenses?

Answer: Yes. You're entitled to claim a charitable deduction for your out-of-pocket expenses while serving on the board (assuming the organization qualifies as a tax-exempt entity). Typically, this might include the cost of travel, meals and lodging; special uniforms; and supplies such as stamps and stationary. However, you can't deduct the value of the services you perform as a board member (such as the value of your time converted to wages). In addition, no deduction is allowed for amounts reimbursed by the charity. And, remember that the deductions are subject to all the usual limits for charitable expenses (e.g., deductions for certain high-income taxpayers may be reduced).

WHEN IS A GIFT TAX RETURN REQUIRED?

Please don't think that if you make a tax free gift, it automatically means that a gift tax return is not required. In 2015 everyone can make gifts up to $14,000 in value to as many different individuals as they wanted. So, you could make gifts of cash, personal property or real estate, in the amount of $14,000 without needing to file a return—BUT, a gift tax return is generally required if your gift is in excess of that amount, say for example, $20,000. Therefore, although there will be no tax to pay, a return would still be due. The IRS is always looking for ways to collect money, and if a required return is not filed, the IRS could assess a penalty. The IRS runs programs to find situations in which returns should have been filed, but weren't. For example, if someone made a gift of real estate, and identified the conveyance as a "gift" when recording the deed, the IRS can cross-check to see if a gift tax return was filed. If it wasn't , the IRS will send letters out reminding the involved parties that a return is required. So, be prudent, and file a Form 709—it is pretty easy to do and available (along with instructions) free from your government at www.irs.gov. The return is due by April 15th of the following year (same as your income tax return) and if you need more help, just give us a call!

Don't get your tinsel in a tangle....
Call Sweet & Maier; we'll straighten it out!

SHOULD YOUR BUSINESS CHANGE TO S-CORP STATUS?

If you are the owner [shareholder] of a corporation, at year end, you, your accountant, and your attorney might want to spend some time figuring out if a switch makes sense for your business. Under the current federal income tax rate structure, some owners of incorporated businesses are better off NOT electing Sub S status, but others would benefit. It's all in the numbers.

What are the main attractions? The shareholders of an S corporation benefit from the same protection from personal liability as do shareholders of a C corporation. So a corporate creditor can't go after your private assets to satisfy a debt of the corporation. But with an S corporation, taxable income and loss, and tax credits, are passed through to the S corporation shareholders, just like partnerships. Thus, with S status in place, there is no "double taxation" at both the corporate and shareholder levels -- like there could be with a regular C corporation.

S corporation shareholders can be employees of the business, draw salaries, and may also receive dividends from the corporation as well as other distributions that are tax-free to the extent of their investment in the corporation. And S corp. stock can be transferred without triggering any adverse tax consequences, as long as the transfer is to a qualifying shareholder (individual and certain types of trusts count as qualifying shareholders).

So - it sounds like switching to S corporation status is a real no-brainer, right? ***Wrong!***

What's the deal? The answer is that for years, most individual shareholders were taxed at a lower federal rate than the maximum corporate rate. But the current top individual federal income tax rate of 39.6% is almost 5% higher than the top average corporate rate of 35%. Plus, tax reform calls to lower the corporate rate, which would create even more separation, are getting louder. Rep. Paul Ryan, now Speaker of the House, is putting corporate tax reform high on his agenda for 2016. This means that the tax rate differential might not be there to warrant the Sub S status -- you have to check your own situation, and that of any fellow shareholders.

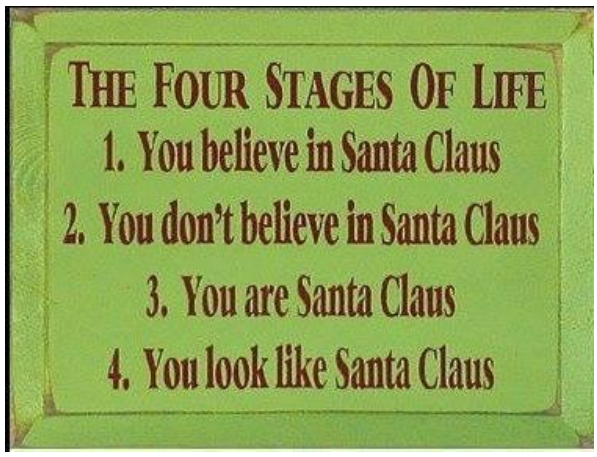
Finally, consider these potential drawbacks:

° An S corporation can have only one class of stock (although it may have both voting and nonvoting shares).

° Because amounts distributed to a shareholder can be classified as dividends or salary, the IRS often scrutinizes payments to ensure compensation is reasonable.

° Due to the one-class-of-stock restriction, an S corporation can't allocate a disproportionate share of tax losses or taxable income to a particular shareholder or group of shareholders.

An S corp. election is made on Form 2553, *Election by a Small Business Corporation*. The election must be made by the 15th day of the third month of the current tax year. In other words, a calendar-year corporation has until March 15, 2016, to decide whether to make the election for the 2016 tax year, or, conversely, revoke the election if that would be better.



Dear Clients:

In warm appreciation of our association, we extend our best wishes for a Merry Christmas and a New Year filled with Peace, Joy and Success.

John, Rob, Deb, Mimi, Judy and Terri