

# ASHES TO ASHES & DUST TO DUST IS COMPLEX

Jack Davidson

The primary focus of most estate plans is what happens when we leave? How do we save taxes? How do we provide for others? How to plan if our journey might include a nursing home? And our final journey when we transition from ashes to ashes and dust to dust.



As a youth, I encountered caskets and graveyards. Today the transition has changed. In 1960, only 3.6% of Americans chose cremation. The current rate is projected at 55.8%. According to the National Funeral Directors Association, the projected cremation rate



will continue to rise in the coming years to 70.6% in 2030. There are several reasons why cremation has become popular, such as economic and demographic factors, but I suspect that the speed of decomposition is probably

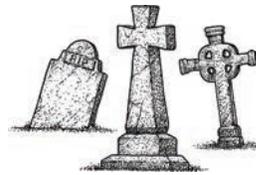
not a significant factor. Depending on the type of the casket...wood composition such as oak versus cherry would be one of the factors...the journey to ashes would take no more than 100 years (teeth being the exception). The graves, and what is left of us, for those who choose the grave and the casket, may be attractive simply because we will be enshrined in perpetuity. Our grave site is permanent, and our stone will name us, and perhaps nearby, our ancestors and our descendants.

Legally, can we embrace the concept of perpetuity? When I first came upon the common law Rule Against Perpetuity (the “Rule”), I simply focused on trusts. The Rule prevents a trust from holding property that would vest beyond 21 years after the “measuring lives” living at the time of creation of the interest. Most states still

embrace this rule but many of them have adjusted the rule. At least 27 states allow the rule to be violated if the trust terminates in 90 years.

At the time when I first focused on the rule and the popularity of Generation Skipping Trusts designed to go for several generations, I encountered creative lawyers who would add the following clause: “In no event shall the trust continue beyond the expiration of 21 years from the death of the last survivor of the descendants of Joseph P. Kennedy Sr., the late Ambassador to the Court of St. James.” The Kennedy family of 9 children had many descendants at the time the clause was inserted in many documents. Although not beneficiaries, they were the measuring lives.

Vermont has embraced the rule in its earliest version with one exception. Vermont allows trusts in perpetuity for the benefit of cemeteries. Gravesites need attention, and managing the costs over multiple generations is embraced in Vermont. Under Vermont law, a town becomes responsible for a cemetery if a church or volunteers, with time or money, are unable to maintain the property.



The headstone may be our effort not to be forgotten so the next generations know those who went before. Vermont headstones may enshrine a few, in perpetuity, that may enlighten us on the behavior of others. For example, James Fisk’s headstone in the Prospect Hill Cemetery in Brattleboro may reveal to us his chosen lifestyle and his preferred relationships.



*“James Fisk, Jr. (April 1, 1835 – January 7, 1872) – known variously as “Big Jim”, “Diamond Jim”, and “Jubilee Jim” – was an American stockbroker and corporate executive who has been referred to as one of the “robber barons” of the Gilded Age.*

*Though Fisk was admired by the working class of New York and the Erie Railroad, he achieved much ill-fame for his role in Black Friday in 1869, where he and his partner Jay Gould befriended the unsuspecting President Ulysses S. Grant in an attempt to use the President’s good name in a scheme to corner the gold market in New York City. Several years later Fisk was murdered by a disgruntled business associate.”<sup>1</sup>*

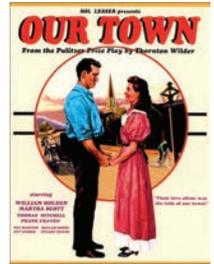
Ellsworth Bunker’s headstone in the Dummerston Center Cemetery suggested a less complex world view.



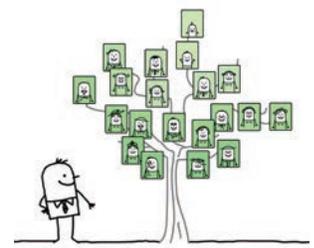
Ellsworth F. Bunker (May 11, 1894 – September 27, 1984) was an American businessman and diplomat (including being the ambassador to Argentina, Italy, India, Nepal and South Vietnam). As of

2018, Bunker is one of two people to receive the Presidential Medal of Freedom twice.

In 1977, I moved to a home in front of the Dummerston Center Cemetery. Oddly, I found it comforting. I had great affection for the movie *Our Town* based on Thornton Wilder’s 1938 metatheatrical three-act play about an American small town, Grover’s Corners, portraying the everyday lives of its citizens between 1901 - 1913. One theater production used the back drop of the Dummerston Center Cemetery. So, now I have headstones and a gravesite and conflict with my spouse. She wants cremation for herself and I want to stay intact in a cherry casket. She has threatened that if I go first, she will decide whether to accelerate the process of ashes to ashes by being housed in a very small container. At least I will have a stone, perhaps in perpetuity.



Estate planning for the final stages may be difficult, and may often involve family members. Graves and headstones versus cremation may be less of a challenge



than selecting funeral homes and/or ceremonial sites. For many, it is important for family stories to invigorate a ceremony so that family members are not lost and forgotten. Fortunately, we can now write our history where it can be found many generations later, if we pay attention to where it is stored, either in paper form or digital storage.

Ceremonies often inspire us and inspirations sometimes come from well-written scripts about our lost ones. Sometimes the happenstance of talking with friends and relatives can unexpectedly inspire us as well.

<sup>1</sup> Extracted from Wikipedia