

NYC Elder Abuse Conference — Philip C. Marshall — June 15, 2016

Sustain

As my grandmother, Brooke Astor, now rests in peace, I could have resumed my life as before.

For years my battle for my grandmother, and my battle against my father consumed my life—and consumed our family.

In 2009, after a six-month criminal trial and conviction of my father, a friend said, “You must be glad that’s all behind you.”

But, I realize: When elder abuse hits home, it hurts.

I realize: While my grandmother was emotionally and financially abused...and isolated, her case is far from isolated; there are millions of victims, today, suffering similar injury.

I realize: If my grandmother, Brooke Astor, can be victimized by her own son, elder abuse does not discriminate; any elder is vulnerable.

I realize: The aftermath of elder abuse far exceeds any dollar amount. Most costs are irretrievable; some, compounded.

And I realize: To be complacent about elder justice is to be complicit in elder abuse.

In fact, our national negligence is a proximate cause of elder abuse—and an injury to our mores...and morality.

Our silence protects perpetrators, not their victims, our loved ones—or, on another day, ourselves.

When our elders lose their sight, it's natural;
when we turn a blind eye to their plight, it's negligent.

When our elders lose their hearing, it's natural;
when we are deaf to their cries for help, it's negligent.

When our elders lose their voice, it's natural;
when we choose not to voice our concerns, it's negligent.

And when our elder's capacity is reduced, it's natural;
when their assets are reduced, without consent, it's criminal.

Together

Over a decade ago, I was filled with angst, frustration, and a sense of impotence as I watched my grandmother's world, which had spanned the globe and a century, become so diminished and compromised by her son, my father.

I did not know what to do or who to turn to.

Yet, when bad things happen, good people get together.

In helping my fragile, abused grandmother I was not alone.

Her abuse galvanized a collective response by family, friends, staff, and caregivers all united by compassion and a common cause—individuals-in-sum with a great mixed skill-set. The strength of our diversity contributed much to our success.

I later learned we were an informal “multi-disciplinary team.” Yet there was nothing “informal” about the stress we endured.

Staff and caregivers could have walked away any day—but, with affirmation through action, they stood firm and protected my grandmother. Yet, some saviors endured secondary trauma or vicarious victimization.

I filed a guardianship petition to save my grandmother *and* to help those who were helping her.

Some of you are here today, providing me an opportunity to thank you publically for the first time—in New York. To you, I am forever grateful. ≈

In filing my petition, I hoped that this matter would be quietly settled. Yet this was not just a family affair, nor was it “civil”—it was criminal.

If I could do it over again, I would call the DA—right away.

Philanthropy

Before dying in 1959, Vincent Astor, my grandmother's husband, established the Vincent Astor Foundation for the “alleviation of human suffering”.

My grandmother, as president, furthered the foundation's mission by addressing the “quality of life”—achieved through engaged philanthropy decades before the practice was mainstream.

Well in to her 90s, she was center stage as “New York’s First Lady” and a “humanist aristocrat with a generous heart”.

In 1998, at age 96, she was awarded the Presidential Medal of Freedom by President Bill Clinton in recognition of her achievements.

By 100, she had disappeared from the limelight.

This is until July 2006 when the content of my guardianship petition was discovered by the press—leading to front-page headlines reading “Disaster for Mrs Astor.”

My grandmother would never want to be known as one of America’s most famous cases of elder abuse.

Nor did she, while in the throes of dementia, choose to be victimized; to be deprived, manipulated, and robbed—all as part of a calculated “scheme to defraud,” as characterized by the Manhattan District Attorney.

Yet, the sad circumstances surrounding my grandmother have informed a timely, and timeless, cause in elder justice.

At 104, she unknowingly entered her “encore career” as an advocate for elder Americans, including seniors two generations younger.

Just as her timing was critical with her intentional, quality-of-life philanthropy so, now, in her advanced age, she unintentionally advanced the “quality of life at the end of life.”

One of the greatest impediments to elder justice is ageism.

By example, my grandmother did so much to combat proactively this social impediment through the way she took on each day, year after year, decade after decade—from when she first headed the foundation in 1959 at age 57, to closing the foundation in 1997, when she was 95.

It is ironic, and so sad, that my grandmother’s ageless attitude did not protect her from abuse.

Before the Rubicon

In her later years, my grandmother was increasingly isolated: Close friends were denied visits; longtime, caring staff fired—fired because of their efforts to help and protect their boss, my grandmother. Eventually she only went out to visit her doctor.

Isolated, too, were efforts to help my grandmother.

But out of shared concern, and facing incredible obstacles, we were able to unite. And act.

I am but one of dozens of people who stood up for my grandmother in her last years—and then who took the stand, in criminal court, for the greater cause of elder justice.

At the outset, all we dreamed and prayed for was to be able to respect my grandmother's needs and wishes.

But, once we took action, it was clear that we were addressing a much greater issue.

Red Flags

After her hundredth birthday, I grew increasingly concerned for my grandmother. I began speaking with her supportive staff and caregivers.

Here are but two—of too many—incidents.

A transaction in early 2002 raised red flags. I heard that while my father was cutting back on my grandmother's expenses he had sold her favorite painting—one that she had bequeathed to the Metropolitan Museum of Art.

The sale realized \$10 million, two of which my father kept as a "commission."

On hearing of the sale, my grandmother, who had been led to believe she was running out of money, asked, "Now, can I buy dresses?"

My grandmother went from the limelight, center stage as lead actor in her own life, to being "gaslighted," by her own son, who psychologically broke her down into believing she was going broke.

As perpetrators know, psychological manipulation by undue influence is so effective in further compromising seniors who have diminished capacity and lack testamentary capacity.

Undue influence can compromise their wellbeing—and their wishes.

In horror, I recognized this was happening to my grandmother, when she was most vulnerable and isolated.

Today, the Sumner Redstone case, so public, reminds us of what happens in private to seniors each day. ≈

My grandmother loved the peace and nature of her country house, where she wished to spend her final days.

In early 2005, my father closed the house and fired my grandmother's most loyal staff member, her butler, Chris Ely. [reference photograph]

Later, back in her New York apartment, caregivers showed my grandmother a photograph of Chris. She thought he must have died because she couldn't understand why else he was gone. ≈

In mid 2005, only through the pressure of my grandmother's two closest friends, my father reluctantly agreed to reopen her country house.

I barely knew these friends at the time, but I was so grateful when I heard about their intervention.

But, by fall, my grandmother was back in New York City.

In early 2006, I spoke with more staff and caregivers. After hearing many new, independent accounts I became much more concerned—concerned not only about my grandmother's compromised lifestyle; I was now concerned for her wellbeing—and for her life.

If my father had simply "taken" money and property of hers, but had provided for my grandmother, this story might have played out differently.

In fact, given her means, it would have been easy to provide what my grandmother wished for at the end of her life.

As we learned later: support for a year would have cost much less than my father's legal fees for a week in criminal court.

But to witness my father's greed, at my grandmother's expense—at the cost of her psychological and physical wellbeing—was something none of us could bear.

I was still not sure what to do. I sought advice from several trusted people including a sage high-school friend whose own family had been through similar circumstances.

He advised, "Philip, follow your heart first; then follow the money."

Our greatest concern was my grandmother's psychological abuse, one of the most difficult forms of elder abuse to give credence to...much less document and assess.

So, in large part, the fallback was the financials.

But...I now know, financials are at the forefront of our campaign for elder justice.

The financial industry can help elders branch banks and with fiduciaries, and with big-data analytics to help detect, arrest, and even prevent abuse.

Much is being achieved in this arena. As financial capital of the country, New York is taking a leadership role...

...Washington, too, with model regulation, legislation, interagency guidance, and resources.

I applaud the efforts of many organizations, including the Consumer Financial Protection Bureau, with Nora Eisenhower with us today.

Just as CFBP so protects our vulnerable citizens, we need to help protect CFBP against those who wish to reduce or abolish its critical work. ≈

Even more can be accomplished when we intentionally couple financial management with health care, to create “whealthcare,” and address wealth, health—and self.

This subject was recently explored at a World Economic Forum conference co-sponsored and hosted by the University of Pennsylvania—led by Derek Yach and Jason Karlawish, your 2013 keynote speaker.

In the arena of geriatric health care, one of our supporters today, The John A. Hartford Foundation has done so much—for decades. And now, under Terry Fulmer’s leadership, Hartford is launching its initiative to address and arrest “elder mistreatment.”

Guardianship

Since the late 70s I have been a teacher and practitioner in conservation—architectural conservation.

As you can imagine, the term “conservator” took on new meaning as I desperately sought to help my grandmother.

After much work, I finally connected with my grandmother’s two friends, Annette de la Renta and David Rockefeller, who had managed to have my father open up her country house the year before.

We met in May 2006 and decided we must act.

It became clear that I should file a petition for guardianship.

We considered the option to speak with my father. But we knew that while my father held power of attorney for his mother, my father’s wife held power over him.

We also knew that, if my father was altered, my grandmother's condition could be compromised—further.

Save a guardianship petition we had little recourse—for my father was using his power of attorney as both a weapon...and a shield.

In July, in Supreme Court in New York City, I filed a petition seeking guardianship for my grandmother. It was supported by affidavits from friends, staff, and caregivers.

Immediately, temporary guardians of both her person and property were appointed. Lifelong friend Annette de la Renta was appointed as guardian for my grandmother. JPMorgan Chase was appointed as guardian of my grandmother's assets.

The next week, we got my grandmother back to her country house to spend her last days as she would have wanted.

On a side note, it was repeatedly reported that I "sued" my father.

Unfortunately, this inaccurate portrayal of my petition has done little to inform the public of options available for themselves—specifically about the critical role guardianship may play. ≈

In my guardianship petition I stated that my father, with reference to his mother, "... has turned a blind eye to her, intentionally and repeatedly ignoring her health, safety, personal and household needs, while enriching himself with millions of dollars."

Immediately, my father lashed back at us—denying our accusations, misportraying our intentions, and intimidating us.

In October, after a three-month battle, and five days before our court date, a settlement was reached.

Temporary guardians were made permanent. My father and two lawyers renounced any right to be appointed fiduciaries in Surrogate's Court. ≈

My petition for guardianship helped save my grandmother and allow us to respect her wishes.

And guardianship will always play a critical role in helping other incapacitated seniors and disabled adults, especially those who have no other legal instruments or financial resources. This is why New York's community guardian programs are so important, especially when seniors can stay at home.

But guardianship needs reform...and guardians, who have so much to offer, must be included in other professionals' work, more—as I expressed in my keynote at the annual National Guardianship Association conference last year.

While guardianship should serve as the option of last resort, guardians can be some of the first at the table and can play a key role in maximizing self-determination and supporting an individual in making or participating in at least some decisions—that is, in “supported decision-making.”

Nationwide, efforts advance this cause. This includes the American Bar Association's new PRACTICAL tool. In this acronym, the “P” stands for “presume guardianship is not needed.” The tool suggests an array of supports to consider, first.

The Administration for Community Living has funded a National Resource Center on Supported Decision-Making, and recently held a ‘federal conversation’ about adult guardianship and less restrictive decision-making options, including supported decision-making.

As expressed by Kim Grier, past president of the National Guardianship Association, “Without advocating for supported decision making, we devalue the humanness, individuality, and self-determination of others—until the ‘others’ become ‘us.’”

Halcyon Days

Once awarded guardianship, we had achieved our goal.

Now back in the country, my grandmother was no longer fearful. Caregivers were coupled with fully coordinated medical care. Friends visited. Her rector came for communion weekly. She went outside...with her dogs.

Thanksgiving, which lived up to its name, provided a quiet time for *my* family to visit. Our children and my wife played guitar and sang harmonies.

Deep below her blanket of full dementia, we captured a twinkle in my grandmother's eyes.

These fall months turned out to be halcyon days in the eye of the storm.

Aftermath

In a December 2006 court decision, which largely addressed payment of legal fees, the guardianship judge authorized reimbursement of my fees for bringing the guardianship petition, stating, “Although this matter voluntarily settled before the hearing, I find the petitioner Philip Marshall was the prevailing party...”

Yet the judge also decided to award my father a portion of his legal fees, writing, “I make this ruling based on the conclusion of the court evaluator that the allegations in the petition regarding Mrs. Astor’s medical and dental care, and the other allegations of intentional elder abuse by the Marshalls, *were not substantiated.*” [italics added]

I believe the court evaluator’s report never connected the dots and decimal points.

It never made a connection between the allegations in the guardianship petition and an appendix to his report: a long list of financial dealings, totaling tens of millions of dollars, identified by the temporary guardian of the purse, JPMorgan Chase.

Notably, Chase’s discovery was limited...as the court had denied the bank’s motion seeking expanded powers to conduct wide-reaching discovery, with subpoena power.

Further, the Judge had ruled that “[w]hile the propriety of the transfers of money and property to Anthony and Charlene Marshall [my father’s wife] is a key subject of the guardianship proceeding, it is not the Bank’s role to prove or disprove any of the allegations of the Petition.”

Now, nor did it seem to be the court evaluator’s role—when he dismissed these “transfers” as having no bearing on the case.

Nonetheless, these transfers had directly affected our out-of-court settlement.

Guardianship was settled, and won, in large part due to these financial findings.

The court evaluator’s report opened the door wide to claims that there was no elder abuse.

This probably has much to do with the widely misunderstood definition of abuse.

“Astor son is cleared”, headlined *The New York Times*, which quoted my father’s lawyer saying, “This is a case that was given birth from allegations that were absolutely fictitious regarding Mr. Marshall’s care of his mother.”

On the dark December day of this decision, our Pyrrhic victory found us losing the greater war against elder abuse.

Was my grandmother’s guardianship to be elder justice’s *Plessey v Ferguson*?

Were we to repurpose the family’s dirty laundry as surrender flags, giving up on the greater cause in to which we had been so thrust?

Before guardianship, my grandmother was traumatized and in jeopardy. However she did not endure “double jeopardy” by being ‘revictimized’—only because she was not cognizant of the judge’s finding that, “elder abuse was not substantiated.”

In August 2007 my grandmother died at home, in peace, with grace and dignity, free from fear—and surrounded by loved ones.

Then, in Surrogate’s (in Westchester County), my father filed her 2002 will and two of three codicils—making changes that would give him control of millions of dollars.

Codicils

Early on, using his power of attorney, my father made large, irregular financial transactions from his mother’s accounts.

So emboldened by successful gain of such sums, my father escalated his insidious, serial exploitation, in secrecy, by having his mother sign three codicils that transferred almost one hundred million dollars to his control.

With mandated reporting by financial institutions, such egregious acts could have been “arrested” early on, protecting my grandmother from added loss and injury.

In my grandmother’s case three lawyers combined to create “a perfect storm,” coming in to her frail life in the winter of ’03-’04 , to execute three codicils that redistributed \$100 million of her bequests, directing them to my father’s control.

First, my grandmother’s long-standing lawyer and good “friend” who was head of trusts and estates for an internationally recognized firm.

This lawyer was planning to be co-executor of my grandmother’s estate—with New York providing 2% of the estate to each executor.

This lawyer took the highly unusual step of preparing a self-described “First and Final Codicil.”

This lawyer betrayed my grandmother’s trust and compromised her testamentary wishes.

Another lawyer, who my grandmother had never met before, but presumed to act in her best interest, executed a second codicil—then covered up his tracks to, at, and from, the signing. Multiple versions of his memo-to-file recording of the event suggest that while truth is eternal and absolute, lies are forever revised.

And last, a lawyer, Francis Morrissey, who, in the ’90s, had been suspended from practicing law.

This lawyer, who had known my father's wife for years, insinuated himself in to my grandmother's life and orchestrated much of this from the sidelines— while waiting for the residual in the form of fees as newly appointed co-executor and estate attorney.

This lawyer's suspect execution of a third codicil later served as a catalyst for involvement by the Manhattan District Attorney.

While my grandmother's will to *live* remained strong, her will to *give* had been completely compromised—four years after my father, in a letter to a geriatric neurologist, claimed she was “delusional.”

After the execution of these codicils, my grandmother was scared—becoming fearful of “men in suits.”

At night, she asked nurses to look under her bed for the, “man who wants to kill me.”

Was my grandmother's well being collateral damage? No. Her wellbeing was direct casualty of a war conducted in an effort to exploit her.

My grandmother had already provided for my father in her will. Before “amendment,” she bequeathed him over \$60 million in assets.

Cusp

Back in October, only days after the guardianship was settled, a criminal investigation was launched by the Manhattan District Attorney.

With such great care on lawyer #3's part to be at arm's length from dealings, it is ironic to think that his final act, the execution of the third codicil, was the first matter that prompted the DA to take action.

In December 2006, just as my father declared that he had been vindicated, the DA's office expanded its work, empanelled a grand jury, and issued subpoenas.

In November 2007, my father and the third lawyer were indicted.

In April 2009 the criminal trail began—and proceeded, for months.

Today, you now know much more about the guardianship case than the jury did, even after six months.

That's because all of the guardianship proceedings were barred from being introduced in criminal court.

For me, taking the stand was difficult. But not taking a stand, and not helping my grandmother, would have been more so.

Testifying against my father was very difficult.

But, more difficult, was having to recount the trauma imposed on my grandmother and those helping her—all the while not being able to tell my whole story to the jury.

The jury's verdict: My father was found guilty on 14 of the 15 counts against him.

After a spring and long, long summer of my father's trial and after heart-wrenching testimony, this was a very bittersweet harvest.

Yet, this harvest has so nourished the cause of elder justice.

We had advanced from tribulation to trial. From the tribulation of hearing the allegations in my petition for guardianship were "unsubstantiated," to a criminal trial that proved otherwise.

Even though much evidence was barred in the criminal court, the jury understood how elder abuse was used as a means to exploit and enrich in my father's scheme to defraud his mother.

Save one, all counts were upheld upon appeal.

And later, in Surrogates—whose proceedings had been put on hold through the efforts of the Attorney General—a settlement was reached that provided for charities (especially those with an emphasis on education) largely as my grandmother wished.

Here, if her wishes had not been met, New York teachers would have received nothing more than a lesson plan in how elder abuse can be used to exploit.

Act

I could have disregarded heart-wrenching accounts, and discounted calls for help from staff, caregivers, and friends.

I could have found false consolation in thinking my grandmother had "had a good life" and, in the throes of dementia, wasn't cognizant of her circumstances.

I could have maintained the fallacy that families should not air their dirty linen in public—even when financial assets are being "laundered," or stolen.

I could have been made complicit by the false prospect of "silence money" that would have increased my inheritance significantly.

I could have enabled my father by thinking “family first” and presume that my grandmother’s only child, only son—natural object of her affection—deserved all he sought.

But, I could never, ever live with any of these choices.

And I am so glad I chose to act.

Pre-serve

My profession, historic preservation, started out in response to the damage and destruction of our cultural resources; harm inflicted due to poor policies, practices, disinvestment—and a discount, sometimes until it is too late, of the ageless value of that which is old.

In 2014, before the annual conference of the National Center for Victims of Crime, and more recently in Albany with the NYS Office of Victim Services, I expressed the parallels between my profession and elder justice; both involve victims and address preservation of “elders” with such embodied worth.

Early on preservationists were good at saving sites and structures that were victim to neglect, abandonment, maltreatment, and inappropriate interventions. This work, which continues, is heroic, visible, and visceral.

Yet this work is reactive, not proactive and preventive—or engaging all stakeholders, which we now choose to embrace.

In the same way, in working with those who are vulnerable and victimized (like older adults) we realize that community concern and capacity are just as important as professional “restoration,” which is damage-control-after-the-fact—and which, for elder justice, does not address the full nature of strengths and vulnerability.

Damage-control, alone, is not acceptable. Older adults (and their circle of support) must be valued and protected *before* abuse occurs, not just after.

Now, we can strengthen our approach to “elder ecology”—working not for, but *with*, elders; *with* their circles of support; and *with* their communities.

In working with family, friends, and caregivers we provide support along the way—and encouragement to come forward when elder abuse is suspected.

Should abuse occur, when victim-centered response and healing are articulated, they guide our every step forward, hand in hand with elders, to address risk, resiliency, healing, and prevention.

Systems and sectors

Elder justice is in its infancy compared to other realms that define our social, legal, and moral obligations.

Here, elder justice can help *complete*, not compete with, other causes.

Social justice is not about *just* one cause or *just* another. It's inclusive and embracing, coming full circle to become whole, even holy—for society, and, here, for seniors.

We achieve “ageless equity,” when the scales of justice balance the promise *of* our rising generations with our promise *to* those upon whose shoulders they stand.

Elder abuse is a pervasive, profound, and systemic problem best addressed through systems-based solutions to understand better our universe of elder-justice with its constellations, the alignment of its shining stars, and the forces that keep them apart or draw them together...by the gravity of elder abuse.

Our systems-based solutions are both bottom up, starting with a person-centered approach...and top down, with leadership engaging all sectors in what Edwin Walker describes as a, “comprehensive national framework.”

Within this framework, metrics matter more now—to assess gaps, needs, opportunities, and formative assessment along the way.

Just as elder justice is infancy...so are big-data analytics, with both seeking to explore and enhance relationships—and their value in our complex life.

It's all about relationships: face-to-face and in our digital space. Analytics can strengthen our collective cognitive capacity to address elder abuse—while helping all sectors in society steward our wealth, health, and self.

With greater “cognitive capacity” and formative assessments, made possible by analytics, we can better build upon existing public and philanthropic resources to include more private investment, which was never imaginable when my grandmother held the helm at the Vincent Astor Foundation.

Today, private-sector impact investment (through social impact bonds and other vehicles) provide powerful, purpose-driven means to achieve transformation, while leveraging assets to gain robust returns—social and economic.

In Jean Case's words, impact investing is, “new ways to solve old problems”—here, elder problems.

This investment in a systems-based approach to elder justice includes our investment in communities, and their circles of support.

Elizabeth Podnieks, founder of World Elder Abuse Awareness Day, or “World Day,” noted, in a Webinar last Friday, “You can’t talk about networks without talking about social support.”

Beyond Brooke

My grandmother would never want to be remembered, only, as one of America’s most famous cases of elder abuse.

For, in such a context, victimization, “trims a life to fit the frame” (James Hillman)

But, here is my grandmother’s greatest legacy: that, as an elder for over four decades, she practiced, in New York City, philanthropy whose priceless essence is the “love of humanity.”

It is through the lens of humanity that we see elders, otherwise made invisible by our ageist attitude.

For, seniors are not the “problem,” they are part of our shared solution and resolution to address ageless issues and advance ageless equity.

With ageless equity, we work with elders, who become indivisible, not rendered invisible.

Global

By 2030 in the U.S. there will be over 70 million “shades of gray”; the world will have a billion, each one with its own hue, value, and chroma to color our world far beyond that provided by the polarizing perception of a black-and-white approach to “graying,” to individuals, and to age.

In recognition of World Elder Abuse Awareness Day, Assemblyman Cymbrowitz (Chairman, Aging Committee), emphasizes that, “Elder abuse is a problem that affects every community and cuts across all race, religion, culture and income lines.”

And so, our “global,” is our inclusive, perimeter protection and care of all elders—year round.

Thank you for inviting me to share my story and dreams.

Thank you, more, for all you do, every day—with elders.