

## **11th Annual Statewide Conference on Victim Notification (National Crime Victims' Rights Week)**

[NYS Sheriffs' Institute](#)

Keynote by Philip C. Marshall, [Beyond Brooke](#)

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### **Permission**

Today, reflecting on my grandmother's sad circumstances before I acted, I wonder how many trusted family, friends, neighbors, and professionals share a similar situation – yet do not know what to do or who to turn to.

Before I acted 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 my father.

With the help of her staff, one January evening (in 2006) I was able to gain access to my grandmother without alerting my father. I visited my grandmother for what I thought might be the last time. On my way out, visibly shaken, I embraced her attending nurse. We realized we embraced an opportunity, to talk – just as another nurse appeared for her shift.

With my grandmother asleep, we three spoke at length, shared sad stories, concern and support. This was the signal moment that spurred me to act.

So informed, emboldened and empowered, I gave myself permission to act.

This has led me to delve deeply in to “bystander intervention” (or “active bystandership”) and how its realization can be supported in the realm of “elder ecology” (my term): the human environment that defines our relationships, fosters justice, and supports our social compact between society and self – every day *with* elders.

### **Sustain**

As my grandmother 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.

Today, there are millions of elder-abuse victims suffering similar injury. One in ten are abused, one in five are exploited.

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

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

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

Our silence.....protects perpetrators, not their victims.

Today, victims of this crime may be strangers. Tomorrow, they may be our loved ones, or perhaps, in the future, ourselves. Seniors and society deserve more.

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

Negligence may be at personal, professional and societal levels. ≈

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.

## **Criminal**

In filing my guardianship petition for my grandmother, it was my hope was that this “family affair” would be quietly settled.

Yet, for my victimized grandmother, and many others, elder abuse is not a family affair or a “civil” matter. It is a crime and needs to be treated as such so victims and their supporters are not re-victimized.

If I could do it over again, I would have called the Manhattan District Attorney’s Office immediately.

I remain grateful to Liz Loewy, at the time lead prosecutor of the elder-abuse unit of the Manhattan District Attorney’s Office.

As we entered the criminal justice system, Liz coupled Kleenex with compassion, helping us to find our voice and tell our story – allowing us to advance from taking *a* stand, and helping my grandmother, to taking *the* stand, in criminal court, for the greater cause of elder justice.

At first, I did not recognize the full meaning of “elder justice.”

When my petition for guardianship was granted, I did not realize elder justice: I helped my grandmother and those trying to helping her. I only realized elder justice when I, and many others, brought my grandmother’s perpetrators – my father included – to justice.

In so doing, I better understand Reverend King’s claim that, “True peace is not merely the absence of tension, it is the presence of justice” – here, elder justice.

As sheriffs, you maintain King’s “true peace” in our communities – countryside, countrywide.

For society to realize elder justice, we must articulate the efforts of those who save seniors – here, law enforcement and APS at the forefront – with those who bring perpetrators to justice, including District Attorneys who substantiate elder abuse.

## **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.

Such is the strength of ‘community collaboration,’ cradled in trust, relationships and responsibility.

I later learned my grandmother’s circle of support was 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 vicarious trauma.

While my grandmother’s abuse galvanized a collective and coordinated response, some elders are re-victimized by a fragmented support system.

Here, much greater support and expansion of multi-disciplinary teams (MDTs), with a person-centered approach, will be so helpful.

Enhanced multi-disciplinary teams, or eMDTs also include geropsychiatrists and forensic accountants.

In 2012, New York State Office for the Aging (NYSOFA) received a three-year, \$1 million Elder Abuse Prevention Interventions Grant from the U.S. Administration for Community Living (ACL). The grant helped initiate and test a program to combat financial exploitation and elder abuse, with pilot programs in Manhattan and the Finger Lakes region. Project partners include [NYS Office of Children and Family Services](#) (OCFS), [Weill Cornell Medicine’s NYC Elder Abuse Center](#) (NYCEAC) and [Lifespan of Greater Rochester, Inc.](#) (NYCEAC)

## **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 later 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. The same might be said for millions of elders.

## **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. ≈

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: added 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. ≈

In my grandmother’s abuse there was both opportunity and motive.

The opportunity was provided when my grandmother, at 100 years old, was frail, in the throes of Alzheimer’s and susceptible to psychological manipulation and isolation.

There was motive. Transgressions were fueled by my father’s mistaken belief that, irrespective of his mother’s needs and wishes, he deserved and could take whatever she had. This included her money – and her wellbeing.

My father used his power of attorney as a weapon and a shield to steal – as chronicled by large, irregular financial transactions.

Emboldened by successful gain of such sums, my father escalated his insidious, serial exploitation by having his mother ‘sign’ three codicils (using three lawyers) that transferred millions of dollars (most of which she has bequeathed to charities) to his control.

With legislation, training and reporting such egregious acts could have been arrested early on, protecting my grandmother from added loss and injury.

Here, I am addressing financial exploitation but, sadly, such exploitation usually goes hand in hand with other forms of abuse, with seniors poly-victimized and re-victimized, as my grandmother was.

As much financial exploitation is detectible and evidential, its discovery can help with rapid response and ‘arrest’ of many forms of abuse.

This is why NYS Senate Bill [S1093](#) and Assembly Bill [A6099](#) sponsored by [Senator Valesky](#) and [Assemblywoman Lupardo](#), respectively, are so critical – as each, “authorizes banks to refuse payment of moneys when there is reason to believe that a vulnerable adult is being financially exploited.”

This is why Part AA of the NYS Executive Budget is so important as it seeks to “empower banking institutions to protect vulnerable adults from financial exploitation” and includes a “financial exploitation certification program,” to be developed by the [NYS Department of Financial Services](#). ([FY 2018 Executive Budget Financial Plan](#))

## **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.

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, even in press last month.

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.

## **Codicils**

Substantial changes to my grandmother's will began in 2002—and then escalated.

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 almost \$100 million of her bequests, directing them to my father.

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.

This lawyer, as his last of several acts, 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 (testamentary) will, to *give*, had been completely compromised—four years after my father, in a letter to a neurologist, claimed she was "delusional."

After the execution of these codicils, my grandmother was scared. She was 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 wellbeing collateral damage? No. Her wellbeing was direct casualty of a psychological 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. And now he was to inherit millions more.

## **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, my grandmother's 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.

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, again, —only because she was not cognizant of the judge’s finding that, “elder abuse was not substantiated.” ≈

We were ever mindful of potential added trauma to my grandmother. While my father was allowed to schedule observed visits, my father’s wife was prohibited. And, as my grandmother was afraid of “men in suits,” a woman, Susan Robbins, was appointed as my grandmother’s guardianship attorney.

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

## **Cusp**

Back in October 2006, only days after the guardianship was settled, a criminal investigation was launched by the Manhattan District Attorney.

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 Attorney General Eric Schneiderman – 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.

### **Pre-serve**

There are many parallels between my field, historic preservation, and elder justice.

I first made this analogy during National Crime Victims' Rights Week two springs ago when I spoke at an [event](#) convened by the [NYS Office of Victim Services](#) (OVS), which, in partnership with the [NYS Office for the Aging](#) (NYSOFA), was announcing its expansion of outreach and education about elder abuse.

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 of their ageless value.

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

Yet this work is reactive, not proactive and preventive—nor does it engage all community stakeholders, which we now choose to embrace and embolden.

In the same way, in working with those who are vulnerable and victimized (like older adults) we realize that proactive 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 unacceptable. Older adults (and their circle of support) must be valued, protected and empowered *before* abuse occurs, not just after.

We must prevent abuse, more. Our greatest resources and our first line of offense are our communities, coupled with New York State’s existing programs and services that can protect seniors at risk.

Yet, in New York State, parts of these programs and services, themselves, are now at risk. These must be saved, expanded and augmented with new awareness, education and training programs on elder abuse and elder financial exploitation. ([FY 2018 Executive Budget Financial Plan](#))

Like your work as sheriffs, senior services and programs cultivate trust, relationships and awareness among elders, their circle of support, and other professionals. Should abuse occur, they demonstrate community concern and capacity, empowering individuals to come forward and act.

## **Isolation**

My grandmother was rendered invisible by my father.

In her later years, my grandmother was increasingly isolated: Close friends were denied visits; professionals and 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.

As perpetrators – my late father among them – know, isolation is extremely effective in compromising seniors. Through isolation and manipulation, perpetrators also successfully thwart the efforts of seniors’ circles of support.

But isolation occurs among us, too.

By maintaining disciplinary silos, efforts of trusted professionals endure isolation – among professionals and between other concentric circles.

Elder abuse is a complex, multifaceted condition that can only be transformed by a collaborative and coordinated response – in each of our communities, and between communities: rural, urban, and suburban.

### **Country counties v**

Too frequently, “elder ecology” is seen through an urban lens.

Cities are part of the solution to our shared national problems. But so are our rural communities that blanket and feed our nation.

Starting out my professional work at the University of Vermont, I realized long ago that the importance and preservation of rural communities are discounted – just as they are now challenged by changes in demographics, jobs, asset allocation, and much more.

When it comes to small-towns and large metropolitan areas, we cannot take a one-(super)-size-fits-all approach. Yet, prevalent urban models are frequently funded and imposed countryside, countrywide.

The specific needs and strengths of rural communities remain under-researched, under-resourced, misunderstood and marginalized. So is elder justice.

We need a pragmatic perspective of rural New York; not just a pastoral view, seen from the vantage point of urbanites.

I can see this will happen today; as it happens every day – in your work, your communities.

Your pragmatic perspective on our country communities – and elder justice – are critical to addressing these issues and developing a strategy.

### **Strategy**

For, we are the midst of a war, although this one is not abroad, this one is at home; one that affects homes across America.

As with all wars, it involves domination and violence that are both intentional and instrumental.

As with all wars, it results in great economic and emotional cost, physical and psychological harm, and even premature death.

Homes are best considered a sanctuary. But some homes have become battle zones.

At times elders are collateral damage inflicted by the ‘friendly fire’ among dysfunctional family members.

Other times elders are the intentional target of abuse.

In the context of families, such as mine, this lends new meaning to von Clausewitz’s definition of war as “a struggle of wills”.

Here, at home in America, stealth aggressors are low on the radar of any home-land security.

Effort will remain tactical trench warfare until guided by a national, state and community-based strategies and funded with a budget commensurate to the challenges at hand.

Then, our ‘war’ *against* elder abuse will be transformed into our campaign *for* elder justice.

This campaign will dispense with the concept of war, as this concept is the antithesis of caring, which we so espouse.

Then our campaign will be won not by a rear-guard (re)action but by our vanguard, caring call to action. ≈

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.

Our “global” starts in our communities, with sheriffs spearheading our inclusive, perimeter protection and care those most vulnerable – including elders.

### **Beyond Brooke**

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

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

Here is my grandmother’s greatest legacy: that, as an elder for over four decades, she practiced 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 and by perpetrators.

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

Guided by our investment, we achieve “ageless equity,” as the scales of justice balance the promise *of* our rising generations with our promise *to* those upon whose shoulders they stand.

I commend and support your constant, critical work for elder justice. Thank you for all you do – with elders.

END