

Annual Meeting, [Bristol County Estate Planning Council](#)

## **A Story of Financial Elder Abuse**

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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 her 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” 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; here, 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.

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 senior 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 a 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 nor 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 DA immediately.

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

As we entered the criminal justice system, Liz coupled compassion with Kleenex, 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.

### **Elder justice**

Elder abuse is a trend, but it’s not our destiny.

In celebrating May as Older Americans Month, we take pause to recognize advances in elder justice, which is coming of age—just as ten thousand older Americans celebrate their 65<sup>th</sup> birthday, every day. Advances are being achieved through awareness, research, practice, policy, legislation—and all law.

America’s public-health triumph of the 20<sup>th</sup> century gained us thirty years, added to our lives. ([Global Health and Aging](#), 2011) To benefit fully from this longevity dividend, we must explore creative solutions to engage older Americans in to our social and economic fabric, more, while protecting those of us in our new old age from abuse and exploitation — a public-health epidemic of the 21<sup>st</sup> century that compromises society and the inherent potential of a seventh of our citizens.

Just as seniors are an untapped resource for society, they are also a target for perpetrators—most of which are family members, “friends,” or caregivers.

Interpersonal dynamics may be an added risk factor—especially when coupled with undue influence, which is prevalent, persistent, and pathological.

We can help: as non-abusing family, friends, caregivers, and professionals each of us provides protection.

Elder abuse is inflicted by the betrayal of trust. Elder justice is realized by the provision of trust—through relationships and responsibility. Here, your role as a trusted professional is so important.

## **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 it 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 can be said for millions of seniors.

### **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 even 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.

The financial industry, regulators and nonprofits are playing a key, leadership role.

## **Guardianship**

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 recently.

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. He was also a beneficiary.

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—forgery—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.

My grandmother knew she was subject to undue influence, as evidenced by testimony during my father's trial. As reported by [The New York Times](#), according to an attending nurse, Ms. Noble, my grandmother said in February 2004, "I give up. They [including my father and his third wife] get all that they want. I'm so gaga, what can I do?"

In March, during signing of the second codicil, my grandmother attempted to defend herself: "I won't be pushed into any business, do you hear me?" Ms. Noble said that Mrs. Astor told her son." and "...when the Marshalls visited the apartment, Ms. Noble said that Mrs. Astor told her: 'What do they want? Tell them I will pay them to leave.'

### **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?

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, empaneled a grand jury, and issued subpoenas.

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

In April 2009, the criminal trial 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 guardianship petition 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.

### **Elder ecology**

Employing “elder ecology” we can strengthen community collaboration to achieve elder justice.

“Elder ecology” applies an adaptation of the [ecological systems theory](#) of Urie Bronfenbrenner now advanced by [Karl Pillemer](#), Cornell gerontologist and professor of human development.

First used for children, the theory has application for all ages – and, here, seniors – as we seek to realize social justice in the realm of ‘society and self.’

Just as elder ecology addresses the contextual risk factors of elder abuse ([Sciamberg and Gans](#), 2000), it also embraces senior’s ‘circles of support.’

Elder ecology is represented by concentric circles radiating out from seniors centered in a community context in multiple social environments, and relationships, over time.

First, intimate family and immediate friends and neighbors;

Then community connections, from worshipers to fellow workers...

...to trusted professionals: including postal carriers, healthcare providers, financial advisers, law enforcement, and lawyers;

And far outward, from media broadcasters to legislators, to regulators—and many more.

Connections and their context are critical among and between all concentric circles of support.

We strengthen our approach to elder ecology when we work not *for* but *with* elders; *with* their circles of support; and *within* their communities.

In working with family, friends, caregivers, and professionals we provide awareness and support along the way—and encouragement to come forward and report 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, and prevention.

### **Bystander intervention**

Elder justice is achieved in the context of elder ecology through “bystander intervention,” which involves a continuum of our:

1. *attention* to our elders—and ourselves,
2. *awareness* of ageism, of seniors, and of relevant risk factors and cues to their abuse,
3. *knowledge* of alleged or actual abuse of an individual —as we advance from “to know” to “to notice” when we interpret a situation as abuse,
4. acknowledgement of our personal *responsibility*,
5. coupling our responsibility with our “response ability,” our ability to respond (whether mandated or permissive) to emergency situations and, for non-emergency situations, to document, seek advice, assess risk, and *formalize a plan*, including assistance from our circles of support—as described in elder ecology.
6. *to act*, intervene, save, and mitigate—by providing a person-centered approach with victims, to include: enhanced multi-disciplinary teams, parallel justice, institution-to-community connections
7. *advocate* with and for victims, and our future selves, to spur attention and action

### **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 a senior 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 seniors, 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 involvement and 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 work for elder justice. Thank you for all you do—with elders.

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