

FROM WHISTLE-BLOWER TO ELDER CHAMPION

WHEN PHILIP MARSHALL SAW HIS GRANDMOTHER BROOKE ASTOR BEING EXPLOITED, HE DID SOMETHING. NOW HE'S AN ADVOCATE AGAINST ALL ELDER FRAUD.

BY KAREN DEMASTERS

BROOKE ASTOR, THE NEW YORK PHILANTHROPIST, SOCIALITE AND WRITER, wanted to leave her family fortune to charity as her legacy. She did that. But she has also touched the lives of many elderly people through the work of her grandson, Philip Marshall.

Marshall is using his experience in protecting his grandmother from abuse to help lead a crusade to protect all older people from financial exploitation, abuse and neglect. To do that, Marshall first had to confront his own father, Anthony Marshall, Brooke Astor's son.

Thanks to Philip, who prompted one of the most well-known court cases involving elder financial abuse in U.S. history, Brooke Astor will go down not only as a patron of the arts and a philanthropist, but as a lead player in the fight for elder justice. That fight, which began on a very personal level, now has Marshall spearheading a movement more national in scope as he fights to protect vulnerable elderly people. And he says financial advisors and institutions like banks have a crucial and lead role to play in that fight.

Patrick T. Harker, president and chief executive officer of the Federal Reserve Bank of Philadelphia, says financial exploitation of older Americans affects families, society and the overall economy. As the population ages and more retirees rely on their own personal savings and investments, elder fraud has the potential of becoming a full-blown national crisis.

Philip Marshall,
grandson of
Brooke Astor.

Part of the problem with tackling elder financial abuse is that the size of the problem is not even known, Harker says. Also, many questions remain about how the brain ages and who is susceptible to cognitive decline. Estimates of the cost of financial abuse range from \$3 billion a year to \$36 billion, he says, and even those figures don't take the social costs into account.

One of the major causes of cognitive decline is Alzheimer's disease. Approximately 5 million Americans have the disease today, a figure that is expected to rise to 14 million by 2050, according to Patricia Boyle, a researcher at the Rush University Medical Center. Financial decision-making is often one of the first areas impacted by cognitive decline, she says.

Cognitive decline and elder financial exploitation and abuse are also issues that have to be addressed by financial regulators and the financial industry, as well as the medical, social and legal industries.

Philip Marshall, who is now 64 and lives in South Dartmouth, Mass., will relate his grandmother's story to almost anyone if he thinks it will help the cause, and he recently told the story to *Financial Advisor* magazine.

He has been at it long enough that he talks in sound bites, but he is never glib. This is serious to him and to a growing number of other people.

He and his grandmother, whose third husband was Vincent Astor, the son of financial mogul and Titanic victim John Jacob Astor IV, grew close over the years through a shared love of history and art. (Philip Marshall is a professor of historic preservation and has held faculty positions at Roger Williams University, Columbia University and the University of Vermont; he's also acted as a consultant for the Hopi tribe in Arizona and worked with the U.S. Tibetan community.)

He had no idea where his path would lead when he first began questioning the actions of his father. "I didn't know anything about estate planning and estate settlement or elder justice or undue influence in the beginning, but in 2004 I found my grandmother had changed her will. And then I heard things of hers were being sold and I realized these were red flags that something was wrong," he says.

A turning point came when one of Astor's most beloved paintings, Childe Hassam's "Flags, Fifth Avenue," went missing from the library of her luxurious Park Avenue home. She had promised the painting on numerous occasions to New York's Metropolitan Museum of Art, but Anthony Marshall had sold it for \$10 million and soon afterward bought a home in New Jersey.

Astor also made it clear throughout her life that much of her fortune should go to charity. But as she

aged, she became frail and was eventually diagnosed as having Alzheimer's. As Marshall was to learn, she was coming under the influence of her son, who had power of attorney for his mother, which he used as a "sword and a shield," says Philip Marshall.

Anthony Marshall shut his mother's 65-acre Hudson River estate Holly Hill, where Astor had wanted to live out her life in peace. He was accused of doing petty things (like separating Astor from her beloved dachshunds) and dangerous things (refusing to buy

"It would have taken comparatively little to take care of my grandmother's needs. My father was going to have tens of millions of dollars eventually, even with the large sums going to charity." But he couldn't wait. "Charlene may have been behind some of this."

—PHILIP MARSHALL

her medication), supposedly prompted by his third wife, Charlene (who was not charged).

"It would have taken comparatively little to take care of my grandmother's needs," Philip Marshall says. "My father was going to have tens of millions of dollars eventually, even with the large sums going to charity." But he couldn't wait. "Charlene may have been behind some of this."

The red flags kept popping up between 2002 and 2006 as Marshall watched the situation and talked to staff members, who confided in him. But like many in his situation, he did not know what to do at first. His relationship with his standoffish, authoritarian father had never been good, so he could not talk to him. Eventually, he turned for help to a college friend who advised him to "follow his heart and then follow the money."

With the help of financier David Rockefeller and Annette de la Renta, wife of fashion designer Oscar de la Renta, longtime friends of Astor, Marshall filed a pe-

tion for guardianship of Astor in 2006, a role Annette de la Renta took on along with J.P. Morgan Chase. It was supposed to be a quiet, private move, but news leaked out and the front page of the *New York Daily News* blared "Disaster for Mrs. Astor," and everything from that point forward was done in public.

Anthony Marshall in 2006 agreed to a settlement of the millions of dollars in dispute in the civil matter without admitting any wrongdoing, but by then it was too late. The Manhattan district attorney's office had

She adds, "People are not taking this issue seriously enough. I hope people in financial services, banks and advisory firms are starting to think about financial elder abuse long and hard.

"There is a myth out there that only people with tons of money can pursue a case like this. Nothing could be further from the truth. I have had cases that involve hundreds of dollars, as well as ones that involve millions," Loewy says. (She's moved on from the district attorney's office and is now a general counsel at Ever-



Philip Marshall with his grandmother, Brooke Astor, in 2003.

gotten wind of the situation, saw possible criminal activity, and filed criminal fraud and forgery charges against Anthony Marshall and one of Astor's lawyers.

Astor lived out her final days at her reopened Hudson River estate with her dog, Girlsie. She died in 2007 at the age of 105.

In the meantime, a grueling and very public, six-month criminal trial took place, including testimony from Philip Marshall against his father that ended in Anthony Marshall's conviction. He was in prison for a short time in 2013 before being released for medical reasons, and he died in 2014. Liz Loewy was the lead prosecutor for the district attorney's office at the time.

"I was worried about Philip during the trial because what he was doing was so difficult," Loewy says. "Not many of these cases make it to criminal trial. Most plea-bargain out. Testifying against his father was very emotional but he held up very well. I am amazed at how brave he was then and is continuing to be now."

Safe, a fraud and identity theft protection company.)

Speaking at a conference on elder justice in Philadelphia in November, Marshall said, "If I had it to do over again, I would take my suspicions to the Manhattan district attorney's office immediately. It was my hope in filing for guardianship that this would remain a family affair and 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 revictimized," he said.

The conference is one of many such events Marshall participates in. "It is really good to help people in these situations," he says. "Elder abuse includes financial exploitation, psychological abuse and physical abuse and neglect. Financial abuse is evidentiary [easier to prove]. It is much more difficult to prove someone is under the undue influence of another person, so the financials were our fallback."

Marshall now crisscrosses the country to push

for elder justice and advance the cause of protecting the elderly. Also, he maintains a website, www.BeyondBrooke.org.

The problems are often evident in financial transactions first, which is why financial advisors should be in the lead of the fight, Marshall says. Financial exploitation can also be an indicator that there is other abuse going on, such as physical and psychological abuse and neglect.

“We need to aim for really early detection of cognitive impairment of the elderly, and financial advisors are in a perfect position to do that,” he explains.

information about the account, but can be alerted that something may be wrong and that he should check on the client.

The second provision, Rule 2165, is known as the safe harbor rule. It allows a broker who suspects abuse or exploitation to put a 15-day hold on any disbursement from an account while the firm investigates. If necessary, the hold can be extended an additional 10 days, Wrona says.

In the meantime, a firm can bring in state authorities, offices on aging or law enforcement authorities. “Finra does not say what the firm should

Lindsay Goldman, the director of healthy aging at the Center for Health Policy and Programs at the New York Academy of Medicine, said she and Marshall have worked together on projects, including a multidisciplinary conference in New York City in January 2018. “No one delivers like Philip when it comes to reaching out to others. He’s on every call where he can help.”

Even little things matter. “He has a thing about domain names. If he thinks one might be useful in the future, he buys it and then has it ready when it comes in handy,” she adds. “For the big picture, he

M. Blandin, who has worked with Marshall and is the president and CEO of Investor Protection Trust, a nonprofit organization devoted to investor education.

“The Brooke Astor case made headlines because of her wealth and her public persona and because her grandson fought for her, but similar cases of elder abuse and elder financial abuse take place every day,” Blandin says. “Philip shined a spotlight on the issue. We share his story whenever we talk to medical, legal, financial and other professionals who routinely work with seniors.

“We need a multidisciplinary approach to protecting older Americans. It begins with professionals who interact with older Americans frequently, [including] banking and financial professionals,” he adds. “They need to be trained to recognize the signs of cognitive impairment in the seniors they see regularly and the signs that the senior may be being abused or exploited. They need to know what actions they can take and how and to whom to report suspected abuse.”

The Senior Safe Act pending in the U.S. Senate would go a long way toward making reporting suspicions easier, says Marshall. The proposed legislation would provide immunity to investment advisors, broker-dealers, banking officials and others who act in good faith to report elder abuse and financial exploitation. State legislation is also needed, Marshall says.

He urges others not to hesitate if they see exploitation or abuse, even if it is being perpetrated by a family member, which can make the situation more emotional. When confronted, Anthony Marshall told his son he would never speak to him again.

“But if you are complacent, you are complicit,” says Marshall. “I wondered, and others wonder, how do you gain the permission to act? Sometimes, you just have to give the permission to yourself.”

Dr. Jason Karlawish, associate director of the Memory Center at the University of Pennsylvania Health System and an elder justice advocate, says, “Elder abuse cannot be just a criminal justice issue, or a medical issue; it is also a financial issue. We have to put all of those together for the issue to make sense.”

Marshall also says an important advance in the fight for elder justice is that advisors and other financial professionals are being brought into it, because they are often the ones who see cognitive decline first through the elder person’s lack of ability to deal with money.

“The numbers are numbing,” says Marshall. “One in five people over the age of 65 are subject to elder financial exploitation ... and it remains under the radar. The cost of elder financial exploitation is enormous [and] even when the sum is small, the effect can be devastating to the person and to society.” **FA**



Philip Marshall speaking at a New York State Sheriffs' Institute conference in April 2017.

“We need a multidisciplinary approach to protecting older Americans. It begins with professionals who interact with older Americans frequently, [including] banking and financial professionals. They need to know what actions they can take and how and to whom to report suspected abuse.”

—PHILIP MARSHALL

“It also has to be a multidisciplinary solution involving financial advisors and banks, law enforcement, the medical profession and psychologists.”

Two new Finra rules go into effect in February that should help. One allows broker-dealers to put a hold on disbursements from a client’s account if suspicious activity is suspected. The other requires brokers to ask clients for a trusted contact so there is another person to reach out to if problems arise.

The first rule, an amendment to Rule 4512, requires brokers to ask clients for a trusted contact who the broker can reach out to if there is a problem contacting the account holder or if any type of financial exploitation is suspected. The client does not have to provide a contact if he or she does not want to, but the broker has to ask, says Jim Wrona, vice president and associate general counsel for Finra.

The trusted contact cannot be given any private

do during this time, but it gives them time to investigate because once money is gone from an account, it is gone forever,” Wrona says. “Different states have different reporting requirements. We want to be proactive in addressing elder abuse or exploitation, and these are the two biggest issues that keep coming up when we talk to brokers.”

Risa S. Breckman, executive director of the NYC Elder Abuse Center, says people have had their heads in the sand for too long. “But with the growing number of the elderly, people are beginning to realize elder abuse is a significant problem. People often are not just financially exploited, they are also verbally abused and neglected.”

Marshall brings more people into the fold, Breckman says. “Philip has amazing qualities. He is smart, compassionate and inquisitive, and he is in this for the long haul.”

wants to help prevent what happened to his grandmother from happening to anyone else, no matter what their economic circumstances.”

The fact that Marshall and the circumstances surrounding his grandmother’s high-profile case are well known has given him credibility in the elder justice arena that others might not have. He has testified before the U.S. Senate Special Committee on Aging, for instance.

He says not many people who have some measure of fame have stepped forward to advance the mission of preventing elder abuse. Mickey Rooney, who suffered financial exploitation late in his life, came forward and testified before Congress, making him an effective advocate, but he died soon after his situation became public.

“It is a good thing there are people like Philip out there who have a stage they can speak from,” says Don