

Volume 12 No. 7 / 8 – January/February 2010

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A Case Study: The Astor Trial – An Interview with the Prosecutor

In late December, Anthony Marshall, the only son of the late Brooke Russell Astor, and Francis X. Morrissey, an attorney, were both sentenced to a state prison term of one to three years for defrauding and stealing from the legendary philanthropist. Although the trial involved an extremely high profile victim and the loss of millions of dollars, the case exemplified many aspects typical of elder abuse cases involving financial exploitation. NCEA recently interviewed the prosecutor who initiated the investigation and served on the trial team, New York County Assistant District Attorney Elizabeth Loewy, about the trial, the verdict, and the Office's specialized elder abuse prosecution unit.

NCEA: A case of this magnitude must have taken a Herculean effort to bring to trial and prosecute. In a recent interview, expert witness attorney Alex Forger indicated that he alone spent hundreds of hours analyzing documents in preparation to give

testimony. Can you share some sense of what it took to bring the case to trial? What were the major obstacles?

Ms. Loewy: Alex Forger, a renowned trusts and estates attorney and former head of the American Bar Association Commission on Law and Aging, was one of our expert witnesses. We were fortunate that he was so thorough in his efforts to prepare for his testimony. Mr. Forger familiarized himself with trusts and estates documents covering five decades. The Court permitted him to testify about professional practice standards of trusts and estates attorneys. Dr. Gene Cohen, a well-respected geriatric psychiatrist, was another significant expert witness who was permitted to give his opinion about Mrs. Astor's mental capacity. These were only two of the 73 witnesses we called in this six month trial.

[The] Astor [case] did entail a great deal of work. But most elder abuse prosecutions require tremendous effort and sometimes creativity on the part of the prosecution. Without a doubt, I believe these are among the most challenging cases to prosecute, especially when the case involves abuse or exploitation committed by the elder's family member or fiduciary, such as an attorney pursuant to a power of attorney. As a prosecutor, you expect to encounter issues that are common to domestic violence cases, such as the reluctant and fearful victim who is less than enthusiastic about testifying. Added to the mix in these cases are the formidable obstacles related to older victims who are either unable or unavailable to testify, either because of mental impairment or death. Any time you are not able to call your victim as a witness, the investigation and the trial will take more time – almost by necessity. With respect to a victim's mental impairment, this is usually the reason why they were targeted. And the prosecution will have to establish evidence related to the victim's lack of consent through other means, usually through circumstantial evidence. Many of my elder abuse

investigations have taken years to resolve – it’s not uncommon. But naturally they didn’t generate this level of attention.

The Astor investigation began in late 2006, the defendants were indicted in late 2007, and we started picking a jury in March of 2009. The trial lasted for six months. The investigation involved scrutinizing a mountain of documents – not just one or two wills, but about 32 wills and codicils over five decades, several powers of attorney, as well as filings from the guardianship proceeding and Surrogate’s Court. This evidence was important to establish Mrs. Astor’s intent with respect to her longstanding estate plan, as she was unable to testify when we first started to work on the case and had passed away before the trial began. This is a common strategy that we employ in cases of elder financial exploitation. Additional steps we took to glean Mrs. Astor’s intent and demonstrate her lack of capacity included reviewing voluminous medical records, analyzing bank records, interviewing her doctors and nurses, speaking to her longtime friends and employees and to her attorneys as well. This was necessary to gain a sense of her intentions and her capacity to make decisions.

NCEA: Have other cases you’ve prosecuted lasted this long?

Ms. Loewy: Well, I’ve never had a trial that lasted six months! There was a good bit of criticism about the length of the trial – some of it was good-natured. One of the NY papers even ran a cartoon depicting the jurors as aging in their seats and asleep, which was amusing but inaccurate. We kept an eye on the jury and they appeared attentive throughout the trial. As a prosecutor, you can’t try your case based on what the press is saying. An article or two quoted well-known defense attorneys who were critical of the way we were putting on our case, but they hadn’t set foot in the courtroom. We had a plan with respect to how to

prove our case, and we weren’t going to change our strategy or allow ourselves to be distracted based on opinions of the pundits. At one point, we were criticized not just for calling too many witnesses, but for bringing in celebrities such as Barbara Walters and Henry Kissinger, as though we were doing it for the titillation factor. Not so. As I said, when you can’t call the victim to the stand, but there are close friends and associates who have significant, relevant information to share with respect to the victim’s mental capacity, or lack thereof, at important times – this is the way you build your case. Each witness played a vital and important role in helping the jury to assess the big picture with respect to Mrs. Astor’s mental state. Another important aspect of the evidence were the many statements made by the defendants, such as letters and conversations Marshall had with his mother’s doctors regarding her diagnosis of probable Alzheimer’s disease.

Another challenge in this case was the fact that many of our witnesses were represented by counsel. Logistically, scheduling time with any of these witnesses meant scheduling with not one person but two or more. One reason for this was that there were two civil actions which were proceeding concurrently with the Astor investigation and trial. One was a guardianship proceeding, which has since been resolved, and the other a Surrogate’s Court action – which is still ongoing.

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Elder Financial Protection Network Receives Federal Deposit Insurance Corporation Chairman’s Award

In December, in celebration of the 75th Anniversary of the Federal Deposit Insurance

Corporation (FDIC), Chairman Sheila Bair recognized six organizations from each of the FDIC's six regions with the Chairman's Award for Innovation in Financial Education. The honorees were selected based on innovation and excellence in financial education that led to measurable results and potentially replicable best practices. Jenefer Duane, Founder and CEO of the Elder Financial Protection Network (EFPN), accepted the award on behalf of the San Francisco-based organization.

Ms. Duane believes that the timing of the Chairman's Award could not have been better as it coincided with the beginning of EFPN's ten year anniversary, and highlights the good relationship that the EFPN has with the FDIC and other financial institution regulatory agencies. Shortly after its formation in 2000, EFPN, was able to demonstrate to the FDIC that elder financial abuse prevention should be included in the nationwide financial literacy initiative under the Community Reinvestment Act. This inclusion has been instrumental in increasing elder financial abuse awareness through collaboration with several hundred banks and credit unions. Clearly, elders benefit from financial security, and as Ms. Duane said, "Financial institutions also benefit from their elder customers' deposits remaining in the bank and not falling prey to financial predators." EFPN has made great progress in developing models to protect seniors from financial abuse not just in California, but nationally, and the Chairman's Award is a reflection of its successful replication. Through collaboration with NBC Bay Area, EFPN will soon be launching Be Wise University, a series of six free fifteen-minute podcasts classes on topics such as frauds and scams, legal issues, hiring in home help, etc.

"The Chairman's Award is an acknowledgement of the FDIC which sends a message to our country's banking industry that elder financial abuse prevention is a national priority," noted Ms. Duane.

After a decade of working to promote elder financial abuse awareness and prevention with support from the FDIC, she said, "This is the cherry on top."

EFPN is a non-profit organization located in San Francisco-based collaborative partnership of financial institutions, law enforcement agencies, non-profit organizations, professional and trade associations, and social service providers dedicated to the prevention of financial abuse of the elderly and dependent adults in California. To learn more, visit [EFPN online](#), or read the article appearing in the [November 2009 NCEA E-News](#).

Special thanks to Katie Wolinski of the University of Delaware Center for Community Research and Service for submitting this article.

Online Resources for Caregivers

With increasing numbers of elders living longer, more and more aging caregivers find themselves providing care for extended periods of time. Several new resources to support caregivers -- and ultimately enhance the well-being and quality of life for elderly care recipients -- are now online:

Implementing a Community-Based Program for Dementia Caregivers: An Action Guide Using REACH OUT

This program was developed in collaboration with the University of Michigan's Institute of Gerontology, the Centers for Disease Control and Prevention, and the National Association of Chronic Disease Directors. The guide is intended for use by state and local agencies that offer or plan to develop services for older adults with dementia, including State Units on Aging, senior centers, home health agencies, etc. The publication details the evidence-based REACH OUT (Resources for

Enhancing Alzheimer's Caregiver Health: Offering Useful Treatments) program. Research on the effectiveness of the approach demonstrated improvement in overall caregiver health and depression, lower levels of caregiver burden, and a decrease in anger towards care recipients. According to the authors, the REACH OUT evidence-based approach may be broadly applied to other types of aging services programming development and evaluation. [Click here](#) to access the guide.

Ask Medicare Website

The "Ask Medicare" website features two new resources. The first is a link to a [Caregiver's Broadcast video](#) on YouTube that explores one family's experiences and discusses programs and services available for caregivers and care recipients.

In addition, [The Caregivers Resource Guide](#) provides information on and links to services and programs available for caregivers and care recipients through the HHS Administration on Aging, HHS Centers for Medicare & Medicaid Services and other state and local programs.

Additional resources are accessible from the [Ask Medicare Caregiver Information web page](#).

Videocaregiving.org

[Videocaregiving.org](#) is a new web site by Terra Nova Films featuring a series of streaming educational videos for family caregivers. Brief video clips highlight both practical caregiving skills as well as emotional issues and interpersonal dynamics that are part of the caregiving experience.

James Vanden Bosch is the founder and executive director of [Terra Nova Films](#), a not-for-profit video

production company specializing in aging and caregiving issues, including elder abuse.

Administration on Aging to Host Reauthorization of Older Americans Act Listening Forums

The reauthorization of the Older Americans Act is scheduled for 2011. To gather input from key stakeholders, the Administration on Aging (AoA) will convene a series of listening forums throughout the country during the coming months. Members of the aging services network, policymakers, and the public, particularly older Americans, are invited to share their insights and concerns on significant issues.

Here is a listing of the dates selected for states served by the following AoA Regional Support Centers ([click here](#) to see a listing of states served by each Regional Center):

- February 18th in Dallas for AoA Regions IV, VI, VII and Title VI representatives
- February 25th in Washington, DC Metro Area for AoA Regions I, II, and V
- March 3rd in San Francisco for AoA Regions VIII, IX, X and Title VI representatives

In addition, a separate listening forum will be held at the NCOA/ASA Annual Conference in Chicago on March 16th.

More information will soon be available through the AoA eNewsletter and eNews Alerts. [Click here](#) to subscribe.

Request for Presentations: Fifth Annual New York City Elder Abuse Conference

On June 2, the Fifth Annual New York City Elder Abuse Conference will be held at The New School Institute for Retired Professional in New York. This year's event is entitled: *Don't Walk Alone: Interdisciplinary Collaborations to Improve the Impact of Interventions in Elder Abuse.*

Conference planners are now seeking proposals for workshops representing a wide spectrum of disciplines, including, but not limited to, social work, psychology and psychiatry, law, finance, medicine, religion/spirituality, policy, education, research, and media.

According to the sponsors, the conference "will focus on recent legal, clinical, mental health, and medical developments in the identification and prevention of elder abuse and new strategies for intervention. Presentations concerning interdisciplinary perspectives on capacity and competency, incidence of domestic violence, and implications for serving older adults within the continuum of family violence, developments in human rights that impact on older adults, family dynamics and the intergenerational aspects of elder abuse, developments in mandatory reporting, and other advocacy initiatives are of particular interest.

Sponsors are also seeking submissions for the keynote address "which will focus on compassion fatigue while emphasizing self-care when working with abused older adults."

Proposals should include a 300-word abstract summarizing the proposed presentation, three learning objectives, and a brief presenter biography and suggested resources. Presentations are 90 minutes, and may be grouped to create

interdisciplinary sessions and enable panel discussions." Submit proposals [via email](#). For questions, please contact Mara Schechter 718-286-1540 or by [email](#). **Deadline for submissions is January 29, 2010**

Online Resources for Legal Services

Following are a number of new resources for both legal service providers as well as consumers on issues related to elder abuse, neglect, and exploitation as well as consumer protection.

Stetson University Elder Consumer Protection Program

The [Elder Consumer Protection Program](#) at Stetson University College of Law serves as a progressive and evolving resource, to both professionals and the public, on general and legal topics regarding current and developing matters in the area of elder consumer protection. Directed by Rebecca C. Morgan and managed by Slade V. Dukes, the Program is housed within the College of Law's Center for Excellence in Elder Law.

The Program offers personalized guidance and assistance by reviewing and responding to elder consumer related inquiries received directly or through the National Center on Elder Abuse (NCEA). The Program's website was recently revised and updated and now includes access to all available videos and brochures, as well as access to the Statutory Update Resource database and Consumer Inquiry Direct Submission feature.

Statutory Update of Adult Protection and Elder-Related Laws

In collaboration with National Committee for the Prevention of Elder Abuse (NCEA grantee), the Program annually monitors and compiles statutory information on individual state and federal adult

protection and elder-related laws for the NCEA. [The Statutory Update Resource Database](#) includes the following information for each state/entity:

- Identification of each state's or entity's local legislative or governmental website;
- Step-by-step Instructions for accessing each state's or entity's current statutory listings;
- Process by which each state or entity enacts legislation;
- A listing of each state's or entity's 2007 and 2008 adult protective statutes as identified (which includes statutory number, statutory title, statutory language, and identification of any statutory changes).

Additionally, the Statutory Update page links to the [Additions and Deletions Quick Reference Guide](#).

This guide highlights, for easy reference and identification, those statutes for each state or entity that changed between 2007 and 2008.

Consumer Inquiry Online Submission Form

The revamped website now includes an [Online Consumer Inquiry Form](#) to submit questions or concerns about general or legal matters regarding elder consumer protection and elder financial exploitation:

- All technical assistance inquiries are carefully reviewed.
- Best efforts are made to provide a timely response.
- Responses will be provided either by telephone, e-mail, or U.S. Mail.
- Best attempts are made to provide useful and detailed assistance and guidance (e.g., reference to educational, informational and instructional resources; referral to legal or community social assistance agencies; referral to local or state lawyer referral services or entities; referral to an appropriate local/state/federal regulatory agency).

Special thanks to Slade V. Dukes, Esq., for submitting this article.

The National Legal Resource Center

The National Legal Resource Center (NLRC) was developed by the Administration on Aging "to empower legal and aging services advocates with the resources necessary to provide high quality legal help to seniors who are facing direct threats to their ability to live independently in their homes and communities." The NLRC recently launched its [new web site](#) which provides a single portal for advocates and professionals in aging and law to access a wide array of information and resources.

According to Omar Valverde, NLRC Project Officer, "A highly significant innovation includes the ability for legal and aging service providers to directly request intensive case consultation and training on the most difficult and pervasive legal issues facing older persons, through an easy online request process.

The NLRC is a collaborative project involving five national non-profit organizations with longstanding involvement in legal and aging services:

- [National Senior Citizens Law Center](#)
- [National Consumer Law Center](#)
- [The Center for Social Gerontology](#)
- [The Center for Elder Rights Advocacy](#)
- [The American Bar Association-Commission on Law and Aging](#)

To learn more about the NLRC, read [November 2008 NCEA E-News](#) article on the project.

[The Astor Trial, continued from p. 2](#)

At every turn, the defense attempted to paint this case as a civil action that was inappropriately pursued and litigated in Criminal Court. My Unit has been prosecuting cases involving the abuse of power of attorney documents for over a decade. And some folks may not realize that when this case was referred to us in 2006, it was because a highly respected handwriting expert, Gus Lesnevich, had determined that the signature on Mrs. Astor's Third Codicil appeared to be a forgery. I'm not aware of any prosecutor's office that routinely refers forgery allegations to a civil forum.

NCEA: In talking with advocates and professionals around the country, it is clear that many believed a great deal was riding on the outcome of this trial. Did you feel additional pressure because of that?

Ms. Loewy: Perhaps I was naïve, but this surprised me a bit. I did feel pressure preparing the case for the grand jury. For me, the indictment itself was a significant accomplishment. I wasn't thinking about the repercussions of an acquittal or whether it would have a chilling effect on elder abuse prosecutions. Perhaps I was in denial but I am heartened that this case may serve to be an incentive for other law enforcement professionals who serve older or impaired clients.

NCEA: How do you feel about the sentences handed down?

Ms. Loewy: I respect the jury's verdict. The defendants both received state time sentences of one to three years. I think justice prevailed. Marshall is an 85 year old defendant with no prior criminal record who now faces state prison. Morrissey is also an older defendant who, at 67, not only received a state time sentence, but will automatically be disbarred. This case also represented Morrissey's first arrest, although he

was suspended from the practice of law in the 1990s for an unrelated matter. That's a whole other story.

New York County's Specialized Elder Abuse Prosecution Unit

The NCEA also had the opportunity to speak with Ms. Loewy about the development of New York County's Specialized Elder Abuse Prosecution Unit, and how this enhances the prosecution of elder abuse crimes.

Ms. Loewy: Originally, domestic violence and elder abuse cases were merged in one unit. In 1995, elder abuse prosecutions were referred to a separate program within the Special Prosecutions Bureau. The Elder Abuse Unit now handles cases vertically, which means that one prosecutor will work on the case from start to finish -- from the original complaint through the resolution of the case by a plea of guilty or trial.

NCEA: Do all of the prosecutors in this unit work exclusively on elder abuse cases?

Ms. Loewy: No. Other than me, the prosecutors who work on these cases receive specialized training and develop expertise in elder abuse issues, but they work on other types of cases as well. This is true of most of the assistant district attorneys (ADAs) who work in specialized units (such as the Sex Crimes unit, etc) in my Office.

In addition to receiving specialized training in elder abuse issues, ADAs also cross train others (APS, civil attorneys, police, doctors, social service agencies, etc.) and we invite speakers from those entities to train our legal staff. The unit has two detectives from the New York Police Department who specialize in elder abuse cases and receive special training. We are also fortunate to have forensic accountants available to the Unit to assist on financial fraud investigations involving senior

victims. As we have seen in other specialized prosecution units, the increased training and experience enhances our abilities to deal effectively with these cases.

NCEA: In closing, would you like to share any additional thoughts?

Ms. Loewy: The Astor convictions were the result of hard work achieved by a team. First and most important, the case was brought by DA Robert Morgenthau and continues under our new DA, Cyrus Vance, Jr. I feel fortunate to work in an Office where issues related to elderly victims are made a top priority. The support of the executives in my Office is the reason there was a trial. The talent and dedication of co-counsel, ADA Joel Seidemann (Senior Trial Counsel) and ADA Peirce Moser, as well as the lead Detective Don Kennedy, were instrumental in our ability to successfully prosecute the case. Although the Astor case involved a well-known and wealthy victim, it shares many of the elements and dynamics of elder abuses cases that happen every day, everywhere to regular folks. In talking about the Brooke Astor case, I hope that advocates can use its lessons to raise the visibility of the issue of elder abuse. And that perhaps prosecutors and law enforcement around the country will be encouraged by the result of the trial.

Any questions may be referred to [Assistant District Attorney Elizabeth Loewy](#).

Note: The defense in the case has issued a notice of appeal. Mr. Marshall and Mr. Morrissey will not begin serving their sentences until after a decision is made on the appeal.

Online Resources for Public Awareness

“Age Strong! Live Long!” Older Americans’ Month Materials Now Online

Annually, the month of May is nationally recognized as *Older Americans’ Month*. This provides an excellent opportunity to raise public awareness of elder abuse, neglect, self-neglect, and exploitation.

The theme of this year’s observance is, *Age Strong! Live Long!* The Administration on Aging has created a series of materials to support state, community, tribal, and other organizations in conducting public awareness activities. Visit the [AoA Online Press Room](#) to access and download the official logo, poster, and other materials.

For suggestions on raising awareness of elder abuse in your community and to download tip sheets, fact sheets, and other resources, visit the [NCEA Join Us in the Fight Against Elder Abuse](#) web page.

Office of Victims of Crime Announces Theme for Annual Observance

The 2010 National Crime Victims’ Rights Week (NCVRW) will be observed from April 18th-24th. This year’s theme is “Crime Victims’ Rights: Fairness. Dignity. Respect.” The colors are yellow, orange, red, blue, and black. According to the Office of Victims of Crime (OVC), “the theme recognizes the ideals that are critical to the decades-long struggle for justice by victims and advocates.”

NCVRW provides an opportunity to draw attention to the unique issues that older victims of crime face. Annually, OVC produces a comprehensive and practical resource guide to assist individuals and

organizations in planning public awareness activities. The 2010 guide will soon be available. To review materials from previous years or to register for email notifications of NCVRW news and events, visit the [NCVRW Web page](#).

Online Resources for Training: The National Elder Rights Training Project 2010 Podcasts

The National Consumer Law Center recently posted its agenda for the National Elder Rights Training Project 2010 Webinar schedule. Topics that may be of interest include loan mod scams, consumer fraud, and undue influence. The series begins on January 20th and run through July 14th. All webinars are on Wednesdays at 2pm EST unless otherwise noted. They are also open to the public and there is no charge.

Podcasts from the 2009 series are currently available online also. For more information or to register, visit the [National Consumer Law Center Web site](#).

Office on Violence Against Women Funding Opportunities

There are several open solicitations for grant-funded projects through the Department of Justice Office on Violence Against Women (OVW).

OVW Fiscal Year 2010 STOP Violence Against Women Formula Grant Program

"By statute, the STOP Program supports communities in their efforts to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen

victim services in cases involving violent crimes against women."

Of note, elder abuse training is one of the priority areas identified in this year's solicitation.

The solicitation requires that both a "hard" (paper) copy of the submission and an electronic submission through the Office of Justice Programs Grant Management System (GMS) be received by the application deadline.

Important dates:

- Applications deadline: 8:00 p.m. E.T. on January 28, 2010.
- All applicants should register online with GMS by January 14, 2010.

For more information, visit the OVW [STOP solicitation Web page](#).

OVW FY 2010 Court Training and Improvements Program

While elder abuse, neglect, and exploitation is not a specific priority area, the Court Training and Improvements Program supports court and court-based initiatives that aim to improve civil and criminal court functions, enhance court infrastructure and improve court responses to victims of sexual assault, domestic violence, dating violence and stalking.

Important dates:

- Applications deadline: 8:00 p.m. E.T. on February 9, 2010.
- Letters of intent to apply should be submitted by January 26, 2010.
- All applicants should register online with GMS by January 26, 2010.

Pre-Application Conference Calls

- February 3, 2010: 2 p.m. – 4 p.m. E.T.

