

VICTIMIZATION OF THE ELDERLY AND DISABLED™

Preventing Abuse, Mistreatment, and Neglect

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Summary of the NYC Elder Abuse Center

Cases of elder abuse and neglect are complex, requiring thoughtful and innovative solutions. Extant evidence suggests that a collaborative response improves the effectiveness of agency responses and efficiently utilizes scarce resources. (A. Wiglesworth, L. Mosqueda, K. Burnight, et al., "Findings From an Elder Abuse Forensics Center," 46 *The Gerontologist* 277 (2006).) Collaborating can also lead to original research suggestions and initiatives.

The NYC Elder Abuse Center will utilize a collaborative approach to immediately establish a much-needed multidisciplinary team (MDT) of experts to coordinate care and create solutions for the growing number of complex cases of elder abuse in New York City. The first MDT will begin work in Brooklyn and, if successful, MDTs will be instituted in other boroughs, starting with Manhattan. As it matures and grows, the Center will also serve a larger role as a training ground and central resource for technical assistance, innovative best practices, multidisciplinary training, research, and policy development in New York City.

Through representatives from key government agencies and nonprofit elder care organizations serving on an executive council, the Center receives guidance and

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Brooke Astor Elder Abuse Case Finally Closes

by Loree Cook-Daniels

A son who could never satisfy his mother; a mother who loathed her less-than-purebred daughter-in-law; a father who felt betrayed by his twin sons.

Sosummed up a New York Times report of the elder abuse field's equivalent of O.J. Simpson's trial. The case involved the top of the top tier of New York society, millions of dollars, and a complicated storyline featuring not only the 100-plus years lived by its victim, but generations before and after her. The Brooke Astor/Anthony Marshall trial finally came to a conclusion on October 8, 2009: Anthony Marshall, 85, was convicted of 14 of 16 counts of stealing from his mother. His attorney, Francis X. Morrissey, was convicted of all five counts against him, including forgery.

Long-Running Family Drama

Money is like manure; it's not worth a thing unless it's spread around.
—Frequent saying of Brooke Astor

The money at stake in Brooke Astor's estate is huge by almost anyone's standards: nearly \$190 million. The Astor family was, the New York Times reported, the U.S.'s first millionaire family. (John Eligon, "Fight for Astor Estate Mirrors Battle 50 Years Ago," The

NY Times, Apr. 26, 2009, at A20.) The treasure started growing under John Jacob Astor, a fur trader and real estate investor. It passed to Vincent Astor, age 20 and his great-great-grandson, when his father drowned on the Titanic. Brooke came into the picture in 1953, after Vincent had already had two wives. She, too, had been married twice before. The first time, Brooke was only a teenager. Her first husband, Dryden Kuser, was rich, alcoholic, and abusive. Brooke implied that their son, Anthony, was born as a result of marital rape. They divorced when Anthony was five so that Dryden could marry someone else.

Remarriages. Brooke went on to marry Buddie Marshall, with whom she had been having an extramarital affair. By all accounts, he was the love of her life, and she spent 20 years with him before she was widowed. Although she inherited half-a-million from Buddie, living within those means would have meant a radical lifestyle change. She married Vincent Astor within a year. Vincent died five years later, leaving her, still in her 50s, one of the world's richest widows. At this point, Brooke had her first court experience, ironically, around the same topic as her son's: Vincent's son. John Jacob

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Astor, took her to court, arguing that the will Brooke was inheriting under had been signed while Vincent was mentally incompetent. (Like Brooke, Vincent liked revising his wills; he had changed his 26 times.) Brooke settled with Jack Astor for \$250,000.

Family Tension. Anthony, meanwhile, was destined to be an only child. Brooke later admitted she had three abortions, telling David Rockefeller's granddaughter, when in her 100s, that she only had one child because her experience with that child had been "so unfortunate I decided not to have any more." (John Eligon, "Astor Wanted New Clothes, Butler Testifies," *The NY Times*, Jun. 10, 2009, at A24.) Money issues arose between Anthony (now usually known as Tony) and his mother early on, as did his first court battle. When his mother married Buddie Marshall, her alimony went into a trust fund for Tony. Brooke allegedly thought this money should have been hers, and she frequently (and successfully) asked her son for financial help. Tony also had to fight his father for this money: Dryden Kuser took him to court, arguing that "since Tony had rejected the Kuser name [he had taken Marshall's even though Marshall had not formally adopted him], he did not deserve to have Kuser money." Tony won this court battle.

Tony's Career. Tony had a spotted career. He was a Marine at the battle of

Iwo Jima, where he was badly wounded. He then went to work at the State Department as an intelligence analyst. He failed the Foreign Service entrance exam, and then worked for the CIA as a roving recruiter. After a stint at Buddie Marshall's brokerage firm, he set up companies to do business with Kenya and Nigeria. A large contribution from Brooke to the Nixon campaign allegedly led to Tony's appointment as ambassador to Madagascar. By midlife, however, his principal job was managing his mother's money, although later in life he and his third wife had success as Broadway producers.

Tony, too, went through a series of marriages. His twin sons, Philip and Alec, were born to his first wife, but the parents divorced when the twins were eight. By the next year, the twins had a new stepmother and then, two years later, a new stepfather. Wife number three (stepmother number two), Charlene, who was 20 years younger than Tony, left her pastor husband and their five children to marry Tony in 1992. That year, the main players' approximate ages were: Brooke, 90; Tony, 68; Charlene, 48; Philip and Alec, 39.

Brooke Astor executed 31 wills in her lifetime. Admitted as evidence at her son's trial, they appeared encased in black binders and covered nine linear feet of shelving. Although Brooke had initially left her personal fortune to Tony, by 1994—post Charlene—she had put that money in a trust that would

sustain Tony during his lifetime, but would be left to charity at his death.

Guardianship Case

You see my son, he's not an Astor.
—Frequent saying of Brooke Astor

It does not appear that Tony was ever close to his sons, although his relationship with Philip seemed to worsen as time went on: "On the one hand," Meryl Gordon writes:

Tony kept saying he wanted to know his grandchildren, yet he and Charlene had last visited Philip in Massachusetts 12 years before, shortly after Winslow [Tony's grandchild] was born, in 1991. Invitations for return visits had been politely deflected. (Meryl Gordon, *Mrs. Astor Regrets: The Hidden Betrayal of a Family Beyond Reproach* (Houghton Mifflin Harcourt Publishing Co. 2008).)

Philip's Investigations. In January 2006, Philip Marshall visited his grandmother and was barraged by staff complaints, including allegations that staff had been instructed not to call 911 in an emergency. He investigated by calling other, recently fired, staff members. He Googled Francis X. Morrissey, who staff said was a lawyer, a friend of Tony's, and a very frequent visitor of Brooke's. He found a 1993 *New York Times* article that detailed a number of ethical questions

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involving Morrissey, including charges he had tricked people into signing letters that benefited him and information on numerous older clients who had willed him large chunks of money or valuable property. Gathering still more evidence and steam, he met repeatedly with Brooke's long-time friends, David Rockefeller and Annette de la Renta. Eventually, the three decided to petition a judge to rescind Tony's power of attorney and grant it to Annette instead. To strengthen the petition, they included charges large and small, detailing ways in which they felt Brooke was not being cared for as she should be. The affidavit included this statement from Philip:

Her diet is inadequate, endangering the life and safety of this slight and sickly 104-year-old woman ... Her Park Avenue duplex is in such a dirty and dilapidated state that she's been forced to live among peeling and falling paint and dusty and crumbling carpets. Her bedroom is so cold in the winter that my grandmother is forced to sleep in the TV room in torn nightgowns on a filthy couch that smells, probably from dog urine ... Why should my grandmother, who was accustomed to dining with world leaders and frequented "21" and the Knickerbocker Club, be forced to eat oatmeal and pureed carrots, pureed peas, and pureed liver every day, Monday through Friday, months on end?

Case Begins. A court evaluator, Susan Robbins, was retained to investigate the petition's charges. The petition became public—Meryl Gordon was not clear how—and an effort to appoint Tony and Annette co-guardians was shot down by Robbins. Lawyers were hired all around, subpoenas were issued, documents were analyzed, and the media reported everything. In the end, six days before the case was to go to trial, Tony agreed to give up guardianship of his mother and his yearly salary. The settlement stipulated that legal claims against the couple would be frozen until after Brooke's death. Tony, Charlene, Francis Morrissey, and Terry Christensen (another lawyer who had been written into Brooke's will amendments) gave up their claims to serve as executors of Brooke's will.

A week later, a forensic handwriting expert said Brooke could not have

produced the signature on one of the will amendments, and Susan Robbins, a mandated reporter, handed her files over to the prosecutor's office. Through this act, a grandson's effort to secure better care for his centenarian grandmother quickly morphed into a criminal case against his father.

Jury Composition

I'm glad [the trial] can inform a conversation, beyond Brooke.

—Philip Marshall

Brooke Astor died in August 2007 at age 105. Three months later, former Manhattan District Attorney Robert Morgenthau filed an 18-count indictment against Tony and his lawyer, Francis X. Morrissey.

Selection of the jury began in March 2009. Morrissey's lawyer tried, but failed, to sever his case from Tony's. Potential jurors were asked if they were willing to convict someone in his 80s. Initially, a jury of nine women and three men were seated, and they were told to expect the trial to run a couple of months. It ended up taking 18 weeks and, by the end, the final jury consisted of eight women and four men. There was a 43-year-old event planner and caterer who became the forewoman, a woman who worked in the control room for TruTV (formerly Court TV), a widowed painter in her 70s, a 34-year-old labor consultant, a retired textile furniture designer, a Ph.D. candidate, and a Columbia University administrator.

The New York Daily News noted that:

Like many New Yorkers, not all of the jurors are employed. Three of them are job-hunting, including a recently laid-off creative director for consumer products at *Sesame Street*.

One member was a sociologist who for 20 years headed a market research firm that does jury selection consulting work; another was a lawyer who had been a legislative assistant and lobbyist and worked in the attorney general's office. Three were retired. (Melissa Grace, "Jury for Trial of Brooke Astor's, Anthony Marshall, Composed of Regular Folks" [sic], New York Daily News, Apr. 16, 2009; available at http://www.NYDailyNews.com/gossip/2009/04/16/2009-04-16_jury_for_trial_of_brooke_astors_anthony_marshall_composed_of_regular_folks.html.)

Trial Evidence

It was one complicated relationship.

—Prosecutor closing arguments, characterizing the Brooke/Tony dyad

Clearly, 18 weeks' worth of evidence and argument, provided by 72 witnesses for the prosecution and two witnesses for the defense (both handwriting experts called by Morrissey's lawyers), cannot be captured in a few paragraphs. The main issues, however, were clear: Was Brooke forced to sign documents she did not want to sign and was she competent to sign documents if and when she did sign them? Had Tony acted ethically when he used Brooke's power of attorney to grant himself large salary increases and bonuses and take home pictures that had been hanging on Brooke's walls? Did people, in fact, conspire to get money out of Brooke that she did not want to give?

Following are some of the issues the jury heard about.

Alzheimer's Diagnosis. Before 1995, her doctor testified, Brooke was already complaining about her memory. In 1997, Tony called Brooke's doctor to complain that she was "more and more confused," and said she had asked him how many times he had been married and who the mother of his children was. Tony followed up in 2000 with a letter about Brooke's deteriorating mental state. That same year, her doctor gave her a formal diagnosis of Alzheimer's. By April 2001, Brooke could no longer draw a clock face for her doctor, although she did sign her name. (John Eligon, "Astor's Doctor Tells of Years of Decline," The NY Times, Jun. 25, 2009, at A20.)

Suggested Changes to Estate Plan. In October 2001, Tony Marshall sent a memo to his mother's longtime lawyer, Henry Christensen III. It was headlined, "Concern: my ability to provide sufficient financial assistance to Charlene upon my death." According to The New York Times, Marshall then:

using complicated arithmetic that took into account things like estate taxes and expenses ... calculated the value of his mother's investments (\$67 million), her real estate (\$20 million), the amount she planned to leave to families and friends (\$10 million), how much would be in a trust she was creating

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for him (\$28 million), what his net annual income from that trust would be after her death (\$787,500), and his disposable income after all his expenses (\$87,500). He also computed his wife's net worth: \$3.65 million. Mr. Marshall ... rounded out the memo by suggesting two possible changes to the estate plan of his mother, Brooke Astor, that would allow him to funnel more money toward his wife. (John Eligon, "Astor's Lawyer Says Son Fretted Over Inheritance," *The NY Times*, May 29, 2009, at A20.)

The lawyer drafted two codicils (will amendments), but they were never executed.

Last Will. In January 2002, Brooke threw a dinner party for Kofi Annan, the United Nations Secretary General. According to testimony by Dr. Henry Kissinger, Brooke—seated between Kofi and Dr. Kissinger—leaned over and asked him who Kofi was. Later that month, she executed her last will. It left the bulk of her estate to charity, "with a detailed list of beneficiaries." Soon afterwards, Tony sold her favorite painting, the Childe Hassam painting "Flags, Fifth Avenue," for \$10 million. He took a \$2 million "commission" for himself.

In May 2002, Tony told staff not to let Brooke give things away because she did not know what she was doing. By June of the following year, he was cracking down further:

Mr. Marshall informed the Metropolitan Museum of Art that his mother, Brooke Astor, would not be able to honor her commitment to donate \$117,000 to help purchase an antique Buddha for the museum, warning that she would be limited to donations of \$250 to \$1,000 because of the cost of her medical care, according to an email message sent between museum employees. Over the next year he signed checks drawing on her account to invest \$250,000 in a theater production company he was involved in, to pay for construction, maids, taxes, and groceries at the family's summer home in Maine and to meet his \$1 million pledge to the United States Marine Corps for the creation of the Anthony D. Marshall Interactive Leadership Fund. (A.G. Sulzberger, "Son Limited Brooke Astor's Donations to Charity, Trial

Evidence Shows," *The NY Times*, Jul. 28, 2009, at A18.)

In August 2003, Mr. Christensen requested authorization from Brooke for a \$5 million gift to her son. She apparently said yes, but later that night and again the next morning, she asked her staff what the lawyer had wanted. They requested a copy of the letter from the lawyer, but never received it.

By October, Brooke had admitted to staff that the man she sometimes thought was trying to kill her was her son. Another nurse testified that Brooke had nightmares in which she conflated Tony with her first husband, and said "he" was coming to get her. (Ralph Gardner Jr., "The Astor Trial's Final Days," *Daily Beast*, Sept. 17, 2009; available at <http://www.TheDailyBeast.com/blogs-and-stories/2009-09-17/the-astor-trials-final-days/3/>.)

Codicils. On December 18, 2003, Brooke signed the first codicil (amendment) to the 2001 will. Drafted by her trusted lawyer, Henry Christensen, it was oddly entitled, "First and Final Codicil." It took 49% of the assets remaining in a trust set up by Vincent Astor and put it into a new entity, the Anthony Marshall Fund, so her son could make charitable donations in his own name. At his death, the funds were to go not to his wife Charlene, but to the Metropolitan Museum and the New York Public Library. Tony was the sole trustee of the funds and would receive 7% per year. While Christensen was meeting with Brooke, staff saw Tony and Charlene in an adjoining room, ears to the wall. Staff testified that Charlene allegedly shoved Tony and told him to "get in there." He did. (John Eligon, "Nurse Testifies About Eavesdropping by Brooke Astor's Son," *The NY Times*, Jul. 10, 2009; available at <http://www.NYTimes.com/2009/07/10/nyregion/10astor.html>.) (Interestingly, the validity of this codicil was not in question at Tony's subsequent trial.)

Less than a month later, on January 12, 2004, Brooke was asked to put her name on a second codicil. This one was given to her by new lawyers Tony had hired, G. Warren Whitaker and Robert Knuts, who had not previously met with Brooke (although they were billing her at the rate of \$500 per hour). Staff report that Tony and Morrissey physically dragged Brooke into the library, and that she shouted, "I won't be pushed into any business," and pounded her cane on the floor. "Do you hear me?" (John Eligon, "Recreating a Crucial Signing at

the Astor Trial," *The NY Times*, Jul. 13, 2009; available at <http://CityRoom.blogs.nytimes.com/2009/07/13/recreating-a-crucial-signing-at-the-astor-trial/>.)

This codicil gave Tony \$60 million outright that previous wills and codicils had earmarked for charity. The codicil also allowed Tony to pass this inheritance on to his wife, Charlene. Later that day, Brooke asked staff, "What just happened? Who are those men?" (Eligon, "Recreating a Crucial Signing at the Astor Trial," *supra*.)

At 8 p.m., her night nurse wrote:

[Mrs. Astor] [c]omplained of being afraid and that four men are in the house who know everything about her and she doesn't know them. And that the men want her to do things. Very hard on herself. Referring to herself as "a damn fool." Asked if the men have left. Said, "I don't want to die." (A.G. Sulzberger, "Astor Feared That Her Son Would Kill Her, Nurse Says," *The NY Times*, Jul. 21, 2009, at A16.)

New Power of Attorney. Two weeks later, at the Knickerbocker Club, Tony had Brooke read a speech he had written for her on the topic of Anthony Marshall. Two weeks later was also when Whitaker returned to Brooke's apartment and asked her to sign a new power of attorney, this one writing out her previous attorney, Henry Christensen, and giving sole control to Tony.

The third codicil was signed two months later, on March 3, 2004. Morrissey took it to Brooke alone. This one provided that all real estate was to be sold at Brooke's death and the proceeds placed into her estate. It also made Morrissey co-executor of the estate, along with Tony. Both would receive higher executors' fees as a result of the new arrangement. Two staff members witnessed Brooke's signature, although one later testified that the signature produced in court looked nothing like what she had seen that day. (John Eligon, "Maid Questions Validity of Signature on Astor's Will," *The NY Times*, Jun. 30, 2009; available at <http://CityRoom.blogs.nytimes.com/2009/06/30/maid-questions-validity-of-signature-on-astors-will/>.)

In September of that year, Brooke swore her nurse to secrecy, and then said:

I was made to do some things
I don't want to do by the man. Now

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you know, in case anything happens to me. (Sulzberger, "Astor Feared That Her Son Would Kill Her, Nurse Says," supra.)

Charlene Deemed Villain

My impression was that Charlene set her teeth on edge.
—Henry Kissinger, speaking of Brooke

During the trial, the press had a field day with Charlene Marshall, regularly writing about the small pillow she always sat on, constantly commenting on her clothes and demeanor, and gleefully reporting testimony that at least one of Brooke's staff members called her "Miss Piggy."

Although she was not indicted, it was clear that many had deemed her the villain of the story, characterizing her as a younger woman who controlled and disrespected her elderly husband, and a daughter-in-law who was determined to milk her rich mother-in-law for all she was worth. One reporter even wrote that while she had initially greeted him with a comment that she liked his dreadlocked hair, on another day she suddenly and unexpectedly ran her hands through it. (John Eligon, "In Chats at the Astor Trial, a Reporter's Education," *The NY Times*, Oct. 11, 2009, at MB16.)

A key piece of evidence regarding her—a witness' account that she had complained, "if he [Tony] dies, I get nothing"—was not given to the jury. (John Eligon and C.J. Hughes, "Evidence Rejected in Astor Trial," *The NY Times*, May 13, 2009, at A26.) (Neither was the information that Morrissey had previously been suspended from practicing law and had settled other suits claiming he had taken clients' money.) Even Philip Marshall chimed in, telling the *New York Post* that it was Charlene who should go to jail, not Tony. (Laura Italiano, "Astor Grandson: Stepmom's Real Villain," *NY Post*, Oct. 10, 2009; available at http://www.NYPost.com/p/news/national/item_uiYrtfuOW8D5c2r1uL79eP.)

The Verdict

We all feel now, more certain than certain.

—Jury forewoman, commenting on length of the jury's deliberations

It took the jury 12 days to come to agreement. A mistrial loomed on the ninth day when one juror said she wanted to be dismissed because she felt "personally threatened" by another juror. The judge urged them to try some more and in the end they found Tony Marshall guilty of the following:

- Grand larceny, second degree (five counts), for expenses on a Maine property, theft of two paintings, using a worker employed by Mrs. Astor, and payment of the salary of a captain employed on Tony's yacht.
- Grand larceny, first degree (one count), for Tony's \$1 million salary increase.
- Criminal possession of stolen property, second degree (two counts), for two paintings taken from Brooke's home.
- Conspiracy, fourth degree (two counts), for will changes to a residuary clause and for shifting estate costs.
- Conspiracy, fifth degree (one count), for will changes to a residuary clause.
- Scheme to defraud, first degree (one count), relating to false pretenses, both thefts, and duped will changes.
- Offering a false instrument for filing, first degree (two counts), for his guardianship petition and for a will change to a residuary clause.

The jury found him not guilty of a first-degree grand larceny charge for taking a \$2 million commission on the \$10 million sale of "Flags, Fifth Avenue," one of Brooke's most valuable paintings, and falsifying business records related to this sale. They said that because Brooke had at one time written letters saying she wanted to sell the painting, they had reasonable doubt whether he did it against her will. (Anemona Hartocollis and John Eligon, "Looking Beyond the Glamour, Astor Jury Found a Moral Flaw," *The NY Times*, Oct. 9, 2009, at A1.)

Francis X. Morrissey was found guilty of second-degree forgery for a will codicil shifting estate costs and criminal possession of a forged instrument, second degree, for that codicil. He was also found guilty of the three conspiracy charges. (Daniel Wise, "Astor's Son, Lawyer Guilty of Looting Estate," *NY L. J.* (Oct. 9, 2009); available at <http://www.Law.com/jsp/nylj/PubArticleNY.jsp?id=1202434409146&shreturn=1&hbxlo gin=1>.)

Next Chapter

This is her last act of giving herself for the greater good.
—Philip Marshall

Sentencing for Anthony Marshall and Francis X. Morrissey was scheduled for December 8, 2009. Tony is destined for jail, as the grand larceny in the first degree conviction carries a mandatory minimum sentence of one to three years in prison. (The rest of his convictions could get him up to 25 years.) However, some speculated that his age and ill health (the trial took several breaks due to his being injured or ill) might land him an easy sentence. *The New York Times*, for instance, noted that less than 1.5% of the state's inmates are 65 and older. (John Eligon and Benjamin Weiser, "Weighing Prison When the Convict Is Over 80," *The NY Times*, Oct. 10, 2009, at A1.)

Also left hanging are Tony's lawyers, who are already (pre-appeal) owed \$4.7 million. Charlene has co-signed as a guarantor of the fees, and Tony has regularly filed "confessions of judgment" with the court, acknowledging the validity of the debt. (Jeane MacIntosh, Douglas Montero, and Dareh Gregorian, "Astor Son Stiffing His Lawyers," *NY Post*, Oct. 10, 2009; available at http://www.NYPost.com/p/news/local/manhattan/astor_son_stiffing_his_lawyers_sn1G1bWkWcoVi9D5HVgtLJ.)

Philip learned, after the fact, that the trial might have cost him and his brother about \$10 million each in an inheritance they never realized they were entitled to. Just as their grandfather Kuser's divorce decree had contained an inheritance provision providing for the child, so did Tony's divorce decree from the twins' mother. Tony had never told the twins about the provision, and their mother had forgotten about it, tracking it down only after it was mentioned at the trial. It would have reserved one-third of Tony's estate for the twins. (A.G. Sulzberger, "Move to Protect Mrs. Astor May Cost an Inheritance," *The New York Times*, Oct. 12, 2009, at A18.)

Still pending is a Surrogate's Court case that will settle Brooke's estate. Philip Marshall and Annette de la Renta have asked the court to use Brooke's 1997 will to guide the distribution of her

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Astor Case, by the Numbers

- \$187,113,721.15: the estimated value of Brooke Astor's estate
- \$20 to \$23 million: what Tony Marshall was due to inherit from Brooke's last unchallenged will
- \$20 million: what Brooke Astor gave the Metropolitan Museum of Art over the years
- \$10 million each: what the New York Public Library and the Metropolitan Museum of Art lost when Brooke Astor's last will was amended
- \$1.7 million: legal fees G. Warren Whitaker stood to receive as a result of the codicil changes
- 15,000 + pages: court record
- 350: exhibits introduced as evidence
- 72: number of witnesses called by the prosecution
- 18: number of weeks the trial took
- 12: days the jury deliberated

estate, mostly to her favorite charities. (Wise, *supra*.)

I am old and I have had
More than my share of good
and bad.

—From Brooke Astor's poem, entitled "Discipline"

Author's note: Except where otherwise noted, pre-trial information came from *Mrs. Astor Regrets: The Hidden Betrayal of a Family Beyond Reproach*, written by Meryl Gordon (Houghton Mifflin Harcourt Publishing Co. 2008).)

Loree Cook-Daniels is the founding executive director of the American Society of Adult Abuse Professionals and Survivors. For more information about NCAVP, its publications, or its member organizations, go to www.NCAVP.org or call (212) 714-1184. ■



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