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P A C E U N I V E R S I T Y

***THE BROOKE ASTOR CASE:  
WHEN A WILL CONTEST GOES CRIMINAL—  
A LESSON FOR LAWYERS, ADVISORS  
AND LAYMEN***

*OCTOBER 11, 2011*

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**Joel J. Seidemann** is currently an Assistant District Attorney and Senior Trial Counsel in the New York County District Attorney's Office, responsible in part for the investigation and prosecution of murders and other serious felonies. In 1979, he graduated from the National Law Center at George Washington University and began his professional career with the firm of Shearman & Sterling.

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## The Brooke Astor Case

Joel J. Seidemann

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# **The Charges and the Law**



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

ANTHONY MARSHALL,  
FRANCIS MORRISSEY,

Defendants.

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuse the defendants ANTHONY MARSHALL and FRANCIS MORRISSEY of the crime of **SCHEME TO DEFRAUD IN THE FIRST DEGREE**, in violation of Penal Law §190.65(1)(b), committed as follows:

The defendants ANTHONY MARSHALL and FRANCIS MORRISSEY, in the County of New York and elsewhere, during the period from on or about December 1, 2001 to on or about September 11, 2007, engaged in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person and to obtain property from more than one person by false and fraudulent pretenses, representations and promises, and so obtained property with a value in excess of one thousand dollars from one or more such persons.

During the course of and in furtherance of the scheme, the defendants exploited Brooke Astor's diminished mental capacity, including abusing defendant ANTHONY MARSHALL's power of attorney, in order to unjustly enrich themselves and others at the expense of Brooke Astor and others, including the intended beneficiaries of her 2002 will, in committing the following acts, among others:

1. The defendant ANTHONY MARSHALL made false representations to Brooke Astor that induced her ostensible consent to his sale of her painting, "Up the

Avenue from Thirty-fourth Street” by Childe Hassam, and enabled the defendant ANTHONY MARSHALL to obtain two million dollars from the proceeds of said sale.

2. The defendant ANTHONY MARSHALL used Brooke Astor’s funds to pay expenses related to real property in Maine that was no longer owned or being used by Brooke Astor.
3. The defendant ANTHONY MARSHALL took works of art owned by Brooke Astor from her residence while she still lived there.
4. The defendant ANTHONY MARSHALL used Brooke Astor’s funds to pay the salary of an employee who worked primarily for a theater production company unrelated to Mrs. Astor called Delphi Productions.
5. The defendants ANTHONY MARSHALL and FRANCIS MORRISSEY had Brooke Astor execute a second codicil to her 2002 will which, among other things, left the defendant ANTHONY MARSHALL her residuary estate outright, thereby changing her long-established plan that her residuary estate would ultimately go to charity, and the defendant ANTHONY MARSHALL thereafter offered said codicil for probate in the Surrogate’s Court of the State of New York, County of Westchester.
6. The defendants ANTHONY MARSHALL and FRANCIS MORRISSEY had Brooke Astor execute a third codicil to her 2002 will which, among other things, directed that her real property be sold after her death, resulting in higher executor fees being paid to defendant ANTHONY MARSHALL and others.
7. The defendants ANTHONY MARSHALL and FRANCIS MORRISSEY used Brooke Astor’s funds to increase defendant ANTHONY MARSHALL’s salary both retroactively and prospectively.

8. The defendant ANTHONY MARSHALL used Brooke Astor's funds to pay the salary of a captain for a yacht purchased by the defendant that was neither owned nor used by Brooke Astor.

SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant ANTHONY MARSHALL of the crime of **GRAND LARCENY IN THE FIRST DEGREE**, in violation of Penal Law §155.42, committed as follows:

The defendant ANTHONY MARSHALL, in the County of New York, during the period from on or about December 1, 2001 to on or about November 5, 2002, stole property from Brooke Astor and the value of the property exceeded one million dollars, to wit, two million dollars.

THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant ANTHONY MARSHALL of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law §175.10, committed as follows:

The defendant ANTHONY MARSHALL, in the County of New York, on or about September 30, 2003, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused a false entry in the business records of an enterprise, to wit, Samuel Cohen & Company, CPA's P.C.

FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant ANTHONY MARSHALL of the crime of **OFFERING A FALSE INSTRUMENT**

**FOR FILING IN THE FIRST DEGREE**, in violation of Penal Law §175.35, committed as follows:

The defendant ANTHONY MARSHALL, in the County of New York, on or about October 17, 2006, knowing that a written instrument, to wit, the Verified Answer and Cross-Petition, including Verification, of ANTHONY MARSHALL, filed in the action entitled In the Matter of the Application of PHILIP MARSHALL for the Appointment of Guardians of the Person and Property of BROOKE ASTOR, An Alleged Incapacitated Person, Index No. 500095/06, of the Supreme Court of the State of New York, County of New York, contained a false statement and false information, and with intent to defraud the state and any political subdivision, public authority and public benefit corporation of the state, offered and presented it to a public office, public servant, public authority and public benefit corporation, with the knowledge and belief that it would be filed with, registered and recorded in and otherwise become a part of the records of such public office, public servant, public authority and public benefit corporation.

FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant ANTHONY MARSHALL of the crime of **GRAND LARCENY IN THE SECOND DEGREE**, in violation of Penal Law §155.40(1), committed as follows:

The defendant ANTHONY MARSHALL, in the County of New York, during the period from on or about November 18, 2003 to on or about July 12, 2006, stole property from Brooke Astor and the value of the property exceeded fifty thousand dollars, to wit, funds used to pay expenses related to real property in Maine that was no longer owned or being used by Brooke Astor.

SIXTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant ANTHONY MARSHALL of the crime of **GRAND LARCENY IN THE SECOND DEGREE**, in violation of Penal Law §155.40(1), committed as follows:

The defendant ANTHONY MARSHALL, in the County of New York, on a date during the period from on or about December 22, 2003 to on or about March 20, 2004, stole property from Brooke Astor and the value of the property exceeded fifty thousand dollars, to wit, a work of art by Giovanni Domenico Tiepolo.

SEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant ANTHONY MARSHALL of the crime of **CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE**, in violation of Penal Law §165.52, committed as follows:

The defendant ANTHONY MARSHALL, in the County of New York, during the period from on or about March 20, 2004 to on or about October 23, 2006, with intent to benefit himself and a person other than an owner thereof and to impede the recovery by an owner thereof, knowingly possessed stolen property owned by Brooke Astor, to wit, a work of art by Giovanni Domenico Tiepolo, and the value of the property exceeded fifty thousand dollars.

EIGHTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant ANTHONY MARSHALL of the crime of **GRAND LARCENY IN THE SECOND DEGREE**, in violation of Penal Law §155.40(1), committed as follows:

The defendant ANTHONY MARSHALL, in the County of New York, during the period from on or about January 1, 2004 to on or about September 30, 2005, stole property from Brooke Astor and the value of the property exceeded fifty thousand dollars, to wit, wages paid to a household employee.

NINTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendants ANTHONY MARSHALL and FRANCIS MORRISSEY of the crime of **CONSPIRACY IN THE FOURTH DEGREE**, in violation of Penal Law §105.10(1), committed as follows:

The defendants ANTHONY MARSHALL and FRANCIS MORRISSEY, in the County of New York and elsewhere, during the period from on or about January 1, 2004 to on or about September 11, 2007, with intent that conduct constituting the crime of **GRAND LARCENY IN THE FIRST DEGREE** be performed, said crime being a class "B" felony, agreed to engage in and to cause the performance of such conduct.

#### **The Conspiracy**

During the period of the conspiracy, Brooke Astor had diminished mental capacity. Defendant ANTHONY MARSHALL was Brooke Astor's son and agent pursuant to a durable power of attorney, authorizing him to act on Brooke Astor's behalf and in her best interest. Defendant FRANCIS MORRISSEY was an attorney known to defendant ANTHONY MARSHALL. The object of the conspiracy was to obtain funds from Brooke Astor's residuary estate for the benefit of defendant ANTHONY MARSHALL and others. To achieve this end, defendant ANTHONY MARSHALL and defendant FRANCIS MORRISSEY agreed to have Brooke Astor execute a second codicil to her 2002 will which, among other things, left the defendant ANTHONY MARSHALL her residuary estate outright, thereby changing her long-



established plan that her residuary estate would ultimately go to charity. They further agreed that said codicil would be offered for probate after her death.

### **Overt Acts**

In furtherance of said conspiracy and to effect the objects thereof, from on or about January 1, 2004 to on or about September 11, 2007, the following overt acts, among others, were committed in the County of New York and elsewhere:

1. On a date between on or about January 1, 2004 and on or about January 12, 2004, defendant ANTHONY MARSHALL and defendant FRANCIS MORRISSEY hired a trusts and estates attorney known to the Grand Jury, ostensibly to represent Brooke Astor.
2. On a date or dates between on or about January 1, 2004 and on or about January 12, 2004, defendant FRANCIS MORRISSEY directed said trusts and estates attorney to draft the second codicil to Brooke Astor's 2002 will, which would, in part, leave the residuary estate of Brooke Astor to defendant ANTHONY MARSHALL, or defendant ANTHONY MARSHALL's estate.
3. On or about January 12, 2004, defendant ANTHONY MARSHALL and defendant FRANCIS MORRISSEY brought Brooke Astor to a room in her residence in New York County, in which she was presented with the second codicil.
4. On or about January 12, 2004, defendant FRANCIS MORRISSEY and said trusts and estates attorney had Brooke Astor execute the second codicil to her 2002 will in Brooke Astor's residence in New York County.
5. From on or about August 22, 2007 to on or about September 11, 2007, after Brooke Astor's death, defendant ANTHONY MARSHALL offered the purported

second codicil for probate in the Surrogate's Court of the State of New York, County of Westchester.

TENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendants ANTHONY MARSHALL and FRANCIS MORRISSEY of the crime of **CONSPIRACY IN THE FIFTH DEGREE**, in violation of Penal Law §105.05(1), committed as follows:

The defendants ANTHONY MARSHALL and FRANCIS MORRISSEY, in the County of New York and elsewhere, during the period from on or about January 1, 2004 to on or about September 11, 2007, with intent that conduct constituting the crime of **OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE** be performed, said crime being a felony, agreed to engage in and to cause the performance of such conduct.

#### **The Conspiracy**

During the period of the conspiracy, Brooke Astor had diminished mental capacity. Defendant ANTHONY MARSHALL was Brooke Astor's son and agent pursuant to a durable power of attorney, authorizing him to act on Brooke Astor's behalf and in her best interest. Defendant FRANCIS MORRISSEY was an attorney known to defendant ANTHONY MARSHALL. The object of the conspiracy was to offer into probate a second codicil to Brooke Astor's 2002 will that contained false statements and false information, in order to obtain funds from Brooke Astor's residuary estate for the benefit of defendant ANTHONY MARSHALL and others. To achieve this end, defendant ANTHONY MARSHALL and defendant FRANCIS MORRISSEY agreed to have Brooke Astor execute a second codicil to her 2002 will which, among other things, left the defendant ANTHONY MARSHALL her residuary estate outright,

thereby changing her long-established plan that her residuary estate would ultimately go to charity. They further agreed that said codicil would be offered for probate after her death.

### Overt Acts

In furtherance of said conspiracy and to effect the objects thereof, from on or about January 1, 2004, to on or about September 11, 2007, the following overt acts, among others, were committed in the County of New York and elsewhere:

1. On a date between on or about January 1, 2004 and on or about January 12, 2004, defendant ANTHONY MARSHALL and defendant FRANCIS MORRISSEY hired a trusts and estates attorney known to the Grand Jury, ostensibly to represent Brooke Astor.
2. On a date or dates between on or about January 1, 2004 and on or about January 12, 2004, defendant FRANCIS MORRISSEY directed said trusts and estates attorney to draft the second codicil to Brooke Astor's 2002 will, which would, in part, leave the residuary estate of Brooke Astor to defendant ANTHONY MARSHALL, or defendant ANTHONY MARSHALL's estate.
3. On or about January 12, 2004, defendant ANTHONY MARSHALL and defendant FRANCIS MORRISSEY brought Brooke Astor to a room in her residence in New York County, in which she was presented with the second codicil.
4. On or about January 12, 2004, defendant FRANCIS MORRISSEY and said trusts and estates attorney had Brooke Astor execute the second codicil to her 2002 will in Brooke Astor's residence in New York County.
5. From on or about August 22, 2007 to on or about September 11, 2007, after Brooke Astor's death, defendant ANTHONY MARSHALL offered the purported

second codicil for probate in the Surrogate's Court of the State of New York,  
County of Westchester.

ELEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant ANTHONY MARSHALL of the crime of **OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE**, in violation of Penal Law §175.35, committed as follows:

The defendant ANTHONY MARSHALL, in the County of New York, from on or about August 22, 2007 to on or about September 11, 2007, knowing that a written instrument, to wit, the purported Second Codicil to Will of Brooke Russell Astor, dated January 12, 2004, contained a false statement and false information, and with intent to defraud the state and any political subdivision, public authority and public benefit corporation of the state, offered and presented it to a public office, public servant, public authority and public benefit corporation, with the knowledge and belief that it would be filed with, registered and recorded in and otherwise become a part of the records of such public office, public servant, public authority and public benefit corporation.

TWELFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendants ANTHONY MARSHALL and FRANCIS MORRISSEY of the crime of **CONSPIRACY IN THE FOURTH DEGREE**, in violation of Penal Law §105.10(1), committed as follows:

The defendants ANTHONY MARSHALL and FRANCIS MORRISSEY, in the County of New York and elsewhere, during the period from on or about January 12, 2004 to on or about

September 11, 2007, with intent that conduct constituting the crime of **GRAND LARCENY IN THE FIRST DEGREE** be performed, said crime being a class "B" felony, agreed to engage in and to cause the performance of such conduct.

### **The Conspiracy**

During the period of the conspiracy, Brooke Astor had diminished mental capacity. Defendant ANTHONY MARSHALL was Brooke Astor's son and agent pursuant to a durable power of attorney, authorizing him to act on Brooke Astor's behalf and in her best interest. Defendant FRANCIS MORRISSEY was an attorney known to defendant ANTHONY MARSHALL. The object of the conspiracy was to obtain funds from the Vincent Astor Trust for the benefit of defendant ANTHONY MARSHALL and others. To achieve this end, defendant ANTHONY MARSHALL and defendant FRANCIS MORRISSEY agreed to have Brooke Astor execute a third codicil to her 2002 will which, among other things, directed that her real property be sold after her death, resulting in higher executor fees being paid to defendant ANTHONY MARSHALL and others. They further agreed that said codicil would be offered for probate after her death.

### **Overt Acts**

In furtherance of said conspiracy and to effect the objects thereof, from on or about January 12, 2004, to on or about September 11, 2007, the following overt acts, among others, were committed in the County of New York and elsewhere:

1. On or about March 3, 2004, in Brooke Astor's residence in New York County, defendant FRANCIS MORRISSEY secured signatures of two persons known to the Grand Jury, as witnesses to a document purportedly signed by Brooke Russell Astor.