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Trial Expected to Hinge on Astor's Competence During Will Revisions

By JOHN ELIGON

With Brooke Astor's son scheduled to go on trial this week on charges that he took advantage of his ailing mother to gain access to her fortune, who would better serve as the focus of attention than Mrs. Astor, the unforgettable matriarch of New York society and philanthropy, herself?

The trial, which is to begin with jury selection on Monday in State Supreme Court in Manhattan, will parse Mrs. Astor's behavior and habits as she declined from magnetic and charming to secluded and disoriented, before dying in 2007 at age 105. The fates of her son, Anthony Marshall, and his co-defendant, Francis X. Morrissey Jr., a lawyer who helped with her [estate planning](#), may come down to a not-so-simple question: What was her mental state in the final years of her life?

Prosecutors will argue that Mr. Marshall and Mr. Morrissey knew that Mrs. Astor, suffering from Alzheimer's disease, had deteriorated mentally, but that they exploited her ailments to trick her into directing millions of dollars their way, according to the indictment and lawyers briefed on the case. A second change to Mrs. Astor's will, executed in January 2004, which gave Mr. Marshall her estate outright, will be under the most scrutiny.

In trying to prove that Mr. Marshall knowingly took advantage of his mother, prosecutors will rely heavily on a letter he wrote to one of her doctors in 2000 in which he told vivid anecdotes about her fragile mental state, according to an official briefed on the case who was not authorized to talk publicly and spoke on the condition of anonymity.

In the letter, Mr. Marshall wrote that his mother had difficulty getting dressed, writing and spelling. She also had problems with simple arithmetic and was incoherent and indecisive. She even "mixes up words, saying one, meaning another," the letter says.

Prosecutors are expected to try to build a cumulative picture of Mrs. Astor's diminished mind by calling witnesses who dealt with her closely, including her housekeepers, former lawyers and friends. Among the five dozen witnesses they intend to call are friends from Mrs. Astor's social orbit, including Annette de la Renta, wife of the fashion magnate [Oscar de la Renta](#). The trial is expected to last about two months.

But the mere fact that someone has a degenerative mental condition does not prevent that person from consenting to a change in a will, lawyers and legal scholars say. Alzheimer's patients can have moments of lucidity, and so prosecutors must prove that Mrs. Astor was mentally incapacitated at the moment she approved amendments, known as codicils, to her will, the lawyers and scholars said.

Both men face charges of conspiracy and scheming to defraud. Mr. Marshall, 84, also faces a charge of first-degree grand larceny, the most serious count on the indictment, for selling one of his mother's [Childe Hassam](#) paintings for \$10 million and pocketing \$2 million as commission. If convicted of the top count, he could face up to 25 years in prison.

The top charge against Mr. Morrissey, 66, is forgery, with prosecutors accusing him of faking Mrs. Astor's signature on a third amendment to her will. If convicted of that count, he could spend up to seven years in prison. Mr. Marshall's lawyers will argue that Mrs. Astor was competent when she changed her will and authorized her son to disburse her money and property in various ways, according to lawyers briefed on the case. They also will likely suggest Mrs. Astor made decisions that were financially favorable to Mr. Marshall because she cared for him.

Kenneth E. Warner, one of Mr. Marshall's lawyers, wrote in an e-mail message: "Mr. Marshall is an innocent man. He's almost 85 years old and recovering from heart surgery, so this indictment is terribly burdensome, as well as unjust."

Mr. Morrissey's lawyer, Thomas Puccio, said his client had limited involvement in the codicils.

"We will prove that [Brooke Astor](#) signed the third codicil," he said. Mr. Puccio noted that the investigation began with a lawsuit by Mr. Marshall's son, Philip, in which he accused his father of mistreating his grandmother and asked that he be removed as her guardian. "This forgery allegation did not begin with the prosecutors," the lawyer said. "It started with people who were highly motivated to oust Mr. Marshall and to discredit Mr. Morrissey."

The filing of the lawsuit in 2006 made clear that Mrs. Astor's final few years were far less glamorous than her first 100. Her third husband, Vincent Astor, was the son of John Jacob Astor, who made his fortune in fur trading and real estate and who died in the sinking of the Titanic. Mr. Marshall, Mrs. Astor's only child, was from her first marriage.

When Mr. Astor died in 1959, he left his wife \$60 million for herself and an equal amount for a foundation "for the alleviation of human suffering." The foundation's endowment, which grew to nearly \$195 million, was eventually given to charity; when Mrs. Astor died, her estate was estimated to be worth \$132 million, in addition to a trust valued at more than \$60 million.

In addition to selling Mrs. Astor's painting and changing her will, Mr. Marshall is accused of using his mother's money for several unauthorized reasons: to pay the salary of an employee of his former theater company, Delphi Productions; to raise his own salary; to pay expenses on a retreat in Maine that his mother no longer owned or used; and to pay the salary of the captain of his yacht.

Still, a large portion of the case will revolve around the second codicil, which prosecutors have said betrayed Mrs. Astor's longstanding wish that her estate eventually be handed down to charity. Before the change was made on Jan. 12, 2004, the estate was supposed to be put into a trust from which Mr. Marshall would receive 7 percent of the value every year for the rest of his life, according to the indictment and lawyers briefed on the case.

But Mr. Marshall's lawyers plan to use the first codicil, executed three weeks before the second and

unchallenged in the criminal proceeding, to raise the argument that if Mrs. Astor was competent for one, she must have been competent for the other. The first codicil sent 51 percent of the foundation trust to a fund run by Mr. Marshall, allowing him to distribute the money to charities. His lawyers also planned to argue that the codicils were carried out by well-respected lawyers.

"Mrs. Astor was competent to sign her second codicil, just as three weeks earlier she was competent to sign her first codicil, which the indictment doesn't challenge," Mr. Warner wrote in an e-mail message. "A highly experienced and respected estates attorney drafted each codicil, supervised the signing and swore to her competence in each instance."

The indictment against Mr. Marshall contends that he tricked his mother into thinking it was necessary to sell the Hassam painting, "[Up the Avenue from 34th Street](#)," by telling her she was running out of money.

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