

TESTIMONY OF IRA SALZMAN BEFORE THE UNITED STATES SENATE SPECIAL
COMMITTEE ON AGING - SEPTEMBER 7, 2006

Good morning. Thank you for allowing me to testify before you about the Elder Justice Act.

My name is Ira Salzman. I practice law in New York City and I am a partner with the firm of Goldfarb Abrandt Salzman & Kutzin LLP. Almost from the time I was admitted to practice law in 1978 my practice has focused on Adult Guardianship, Mental Health Law, and what is now called Elder Law. Early in my career, I served as counsel for our local Adult Protective Services Agency. My current clients include not-for-profit corporations that serve as guardian where there is no one else available, or willing to serve. My firm also represents people who are petitioning for the appointment of a guardian for a loved one.

I am also the attorney for Philip Marshall, who has brought a proceeding to have a guardian appointed for his grandmother, Brooke Astor. Because this case is still in litigation and part of the file is under Court seal, it is not appropriate for me to make any comments about the specifics of the case. However, there are newspaper reports about the facts that are alleged in

the Court papers which I have filed. Many people have found these reports shocking. I believe that the sense of outrage that this case has engendered is entirely justified.

Having said that, I think there is a very important point that needs to be made.

The Astor case is by no means unique. In the Astor case the petition alleges that a power of attorney has been used to misappropriate money. My firm has been involved in many cases where this is an issue. In the Astor case it is alleged that money was not being spent for needed care. This is also the kind of case where my firm has been involved in litigation many times. In the Astor case we were able to document the allegations of abuse well enough for the court to determine that the immediate appointment of temporary guardians was appropriate. An important lesson of the Astor case is that guardianship proceedings can be a powerful weapon in the battle to stop elder abuse.

It is also important to note that guardianship is by no means a universal solution to the problem of elder abuse.

First, even assuming that guardianship is an appropriate goal in a particular case, there may be no one who is willing to be the person who petitions the court. More significantly there may be no one willing to serve as guardian. Supervising the care of an incapacitated person who has been abused is time consuming. It may involve frequent visits to supervise care. It may involve managing another person's finances. It requires someone who is willing to try to do the right thing, and is willing to take the personal risk of being second-guessed by someone else after the fact.

Second, even with a guardianship in place there may not be enough money available to pay for the cost of an appropriate care plan. For example, one of the common ways to resolve elder abuse problems is to put home care in place. This can be expensive. New York City has a generous Medicaid funded home care program but it is, to the best of my knowledge, relatively unique in this respect.

In addition, if there is no one available who is willing to serve as guardian without fee, then even in the simplest of cases the services of a guardian can be very expensive, given the household budgets of many people. Under New York law, a guardian has to visit his/her ward at least four times per year.

Let's assume that a visit takes three hours. Let's further assume that the guardian spends one hour per month paying bills, balancing checkbooks, filing insurance claims, etc., and three more hours per year preparing reports for the Court. That means that at a minimum a guardianship takes 27 hours per year. This assumes that there is no crisis to deal with (medical or otherwise), there is no fight with an insurance company over a claim, there is no heavy duty cleaning that needs to be done, and that four times per year is in fact an adequate number of times to visit.

In New York City you cannot get a professional to do anything for less than \$100.00 an hour. This means that the minimum charge for a guardian to do an adequate job is \$2,700.00 per year. This does not include legal fees for the filing of court reports.

A third problem that can arise is that sometimes the abused elderly person refuses to assist in any way in the appointment of a guardian and opposes the elimination of the abuser from his/her life. In a recent case handled by my firm, a mother refused numerous offers of assistance to remove an abusing adult child from her home, in part because of the concern by the elderly person that if the child were removed the child would

have no place to live and would be at risk. It is not uncommon that the person who is being abused has a powerful psychological bond with the abuser, is living with the abuser, and does not want to be separated from that person. Therefore, those who want to intercede in elder abuse cases frequently have an extraordinarily difficult decision to make. What is going to cause more harm, allowing the abuse to continue or separating the incapacitated person who is being abused from his/her loved one?

All this brings me to the Elder Justice Act. As noted in the Congressional findings, there are somewhere between 500,000 and 5,000,000 elderly who are abused, neglected or exploited each year. Most of this is unreported. Different states use different procedures to respond to these cases. In New York the procedures vary by county. For example, there is no statewide public guardian in New York. Counties are given the option to establish what is called a community guardian program. Some counties have one, others do not.

Guardianship is an important tool that can be used to end elder abuse in some cases. But it is certainly not the appropriate tool in every case. What is needed is a balanced comprehensive multidisciplinary approach. Research is needed to

establish best practices. There is a need to create a national platform for the discussion of this issue.

The passage of the Elder Justice Act is important because it provides funding to establish best practices in this area. This is an absolutely critical need.

The passage of the Elder Justice Act is important because it provides additional funding to adult protective services agencies in order to decrease caseload per worker. This is an absolutely critical need.

The passage of the Elder Justice Act is important because it establishes funding and procedures for data collection so that we can get a better understanding of the nature and scope of this problem. This is an absolutely critical need.

As outrageous as the allegations in the Astor case may seem to some, the important point that needs to be made is that the Astor case is only one of many. Elder abuse cuts across class lines and economic strata. There are hundreds of thousands if not millions of other elder abuse cases in the United States which also cry out for our outrage and concern. The passage of

the Elder Justice Act would be an important way to channel that outrage and concern in a productive way.

Thank you for the opportunity to testify before you today.

Respectfully submitted,

Ira Salzman

BIOGRAPHICAL INFORMATION ABOUT IRA SALZMAN

Ira Salzman is the former Chair of the Elder Law Committee of the New York County Lawyers' Association. He is currently a member of the Executive Committee of the Elder Law Section of the New York State Bar Association and the former Vice-Chair of its Guardianship subcommittee.

He is a Fellow of the Brookdale Center on Aging. He is a member of the National Academy of Elder Law Attorneys and a former editor of its quarterly journal.

He has written articles for the quarterly journal of the National Academy of Elder Law Attorneys, the Elder Law News (a publication of Little, Brown & Company), and for the Elder Law Attorney (published by the Elder Law Section of the New York State Bar Association). He is the co-author of the Guardianship Section of the New York Lawyer's Form Book (published by the New York State Bar Association). He is the author of the chapter on the responsibilities of the attorney for an alleged incapacitated person in Guardianship Practice In New York (published by the New York State Bar Association). He chairs the semi-annual New York State Office of Court Administration Certified Program for the training of guardians and court evaluators which are sponsored by the New York County Lawyers Association.