



## SPECIAL REPORT: ELDER CARE

By **Patricia A. Maisano**

# Predatory Behavior

How to identify and prevent abuse against your client

Every day, there are numerous threats to the health and security of your clients' estates. Some, like the tax consequences of Internal Revenue Service changes, run rampant through the media. They resonate with a chord of urgency and drive clients to you, seeking guidance and protection. Others are less obvious, not only because those who levy them prefer to go unnoticed, but also because your clients will typically be reluctant to mention them or the loss they produce.

In the fiduciary world, the risk of loss has been a driving force behind the creation of trusts and legal documents to prevent individuals from challenging the will of clients to dispense with their estates as they see fit. But, not all loss can be prevented by such formalities. **One of the most significant agents of loss, one that often goes unmentioned by the client and largely undetected by the professional, is predatory behavior,** a growing practice that threatens great waste of control and wealth, not to mention ancillary damages.

Predatory behavior has gained public prominence in recent years thanks to high profile cases such as the Brooke Astor matter<sup>1</sup> and Mickey Rooney's testimony before Congress in March 2011,<sup>2</sup> but it's not limited to the exceptionally wealthy and famous. A growing societal sense of entitlement and the ability for some people to knowingly do wrong without feeling guilty has given rise to predatory behavior in many forms and by many people whom most of us wouldn't immediately expect.

What does predatory behavior look like? What can you do to prevent clients from falling victim to it? What

are the telltale signs that your client may be suffering from such undue influence, and what can you do for them if they do? These are the issues I'd like to address. By increasing awareness of how to identify predatory behavior, prevent it whenever possible and pick up the pieces after it's been properly addressed, you can better help your clients face the threat not only of lost finances, but also of lost dignity and quality of life to which they're entitled.

**Removing the Camouflage** Predatory behavior is usually a gradual assumption or granting of power over another who needs the predator to give him physical, social, spiritual or emotional support. **Physical harm doesn't have to be a factor, although it may be an eventual risk.**

The person amassing this power may be any of a number of individuals hovering around the client on a routine basis. It may be a family member or not, someone young or old. It may be the aide who provides care at home or in a facility, the person who drives your client to see you and to other appointments, the concerned individual who visits the client regularly about the beginning of every month (when Social Security checks come in) or the neighbor who they believe looks out for him. Your client might express that he can't live without this person. His dependence may even have progressed to the stage where he's granted the person license to make every decision for him. But, he may not come right out and say that. Watch for signs and listen for comments like, "I need to ask Jane" when you pose a simple or personal question that needs no input from "Jane."

In our work as advocates we've come across many cases of predatory behavior. One involved an adult son, an only child who had never worked. His elderly mother was supplying his income so that he might maintain his lifestyle. He was her only family and her only visitor. He



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would insist on receiving extra money around Mother's Day, her birthday and Christmas to come see her. He gave all signs of feeling entitled to her money and, in fact, even accused us at one point of prolonging his mother's life and, thereby, using up his inheritance.

Another case involved a widow experiencing the onset of a memory problem. She had a neighbor who, she told us, helped her with her grocery shopping and checked in on her regularly. The neighbor was using the woman's money, but never brought her anything but canned soup, even though her weekly grocery bill was averaging \$600. This same woman's hairdresser was insisting on being paid a year in advance or she wouldn't style her hair. The woman obliged and paid the hairdresser, but she rarely could arrange a ride to visit the salon. The only person she could count on for transportation was her neighbor's minister, who would take her to Costco, leading to credit card charges of some \$800 a month for goods that never returned home with her. All of these close contacts were taking advantage of her vulnerabilities, but the abuse didn't end there. Even total strangers were in on the game. She was on every scam mailing list you could imagine, some of which were so bold as to just send her pre-paid FedEx envelopes with the simple direction, "Put the money in here."

In a third situation, we encountered a recently widowed man who had two aides helping him at home. Aide 1 wanted Aide 2 fired, and she got her way because the widower's daughter considered Aide 1 her eyes and ears, a dependable watchdog looking out for anyone trying to get money from her dad. The daughter lived far away, making her dependent on Aide 1 for reports on her dad, and her dad dependent on Aide 1 for everything. The predatory behavior didn't take long to materialize once Aide 2 was no longer there posing the threat of discovery. First, the father bought Aide 1 a small gift, and by the end, the daughter had a new stepmother with even greater influence and a legal claim to her father's estate. Because the father hadn't been ruled incapacitated, the marriage was deemed legal, and the daughter had no recourse but to accept the new situation.

### Take Note, Then Action

Cases like these may not come to light until it's too late

and your client's estate has been compromised or irreparably devastated. As your client's trusted advisor, you should be on the lookout for vulnerabilities that may put your client at risk or signs that he may already be the victim of predatory behavior. The earlier you can identify a problem, the easier it will be to resolve.

What can you do to help prevent predatory attacks? Listen carefully to your client. In general conversations, you may hear a name mentioned repeatedly. If you don't already know, ask your client, in a non-confron-

Confronting the predator may not always be easy or straightforward.

tational way, who this person is and how he fits into your client's everyday life. If you already know this person, try to steal a moment with your client for a casual conversation in which you can try to discern just how much influence the person is exerting over him. This may not always be easy, especially if the client is embarrassed that he's let this behavior occur or if he's reluctant to sell out the only person with whom he feels he has regular interaction or worse, if the person typically accompanies your client to your meetings. Try to find a reason to get the client alone, and have a gentle but pointed discussion.

If, for example, your client makes a comment such as, "Sue has been taking me out," you might respond by saying, "I'm so glad you're getting out more. Where have you been going and what are you getting to do?" Treat your client gently and again, in a non-challenging way, try to dig a little deeper. Be on the alert for situations in which your client feels he needs to get Sue's okay before making a decision or doing something. If your client becomes guarded or nervous, you may have a problem.

If you suspect a problem, don't try to address the issue on the phone. You may place your client in jeopardy. Instead, make an unscheduled visit to see your client



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as soon as you can. If your client is embarrassed about what's happened, he may not come forward about it on the phone, but may confide in you face to face in a casual conversation. Also, when you're on the phone, you may not be able to detect a threat in the background, such as "I won't fix your dinner" or "I won't let you take any calls if you don't do as you're told." Your client may be fearful because of the repercussions. If someone can show up in person and unannounced, he may catch the predator off-guard, before the predator has had time to cover his tracks or to reassert a threat over your client.

Once you've justified your suspicion that wrongdoing is at hand, you'll need proof to convince the client (if he isn't already convinced) that he's being taken advantage of and at risk and to have just cause to take action to prevent the predator from continuing his behavior. **If your client has access to his funds, review expenditures carefully for unusual numbers, out-of-the-ordinary purchases or stores you know your client wouldn't frequent.** Make your client feel he can truly trust you as a person, not just as a professional. Only when you have the client's complete trust will he feel safe enough to confide in you.

As you begin to work through the situation with your client, remember that your client has been a victim and, depending on who the perpetrator is, his feeling of violation may be profound. It's important that you reassure him that he's not foolish or at fault. Guilt and shame are two very big emotions associated with this type of situation. This is another reason why you should always address such matters in person; they concern a very delicate discussion. Think of this situation much as you would if someone broke into your home and not only took your things, but also stole papers and your identity and left you feeling completely violated. Picking up the pieces and moving forward with confidence and strength may require moral as well as professional support.


### Confrontation

Confronting the predator may not always be easy or straightforward. When the predator is a family member, getting involved may embroil you in an internal battle that ultimately unravels your ties to even your biggest fans in the family. You need to bring the situation up in

a way that demonstrates you're acting in the best interest of the client first and foremost, but that also shows you appreciate the bigger picture of the family dynamic. The point is that the behavior must be put to an end, and the predator must be removed from his isolated position of influence. In such cases, or if you simply feel unable or insufficiently experienced to address the matter personally, you may want to seek out the intervention of an experienced professional trained specifically in dealing with the sensitivities of family affairs. Bringing in such a third party will allow you to keep your relationship with all those involved at a higher level.

When the predator is an outsider, additional steps may be necessary. First, make sure the predator is removed from any possible contact with your client for psychological as well as financial reasons. This can be accomplished by changing your client's phone number and making the new number unlisted, changing an email address if the client has one, notifying the guards in a gated community and, at least for a period, diverting the mail. If the client lives on his own, have the house alarmed.

**In many situations, the victim won't want to notify the police because of his sense of shame. If that sentiment is strong, you should honor his wish, but when he's able, discuss the things that you can do together to protect him, make a prevention plan and implement it as soon as possible.** In this way, you'll bring back his sense of self worth and protection, and allow him to move on.

Remember, predatory behavior occurs for many reasons and may be carried out by many unexpected sources. The one thing the statistics are showing us is that it's a big problem, growing bigger every day. Whatever you do, bear in mind you may be the only one who suspects or knows this behavior is occurring. Either through your own actions, or the actions of one of your trusted resources, you can be that first line of defense for your client, protecting him and in so doing, bringing the strength of your relationship to a whole new level and making an enduring connection. 

### Endnotes

1. Barbara Ross and Corky Siemaszko,

"Brooke Astor's Octogenarian Son Anthony Marshall to



Get 1 to 3 Years in Prison for Looting his Mom's Fortune," New York Daily News (March 26, 2013), <http://www.nydailynews.com/new-york/brooke-astor-son-spend-1-3-years-prison-article-1.1299336>.

2. YouTube video [www.youtube.com/watch?v=W9ikkP5-s5A](http://www.youtube.com/watch?v=W9ikkP5-s5A) and ABC News, Feb. 17, 2011 <http://abcnews.go.com/Health/Wellness/mickey-rooney-90-victim-alleged-elder-abuse/story?id=12934033&page=2#.Uay7I5WWXkQ>.