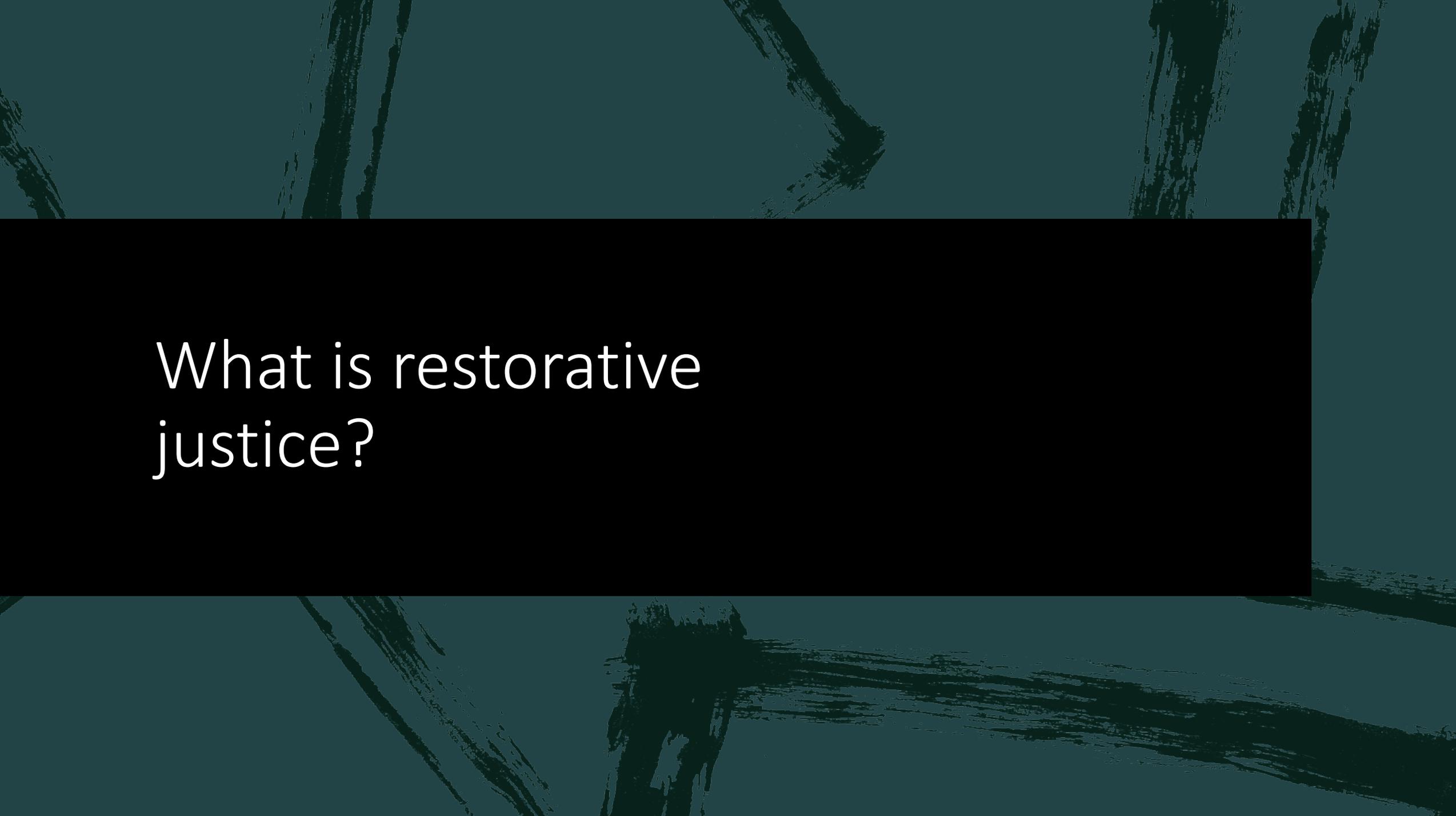


Restorative Justice for Older Adults

Presented by
Sarah Morton, Elderly Services Attorney
Blue Ridge Legal Services, Harrisonburg, VA



What is restorative
justice?

Comparison

Mainstream Adversarial

- What rule has been broken?
- Who broke that rule?
- What should the punishment be?

Restorative Justice

- Who has been harmed?
- What does that person need?
 - Physically?
 - Socially?
 - Financially?
 - Emotionally?
 - Spiritually?
- Who should be responsible for meeting those needs?

Major Themes of all Restorative Justice Efforts

- A foundational belief is that acknowledging the offense and the harm is both helpful to the victim's healing and a necessary condition for future right relationship.
- Focus shifts from broken laws and punishment to broken relationships and healing the damage.
- Victim plays an active role in the goal setting, the process, and the way in which the offender will make amends.
- Offenders are held accountable yet still cared for, and in the end are restored as members of the family and community.
- Aims to reduce recidivism by promoting positive behavior.
- Acknowledges that the offense impacts the survivors, their family, their community, and the offenders themselves.

Basic process:

- A group that contains at least the survivor, the offender, and a trained facilitator meet at the same location.
 - Models vary greatly. There may be more people in the room to support or lend expertise.
 - The parties usually are in the same room, but may be conferred with separately if needed to correct power imbalances.
- The facilitator is neutral in most models. The facilitator is not the decision maker, the parties are. They are to facilitate the victim and offender in their quest to make the situation right.
- The victim is invited to explain the wrongdoing, the harm it caused. The offender is invited to acknowledge the wrong and the harm, repent, apologize, and make amends.
- If a satisfactory resolution is not reached, then the parties can choose to try the process again another day or resort to the adversarial system.

Common elements:

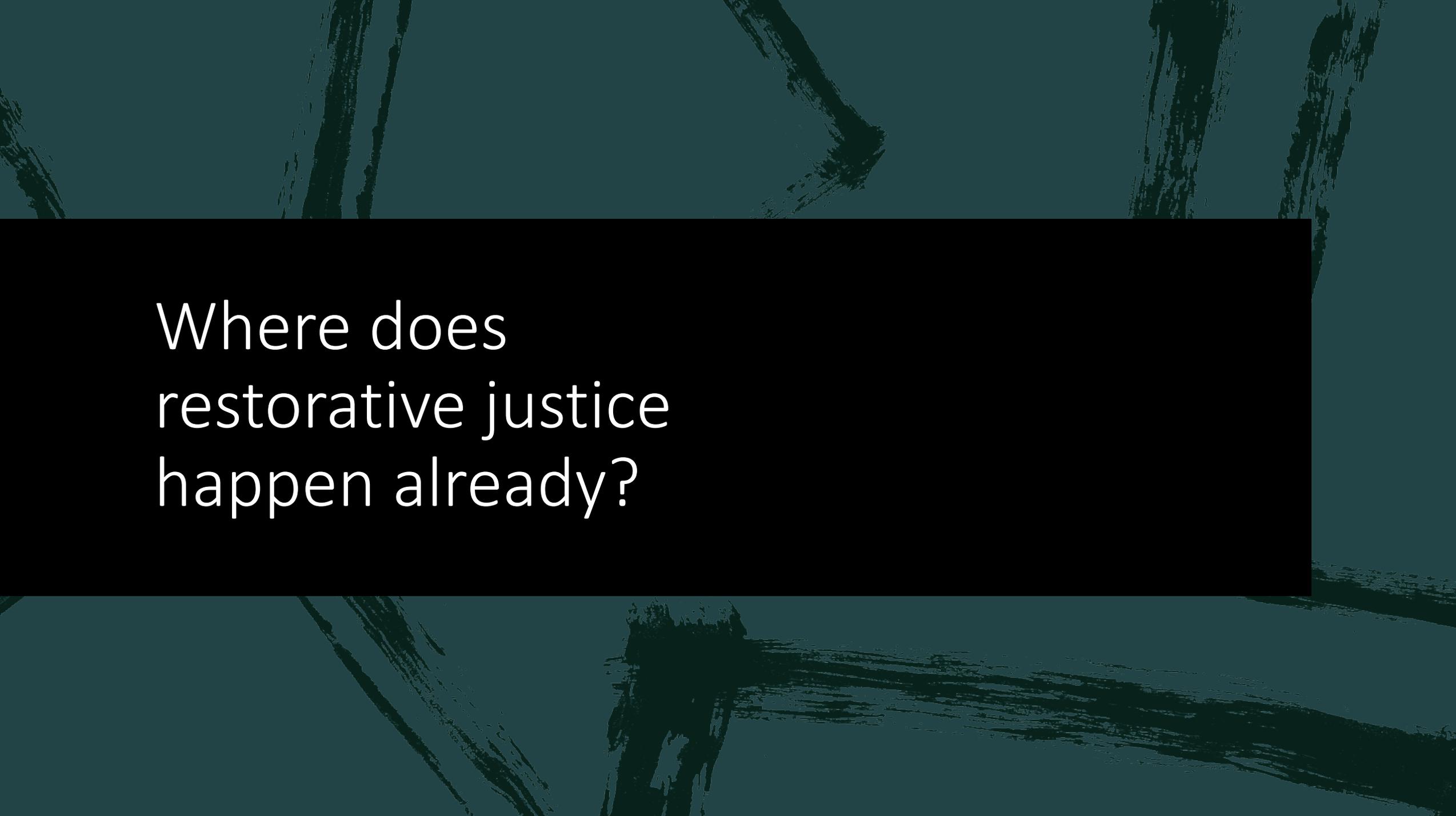
- Victim empowerment and participation
 - Victims set the goals.
 - *In many systems the victim has full control of the goals.*
 - *In some systems the victim sets the goals in cooperation with the community.*
 - Victims are invited to talk about how this has impacted them. Emotional impact is heard and validated as a harm.
 - Victims play an active role in determining how the offender makes amends.
 - This is why Restorative Justice is sometimes called Participatory Justice.
- Safe space and power balancing
- A facilitated discussion

May involve, as programs vary greatly:

- Voluntary participation by all parties
 - Outside of the tribal context, restorative justice efforts are voluntary for all parties.
 - Tribal systems vary but may require Native American tribe members to participate.
- Family and community support or involvement
- Counselor, social worker, or other professional support for the victim
- Discussion facilitator may be
 - A neutral mediator
 - A panel of respected community elders or even the victim's family, so not necessarily neutral.
- A spiritual dimension may be seen throughout the process, particularly in the Native American models.
 - A higher power is seen as at work enabling the process and bringing about healing for the survivor, repentance for the offender, and reconciliation of the parties.

Common outcomes:

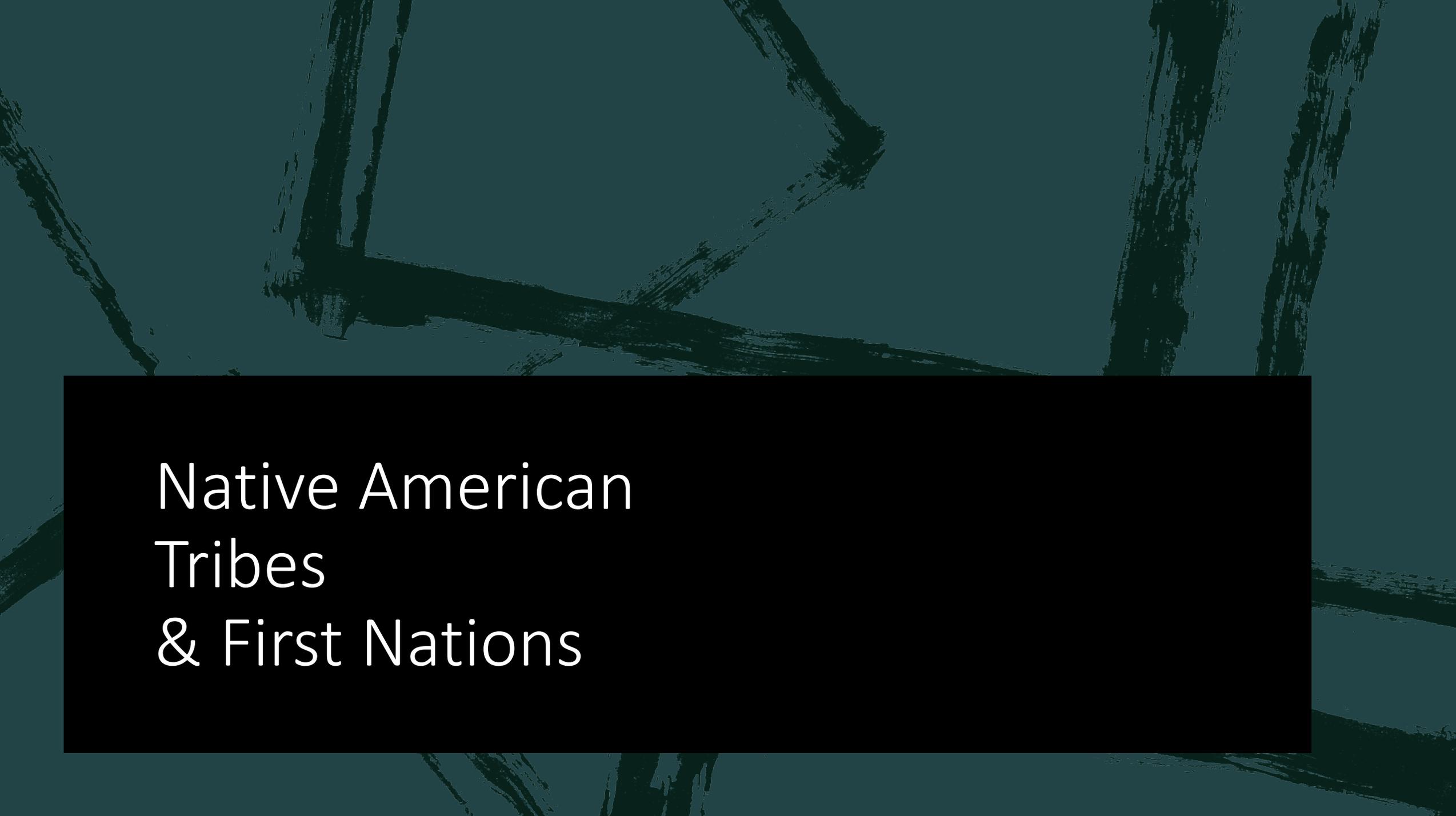
- An apology (can be by letter)
- Returned items, repaired vandalism, and/or a contract to replace financial loss
- Community or personal service
 - An attempt to recognize that the harm goes beyond the dollar amount of the loss.
 - *Examples:*
 - *A teen who vandalized a mailbox might rebuild and repaint it, but also do extra yard work throughout the summer for the victim.*
 - *Native American tribes often create a plan for the offender to help the survivor to plant, tend, and harvest the survivor's crops.*
- Anything else the victim wants is on the table



Where does
restorative justice
happen already?

Existing Restorative Justice Efforts

- Native American Tribes & First Nations
- Victim-Offender Reconciliation Program (VORP) Mediation
- Truth Commissions in the International Context



Native American Tribes & First Nations

Initial notes:

- Native American tribes vary greatly. While many tribes have a long history of restorative practices, a few tribes have processes that are mostly, or perhaps entirely, retributive.
- This outline is an attempt to generalize practices so that others can learn from our Native American neighbors' lived experiences and apply it in our own practice. For more details, see the written materials and especially the table of authorities for further reading.

Common Native American justice concepts:

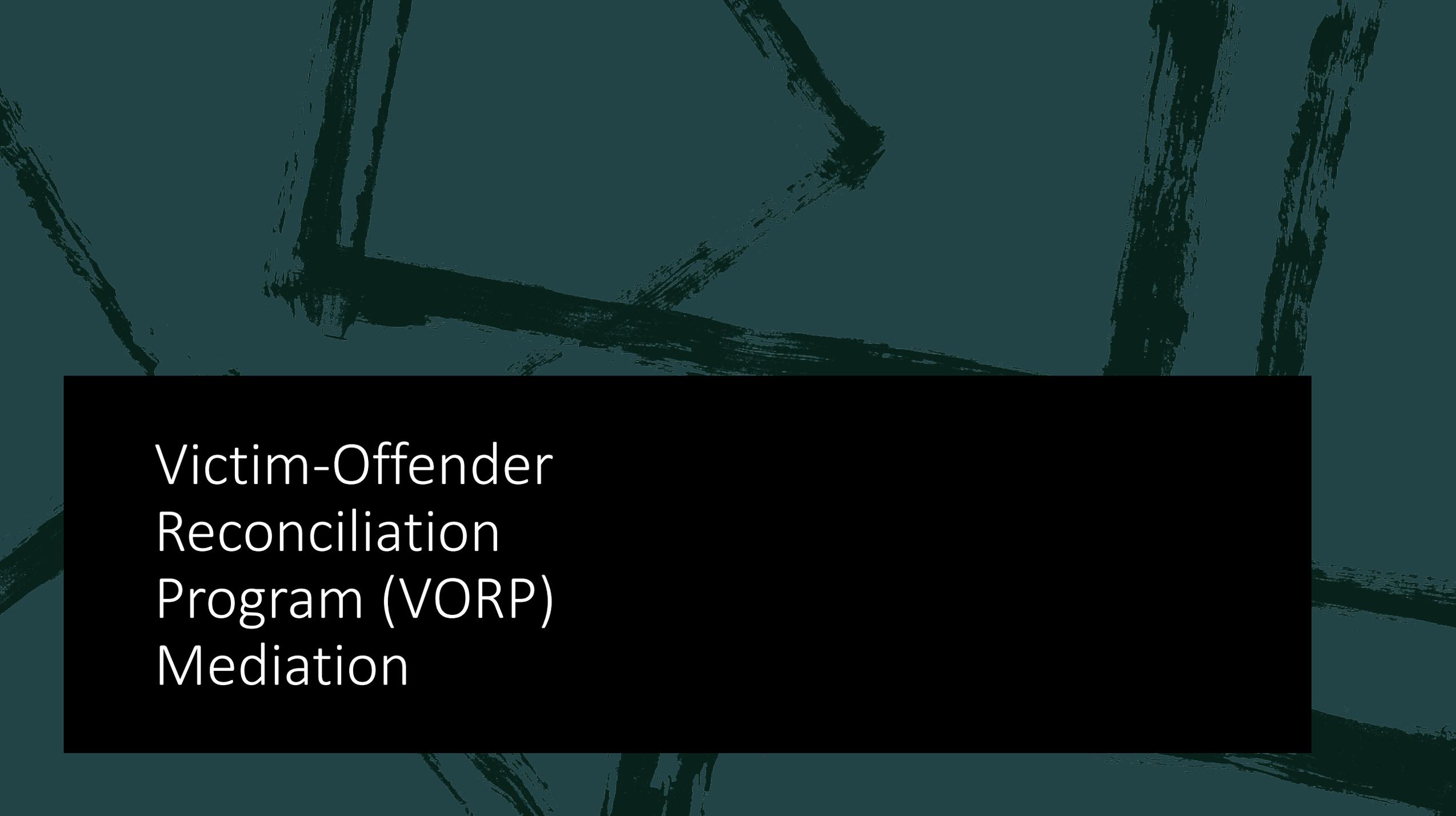
- Both the conception of the problem, and the remedy, are inescapably relational.
- Participants need to focus on the underlying problems, rather than simply the criminal act itself.
- Justice processes need to involve extended family and the community.
- Healing and reintegrating individuals into the community is more important than punishment.

Justice is viewed as circular or horizontal, rather than vertical.

- The predominant US legal system emphasizes vertical justice, with higher members of the hierarchy imposing the law on offenders.
- Native American views on justice involve all participants looking inward (“circular”) or sideways at each other (“horizontal”) and trying to restore or achieve right relationships.
 - This is why justice processes are described as “sentencing circles” or “peacemaking.”

Relational conceptions of “rights”

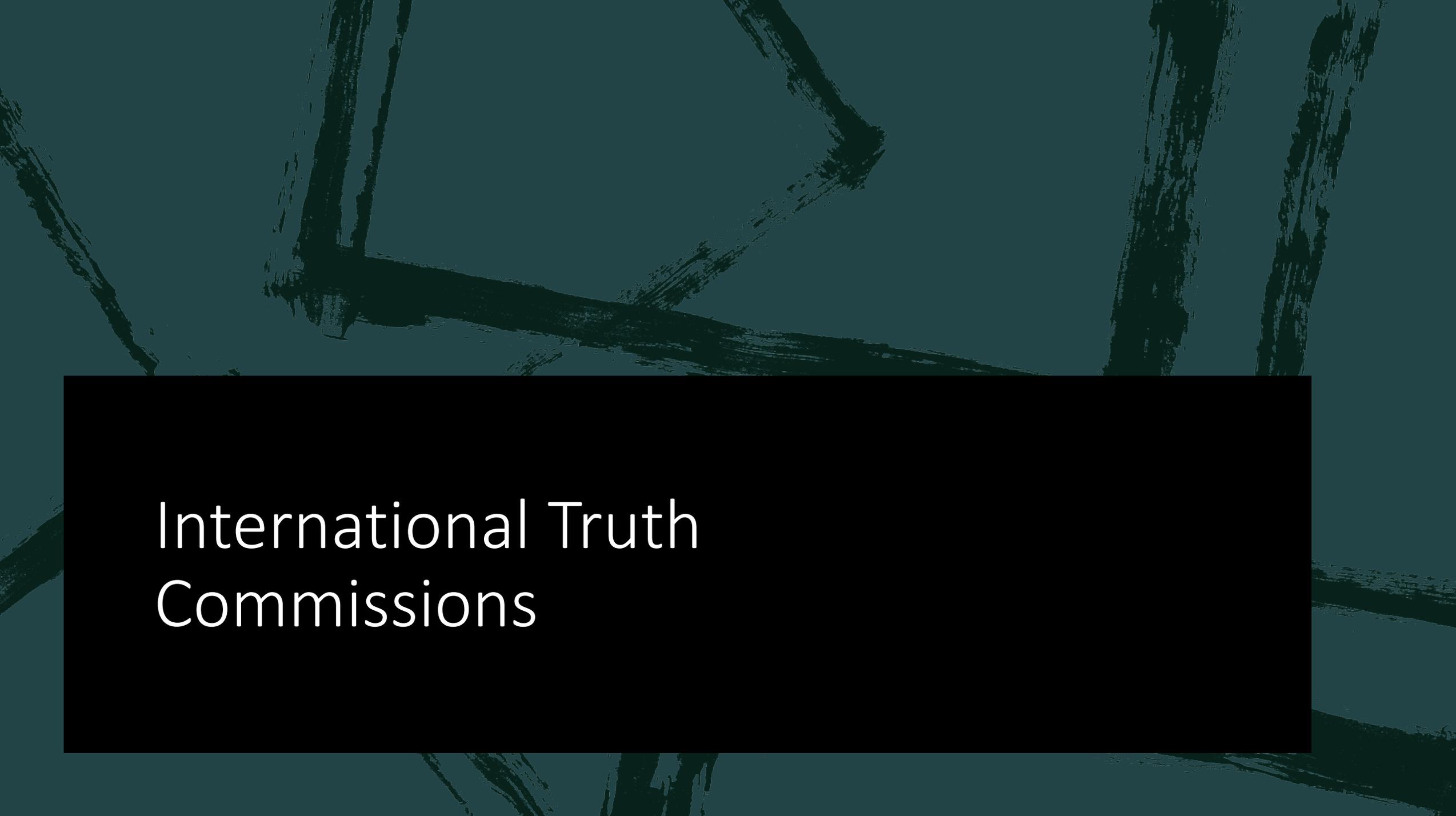
- The idea of an “individual,” a person outside his social context, is seen as a hypothetical. No one exists in isolation.
- What Westerners think of as “rights” would be regarded more as situations in relationships.
- Truth-telling is expected and encouraged.
- Emotions have a place in the peace-making process.
- Monetary damages are inadequate, and a judgement for only monetary damages is seen as missing the point. The offender must not only pay for the harm, but also take action to repair the relationships she tore. The offender might come up with a plan to help the victim tend to crops or livestock.
- Not just the harm to the victim, but also the abuser’s ability to repay is considered in setting restitution.



Victim-Offender
Reconciliation
Program (VORP)
Mediation

Victim-Offender Reconciliation Program (VORP) Mediation

- Started in Canada in the early 1970s.
- In the USA VORP began in 1977 at the Center for Community Justice in Elkhart (modelled on a program in Canada), and used now in many areas.
 - In many areas it is restricted to underage offenders and/or minor offenses.



International Truth Commissions

International Truth Commissions

- Chile for deaths and disappearances under Pinochet
 - One of the early efforts.
- South Africa for apartheid
 - Used as a model for later efforts in other areas.
- Rwanda for genocide
 - Problems completing their work due to a return to conflict.
- Canada and Australia for the treatment of native and aboriginal children

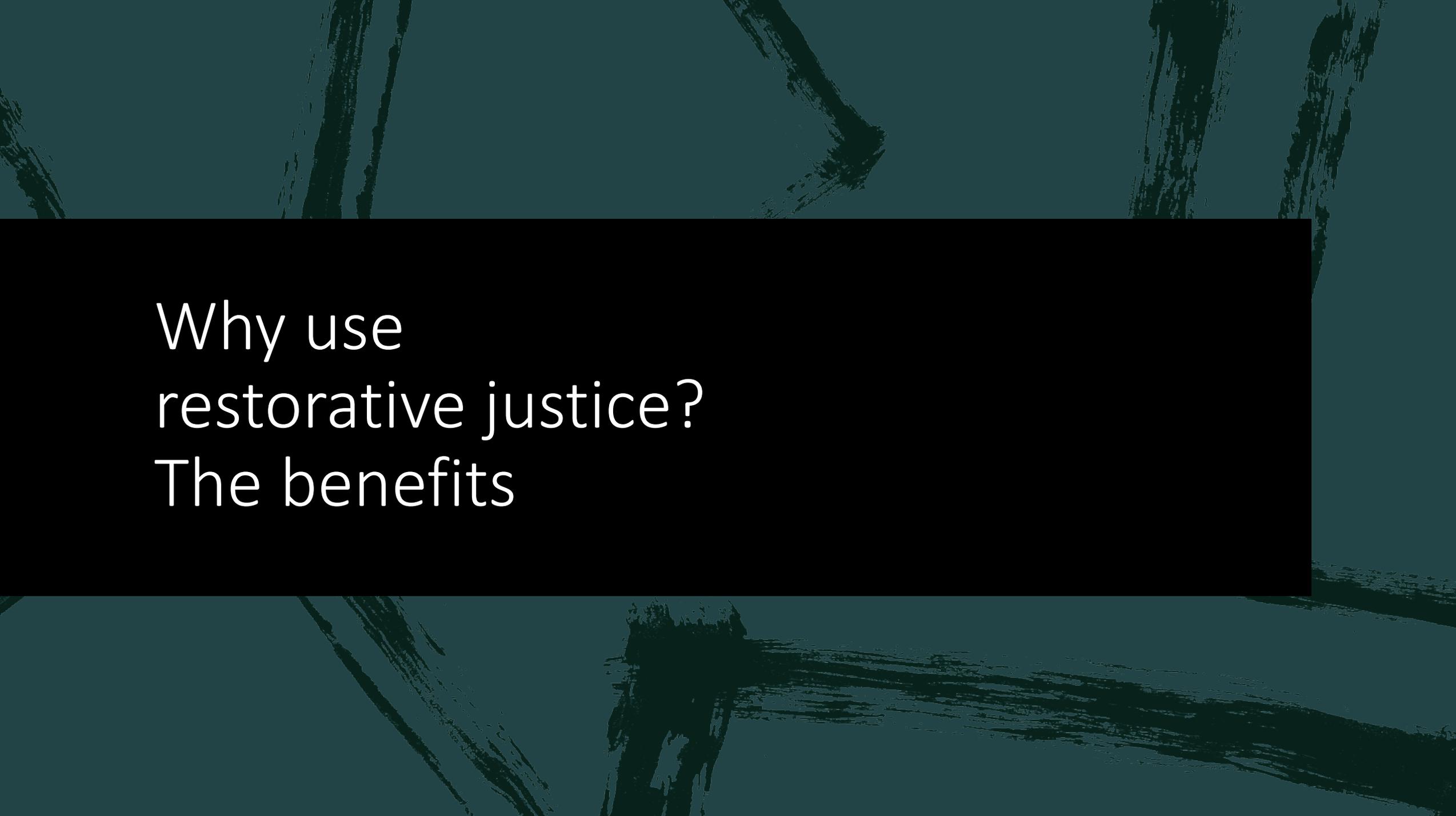
Common features of truth commissions:

- They are more about bringing the truth to light, and making victims heard, and less about punishing offenders.
- Often they have no power to punish themselves, but their work may lead to separate prosecution.
- They generally do not themselves have the power to make reforms, but their work may also lead to legislative or other change to create structures to avoid repetition of past abuse.
- They do not have the same standards of proof or evidence.
- They can help to handle large-volume offenses that would overwhelm courts.
- Can function even if the court system is not functioning well or is biased.
- Focuses more on the victim, less on the perpetrator.
- Some do not attempt to name the perpetrator but rather to acknowledge it happened and it was extremely harmful. Others do attempt some measure of public accountability for the offender.
- The goal is to create an environment where future peace is possible.
 - Acknowledging the offenses and the harm is seen as healing for a harmed group, a necessary condition for future relationship.

Note:

Smaller-scale racial justice projects in the US are sometimes labeled “Truth Commissions.”

- Not the same process at all.
- Similar in that these efforts are based on the belief that acknowledging the offenses and the harm is helpful for the healing of a harmed group and as a necessary condition for societal healing and right relationships in the future.
- Greensboro Truth and Reconciliation Commission, ran from 1999-2006 to deal with events in 1979.
 - Police failure to adequately protect anti-KKK protestors from KKK violence.
- Efforts to get public apologies, and correct death certificates to reflect homicide rather than accident for race-based killings that were covered up by officials.
- For more details and more examples, see the Northeastern University School of Law Civil Rights and Restorative Justice Project.
<https://crrj.northeastern.edu/home/restorative-justice/>



Why use
restorative justice?
The benefits

Why use it? Better achieve your client's goals

- **Recompense and restoration**
 - Get back the money
 - Return of property they lost--*The actual meaningful item, not just its objective value.*
- **Reconciled relationships**
 - The loss of any relationship is itself a harm.
 - Return to *a* relationship, perhaps not the same relationship as before.
 - The abuser saying “I am sorry,” and acknowledging the wrong, is very important to many seniors.
- **Having life get back to normal**
 - Case example: The older adult survivor wants the her daughter’s abusive behavior to stop. She also wants to resume watching TV shows together with her daughter, the offender, who has severe mental health issues.

Why use it?
Better achieve
your client's
goals

Family or religious events where full participation is meaningful

- The work of Dr. Jacqueline Gray, National Indigenous Elder Initiative at UND, validates a survivor's perspective that the offender's refusal to participate in a family, cultural, and religious celebration is itself ongoing abuse of the elder.
 - *May even be explicit: Now that you have reported me to the police, you'll never have another full photo of the family, I won't be there for my sister's wedding, I won't participate in the Native American ceremony that is meaningful to you, etc.*
- "Everyone was there" may be particularly meaningful to seniors.
- Holiday dinners, weddings, funerals, religious ceremonies, cultural events.

Achieve the
goals *in a way*
that our client
finds
meaningful

- Many survivors have looked at the adversarial system and are telling us that they do not see the solution to their problems as coming from it.
 - It is tempting to describe this as “they don’t want to do anything.” The survivor is seen as the problem.
 - **Can we instead consider the possibility that our own menu of options is not varied enough?** Our own limited goals and tactics may be the problem.

Achieve the
goals *in a way*
that our client
finds
meaningful

Why might a senior be hesitant about the mainstream, adversarial system?

- Certain groups have not historically had a good experience in our mainstream, adversarial system
- Might conflict with cultural or religious beliefs about conflict and justice
 - Native American Communities
 - Amish, Mennonite Communities
 - Many others
- At minimum, our adversarial tactics can feel unfamiliar to older adult clients

Achieve the
goals *in a way*
that our client
finds
meaningful

- **We should be willing to at least consider the idea that our adversarial tactics themselves might also be harmful to the older adult.**
 - **Trust that the victim's assessment of "that's not right for me" might be correct and be ready to offer them another choice.**

Hearing the survivor

- “I don’t want my nephew to go to jail.”
- “I don’t want my grandchildren to lose their respect for their mother when they hear about what she did to me.”
- “I want life to continue how it has been.”

... Is this the same as “I don’t want to do anything?”

Hearing the survivor

- “I don’t want my nephew to go to jail.”
 - But perhaps I do want him to regret what he has done. Perhaps I do want to ensure he does not harm other older adults.
- “I don’t want my grandchildren to lose their respect for their mother when they hear about what she did to me.”
 - But perhaps I do want the grandchildren to see a good model for how to treat seniors.
- “I want life to continue how it has been.”
 - What parts of life do you want to have continue how it has been?
 - Perhaps she means wants to live in her own home.
 - What parts of your recent life would you change if you could?
 - Perhaps she wants the emotional manipulation to end.

Restorative justice tactics may better acknowledge complex emotions.

- Complex emotions are common for older adult survivors, even those who choose to follow the adversarial path to justice.

Restorative justice may have fewer of the pitfalls we sometimes face.

- Statute of limitations has run? No problem.
- Not enough proof? Client with memory issues is the only witness? Not a dealbreaker.
- Venue is miles out of your service area? Not a deal breaker.
- Offender's behavior is borderline, or perhaps immoral but not illegal? Right up their alley.
- The offense is recognized, but the harm is one that our adversarial legal system doesn't yet recognize? Restorative Justice will recognize financial harm, property harm, physical harm, but also...
 - Emotional harm
 - Fractured relationships themselves as a harm
 - Spiritual abuse
 - *Groundbreaking work by Dr. Jaqueline Gray, at the request of Native American older adult survivors.*
 - *Examples: Misuse of sacred objects, or refusal to take the elderly victim to religious ceremonies.*



Drawbacks of restorative justice

Power Imbalances

- You must correct for power imbalances or this process can become another tool for the offender.
- At the same time, it is also the case that the adversarial process can become a tool of offenders as well.

Well-run mediations take steps to correct power imbalances.

Examples:

- Preparation work with all parties
- Placement of the chairs to seat the victim closer to the neutral mediator
- Taking breaks at the weaker party's request
- Allowing support persons for the weaker party
- Shuttle mediation

In order to ensure a balance of power, though, mediators must be trained and willing to implement these procedures.

Lack of an enforcement mechanism. A fall back to the adversarial system may be needed.

- Example: Offenders participates in a meaningful discussion, the survivor and offender draw up a contract for the offender to repay the survivor, but months later the offender has not paid.

Less fact-finding, de-emphasis of guilt determination

- In the rush to take the emphasis off blame, the dispute resolution process assumes that the person who comes in labeled as the offender is the person at fault.
 - *What if someone else is at fault?*
 - *That person is still at large in the community, unchecked.*
 - *What if the person who labeled themselves as the victim was not actually harmed?*
- Ignoring the issue of guilt and yet requiring restitution will not lead to a just result, and will not lead to a repaired relationship.
- May be able to alleviate this with
 - Working into the process more fact-finding and fault determination
 - Voluntary nature of the process

Group or family punishment

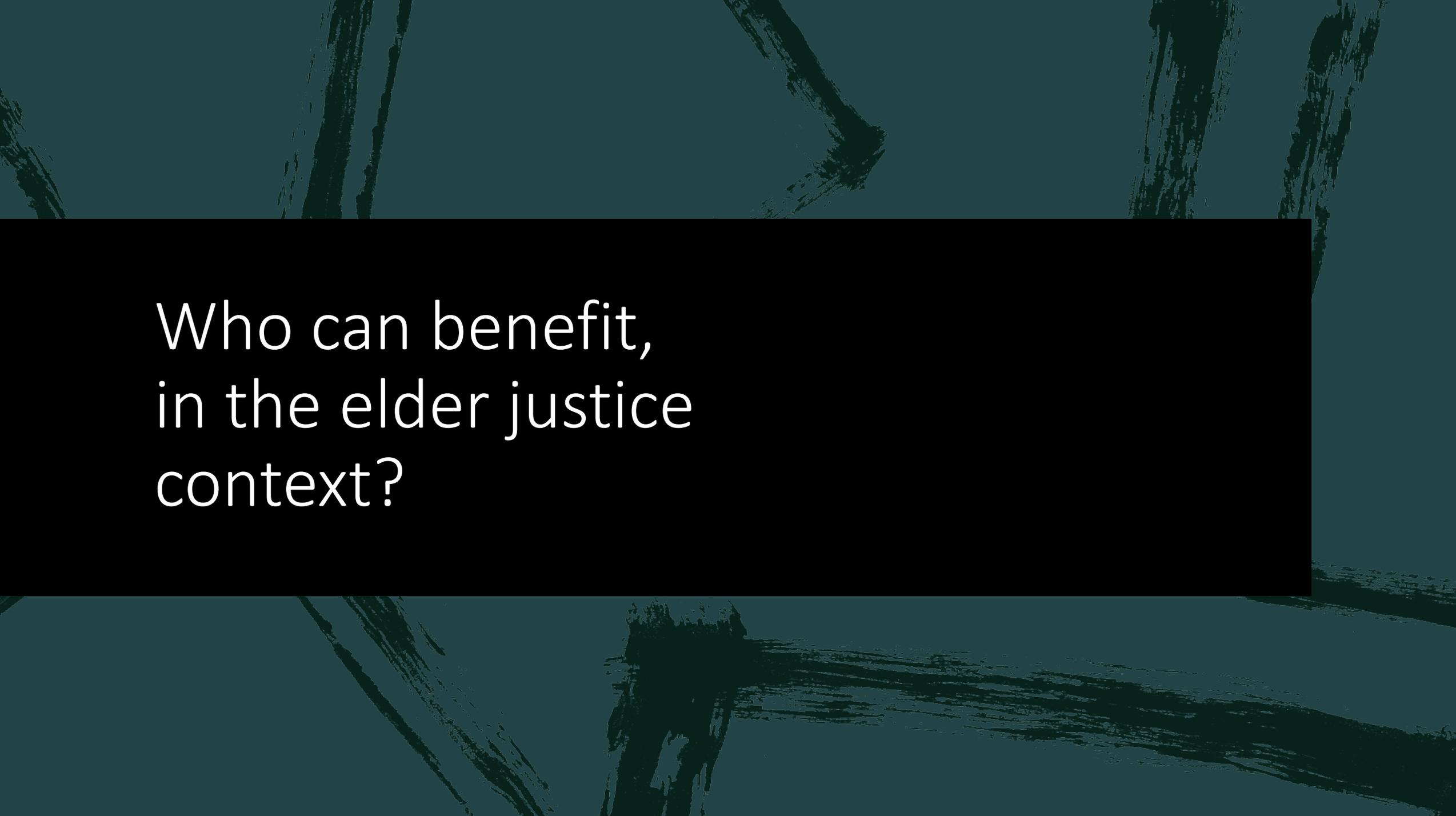
- In the tribal law context, the offender's family often is expected to pay restitution along with the offender.
 - This runs contrary to the Anglo-American system's views on personal responsibility. It does, though, reflect the approach of many Native American tribes that responsibility and justice are more communal than individual.
 - Though, note that even in the current Anglo-American system, often an offender's family is paying the bill anyway.

Possible unequal treatment from one offender to the next

- This may be an acceptable trade-off because the goal of restorative justice is primarily to improve the victim's experience, not the offender's.

Spiritual components can be seen as a positive or a negative

- Tribal restorative justice generally views the spiritual component as essential.
 - *They would say that the higher power is what enables survivors to heal, offenders to repent, relationships to reconcile, and society to rebuild. It is not something human beings are well-suited to do on their own.*
- Some other faith traditions agree.
 - *Restorative justice approaches are very popular in certain Christian denominations, including the Mennonite and Amish communities.*
- One Canadian tribe asks participants to each select their own spiritual approach and pray in any style meaningful to them.
- Most Anglo-American restorative justice processes have stripped out any overt spiritual component.



Who can benefit,
in the elder justice
context?

Victim Benefits

- A restorative process:
 - Empowers the victim and allows more victim participation
 - Provides a safe space and power rebalancing during discussion
 - Acknowledges the wrong
 - Addresses the complex emotions
 - Can involve family, professional, or community support of the victim during the process
 - Seeks an apology
 - May be a better vehicle for showing the offender mercy and grace, for victims who wish to do so.
 - *Better than either “doing nothing” (which ignores, rather than acknowledges the harm) or adversarial system (which may not promote healing or reconciled relationships).*

Offender Benefits

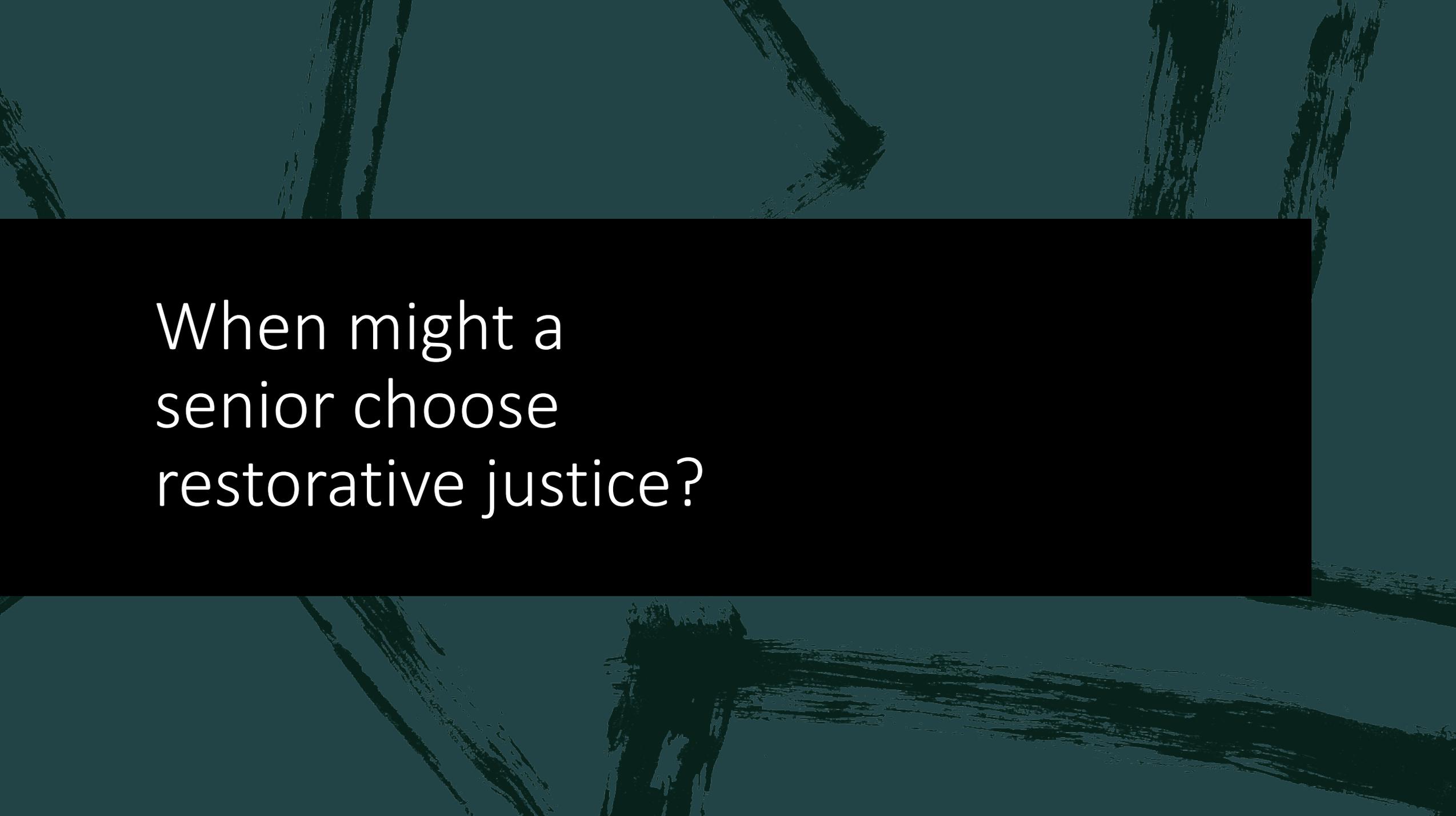
- A restorative process:
 - Allows offenders to face consequences.
 - Encourages offenders to acknowledge the wrong, recognize the harm, and then apologize.
 - Works towards the offenders becoming reintegrated into relationship with survivor, family, community.
 - May be a better vehicle for receiving grace than the adversarial system.

Families Benefit

- The treatment of the senior often impacts the relationship of others with that offender, too.
- In some cases, family members may feel pressured to take sides.
- Family members also benefit from honest acknowledgement of the wrongdoing, the full harm it caused, and an effort to repair the damage and reconcile the relationship.

Communities Benefit

- Less incarceration and the expenses and social harm that can come with it.
- Reparation comes out of the offender's pocket rather than the community's efforts to keep the survivor afloat.
- Less recidivism.
- We all benefit when older adults live with the respect and dignity they deserve.



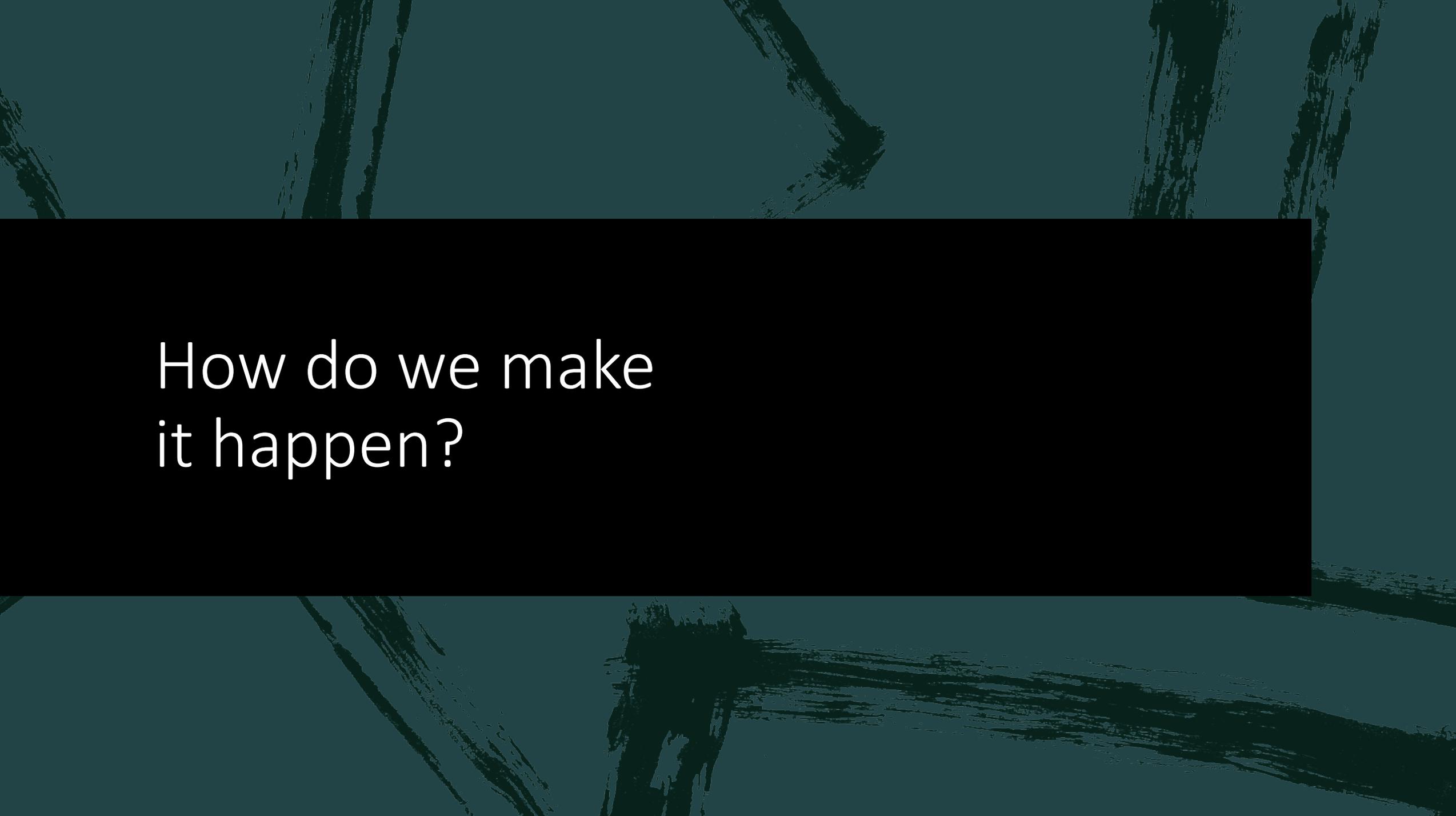
When might a
senior choose
restorative justice?

When is it appropriate?

- A relationship to salvage:
- Family
- Possibly other close friends/caregivers with extensive relationship
 - Case example G.K. Elderly man with the same home health aide for many years. Home health aide lost her vehicle and had no transportation to their home to care for them, or so she claimed. The client then cosigned a car for the home health aide who later was in a serious car accident and could not work, so she defaulted. The finance company sued him for the bill. Survivor and his wife had many conflicted feelings. Felt somewhat manipulated and taken advantage of, and yet were still worried about making life harder for her and family when she had done so much for them when they were helpless.

Less likely to be a good avenue for:

- Corporate offender
 - Though possibly the business community could have a process to censure them.
- Serial non-family offender
 - No relationship to restore.
- Violent situations
 - Unlikely to be able to create a safe space for them to discuss.
- Substance abuse *perhaps*



How do we make
it happen?

Realign our goals

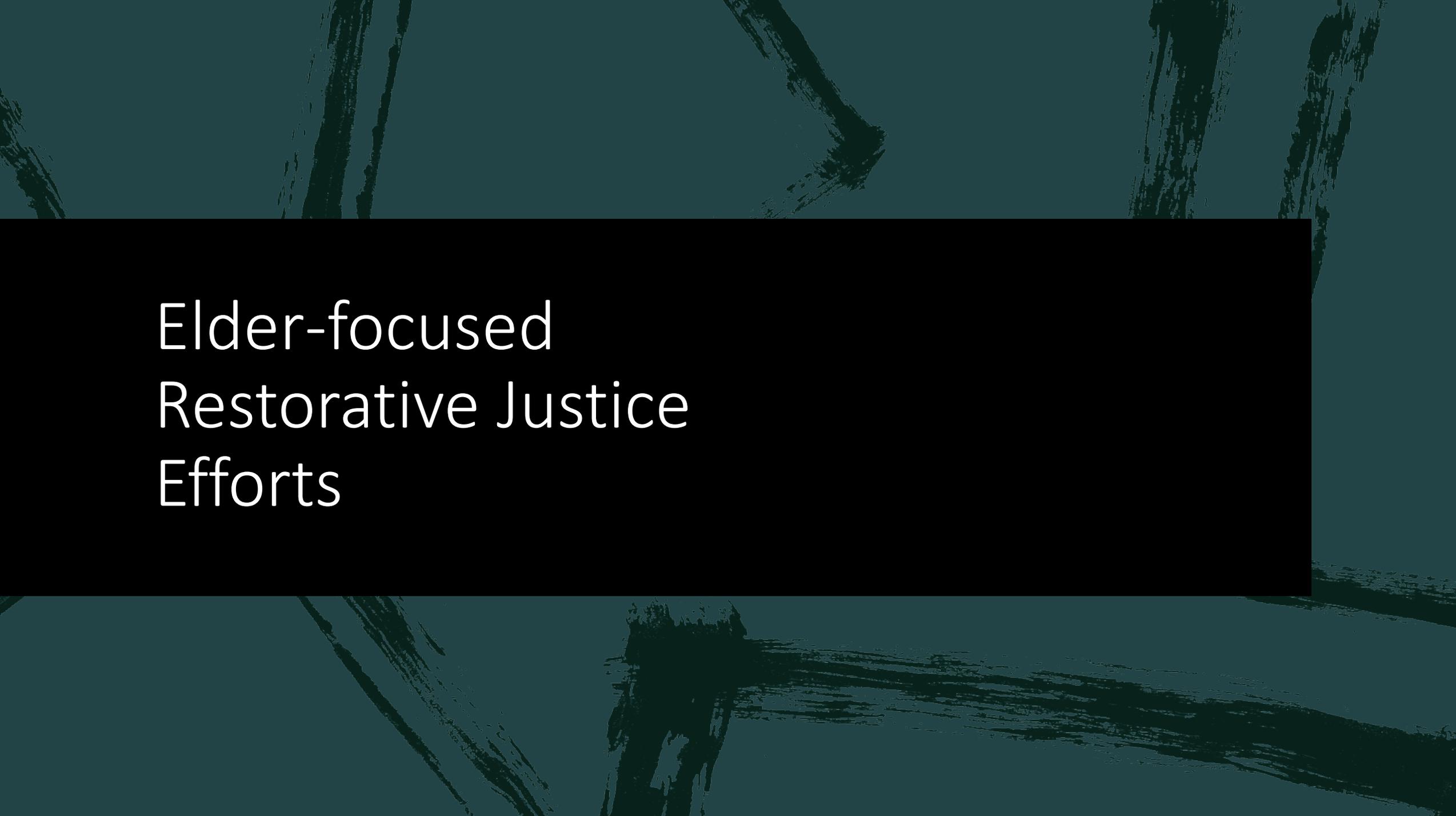
- They should be your client's goals.
 - Ethical rules 1.2(a) and 1.16 say the attorney is to pursue the client's goals. Should the lawyer object to the client's goals, the lawyer can turn down the case or withdraw, but must not hijack the case and do what the lawyer wants.
 - Under Rule 1.2, "A lawyer shall abide by a client's decisions concerning the objectives of representation . . . and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. . ."
 - Under Rule 1.16(b) "a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if: (3) client insists upon pursuing an objective that the lawyer considers [. . .] imprudent"

Reimagine our approach

- The client should help choose the tactics.
 - Ethical rule 1.4 says the clients help choose tactics
 - As per comment 5, “The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so.”

Reimagine our approach

- Zealous representation
 - Ethical rule 1.3 says we must be zealous.
 - As per comment 1, “A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued. . . A lawyer's workload should be controlled so that each matter can be handled adequately.”
 - ... but that should mean zealously working for what your client wants, with the tactics the client desires.
 - *Too often lawyers confuse zealous with working to be as confrontational as possible, working for a big court win even if a negotiated settlement would be just as good or better. Let us avoid that by looking to what our clients want. Perhaps they do want that, and if so, pursue that course. But make sure it is your client's goal and tactics.*
- Rule 1.14 should be reviewed in cases where, for example, a client loses capacity at some point during our handling of a matter for them.



Elder-focused Restorative Justice Efforts

Elder-focused Restorative Justice Efforts

- The Elder Law Clinic at the National Institute of Law, Policy, and Aging Quebec, Canada
 - Ann Soden
- Facilitated group discussion w/ a group of professionals.
- *Attorney represents the senior throughout the process.*
- Goal is to empower & enable the senior to retake his or her own life.
 - Even seniors with some degree of incapacity.

Elder-focused Restorative Justice Efforts

- Older adults often are disinclined to take a court-based approach because either:
 - They do not recognize their most pressing problems as being legal problems, or
 - Their most pressing problems are not recognized as legal problems by the court.

Elder-focused Restorative Justice Efforts

- The Elder Law Clinic at the National Institute of Law, Policy, and Aging Quebec, Canada (continued)
- (1) Family conflict that does not yet rise to the level of legal problems
 - Example: children from prior marriage are concerned about senior's new romantic interest
 - They may eventually object to actions of new partner as POA, or one day contest will
 - Senior can choose to have a facilitated discussion with children to:
 - Children express concerns
 - Review bank statements
 - Review will
 - Senior explains unusual decisions & shows supporting documents (ex. senior whose new love interest encouraged him to liquidate assets to pay off his considerable debt load)

Elder-focused Restorative Justice Efforts

- The Elder Law Clinic at the National Institute of Law, Policy, and Aging Quebec, Canada (continued)
- (2) More serious abuse or exploitation:
 - Referrals from court when criminal elements not met, or for civil offshoots of criminal cases
 - Senior survivor has the choice to select the restorative model
 - Police first work up the initial findings
 - Next the restorative facilitated group discussion
 - Attorney provides counsel to the senior
 - Police can be present as a peace officer if helpful
 - Social workers often support
 - Conference decision can be then entered as a court order
 - Oversight and follow-up with the senior, to ensure safety

Elder-focused Restorative Justice Efforts

- The Elder Law Clinic at the National Institute of Law, Policy, and Aging Quebec, Canada (continued)
- (2) More serious abuse or exploitation (continued)
 - Priority to “age in place” if survivor desires.
 - Avoid using removal from home as the mechanism to achieve safety.
 - Distance and monitor the abuser.
 - First put reasonable protections in place, such as supportive decision making or limited guardianship.
 - Then reassess the senior once freed of abuse.

Elder-focused Restorative Justice Efforts

- Eldercaring Coordination

- Evaluation research by Dr. Megan Dolbin-MacNab and Dr. Pamela Teaster of Virginia Tech
- Pilot sites in Idaho, Indiana, Maryland, Minnesota, Ohio, and Florida
- Focused on non-legal issues pertaining to elder care and safety
- Disagreements among family members about elder's living situation, finances, decision-making, etc.
- Participants:
 - Elder, if appropriate
 - Family
 - Guardian
 - Attorneys

Elder-focused Restorative Justice Efforts

- Eldercaring Coordination, continued
 - Clear benefits:
 - Allows elder's voice to be prioritized
 - Prioritized needs of the elder over the needs & desires of others involved
 - Mixed results on family relationships—according to the coordinators:
 - $\frac{1}{4}$ family relationships better, $\frac{1}{2}$ same, $\frac{1}{4}$ worse according to the coordinators
 - Mixed results on reducing court involvement:
 - Judges & court admins report court involvement reduced, but only about $\frac{1}{2}$ of coordinators
 - Though some families may reap significant benefits while still needing some court involvement.
 - Challenges:
 - Deeply entrenched, multi-generational patterns of interaction may not change substantially in one encounter.
 - Cases highly complicated and involve deeply held conflicts among participants. Coordinators need considerable skill to get families to take a new perspective on their situation.
 - Families referred by the court system have to pivot from a “fight-to-win” to “work together” approach that prioritizes the needs of the elder.

Elder-focused Restorative Justice Efforts

- Eldercaring Coordination, continued
 - Suggestions from Dolbin-MacNab and Teaster based on preliminary research
 - Prioritize:
 - (1) Shielding the elder from destructive family conflict
 - (2) Reducing general family conflict
 - Training for the coordinators on:
 - How to explain the process at the outset
 - How to overcome participant resistance
 - How to increase participant buy-in
 - How to identify and handle disruptive deep-set family conflict
 - More referrals to mental health providers and other community resources
 - Flexible scheduling
 - Financial aid for families with lower incomes

Case Discussions

A.M.

- A.M.'s adult daughter stole thousands of dollars while A.M., who is in her late 60s, was temporarily in a nursing home recovering from a serious illness. A.M. was not only heartbroken to learn of the theft, but she also faced court action for unpaid bills, and narrowly escaped eviction. The survivor wants to be repaid, and she wants her daughter to understand that the costs went far beyond just a dollar value, as she also had to go to court for unpaid debts, and nearly was evicted. She also wants her daughter to resume coming to Thanksgiving and Christmas dinners. The daughter, meanwhile, has called her mother's legal aid attorney to ask that the attorney relay the message that the daughter has been accepted into graduate school. The daughter says that after all that has happened, she still hopes that her mother will one day be proud of her again.
- What are the client's goals?
- What might be some of the tactics you could offer?
- Is this a case where restorative justice might be helpful?

B.T.

- B.T., who is in her early 90s, is referred to your office by APS who has concerns about financial exploitation. Before you even have your first meeting, B.T. disappears. Finally law enforcement locates B.T. and determines that she has been kidnapped by son 1. B.T. is returned home, but son 1 escapes. B.T. is cared for at her home by son 2. Son 2 brings his mother into the office. Son 2 explains that his evil brother, son 1, has stolen the client's identity and immigration documents, as well as sums of money. He makes a show of asking if his mother needs a glass of water, and if she is comfortable. He tells her how much he loves her. You notice after a while, though, that these statements to his mother are always in English, and his mother speaks almost exclusively Russian. As per your normal procedure, you move son 2 to the waiting room and you meet only with B.T. and your interpreter. Son 2 is very agitated about you meeting with his mother alone. B.T. seems to shrink away from him as he becomes agitated. After you move him to the waiting room, though, B.T. seems to come out of her shell a bit.

B.T.

- B.T. says that son 1 took her away on a trip without planning the trip in advance or asking if she wanted to go with him, but she refuses to call it kidnapping. She insists that she does not want him to go to jail. She hopes that he will stay away from her. B.T. confirms that son 1 also stole her identity and immigration documents, and asks you to help her replace them. Over the course of many meetings, B.T. begins to hint that son 2 may be physically abusive. B.T. tells you that she was previously in a nursing home in another state, where she was physically abused by staff. B.T. tells you she would rather endure her current situation and live in her own home than return to a nursing home where she fears she will be abused again.
- What are the client's goals?
- What might be some of the tactics you could offer?
- Is this a case where restorative justice might be helpful?

L.J.

- L.J., an older adult client in her 80s, formed a romantic relationship with an older adult man she met at the senior center. One day L.J. went to check out at a store and her debit card did not work. She called the bank and learned that there is now no money in her bank account which previously held approximately \$20,000. She panicked as her mortgage payment is due soon. She meets with a bank representative who tells her that her POA daughter moved the money two days ago, and the bank cannot tell her where. You leave a voicemail for her POA daughter, and the call is returned by the daughter's attorney, who represents all the adult children. The children say they have moved the funds, using the one daughter's POA for the client, for "safe keeping." They insist they will make sure her mortgage and other bills get paid. Her adult children are convinced the boyfriend could not truly be romantically interested in their mom, and is simply trying to exploit her. They love their mother and are not going to let this man steal her life savings. You discuss this with L.J. who insists that the relationship is healthy, that neither she or her boyfriend is perfect but that they support one another. He has not asked her for money, though she insisted that he allow her to lend him \$75 when he was in a tough spot a few months ago. She is furious that her children are treating her like a 14-year-old child instead of an adult. She wants her day in court, as she has a good deal to say to the judge about the way her children are treating her. She wants her money back immediately.
- What are the client's goals?
- What might be some of the tactics you could offer?
- Is this a case where restorative justice might be helpful?

Participants--Please wait
to read further until after
the group has discussed



A.M.

- Goals: Repayment of the money that was stolen, full extent of the harm acknowledged, daughter to return to holiday dinners.
- Tactics:
Conventional adversarial system: Demand letter, then a suit for the unpaid money. Could explore whether a claim is available for consequential damages arising from the warrant-in-debt and unlawful detainer. No judge is going to order the daughter to return to holiday dinners.

Restorative justice: A chance for the client to explain the full extent of the harm, and ask the daughter to acknowledge it. Could ask the daughter for a contract to repay the money. Could discuss the daughter returning to holiday dinners, perhaps with other trusted family and friends around to ensure there is no further exploitation.

- Appropriate? Almost certainly yes. Both parties desire a return to right relationship.

B.T.

- Goal: Doesn't want son 1 to go to jail, but also wants him to stay away. Explore what she wants with regard to son 2.
- Tactics:
Conventional: Could consider a protective order, could refer to the police and prosecutor for prosecution of both sons, but one or both might go to jail. Could file a warrant-in-detinue for the documents, or simply report them as stolen and order new copies. Could file a warrant-in-debt for the stolen money. Could offer a referral to APS and a housing options counselor. Could offer to help with a Medicaid Long-Term Care application.
Restorative:
Power balancing for son 1 is extremely challenging. Possibly you could try shuttle mediation, keeping the parties in separate rooms with the mediator moving between them. In theory you could ask for a voluntary no-contact agreement from son 1, but enforceability is highly questionable. You could ask for the documents back and a contract to replace the money. It would be hard for restorative justice to even address son 2, though, with the concerns surrounding lack of honesty and possible ongoing violence.
- Appropriate? Almost certainly not appropriate. It will be nearly impossible to balance out the power in this situation.

L.J.

- Goals: A very prompt return of her money. “Having her day in court.”
- Tactics:
 - Conventional: Demand an accounting from the POA daughter. Send a demand letter, and if necessary, sue for breach of fiduciary duty. This will likely take time, though.
 - Restorative: Invite all the adult children and the client to a meeting. Probably do not include the boyfriend in at least the initial meeting. Consider a support person or two for the client, since she is outnumbered by her children otherwise. Invite the client to talk about how she felt when her money was suddenly gone. Invite everyone to share their concerns and talk it through. Ask for the money back without delay. Perhaps the client might be open to sharing copies of the bank statements with a trusted relative or friend to help reassure the children that there is no exploitation.
- Appropriate? Perhaps. It depends on what the client wants. What does the client see as the important parts of “having your day in court?” How important is simply being heard? How important is the hierarchical nature of the judge saying with authority that the children are in the wrong? What other value does the client see in a court date? If the demand letter fails, and thus the client has to choose between a prompt resolution and a court resolution that will take longer, which is most important to her? Are the other parties willing to try this?

Further Reading:

- Gray, LaBore, & Carter 2018. *Protecting the Sacred Tree: Conceptualizing Spiritual Abuse Against Native American Elders*. Psychology of Religion and Spirituality, <http://dx.doi.org/10.1037/rel0000195>.
- Grossman, S., Hinkley, S. Kawalski, A., & Margrave, C. (2005). *Rural Versus Urban Victims of Violence: The Interplay of Race and Religion*. Journal of Family Violence, 20(2):71-81.
- National Resource Center on Native American Aging (NRCNAA). (2015). *Identifying Our Needs: A Survey of Elders*.
- South Carolina Restorative Justice Initiative. <https://scrji.org>
- Teaster, P., Soden, A, Tetunic, F., and Dolbin-MacNab, M. (2018). *The Elderlaw Clinic (Canada) and Eldercaring Coordination (US): Similarities & Differences in Effectuating Participatory Justice*. Presented at the American Bar Association's National Aging and Law Conference, Alexandria, Virginia.
- Wheeler, M.J. and Gray, J.S. (2019). *Maltreatment of American Indian Elderly*. Presented at the Division 18: Psychologists in Public Service at the 127th Annual American Psychological Association Convention, Chicago, IL.

- **Sarah Morton**
Elderly Services Attorney
Blue Ridge Legal Services
Harrisonburg & Staunton, VA
smorton@brls.org
540-370-9954

•

- *Special thanks for:*
 - *Legal research assistance from Ian McDowell & Rosa Nielsen, BRLS Summer Law Clerks.*
 - *Review & feedback from Dr. Jacque Gray, Nicole Morrow, & Hannah Yates.*