

Using Restorative Justice for Older Adults

Presented by
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1. What is restorative justice?

- a. Major Themes of all Restorative Justice Efforts
 - i. **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.**
 - ii. Focus shifts from broken laws and punishment to broken relationships and healing the damage.
 - iii. Victim plays an active role in the goal setting, the process, and the way in which the offender will make amends.
 - iv. Offenders are held accountable yet still cared for, and in the end are restored as members of the family and community.
 - v. Aims to reduce recidivism by promoting positive behavior.
 - vi. Acknowledges that the offense impacts the survivors, their family, their community, and the offenders themselves.
- b. Basic process:
 - i. A group that contains at least the survivor, the offender, and a trained facilitator meet at the same location.
 1. Models vary great. There may be more people in the room to support or lend expertise.
 2. The parties usually are in the same room, but may be conferred with separately if needed to correct power imbalances.
 - ii. 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.
 - iii. 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.

¹ With legal research assistance from Ian McDowell, BRLS Summer Law Clerk.

- iv. 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.
- c. Common elements:
 - i. Victim empowerment and participation
 - 1. Victims set the goals.
 - a. In many systems the victim has full control of the goals.
 - b. In some systems the victim sets the goals in cooperation with the community.
 - 2. Victims are invited to talk about how this has impacted them. Emotional impact is heard and validated as a harm.
 - 3. Victims play an active role in determining how the offender makes amends.
 - a. This is why Restorative Justice is sometimes called Participatory Justice.
 - ii. Safe space and power balancing.
 - iii. A facilitated discussion
- d. May involve, as programs vary greatly:
 - i. Voluntary participation by all parties
 - 1. Outside of the tribal context, all restorative justice efforts are voluntary for all parties.
 - 2. Tribal systems vary but may require Native American tribe members to participate.
 - ii. Family and community support or involvement
 - iii. Counselor, social worker, or other professional support for the victim
 - iv. Discussion facilitator may be
 - 1. A neutral mediator
 - 2. A panel of respected community elders or even the victim's family, so not necessarily neutral.
 - v. A spiritual dimension may be seen throughout the process, particularly in the Native American models.
 - 1. 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.

2. A large variety of ways to handle this.
 - a. Not a problem for Native American justice systems, because they have no establishment clause. See the written materials for more.
 - b. One Canadian tribe has all participants pick a faith tradition and prayer style meaningful to them personally.
 - c. Generally absent in Anglo-American models.
- e. Common outcomes:
 - i. An apology (can be by letter)
 - ii. Returned items, repaired vandalism, and/or a contract to replace financial loss
 - iii. Community or personal service
 1. An attempt to recognize that the harm goes beyond the dollar amount of the loss.
 2. Examples:
 - a. A teen who vandalized a mailbox might rebuild and repaint it, but also do extra yard work throughout the summer for the victim.
 - b. Native American tribes often create a plan for the offender to help the survivor to plant, tend, and harvest the survivor's crops.
 - iv. Anything else the victims wants is on the table

2. Where does it happen already?

- a. Native American Tribes & First Nations
 - i. Initial notes:
 1. 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.
 2. 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.

- ii. Common Native American justice concepts:
 - 1. Both the conception of the problem, and the remedy, are inescapably relational.
 - 2. Participants need to focus on the underlying problems, rather than simply the criminal act itself
 - 3. Justice processes need to involve extended family and the community.
 - 4. Healing and reintegrating individuals into the community is more important than punishment
- iii. Justice is viewed as circular or horizontal, rather than vertical.
 - 1. The predominant US legal system emphasizes vertical justice, with higher members of the hierarchy imposing the law on offenders.
 - 2. 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.
 - a. This is why justice processes are described as “sentencing circles” or “peacemaking.”
- iv. Relational conceptions of “rights”
 - 1. The idea of an “individual,” a person outside his social context, is seen as a hypothetical. No one exists in isolation.
 - 2. What Westerners think of as “rights” would be regarded more as situations in relationships.
 - 3. Examples:
 - a. A deaf child enters a new classroom at school.
 - i. Western conceptions of rights would say that child has a disability and so has a right to an ASL interpreter or tutor.
 - ii. Native American conceptions of rights are more relational, so the problem might be identified as a communication barrier within the classroom, and the solution may be that all the children in the classroom, as well as the teacher, will learn ASL.

- b. A child's custody needs to be determined.
 - i. The predominant US legal system would generally confer standing on the mother and father of the child.
 - ii. A Native American tribe may see that distinction as arbitrary, as distant relatives and other tribal members are usually extremely involved with children's upbringing.
 - v. Truth-telling is expected and encouraged.
 - vi. Emotions have a place in the peace-making process.
 - vii. 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.
 - viii. Not just the harm to the victim, but also the abuser's ability to repay is considered in setting restitution.
 - 1. This can result in wealthier offenders paying vastly more than poorer offenders.
 - b. Victim-Offender Reconciliation Program (VORP) Mediation
 - i. Started in Canada in the early 1970s.
 - ii. 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.
 - 1. In many areas it is restricted to underage offenders and/or minor offenses.
 - c. Truth Commissions in the International Context
 - i. Chile for deaths and disappearances under Pinochet
 - 1. One of the early efforts.
 - ii. South Africa for apartheid
 - 1. Used as a model for later efforts in other areas.
 - iii. Rwanda for genocide
 - 1. Problems completing their work due to a return to conflict.
 - iv. Canada and Australia for the treatment of native and aboriginal children.

- v. Common features of truth commissions:
 1. They are more about bringing the truth to light, and making victims heard, and less about punishing offenders.
 2. Often they have no power to punish themselves, but their work may lead to separate prosecution.
 3. 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.
 4. They do not have the same standards of proof or evidence.
 5. They can help to handle large-volume offenses that would overwhelm courts.
 6. Can function even if the court system is not functioning well or is biased.
 7. Focuses more on the victim, less than the perpetrator.
 8. 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.
 9. The goal is to create an environment where future peace is possible.
 - a. **Acknowledging the offenses and the harm is seen as healing for a harmed group a necessary condition for future relationship.**
- vi. Some, much smaller-scale projects, in the US to deal with race-based violence are labeled “Truth Commissions.”
 1. 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.**
 2. Greensboro Truth and Reconciliation Commission, ran from 1999-2006 to deal with events in 1979.
 3. 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.

4. 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/>

3. Why use it?

a. Better achieve your client's goals

- i. Recompense and restoration
 1. Get back the money or property they lost
 - a. The actual meaningful item, not just its objective value
- ii. Reconciled relationships
 1. The loss of the relationship itself is a harm too.
 2. The abuser saying sorry, and acknowledging the wrong, is really important to many seniors.
- iii. Having life get back to normal
 1. Case example: K.P. Older adult is the guardian and caretaker for her adult daughter with serious emotional problems. The adult daughter slaps the mother and pours food on her. The older adult survivor wants the violence to stop, and she also wants to resume watching TV shows together with her daughter (the offender).
- iv. Family or religious events where full participation is meaningful
 1. **Dr. Jacqueline Gray's study recognizes that the offender's lack of family, cultural, and religious participation is itself ongoing abuse of the elder.**
 - a. 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.
 2. "Everyone was there" may be particularly meaningful to seniors.

3. Holiday dinners, weddings, funerals, religious ceremonies, cultural events.
- b. Achieve the goals *in a way* that our client finds meaningful
 - i. **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.**
 1. It is tempting to describe this as “they don’t want to do anything.” The survivor is seen as the problem.
 2. Can we instead consider the possibility that our own menu of options isn’t varied enough? Our own limited goals and tactics may be the problem.
 - ii. At minimum, our adversarial tactics can feel unfamiliar to older adult clients.
 - iii. We should be willing to at least consider the idea that our adversarial tactics themselves might also be harmful to the older adult.
 1. Trust that the victim’s “that’s not right for me” might be correct, and be ready to offer them another choice.
 - iv. What are survivors saying about our tactics?
Examples:
 1. “I don’t want my nephew to go to jail.”
 - a. 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.
 2. “I don’t want my grandchildren to lose their respect for their mother when they hear about what she did to me.” [case example G.P.]
 - a. But perhaps I do want the grandchildren to see a good model for how to treat seniors.
 3. “I want life to continue how it has been.”
 - a. What parts of life do you want to have continue how it has been? Perhaps she means wants to live in her own home.
 - b. What parts of your recent life would you change if you could? Perhaps she wants the emotional manipulation to end.
 - v. Restorative justice tactics may better acknowledge complex emotions.

1. Complex emotions are common for older adult survivors, even those who choose to follow the adversarial path to justice.
- vi. Restorative justice may have fewer of the pitfalls we sometimes face.
1. Statue of limitations has run? No problem.
 2. Not enough proof? Client with memory issues is the only witness? Not a dealbreaker. Case example: M.R.
 3. Venue is miles out of your service area? Not a deal breaker. Case example: M.R.
 4. Offender's behavior is borderline, or perhaps immoral but not illegal? Right up their alley.
 - a. Moochers—not necessarily going to qualify as exploitation, but they aren't contributing and they are benefiting
 - i. Case Examples: N.J. and E.T.
 5. 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...
 - a. Emotional harm
 - b. Fractured relationships themselves as a harm
 - c. Spiritual abuse
 - i. 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.
- c. What are the potential drawbacks?
- i. You must correct for power imbalances or this process can become another tool for the offender.
 1. Case example A.C. Older adult domestic violence survivor goes to mediation (not a restorative justice mediation, but something similar) with her abusive partner. The survivor's legal aid attorney asked to participate as a support person, but the mediation center declined the request because the abuser did

not also have an attorney. The survivor chose to participate anyway. The partner in the past had physically abused the older adult survivor after she did not complete housework to his satisfaction. The victim emerged from the mediation with an agreement to do her chores. The legal aid attorney exploded.

2. At the same time, it is also the case that the adversarial process can become a tool of offenders as well. But the system there is much more well developed to pit one party against the other, and power imbalances can be equalized somewhat with legal assistance, social worker and other professional support.
3. Well-run mediations do many things to correct power imbalances. Examples include placement of the chairs to seat the victim closer to the neutral mediator, taking breaks at the weaker party's request, and allowing support persons for the weaker party. Shuttle mediation, where the two parties sit in different rooms and the mediator travels between them can be helpful if the survivor is intimidated in the physical presence of the abuser. In order to ensure a balance of power, though, mediators must be trained and willing to implement these procedures.
 - ii. Lack of an enforcement mechanism.
 1. 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.
 - iii. Less fact-finding, deemphasis of guilt determination
 1. 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.
 - a. What if someone else is at fault?

- i. That person is still at large in the community, unchecked.
 - b. What if the person who labeled themselves as the victim was not actually harmed?
 - 2. Ignoring the issue of guilt and yet requiring restitution will not lead to a just result, and will not lead to a repaired relationship.
 - 3. May be able to alleviate this by working into the process more fact-finding and fault determination.
 - iv. In the tribal law context, the offender's family often is expected to pay restitution along with the offender.
 - 1. 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.
 - 2. Though, note that even in the current Anglo-American system, often an offender's family are paying the bill anyway.
 - v. Possible unequal treatment from one offender to the next.
 - 1. This may be an acceptable trade-off because the goal of restorative justice is to improve the victim's experience, not the offender's.
 - vi. Spiritual components can be seen as a positive or a negative
 - 1. Tribal restorative justice generally views the spiritual component as essential.
 - a. 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.
 - b. Some other faith traditions might agree.
 - 2. One Canadian tribe asks participants to each select their own spiritual approach and pray in any style meaningful to them.
 - 3. Most Anglo-American restorative justice processes have stripped out any overt spiritual component.

4. Who can benefit, in the elder justice context?

- a. Victims benefit, because a restorative process:
 - i. Empowers the victim and allows more victim participation
 - ii. Provides a safe space and power rebalancing during discussion
 - iii. Acknowledges the wrong
 - iv. Addresses the complex emotions
 - v. Can involve family, professional, or community support of the victim during the process
 - vi. Seeks an apology
 - vii. May be a better vehicle for showing the offender mercy and grace, for victims who wish to do so.
 1. Better than either “doing nothing” (which ignores, rather than acknowledges the harm) or adversarial system (which may not promote healing or reconciled relationships).
- b. Offenders benefit, because a restorative process:
 - i. Allows offenders to face consequences.
 - ii. Encourages offenders to acknowledge the wrong, recognize the harm, and then apologize.
 - iii. Works towards the offenders becoming reintegrated into relationship with survivor, family, community.
 - iv. May be a better vehicle for receiving grace than the adversarial system.
- c. Families of survivors benefit because
 - i. The treatment of the senior often impacts the relationship of others with that offender, too.
 1. Case examples E.H. and W.C.
 - ii. In some cases, family members may feel pressured to take sides
 - iii. 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.
- d. Communities benefit
 - i. Less incarceration and the expenses and social harm that can come with it.

- ii. Reparation comes out of the offender's pocket rather than the community's efforts to keep the survivor afloat.
- iii. Less recidivism.
- iv. We all benefit when older adults live with the respect and dignity they deserve.

5. When is it appropriate?

a. A relationship to salvage:

- i. Family
- ii. Possibly other close friends/caregivers with extensive relationship
 - a. 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.

b. Less likely to be a good avenue for:

- i. Corporate offender
 - 1. Case example H.H. Though possibly the business community could have a process to censure them.
- ii. Serial non-family offender
 - 1. No relationship to restore
 - a. Case examples G.D. and W.F. – random “friends” made at antique stores, who then financially exploited them over many years. G.D. was also imprisoned in abuser's home. Repeat offenders.
- iii. Violent situations

1. Case example D.E. Offender started swinging at her dad in court right in front of the judge and bailiffs. Unlikely to be able to create a safe space for them to discuss.
- iv. Substance abuse perhaps
 1. Case example B.T. Client sought to evict her son and his girlfriend, who has meth charges pending against her. Both offenders were visibly twitching in court. We got them out using the adversarial process, but she feels real bad about it. There was no violence. Maybe restorative process would have worked.
 2. Case example D.E. Daughter was confining the client to a few rooms in his own home, and selling drugs out of the rest. She was also violent, though.

6. How do we make it happen?

a. Realign our goals

- i. They should be your client's goals.
- ii. 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.
 1. 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"

b. Reimagine our approach

- i. The client should help choose the tactics.
- ii. Ethical rule 1.4 says the clients help choose tactics

- iii. 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.”
- c. Zealous representation
 - i. Ethical rule 1.3 says we must be zealous.
 - ii. 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 work load should be controlled so that each matter can be handled adequately.”
 - iii. ... but that should mean zealously working for what your client wants, with the tactics the client desires.
 - 1. 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.
- d. 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.

Hypotheticals for Group Discussion:

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. 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 until after the group has discussed

Possible considerations when answering the hypotheticals:

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>.

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