

Episode One: That's a Big Responsibility

Jacob: I've tried to contribute in different ways that I can in prison. And some things are small. Like, currently, I'm a photographer and graphic designer. And so when I go out to take people's pictures, you know, I try to be, I try to get them to, like, say with their smile, you know, like, and they're pretty self-conscious about their smile. I'm like, "No, you got a great smile," you know. Whether they have a great smile or not, I think it's important to try to help people, and build them, you know.

Narration: This is Jacob. He's incarcerated at the Columbia River Correctional Institution in Portland, Oregon. His work as a photographer is just one of the many ways he tries to help others, and to help make the best of his time inside.

Jacob: So that's a small thing, but in prison, I mean, there's normally only small ways that we can help. And maybe that's true on the outside too, you know. You help in small ways, as far as, you know, if you see somebody down, you offer to talk to them or listen to them. One, it helps my time move forward, it helps me to grow. But also it involves me in my community, you know, because for so many years I felt alone and disjointed.

Narration: Jacob's childhood was not the easiest. His father left him, his sister, and his drug-addicted mother when Jacob was only two. He spent his childhood moving from one home to another – sometimes with his mom, or with his grandparents, or with an uncle, and even back with his father for a few years. He tries as best he can to empathize with the plight that faced his mother, who gave birth to him when she was 17.

Jacob: She wasn't necessarily prepared to really be an adult, but she was a sweet person and had a kind heart. But she just—she had a lot of issues and a rough childhood herself. So it made it difficult, I think, for her to be an adult with two children. So a lot of times this led to us moving around a lot.

Narration: Moving around as he did, Jacob struggled to find a connection with his peers or to establish a foundation at any of the schools that he attended. He now thinks that this rootless childhood likely had something to do with the role he played in an assault that became a homicide. One night when he was 17, he was heavily drunk with a few friends in a park in Pendleton, Oregon. Another man was in the park as well. One of the members of Jacob's group began assaulting that man, and told Jacob to jump in. Jacob kicked the man a few times, but was mostly a passive onlooker. Today, he blames himself for not stepping in to prevent the murder.

Jacob: I'm definitely responsible for the man dying, even if it wasn't my intent. I didn't want to hurt him and it definitely wasn't my intent for him to die. But, at that point, I mean, I thought more of myself and I was scared for myself. But when I look back on it, I think that I was really trying to fit in still. I'd found a few friends and we're having a good time, we're drinking and this and that. And so I wanted to belong. I didn't want to belong to a

MAKING AMENDS

murder, but I think that when he told me to help, not only was I scared of what he might do to me if I didn't, but I was also scared of what it would look like if I wasn't willing to help him out, you know. Would I not look cool or would I not look like I was tough enough to be part of it? And so I think that I'm definitely responsible for William not having his life, you know. Because there's so many times when I could have stopped it, for sure. Because even at the time, I knew what was happening was wrong. There was no doubt.

Narration: Because he accepts responsibility for his role in the murder, Jacob believes that he deserved to go to prison.

Jacob: If I had only done a few years, I don't know that I would have been grown up enough or been through enough where I'd made that change in my mental, you know. Or if I'd grown up enough that -- I don't think that I would have gone and killed anybody, but I probably would've been drinking still, I would've been doing drugs, and who knows where that would've led me. So I definitely needed to do some time.

Narration: But just how much prison time did Jacob deserve? What should a 17-year old get when he's an accessory to a murder? It is hard to know for certain.

But what we do know for certain is that Jacob got 25 years. And what we also know is that his case helps us understand why the United States sends people to prison like no other society ever in human history. That's largely because, starting in the 1980's, most states dramatically changed their sentencing policies, especially for violent crimes. That means that there are hundreds of thousands of Jacobs in the United States: people spending decades inside for violent offenses, often committed when they were quite young – just like Jacob.

Now in his early 40's, Jacob is nearing the end of his prison term. Although he has worked hard to make the best use of his time, Jacob wonders whether he needed such a lengthy sentence, especially considering his age at the time. His prosecutor could have sought a conviction for a lesser crime, such as manslaughter, but pushed for first-degree murder. A conviction on that charge guaranteed the 25-year sentence that has kept Jacob incarcerated for his entire adult life.

Herbert: So, thinking about your prosecutor, who I think you might have felt overcharged you, but certainly made these very consequential decisions for you. And now you're years away from that moment in time. And you're a completely different person, or you've tried very hard to be a different person. But you have no relationship with that prosecutor, even though he did something highly consequential for you. How do you think about that individual and your relationship, or lack thereof, with him?

Jacob: That's a tough question. It would be great if he could see that, hey, I didn't need to be thrown away, for lack of a better word. I think that if he could see the person that I am,

MAKING AMENDS

then he might, maybe it would help him look on the next person that comes up and say, “Hey, this kid has done a horrible thing. But he is also a kid and a human being and there are things that happened in his life that lead to this, you know.”

Narration: Our criminal justice process is adversarial. Any criminal charge is defined as the state versus the alleged offender. And it’s the prosecutor who is acting on behalf of the state. That means that prosecutors are very powerful. They are the ones who decide to charge someone with a crime, and they are the ones that try to secure the types of convictions that will result in long prison terms like Jacob’s.

But what do prosecutors know about the impact of their decisions? Are they aware of what it feels like to be prosecuted? Do they know what happens to people after their conviction, of what it means to spend years and years in prison? What might happen if a group of prosecutors came to prison and talked with people like Jacob?

Herbert: You’re gonna be sitting in a room with a group of prosecutors. How do you feel about that?

Jacob: So I’m actually pretty excited. One, for them to get the opportunity to get to know us and hopefully realize that we have committed some horrible crimes but that isn’t the only thing that we’ve done, you know. That we’re people and so maybe that will help inform how they do their county.

Also, I mean, I’ve lived with the people in here. Some of them horrible, that I would never want to have out with my family or my friends on the streets, you know. So I know that the district attorneys that are coming in here and that’s, you know, their overriding thing, is public safety. But hopefully, the fact that they’re willing to come in here and do this shows that they’re gonna look at it in a new light and be like, “How can we make this where it actually makes sense for, not only the victims of the crime and their families, but the people that are coming into prison?” So I’m really excited about it.

Narration: This is season two of Making Amends: The Prosecutors Go to Prison. I’m Steve Herbert. In this series, we’re going to follow a group of prosecutors from Portland, Oregon, who agreed to enter a prison there to engage in several conversations with Jacob and five of his peers. Their goal was to consider crimes of violence – why they happen, what harms they cause, and how we should respond to them. If the United States wants to no longer be the most punitive nation in history, there will have to be changes to how we sentence those convicted of violent crimes. Can these two groups, once adversaries, engage in constructive dialogue about our use of incarceration? What can they learn from each other, and what can we learn from listening in?

Episode One: That’s a big responsibility.

MAKING AMENDS

Adrienne I think what people think of prosecutors and what they see on Law & Order: you have a case, you take it to trial, you fight like hell, and you get a guilty verdict. And you are judged and measured by the guilty verdicts that you can get, or how hard you fight for something. And I don't really, I don't like that.

Narration: This is Adrienne. She's a deputy district attorney for Multnomah County, in Oregon. That means that she is what is called a line prosecutor, and she works in Portland. As a line prosecutor, Adrienne manages criminal cases as they move from an arrest to a possible conviction. Just because someone is arrested by the police does not mean that they will actually be charged with a crime. The decision to charge someone – and what crime or crimes to charge -- is made by prosecutors like Adrienne. And once they decide to charge someone, then people like Adrienne work to move the case toward a conviction and whatever punishment might result from that. So, there is a lot that goes into the job, and more ways to measure success besides the number of dramatic convictions earned at trial.

Adrienne: I mean, I understand that's my role, is to seek justice. But I don't think the outcome of a trial or the amount of cases that I'm turning over, I don't think that I should be measured on that because there's so many different factors that go into that.

Herbert: Is there a particular group that you feel most accountable to or is there, in terms of who you think you're serving as a prosecutor?

Adrienne: Ooh, that's a tough question. I think it's a toss-up between the community at large and the victims who have been harmed. I think you have two, not very different goals, but different kind of goals, because the victims want to see, not all of them so I'm generalizing here, but a lot of them want to see this personal kind of justice: "I've been harmed. I want to see something happen." And the community at large would like to see their community be a little safer, where people have places to go and food to eat and the things to wear. And so, I think balancing that kind of personal justice versus the community-at-large justice, is a fine line, but it's important to be held accountable to both.

Herbert: And are those the same or are they different?

Adrienne: Sometimes they can be the same, a lot of times they're different. You know, when you have a victim who really, really wants someone to go to prison for the rest of their life, because of the harm that was done to them. And, you know what, that's fair, if you're crime victim, I get it. But then you're looking at the defendant, the person who caused the harm and the things they've gone through in their life and what might be best suited for them so that they can continue to live a productive life and be a valuable member of society. And so, you kind of have to look at it that way.

Narration: As Adrienne suggests, she does not have an easy job. One issue that makes it tough is trying to balance the interests of the different groups that she is meant to serve.

MAKING AMENDS

One group clearly is crime victims, who she deals with all of the time. She is obligated to keep victims informed of a case as it moves its way through the criminal justice process. She also tries hard to empathize with them, and to help them feel like the process is delivering justice. And that's especially true when a crime involves violence.

Herbert: How is for you prosecuting a violent crime different from prosecuting a non-violent crime?

Adrienne: Stakes are higher, stakes are much higher. And, I don't want to say I care about them more, but I am more passionate than just your run-of-the-mill stolen car case, that you know, happens all the time. And it's just not something that I'm super passionate about. But when you have violent crimes and you're interacting with the victims who've been hurt by that, the stakes are much higher and so there's just a lot more pressure, because the crimes are more serious.

Narration: Adrienne's colleague, Leslie, also recognizes the gravity of prosecuting a violent crime.

Leslie: On a sort of personal level, it feels really different to me. I think that you become a little bit jaded to non-violent crimes when you're prosecuting so many of them and that's partly because they're committed more frequently, and they're a little bit less serious in their impact a lot of the time. And it's been interesting to have some more serious cases, including cases where a victim has died as the result of the criminal act, and for me I feel much slower, is kind of the only word I can think of to describe it. Like my brain almost will process the facts and the information and what people say to me in relation to the case much more slowly and I almost have to – like, the words will kind of echo in my head and I'll find myself at various points of the day thinking back to that case and trying to process what I'm hearing there. I find it much harder to talk about it to other people.

Herbert: So why do you think prosecuting violent crimes, in your words, feels different?

Leslie: Yeah, um, at least I kind of put myself in the shoes of the people who are in my cases. And at various times that will be the victim's shoes or the defendant's shoes, or an eye witness's shoes, right? And putting yourself in the shoes of a person who's been affected, you know, by a crime of violence, is very different than putting yourself in the shoes of a person who's had their purse stolen. And I find myself, in cases where the victim is deceased, you have to put yourself in the shoes of the next of kin, which is almost worse. I mean, it's really awful. And you do talk a lot more, I think, to the victims and the victim's family if the victim is deceased or if it's a really serious injury. So you just have more detail, it's more in focus.

Clayton: There's so much lasting harm there even once the physical has healed.

MAKING AMENDS

Narration: This is Clayton, another Multnomah County deputy district attorney. He also understands violent crimes as notably different from non-violent ones.

Clayton: There's all this psychological trauma done, where walking down that street that you were assaulted at, no longer becomes an ability. You know, being assaulted in your own home. Is that a safe space psychologically for you? Can any home now be a safe space for you? So, there's all these harms that are so much more than just the physical.

Herbert: And does that shift the way you might approach the defendant in the case?

Clayton: It has to. Those individuals who have done something violent, it is completely different, as well as the sentencings that have been put in place by our legislature. So you've got both the community and legislature telling you to treat it differently, but also the obvious that it is different.

Narration: The common expectation is that the criminal justice process will provide some form of a just resolution after physical harm occurs. And for most crimes of violence, that resolution is going to include a term in prison. That's true even in a left-leaning place like Portland.

Shannon: I think it's fair to say that prison is the easy solution and for obvious reasons. It does fix a problem, right? We can argue about what other problems it creates, but I don't think that we can argue that just, you know, removing somebody who is unsafe to society doesn't fix that problem, of diminishing at least that particular threat.

Narration: This is Shannon, one of the younger prosecutors in the office.

Shannon: And that's very ingrained, that there's no other option. I do think that there is a bit of a mentality, even here in a pretty liberal place, where you look at the rap sheet and you look at the charges and you say, "That's a prison case." I don't think even in Multnomah County that we have a culture where we look at the rap sheet and we look at the charges and we say, "How do we avoid prison?" It's what we're seeing more experienced attorneys do, it's what we're being taught to do.

Narration: One of those more experienced attorneys is Kirsten. The only cases she handles involve murder. She also supervises the other attorneys who focus on violent crime. For her, prison time is often necessary.

Kirsten: So most of my career has been spent prosecuting gang and group-related violence. So, it's retaliatory violence. And one thing that can be said about retaliatory violence is it's easier to interrupt because, you know, one shooting begets another. And so, I am inspired by trying to interrupt that cycle. Because it affects our society as a whole, you know, regardless of whether or not you or I might live in a neighborhood, that's, you know,

MAKING AMENDS

besieged with gunfire, we're now reading about it in the paper, it's spreading more and more widely, it's an increasing problem and it affects the livability of our community as a whole.

Herbert: So, when you end up with someone getting a custodial sentence of however many months or years, what's the purpose of that custodial sentence from your perspective?

Kirsten: Having the person mature or age out or whatever the term is that you want to use, of being a potential threat in the future. Really a timeout. Because for some people that are so criminally involved and, you know, involved in many, many repeated acts of violence, they're just not in the headspace to make a change. They're just going down the road, they're going down the pathway, and especially if they're involved in a gang, that becomes their life, that becomes their social support, their family. And they're committed to it as a result. And so the only way to make them perhaps realize the benefits of freedom, realize the need to change their lives, realize that, you know, maybe they should pay attention to their kids or prioritize them and they don't want their kids to end up in prison like them, is to spend some time incarcerated. Just allowing them to remain in society and continuing to victimize people is not a viable solution.

Narration: For her part, Leslie is uncertain about the benefits of a term in prison.

Herbert: So, I assume in many of the violent crimes that you are prosecuting, for some number of those individuals, you are going to believe that a custodial sentence is appropriate. What do you hope that custodial sentence is going to accomplish?

Leslie: Um, your question makes me laugh, because I don't know that I think of it as accomplishing anything. Usually the reason behind why I'll look at a case and say, this is going to be a prison sentence, is based on comparable cases. And that's really kind of the only basis. So, if my comparable cases were six months of local jail time, I would probably say that's the appropriate sentence for this case, six months of local jail time. You know, I think it can accomplish something, but most of the time what I'm thinking about when I know it's going to a prison sentence is, like that's the only fair outcome, and my hands are kind of tied. I really only make that decision if my hands are tied.

Narration: Adrienne shares Leslie's ambivalence about imprisonment. She has doubts about mass incarceration, but she also handles cases involving sex trafficking. In that line of work, she often sees a prison sentence as a just outcome.

Herbert: So why is decreasing incarceration important to you?

Adrienne: It's important to me because I think we use it too much, we use it way too much. And we've kind of gotten away from what our actual, like what are we trying to accomplish

MAKING AMENDS

when we're incarcerating people? A lot of people have a lot of different ideas. You know, we want to get them away from society, they need a timeout, we're just strictly punishing them, or we're putting them somewhere where they'll get programs and they'll come back out. So, there's a lot of different reasons why we use incarceration. There's not just one central goal. But I think we use it way too much, and we rely on it too much, to do too much.

Herbert: In the context of a human trafficking defendant, what kind of options do you have or do you wish you had as an alternative to incarceration?

Adrienne: Oh man. You know, I think that's tough and I feel this is kind of where I'm straddling, because when I'm thinking about lesser incarceration, I'm thinking about for property felonies, and for, you know, the violent felonies: robberies, burglaries, some burglaries, some assaults. That's kind of where I'm thinking about it. I guess I'm not thinking about it in the realm of trafficking. Because in my head that's just pure exploitation and it's really hard for me to kind of pull myself out of that to see what else could work.

Herbert: So I hear you saying, on the one hand, that you wish we relied on incarceration less. But I also hear you, you've cited a couple instances in which actually you were quite comfortable with individuals being incarcerated. So to the extent that you feel like incarceration does have an appropriate role, how do you kind of constrain it within bounds that you think are legitimate?

Adrienne: Yeah, I don't know. I don't know if I can answer that question, because I don't know when it's enough. That's tough. Yeah, it is a weird, kind of, you know, idea for me to grapple with, because I know we overincarcerate, but I still feel that some people just deserve to be in prison. I don't know. You'll hear some prosecutors just say that you know this number just feels right. Seven and a half years feels appropriate. I don't know why, it just does. It's enough time. It's not 10. So, yeah, it's really tough, and because there's not a correct answer is why we should be shifting away from incarceration. I wish that there were a correct answer or at least an answer other than it just feels good. I don't know. It doesn't feel good but it feels, you know, appropriate I guess.

Narration: Clayton is also troubled by our emphasis on incarceration. He wonders whether a prison term is actually going to help those convicted of crime to address whatever challenges they are facing.

Clayton: It's really easy to get support for the position that we need to keep violent people off the streets. For victims and for the community at large, it is important. There is a certain easiness to just getting them out of the eyesight. So how do we rehabilitate those people so that they are welcome in the community? How can we help this defendant to be in a place that they won't need to do that again, or they'll be more stabilized? And so I do think that helping defendants rehabilitate is just as important to that community safety.

MAKING AMENDS

Narration: But even if a prosecutor wanted to emphasize rehabilitation, they often don't know that much about the defendants that they are charging. That's largely because of the adversarial nature of our criminal justice process. So, if you're the person being charged, you see the state as your opponent. And it's the prosecutor who is representing the state. So, Adrienne understands why a defendant might not tell her all that much.

Herbert: The way the criminal process is typically structured, does it allow all of the relevant information to surface?

Adrienne: No, it doesn't, and it also can't, I would say. There is only so much information that I can know about the defendant, or their past, or their history. They don't know me, you know. Why on earth would they trust me with their life story of what has happened to them and all the trauma that's happened to them? So, there's really nowhere for any of that to occur.

Narration: This lack of knowledge about defendants is no small matter. Remember, prosecutors get to decide what to charge someone with. That power has become more important in recent years, due to our changes in sentencing laws. Many of these laws stripped judges of the power they used to possess at sentencing. Now, a conviction is likely to lead to what's called a determinate sentence, a sentence that's been fixed ahead of time, one a judge can't change much, if at all. So that means that when a prosecutor chooses a charge, they know exactly what sentence is going to result.

Kirsten: I think the single most important thing that I do in this job is decide fates.

Narration: Here's Kirsten.

Kirsten: So really kind of deciding how long somebody should spend in prison and you know that's, that's a big responsibility, and part of that has to do with: Okay, how much time do we think is necessary for this person to grow up, for this person to actually make a change in their life? And it's a gamble. It's not a precise science. Everybody is different, right? There are some folks that go to prison that really do make efforts to change their trajectory, and there are others that really double down and become more entrenched in a criminal lifestyle and those bad decision-making habits that got them into prison in the first place. So it's, you know, you have to look at the body of evidence that's presented to you at the time, and figure out what supports they have, figure out what capacity you think they have intellectually, emotionally to make that kind of change and kind of go from there.

Narration: What makes matters more difficult for prosecutors is that they really don't know what's going to happen to someone after they get a prison sentence. Here's Clayton:

MAKING AMENDS

Clayton: Are your sentences that you're arguing for, for this defendant actually helping the community in the long run? I mean, it really comes down to what is available for that individual to better themselves. As prosecutors, we don't know every treatment that is offered in each of these different institutions, we don't know whether they work, we don't know anything about them. So we're kind of in this weird part of the criminal justice system, where it is our job to get convictions on individuals and also make recommendations for what's best for the community in the long run, while not being a part of those solutions.

Herbert: That must be, I don't know if frustrating is the right word, or a challenge?

Clayton: It's definitely frustrating to a degree. You know, the system is so big and I would love to go to each prison and learn about each of these programs they have. Nobody has the time to be an expert on both prosecution and the treatment.

Narration: So, prosecutors have a lot of responsibility when it comes to violence. We expect them to respond to the harms of violent crimes in a just and sensible fashion. And we give them a lot of power in doing so. With their charging decisions, they largely determine whether someone is going to prison, and for how long. Even if some prosecutors are ambivalent about our heavy use of incarceration, they still regularly act to put people away. But once they get a conviction, prosecutors know little about what happens to people during their often very long sentences. Shannon is concerned about that. So, she sees the value in talking directly with people who are incarcerated.

Shannon: If the whole point of, you know, sentencing somebody for a crime is to sort of alleviate a problem or whatever and one aspect of that is separating them from society, because they are a danger to society, how can we possibly know if they are if you're not having those conversations? That's not the only indicator, right? I think it will be helpful to hear that perspective, from somebody who's been a part of the process for longer than I have, right? They're in the best position to assess and articulate what they've learned, and what they haven't.

Narration: What might the conversations that Shannon references be like? What would happen if these five prosecutors got a chance to sit down and talk with people who are serving time for a crime of violence?

Herbert: So you're going to be sitting in a room with four of your colleagues and six adults in custody. How do you feel about that prospect?

Leslie: I do think there will be moments where I'm really uncomfortable, which is kind of an interesting thought. My palms are sweating in anticipation.

MAKING AMENDS

Narration: In our next episode, we'll travel inside the Columbia River Correctional Institution with these five prosecutors, and we'll learn how some of the men there ended up being imprisoned for acts of violence.

Enoch: It was difficult to, you know, share my essentially what I call you know 'dark secrets' now. You know, because, you know some of the stuff, you know, that I lived through and did, you just don't bring up in polite company.

Narration: How violence is learned. That's next time on Making Amends: The Prosecutors Go to Prison.