

MAKING AMENDS

Episode Five: You Get to the Point Where You're Doing Dead Time

Enoch: I ended up doing a long, long time in isolation confinement. And it really, really started to mess with my head. To the point where I had decided that, you know, if this is it, if we're going to keep doing this lockdown stuff then, then I'm done. You know, I had braided up some stuff and I was just going to hang myself.

Narration: This is Enoch. As you may remember, he was once a neo-Nazi skinhead, and he received a 25-year sentence for homicide. He's talking about his experiences in solitary confinement. In Oregon, solitary confinement means that you are housed in what's called the Intensive Management Unit, or IMU.

Enoch: And oddly enough this lady had come into IMU to do a class, called dialectical behavior therapy. So, what struck me about her was her personality. Like she was just really enthusiastic about helping people. It just struck me as odd. And I was like, "Well what the fuck, how bad can it be? I'm going to fucking hang myself anyway, might as well go to this class." And so I did. And I kept going every week. She basically was, like, just so enthusiastic about wanting to help. Yeah, just really focused energy, really positive person. Um, most of your interactions in IMU are really dour. Nobody smiles. The only contact you have with other people is when you're on a dog leash to your handcuffs and you got two guards grabbing onto your arm and escorting you to the tiny rec yard or the shower. And that's your only interaction, other than, "Hey what time is it?" Because there's no fucking windows, so you don't know what time of day or night it is. To go from that to just her overwhelming positive interaction, I was just like, "Yeah! I think I will sign up for this class." You know what I mean? So, literally, the woman saved my life without ever knowing it.

Narration: So, for Enoch, a chance encounter with a single person jolted him into a journey toward shedding his past. That's when his transformation began. But that was many years ago. He believes he has long been ready to return to society. However, under Oregon's mandatory minimum law, that does not matter: he is required to serve out the entirety of his sentence.

Herbert: So in thinking about your incarceration, I mean, you shot and killed somebody, and the state of Oregon says, in response, you get 25 years in prison. Is that the appropriate response to the violence that you practiced?

Enoch: Yes and no. I wish it was as simple as black and white. For me, I needed to get took out of circulation. I was a fucking asshole. But at the same time, I didn't need 25 years to come out of it. These last nine years or so have just been warehousing. I mean, I've used the time well, in my estimation. I've focused on education and just trying to become a better person. But I could've done that while working, you know, and not having the state footing the bill. You know, the same taxpayers, the same mom and father of the person that I killed, you know, paying for my room and board without much other benefit

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Narration: The United States became the most punitive nation in history by imposing long, mandatory prison terms. So Enoch is hardly alone in being confined by a sentence he cannot escape, a sentence facilitated by the prosecutor who helped convict him. But Enoch is hardly alone in another respect – he is not the same person today as the person who committed his crime.

So, what made that change possible? Could such change become more common in America's prisons? And can prosecutors come to understand how our criminal justice policies might change to make our punishment system work better?

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 six incarcerated men. Their goal was to consider crimes of violence – why they happen, what harms they cause, and how we should respond to them. What can they learn from each other, and what can we learn from listening in?

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Josiah: I met this guy, Mike, I can't remember his last name, but he studied Buddhism, Taoism, and a few other things. And he was also an artist. He was, like, "Hey man, like, how old are you?" I was like, "I'm 23." I think I was 23 at the time I was in IMU.

Narration: This is Josiah.

Josiah: And he was, like, "Is this what you wanna do?" And he was an older cat. He was like 40, 50 years old. And I was like, "I mean, I really don't care. They sentenced me 19 years. Like, I don't really give a damn." And he was like, "Seriously? Like, this is what you wanna do for 19 straight years? And then get out, and what you are doing right now, you are going to perpetuate when you get out." And I was like, "Nah. I'll be different." And he was like, "No you won't." He's like, "I promise you, you will not." And he's like, "I've been doing this. This is what I've done my whole life. And it's not something I'm proud of it's just something I'm stuck in." Uh, he's like, "But for a youngster like you man, you got your whole life ahead of you." He's like, "Yeah they gave you 19 years. You were 19, that means you're gonna be 38. You still got a whole life to go live, bud." And so we started having conversations and, uh, I don't know what clicked, but obviously something in those conversations clicked. I decided, you know, one, this is not what I want to do for 19 years. This is, this is dumb. But, two, he was right. Like, if I continue this path of destruction, I'm going to do this same thing when I get out, because I'm not going to know anything else.

Herbert: So, are you making a case for IMU?

Josiah: No, I'm making a case for mentors. Mentors are where it's at. Even now, right, I'm towards the end of my stay, I have 16 and a half years in. And if I see young kids come in, I instantaneously do the same thing that this guy did for me. I'll pull 'em up. I'll be like, "Hey man. Like, what are you doing? This is stupid. Why are you here?" You know what I mean?

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“Oh, you got a kid? Your kid needs you. Like, your kid is gonna do the same thing as you, if you’re not there for him.”

Narration: Despite the fact that prisons are riddled with violence, many individuals, even those with long sentences, find ways to mature. Josiah was not the only person who cited a mentor as the key catalyst to his change. Here’s Jacob.

Jacob: I lucked out in that I had three cousins who acted as mentors. One of them was an amazing mentor, you know. And he’d been incarcerated for 17 years, also for murder, from the age of 19. And he really helped me change my focus. Had I not had that, you know, and if they’d sent me somewhere else, the trajectory of my life could have been drastically different.

Narration: Gerard also benefited from mentors, particularly those whose life stories were similar to his own. He wants others to have the same experience.

Herbert: So, in thinking about how prisons could be constructed differently, to the extent that prison could help more than it currently does, what would it look like?

Gerard: For whatever reason, they are reluctant to allow people with criminal records to come in. I think that they need to allow more people who have changed their life and who disconnected gang ties, whether it’s gangs, drugs, pimps, whatever it was. Somebody who changed their life. And let them come in and facilitate some type of group. Get them more involved.

Herbert: So why is having former gang members important to you?

Gerard: It’s just like a visual incentive. Something that they can see, somebody that they know. And that it’s not like a mystical life that’s waiting. It’s tangible. It’s achievable. This person did it.

Narration: For Enoch, it’s not just who the mentor is, but when you encounter that person. In his view, it would be great if that encounter could happen as early as possible.

Enoch: One of the things to push is, uh, mentorship from somebody who was a former prisoner, who shows up after you’ve been sentenced, but before you’ve been sent to prison, at the county jail. And says, “This is what you’re in for. This is what you can expect. These are gonna be the pitfalls that you’ll encounter. And these are the programs that are gonna be available to you.” Um, in addition, that person would stay your mentor and adviser during your incarceration, and encourage you to take part in education, to get your GED, to do this, or that. And to basically communicate to you at the very beginning, that you’re not the sum total of this decision that you made that has cost you your freedom. And you absolutely can change your mind, right now, and do something else. At that moment, when you’re about to go to prison, you’re at your lowest point. And that’s when, you know, people are like, you know, “God please help me!” They’re just, uh, they’re shattered, you know? I was as tough as anyone. But at that moment, you’re vulnerable to the idea of

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change. And I think it would be good if there was somebody there to say, “Hey man, you’re not a shitty person.”

Narration: What Enoch wants to see – a mentor assigned to each prisoner as they enter the system – does not now occur. But his hope that individuals can see a new direction for themselves was something that his fellow prisoners shared. Gerard was able to find that new direction when he was incarcerated at the Oregon State Penitentiary, or OSP. There, he said, the opportunities for education were more numerous than any other prison where he had done time.

Gerard: I wanted to better myself, I wanted to educate myself. There was a lot of opportunities at OSP. College courses, restorative justice programs, the youth panel, the clubs. Um, there’s an opportunity for people to come, and get involved, to have the social interaction with people who are doing positive things. That’s not the case at every institution. But I never thought I was good at formal education, until I got to OSP and was taking college classes and doing well in them. The different seminars, and the activities and the presentations that I attended was opportunity for me to grow.

Narration: Messiah shared a similar feeling about education in the circle, when I asked him what he would most want to see changed about the world of prison.

Herbert: Messiah, what would you change?

Messiah: I would have to say, uh, education, because I feel like if everybody has a tool that they can leave with and, you know, they get a degree, a certification, or whatever it may be, that’s useful. You know, you have something that you’re proud of. And it’s, like, it makes you think in a different way. It’s like you accomplished something. So now it’s like, “Okay, I’m ready to go back in society and use what I just learned to be more successful and be a better person.” That’s a game-changer you know? They make it kinda hard to do the education thing, as far as college goes, inside prison. They need to make it more available for everyone so that everybody actually gets a chance. One of the things that I did was get my three certifications since I’ve been in prison, to be a personal trainer, strength and conditioning, nutrition, and stuff like that. And just having that you know I feel like I’m, I’m going to be successful.

Herbert: Well I could use a personal trainer...

Messiah: Well, anybody who need one, you got it for free. (group laughter)

Narration: So, mentors and education are two key ways that the men think will make change inside prisons more common. Another key, Jacob told me, was the approach of any staff member running a program.

Herbert: So, you’ve done a lot of programs. So what separates a good program from a not-so-good program?

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Jacob: If you can tell that the person running the program has bought in, even if the program, at times, is a little bit cheesy, if you know that the person in the program cares about it, believes in it, and is trying to make a difference in your life, that can make a program that isn't so great into a great one. You know, because you know this person actually cares and, you know, so you can meet them partway and buy in yourself. If you get a program where it is clear that the person has to do the program, they don't really want to be doing it, it's just something the state has told them that they have to do, then even if the material is good, it's difficult to buy into it. I mean, you still can, of course, but it makes it a lot more difficult.

Narration: And it's not just the staff who run programs that are important to their experience, according to the men. Also important are the correctional officers who manage everyday life. Here's Josiah.

Josiah: Not every CO is going to talk to you, right, on the level of being a person. But I've met COs over the years, good people, who are legitimately here to pick up a paycheck, but also to help. Right? Because their job is to make sure we don't kill each other. Make sure we don't escape, and to make sure we rehabilitate, right? Well a chunk of them don't care about the rehabilitation. Most of them care about getting their money and making sure that the facility's running safe. Right? You're gonna get those few people that are like, "Oh, I got power." And they just don't stop. But then you have certain COs that are legitimately there to help. And that helped me a lot. Being able to actually talk to somebody that's not an inmate, you know? Somebody that's not a criminal. It made me feel human again. Because prison definitely dehumanizes you. And so to be able to talk to somebody like that, helps a lot. You know, when I'm walking down the hall and a CO, "Hey, Richards. Nice to see you." You know, that's, that really grabs at your soul. I can be a better person.

Narration: And what would better mentors, more educational programs and more humane staff mean? Well, for Messiah, it could mean that people who have embraced a violent persona can be helped to see things differently. A big part of that, he says, is learning to ignore peer pressure.

Messiah: I think really just giving people that outlook, you know, challenging them in a way that they haven't been challenged, in a positive way. To where they understand that, like, you can be who you are but, but if you continue to be who you are, how's that going to help you go further, you know? Like do you, asking people the question, "Do you really care how much that person thinks about you?" So, for you to be worried about your image with another person who's doing time just like you, it's stupid. And that will kind of push somebody, like, "So, like, are you really telling me that you're more worried about Johnny looks at you and you want to be that tough guy to Johnny? But what about your family? You know?"

Narration: Gerard agrees with Messiah, particularly when it comes to trying to help people to break from a gang, like he did.

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Gerard: I believe that exposing the lies and introducing the truth is the biggest tool. Exposing the lies.

Herbert: Such as?

Gerard: The homie love. I got love for you, man, and you got love for me. That's a lie. If you think that's love you have a distorted perception of reality, because love is the opposite of that. You know a lot of people take pride in being a bad guy. "I don't follow rules, I'm a rebel." But the reality is you either going to get killed or you're going to go to the penitentiary where you have to follow every rule that's enforced, more than on the street, and for nothing. You can follow the rules in society and live your life and be happy or you can come to the penitentiary and go to eat whenever they say chow. Two, three, chow. Go to the yard when they say you can go to the yard. Be in bed by certain times. Sit up for count. A thousand rules. But we believe the fallacy of the street.

Narration: So these men hope that prisons could be structured so that mentors are easier to find, programs are more plentiful, and staff are more respectful. But there's another important consideration, particularly for those with mandatory minimums under Measure 11. It's what Josiah calls dead time.

Josiah: I don't know if any amount of time makes up for taking a life. That's hard to say. That's hard to process. Sometimes I feel like I deserve to do more, sometimes I feel like I deserve to do way less. I definitely feel that anything that I had to learn while I was in prison, it's been learned. They say you get to a point where you're doing dead time, is what they say. To where basically you're just living day after day after day to your release date.

Narration: Given this, it is perhaps not a surprise that Josiah is a critic of Measure 11.

Josiah: Measure 11. Like, it's horrible. It's one of the worst crimes I've ever – er, not crimes – one of the worst sentencing guidelines I've ever seen. You can give a mandatory minimum if you want. But, in my opinion, you should always give somebody the chance to earn time off. If you send somebody to jail, you're doing 15 years day for day, you'll get out on this day. No earlier, no later. I don't care. "Okay cool, I'll see you in 15 years." Uh, I'm not gonna behave. Why? Now 5 to 15? Hold on, now I got a chance. I got a 10-year window chance. Like that is huge.

Narration: Josiah shared his frustration with Measure 11 with the prosecutors in the circle, and Jacob chimed in.

Josiah: Nobody except for me knows, in my mind, if I feel that I've paid for what I've done. Somebody passed away. And so that'll get to weigh on my mind for the rest of my life. And I'll never feel that I've ever paid for it. But in the sense of coming to prison and changing who I was, when I came to prison, I've done that. And so I use the term dead time. For the rest of my time, which I have 27 months left, I'm just kind of sitting around being warehoused. I'm just sitting here.

Herbert: Jacob.

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Jacob: Yeah, so I definitely feel that as well. I think also when you start to feel warehoused or when you are warehousing people, then it lessens the, like the impact of the retribution or the reason that we're here.

Narration: So, these men think that it's not enough just to have the conditions for change inside, as important as that would be. Prisoners still need an incentive to change. As it turns out, there was a strong consensus in the circle about how you might create that incentive. And it was a prosecutor, Kirsten, who first raised the idea. That led to a lively discussion.

Kirsten: More than anything, though, one of the things I think we could do is have really a more robust parole system. Obviously, there needs to be more and better programming available. Mentors is super important: having positive role models to talk to, you know, about their lives and what your life is going to be like when you get out. You know, we don't want to warehouse people. You want to have people transition back in when they're ready. And when they're changed. You have more control over your fate, right? You have incentive to participate in the programming. So that you could put kind of your best case forward to the parole board. "Hey, you should take a chance on me, you should let me out. Here are all the things I'm gonna do when I'm out. Here's my whole plan. Here's how I've changed. Here's my remorse for what I did. Here's my accountability." All of those things that we just don't have in our current system.

Herbert: Enoch.

Enoch: The parole board can require you to do classes, and to meet these milestones before they'll consider you for any early release. And I think if the parole board were given much more broad powers, I think we can meet that happy medium, where you still have intense mandatory minimum sentences for violent crimes. Because you never, you never really do know, the people who are incapable of being rehabilitated. You can't really separate them, in the time that they're prosecuting a case or a judge is looking at the case, to determine that. It's just not, it's not really feasible. But you can observe their conduct while they're in prison over a long period of time.

Herbert: So what would that look like? What should you have been sentenced to instead?

Enoch: Anything over 10 years, there has to be reviews, and a system of evaluating.

Herbert: So you should have been sentenced to 10 years to 20 years?

Enoch: I think I should have got the mandatory minimum, Measure 11, 25 years. But with the parole board reviewing me after 10.

Herbert: Gerard, and then Jacob.

Gerard: I think one of the problems, is the incentive, right? And I'm not sure if 10 years would have been necessary if the incentive was there for change.

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Enoch Absolutely right.

Gerard: And so, what kind of information can lead somebody in our situation, to change? But to say, because Enoch required 10 years, let's set the bar at 10, I think would be a mistake. Because what took Enoch 10 years might have been alleviated, had he got some information sooner.

Herbert: Jacob and then Kirsten.

Jacob: As far as the, like, how to lessen mass incarceration – so, I mean, I don't know how to do it at the outset, just because depending on where you're from, you're gonna get even more time or less time. But if there's a mechanism once you get in here, so even if we all get 25 years, if me and Gerard have put in the work, and then you know, we can show people, “Hey, we're no longer a threat, we're no longer that person. The reason for keeping us here no longer applies.” Like his dead time, I mean, there's no, it's not serving a purpose at all. So, if he could go to a hearing and they've determined, “Yeah, there's no reason to keep you here any longer.” That would drastically reduce the population.

Herbert: Kirsten.

Kirsten: Well, so it's interesting to me, although I'm not surprised, that so many folks that are here serving a sentence are really struggling with what is the right sentence that they should have gotten. And the reason that that's so difficult is because it's going to vary tremendously from person to person. And the way our current system is set up is we're expecting either the prosecutor if it's a plea bargain and determining that sentence, or the judge, if that's the circumstance that you're in, to basically, you know, have the foresight to know what's going to happen in the future with somebody. And that's very difficult to do. People change for different reasons, at different rates, depending on their experiences. And I think that what I am hearing over and over again, and I agree with, is that the current mandatory minimum downfall is it's all stick with no carrot, right? There is no ability to make meaningful change and have that benefit you.

Enoch: No incentive, either.

Kirsten: There's no incentive. There's no incentive and that's a, that's a serious flaw.

Narration: This all leads Kirsten to want to see a change in Oregon's sentencing laws, including a challenge to Measure 11.

Kirsten: What you could do legislatively would be to come up with a system where there is at least some amount of minimum time, so that you don't end up in the circumstances that led to Measure 11's passage in the first place. Where the society feels like, “Hey, if you're getting out in less than five years for murder, we think that's inherently unfair.” The public will not accept it, if there isn't a retribution component.

Steve: Leslie, what do you think?

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Leslie: I love that idea. I think coming up with a sentence is my least favorite part of being a prosecutor, honestly, because, like we've all kind of acknowledged, nothing is perfect. We don't have a lot of certainty that what we're doing is going to work for any aspect of, you know, reducing recidivism or making sure the person changes. Like, I just don't have control over that. And I feel like there's a sense from people outside of the criminal justice system that we do know, you know, that kind of stuff. And it's based on data. And we have the tools to be able to come up with the right sentence, but I personally feel like we don't right now. And I don't know that we'll ever have the tools for that in the near future. So. . .

Herbert: But these guys want variant sentences, right. They want, they want change to be somehow assessed such that two people commit the same crime, one guy changes, one guy doesn't. The guy who changes gets out earlier.

Leslie: Yeah, I think that's a good idea. And it's the same idea as at certain increments, you have an expert group of people who know more than the prosecutor or the judge or a random person about whether this person is actually changed and whether they've been sincere in their programming. And you have, you know, the people who lead the programming, who are ideally, folks from the community who know what they're talking about to say, "Yeah, this guy's changed."

Herbert: So but then the ultimate punishment outcome for two people who commit the exact same crime could be significantly variant.

Enoch: It should be.

Herbert: We're cool with that?

Many: Yeah, Yeah.

Kirsten: But the initial sentence is going to be the same.

Narration: Adrienne supports the idea of giving the parole board more power, even though it would mean that she would likely lose power.

Herbert: Another possible way to approach this would be to give people more indeterminate sentences and make parole a more central focus of the process. Is that something you would be comfortable with?

Adrienne: Yeah, I guess it would be, because it would take, you know, some of the power away from the prosecutor, give it, I guess, a little bit of the power back to the judges. And then really relying on the parole board to properly use their judgment and the tools that they have to make that appropriate decision. That would be one way to decrease the prison population, if you have a parole board that would want to do that.

Herbert: Right. But that would mean less power for you.

Adrienne: Yeah it would, but, I mean, I don't really care about the power piece.

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Narration: For his part, Jacob is quite convinced that a renewed emphasis on parole would change the prison environment enormously.

Jacob: If any of us had had the opportunity of saying that, if you meet these benchmarks and show that you have done enough to change and that you're, you know, making amends or that you're trying to overcome your past and we're gonna let you out. I mean, I think that would change the entire population in here. If you had, you know, a thing where you could say you can be released, you know, in half your time, if you really show us that you're worthy of that second chance. Yeah, I think that would drastically change almost every prison around here, you know. If you had a thing where you say, "You're gonna parole, but, you know, you're not gonna be in a gang and be eligible for that. You're not gonna, you know, you have to meet these standards." I think that you would see a lot more people stepping away from the gangs. And, yeah, it would completely change the way our world is in here.

Narration: And so, by the end of their time together, these former adversaries had reached agreement on a key way that our punishment policy should change. Although there was a recognition that some mandatory minimum for a violent crime might be something the public wants, there was also recognition that no sentence should result in dead time. The group was united in the belief that allowing people to earn early release, likely through an improved parole process, was a necessary shift for Oregon and other states to pursue.

So, what else did they learn in their time together? What was like to sit through those Saturday morning conversations? What lessons will these prosecutors take from their time in the circle?

Shannon: I just feel really grateful that I got to sit there with these individuals who had spent so much time incarcerated, and have these really interesting conversations about really big issues. I mean, things I can't even talk to my family about. And yet I could sit three feet away from someone who had been convicted of murder and have this really engaging and respectful conversation.

Narration: What the prosecutors learned during their time inside. That's next time on Making Amends: The Prosecutors Go to Prison.