

MAKING AMENDS

Episode Six: This Really Humanized the Criminal Justice System

Herbert: It seemed like one of the themes that that the men kind of came back to was the degree to which they felt like the DA didn't take the time to understand the very unique contextual factors that for them helps explain what they did. And I was kind of curious, just kind of how, how you reacted to hearing them sort of come back to that theme, with some regularity?

Adrienne: You know, I think that that's a very fair argument. I can't speak for everybody in this office, or DA's across the country. But oftentimes, we're not looking at the person holistically. You know, we're blaming them for the situations that have happened to them in their past. You know, you live up through a life of violence, yeah, of course, you're gonna go out and, you know, commit this awful, serious felony. And we're not, we're not appreciating the fact that they were probably a victim as well. And we're not taking that into consideration enough.

Herbert: So what are the impediments preventing you all from doing that more consistently and thoroughly?

Adrienne: Sometimes we're kind of strapped by statutes and mandatory minimums and stuff like that. Or the crime is so violent, that, you know, it's: Okay, I get that your life has been very difficult and rough. Taking small portions of that into consideration, we still have this awful crime that occurred. And so we have to do something about that.

Herbert: Right. And if you look at it from the defendant's perspective, what's impeding them from being more forthcoming to you?

Adrienne: Why sit down and tell a stranger, everything that I've gone through in my life, right? Can I trust this person with this information? Are they going to do right by this information? You know, a lot of people in this system, they've been abused by it. And so like: Why should I trust this one person I don't know with stuff that I probably haven't even told my close friends? Especially if I'm in this horrible predicament where it's like, I'm gonna go to prison. Now I got to spill my guts.

Herbert: And that might be used against me.

Adrienne: Yeah, exactly.

Narration: Adrienne is correct: she is obligated to respond to awful crimes, and especially violent crimes. As a prosecutor, she is the primary agent in a criminal justice process that has generated our historic rate of incarceration. If a prosecutor like Adrienne gets a conviction for a violent crime, a long prison sentence will almost certainly result.

But she is also correct about our adversarial process, and of how that can limit her knowledge of the people she tries to convict for violent crimes. And once those people are convicted and carted off to prison, prosecutors like Adrienne typically know nothing of what then happens.

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So, what did it mean for her and her colleagues to spend time with people that were convicted of violent crimes, many of them forced to spend decades inside? What did it mean for them to step across the divide that usually separates them from those they charge and convict? What did it mean for the prosecutors to go to prison?

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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Kirsten: The reason that I understood that they really had the desire to talk with the DA themselves was not only because they have a general distrust of the system and perhaps their lawyers or even the judge and they perceive the prosecutors to have the majority of the power. But also because they really wanted the prosecutor to see them as human beings, as individuals, to consider their specific circumstances.

Narration: This is Kirsten.

Kirsten: And one of the things that I think surprised me a little bit, there seemingly wasn't a lot of awareness around the amount of work that most criminal defense attorneys do to provide us this backstory, right, this information. I think it will forever change how I approach my communications with defendants going forward. And really the only opportunity I have to address a defendant is in the course of a settlement conference. And so yeah, I think it will forever change how I approach those. And it's really incumbent on me to get to know them and to make the defendant understand that I want to hear their story.

Herbert: And how would you help them feel confident that that's where you are?

Kirsten: Well, really, I mean, you know, a lot of these guys, you know, whether they have an education or not, they're growing up on the streets, and they're street smart. And they can read people. And they can read body language. And really, I just think, it's about having a conversation. I mean, that's kinda what's wrong with our society as a whole right now. Nobody's having conversations. Everybody's just yelling at each other on social media. And so, just sitting down with somebody and asking, "Well tell me about your childhood. Tell me how you got here." And being interested in them, and stopping and listening. Even if that person and I have wildly different opinions about how dangerous they are, or how long they might need to be incarcerated for, I think to have that conversation is beneficial for both of us.

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Narration: Shannon also said that her approach to settlement conferences was different as a result of her time in the circle. She mentioned that when I asked how she thought her future practices would be different.

Shannon: Certainly the judicial settlement conferences, it already has.

Herbert: Oh really?

Shannon: Yeah, I set multiple judicial settlement conferences that I would maybe have otherwise just let the defense attorney recommend it, and if they didn't ask, fine, we'll set trial dates and go to trial. Um, but I've had a couple cases come up recently where -- I mean I had one today where what I was reading in the police report I'm thinking, "What in the world is going on with this person?" And so we had a settlement conference on it today at my request. I said, "You know I'm not really ready to give an offer on this case because I need to hear what is going with this person." And I was very surprised to hear what was going on with the person in the settlement conference. And I had done that stuff before, but I'm a little more focused on it now, knowing how much, you know, that a meaningful part of that process would have benefited them. The other thing that I'm doing now that I maybe tried to do before but wasn't admittedly very good at it, is explaining my charging decisions in a settlement conference. That's not something I did before, because frankly I just hadn't thought about it.

Herbert: You thought it was self evident? Or?

Shannon: I think so, yeah, um or you know maybe I just assumed that was the defense attorney's job and they were doing it. You know but hearing, I think multiple of the gentlemen said this, but Jacob particularly made a point to say, "I couldn't understand why it was charged this way." And then, you know, Kirsten obviously gave some really great perspective on why we do that. That conversation impacted me, and I thought, "You know, I'm gonna start doing that in my settlement conferences." So, now, I'm kind of explaining myself a little bit more, because maybe it's helpful, maybe it's not. But it's something I hadn't thought about and now I am, which I think is helpful. I don't think that's the way our system should work, that somebody is gonna sit in prison wondering what the DA was thinking.

Narration: Leslie also finds herself acting differently since her time in the circle.

Leslie: I've found that I'm much more patient. I think that because of our case load and this is our profession and we're seeing all these cases, we can just be like, going fast. And trying to get through the day and trying to get all our tasks done. But it has made me take a step back and think like, "Slow down, you know. You don't know everything that's going on in this person's life." And it's important for me in the role I'm in, which has become clearer through this class, as an important role. Like, the words I say have a pretty big impact probably on this witness or this defendant or this victim.

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Herbert: And you didn't fully appreciate that before, you don't think?

Leslie: No, I don't think so. That's kinda like--that's my personality, maybe. Like I've never thought of myself as an important person. Uh, and I am a lot more careful now and think more about like, I--of course I've always known I have a role of power as a prosecutor. But like literally every word I have could be extremely powerful to the person in that situation. I think more carefully about the words that are coming out and what's going on in that person's life, and give them more space.

Herbert: So, what was it like for you to hear them tell stories about what their experience has been like inside?

Clayton: Tragic and terrifying.

Narration: This is Clayton.

Clayton: And I just hope that when people hear those kinds of stories, they realize how much better we need to do when it comes to prison.

Herbert: So, I mean, did anything you hear surprise you?

Clayton: Yes. I was absolutely shocked at how much people can change, in what I would view as a fairly short amount of time. I doubt very many people have sat in a room with someone who is admittedly a past Neo-Nazi gang enforcer, going out and hurting a lot of people both in the community and then once in prison for murder. Something that I would never want to step into a room with that person. Yet Enoch is completely believable in his story of redemption. I think it's, it's inspiring that we can look at a person for who they are in the moment, while recognizing that, yes, they did some terrible things, but he's going to get out, and how unhelpful would it be to continue to shove his past mistakes in his face and call him a terrible person. I have to give everyone a shot. I don't know them until I meet them, and it allows me to be a lot more open-minded than I'd like to think I already was.

Narration: Adrienne was also impacted by sitting in the circle, and said she learned a lot about life inside. She was particularly discouraged to learn that although some prisons, like the Oregon State Penitentiary, or OSP, have some high-quality programs, others largely do not.

Adrienne: I mean, their emphasis on programs was helpful for me to understand. Because I think, you know, we all kind of use that word generally, like, "Oh, you can get programs when you go to prison." But we never really think about the quality of the programs that they're getting. And so to hear them talk about, you know, the quality of the programs at OSP, and how the tools that they're given at OSP help them set up, you know, this life for themselves. And where it sounds like programs given at other facilities are basically just, "We have to do this. So here it is, and read this book." And it's not really going to help you. So the quality of the programs is incredibly important. And if we're going to send people to

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prison, you know, I don't think that there needs to be this great inequality between the different prisons. Like if you have to go to eastern Oregon, it's gonna suck, your life is going to be miserable, and you're gonna come out worse than you went in. But if you get to go to OSP, you're going to get college courses and stuff like that. That doesn't make any sense to me.

Narration: Another conversation that proved impactful to the prosecutors focused on mandatory minimums like Oregon's Measure 11. Here's Clayton.

Clayton: I didn't have a good grasp on mandatory minimums. So to see it in action, it was a lot more devastating than I realized. I had heard the arguments against them. But until you see the people who are already rehabilitated and yet are stuck because of it -- it really throws into perspective the situation. Where before, I might have imagined, "Yeah, that's too long," but without any context of the people and the individuals who were actually being affected by that.

Narration: Adrienne had a similar reaction.

Adrienne: You know, one strange thing that kind of stuck out to me and I think it was Josiah that was talking about it, but how they described dead time. And that they've, you know, during their incarceration, they've reached this point where they can get all they can get. So they're just sitting on this time, waiting to get out. And it's kind of doing more harm than good, because they're not able to, you know, set up the resources for them to have on the outside and, you know, get in contact with family and set up living and jobs and stuff like that. They're just kind of sitting around twiddling their thumbs. And so for some reason, that really stuck out to me, because, you know, we just set these arbitrary numbers -- 20 years, okay. And then, that's it. And there's, there's no, you know, especially in Oregon, there's no parole, there's no furlough, there's no nothing.

Herbert: So, that surprised you?

Adrienne: That surprised me, because I didn't I, I never really thought about it, you know?

Narration: For her part, Kirsten is ready to try to do what she can to get the law changed.

Kirsten: I could foresee, perhaps, testifying in front of the legislature at some point about our, about the experience, you know, perhaps with, you know, one of the inmates ready to talk about what we learned as a group.

Herbert: And what would you hope to accomplish from doing that?

Kirsten: Well, if there was ever going to be reform to Measure 11, right, to talk about what would make sense or not. You know, I feel that many times, legislation is passed without true awareness of the implications.

Herbert: Right. And what in particular about Measure 11 either has always troubled you, or is sort of more newly worrisome to you?

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Kirsten: I guess, while I've known that many prison officials have complained about the inability of inmates to earn good time, and the result that that has for them trying to manage the prison population, I think that I more holistically understand the detrimental effect that that also has on the prisoner when you're not giving them any incentive, any hope. And so, yeah, I think that that's reinforced the idea, the notion that I have that, you know, it's better to give folks that carrot, not just the stick.

Narration: As much as anything for Leslie, it was just having the conversations that was the point.

Leslie: There aren't a lot of opportunities to think about your background and think about another person's background in a deep way, and talk about it. When do you sit in a circle and talk about like the traumatic things that have happened in your life? You don't get to do that, and you certainly don't do that with people who are kind of outside of your comfort zone, of people you hang out with.

Herbert: Well, and in your case, people with whom you have--you or your counterparts have been defined in an adversarial relationship with.

Leslie: Mm, hmm. Yeah. So I think it's good for one's mental health.

Narration: Shannon feels the same way.

Shannon: I just feel really grateful that I got to sit there with these individuals who had spent so much time incarcerated, um, and were willing to joke with us and, you know, have these really deep, interesting conversations about really big issues. I mean, things I can't even talk to my family about or friends about without, you know, some difficulty. And yet I could sit three feet away from, you know, someone who had been convicted of murder twenty-something years ago, um, and have this really engaging, uh, thoughtful, and respectful conversation, um. You know, even if nothing comes from it, just to have that experience that shows that there's a different way, you know? Here, we did it, we got to participate in it. Yeah, this really humanized, I think, the criminal justice system. Sort of put the heart back into what we're doing, on both sides.

Herbert: So, go back to the first day you were sitting in the circle with the DAs.

Josiah: I felt...well, one, nervous. Because it's a weird, um, it's a weird dynamic to sit with DAs in a non-adversarial situation. Um, I don't think I talked for, like, three-quarters of it (laughs). I was just listening and examining. And I was trying to pay attention to, when the DAs talked, if they were being receptive to what we were saying or if they were close-minded. And, to me, they seemed so open to everything that we had to say, it was almost off-putting. Like, I was, like, "I feel like they're faking it, like, this is *too* much." But then, next session same thing, next session same thing, and I was like, "Wow, these people are so progressive." Like, to listen to our perspective – people they've put in prison. They may not have directly put me in prison, but people in their position put us in prison. And for them to be willing to come here, listen to our perspective, agree with us on a lot of stuff --

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changes the tone. 100% changes the tone. It makes you, “Okay, wait a minute, maybe if I do say this, or I suggest this, they might listen to this.” Which for us as inmates is weird.

Narration: Davorea was also surprised.

Davorea: I think the thing that surprised me was the fact that they were open to see a change. Whether in the DOC or their process of thinking or their outlook of things. Because like they said, they can’t get to know every individual that comes in front of them for a case. It’s impossible. So, I liked when they said that, if they could take time to have a conversation with somebody or, somebody explain to them about that person, you know, it can change the direction of how they wanna go sometimes.

Herbert: You felt like they were more interested in, in your guys’ stories than you thought they would be?

Davorea: Yeah.

Narration: Gerard was surprised, but also a bit disappointed.

Gerard: Previous to these Saturday morning conversations, if I were to hear the word DA, negative thoughts came to mind. And, um, I’ve always seen them as part of the problem, just like they’ve probably seen me as part of the problem previous to coming to this class. I understand now they’re part of the solution, and hopefully they understand that I’m part of the solution. You know, but being in a position to where I am now a colleague of the district attorney. We’re colleagues, we’re trying to figure out a solution. I don’t look at you as a tooth of oppression that wants to just grind me down. I see, for the most part, I see in each one of their eyes a real commitment to change. And we’ve had conversations where they was -- the popular word for this decade is vulnerable. And I hear it a lot, and I was like I’m tired of hearing about vulnerable. But I was, allowed myself to be vulnerable and they allowed themselves to be vulnerable. And during that experience, I’ve seen them in another light.

Herbert: Does that surprise you?

Gerard: Yeah, I was ready for the Great Debate. I was ready. I had ammo. And then we get there, I was, like, “Hold on. Who is this? What is this?” Yeah, I’m glad, but I’m disappointed.

Herbert: You wanted to fight.

Gerard: I wanted to fight! (laughs)

Herbert: It’s supposed to be adversarial.

Gerard: Yea man, you messed me up! What's happening? Woah!

Herbert: Were you surprised that they were less supportive of Measure 11 then they are?

Enoch: Um, yes. Going into it, I thought that the prosecutor’s office would be much more in line with that way of thinking.

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Narration: This is Enoch.

Enoch: And I was super heartened to hear that that had transitioned, and that they were just no longer looking at things like that. Um, I mean, they still gotta follow the law. But I was super happy to hear that they were just like, “Yeah we don’t like this. And it may not be for the same exact reasons that you guys don’t like it, but. . .”

Herbert: So that surprised you.

Enoch: Yeah, it surprised me at first, because I still had the whole us against them adversarial idea. But once I got past that -- their comments were not adversarial at all. They were -- and reading their faces and body language, and inflection, and their general tone -- they were all genuine in their desire to brainstorm and come up with uh, a solution and hear people’s experiences so that they can apply that to how they deal with things on a daily basis.

Narration: Messiah thought that the prosecutors learned something about how to make personal change easier inside prisons.

Herbert: What do you feel like you taught them?

Messiah: That, yes they can send somebody to prison, but if there's not really resources in prison to help that person, then they're really not doing anything good for that person or society. Because they can, you can send someone to prison for “X” amount of time but if they don't get the help they need, which is not on them obviously, but if they don’t get the help they need, then they are more likely just to end up back on their desks as another as another case.

Narration: Gerard agrees with Messiah.

Herbert: Things that you felt like the group came to agree on. What’s in that category?

Gerard: A need for more education. A need for more programs. The status quo is not working, we agreed on that. And we agreed that there needs to be more education and programs. The reason why isn’t important. As long as we come to that agreement, then we can work, we can work with that.

Narration: This all brings us back to Jacob. He was the one convicted for first degree murder when he was 17, and got a 25-year sentence. He never felt understood by his prosecutor, so he very much wanted to sit in the circle.

Jacob: I hope that we let them see that, “Hey, we, we're trying to make amends or we're trying to change ourselves in a way, with whatever limited tools we have.” We are each broken in our unique way, but we’re trying to overcome those trying to, you know, come back stronger and to give back in some way. But I hope that we've reinforced the idea of our humanity and that we're not just you know a number and things like that.

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Herbert: Right. Do you have any sense of how learning those lessons might impact their work?

Jacob: Yeah, I mean, I think - I think already they're thoughtful people. And so, I don't think that they make decisions lightly when it comes to people's lives. But I think that seeing exactly where someone is going and what they're going to endure or what they're, you know, what their life is gonna be like, then it definitely makes you pause even a little more. Just to think, "Okay, is this what this crime deserves? You know, is this what this person is gonna -- or is this gonna benefit the victim and the perpetrator or the state. They're already probably taking a lot into consideration before they do that. I think that, yeah, it could definitely help them knowing more about, about where they're sending people. It gave me a great feeling that if these are the kind of people that we are having in those positions, then the future looks really good for reform, you know, whatever way that looks.