Almost There
An Emerson Collective Podcast
Episode 12: Can we follow the data to a fairer criminal justice system?

Dwayne Betts:

Who gets to tell the story and what data drives the stories that we hear. It is one of those questions that doesn't just haunt you, but makes you ask, what is your role in all of this? How do you turn the fact that there are more than 2.3 million people incarcerated in the United States and more than 70 million people in this country with a criminal record? And it's something that makes you pause. It is only through the stories that hide behind those numbers.

Amy Bach:

It is not the data itself, it's the data with the story, that is the ultimate one-two punch. You got to have both because that's where the soul is.

Dwayne Betts:

I'm Regina Dwayne Betts, and you're listening to Almost There from Emerson Collective. Amy Bach is the founder and executive director of Measures for Justice, a nonprofit organization that collects and standardizes and publicizes criminal justice information or put in a different way. She's the executive director of an organization that tries to grab the numbers that make us understand why the stories we tell have meaning. She also wrote a book about all of this called Ordinary Justice, how America Holds Court.

I was talking to my mom last night and she asked me what was I doing? And I said, I was going to be on this podcast today, and I was talking to Amy Bach, a dear friend of mine about her work, and she asked me what your work was. And I said, well, she works with prosecutor's offices to help them understand how to measure the things that matter so that they could understand if they do their job correctly.

Amy Bach:

But it's not just prosecutors, it's also public defenders and courts and jails. Ideally, we would measure the entire system from arrest to post-conviction so that you could see how the system actually flowed and worked. So what we are trying to do is create a system so that prosecutor and court data and jail data is really all connected so that people who live in the communities can see what's happening and really get a seat at the table so that they can reshape the system in a way that matters to them.

Dwayne Betts:

You get me close to that because I tried to say some of that to my mom, and my mom said, "Explain to me what you mean." And I said, well, you have numbers that people have access to, and then Amy is pulling those numbers together so that they tell a story from all of these different angles. And my mom kept saying, "But Dwayne, you are a poet. What stories animate this conversation? What are you talking about?" So I guess I wonder, how could I explain this to my mom so that she understands and in a three-minute antidote or a 30 second antidote, what is the exact thing that I'm going to be tracking? What story happened? Who got arrested? What am I going to be telling my mom?

Amy Bach:

I want to tell you two stories. Okay. The first one is our origin story. I was a writer and I was in a county called Quitman County, Mississippi, which is about an hour and a half south of Memphis. And I met this court clerk, her name was Miss Wigs, and she had a helmet of white hair. She was a white woman. And I went to her and I said, "I've been in all of these courts around Georgia, and there's like a line of people coming out the door, but with you in this courtroom, I only saw eight people. And where are all the people? Are you guys not arresting people? What's happening here?" And she holds up this list of cases and she says, "You want to know what's happening? Look at this list." And so these were cases where people had been arrested and they had been charged in a lower court and been bound over to the main court, but the prosecutor had never charged these people.

And so I said, "Well, what happens to these people?" And she says, "I don't know. I put them on the list and then I put up another list." So I basically used this list as a roadmap to find out what was going on in this county. And it turned out that there were enormous categories of cases that disappeared. For example, there hadn't been, and this is shocking, a domestic violence case prosecuted in this county in 21 years. And I figured this out because I met this woman who'd been beaten up horribly by her boyfriend under a bridge with a tire iron and I couldn't figure out why the case wasn't prosecuted. And then the court clerk and I, Ms Wigs, basically kept on looking and looking and figuring out, oh my gosh, he hasn't prosecuted domestic violence. He hasn't prosecuted a lot of sex crimes having to do with little kids.

And so I went back to the prosecutor and I said, do you realize that you haven't prosecuted domestic violence gates in 21 years? And he said, "Has it been that long?" And that's the whole point, is that people who work in these counties can't begin to see what they're doing. They have, and the people who work or live in the communities, they have no way lever in to go in and say, "Look, you didn't prosecute my domestic violence case."

You could tell your mom, it's for that woman, so she can go in and say, it's not just my case there. It's every case in this community. And either you start prosecuting domestic violence cases on across the railroad tracks, which is on the black side of town, or we're going to vote you out of office first. The first hill that we had to climb, and this, now that you have your own nonprofit, you have to climb all these different hills.

The first hill for us was to establish a measurement system. So how do you even measure justice? In the beginning, people didn't know. So we created a measurement system, and then the next thing that we did is we created a tool, which is what we're doing now, and it's called commons. And the idea is to give law enforcement a live stream of data that is public and they can use it to fix things internally, but they have to get the tool, they've got to bring people in the community to the table to set data-driven goals. And that's what we've been doing now.

Dwayne Betts:

Can you give me an example of a data-driven goal? Because in a context of the domestic violence, I feel like the goal wouldn't necessarily be to increase prosecutions, but the goal would be to have something happen on those cases so that the parties feel like the public is more safe. And that might not actually be an arrest or a conviction, but it would be something. So I imagine that you want to develop a tool that allows you to track what happens, even if it falls short of a conviction or short of a jail or prison sentence, right?

Amy Bach:

Yeah, that's exactly right. And our first commons, and the idea is that, commons is an open green space where people can meet. We did it in a place called Yolo County, California. And so the first data-driven

goal that they picked was the community felt like this prosecutor was diverting a lot of small crime, like misdemeanor and non-violent misdemeanors, but he wasn't doing felonies. So they said, "Look, for a year, we want you to divert." And if you don't know what diversion is, it means basically give you a break so that you could do some sort of service.

The goal was diverting 10% of all felonies, but then when the data came out, he found that there were huge racial disparities in the arrests that the police were making, particularly with one police precinct. And so what the prosecutor's office did was he changed this important policy after the data revealed these racial disparities in cases sent to his office by the police. And now, because of what the data revealed, more defendants, many more defendants, even if they have a criminal history, aren't going to be disqualified for services. They can get diverted for things like mental health and housing. And the only reason that this happened was because the law enforcement knew that they were being held accountable.

Dwayne Betts:

But you started as a journalist, right?

Amy Bach:

That's right.

Dwayne Betts:

And so are you afraid that... I hate to call you this, the E word, right?

Amy Bach:

The E word?

Dwayne Betts:

Economists. Are you afraid that you are becoming devoted to numbers in a way a classical economists might so much so that people lose the stories? Because what I find really interesting is this started with the story about the domestic violence cases and about this particular woman. And I wonder, how do you make sure that the stories don't get lost? Whose job is it to make sure that the stories don't get lost as the data suggests the existence of a troubling story, but the data never reveals necessarily what that troubling story is?

Amy Bach:

Okay, first of all, you have asked a question that obsesses me. The people in my book are with me all the time. They're little characters in my head that I'm constantly trying to make sure that I have the data to touch every story, whether it's the guy who was arrested for not having a bell on his bike and for riding it on the sidewalk. The thing is, those people are in your heart all the time. And so they're guiding the work. They're like a ghost that is constantly with you trying. You're thinking of, "Okay, well how am I going to solve that person's problem? How am I going to solve that person's problem?" But the other thing is, as we're doing the work, it's the stories that really make the change. It's not the data itself. It's the data with the story. That is the ultimate one two punch.

You got to have both because that's where the soul is. It's data with a soul. And so here's another example. Last week I was meeting with police in a place that's extremely stratified, probably one of biggest conflict zones in America. And the police were looking at what we're going to measure. And

they're like, we need this so much because otherwise we're having to meeting with people and we're saying we're doing things and we can't prove it. And I was like, I wish I could have had that on tape. And that becomes a story in my mind that sort of pushes me on to make the next hill. So you're constantly finding the stories to go with the data, and that is ultimately what moves people, not the data alone. Most people can't handle very much data, one little piece.

Dwayne Betts:

What is data? So because for prosecutors, I know the data. So for police, I know the data is the arrest. It could be the location, it could be the ethnicity or the race of the person that's arrested. It could literally be the time of day. Does this mean that when you guys go to collect this data, do you got a army of students that go into a public defender's office and comb through every file? Because what I imagine is that the data exists, but the data exists on an individual file. And so how do you get the data off? When I worked in the public defender's office, I only worked there for a year, and my supervisor and attorney, he might have 400 cases, and those cases were at various stages of disposition. But how do you collect the data on that 400 case caseload? Do you have to look at every file?

Amy Bach:

The best way to do it is through their case management system. So in Yolo, for example, there's an API, which is basically an umbilical cord, and we get a live stream of data, and then it goes into our pipeline, collates in and does all of these magical things, and then it comes out cleaned and coated. But in order to do that takes an enormous amount of effort right now. We spend an enormous amount of time being data therapists.

Dwayne Betts:

I've seen some public defender are still using floppy disks.

Amy Bach:

Oh, that's unbelievable. I see.

Dwayne Betts:

No, I made that up.

Amy Bach:

They do. I'm sure there are public defenders still using Ms. Wigs used this really... She's a court clerk, but she used this really crappy IBM that was almost taped together, and she's kept a lot of things on paper. And that's probably throughout all of Mississippi. They'll see a lot of that.

Dwayne Betts:

Although, I mean, to be frank though, and again, I didn't work there long and I didn't have a lot of cases, but I was never in putting things in a computers. I was putting everything on file. So all of my appearances were notated on the file.

Amy Bach:

Really?

Dwayne Betts:

Yeah. I wasn't coming from court to notate into the system that I appeared even in notes on what happened. It was happening on the file. If somebody else took the case, I passed the file to the next person. Now, I'm being honest, there was no digital record. And that's one of the reasons why I actually think the work that you're doing is so important because I almost feel like, I shouldn't say this, but I almost feel like the criminal justice system in America is oral history.

Everybody is telling these stories, and you hope that you have REOs that's good enough to pass the story down efficiently, so forth. Single case, if I'm working this case, I am the only person that knows the story. I'm the person that knows what happened when I go talk to the prosecutor, when we are in conference with the judge, when we're in court, and I notate some of it on the record, but even when I notate it on the record, it's all shorthand. So I'm really the only person that I know. So it feels like we live in a system. We live in a sort of a pre-written stage.

Amy Bach:

But why is that? Let's just think about that for a second. I mean, think about we're 30 or 40 years behind in the justice system, why do you think it is? And I'm going to tell you why. Okay. That is, it's because people really are ambivalent about transparency. And if you really wanted everyone to be able to see what was going on, you would make it so that people could see how the whole office was working and how it was related to the prosecutors.

Dwayne Betts:

Now, I don't know. I know that you like poetry. I know that you like literature. One of the things I imagine though is that the system that we have now, one of the reasons why I don't think it's that people loathe transparency. I think it's that people have a heightened sense of power of what it is to be the person gets to tell the story. And so the prosecutor's trying to tell a story. The public defender's trying to tell a story, and a judge is telling a completely different story. And if that story only exists when they speak, the story can never be criticized or judged.

And so that's why I feel like when your obsession with data is an obsession with narrative, because the data points you to the narratives that either aren't being told or have to be more deeply explored. When you say 21 years, no domestic violence cases. What I think about is when my neighbor had a black eye, what I think about is when a friend of mine was getting beat up by a stepdad, I think about these things that happen in the world that aren't being accounted for in the system that is supposed to account for it.

Amy Bach:

I was once in this county and there was this judge who was the chief judge of the county. And I went in and I was really excited to show him the county's data, and I wanted to know what his stories were behind the data. Specifically, he had a real interest in domestic violence. And so his eyes popped, and when he saw, he wanted to know, you could see all the counties across the state and how they compared. And he said, "Here's the thing, you can't compare two counties." And I said, "Why not? Why can't you compare two counties?" And he said, "Because one's an apple and one's an orange." And I said, "Well, you can compare an apple and orange one is red and smooth, and the other's orange and bumpy. Why can't you compare those things?" And then he looked at me and he had smoke coming out of his ears, and he said, but I don't want a tomato in my fruit salad.

And I remember looking at him and thinking, what does that mean? And after that, he got up and he left and he wouldn't shake my hand. And I realized later what he's saying is, get out of my state. I don't want

a tomato in my fruit salad. I don't want something that's not supposed to be there. The system is the narrative that we say it is, and if you're coming and tell a different narrative, then that's going to challenge how I do work every day, whether I can go home on time, whether more committees, et cetera, et cetera.

Dwayne Betts:

I wonder how much do you think it's important for you to write down some of these stories? Because these stories actually do a much better job of explaining why you have to do this work. And so I wonder, are you doing some parallel work that goes back to your experiences as a journalist that help explain our fear of data? They help explain that our fear of data is a fear of transparency, but maybe even beyond that, our fear of data is a fear of revealing the narrative, the story that helps us understand what system it is that we live up under.

Amy Bach:

Yeah, I actually have been writing something and it's in a huge file, and sometimes they're just small little things. Like I was in a meeting the other day and this woman exploded at a prosecutor and said, "Why now? Why are you want to be transparent now?" And the prosecutor just yelled at her right back and said, "I see you protesting at my house every day." And then afterwards the prosecutor came to me and wrote me this email that's like my favorite email I've ever gotten in my life. And it's called I'm Sorry. And in it she said, "I just want to tell you that I'm already thinking about what I'm going to do. I know I shouldn't have exploded like that, but wait till they see I'm going to decrease the number of misdemeanors by half." And I thought, that's it. That's transparency. It's making, it's not just transparency, it's transparency with accountability. And those stories, I think, you're right, do a better job of explaining than a bar chart.

Dwayne Betts:

Although some of us love bar charts, but every one of these stories and one of these pieces of data seems to be a mark of injustice. I haven't heard. I mean there is some joy in terms of that email was a slice of joy. The Yellow county prosecutor saying that he was going to reduce that-

Amy Bach:

Oh my God.

Dwayne Betts:

... he was going to-

Amy Bach:

It's like a party.

Dwayne Betts:

Yeah. So I do think there is some joy in there. So I don't want to paint a really grim picture, but it still feels like it's a whole lot of despair that could be... You could walk away from these numbers and feel despair. And so I wonder, how do you take care of yourself so that is not what you leave your desk with every day feeling it's despair.

Amy Bach:

That's such a nice question. I think the most important things are the human connection. It's the people that you work with. You got to love the people you work with and they'll help you through. And that people I've worked with, I have a woman, Samantha Silver, who's like my, she's the yin to my yang. And these people, the friendships, the closeness. I also do, I exercise in the morning and I often do it in the woods. I drink a lot of coffee and I try and reconnect with my friends. I think those are the people that nourish you and then bring you back. And then my husband and my child, they ground everything. I think all those things, you got to have those intimate connections and then they boost you up and fluff you up again and then come back. What do you do, Dwayne?

Dwayne Betts:

Yeah, I don't know.

Yeah, I'm not sure. I mean, I practice, I think almost there is almost a idea that the point isn't reaching the destination. The point is traveling to the destination. And I think traveling to the destination necessitates practice. And so I practice a lot. I practice Spanish, I practice haiku, I practice poetry. I practice figuring out ways of being a better coach. And I do some of these things. I practice identifying flowers in the garden that I inherited from the man who owned the house that we live in. And the point of all of this though, is I think one of the things that animates the system is the lack of opportunity for people to practice things that they find meaningful. So when you locked up in a cell, you can't smell the grass. I find Four-leaf clovers. I got a Four-leaf clover in my wallet right now.

I found a Four-leaf clover yesterday when I was walking my dog. People who know me well know that I find Four-leaf clovers or they find me. But the thing is, I remember that it's people that's inside that can't do those things. And so I think I do those things to sustain myself when the work is challenging. And sometimes I'm honest with people. I wrote a letter trying to find out if a friend of mine that I've represented made parole. I wrote a letter. I was asleep one night, two nights ago actually, and I woke up three o'clock in the morning and I woke up, I was in prison, and I was having a dream that I didn't like. And so I woke up to leave prison and I owed an email out to them to find out if he had made parole. And I wrote the email.

And then typically the professional response is to write the email and keep it super professional. And I said, I'm going to send you this email at nine o'clock on Monday morning. But in fact, it's 4:30 on Saturday morning, and I've just woken up from my sleep because I was having one of those dreams where I was in prison and the only way to leave was to open my eyes. And I opened my eyes, and I'm reminded when I looked at my phone to see what time it is that I owed you an email because I got a message from somebody who couldn't wake from prison. And anyway, I just sent the email out as if I knew this person. And I do know her. I mean, I've worked with her for a couple of years, but we have a professional relationship. Somebody argued that the email was completely inappropriate, and she wrote me a lovely email back. I mean, she let me know that the boy hadn't made a decision. And it's not like the email was, I wasn't trying to sway her. The boy wasn't going to read the email. But we live in a world sometimes that's devoid of actual human contact.

And so I think I practice treating people the way I want to be treated, even if it's just being transparent in a way that transparency is sometimes vulnerability. But you're trying to make this podcast about me and the one thing that they made me-

Amy Bach:

No, that was so good. Oh my God, that was. No, and I completely... The more real you can be. And it's sometimes people, the more real you are, it just relaxes people. It makes them feel like, well, I can be real now.

Dwayne Betts:

I'll just say, one of the things I love to talk to people about when they come on the show is about the books that matter to them. And so as we come to a close, I think I have to ask you if you were going to tell somebody, these are the two books that I read that transformed how I thought about myself in the world. What would those two books be?

Amy Bach:

I have a poem that transformed how I think of the world and that I've used as a mantra ever since high school. I love it because to me it's about love and it's about perseverance. Mother to Son by Langston Hughes, I think is the most beautiful poem in the world. And every time I say it, I don't think about it. I cry a little bit. So I think that's the perseverance and thick love that you have to approach the world with.

Dwayne Betts:

Oh, wait a minute. Let me pause right here. I want to read this poem so the audience can hear it. Mother to Son by Langton Hughes. Well, son, I'll tell you, life for me ain't been no crystal stair. It's had tacks in it and splinters and boards torn up and places with no carpet on the floor, bare. But all the time I've been a climbing on and reaching landings and turning corners and sometimes going in the dark where there ain't been no light. So boy, don't you turn back. Don't you sat down on the steps cause you finds it's kinder hard. Don't you fall now, for I'se still going, honey. I still climbing. And life for me ain't been no crystal stair.

Amy Bach:

That poem. I love that poem.

Dwayne Betts:

It's a kid that I know that got executed. I don't really know him, but I know him through his letters. And he used to quote from that poem in his letters to a friend of mine as he was on death row.

Amy Bach:

I didn't know that Obama used it in his first Democratic convention address where he became the star.

Dwayne Betts:

Yeah. Yeah.

Amy Bach:

I didn't know that.

Dwayne Betts:

Me either. But the last thing I want to ask you is, I know that you think it's possible to reform a system. I so much of your work and so much of your life has been dedicated both to the need. But the idea that this is tangible, it is possible. We don't want to talk about failure.

Amy Bach:

Why? It happens. I mean, we fail every day. I mean, although people always say that, they're like, "Oh, I'm a graduation speaker. You have to learn how to fail." And then you're like, well, you didn't fail. You're the graduation speaker.

Dwayne Betts:

But people don't talk... I had a friend that I've represented five times trying to get out on parole, and I failed every year. And I thought I went to the best law school in the world, and I thought I had the most compelling arguments and I was flying down and I failed every time. And then I finally helped him get out and then he died six months later. Which means that had I gotten him out a year earlier, he would've got competent healthcare and might still be alive right now. And you just can't walk that back. And I do think that people who run organizations, people who are successful, rarely I feel or not enough talk about the failures that haunt them. And so I wonder, what does success look like in the face of a failure that you don't feel comfortable talking about, the failure that you might've had in the past, that doesn't become one of the stories you tell the public about who you are in the world.

Amy Bach:

Look, I don't think, the story that we don't talk about very much, it Measures for Justice is the story of when we released our first data to a state and they sent a letter to everybody in the entire country saying that you couldn't use this data, the data wasn't ready. And that we didn't know what we were doing and we didn't have the chops to do it. And then we ended up having to go to that state and go through every single measure. We gave them a book three inches high, and we just kept on going and going. And the truth is, back then, no one had measured justice before. No one had compared counties. We were the ones who created the methodology and we were going to make huge mistakes, but we kept on pushing and pushing. And if you keep on pushing, something will come out the other side, and that's the thing is that, I hate to say it and sound right, but it's Mother to Son like Hughes, don't turn back.

Keep on going. Don't set down on the steps because you find it hard. You fall, right, because you're still going. I'm still going, honey, I'm still climbing. It's no crystal stair. It's just keep on. And there are angels in America, right? There are people up there. I do believe it. I sound a little bit, you're bringing this out in me. There are these people and they're in the ether. They're around us. They're people from other generations. They're people in this world who will have your back and will be pushing you forward if you do have that resilience.

Dwayne Betts:

Almost There is produced by Jesse Baker and Eric Newsome at Magnificent Noise for Emerson Collective. Our production staff includes Elena Kagan, Breonna Garrett, Paul Schneider, and Kristen Mueller, along with Patrick Darcy, Alex Simon, and Amy Lowe from Emerson Collective. Special thanks to Nia Elliott. I'm Reginald Dwayne Betts. Thank you for listening.