The Criminal Justice Conversations Podcast with David Onek

Episode #23: Sujatha Baliga, Program Director, Community Justice Works (April 28, 2011)

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DAVID ONEK: Welcome to the Criminal Justice Conversations podcast, a coproduction of the Berkeley Center for Criminal Justice and the Berkeley School of Journalism. I'm your host David Onek. The podcast, recorded in the Berkeley School of Journalism studios, features in depth interviews with a wide range of criminal justice leaders: law enforcement officials, policy makers, advocates, service providers, academics, and others. The podcast gets behind the sound bites that far too often dominate the public dialogue about criminal justice to have detailed nuanced conversations about criminal justice policy.

Today's guest is Sujatha Baliga, a nationally recognized restorative justice expert. Baliga is the Program Director of Community Justice Works in Berkeley. Previously she served as Soros justice fellow at Restorative Justice for Oakland Youth. Prior to that Baliga worked as a public defender in both New York and New Mexico. She was a Daynard distinguished visiting

fellow at Northeastern Law School in 2010 and is a graduate of Harvard and Radcliff College and the University of Pennsylvania Law School. She joins us in studio this morning. Sujatha Baliga, welcome to the program.

SUJATHA BALIGA: Thanks David so happy to be here.

ONEK: Now Restorative Justice is a term that gets thrown a lot around a lot these days and can mean different things to different people. What do you mean when you talk about restorative justice?

BALIGA: So restorative justice is a theory of justice and it is a real paradigm shift in the way that we think about, the way we think about wrong doing, whether it is criminal wrong doing or wrong doing in our schools. And what is does is it requires a shift away from punishment towards repair. And a good way to think about it is a thing called the three questions which is instead of asking what we usually ask when a child is has done something inappropriate at school, or someone has harmed another person sort of in the criminal context what we generally ask is what law was broken, or what rule was broken, who broke it and how do we punish them? And in restorative justice we ask a

very different set of questions. We ask what harm was done and to whom? What needs have arisen based on that harm? And whose obligation is it to meet that need or those multiple needs. And so really it is about processes that help bring stakeholders, all the multiple stakeholders when there is a harm together to engage in a reparative process ideally through consensus based decision making.

ONEK: Can you talk about who those stakeholders are that are brought together in a restorative justice process?

BALIGA: So it is a typically so the immediate person who has done the harm and the person who has received the harm or the multiple people that have received the harm and supporters on both sides and the community that is also affected by harm and occasionally systems people as well. So if it is in the criminal justice context it could involve the district attorney or police officer. In the schools context it might involve the principal, the vice principal depending and when it is children of course it is parents when parents are available are involved in the process. But it is best to really think broadly about who all needs to be there. Who has been affected by the situation? Is a very, a very you know you can obviously you

could and many, many people there is always a ripple, ripple, ripple affect but --

ONEK: Sure.

BALIGA: There have been restorative processes that have involved 60 people coming together to think about a way in which something has affected their community or them individually negatively and have been effective with that large of a group.

ONEK: Where did the concept of restorative justice originate?

BALIGA: Well it is interesting I mean um, there is sort of modern day restorative justice and there is sort of the indigenous roots of restorative justice. And so speaking about it in more of the modern day context there was a man named Mark Yancey. He was a probation officer and in 1974 tired of the revolving door of the juvenile justice system he saw a kid I believe he had seen before who had damaged 22, he and his buddy had gone out and damaged 22 properties in a small town in Canada and the community was rocked by this I mean serious damage. Boats destroyed, houses really seriously vandalized and he got the idea that instead of going through the regular system that

these children should be made to go door to door and apologize directly to each one of these families and ask these families what do I need to do to make this right by you? OKAY, maybe a little ill conceived and potentially dangerous and there were some of those encounters I heard were a little heated. But that sort of people sort of see that as the beginning of the way we think about restorative justice today and interestingly enough one of those, one of the young men who had been involved in that many years later turned his absolutely heartbreaking life around and was sitting in community college in criminal justice class and heard his own story and found about Mark Yancey's organization and ultimately ended up reaching out to his professor and saying okay I am a little embarrassed but that was me we are talking about so [LAUGHTER] how do I get involved in this and so he now works for that organization, Mark Yancey's organization.

ONEK: So that is in North America can you talk a little bit about its roots in Australia and New Zealand?

BALIGA: Absolutely. So in New Zealand family group conferencing which is the model of restorative justice that I primarily work with is a model that came out of indigenous Maori

ways of dealing with youthful wrong doing and all wrong doing in their communities and so basically what the beginning of it was was that there was a disproportionate incarceration of Maori children. And in response to that –

ONEK: Which are the native people in New Zealand.

BALIGA: Yes. Exactly and so the Maori people said you know we are not having this. We are not down with the disproportionate incarceration of our youth and we want to use our own indigenous processes. So I believe that it started in the early '80s this resistance and request that we handle it ourselves, ah the way we do it. And it was so successful that is, that pilots started to spread outside the Maori community and in 1989 nationwide there was an act passed, Children, Youth and Their Families Act, which made restorative justice, made family group conferencing the way of dealing with serious crime other than murder and manslaughter all crimes. And to such success that it ended juvenile incarceration nationwide. But there are indigenous roots of restorative practices or things you would call restorative justice in multiple you know places in the world that are African roots of similar situations. Basically when you look far enough back anthropologically people sitting

in circles, sitting face to face, and coming up with their own sort of collectively identified ways of dealing with wrong doing exists in all of our communities. The Tibetan system of justice prior to Chinese occupation really has strong restorative elements in it as well. So when you look, look far enough back in all of our cultures you'll see things that could be called roots of restorative justice.

ONEK: Now you talked about the success of the New Zealand program. What evidence is there that this is an approach that actually works?

BALIGA: Well not just in they shut down their juvenile detention facilities nationwide basically. They do not incarcerate their youth anymore. Numerous studies, net analyses as well as countless individual studies show victim, increased victim satisfaction, and reduction in recidivism. Higher level of completion of plans versus regular probation plans. There are so many different ways in which you can show that restorative justice is an improvement over what we are doing now. Even locally Sonoma County has a really successful program in diversion and they show about a 10 percent recidivism rate which compared to say Alameda County we think gets about a 75

percent recidivism rate with young people and so –

ONEK: Let's talk about Alameda County because I know you have been working in the juvenile justice system there on a pilot restorative justice program. Can you start by telling us what is a typical case that you are working on in the Alameda juvenile justice system?

BALIGA: Absolutely. So I will tell you about the first case we did which was really, it was nerve racking because it was our sort of our first case and it was a serious assault. A young lady had been expelled from her school and her victim had been beaten very badly, taken to a hospital actually, and so with meeting with and she really had never been in this level of trouble before. And we do several prep meetings on both sides. And sitting down with you know first we start with the person who has done the harm and we say do you take responsibility for this and usually we are getting cases where the person has already either made a full statement to the police and has never really denied responsibility for it, which is a critical piece of restorative processes. You can't really come into the circle and take responsibility for something you saying you didn't do right?

ONEK: Right. You can’t repair a harm if you think you didn’t cause the harm.

BALIGA: Exactly. So what was really interesting about it was that the families were really afraid of each other. And both families believe that the other family had gang involvement. And when we got both sides to actually agree to do this they insisted on meeting with a screen in the middle of the circle. [LAUGHTER] And as the conversation started to unfold there ended up being no screen and in the end there was such heartfelt apology and deep recognition on all parts including and especially the parents on both sides for what needed to happen for this not to have escalated to the place to which it did and still really firm understanding that the child who took it to the next level was the one that really need to be held firmly accountable. One young lady study up and had a note that she had written an apology note and she walked across the room and she handed it to the other one and they paused there in the middle of the room and there was this moment there where I thought before we have even started talking they are going to hug and they both started crying and it was, it was really moving and then some of the parents started crying and then the

way in which the conversation unfolded was so different in every way from my experiences in court which is that the fact that everything is fully confidential and that nothing can be used against either of these young people in a court of law means that actually the victim got to take some responsibility for some of the things that nobody knew that she had been doing that had been involved in what led to this. And I don't want to give too many identifying [OVERLAPPING VOICES] because it is a juvenile case. But it was a way in which every, the parents really got to hear what is going on in these kid's lives and a deeper level of understanding around sort of jealousies and involvement in things that kids should not be involved in in front of parents and in front of police officers. There were two police officers in the room who really both walked away from it saying that was one of the best things that I have ever seen. And recently Matt Golde who is the, uh he is the District Attorney who oversees the juvenile division here is the managing district attorney for the juvenile division for Alameda County was present in a serious drunk driving case that we had done and he sent me an email the next day that said you know this, that was incredibly moving and was a far better outcome than anything we could have gotten from our traditional juvenile justice system. So the way in which apology comes forth from young

people when they are given an opportunity to really take responsibility for the things they have done and the ways in which hearing the stories of their victims really opens their hearts to the human consequences of their behavior is really, I mean there is never a dry eye, tissues boxes are a regular part of what I need to bring to these things because it is quite beautiful so --

ONEK: Now you talked about police officers being there. You talked about the DA being involved. How did you get the district attorney, police, probation on board with a project like this?

BALIGA: So in 2007 an organization that I was just getting to know Restorative Justice for Oakland Youth had reached out to Judge Gail Bereola who was then the presiding judge for the juvenile division for the county and told her about restorative justice and she caught fire and created this restorative justice task force. And just a couple months later I ended up getting a Soros Fellowship that I had applied for to work with RJOY, Restorative Justice for Oakland Youth, it is also known as RJOY, and I worked with that task force which because a judge invites a lot of people to come everyone comes, Chief of Probation had

come a few times, you know the District Attorney, the managing District Attorney for the Juvenile Division, Public Defenders literally every single stakeholder, systems stakeholder, community based organizations, youth serving organizations, victim serving organizations, came to this task force.

ONEK: So the judge helped give it legitimacy is that [OVERLAPPING VOICES]. If you had to be calling on your own and say hey I just got a Soros Justice Fellowship will you guys [OVERLAPPING VOICES] –

BALIGA: Yeah who am I? [LAUGHTER]

ONEK: Much more difficult yeah.

BALIGA: Absolutely couldn’t have done it without her. And her genuine, just yesterday I was meeting with the new and because there is so much turnover here, the new Chief of Probation and we met in --

ONEK: A wonderful guy by the way. David Muhammad I had lunch with him a few days ago and I am definitely going to have him on the show before too long.

BALIGA: Wonderful. Yeah so I just got to spend a couple of hours with him again with Judge Bereola it is not that he might have eventually met with me but Judge Bereola also invited me to meet with Chief Batts with her so I get these hour long meetings with people who have a lot of power to have this happen because there was systems buy in. And then on the community side too, to have all these people in one room together and we created a year so after a year of conversations and educating ourselves about restorative justice a three year strategic plan to roll out restorative processes from pre-adjudication from post release for young people and so in some ways there was that systems legitimacy and the collectively legitimacy seeing the victims, you know the victims advocate from the DA's office comes to these meetings you know, seeing all of these people come together helps us get those systems, helps us get the individuals within the systems to buy in. But the most critical piece is I think was also inviting them into the circles.
So when they can see that young people can take meaningful responsibility for their behavior and when properly supported can complete plans to truly repair harm I mean that is really life changing for District Attorneys, for police officers, they, they are seeing young people in very different ways than they

get to see them on a regular basis. So that really and as a former public defender there was a great fear there in inviting sort of my former "enemy" into the circle. But --

ONEK: But they have got to be a part of it for it to work.

BALIGA: Absolutely. Yeah.

ONEK: Yeah.

BALIGA: Absolutely I mean they give me the referrals now and the more they see how well it goes the more serious cases they feel comfortable giving. You know.

ONEK: Yeah I was surprised by the examples you gave at the seriousness of those cases especially for first cases a serious assault case, a drunk driving case, these are very serious offenses where accountability is essential.

BALIGA: Right.

ONEK: So can you talk a little about that because some people about restorative justice oh that means oh you just sit around

in a circle and then you know ah are they accountable for what they have done. So I am sure you hear that a lot and you have to explain what kind of accountability is involved so can you talk about that.

BALIGA: Absolutely. A far deeper level of accountability than our system puts into place particularly because plea agreements resolve the vast majority of our cases which means that nobody ever really takes responsibility for what they actually did and it is some sort of thing in the middle that we are kind of saying we sort of did right? And with restorative justice you are being held directly responsible to the person you actually harmed and you know it looked, it looks at, restorative justice looks at, um the problem is a violation of personal relationships you know crime is a violation of those relationships and the central obligation that flows from that is to meet the needs of the person who is harmed so that in my mind is true accountability. And so kids decline. Victims rarely decline to participate they occasionally do but they never, victims never say I don’t want the kid to get this process. Victims will say I don’t want to be there but I will send in a letter. You read this letter to the kid. Or you can send in a surrogate and it is easy to find somebody else who

has been burglarized who can tell this kid you know what the consequences of burglary are. But victims, kids will say oh I am not interested in that. A couple of kids will be like what do you mean I have to talk to the person whose house I robbed? You know, no way. [LAUGHTER] And so they --

ONEK: That is much harder to do than just about anything else you could ask them to do.

BALIGA: Oh, then some short period of time that you might serve for burglary in juvenile hall and a probation you know having to go see a probation officer um, having to look yourself in the eye and I am sure Sunny Schwartz must have talked about this at great length. I think it is so much tougher on crime. It is so tough and we all know this in our personal lives to look at things that are personally our own faults and even our minor flaws gosh it just makes us so uncomfortable. [LAUGHTER] Right and so when you think about having stolen this you know this old ladies piece of mind when she saw you, she is afraid to go back in her house to hear directly from her every time I put the key in the lock I am scared because of what you did you know and these kids break down and weep you know it is powerful really tough quote unquote tough kids understanding the human

consequences of what they did really, really touches them.

ONEK: Now you mentioned Sunny Schwartz who leads Great Restorative Justice Program here in San Francisco and we had her on the show previously if we have time we will circle back because I know you are doing some work with that program but before we get there I want to ask what led you to Restorative Justice and you have talked about, as a Public Defender, something happened to you that really was a key moment in your professional development can you tell me about that?

BALIGA: Absolutely. So I was an Appellate Defender in New York City and I felt like we had an absolute win on appeal with a young man I believe he was 19, 18 at the time, no 19, was an adult crime and he killed his cousin's boyfriend who was the father of her child. And the, it was, it was a very, very close call on self defense. And all the witnesses agree that the other guy started it and that my guy was really getting pummeled and um where the knife came from became a very, very important piece of evidence. And my guy, um my guy wanted to testify that he believed that the knife belonged to the other person and that evidence had been excluded by the court. Which is just I mean complete reversible error we were going to get the guy a

new trial. Meanwhile there was no question that my guy killed this other guy regardless if it was self defense somebody was dead. Somebody he cared about. Somebody his favorite cousin's the father of her child was dead at his own hands. And the guilt he was carrying was unbearable. At the sentencing and reading the sentencing transcripts the family just wanted some true acceptance just at least say you are sorry you know and of course the defense attorney at that point had said don't say anything. You are not saying anything, you know because I have got a perfect issue on appeal and you are going to sit there and be quiet. And you know the family is asking for blood. And so when I sat down and met with him and he is a child, he is a big child [LAUGHTER] and he just broke down sobbing about wanting to apologize. And I, he had this beautiful letter that he wanted to send explaining how wrecked he was and I, and how much he would take that night back, and taking responsibility, I should have not been drinking that night, maybe if I had done this then maybe I would maybe you know and I said you need to tear that letter up. Or you do read it to your priest. But don't ever, ever, ever send that letter. And I watched a coldness come over him that I had closed a door on him and the capacity for him to be able to take responsibility because if he had sent that letter that would be evidence against him in his next trial.

And I drove back, it was in Upstate New York and I had a long drive back and I was just tortured the whole way back and what did I just do I mean did what I had to do as a defense attorney and any defense attorney would agree that I did absolutely the right thing but really what did I do and what have I taught him and how is he going to do in the world without this capacity? To give the apology that his own family so desperately wants and I was just not sitting well with my soul and I knew we needed to do things a different way.

ONEK: Now you and I have also spoken and you've spoken publicly about your own history as a victim and how that also led you down the path to restorative justice can you tell us as much as you feel comfortable in this forum about your own personal history and how it has influenced the work that you do?

BALIGA: Absolutely. So when I graduated college I spent a few years working with battered women's shelters and with children who were abused and also with young girls from Nepal who were abducted and taken into Bombay's red light district and were basically made sexual slaves there and what I was doing during those years was really trying to work out my own history of being sexually abused by my father and all of that work was

fueled by this real rage at what had happened to me. And what it was, it was all sending me towards law school I was going to be a prosecutor who was going to lock up all the people who did this to women, to children, I just everything was fueled by this fury and this rage but it was eating me up, it was just destroying me personally I had migraines and I had all kinds of health complications and my relationships were really complicated with my friends and my boyfriend and it was just bad, all around bad. And I knew I needed to take a break when I found out that some of the cops, some of the police officers that I was working with, trying to build a relationship with were corrupt in some way. And you know I just didn't know where I was anymore and I went hiking. I took a backpack and I went north to the mountains in India in the Himalayas and I had an amazing experience there interacting with the Tibetan community in exile. And hearing their stories of victimhood changed me permanently. It was a complete and total wake up that people could be through lives that made my childhood look like a cakewalk and not to diminish what happened to me but really just abuse and trauma after abuse and trauma for decades on end and but they were happier than I was. Much, much happier. And I couldn't figure out what was the happiness about and they would all say the word forgiveness. To me that was madness you know.

And so in dialogues with them they would say well what are you angry about? And I would say I am really angry with my father and they would say well why don't you write a letter to the Dali Lama and ask him what to do about this. And so I thought well he is busy. [LAUGHTER] I don't want to bother him with this, and they were like no, no write the letter. And so I did and I got a response back from his office which ultimately led to a private audience with his Holiness just a few days later where I got to talk to him about how the primary question was how do I work on behalf of the abused and the oppressed without anger as the motivating factor? And so he gave me some very specific advice about how to do that and it sort of led to a personal transformation within me where ultimately I did forgive my father and all of my health problems and relationship problems sort of miraculously vanished and so and you know I say this with the caveat that forgiveness and restorative justice are really different things. I can't think of a better scenario for growing forgiveness or cultivating forgiveness then restorative processes but I don't see restorative processes as being designed to produce forgiveness because victims will do what they need to do. And we need to honor wherever victims are in their journey and it may or may not involve forgiveness. It just happened to be that way for me and therefore after

forgiving my father. Becoming a prosecutor really wasn't an option anymore and a piece of what his Holiness told me was to consider in some way was aligning myself in my heart with my enemies. So even though I was on the brink of start law school to be a prosecutor I ended up becoming a criminal defense attorney instead. Which also as from the previous story was a very flawed approach to my mind so I knew there had to be something in the middle. And restorative justice was that thing.

ONEK: Well that is an incredibly powerful story and I know that now you are working on we talked earlier about the resolve to stop the violence project and part of that project as Sunny Schwartz talked about on this show is having victims go in and talk to violent men ah it is not actually their own victims but other victims who come in and explain the harm that violence has caused in their lives and I know you have gone in and performed that role in the jails in San Francisco. Can you talk about what it is like to go in and talk about your experience to violent men some of whom may have done the same thing that your father did.

BALIGA: Yeah absolutely. So I do both with the Resolve to Stop the Violence Program and also the Victim Offender Education

Group in San Quentin with the lifers there. And that is a part of inside prison project. And I can't say enough good stuff about going in and telling the guys about what happened to me. Because what is heartbreaking is that every single one of these guys who has done seemingly unforgiveable things has had seemingly unforgiveable things happen to them. And so I see them both as people I need to help transform themselves out of the cycle that they are in and also really I feel a connection to them because I know that almost every person in that room if not every person in that room severely traumatized themselves. And there are times when I have spoken about child sexual abuse inside and a guy will come up to me afterwards secretly and say you are the first person I am telling this the guy I killed was the guy who smelled like the cousin he was up on me and we were fighting and he smelled like that cousin who I am just realizing raped me when I was a kid so these knowing where your offending came from is such a critical piece to being able to unpack it. Now sadly we don't you know a lot of facilities across the state do not have the capacity to hold that realization. What kind of program are we giving any one to overcome that but that it is a very powerful experience so what grew out of one of those survivor restoration panel experiences was that in sharing about forgiveness a group of the men who had gone through the

RSVP program and were still in jail and had done all their programming said we want to take it to the next level and so we did an 18 week forgiveness circle where these guys took a really good hard look at what in their lives might they benefit from exploring about forgiveness and we showed films of people who had forgiven and the person, met face to face with the person who had murdered their child and forgave, and forgave that person and so we would ask a really tough question how would you like to sit in Gary's shoes? You know Gary the guy in the film how would you like and these guys would just have these amazing conversations and I felt they were as much my teacher as I was theirs. So great experience.

ONEK: So there are scattered programs I guess it is fair to say across the country that are teaching these principles but in the big scheme of things the criminal justice system whether it is in this state or in the country this is a minuscule number of people are involved in restorative justice –

BALIGA: Right. Yes.

ONEK: What can be done to grow the restorative justice movement in the next five years?

BALIGA: So again the timing seems good in that we have come to see that the degree to which we incarcerate is not sustainable. It is neither affective nor is it given our recidivism rates, nor is it clearly satisfying our victims or else we wouldn't have such a huge and very upset victims lobby. You know it is obviously economically completely unsustainable and so what, there needs to be a shift and I think people need to be less afraid of restorative justice. I think people need to know more about what restorative justice is and that we are looking at harm and that we are looking at the obligation to repair that harm and that it is tough on crime in this way. Or that it is smart on crime you know it is effective on crime. And I also obviously think funding is a big problem I mean what is a challenge for us right now is getting enough funding to do a large enough number of cases that we can show what I am sort of keeping track of is that I have a 15 percent recidivism rate right now but it is such a small number that you know it is not a large enough sample size and when you are funding for people to come and study it and to make it an evidence based practice which would get us the big federal grants so [OVERLAPPING VOICES] --

ONEK: But if you are keeping people from being incarcerated or at least for as long periods of time in keeping them from recidivating that is a tremendous cost savings.

BALIGA: Absolutely. [OVERLAPPING VOICES] And so a study from the University of Pennsylvania recently showed that there is an eight to one savings. For every dollar spent on restorative programming eight dollars saved. Even in the incarceration context which is obviously our most expensive programming Resolve to Stop the Violence four dollars saved for every dollar spent in terms of recidivism rates and all kinds of costs that you can think about this. I believe that we can be saving unbelievable amounts of money and when we think about the cost at the state level of incarcerating a young person nearly 250,000 dollars a year okay. And that is for very serious crimes but still it costs no more than 5,000 dollars a case to go through this process that we are working with young people so I mean it is just such a [LAUGHTER] radical gap between those two numbers that we need to be thinking about this being a cost effective way not only greater victim satisfaction, lower recidivism, true genuine community involvement in solving harms in ways that solve the problem. And I think particularly to if you look at New Zealand as the example what is fascinating about

New Zealand the man who is charge of doing all the training nationally on that program said that the adult incarceration numbers are dropping. And I said oh you are doing it with grownups too that is so great. He said no, no, no we don't have restorative programming for grownups it is just the kids that we would have groomed to be the adult offenders aren't anymore because we did restorative justice with them instead and now we are starting to close our adult facilities. And he said you know can I totally track that to restorative justice I am not sure but it is the one big change that has happened and so we see that happening there.

ONEK: Very interesting. Well I think that is a good place to start Sujatha Baliga thank you so much for joining us.

BALIGA: So happy to be here.

ONEK: Please tune in next week when we'll be joined by Jeffrey Rosen, Santa Clara County District Attorney. Thank you for listening to the Criminal Justice Conversations Podcast. You can find this episode of the program, and all prior episodes, on our website at www.law.berkeley.edu/cjconversations, on NPR KALW's website, and on iTunes. You can also become a fan of

Criminal Justice Conversations on Facebook, and you can follow us on Twitter on CJ Conversations. The podcast was engineered and edited today by Mario Perloni [SP?] and our program intern is Sheridan Block and our research interns are Katie Henderson and Corinne Carpart [SP?]. I am David Onek thanks for listening.