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 Michael Romano, co-founder of the Stanford Three Strikes Project. The Three Strikes Project represents people who are serving life sentences under California’s Three Strikes law for minor, nonviolent felonies. It is the only such organization in the country. Through the project’s efforts, a dozen people have now been released from prison after having
their sentences reduced, with more on the way. Romano co-founded the project in 2006 and he and I have had a chance to discuss his work many times over the years since. Romano graduated with honors from Stanford Law School, and holds a master’s degree from Yale Law School, where he was John S. Knight fellow. He joins us in studio this morning. Mike Romano, welcome to the program.

MICHAEL ROMANO: Thanks for having me.

ONEK: Mike, can you start by giving some examples of the types of crimes your clients have committed that have led to life sentences under Three Strikes?

ROMANO: Sure. So we represent folks who have been sentenced under the Three Strikes law for extraordinarily minor crimes. We represent people who have simple possession of less than a gram of methamphetamine or heroin. Or petty theft of a pair of socks. Or stealing a dollar in change from a parked car. Those are all real cases that we are currently working on.

ONEK: And all of those people received life sentences for the crimes you just described.
ROMANO: All those people are serving life sentences for those crimes. Now, admittedly, they have had prior crimes which make them eligible for the Three Strikes law, which is --

ONEK: Sure.

ROMANO: -- [OVERLAPPING VOICES] of the sentencing law. But they have never committed any violent crimes, or never actually hurt anybody in those past crimes.

ONEK: So those are some very compelling examples, but how big a problem is this? How many prisoners in California are currently serving life sentences for these types of non-serious, nonviolent felonies?

ROMANO: Well, I consider it a major problem for California’s overall prison and criminal justice policy. Currently, there are over 4,000 people who are serving life sentences in California for nonviolent, Third Strike crimes. Most of those people, a large majority have never hurt anybody in their past.

ONEK: And we’ll get back to this, but the budget implications
of that, with the budget crisis we’re facing, are just enormous.

ROMANO: Sure. So last summer, the California state auditor estimated that the state will spend $4.8 billion to house nonviolent, Three Strikers. That’s a minimum cost. That works out to about $200 million a year just to house people who have been sentenced under the law for nonviolent crimes.

ONEK: Now, do you have a problem with the Three Strikes law as it pertains to offenders who do have three legitimate, serious and violent felony strikes?

ROMANO: No, of course not. I live in a house and my kids are in school, just like everyone else, and I don’t think that I have any problem with, nor do a lot of folks with people who have committed three serious or violent crimes, to spend a lot of time in jail. I don’t have any opposition to somebody who has three rape convictions to be sentenced to life, or three murder convictions. And that’s frankly, the way that the Three Strikes law was passed in 1994, was the ballot measure and I think the voters believed that they were putting dangerous murderers and child molesters in jail forever. In fact, the majority of people who’ve been sentenced under the Three Strikes
law have committed a minor, nonviolent crime.

ONEK: Well, they were in fact putting those murderers and rapists away for long periods of time, so that part of it was correct. What they didn’t realize the devil is in the details here, is that also, a large number of nonviolent offenders would be receiving the same sentence.

ROMANO: That’s right.

ONEK: Can you go into detail about one case that has particular resonance from you, kind of from start to finish, walk us through a case?

ROMANO: Sure. I’ll start with one of our earlier cases because for various reasons, as I think will become clear, strike home for me and is important to me. We learned very early on in our project about a guy who was serving a life sentence, named Norman Williams, and he had been convicted for petty theft for stealing a floor jack from the, you know, like a car jack, from an open tow truck. And he was serving a life sentence, had already served 13 years and he was in Folsom State Prison. And when we heard about his case, we wrote him a letter and we said
we would like to represent you and obviously for free, and we’ll come visit you and reinvestigate your case, and no promises, but hopefully, we’ll be able to get you some relief. And he never wrote us back. And we waited and we went on to do some other things, and then finally, I had some students who said that they wanted to go visit him out at Folsom, and Folsom wasn’t that far from Stanford. So they drove out to Folsom to see if, in fact, he had, I think we’d written him a couple times actually. And no response. And to see maybe he didn’t want our help. Maybe it was just too painful. And when the students got there, it became clear right away that Mr. Williams very much wanted our help. He was a loner. He was borderline mentally retarded, and when we asked why he hadn’t written us back, he just said he didn’t feel like he could do it. He said he didn’t write so well. So we began to investigate his case and literally, as we were waiting to be escorted out of the prison, we were thumbing through some of the files that he had brought to the meeting with him, we realized that he had a case that was pending that had never been ruled on, for 10 years, that he had filed by himself, or with a prison lawyer, in federal court in Los Angeles, that had just been sitting on desks for over 10 years. And that said two things to me. It said first of all, there was a legal opportunity for us to get back into this case. There
was a legal vehicle for us to represent him, but it also was just more evidence about the way that the system treats these cases. On the one hand, they’re extraordinarily minor cases. These are misdemeanors in every other state in the country. They’re petty theft, they’re minor drug possession. And they’re handled by the youngest and least experienced prosecutors, defense attorneys, judges. They’re not treated as very serious cases. On the other hand, of course, they carry these enormous sentences. So anyway, we were able to get back into the case and reinvestigate the case and find certain mitigating factors that had never been presented to the judge the first time around. We weren’t saying that Mr. Williams was innocent. In fact, he fully admitted to us that he did take the floor jack. But we found out that first of all, that he was borderline mentally retarded. Nobody had known that before. That he was horribly abused both emotionally, physically, and sexually by his parents when he was young, and these are all contemporaneous reports that social service agencies had compiled at the time. In fact, a neighbor, when he was 11 years old, called the animal control because they thought that the house next door was unfit for dogs. When animal control got there, there were no dogs there, but it was Norman and his nine other siblings living there. Turns out that his stepfather was prostituting him out.
I mean it was just a horrible, horrible life. It does not excuse his criminal behavior. He became a drug addict and did steal some things. His prior crimes were he broke into a house that was tented for fumigation and stole a VCR. When he got out, he was robbed himself by somebody with a gun and didn’t even get away with any goods. So long story short, we were able to put, and by we, I should say that really, the students at Stanford Law School, who staff the project and investigate our cases, have the primary relationships with our clients, and then go litigate those cases in court. Draft the pleadings, appear in court. They drafted a pleading and were able to get back before the judge who originally sentenced Mr. Williams 13 years ago with new evidence, and the students were able to persuade the judge to reduce his sentence. The judge has some authority to what we say strike a strike, and impose a long recidivist sentence, but because he’d already served 13 years, he was able to get out of prison. Norm’s family was not able to take him back in. They’re struggling as well. So we brought him to Palo Alto, and hooked him up with some homeless services, job training, drug treatment, support services, and this is the great news of the story, is that he has just absolutely flourished. He’s worked his way up through a street cleaning program to become a manager. He has his own apartment now.
He’s doing fantastically well, and I have lunch with him, I don’t know, once every couple weeks, once a month, and it’s just a great joy to talk about the movies or the weather with somebody that society had completely written off as incurably recidivist.

ONEK: So that’s an amazing story, and I know you have many others like it. Here you said you had to reach out to him. My understanding is that’s not so much of a problem anymore. Where do you get your referrals now, and how do you decide which cases to take?

ROMANO: Sure. So luckily, we’ve been successful in a number of these cases, and as we have, word of our success has sort of spread throughout the prisons and through family members whose loved ones are in prison, and we receive dozens of letters asking for our help every week. We just last week completed a major, we didn’t actually complete it, we started a major letter writing project to write back to everybody who’s written us. We estimate that about 4,000 people have written to us, asking for our help. And it’s an enormous task just opening that mail, reading the mail, sending letters back, sending questionnaires back, getting the questionnaires back from the prisoners.
So that’s an enormous task. We have a huge database. The students throughout the law school, not just the students in our project, volunteer to help us with that. So the bottom line is that we select our cases by trying to find the cases that we think are the most extreme, the most sympathetic, and the most disproportionate sentences. We have a questionnaire that we send out to prisoners once they reach out to us, that basically ask them briefly about their criminal history, and family background and then we use that to begin our screening process.

ONEK: How does it feel to have to turn down the vast majority of these cases, knowing that people writing you are facing life in prison?

ROMANO: It’s the hardest part of the job. It’s heartbreaking. Like I said, we have boxes and boxes of letters sitting in our hallway and if you just reach in and pull one out, you might find one. I remember the other day, I pulled one out. Somebody serving a life sentence for selling, I think it was $50 worth of pot, something like that. And while my heart went out to them, I knew that it was very unlikely that he was going to make our cut in terms of being able to be represented
by us. We generally don’t represent drug dealers. But my feeling was that a life sentence still, for $20 worth of pot, was disproportionate. And the sad truth of the matter is that there’s no lawyers that are out there to represent these people. If you are not on death row, there’s no more state appointed attorneys for these folks, and they have to represent themselves and it’s a very, very complicated legal process to be able to try to get back into court.

ONEK: You talked earlier about the huge role that the students play in the project. I want to talk a little bit more about that. Stanford also has a great prosecution clinic led by George Fisher and there’s so many more clinical opportunities available at Stanford now than when I was there in the late ‘90s. It must be a very exciting time for students to be there, doing this work. Can you explain all that students do in these cases?

ROMANO: Sure. So just to back up half a step a little bit, the clinical program at Stanford is, we’re hoping that leading the way throughout the country about bringing this into the core of legal education. So my project is one of 10 different clinics at Stanford. So aside from my project, there’s a, as you
mentioned, George Fisher’s prosecution clinic. There’s a clinic that represents folks who have immigration issues. There’s a clinic for litigating environmental issues. There’s a clinic for representing people who are struggling with the educational system. So there are 10 different clinics at Stanford, which students can sign up for and the idea of all the clinics is really twofold. As we’ve been talking about, there is a sort of social justice aspect of the clinic, where we’re representing causes that we believe in. At the same time though, on an equal footing really, is a pedagogic mission for the clinic, which means that we are trying to teach students how to be good lawyers, the highest levels of professionalism, ethics, and a certain skill set that you just can’t teach in a typical classroom. And by putting students on live cases with close supervision and lots of reflection, I think that we are doing a very good job. For example, if you were to try to teach somebody how to swim, it’d be very difficult to have them all in a classroom and you say, put one arm out of the water and reach and kick both your legs at the same time. You know, you really have to have somebody in the water, learning by doing in order to learn how to do it. And we feel that that is not the only way, but an important way to teach people how to be effective lawyers. In our particular clinic, our students take
responsibility for a case. We feel that that’s critical. Meaning that they have the primary relationship with our client. That’s number one. They meet with our clients regularly in prison about once a month. I see our clients once, but then it’s the student’s relationship. The students are responsible then for drawing up a case plan and figuring out what’s the next move in the case strategically. Where do we need to do more investigation? Where legally do we have opportunities to bring these cases? Then they conduct the investigation, they find new witnesses. They hire experts, if need be. Ultimately, they end up drafting pleadings that we will file in court, and we file all throughout the state and federal courts in California, courts of appeal, trial courts. Frequently, we then have hearings, and the students then conduct those hearings. Meaning they call witnesses. They cross examine witnesses that the prosecution may bring. And they argue those cases in front of judges in court. And if we are lucky to have our clients win relief, we also as a clinic, are dedicated to making sure our clients are successful once they’ve been released. And our students work with our clients and their families to make sure that they have a successful transition plan back into the community, meaning job training, mental health services, if they need them, drug treatment services as they almost all need, and
a real support system. So we really believe that that’s a core part of our lawyering job for these folks.

ONEK: Well, that’s an incredible amount of work that the students are doing. How does that work? Are they doing this full time for a certain period, for a quarter? And what happens for cases that go on longer than that? How do you handle those issues?

ROMANO: Sure. So that’s a good question. Logistically, how we handle that at Stanford is that we are on the quarter system, meaning there are three quarters essentially in a school year. Students sign up for my project and any of the clinics full time for one quarter, meaning they don’t take any other classes and they essentially work a 40-hour week for my project. And after that first time, full time quarter, they’re able to continue on in the project in a part-time basis, meaning they take other classes and usually, they work for me about 12 hours a week.

ONEK: So they can follow the cases they started.

ROMANO: Exactly. And a lifespan of a case is approximately an academic year. So it works out pretty well. I mean obviously,
there are some cases that are quicker because of something that happens or that take longer time because of other complications in the case.

ONEK: One more question about working with students. So you’re giving them a tremendous amount of responsibility, and I’m sure the students are extremely bright and willing to take that and do a great job with that responsibility. At the same time, this is somebody’s life, somebody who is facing life in prison if this attempt is unsuccessful. So how do you as a supervisor, balance giving the students the authority to do the work with wanting to make sure that you’re giving this person who is, as of now, to be incarcerated for the rest of their life, the best chance to actually get out?

ROMANO: That’s a good question, something that I struggled with a lot, especially in the beginning of this project. Just let’s start from the beginning, that I’m lucky to be working with some of the most talented law students in the country. They’re extraordinarily bright and they have an incredible amount of time to be able to dedicate to these cases that an experienced lawyer wouldn’t be able to. So just in the amount of time and resources we’re able to put into it. That doesn’t really answer
the core of the question. I think that we also bring, and this is something to do with working with law students and young folks, is a certain amount of idealism about the righteousness of our case, and the injustice that’s been perpetrated on our clients. And I know that when our clients have been in court, standing next to their public defenders, who’ve been through the system, who are veterans and sort of know the drill, that judges have no problem looking at our clients and their lawyers in the face and saying a life sentence for petty theft is appropriate here. Good-bye, Mr. So and So. On the other hand, when it’s our law students who are standing up next to our clients and saying, your honor, a life sentence for petty theft or simple drug possession is inappropriate, something has to be done here, this is unjust. The judges pause and they look at these students and they know that they are, there’s a sense of idealism and I’m not quite sure how to say it, but righteousness that’s in their eyes and in their just being there, that they’ve dedicated themselves, so much of their time and work into these cases, that judges take another look at the cases. It also helps that the students are extraordinarily bright, great researchers, great writers, and have put together probably the best case that certainly our clients have ever seen in their lives, and probably among the better cases that these judges
ONEK: You talked a little bit about helping clients post release. Is that something you even thought about when you started? And tell me ways that you help. Well, let’s start with that.

ROMANO: All right. So no, it wasn’t something that we even imagined. And this goes back to your other question, too, about how could you let law students work on this. There was a sense, because we knew that our clients had already served 13 years, they had exhausted their resources in terms of the amount of lawyers that they would be able to use. We didn’t think that it was a risk, really, to put students on what was essentially a lost cause, that there was no, really, no hope that we were going to be able to win these cases and get our clients out. We would try and we would make that very clear to our clients, that this is an extraordinary long shot, but might as well take it. Some people, and we thought, going back to Norman Williams, perhaps he would not want to sort of raise his own hopes. In any event, moving ahead, when we started winning cases and having success, we really thought hard about what is our role as lawyers. Is our role to fix, is our client’s legal problem,
they’re in jail for life, and once we solve that problem, we’re done, nice to meet you, thank you very much, or you’re welcome? Or is it that our clients have a problem, whether it’s their own problem or problem of circumstance, a problem of mental illness, addiction, mental retardation, poverty, to about getting along in society, and having a successful life without resorting to drugs to deal with overwhelming circumstances and stealing stuff in order to support that habit? So we’ve really taken more of a holistic approach, I think. It’s a luxury of working with students and Stanford Law School, to support our clients once they’ve been released. And we really see that as their legal problem, and we’re their lawyers, so we’ll represent them in that whole process.

ONEK: And you have a dozen folks who have been released. How have they done as a whole?

ROMANO: They’ve all done spectacularly well. Some have reunited with their family, where their families are intact and willing and able to take them back in. And some, like Norman Williams, have been able to go out, find jobs in this incredible economy. Norman Williams works cleaning an armory in Palo Alto. He has to get to his work at 4:30 in the morning. He takes a
bus 45 minutes to get to that job. He works harder than I do. And it’s really remarkable, his work ethic.

ONEK: Have any of the folks that you’ve helped get out reoffended?

ROMANO: No.

ONEK: And have you thought about that? As more and more people get out, the odds increase that at least one person will reoffend. What will that mean to the project and to Three Strikes reform generally, if one of these kind of, these cases kind of become poster child, right? There’s often a local newspaper writes a story and it’s this big feel-good story. Well, if someone slips back a couple years later, what effect would that have on the work you’re doing?

ROMANO: Of course. And our work with our clients post release, I’ve framed it as something very altruistic, but of course, to the extent that we’re concerned about reexamining the Three Strikes law, we want to make sure that our clients are successful, so we could say hey, look, they’ve succeeded on the outside with the proper amount of support. We also realize that
not everybody can get the same kind of support and resources that we’re able to give our clients. The question about somebody coming out and reoffending. A couple of responses to that. We are concerned about it. Obviously. On the other hand, the folks that we represent and the folks that I think that can be safely released without doing great harm to society have never hurt anyone. So to the extent that they might reoffend, they might smoke a joint. That could put them away for life. But these are not folks who are going to go out and rape and murder and be child molesters. They’ve already served an extraordinary amount of time in prison. They’ve aged out of violent crime situations. This is an anecdotal example, but one of the clients that we’re struggling right now so much to get out of prison, I mean he has debilitating arthritis and walks with a walker, can barely hold a fork or a pen. I hope that he’s able to get out and reunite with his family, but there’s just physically no way that somebody like him, Willie Joseph, can be a serious threat to society. Will be a CEO of the next Google? No. But we’re spending $50,000, actually more, because he’s in a medical unit, a year to house him, and his threat of reoffending is not zero, but his threat of doing physical harm to somebody on the outside, I think, is extraordinarily low.
ONEK: And unfortunately, we have more and more folks in our prisons like that. I know Mark Leno passed something last year that got kind of the most severe cases of people who are like literally in a coma out of prison. But there’s still a lot of others that we’re paying a small fortune to keep watch over, who have no chance of hurting anybody, that don’t even know where they are. Two quick last questions. One, you’ve been quoted as calling this project the Guilty Project, I think to differentiate it from the Innocence Projects at certain law schools. What do you mean by that?

ROMANO: That was sort of a glib joke. I used to actually work at the Innocence Project and a lot of the inspiration for our work has been my experience working with Barry Scheck, my mentor at Stanford. Larry Marshall had an Innocence Project in Chicago. What I mean by that is our clients are, in almost every circumstance, absolutely guilty of stealing the floor jack from the tow truck, or possessing a small amount of drugs. We’re not going into court and say they didn’t do it. What we’re saying is that the punishment that they’ve received for this petty crime is disproportionate.

ONEK: Last question. Three Strikes was passed by a voter
initiative back in 1994, and thus, can only be changed by voter initiative. It passed with a whopping 72% of the vote and has been viewed by many as untouchable since then. But with our severe budget crisis here, and with the growing attention brought to this issue with each client that you get released, it seems now is the time to go back to the ballot box and reform Three Strikes. If we’re ever going to be able to do it, it seems to be now is the time. Do you agree with that?

ROMANO: Oh, I certainly do, and thanks, Dave, I appreciate your encouragement there. Quickly, when we started the clinic, we really had sort of a three-phase mission. The first was we were going to identify and represent to the best of our ability, these individual cases that you and I have been talking about. The second phase is to try to educate the public about this massive amount of injustice. The majority of folks who’ve been sentenced under the Three Strikes law are nonviolent. The prisons and jails are overcrowded with these nonviolent Three Strikers to the extent that violent, actual violent rapists and murderers are getting out of prison early because the prisons are filled with these Three Strikers. And the third phase is to try to reform the law to bring some sense and rationality back to the law. Like I said, keep Three Strikes for violent crimes,
but scale back the recidivist sentencing for nonviolent crimes. Our clinic has been retained by the NAACP Legal Defense Fund to explore ways to bring sensible reform to the Three Strikes law, and I’m happy to say that the most important and biggest criminal justice elected officials in the state have been advocating the same thing. Kamala Harris, Steve Cooley. They both realize that Three Strikes reform is necessary to solve our prison overcrowding problem, our state budget problem, and I think, bring more justice to our system here.

ONEK: So stay tuned going forward. Mike Romano, thanks so much for joining us.

ROMANO: Thank you, David.

ONEK: Please tune in next week when we’ll be joined by Patricia Caruso, Former Director of the Michigan Department of Corrections. 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
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