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

Today’s guest is Greg Berman, director of the Center for Court Innovation. Berman has been with the Center since its founding and became director in 2002. The Center is a public/private partnership that seeks to reduce crime, aid victims and improve public trust in justice. It has won numerous awards for innovation, including the Peter F. Drucker Award for nonprofit innovation and the Innovations in American Government Award for
the Ford Foundation and Harvard University. Berman is the co-author of Good Courts, the case for problem-solving justice and Trial and Error in Criminal Justice Reform, Learning from Failure. He’s a graduate of Wesleyan University and most importantly of the Sidwell Friends School in Washington, D.C., where he was a couple of years ahead of me in high school. He joins us from a New York studio this morning. Greg Berman, welcome to the program.

GREG BERMAN: Thanks, David. Thanks for having me.

ONEK: Greg, I want to start with origins of the Center for Court Innovation. The Center grew out of the Midtown Community Court, the first so-called community court in the country. Tell us about founding the Midtown Community Court.

BERMAN: So the Midtown Community Court began back in the early 1990s and it’s a little hard to put yourself mentally in that place now because New York has changed so much. But back then we were talking about a New York that was known in many quarters as an ungovernable city, a place that I think was defined both in reality and in public perception by the idea of drugs and crime and disorder. It was a city that from
1970 to 1990 had lost something like a half million residents from its population, as people fled to the suburbs and other safer environments. There was no place that I think embodied the kind of battered image of New York more than midtown Manhattan. Midtown Manhattan, the area in and around Times Square, which in some respects is kind of the beating heart of this city, was the misdemeanor capital of the world. There was more misdemeanors committed in the midtown north and midtown south police precincts, the two police precincts in and around Times Square, than any other precincts in the country at the time. The theaters were dark. Businesses were leaving New York. Again, all very different from the picture today. And against that backdrop there came this idea that perhaps there was an opportunity to forge a new approach to justice in midtown and specifically to focus in like a laser beam on the kinds of misdemeanor offences that were clogging up the courts. Here I’m talking about crimes like prostitution, like low level drug possession, shoplifting and the like. These cases, as we all know, are kind of minor in a legal sense but they were ending up having a very major impact on the neighborhood. I think our idea, those of us who worked in the early days of the Midtown Community Court, led by a visionary guy named John Feinblatt, I think we were motivated by an idea that we could bring the kind
of wisdom of the broken windows theory, which had started to kind of pick up momentum in policing circles, and we could bring that logic into the courts.

So the Midtown Community Court was launched in 1993. It focuses exclusively on minor offending, so quality of life crime. What we’re trying to do there is forge a new approach that doesn’t just kind of default to jail or fines. Instead what we’re trying to do is link criminal defendants to very visible community restitution projects. Sweeping the streets, cleaning local parks, painting over graffiti, the kinds of very visible signs of disorder that I think undermine people’s sense of safety in urban neighborhoods. And also use the moment of arrest as a window of opportunity in a defendant’s life and link him or her to the kinds of social services, whether it be job training or drug treatment or mental health counseling, that knock wood will help them get out of the life of repeated exposure to the criminal justice system.

So that’s the basic history and idea behind the Midtown Community Court. To try to focus in on minor crimes and rethink how the court system handles them.
ONEK: And the community court movement in those 20 years. I mean, when you started would you ever have dreamed that there are replications all over the country and all over the world now of what you were trying to do in Manhattan 20 years ago?

BERMAN: No. I think that. I wish I could sit here and say that when I got started in this business in the early 1990s that I had this grand vision of where it would go. But the truth of the matter is that I didn’t. My agency has been the beneficiary of a lot of serendipity, to be honest. And we’ve been opportunistic. We’ve sought opportunities. When we’ve seen opportunities we’ve seized them. I think that we’ve never set ourselves out to say that what we wanted to do was spread as many community courts as we possibly could. What we’ve tried to do is say that community courts are a potential solution to discrete criminal justice problems and we’ve seen some replications in places like San Francisco as you know, Seattle and Hartford and Dallas and other cities. But more than trying to replicate a model I think that what we’re really interested in is spreading a set of ideas. That courts can kind of lift their heads up and see the forest for the trees, that we can get better access to information for judges so they can make more informed decisions, that we can create the links between
courts and social service providers so that we can drastically reduce the use of incarceration, that we can be more thoughtful about measuring the impacts of what courts do on the streets. These are kind of the ideas that underlie the Midtown Community Court. And as proud as I am of the replications of the Midtown Community Court I’m probably more proud that those ideas, hard as it is to measure, seem to be gaining traction in the broader criminal justice world and the broader court community.

ONEK: I think that’s a really important distinction because the ideas, every community is so unique that the word replication almost doesn’t even make sense when you think about how localized criminal justice problems are and how localized the solutions need to be to be effective. So it seems that really the key thing for you guys to share are the ideas and then each community will have to figure out how to implement those ideas in a way that works for them.

BERMAN: Yeah, I think that that’s exactly right. We have the arrogance to put community right smack dab in the middle of the name of these projects. So I think you really have to take seriously that idea of community. As you say, every community is idiosyncratic. So it doesn’t make sense just to plop down
the Midtown Community Court model around the world, around the
country or even in the next neighborhood over, because every
neighborhood is different and every neighborhood is suffering
from slightly different problems and has a slightly different
sense of itself and slightly different resources and strengths
that it brings to the table. So we’re very mindful of that.
There’s a quote that I like from a somewhat obscure British pop
singer named Billy Bragg, who says that you can borrow ideas but
you can’t borrow situations. We try to live by that mantra. So
we’re trying to spread ideas but you can’t replicate what was
going on in midtown Manhattan in the early 1990s. Thankfully,
in some respects, that moment is gone forever.

ONEK: I’d like to hear the details of another one of the
projects you’re very well known for, the Red Hook Community
Justice Center. How does that differ from the Midtown Community
Court model?

BERMAN: So the Red Hook Community Justice Center was our second
community court and we operate that with the kind of active
participation and support of the Brooklyn D.A.’s office. Joe
Hynes is a kind of visionary leader when it comes to criminal
justice. The New York state court system and Chief Judge
Jonathan Lippman has been an enormous supporter. The city of New York has also been a big supporter. I could go on and list all the people that have been supporters. We’ve helped galvanize and conceive and implement the project with the support of all those public institutions. And what Red Hook is is an effort to move some of the ideas that animated the Midtown Community Court to a very different neighborhood. So midtown Manhattan, most of your listeners probably have been to midtown Manhattan. That’s Times Square, that’s Broadway, etc. Very, very few, up until recently very few visitors to New York would ever go to Red Hook, Brooklyn. It’s a very isolated neighborhood. It’s a neighborhood with one of the largest public housing developments in the country smack dab in the middle of it. It’s a neighborhood that’s cut off from the rest of Brooklyn by an elevated highway, so it’s not well served by the subway system. Red Hook is a neighborhood that often is not on the radar screen for New Yorkers but emerged on the radar screen in a very powerful way in the mid-1990s when a beloved local school principal was shot in broad daylight while searching for a truant student. He got caught in a crossfire between two rival gang members. In the immediate aftermath of that Brooklyn district attorney Joe Hynes said that two things really had to happen. One was a very aggressive prosecution of
the people that were responsible for the death, and he oversaw
that. But, and I give a lot of credit to D.A. Hynes, he said
you know what? We’re not going to arrest or prosecute our way
out of the problem here in Red Hook. What we need to do is
make a much deeper investment in this neighborhood. So that
was really where the original idea for the Red Hook Community
Justice Center came from.

So how Red Hook looks different from the Midtown Community
Court. Midtown is exclusively focused on criminal cases. In
Red Hook, just because it’s much more of a residential
neighborhood, we decided to create a multi-jurisdictional
courtroom that would handle the same kinds of minor offenses
that are handled at the Midtown Community Court but also handle
juvenile delinquency matters from family court and some landlord/
tenant disputes from housing court, from civil court. That was
the first time that that’s ever happened, at least in the New
York context. In addition, because Red Hook was a neighborhood
that was suffering from a relative paucity of social services we
really tried to in some respects marry a courthouse with the
kinds of proactive crime prevention and youth development
programs that you might find in a community center. So we’ve
used Red Hook as a launching pad for a host of projects that
only tangentially related to the business of the courtroom. So we created a peer court, a youth court, in Red Hook where we trained local teenagers to handle actual cases involving their peers and use that as a kind of a leadership development opportunity for area youth. We created an Americorps program where we recruited 50 local residents to perform a year’s worth of community service in their neighborhood. We did a number of neighborhood beautification programs. There’s a central park in Red Hook called Coffey Park and we created the drive to clean up and take back Coffey Park from drug dealers. It was one of those parks that was kind of where you were constantly stepping over crack vials and graffiti and all the park benches were dilapidated. Fast forward to today, that park, it always had great bones, is now just a jewel. You see families out there every day of the week, using Coffey Park. That wasn’t happening when we started back in, how long ago, 2000 was when we opened the project.

ONEK: Let me turn next to your recent book, Trial and Error in Criminal Justice Reform, Learning From Failure, which I thought was terrific. I’ve actually had it for a while and this interview gave me the opportunity to make sure I sat down and read it. It really resonated with me with a lot of the
experiences that I’ve had in the very difficult job of trying to implement criminal justice reform. Let me start by asking the question, why a book about failure?

BERMAN: [LAUGHTER] I have a perverse sense of humor and so I’m at my happiest when I’m being contrapuntal. So I really felt like, and we write about this, and I should pause just for a second to credit my co-author, Aubrey Fox, who co-wrote the book with me. We wrote the book because we really did feel like there was just so many different books out there in the marketplace, both in the criminal justice space and in other public interest areas, where someone would kind of talk about their own success and market that as a pathway. If everyone could just do what I did then the world would be a happier place. Don’t get me wrong. There’s a space for those books and I’m a big consumer of them and some of my favorite books probably fit into that description. But I guess in some ways I felt like the book was penance in a way. Because I run a not for profit organization and when you run a not for profit organization you’re in some respects a professional supplicant. A lot of what I do, and this is not to complain, but a lot of what I do is try to raise money and try to generate heat and interest in our ideas and in our projects. That involves a
certain amount of hyping. My natural interest is not to hype and my natural instinct is to try to speak truth to power and speak honestly about what we’re doing. I guess I just felt like, and again I don’t think this is a unique diagnosis to criminal justice, you could probably say this about any field of endeavor, I felt like there was a lot of hype out there in the marketplace where people would say you know what, I can solve your crime problem by doing X, Y or Z. And having been in this world and done this work for a while I guess I felt like the truth was just so much more complicated than that. And that as great and as proud as I am of projects like the Midtown Community Court and the Red Hook Community Justice Center and I can quote you chapter and verse about what the independent evaluators say and this good impact and this wonderful result, these projects fail as much as they succeed. It’s very, very hard work to try to turn around the life of an addicted offender who’s been involved in the criminal justice system for 20 years. They don’t turn on a dime. So in some small way, penance is probably too strong a word, but I felt like the book was an effort on my part to introduce some levity and try to introduce some honesty into the conversation about criminal justice reform. Because I felt like if we continue to over-promise, continue to over-hype what we’re doing then inevitably we’ll
fall short of that. You know, my father is a businessman and he always used to teach me that the key to business is to under-promise and over-deliver. But I felt like again and again in the criminal justice system we were doing kind of the opposite of that. So we wrote the book focusing on failure as, we were modest about what this book is going to achieve, but in some small way to try to introduce a note of kind of honesty into the public conversation about criminal justice reform.

ONEK: And in the book you really delve into what causes these failures and you divide it into four types of failure. Failure of concept, failure of implementation, failure of marketing and politics and failure of self-reflection. You use the story of one program, St. Louis’s consent to search program, to give examples of each type of failure. Can you walk us through the four types of failure using the St. Louis example?

BERMAN: I’ll try. You’re stretching my memory of the book. It’s been a little while since I read it. So the consent to search project is a fascinating program and credit where credit is due, two wonderful researchers, Richard Rosenfeld and Scott Decker, have written extensively about consent to search. We relied heavily on their work in writing that chapter. But
consent to search was essentially an effort that was undertaken by the St. Louis police department back in the dark days of the 1990s in an effort to try to get guns off the streets. They would ask for permission to go into the homes of juveniles whom they suspected of possessing guns. The explicit deal of the program, at least when it was first started, was that the police would agree not to make an arrest based on what they found in the house. So if they found a gun, if they found drugs, what have you, they were not going to make an arrest. They were solely focused on getting rid of the guns. This was an idea that kind of bubbled up from the ground level, that was created by a handful of creative entrepreneur police officers in St. Louis and over its first period, in its first year, was remarkably successful in not only getting people to assent to have their houses searched but remarkably successful, took hundreds and hundreds of guns off the streets. Very exciting initiative. It was featured in national policing conferences. President Clinton, who was President at the time, even mentioned it in some remarks that he gave. It was one of these kind of exciting innovations.

The project ended up collapsing and thus earning its inclusion in our book about failure. It collapsed slowly, it was almost a
slow motion collapse. It collapsed in several different stages and over the course of its collapse it came to embody I think a number of our ideas about why projects fail. It was adapted at a certain point to get rid of the promise not to make an arrest. Lo and behold, no one consented to have their house searched in that context. So that to us was an example of just that’s a bad idea, right? That was never going to work. It embodied a failure of implementation. At other stages they made a decision to, when they were going into the homes the police officers were finding not surprisingly a lot of dysfunction, a lot of families in crisis, with deep social service needs. So they wanted to not just seize the guns but figure out a way to link these families in need to needed interventions. So they partnered with a group of clergy to do that and they just, I don’t want to say got caught in the weeds, but they just chose a bad partner. So that was in our view an example of failure of implementation. The project collapsed at one point because it was very identified with the chief of police in St. Louis and the chief of police in St. Louis left to run for mayor and there became a new chief of police, so anything associated with the old chief was just kind of tossed out by the new chief. We see that over and over again in criminal justice. Again, I don’t think this is a unique phenomenon to criminal justice. So we’ve labeled
that kind of a failure of politics. They didn’t get anything wrong conceptually or in terms of implementation but just didn’t manage the politics right in that case. And then finally the kind of failure of self-reflection. This was a project that was conceived on and implemented by [b cops?] essentially. It was not a project that had any kind of architecture or infrastructure behind it. They didn’t do a good job of keeping records. They didn’t do a good job of pausing for breath at various points along the way to analyze how the playing field had changed. For us that embodied a failure of self-reflection, that they were not able to kind of change course in midstream, the way you need to quite often when you’re running projects.

So in those various ways we kind of used the example of consent to search as a way to talk about the four different types of failure.

ONEK: Let me hone in on one of them a little more, the failure of marketing and politics, because I think there’s a lot to say about that. But I think sometimes when people come in and want to start a program they say you know, we don’t really want to get involved in all the details of the politics in a local situation. We’re above that. We’re trying to bring this model.
And I think there’s a failure to understand that if you don’t get involved, that’s the only way, you need to figure out how to get things done and get buy-in on the local level. And if you won’t get your hands dirty and roll up your sleeves and do that there’s just no way you’re going to get local buy-in and be successful.

BERMAN: Yeah, I think that your analysis is exactly right. It sounds like you’ve seen some of it, too. The kind of white glove approach to reform I find, and I’m sure there’s some exceptions that counter this narrative, but I find it almost always doesn’t work. I do think that there is a tendency sometimes among people like me, people that work for the not for profit sector and who are outside of government, to view what happens inside of government with disdain and it’s all political and we’re going to somehow rise about that. But as you say, I just don’t think that that’s a recipe for actually getting things done in the real world. I think that you’re right. To really make a different you do have to mix it up, you do have to get your hands dirty, you do have to understand the nitty gritty of this D.A. hates this police chief or this mayor is trying to do X and the city council wants to do Y, or what have you, because at the end of day, again, I said before
that I’m a professional supplicant. I think those of us who are outside the criminal justice system that are trying to get the criminal justice system to reform are in fact in the position of professional supplicants, in that you do always need permission, money, space from those in power. And those in power are political actors at the end of the day. So I think those of us who fancy ourselves reformers ignore that at our own peril.

ONEK: And how about using the Midtown Court as an example? I mean, 20 years later it’s going as strong as ever. How were you able to, you talk about when a police chief leaves, when a judge leaves? I mean, the average department head in city government lasts about a year and a half I think I saw in a recent study. So leadership change is going to be inevitable when you’re talking about reform. How have you guys been able to keep this going consistently for two decades now?

BERMAN: Well, again, knock wood because things can change.

ONEK: Sure.

BERMAN: I think you really do highlight one of the key challenges, which is that leadership change is in fact
inevitable and you’re always going to have to deal with that. I spoke before about how difficult it is to achieve change. And the kinds of changes that you in the past have advocated for and that my organization has tried to espouse, these are changes that don’t happen overnight and I would argue don’t happen even within the kind of typical political life cycle of two years or four years. So at the risk of self congratulation I would argue that one of the keys to the longevity of the Midtown Community Court, which as you said has gone through multiple judges, multiple mayors, multiple chief judges, has been the existence of an organization like the Center for Court Innovation that wasn’t thinking of it in two year or four year terms but was really thinking of it as, and committed to that model, for the long haul. So that we could take the long view where others might have been inclined to kind of view it in more short term perspectives. And we were able to stay involved with that project and advocate for it behind the scenes when necessary and make mid-course adjustments to try to improve the program and that in some ways has been kind of crucial to its ability to survive for 20 years.

ONEK: The Center for Court Innovation does a lot of what’s called action research. This research falls far short of the
gold standard of research, randomized control trials, but is far above the level of research that’s done on most programs, which is frankly none. So can you talk about what action research is and the challenges in conducting action research.

BERMAN: Yeah. I do think that as you say randomized trials are the gold standard. There are organizations and advocates who are pushing very strongly for there to be more randomized trials in criminal justice and I think that that’s good and appropriate. I don’t think that we should fetishize the randomized control trials. I think that there’s lots of other different kinds of studies that are in fact valuable. I think there are lots of projects and lots of settings where a randomized trial isn’t appropriate or feasible. So we believe, and we’re not the first people and we’re not the only people to believe in this idea of action research. We’ve certainly built on the model that places like the Vera Institute of Justice established, Herb Sturz established more than a generation ago. But what we believe in is embedding research in all of our operating projects. So most of our major operating projects have a fulltime researcher attached to them who is not an independent evaluator, works for us, but his or her job is to constantly be feeding us data about how the project is going so
that we can understand is there a dip in compliance? Maybe we need to tweak this. Or not getting the kind of case load volume that we expected? Well, maybe we need to do X, Y and Z to boost it. So again, it’s about creating an architecture, the kind of architecture that frankly the consent to search program didn’t enjoy so that when things go wrong, because we live in the real world, things go wrong, we’re able to respond to that. And the way we do it is by kind of creating this marriage between research and operations that we call action research.

ONEK: I want to close by asking about some of the most promising new demonstration projects that the Center is involved in. Can you share a few of those, as we leave off?

BERMAN: Yeah, sure. We have this. My organization doesn’t have a mission statement and I like to say our mission statement is our name. Because we have the arrogance to put innovation in our name we have a clear institutional mandate to constantly be coming up with new ideas and testing new approaches to justice. I think that there are at least three areas that we’re working on now that feel new to me and that feel like they’re potentially rich. The first is that we’re attempting to create a new community court in a neighborhood of Brooklyn called
Brownsville. Brownsville right now is kind of ground zero for two things. One, it’s ground zero for violence in New York City. It’s a neighborhood that’s been mostly untouched by the public safety gains that New York has made over the past 20 years. It’s also been the focus of a lot of attention including a major New York Times story because it’s a place where the police department has done a lot of stop and frisk activity. So there’s, not unanimous, don’t get me wrong because the community never speaks with one voice, but there is a segment of that community that feels very aggrieved and disenchanted with justice. Those two things, a very concrete and real public safety problem and a sense of disconnection between citizens and government, those are ripe areas for a community court to make an intervention. So we’ve started to perform a community needs assessment and lay the groundwork for a community court in Brownsville that I’m optimistic will get off the ground in the next year or so. Related to that we’ve been investing more and more of our energy as an institution in juvenile justice. Our roots, and we talked a little bit about our roots at the Midtown Community Court. The Midtown Community Court’s an adult criminal court. More and more we’ve been interested in seeing whether we can apply some of the lessons we’ve learned from working with adults to juveniles. This kind of lines up neatly
with one of the priorities of New York State chief judge
Jonathan Lippman, who’s been very interested in. New York is
one of the outliers, the age of criminal responsibility in New
York is 16 rather than 18 the way it is in many places, many
states. Chief Judge Lippman, one of his priorities for the New
Year is trying to forge a new court-based response to 16 and 17
year olds in criminal court that kind of combines some of the
due process protections that are desirable from criminal court
with the rehabilitation orientation of family court. So we’re
going to help Judge Lippman work on that. That’s an area that
we’re very interested in. Then lastly I would point to the
issue of procedural justice as a potential growth area for us
that we’re very interested in. One of the enduring lessons of
our projects when they are successful, one of the reasons we
find that they do make an impact and they do move the needle in
terms of improving compliance with court orders and improving
compliance with drug treatment in terms of getting people out of
a life of crime is because we take great pains from the judge on
down to communicate with people in an incredibly respectful way
and to treat people as individuals rather than as widgets going
through a factory. So this idea, which was kind of espoused by
law professor Tom Tyler and Judge Kevin Burke and others, that
by focusing in on the process, improving the process by which
people go through the criminal justice system, you can not only
improve their faith in public institutions but you can actually
improve their compliance with the law, that idea I think is at
the heart of so much of what we do. Going forward we’re very
interested in looking at opportunities to spread that idea
broadly.

ONEK: Well, it sounds like some very interesting things ahead.
We look forward to seeing what happens and Greg Berman, thanks
so much for joining us.

BERMAN: Thanks for having me.

ONEK: Please tune in next week when we’ll be joined by Stanford
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David Onek. Thanks for listening.