The Criminal Justice Conversations Podcast with David Onek

Episode #34: Scott MacDonald, Santa Cruz Chief Probation Officer  
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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 Santa Cruz Chief Probation Officer, Scott MacDonald. MacDonald joined the Santa Cruz Probation Department in 1984 and worked his way up the ranks, become chief in 2008. Under his leadership, Santa Cruz is widely viewed as a National Model for Juvenile Justice Reform and is one of four model sites for the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative. MacDonald is partnered with numerous
advocacy, policy and research groups to improve juvenile and criminal justice policy and practice, and he and I have worked together over the years in that context. He has a Bachelor of Arts degree in psychology from the University of California Santa Cruz, and a Master of Science degree in administration of justice from San José State University. And he joins us in studio this morning, Scott MacDonald, welcome to the program.

SCOTT MACDONALD: Well, thank you, it’s always good to see you, David.

ONEK: Scott, you graduated with a psychology degree and shortly after that went into the probation department. What made you want to become a probation officer?

MACDONALD: Well, I sort of fell into it. Since I was a kid, my first job was working as a camp counselor, coaching swimming and then I got interested in psychology, moved from Southern California to UCSC and to get through college I worked at a group home, which just exposed me to another side of life that I hadn’t been familiar with. I knew very little about probation or juvenile halls because, quite frankly, I grew up in a town where there was little risk for an adolescent to involved in
that kind of system. And so it opened my eyes and someone had 
say hey if you work at the juvenile hall, you get paid a bit 
more than working at the group home, and so I started working at 
the juvenile hall. And then someone said, hey, you know, you 
might be interested in probation work, and I had no idea what it 
was. Found out about it and then realized there was a sort of 
career path ahead of me, and one thing led to another —

ONEK: And 30 years later, almost, here you are!

MACDONALD: And 30 years later, I now know what an arraignment 
was and what it is, but whereas when I started I didn’t.

ONEK: Well, let’s talk about the Juvenile Detention 
Alternatives Initiative known as JDAI, which really helped put 
Santa Cruz on the map nationally as a juvenile justice reform 
leader. Can you explain to our listeners the principles of JDAI 
and the history of Santa Cruz involvement in the process?

MACDONALD: Well, yes, boy, so you know, this dates back to 
the mid 90’s. What we were experiencing locally in Santa Cruz 
was an exploding juvenile hall population. We had a 42 bed 
facility and we were frequently running beyond capacity with
kids double bunked and sleeping on the floor. And there was some also recognition that there was a growing disparity, with Latino youth being over-represented in the system. And at around that time, the late 90’s, there was concern locally about these issues and a chief retired, a probation chief retired, and John Rhoades, who had been one of the leaders implementing the Juvenile Detention Alternatives Initiative in Sacramento County, which was one of the first demonstration sites, got the job in Santa Cruz to address these problems that we had. And the Juvenile Detention Alternatives Initiative is basically a model that uses data to drive the system choices. So, the choice of who gets booked into a juvenile hall and why and it brings objective decision making to the choices that the system makes, which was a foreign concept. I mean when I started 28 years ago, most criminal justice policy was based on gut feelings and anecdotes, worse case scenarios that frequently led to these types of policies that overuse the expensive and ineffective options, in particular, incarceration. So, that’s sort of how we came into JDAI.

ONEK: And can you talk about, you talked about Latinos being over represented in the process, and I would imagine until you started to look at the data and break it down, you didn’t really
know how to handle that. And of course that’s something you and I have worked on together over the years, but can you talk about how Santa Cruz began to engage in a process of intentionally looking at racial disparities in the system?

MACDONALD: Well, as mentioned, we had some growing concerns from advocacy groups in the community about the over representation of Latinos. And at that time, the system, the justice system rarely examined or questioned itself, its own practices. And so there was, when you bring up the notion of racial disparity, the first reaction, oftentimes from system people is, what, I’m not Archie Bunker, I’m not racist, and there’s sort of a failure to recognize the systemic racism or systemic disadvantages that impact youth of color. And so we began examining that, and clearly all you had to do was walk into the lunch line of the juvenile hall and you could see wow, there’s all, these are all brown kids. And yet, if you go to the schools or in the community, that wasn’t the case. So, we had approximately, close to 70% of our juvenile hall population was Latino youth, whereas at that time, in the community, their representation was about 30%. So, we then, with some help, early in this process, with JDAI, we were introduced to a James Bell, who was at that time at the Youth Law Center. Subsequently,
David worked with him when he founded the W. Haywood Burns Institute, to address these issues. But, in those early days, we sort of scripted out how we would begin to examine this. And basically, we used aggregate data to examine our decisions at different points in the system. Who got arrested? Was it fair? You know, if you control for crime, is it, are Latino youths arrested for the same reasons as white youth? So, who gets booked? Who gets held? Who goes to a detention hearing? Who gets released on an alternative program or not? And we began examining this data, we could see that there were system choices that disadvantaged youth of color. And so once we had that data, then we felt compelled to do something about it. And that it was our responsibility to change that. I mean, after all, if we’re touting ourselves to be a justice system, we should be examining its outcomes for justice and make sure that we’re just in our practices. So, that sort of began a long trajectory of this work.

ONEK: Can you give me an example of a practice that you changed, that you became aware of due to looking at the data. And how you reacted to that, to make some adjustments that would influence kids of color coming into the system?
MACDONALD: Wow, so this is, as you know, David, because you did this work, it’s like peeling an onion. There’s not any one factor. And in fact the good news about that is that you could start just about any place and you could find things. So, for example in Santa Cruz, one thing that we had was a juvenile hall that was situated at the north end of the county, up in the mountains, with not a good transit system to get to and from court. Whereas, the overrepresented youth were primarily from the southern end of the county, often from communities of poverty, where even if there was a bus system, it might be hard to navigate that and get to court. So, you know, then we weren’t in the position to build a new juvenile hall in a new location, but we could look into all types of factors of how do kids get to court? Do they need to get to court? How many unnecessary continuances does the court process have? And these are all factors that lead to outcomes that cause youth of color to penetrate the system more deeply. So, I could go on and on about this, but I know you have more than one question, so --

ONEK: Sure, well, let’s talk about another key part of it, which is the community relationships that Santa Cruz has, the probation department, the city, the county working together with community groups, especially on issues related to youth of
color. Can you give some examples of community partnerships that have been particularly effective in Santa Cruz?

MACDONALD: Right. Well, first off, you know, we have to recognize that race, geography and poor communities of color are factors that influence over representation. So, we learned that, and this has been reinforced through our work with community agencies, that working with the nonprofit, that is close to the communities, and understands the conditions and the circumstances of the youth that we’re working with, can help us achieve better outcomes. So, as we went through the process of reducing our reliance on incarceration, and this is about 60% reduction in the use of incarceration, and we were getting these young people out of the criminogenic conditions of a crowded juvenile hall, we were able to partner with community based agencies to do a myriad of things. I mean, one might be counseling services, treatment options that are run out of the nonprofit. Another option, another program was we partnered with a community action board who developed restorative justice programs for youth, so it was a form of accountability where they could help beautify a park, or do some meaningful service in the community that maybe started out as a consequence, but really led to a resume item and then some advocacy to get a job,
and help establish a pathway out. Another program is our Azteca Soccer Program, that’s actually run by a probation officer, but back in the day, we used to try to find 14 kids having red bandanas and locking them up or blue bandanas, or doing probation searches, which you can’t really do 14 searches in a night, but you could get those same 14 kids on a soccer team, where now it’s not about red and blue it’s about the purple outfit of the Unity soccer team and teach them skills that get them to think of a different life and I just found out yesterday our Azteca soccer team won the adult championship again, so there’s great possibility when you just partner within the community and work in the community.

ONEK: So, what has the actual data shown about your results in terms of reducing incarceration, which you mentioned, reducing the racial disparities, reducing crime, what can you tell us after these years of reform, the results have been in Santa Cruz?

MACDONALD: Well, I’d like to be able to tell you more, but I can tell you this for certain. De-institutionalizing and de-incarcerating does not lead to greater crime. In fact, the felony crime rate plummeted juvenile violent crime, in the 90’s,
was double what it was after a decade of implementing JDAI. So, juvenile violence was reduced in half, and what we saw from some of the JDAI sites, where it was examined, is that those violence rates, while going down nationally, in the jurisdictions that implemented JDAI, they had more significant drops in violence than those that did not de-incarcerate to that extent.

ONEK: So, the argument that we need to lock people up for safety purposes, because really what JDAI is about, is about appropriate detention, locking up the appropriate folks, so we’re not talking about the serious violent offenders, we’re talking about the other folks who were getting caught up in the system and what Santa Cruz has shown is, by not locking those folks up, not only does it not lead to an increase in crime, it actually leads to a decline in crime, or at least it did in this case.

MACDONALD: Right, and you know, it might be for some counter intuitive, but to me it’s really obvious. When I think about when I started in the juvenile hall and it was crowded and all you could do it be behind a desk sort of monitoring a number of kids that are talking to each other, most likely talking about things that might be along the deviant lines. So, what they’re
going to do when they get out, and you take the same youth, and instead you’ve got them on a soccer team that makes them feel successful at something, and then the conversation leads to maybe ongoing education, it’s pretty obvious how those two approaches create different outcomes.

ONEK: Sure. Now, let me talk about, one of the things that’s really impressive to me about Santa Cruz is that you’ve been able to sustain this reform and to sustain the numbers over a long period of time. Often we see a reformer come in, in a leadership position of an agency and after that person leaves, things fall by the wayside and go back to the way that they were. In Santa Cruz, by contrast, each successive chief has not only continued what their predecessor has done, but continued to build on it as it went from John Rhodes, who you mentioned, to Judy Cox, to yourself. What do you attribute this to in Santa Cruz, because to me, that has got to be one of the key variables that has made Santa Cruz so successful.

MACDONALD: Right, so it’s a number of factors, really, I think. First off, we have had a well-articulated and strong mission and set of values. And we’ve been able to find the confluence between our mandates in the juvenile court, which is really the
objective is to rehabilitate and there’s a mandate to do that in the least restrictive environment possible. And which means that you don’t prematurely remove a youth from their home and institutionalize them. So, there’s those mandates that have always been in place. Then we were an early adopter of the system of care, which is really advocates for collaboration, for data driven practices, for cultural competence and relevant services. And really trying to meet the youths’ needs and families’ needs where they are. We had restorative justice emerge in the late 90’s and we thought well, this is a good way to really articulate a different form of accountability that involves repairing the harm to victims, to the community, through community service and build competencies with the value that kids should exit the system better off than when they enter the system, or we fail. And then you saw the advance of evidence based practices, which talks about how we can use strategies to reduce recidivism. And finally, and for me probably the most powerfully, JDAI said it’s not just about focusing on offender behavior, it’s looking at systemic behavior and the choices of the system. Are we using the --

ONEK: The choices of the adults who are making the decisions.
MACDONALD: Right. So, we had these strong, so one, we had these strong values and we believed in those, you know. For me, in the mid 90’s, I was getting my Master’s Degree and that sort of got me thinking critically about things. And I think that we then stayed involved with the university and academia and research. And so we built a management team that, and we expected our managers to write grants and stay abreast of the research, so we built this sort of smart on crime approach in our department. And so those were all factors. And then I think, so when we started, three chiefs have gone by, I’m the third chief to really reinforce JDAI, and my goal is, when I leave, my succession plan is the next chief will continue this legacy. But, you know, when we started, there were two demonstration sites that came out successfully. That was Cook County, Chicago and Multnomah County, Oregon, as you know, David, because you were involved in this in the very beginning, and we were the first replication site. So, we were a lonely group of leaders in this and so it was a bit difficult, although our staff had been great about, you know, sort of coming around to this. Now, fast forward, you know 14, 15 years later, you’ve got 120 sites nationally, doing this work. And where it’s been done, and where that leadership has emerged to intentionally do this work, jurisdiction after jurisdiction you see these
amazing, powerful effects and this reshaping of the system that is smarter, it’s less expensive, and it’s better public safety. And quite frankly, the youth have a better chance to succeed in life.

ONEK: So, Santa Cruz is clearly playing a leadership role in mentoring many jurisdictions around the country, who are starting to implement these principles. You kind of have it down to a science of people coming to visit you and you take them through and show them what your system is all about and explain it, but I think it’s fair to say, you have far more visitors than folks who actually end up implementing it, or at least completely implementing it. And I think particularly in California, JDAI hasn’t gotten as much traction as some other parts of the country. And I think, you know, what we hear a lot is well sure, Santa Cruz can be successful with this, but you know, they’re different, they’re a liberal city on the coast and you know, their kids are different than our kids and we could never, that would never work here, and certainly with innovations we’ve had in San Francisco, we hear other jurisdictions say well that’s San Francisco, they’re totally different, this isn’t applicable to us. What’s your response to that?
MACDONALD: Well, my response is there’s excuses, excuses, excuses, I mean my response is that JDAI is not hard to implement. It’s very easy to implement. What’s hard for people is sometimes to wrap their head around the notion that it’s OK to look critically at the system, and that the system, that while we’re sort of, justice system focuses on accountability of offenders, that doesn’t mean that we are sort of off the hook in terms of examining ourselves for accountability. And so I think the hard part is for people to accept a critical view of their own practices. That’s the impediment. And it’s unfortunate, because there’s a lot of public dollars tied up and being used for unnecessary incarceration that quite frankly may be producing crime, not stopping it. So, I think that’s, you know, we’ve had close to 70 jurisdictions come out and each jurisdiction that has the will and the leadership to do this work, sees amazing changes very quickly in their system. So, I’ve just seen it time and time again. So, the only impediment is just the leadership and the will to deal with these things.

ONEK: Now we’ve talked a lot about how Santa Cruz has reformed its juvenile justice system, but how have you applied the lessons from the juvenile system to the adult side?
MACDONALD: Right. Well, a lot of the lessons learned from JDAI we found relevant and applicable to the adult side. And this is timely right now. In Santa Cruz, in 2005, we were dealing with an overcrowded jail and looking, the Sheriff at the time was fairly convinced that we would have to build a new jail. Our county executive officer, county administrative officer, called Judy and I up and we suggested a couple strategies, particularly focusing on pre-trial and alternatives to incarceration. So, while one is pending court, the constitution says you’re innocent until proven guilty. During that, we know that in California, 70% of pretrial, 70% of the jail population are people going through court. And so what we did is we implemented a pretrial, a more robust pretrial program that used data and risk assessments to make those decisions and it worked very well. We had a jail that was crowded since the day it was built, and after we implemented those programs we saw a 25% reduction in incarceration. The outcomes were excellent for those who remained in the community pending court. And you know, for some of them, they were able to maintain their jobs, take care of their children, and other obligations, so it’s really been quite effective. Now that we have a realignment where we’ve had a quintupling of the prison population in the
last 30 years, while crime has remained relatively flat, so that shows it wasn’t offender behavior that created a prison explosion, it was systemic practices. Well, guess what folks, these non-violent, non-serious offenders are coming back and having to be dealt with at the local level. So, it’s very timely that people start thinking about JDAI like practices on the adult side, to safely and in a smart way, use that precious resource of jail wisely. So, let’s reserve jail for the serious offenders, but if you’re a non-serious offender who can be put into an alternative program that quite likely will produce better outcomes in the long term in terms of recidivism reduction, that’s what we should be thinking about and doing.

ONEK: And we’ve been talking about realignment a lot on this show. We’ve had Joan Petersilia and some of your fellow Chief Probation Officers on discussing it. Since Santa Cruz was already keeping a lot of low level offenders at home, rather than sending them to state, you kind of realigned, before realignment in some ways, right, because of the practices that you brought. Have you had other counties reach out to you and say hey, wait a minute, you haven’t been sending as many offenders to prison as us, and your crime rate is going down, so what can we learn from you?
MACDONALD: Right. Well, yes, in fact we’ve had about 20 probation departments from different counties come out to learn about our pretrial practices. So, quite frankly, our pretrial practices weren’t a local innovation and this has been applied nationally in other jurisdictions, but not as much in an evidence based way in California. So, a lot of probation departments are really stepping up and trying to learn about that, and we’ve sort of resourced them around that. And we’ve had a couple other innovations that have been interesting to folks, and we --

ONEK: Well, let me ask about one of those, which is the WRAP program, the Warrant Reduction Advocacy Project, that has gotten terrific results. Can you explain what that is and the results you’ve gotten from it?

MACDONALD: So, the context is that probation has been under-resourced and when you have very big adult case loads, oftentimes probation officers are running down problems. Those that violate probation and filing those violation reports and in the meantime, you have folks who might get out of jail, after they get that eight font minute order, court minute order, that
says somewhere on the back, report to probation in five days. Maybe they get out of jail, not quite understanding what the expectations are. And we had a system so inundated, that warrants would go out. Oftentimes, after they’ve been on a caseload for a period of time, a warrant would go out and they’d be re-arrested. And they’d get on the average 40 days in jail. We looked at that data and we thought, you know, for a lot of these folks who haven’t really committed a new crime, they just aren’t succeeding with their obligations on probation, let’s do some better outreach and see if we can get more probation success. And if we do, we’d have higher levels of probation involvement, engagement and less use of jail. So, we partnered with an organization, Friends Outside, that have always worked to reduce the barriers to folks coming out of jail for re-entry. So, they were a natural choice, and they would go out and find people and try to reconnect them to their probation officer. Sometimes we’d have to take them back to court, but what we found through doing that is someone who really didn’t understand they were on formal probation, thought they were just supposed to obey the law. So, we found someone who is at college, taking, going to classes and didn’t understand there was a warrant out. And why would you want someone like that in jail for 40 days? I mean why would you have a deputy sheriff pick
them up, go through that process, have attorneys litigate it, and then spent $76 a day for 40 days on that. It’s counterproductive to our goals. So, that’s just one little vignette of many on this program. The consequence was, we reduced our warrants by 66%. Significant. We were awarded a county, a California State Association of Counties Challenge Award on that. So, if anyone’s interested, you can go their website and there’s a little film on this project.

ONEK: This seems so straightforward, why couldn’t any jurisdiction start a program like this tomorrow?

MACDONALD: It was so straightforward, I looked around and thought certainly this has been tried somewhere and I couldn’t find another program of its kind. We have started talking to folks about this, and there is interest, and I know that Pugh Foundation had covered it and jurisdictions are looking at boy this is a low cost, simple approach to creating more probation success. I think it will see broader application.

ONEK: So, Santa Cruz is always pushing the envelope in continually working to refine and improve its juvenile and criminal justice systems. What are some of the next
opportunities for reform you see in Santa Cruz moving forward?

MACDONALD: Oh, good question. I mean, when we look at the folks who used to go to prison for the non-serious, non-violent, non-sex offenses, when we examine who they were, they were mostly drug offenders with chronic drug problems. Oftentimes, that was it. Sometimes for about 20% of those folks that went to prison, there might be a property offense, but underneath that property offense was a drug problem. So, to me, the challenge is, through realignment, is to really examine our approach to the drug offender. I know Mark Leno, Senator Leno was on your show and I don’t know if he talked about his bill, but I think there needs to be systemic reform and we need to be more nuanced in our approach of folks who have simple possession cases and are using drugs. Our drug treatment needs to get better and we need to also think, what is the role of incarceration for someone with a chronic substance abuse problem? And I know that in Santa Cruz we’re really looking at maybe we should emphasize a public health approach and de-emphasize the criminal justice net for low level drug offenders who are not creating victimization beyond themselves.

ONEK: And finally, you’ve done a lot of work on what you call
systemic interventions. Could you talk about what you mean by that and the work you see yourself doing going forward in that area?

MACDONALD: Right, and I think to put it simply, you know, maybe to restate, if you have a prison system that increased fivefold over 30 years, and crime remained relatively flat, that sort of shows that the system chooses its interventions. It chooses how to respond to crime. And systemic interventions is much like JDAI, uses data in aggregate form, to really examine what is the system doing? So, it doesn’t, policy isn’t created by the worst case scenario, or that one bad case, it’s really looking at the data and saying what’s happening here? The Warrant Reduction Program was a systemic intervention. We saw low level folks who were getting arrested when we examined the system, we saw there wasn’t a lot of good information and support to achieve the outcome of successful engagement on probation. So, we implement a systemic change, which is a little bit different, it’s not inconsistent with evidence based practices, but instead of sort of using the offender as the focal point, we need to also look at the system as point of reference, and create context in which people succeed and victimization goes down and recidivism goes down.
ONEK: All right, well Scott MacDonald, thanks so much for joining us.

MACDONALD: David, it’s always a pleasure to be with you, and thanks for this show, this is, it’s, we welcome thoughtful discussion on criminal justice and this is a great venue for that. So, thank you for having me.

ONEK: Thanks again, Scott. Please tune in next time, when we’ll be joined by UCSF Professor Emeritus, Paul Ekman.

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