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 weekly 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 James Bell, the founder and Executive Director of the W. Haywood Burns Institute for Juvenile Justice Fairness and Equity, where I was privileged to work with him in the early 2000s. Bell oversees the Burns Institute’s work in over 40 jurisdictions across the nation to reduce the overrepresentation of youth of color in their juvenile justice systems. He also
guides the Burns Institute’s community justice network for youth, a national network of programs working with young people of color. Prior to founding the Burns Institute Bell served as a staff attorney at the Youth Law Center in San Francisco for over 20 years representing incarcerated youth. He also has extensive experience in the international juvenile justice arena in South Africa, China, Cambodia, Kenya, Brazil, Australia and elsewhere. Bell is the recipient of numerous awards and honors including the Livingston Hall Award from the American Bar Association, the Attorney of the Year from the Charles Houston Bar Association, and the Advocate of the Year from the Office of Juvenile Justice and Delinquency Prevention. He joins us in studio this morning, James Bell, welcome to the program.

JAMES BELL: It’s a pleasure to be here, David.

ONEK: James, I want to start with a story I’ve heard you tell about a group of Romanians who were visiting California to learn about the justice system, and how that visit led you to rethink the focus of your career. What happened?

BELL: We were entertaining visitors from around the country since I had been doing some international juvenile justice work.
And when the State Department had visitors that wanted to come to the West Coast they would often contact me. Most of the times the visitors wanted to go see a juvenile hall. There’s something about our prisons and the lure of them that intrigues people from across the globe, and when they come to the United States they always want to go into a facility. So we took the Romanians over to the Alameda County Juvenile Court. At that time Judge Wilmont Sweeney was sitting, we had an arrangement where they could observe, and it was basically Romanian judges and probation officers. And they left that court session and we were going to go over to the Juvenile Hall, and as we were getting into the van one of the persons said, now that we’ve seen the Black Court, when can we go see the White Court? And I was just stunned by that observation that they would think that there was such segregation here that was still in play that the sense was that this was an all black system. And so I got defensive at first but then I said well you know what, this was an innocent question and we have become too used to the over-representation of kids of color in the system. And I thought, aah, maybe this is something that we should be working on.

ONEK: So you found the Burns Institute specifically to work with jurisdictions to reduce the overrepresentation of youth
of color in their systems. Can you describe how the Burns Institute works with localities to achieve that?

BELL: Essentially what we do David, is we look at each decision point and try to measure where it is that young people of color are more driven into the system by looking at data. We’re a data approach like most reform efforts are becoming now with the words evidence based, driving things, and so what we wanted to do was look at specifically how decisions are made and where it is that through policies and practices young people of color are ensnared. And that’s essentially our approach shorthand.

ONEK: And one of the other keys to your approach is a collaboration between all the stakeholders in the system. You go into a community and bring together people who are distrustful and not used to working together, law enforcement and community, prosecutors and public defenders, and on top of that begin to discuss race, the most sensitive topic there is. As an outsider in these communities how do you come in and create a safe space for these discussions?

BELL: Yeah, and that’s exactly what’s needed as a safe space. So the first thing that we do is, we make sure that people
understand that we are not about finger pointing, and that we need a collaboration of people who have authority and can make decisions about young people of color to be at the table to cooperate. And then the next thing we do is we don’t lead with race. We actually get data and we try to see where it is that kids of color are impacted the most, and ask them what policies and procedures do they believe contribute to this impact. And one of the other things that we do is we survey people, we have an anonymous survey that we get attitude. So we not only have quantitative information which is the data of how the system works but we also get qualitative data about why is it that you think kids of color in your system more. Are there certain crimes that you think that they commit more? Do you think the white kids don’t commit crimes, what do you think happens to them? So we actually get qualitative information as well as quantitative information as a way to inform this collaborative.

ONEK: And you also involve the community in the process which is pretty unusual for things like this. How do you involve them in a meaningful way in a process?

BELL: Involving the community in a meaningful way is a core
value that we have at the Burns Institute. We believe that you can address the over-representation of young people of color who in most jurisdictions are coming from one or two or three geographic regions within that jurisdiction. There’s no way that you could as just systems stakeholders impact them without engaging people from their communities. And so what we want to do is bring people from the impacted communities to the table to help folks problem solve. However, David, I have to tell you, it’s extremely labor intensive, and we understand why most people don’t do it. Because first you have to have community people when they’re invited to the table to be able to modulate their anger, modulate the fact that they have not been participating, they don’t get much money from the system, and to become a part of the team. And that takes a tremendous amount of coaching, of bringing them up to speed on the alphabet soup that stakeholders have, and it is very time and labor intensive. But it is a essential for these changes to occur.

ONEK: What I remember from when we were working together at the beginning of the Burns Institute in some sites is that the first couple of meetings you really just had to let the community people vent because they had a lot of anger, and if you didn’t let that happen they would never be able to come and
work together. But if you let those first couple of meetings go and let all the anger out, well then you could get down to business and start to work together. Is that something you’ve still found to be the case?

BELL: Absolutely true. And we actually believe that much of that anger is well placed. The point about it is, is that now that we know we don’t want to be about just repeating what the problem is, now we’re about being with solutions. And so part of that is to understand what the drivers are of the people that are sitting around the table from them, why the system does things the way that it does. But, we think it’s totally appropriate that these people when they come to the table, one, should have been there much earlier, and two, that they do have complaints that they should express to these stakeholders, and understand that these young people aren’t numbers to people in our communities. They’re real people, and there’s real pain associated.

ONEK: And they haven’t had the opportunity to express their feedback before, and so obviously they’re going to do it in a strong way in their first forum. But let’s flip it, then law enforcement’s sitting at the table, they’ve invited
the community to the meeting, you come from a background of basically suing juvenile corrections facilities. And so how do they have trust in you to have a process that starts out with the community expressing themselves forcefully, how does law enforcement build the trust back the other way to the community to say we all really need to work together on this.

BELL: Because our approach is not a quota system. We are not there to do something that involves racial profiling, or what we’re going to say is, well you have three black kids so we’re going to need to replace them with two Latinos and a white kid. It’s not that kind of quota system. And once people understand what we’re doing, all we’re doing is an examination. We’re like an internist. You go to the doctor to say I think I got a scratchy throat, something’s wrong, I’m not feeling right, and the doctor goes through a series of questions and looks and asks you about things, and measures things to say well this might be happening. That’s what our process is. But the what might be happening is the over-representation of young people of color which brings in race, which gets a lot of people irrational. And so what we try to do is be data based and as rational as possible as we examine this, for use of this metaphor, this patient which is the jurisdiction to say, why is it that you
continue to do what you’re doing and have the same results. Let’s do an examination. So you know, David, you’re never going to have 100% buy-in from anybody in the room. I’m sure your experiences have told you that. And so we know that there’ll be some people that are never on board. But we’ve been able to get the majority of people to say, you know what, why don’t we reduce our anxiety here, why don’t we take a look at what we’re doing to see if we can be a better system. And we’re not a fit for everyone. There’s jurisdictions in this country that will never contact us, aren’t interested in doing this work, and we go to the places where people say, we’re interested but we’re a little afraid, we’re a little defensive, and how can we do this in a way that’s productive. And those are the places where we’re a good fit.

ONEK: I want to talk about the data. If you could just briefly summarize the state of over-representation in the country so our listeners understand the severity of the problem.

BELL: Yes, well we’re about to have a new census coming out, but looking at the most recent data that we have, young people of color that are detention age, meaning that they’re at an age that can be confined in a system, we usually say between the
ages of 10 and 17, are about 38% of the country, and they are incarcerated most recent data at a rate of about 72%. So it’s twice their representation in the population.

ONEK: Now you recently wrote a report on our nation’s failure to address these disparities, and you called the report adoration of the question. Can you explain why you chose that title?

BELL: Yes, because there is a federal statute for your listeners that require in the juvenile justice system that each state document its level of over-representation. The problem is David, is that statute was enacted in 1988. Here we are 20 years later in some instances, and in fact many jurisdictions have not gone much beyond documenting. They have not, and so what that means is, they’ve continued to adore the question of why do we have representation rather than working on it. And in 2010 there are places like ours, there are places like the juvenile detention alternatives initiative, there are other places where you can successfully reduce the over-representation of young people of color in your system, get better public safety outcomes, spend less money, so win, win, win all the way around. And so the question is why aren’t these jurisdictions
engaging in practices that are already out there. And my take on that was, is because the federal government is not strict enough in 20 years later enforcing these kinds of regulations, you know a topic that’s in the news today.

ONEK: So the federal government says that you have to quote, address the problem in order to receive certain types of federal funding. So unless you address the problem of disproportionate minority confinement or the over-representation of youth of color in the system you won’t receive funding. But what does it take to pass the address test?

BELL: Not much. And address is, our position is, and we’ve said this often, anything you do in the juvenile justice system could be addressing over-representation because most of the systems are overrepresented. So when you walk in the morning you’re addressing it, when you drink a cup of coffee you’re addressing it. So the bar is very low on that, and what we have done is to try to advocate to the federal government to actually strengthen the requirements, so address is not so Loosey Goosey, but we understand it’s a political process. It’s Congress, you have Democrats, Republicans, people on all spectrums but we are still working to strengthen it because we think the evidence is
clear that if we don’t strengthen the language address is too loose after 20 years of results.

ONEK: I now want to turn to the state level. On this program we’ve heard a lot about all the things California’s doing wrong in criminal justice policy, but on this issue California’s actually regarded as a leader. What is California doing about disproportionate minority confinement that is innovative.

BELL: Yes, every state as I mentioned gets federal monies to address this issue. What California has done through the person of Shalini Hunter at the state level is incentivize counties to be engaged in this work. So one of the things that you have to do is put enough money out there for the counties to at least be interested. And what she’s done is, is she has in every grant that she gives through the federal dollars, she puts a component about the impact of racial and ethnic disparities. So it is she’s inculcating it into the work instead of making it separate, that’s the first thing. And on the intentional part of the monies that come in that are to work on this issue, she’s incentivized the counties with enough money, and she’s demanded that they have a technical assistance provider so the money doesn’t just go to the counties, and the counties say well we’re
doing what we can, so they’re being guided through it. And she now has about 16 counties, before there was only one county, now there are about 16 counties who are engaged in a process to work on the state specifically on racial and ethnic disparities. So it’s more than any other state has done.

ONEK: Well let’s start to talk about that work on the local level because that’s really where juvenile justice reform happens, at the local level because each system is different. One of the jurisdictions you’ve been involved with for the longest period of time and which has very impressive results is Santa Cruz. I recently had the Chief Probation Officer there, Scott McDonald, our mutual friend and colleague up here at Berkeley to speak to my Race, Ethnicity and Criminal Justice System class. He really updated me on the continued progress Santa Cruz continues to make. One of the things that really impresses me about them is they’re never satisfied with the results they have, they’re continually examining their system to improve it. What role has the Burns Institute played in that process in Santa Cruz?

BELL: So the first conceptual approach to this David is, most juvenile justice systems don’t gather data to run their
They usually gather data to give it to someone else. What Santa Cruz does is actually gather data, how they do business, look at it to change how they might do business in the future.

ONEK: So they don’t just gather data and put it on a shelf.

BELL: Or hand it to the state, or hand it to the Department of Justice and say, here’s your data, we don’t look at it because guess what. We did this yesterday, we gather data today but we’re going to do the same thing we’ve always done forever, so it doesn’t, it’s not gathering data to run the department. It’s like when your gas gauge is on empty you usually go to a gas station. Justice systems, the gas gauge is on empty and we just keep hitting the pedal. And so I can’t express how big a conceptual difference that is in Santa Cruz, is to use, to look at their practices to change how they do business to meet what the ongoing needs are. And so what we’ve been able to do there is actually they are such a good jurisdiction that we have line staff and supervisors actually looking at data in real time. So if you were supervising a unit you would get the data for that week and look at it and say, wow, X, Y, and Z is happening, and like some businesses out there, the Santa Cruz department has
given that line staff and those supervisors the authority and
the ability to make changes right there to address that need.
And that is why they are exemplary.

ONEK: Now they are exemplary and lots of other sites come and
visit Santa Cruz, but you’ve said that it’s kind of turned
into a quote, tourist attraction, that sites go there to
visit but very few actually take the concepts back to their
own jurisdictions. This is similar to what we heard on this
program recently from Sunny Schwartz about the resolve to
stop the violence project in San Francisco, that they have
visitors all the time who say they love the program but very
few people are actually implementing it. What is it that makes
it so difficult, people are interested enough to come out and
check out these innovations but really don’t get around to
implementing them in their own jurisdictions. Why do you think
that is?

BELL: Because in order to implement them in their jurisdictions
David, they’re going to have to engage in change. And a
lot of people want to look at change, they want to go, oh
wow, to change, but it doesn’t mean that they’re ready to
internalize that change back at home. To fundamentally do
things differently. And so that’s what’s unfortunate, and it is also the conceptual piece that I talked about earlier, where you actually have to say, I am interested in making changes, and politically what is the incentive for a jurisdiction to do well, besides your own morality, your own sense of whatever. When budget cuts come, if you run a great department or you don’t run a great department you’re probably going to be subject to the ax as well. So there isn’t a lot of rewards coming for doing the hard work that’s involved. And so essentially it comes down to leadership, that’s where we are.

ONEK: And that leads right into my next question. You’ve talked about heat and light being essentially components in a jurisdiction wanting to come on board and do this work. What do you mean by that?

BELL: In order for a jurisdiction to decide whether they want to take on this internal examination, we usually find it comes two ways as you’ve mentioned, heat and light. And heat is where you would have external forces that put so much pressure, politically or however they do it on a jurisdiction to say, we want you to tell us why we have so much over-representation of young of color, and do you have a plan to do anything about it.
So that’s heat. And that usually comes politically.

ONEK: From the community yes?

BELL: From the community, absolutely right. Light is if someone that is in a position of power or ascends to a position of power and is sensitive to these issues and is aware of these issues and does the same thing the community would do. And the heat side of the thing is to say, why is that I sit in court every day if I’m a judge, or if I’m a chief probation officer, or if I’m the DA, or I’m the public defender, or whatever, or the social worker. And says why am I in court every day and all I see here are kids of color. I mean I understand that I only get who’s brought in front of me, but I have some questions about this. So can we do something, let’s take an examination of this, or get me some statistics on this. And so that’s light.

ONEK: Now can you give an example of a jurisdiction that has moved forward due to heat, and a different jurisdiction that has moved forward due to light that you’ve worked with.

BELL: Sure. An example of heat would be a community that feels
that they are over-represented, they do not have power, they feel marginalized. And they go to their supervisor or at the county level, or their representative for their community and says --

ONEK: Is there a specific jurisdiction you can think of that that’s how it came about?

BELL: Absolutely. There’s Pima County that happened, San Jose that happened where the Chicano roundtable said to their representative, this is unacceptable, when the department comes for their budget we want you to ask some questions because you represent us and this is what we need. And so there have been jurisdictions where in fact that has happened. Same thing has happened in Saint Paul, Minnesota, other jurisdictions where people have just said we’re not satisfied with the way things are going, and that they haven’t been able to bring the heat to get the system to say, yeah, let’s take a look at this.

ONEK: And what’s an example of a jurisdiction where light led to some changes.

BELL: I think that a jurisdiction where there is light is
someone who has come into a position, we have that situation in Pima as well, where a judge was elevated, a Latino man, and he said I’m feeling the heat from this community, but I also have the light to want to be able to address this myself, let’s do this. Judges in Louisiana, same place, same kinds of thing, where somebody is elevated to the position of power and said, we need to do things quite differently.

ONEK: Now just looking at the bigger picture for a second, you firmly believe that you really need all the key stakeholders at the table, what you call traditional and nontraditional stakeholders at the table to make this work. That’s very different than the way you were working earlier in career when you were suing corrections officials and had a very us versus them relationship with them. What changed in your thinking, why do you think it’s so important to bring everybody to the table and to reach consensus on these issues because that’s something else about the process is that it’s consensus based.

BELL: Right, and I want to combine some of what we talked about with heat and light in answering this question.

ONEK: Great.
BELL: And that is, is that in an adversarial process with litigation we believe at the Burns Institute that everybody has a role. And so actually litigation puts a certain kind of pressure on people.

ONEK: That’s right.

BELL: Cooperation puts a certain kind of dynamic in the room. So collaboration puts a certain kind of dynamic in the room. So there are many ways to get to this approach, but the point is, is to be intentional. And that’s what we were talking about with heat and light. Often a part of the Santa Cruz story that’s not told is that the community in Santa Cruz put a lot of pressure on that system in order to get people like Scott McDonald, John Rhodes, Judy Cox in a position to respond. But that was a community effort as well as a part of the story of Santa Cruz. And so once we get people there through those visions or through the heat or the light as we say, then it’s just a question of can we cooperate to do this voluntarily without, because culture change is not going to happen in an organic way through litigation. Now litigation can put the atmosphere in place for somebody like us to come along and do
that but --

ONEK: In fact there are even some chief probation officers who say, please someone sue me, I want to make these changes, and if I have the heat from the litigation then I’ll help me politically do what I want to do.

BELL: Exactly. And that’s why I go to everyone has a role, and the role that we have played is when people want to cooperate. And as I said earlier, there’s jurisdictions that won’t come anywhere near us. It may be that lawsuits have to force them to do this. One thing I want to say quickly though, David, is, is that what we know is, is that culture change requires trust and people to feel safe and for them to understand how their job is done, and how their job impacts these quote, numbers that we see. And so that is why we like to work with them, but it’s very labor intensive.

ONEK: I want to talk to you of a new DVD out about your work that’s really terrific. It highlights your work in three different jurisdictions. How did that come about, and how are you getting the word about your DVD, because in just I think 22 minutes or something you really do get a sense of the work
and you can hear from the people who are doing the work in the communities.

BELL: Yes. We thought that today’s society is visual, people like to look at things, and the subject matter that we’re dealing with can be a little complicated, it could be a little arcane. And so we thought if we could put together a DVD that shows what we do, I mean I can go to my relatives’ house for Thanksgiving or Christmas and people go, what is it you do every day? They still don’t get it, right. And so the DVD walks through three different jurisdictions and tells about how we work with them in this labor intensive process we do, and as you say, from the mouths of the people they’ll say, this is how we were before, Burns Institute came in and did this, and this is how it helped us move our numbers, and this is how we were able to be better through their interventions. And we are having a showing of that DVD on Tuesday the 15th this evening, and it’s on our website, you can access it there, and we got financing for it from somebody that thought that this is a vision that should be put out.

ONEK: And the screening is actually at Delancey Street where Mimi Silbert, the President, was a guess on the show not long

22
ago. So it’s all coming full circle.

BELL: Wonderful.

ONEK: One of my last questions here, I’d like to ask you about your international juvenile justice work. How does the U.S. Juvenile Justice System compare to other systems around the world?

BELL: The U.S. Juvenile Justice System is much more resourced than most juvenile justice systems around the world. However, the way we use our resources I think are tremendously inefficient, because our resources go to incarceration as our primary instrument of social control, rather than not. And so it’s a very investment heavy approach that we use in the U.S. There are other jurisdictions where incarceration is not the primary instrument of social control, and so dollars are used to deal with the problems and the issues that children and families face rather than trying to squeeze a social problem into this kind of criminal justice milieu. And so other jurisdictions make laws that make it hard to lock people up, to say, did you counsel this person first, did you have some notion of getting the victim and the perpetrator together to try to resolve these
things. So it is a whole conceptual framework that is embodied in legislation that makes the difference in those places.

ONEK: And what are some of the countries that you see as most innovative in their juvenile justice systems.

BELL: Some of the places that are most innovative I think are France, Australia, New Zealand, Scotland. I think that those are places where they have implemented these things that I’ve mentioned.

ONEK: Now last question, the Burns Institute is nearing its 10th anniversary, hard to believe, amazing milestone, what’s the biggest challenge the Burns Institute and the field are facing as you look forward to your next 10 years.

BELL: I think the biggest challenge is to continue to address what seems to be an unlimited appetite by our society for punishment, for people who participate in antisocial behavior. There seems to be an unending appetite for punishment, and we know that the recidivism rates nationally are between 40 and 60%, and it’s extremely expensive. And so what our job is, is to try to open up a different conversation to say, can we
imagine that we separate people from society but do it in a way that is actually more helpful than is harmful. And so that’s a big mega debate, and that is what we have to continue to do because it’s an important, the current punishment system that we have much like the housing bubble, much like many things that we’re facing as a country is unsustainable in its current format.

ONEK: Right. Well that was going to be my follow-up question is, do you see the fiscal crises that California and so many states are facing now with the prison budget being a big part of that crisis, do you see an opportunity for change because of that.

BELL: Absolutely. I think that jurisdictions have to be more accountable, more receptive, more efficient. Politicians are going to demand, what am I getting for this money. Citizens are going to demand, what am I getting for this money, just like at the University of California, what am I getting for $50,000 or whatever it is to educate my kid. So I believe that yes, this is an opportunity, and we have to have something to say. An opportunity without a program or without an alternative approach is meaningless. And so I feel that we have the intellectual
capital, we have the experience, we know what works, so that if people are fair-minded and want to do something different, then we are there to help them jump into that breach.

ONEK: James Bell, thanks so much for joining us.

BELL: Thank you.

ONEK: Please tune in next week when we’ll be joined by San Mateo Police Chief Susan Manheimer, President of the California Police Chiefs Association. Thank you for listening to the Criminal Justice Conversations Podcast. You can find this episode of the podcast and all prior episodes on our website at www.Law.Berkeley.edu/cjconversations, and on iTunes. You can also become a fan of the Criminal Justice Conversations Podcasts on Facebook, and can follow the podcast on Twitter at cjconversations. The podcast is engineered by Milt Wallace, our editor is Callie Shenafelt, and our program intern is Sheridan Bloch. I’m David Onek, thanks for listening.