

M E M O

TO: US Programs Staff
FROM: The Criminal Justice Fund
DATE: May 8, 2009
SUBJECT: Anticipated Grant Recommendations, Docket II, June 2009

The Criminal Justice Fund anticipates recommending the following 24 grants on Docket II, June 2009. Of these grants, 11 advance the goals of the Campaign to End the Death Penalty by 2025, of which OSI was a founding organization. The Campaign is supported by a strategic approach to abolishing the death penalty in the U.S. in coordination with other funders and state-based and national advocacy organizations. The remaining 13 grants address a number of the CJF's other program priorities.

Death Penalty Abolition – Campaign to Abolish the Death Penalty by 2025

Capital Litigation Communications Project (*fiscal agent* Texas Defender Service) (CLCP) - \$100,000 project support for one year to further the Project's mission to serve as a nationwide communications resource for capital litigators. The grant advances the CJF's goal of abolishing the use of capital punishment and is part of the Campaign to End the Death Penalty by 2025. Led by communications expert Laura Burstein, this project will address the media and communications needs of the anti-death penalty movement. Ms. Burstein has been instrumental in locating new allies in the fight for abolition, focusing invaluable media attention on cases like that of Jeffrey Hill in Ohio where the victims' family members unanimously asked for his clemency. The family's request was ignored by the prosecution until Ms. Burstein's involvement, resulting in numerous local and national articles and op-eds that ultimately influenced the parole board to recommend clemency, signed by Governor Strickland. Ms. Burstein will continue to support the public-education aspects of this type of high-impact death penalty case and those taken up by the U. S. Supreme Court in the upcoming term. Ms. Burstein will operate nationally to assess and develop the communications potential in various state cases and to locate and recruit effective media messengers.

Death Penalty Information Center (DPIC) - \$65,000 project support over one year to provide additional support to a current grant from the European Commission that allows DPIC to update needed public opinion information used in the organization's communications and public education work and media trainings. The grant advances the CJF's goal to abolish the death penalty and is an integral part of the Campaign to End the Death Penalty by 2025. DPIC is one of the nation's leading sources of information and educational materials on the death penalty and is referenced frequently by the media and in court opinions, books, and articles. DPIC has been granted funding to pursue national

opinion message research through a contract with Lake Research Partners. To maximize the potential of this research, CJF's grant will add six focus groups in three geographical regions of the country and demographic subgroups. As one of the largest national surveys ever conducted, and the most up-to-date source of information for the Campaign to Abolish the Death Penalty by 2025, this information will point to the important question of why certain members of the public maintain their support of the death penalty and what sort of public education messages might make them question this support. DPIC's Executive Director, Richard Dieter, served as the Campaign's Steering Committee Chair until his term ended in April 2009 and remains an integral part of the Committee's planning process.

Equal Justice Initiative (EJI) - \$150,000 general support grant over one year to advance EJI's primary mandate to abolish the death penalty. This grant advances the CJF goals of eliminating racial disparities in sentencing and incarceration, improving indigent defense, reducing racial bias in the administration of justice and abolishing the death penalty. The grant furthers the goals of the Campaign to Abolish the Death Penalty by 2025. To accomplish its mission, EJI's staff works tirelessly to provide: 1) legal assistance to the 200 people who are currently condemned to death in Alabama; 2) consultation assistance to over 300 individuals who are awaiting prosecution for charges of murder, and 3) training and education to scores of lawyers who work on death penalty cases pro bono. Moreover, EJI offers a two-year fellowship program to a half dozen lawyers each year to receive high-quality training in death penalty practice. The staff also regularly serves as faculty at training programs around the nation on best practices in anti-death penalty litigation. As part of the CJF's and the Campaign's goal to reduce death sentences and executions, targeted activities must be increased in the South - the location of the most intractable death penalty states. By virtue of EJI's reputation and its position as a leader in the South, the CJF and Campaign Steering Committee members have identified EJI as one of a small number of organizations selected for an increase in capacity in order to accomplish the goals of the Campaign.

Equal Justice USA (EJUSA) - \$75,000 general support over one year to provide core support to one of two leading national advocacy organizations providing critical strategic support to state-based campaigns aimed at abolishing the death penalty. The grant furthers the CJF's goal of ending the use of capital punishment and is part of the Campaign to Abolish the Death Penalty by 2025. EJUSA is a national grassroots organization whose ability to bridge the gap between state and national organizations by promoting close partnership and collaboration makes it a leader in the death penalty abolition movement. EJUSA has played an instrumental role in achieving many of the abolition movement's most important recent wins. This grant will allow EJUSA to grow its capacity to partner with state-based abolitionists to provide technical assistance, capacity building, training and organizing support, a necessary growth of resources as more and more states begin to engage in public education campaigns about the arbitrary and ineffectual nature of the death penalty. EJUSA's Executive Director, Shari Silberstein, continues her invaluable role as a Steering Committee member of the Campaign.

Murder Victims' Families for Reconciliation (MVFR) – \$75,000 general support grant over one year to enhance MVFR's efforts to influence public opinion against the death penalty by working in collaboration with state and national anti-death penalty organizations to incorporate murder victims' family members and their perspectives into campaigns for death penalty reform, moratorium and repeal. This grant is part of the Campaign to Abolish the Death Penalty by 2025 and would advance the CJF's commitment to support efforts to abolish the death penalty in the United States. In particular, the grant will provide MVFR with additional capacity to work in the three priority states of California, North Carolina and Texas and engage in six additional target states during the next two years. Moreover, the grant will support the organization's efforts to build a national infrastructure that can influence the national media, public opinion and public policy through an increased membership base, improved communications capacity and partnerships with national advocacy organizations that support abolition of the death penalty. MVFR continues to be an integral component of the anti-death penalty movement. The strategic approach of MVFR in New Jersey and New Mexico has been validated by recent legislative victories that have abolished the death penalty.

National Coalition to Abolish the Death Penalty (NCADP) - \$250,000 general support over one year to advance NCADP's mission to abolish the death penalty. This grant advances the CJF's goal of abolishing the death penalty in the United States and is part of the Campaign to Abolish the Death Penalty by 2025. Further, the grant supports the Democracy and Power Fund's goal of promoting civic engagement and grassroots organizing to build networks of grassroots leadership capable of changing public policy. As the nation's only membership-based, national advocacy organization dedicated solely to abolishing the death penalty, NCADP provides critical technical support in the areas of grassroots organizing, membership base building, fundraising, and communications to its network of over 100 state-based affiliates, individual members, and scores of activists. Most recently, NCADP played an important role in efforts to abolish the death penalty in New Mexico. In particular, NCADP provided the newly appointed executive director of the New Mexico Coalition to Repeal the Death Penalty with skills building support through participation in NCADP's Abolitionist Leadership Training Institute. NCADP offers several national trainings as a component of its work. The organization's annual national conference also provides much needed leadership development and movement-building opportunities through workshops, networking, and strategy sessions for advocates, attorneys, murder victim and death row family members. Moreover, through new initiatives, NCADP is enhancing its affiliate programming and state-of-the-art online fundraising capabilities.

People of Faith Against the Death Penalty (PFADP) - \$75,000 project support in support of the first interfaith conference on religious organizing for abolition in the United States and the development of a comprehensive plan to sustain the effort following the conference. This grant is part of the Campaign to Abolish the Death Penalty by 2025 and advances the CJF's goal of ending the use of capital punishment in the United States. PFADP was founded in 1994 by a group of clergy and lay people in North Carolina and expanded their outreach nationally in 2004 to fill the vacuum of

religious organizing for abolition in the South—the region of the country purported to be the most religious but where 95 percent of US executions took place in 2008. The two-day conference will bring interfaith religious leaders and staff together for an educational exchange with national abolitionist organizers, providing faith leadership with the tools they need to bring the message of abolition to their local communities, and giving organizers a fresh understanding of how to develop a successful partnership with a large and diverse part of the public. Those whose theologies support capital punishment will be reminded that they cannot avoid confronting the deep flaws in the system, including racism, classism, inequities of defense counsel and misconduct by law enforcement and prosecutors.

Philadelphia Capital Representation Project (PCRCP) - \$100,000 project support over one year to further PCRCP's core mission of representing condemned prisoners in state court litigation.¹ This grant advances the CJF's goal of improving indigent defense systems and abolition of the death penalty and is part of the Campaign to Abolish the Death Penalty by 2025. The grant will capitalize on the momentum building in the mid-Atlantic and Northeast regions toward abolition of the death penalty. The Federal Community Defender Office (FCDO) for the Eastern District of Pennsylvania through its Capital Habeas Unit (CHU) represents the vast bulk of prisoners sentenced to death in Pennsylvania's courts when their cases are ready for state post-conviction review (SPC) or federal habeas corpus review (FHC). However, there is no governmental funding for representation in SPC even though the rules of federal habeas proceedings dictate that all federal claims must first be presented in state courts. This presentation generally occurs in SPC. The PCRCP enables CHU personnel to litigate SPC proceedings by raising private funds. Since its inception in 1995, the CHU has had an unprecedented record of achievement and is among the premier defenders of capital prisoners in the nation. Pennsylvania, which has the nation's fourth largest death row, has not had a non-volunteer execution since the start of the CHU and PCRCP. CHU and PCRCP have obtained relief from death sentences for scores of capital prisoners by litigating claims of actual innocence, prosecutorial misconduct, racial bias, defense counsel ineffectiveness, mental retardation, and other mental infirmities. The CHU and PCRCP have created the space for abolition in Pennsylvania and have recently expanded federal court work to Delaware and by application to SPC in Delaware. In 2009, PCRCP will continue the much needed representation of capital defendants in Pennsylvania and Delaware state courts.

Witness to Innocence (WTI) - \$50,000 project support over one year for the TOOLS (Training, Outreach, Organizing, Leadership, and Speaking) Project, which recruits, trains, and supports death row exonerees and their family members to become spokespersons for the anti-death penalty movement. The grant advances the CJF's goals of abolishing the use of capital punishment in the U.S. and promoting civic and political inclusion and re-enfranchisement in high incarceration communities, and supports the goals of the Campaign to Abolish the Death Penalty by 2025. WTI is the only organization in the U.S. composed of and led by ex-death row prisoners, its mission is to empower exonerated men and women through organizing and training to change public opinion through educational outreach. This grant will amplify the powerful voice of

¹ The Philadelphia Capital Representation Project is part of the Federal Community Defender Office for the Eastern District of Pennsylvania, which is a 501(c)(3) organization.

innocence—largely cited as the most salient and compelling reason for the shift in public opinion against the death penalty—by extending the unparalleled influence of exonerated ex-death row prisoners.

Southern Center for Human Rights (SCHR) - \$125,000 general support over one year to advance the Center’s ongoing zealous advocacy for reform of the criminal justice system in Georgia and provide the highest quality legal representation. The grant is part of the Campaign to Abolish the Death Penalty by 2025 and advances the CJF’s goals of improving indigent defense, actively promoting the fair administration of justice, reducing racial disparities in sentencing and abolishing the death penalty. Due to the organization’s track record as the leading independent capital defense representation organization in the heavy-use state of Georgia, as well as its successful record and leadership in the South, the CJF and the Campaign Steering Committee members have elevated SCHR as one of a select group of organizations whose capacity should be grown in light of the increased activity required by the Campaign’s goals to reduce sentencing and executions in the US—a goal achieved largely through a concerted effort in the South. SCHR’s attorneys represent capital defendants at trials, on appeal and in post conviction proceedings – and are supported by investigators who have set the standard in fact and mitigation investigation. SCHR’s attorneys also serve as critical resources to the private criminal defense bar and state capital defenders, consulting regularly on death penalty cases. When needed, the Center’s attorneys become involved in the litigation of these cases including assisting in ongoing trial cases where there is no other option for quality representation.

Texas Defender Service (TDS) - \$125,000 general support over one year to maintain capacity for key trial and post-conviction litigation activities aimed at reducing the number of death sentences and executions in Texas and thus the nation. The grant advances the CJF’s goals of abolishing the use of capital punishment, improving indigent defense services, and eliminating race and class disparities in sentencing. The grant supports the goals of the Campaign to Abolish the Death Penalty by 2025 by allowing TDS to continue the organization’s “crisis-case” intervention – cases with imminent execution dates and viable legal issues that have not been properly litigated (if at all). Besides reducing possible executions, focused examination of these cases will undoubtedly uncover those that can be best used to brand the death penalty as broken and thereby amplify the public understanding of the need for reform. TDS will also continue to identify developing issues in cases and educate and equip lawyers to better handle these challenges. In recent years, this type of trial-case litigation support has resulted in a dramatic reduction in death sentencing. An average of 14 persons have been sentenced to death in 2007 and 2008, down from an annual 25 to 30 in previous years. Last year CJF, with funding from the Strategic Opportunities Fund, increased its support to TDS given the organization’s unparalleled success in impacting capital defense litigation in Texas. TDS continues to provide some of the most influential reductions in sentencing and executions in the U.S. TDS has managed to export the organization’s expertise into the first-ever state-funded model capital public defender office in Texas. Given TDS’s significant impact in the field, the CJF and the Campaign Steering Committee members have selected TDS to join SCHR and EJI as defender offices identified for capacity

growth. This grant will continue the work initiated by the SOF support, which has been responsible for 11 out of the 12 stays of execution thus far.

Criminal Justice Fund General Grantmaking

The Texas Fair Defense Project (TFDP) - \$150,000 general support over two years to strengthen the Project's advocacy and litigation to challenge practices that unconstitutionally deny individuals accused of crime access to counsel in Texas courts and to promote best practices for ensuring access to counsel. TFDP advances the CFJ's goals of ensuring the fair administration of justice, eliminating race and class disparities in sentencing and improving the quality of indigent defense. The Project's staff works with criminal justice stakeholders, bar associations, advocacy organizations, and persons accused of crimes and their families to accomplish these goals. TFDP was founded in 2004 as the Soros Justice Fellowship project of Andrea Marsh, who serves as the organization's Executive Director. Marsh's first case, *Rothgery v. Gillespie County*, went to the U.S. Supreme Court and established a "bright-line" rule that a criminal defendant's Sixth Amendment right to counsel attaches when he first appears before a judge.

Juvenile Justice Project of Louisiana (JJPL) - \$200,000 general support over two years to provide core support to JJPL's efforts to transform Louisiana's public defender system for youth into one that provides trained, supervised and competent counsel to all children accused or adjudicated of crimes. This grant advances the CJF's goal of improving juvenile indigent defense services, eliminating race and class disparities in sentencing and incarceration, and providing alternatives to sentencing and incarceration that encourage rehabilitation and treatment. The grant will support JJPL's mission to transform the state's juvenile justice system into one that builds on the strengths of young people, families, and communities to ensure that children are given the greatest opportunities to grow and thrive. JJPL continues to provide trainings, resources and political support necessary for indigent defense reform to take root in Louisiana. The organization has played an invaluable role in providing defense for the Jena 6, the notorious case stemming from the disparate treatment of 6 African-American teens in Jena, Louisiana. JJPL has also channeled its energies into improving conditions of confinement and ensuring the availability of treatment and advocacy for mental illness, mental retardation and special education services for incarcerated youth.

Justice Policy Institute (JPI) - \$150,000 general support over one year to further the project's mission to reduce instances of adult and juvenile incarceration through research, communications, organizing, and policy advocacy. JPI is a Washington, DC-based think-tank committed to reducing society's reliance on incarceration by promoting both national and local policy reform and has evolved into one of the nation's most thoughtful and progressive voices for crafting workable solutions to problems plaguing our juvenile and criminal justice system. The organization has played a pivotal role in creating a public policy context in which voices for progressive juvenile and criminal justice reform can be heard. Few national criminal justice advocacy organizations have garnered as much national media attention for their timely, high impact research and analysis or accolades from their local community partners.

New York State Defenders Association, Inc. (NYSDA) - \$200,000 general support over two years to provide support to the organization's mission to improve the quality and scope of publicly supported legal representation to indigent criminal defendants in the state of New York. By state contract, NYSDA is responsible for identifying problem areas in the state's public defender system and proposing solutions in the form of specific recommendations to the state's executive, legislative, and judicial branches. NYSDA is New York State's largest criminal defense bar association. NYSDA provides back-up services to more than 100 county-based public defense offices and to more than 5,000 private defense attorneys who are assigned to represent indigent defendants. Its staff engages in impact litigation; writes amicus briefs; provides defenders with case consultations, legal research, technical assistance, and referrals to experts; convenes defenders for trainings, joint strategizing sessions, and moot courts; publishes training materials; monitors state legislation; and designs innovative programs to improve the quality of public defense representation. Most recently, OSI grant support has enabled NYSDA to capture public attitudes regarding public defense reform and information that demonstrates the value of a statewide public defense system and an independent public defense commission.

Immigrant Defense Project (*fiscal agent* Fund for the City of New York) (IDP) - \$400,000 general support grant over two years (co-funded with the Equality and Opportunity Fund), to support its work to advance the legal, constitutional and human rights of immigrants facing criminal or deportation charges. This grant advances CJF's goals of preventing harsh punishment and promoting equal access to justice, and EOF's goals to ensure justice and equality and lift the barriers that prevent people from fully participating in economic, social and political life. IDP was launched in 1997 in order to respond to the devastating 1996 immigration laws that placed hundreds of thousands of immigrants at risk of mandatory detention and deportation for virtually any interaction with the criminal justice system. The proposed grant will support advocacy efforts to scale back egregious overreaching government interpretations of the current criminal-immigration deportation laws through impact litigation and, where resources allow, coordinated communications work; support reform of the current mandatory deportation system through policy analysis and administrative advocacy focusing on the criminal immigration intersection; build the capacity of community groups to respond to immigration enforcement and support community-based advocacy efforts through community education; and establish models for systemic changes in the criminal justice system.

Aspen Institute (Aspen), \$24,780 project grant over one year to prepare for publication chapters for a Rethinking Crime and Punishment for the 21st Century Compendium, by editing, for that publication, nine commissioned papers and writing an executive summary, an introduction, and a synthesis of the analyses, insights, and recommendations from the Rethinking Project. Under a previous OSI grant, Aspen's Roundtable for Community Change created and convened a multidisciplinary group of scholars and intellectuals to rethink the dominant perspectives on crime and punishment in the U.S. and to frame a strategic, progressive vision going forward. OSI add-on funding to this

original grant would enable Aspen to finalize for co-publication with OSI papers from project participants and other materials that begin to articulate a criminal justice system reduced in size and not predicated on structural racism. This grant would advance the Criminal Justice Fund's interest in rethinking crime and punishment for the 21st century through fostering connections between theory and practice and encouraging discussion and debate among a broad range of stakeholders, from scholars, policymakers, and practitioners to advocates and community activists.

The Tides Center/Justice Strategies (Justice Strategies), \$20,000 project grant over one year to broaden the reach and strengthen the impact of Justice Strategies' research and policy analysis by improving its communications capacity. This grant would enable Justice Strategies to complete work under an OSI Technical Assistance grant originally awarded to Justice Strategies in 2006, when Women's Prison Association and Home was its fiscal sponsor. The original grant from OSI's Strategic Opportunities Fund and the Sentencing and Incarceration Alternatives Project was approved in 2007. In autumn 2008, Justice Strategies became a project of the Tides Center and therefore requested that OSI close the original grant. At the same time, Justice Strategies returned to OSI the full \$20,000 grant and requested that OSI provide a grant in the amount of \$20,000 (equivalent to the funds already returned to OSI) to Justice Strategies as a project of the Tides Center. This grant would advance the Criminal Justice Fund's interest in promoting alternatives to incarceration and developing and advocating for alternative policies that address underlying social, racial and economic inequality.

Judge David L. Bazelon Center for Mental Health Law (Bazelon Center), up to \$600,000 project grant over three years to apply performance-improvement techniques to empower community mental health programs reduce crises leading to criminal justice involvement of people with serious mental illness. Specifically, OSI funding will enable Bazelon Center to convene and provide technical assistance to local stakeholders in three or four jurisdictions (currently considering Pittsburgh and Philadelphia, Pennsylvania; Westchester County, New York; Austin, Texas; and exploring Michigan) to establish local pilots that create replicable models and implement reforms that address fundamental issues preventing access to mental health services and supports, empower local mental health programs to influence public policies, and inform Bazelon Center's advocacy for effective federal and state policy on behalf of people with serious mental illness. This grant would advance the Criminal Justice Fund's interest in decriminalizing vulnerable populations and downsizing prisons by fostering cross-sector and multi-agency government collaboration and accountability.

Harm Reduction Coalition (HRC), up to \$200,000 general support over one year. HRC challenges the stigmatization of people who use drugs and advances policies and programs that help people address the adverse effects of drug use including overdose, HIV, hepatitis C, addiction, and incarceration through policy analysis, advocacy, public education, and technical assistance to service providers. This renewal grant would advance CJF's interest in drug policy reform by decriminalizing drug use and DPF's interest in building partnerships and collaborations across communities, sectors, and issues.

Women's Prison Association and Home (WPA), \$100,000 project grant renewal over one year to continue support for the Institute on Women and Criminal Justice. Continued OSI funding will enable WPA to serve as a much-needed, authoritative national voice and resource on women in the criminal justice system and avenue for promoting the participation of formerly incarcerated women in public debate about incarceration policies. This grant would advance the Criminal Justice Fund's interest in promoting the rights and civic/political participation of women with criminal records.

California Association of Local Conservation Corps (CALCC), \$50,000 project grant over one year to support implementation, in conjunction with the California Departments of Juvenile Justice and Parole, County Departments of Juvenile Probation, and the California Department of Corrections and Rehabilitation, of a plan for up to fourteen Civic Justice Corps Preps that change the way the juvenile justice system and staff operate in California by providing service-learning opportunities leading to green collar work for young people aged 19-25 either incarcerated or serving state parole or county probation in California. This grant would advance the Criminal Justice Fund's interest in promoting civic participation and leadership and political re-enfranchisement of people with criminal records and reducing barriers to reentry by expanding opportunities for education, public service and green collar work.

Justice Mapping Center, \$100,000 project grant renewal over one year to educate about the relationship of criminal justice policy to place and the importance of reinvesting in the civil institutions of high incarceration communities, and to expand the grantee's funding sources. OSI funding will enable Justice Mapping Center to continue its non-partisan research and technical assistance, public education, and policy analysis and advocacy highlighting the connection between the predominance of the criminal justice system in low-income communities of color and the concomitant neglect of civil institutions in those neighborhoods. This grant would advance the Criminal Justice Fund's interest in fostering cross-sector and multi-agency government collaboration and accountability for shrinking prison and jail populations at sufficient scale to generate savings for reinvestment in the civil society institutions and reentry infrastructure of high-impact communities through reinvested justice dollars.

Harry Levine (Community Studies of New York as fiscal agent), \$90,000 over one year, to support "Racial Bias in U.S. Marijuana Possession Arrests: Policing Policy and Misdemeanor Arrests in Obama's America." The project combines policy advocacy, activism, interventions, and research focusing on the racial bias in marijuana arrests nationally and in New York. The work emphasizes the damaging, stigmatizing effects of the arrests and criminal records, especially on black and Latino teenagers and young men. The project builds upon the substantial work, connections, and resources developed in the initial phase of the project (described in part in the report "Marijuana Arrest Crusade" released through the NYCLU). Of special interest will be the role of federal grants to police departments which likely fund many of these arrests, and of potential regulatory changes within the U.S. Justice Department that could substantially reduce them. In addition to project's primary focus on marijuana arrests, we are more broadly

interested in police practices and their effects for common low-level offenses including other misdemeanors, stop and frisks, DNA collection, and even the inevitable resulting warrants and arrests when young people cannot pay fines from tickets. The election of Barack Obama and the new U.S. policy environment provide an extraordinary opportunity to focus local and national attention on the ever growing criminalization of young blacks and Latinos.