

Criminal Justice Fund

Memo

To: Ann Beeson

From: Leonard Noisette; Terrance Pitts; Angela Cheng; Allisonjoy Faelnar

Date: March 25, 2011

Re: Out-of-Docket Grant Recommendations

Criminal Justice Fund staff recommends five out-of-docket grants to provide time sensitive support to work advancing core priorities. Two grants would support our goal of eliminating harsh punishment, one to the **University of California at Berkley Death Penalty Clinic** to support its continued work challenging lethal injection practices, and a second to the **Northwestern University's Center on Wrongful Convictions**, to assist in the development and dissemination of comprehensive database of all exoneration in the United States since 1989. Three grants would support our goal to eliminate racial disparities and securing an equitable system of justice by advancing our police accountability efforts in New York City including the following: **John Jay Legal Services** to fund polling and survey efforts to demonstrate the negative impact of the New York City Police Department's zero tolerance enforcement and arrest practices; and **Make the Road New York** and **Spitfire Strategies** to support our continuing efforts to build a broad-based advocacy campaign to challenge NYPD's racially disparate stop-and-frisk practices.

Grant ID: 20032201

Name of Organization: Northwestern University

Tax Status: 501(c)(3) public charity

Name of Fiscal Sponsor: Not Applicable

Purpose of Grant: to assemble and disseminate a comprehensive database of all exoneration in the United States since 1989 and to make data available through an Internet-based National Registry of Exonerations.

Grant Description: \$25,000 to assemble and disseminate a comprehensive database of all exoneration in the United States since 1989— DNA and non-DNA alike — an estimated total of more than 750 cases presently. The project will also make the list of those exonerations and data on them available through an Internet-based National Registry of Exonerations, and to collect, over time, better and more complete information about exonerations in the United States — which in turn will further the goal of publicizing the extent and the causes of the problem of false criminal convictions in the United States. The project advances the Criminal Justice Fund’s (CJF) priority of promoting a more fair and equitable system of justice. Moreover, the project advances the efforts of the national Campaign to Abolish the Death Penalty by 2025 by highlighting how systemic problems with capital punishment expose innocent individuals to be sentenced to death.

Previous OSF Support: \$40,000 USJ Re-Entry 1997; \$220,000 USJ Re-Entry 1997; \$10,000 USJ Re-Entry 1998; \$40,000 USJ Re-Entry 1999; \$280,000 Criminal Justice Fund 2010.

Organization Budget: \$888,852 (Center on Wrongful Convictions at Northwestern University School of Law)

Project Budget: \$52,200

Sources of Support: \$10,000 Vital Projects Fund; \$10,000 University of Michigan; \$7,500 Proteus Action League.

Amount Requested: \$25,000

Contingency Grant?: No

Amount Recommended: \$25,000 (Criminal Justice Fund, T1: 24016)

Term: 1 year (April 1, 2011 – April 1, 2012)

Matching Requirements: None

Description of Organization:

The Center on Wrongful Convictions (CWC)—now a world-renowned project of the Bluhm Legal Clinic at Northwestern University School of Law—is dedicated to identifying and rectifying wrongful convictions and other serious miscarriages of justice. Directed by the award-winning legal affairs journalist, Robert Warden, CWC was the first university-based innocence project to accept non-DNA as well as DNA cases. The CWC mission has three components: representation, research, and community services.

CWC faculty, staff, cooperating outside attorneys, and Bluhm Legal Clinic students investigate possible wrongful convictions and represent imprisoned clients with claims of actual innocence. The research component focuses on identifying systemic problems in the criminal justice system and developing initiatives designed to raise public awareness of the prevalence, causes, and social costs of wrongful convictions and to promote reform of the criminal justice system. The community services component helps exonerated former prisoners cope with the difficult process of reintegration into society. Since its inception, the CWC has been instrumental in the exonerations of 23 innocent men and women in Illinois. In addition to working to exonerate the innocent, one of the CWC's main goals since its founding has been to support reforms in the criminal justice system that will reduce the frequency of wrongful convictions. The CWC is cooperating with Professor Samuel Gross of the University of Michigan Law School to complete the current project.

Description of the Project for Which Funding Is Sought:

From its inception, the Center on Wrongful Convictions (CWC) has collected files on as many cases of possible wrongful convictions in the United States as could be identified and documented. By late 2009, the CWC had files on approximately 1,400 such cases, stretching back to the 19th century. Since October 2009, the CWC has been working with Professor Samuel Gross at the University of Michigan Law School, and a number of law-student and law-graduate research assistants, to create a comprehensive database of exonerations in the United States from 1989 onward.

In April 2004, Professor Samuel Gross released a report analyzing data on 340 exonerations in the United States from 1989 through 2003. (The Gideon Project of OSF provided major funding for that report.) This report was later published as *Exonerations in the United States, 1989 Through 2003*, 95 *Journal of Crim. L. & Criminology* 523 (2005) (with Kristen Jacoby, Daniel Matheson, Nicholas Montgomery & Sujata Patil). Now dated, the report remains the only comprehensive listing and analysis of a set of all known exonerations in the United States, capital and non-capital, those based on DNA evidence and those without DNA. The current project aims to improve and expand that study to make it more comprehensive and accessible on the Internet in the form of a National Registry of Exonerations as an on-going effort.

Project Objectives

To accomplish the scope of work outlined above, Professors Warden and Gross will lead a team of research assistants to accomplish the following:

1. Identify, research, code, and report on 750 to 800 exonerations;
2. Construct a website and prepare a public report on those exonerations;
3. Publicize the extent of the problem of false convictions in the United States, and the underlying problems in criminal investigation and adjudication that lead to wrongful convictions;
4. Demonstrate that wrongful convictions are a major problem that extends beyond the realm of the murder and rape cases that are the subjects of almost all DNA and death-row exonerations;

5. Establish an ongoing National Registry of Exonerations at the CWC in cooperation with the University of Michigan Law School; and
6. Use the Registry to collect, over time, better and more complete information about exonerations in the United States — which in turn will further the goal of publicizing the extent and the causes of the problem of false criminal convictions in the United States.

Rationale for Recommendation:

The project advances the Criminal Justice Fund's (CJF) priority of promoting a more fair and equitable system of justice. Moreover, the project advances the efforts of the national Campaign to Abolish the Death Penalty by 2025 by highlighting how systemic problems with capital punishment expose innocent individuals to be sentenced to death.

Exonerations have become common in the United States — or so it seems. There have been 267 DNA exonerations since 1989, and 138 death-row exonerations since 1973 — 17 of which were based on DNA evidence. These exonerations have had a major impact on the criminal justice system. They are the root cause of a host of reforms, improving the procedures for everything from eyewitness identification and police interrogation procedures to post conviction collateral review. Public awareness of the danger of executing innocent defendants has been the most powerful force behind the great reduction in use and support for the death penalty over the past ten years. Since 2007, concern about executing innocents has led to the repeal of capital punishment in New Jersey, New Mexico, and most recently, Illinois.

One of the most important contributions to the study of exonerations was Professor Gross's 2004 OSF-funded study, which made the persuasive case that there are many more wrongful convictions, probably hundreds of times as many. Although exonerations seem to be an everyday occurrence because they still attract a great deal of individual attention, we only know of about 50 exonerations a year, an average of one per state per year — a tiny number in a country with more than a million felony convictions a year. The overwhelming majority of the wrongful convictions that we do know about — those that produce exonerations — are for rape and murder. These two extreme crimes of violence account for only two percent of all felony convictions but 96 percent of the 340 exonerations in Professor Gross's 2004 study. Rape and murder exonerations are the most visible since they are the most serious common crimes of violence and receive the most attention from innocence projects and other attorneys and courts, especially when the penalties are severe. However, many exonerations remain hidden from public view because they are known primarily to the parties involved and receive no media attention. This observation is particularly true for exonerations for crimes lesser than rape and murder. For example, little information is known about non-DNA rape exonerations, non-DNA exonerations for other crimes of violence, and exonerations for non-violent felonies and misdemeanors.

As a result of the gaps in knowledge about exonerations, the public is only aware of a fraction of the false convictions that come to light, and the magnitude of the problem of false convictions is greatly underestimated. Moreover, the exonerations that are known are highly *unrepresentative* of the all exonerations. This fact creates the wrong impression that false convictions are an insignificant risk in cases other than murder and rape and are a minor issue for convictions that are based on plea bargains or result in light sentences. This lack of knowledge about exonerations limits the range of issues that seem important and reforms possible. The missing data also gives the false impression that most miscarriages of justice can be detected by DNA. Overall, this distorted view of exonerations greatly hampers systematic research on false convictions and on procedural reforms that might prevent them.

The project team is well suited to develop a National Registry of Exonerations. Robert Warden, director of the CWC is the author or co-author of hundreds of articles and seven books, including four focusing on

wrongful convictions. He has more than 50 journalism awards. In 2003, he was inducted into the Chicago Journalism Hall of Fame. Prof. Samuel Gross of the University of Michigan Law School has published two books and numerous articles on the death penalty, false convictions, racial profiling, eyewitness identification, and related topics. In 2005, Prof. Gross published a detailed analysis of all known exonerations in the United States from 1989 through 2003.

Thus far, the project team has identified 1,400 potential cases of wrongful convictions, uncovered approximately 750 exonerations and coded 725 of them. However, much more work is needed to give a full picture and scope of the problem. Support from CJF will allow the Center on Wrongful Convictions to build knowledge about the extent, causes and social costs of wrongful convictions to advance reforms that can improve the fairness and accuracy of the criminal justice system. For the above-mentioned reasons, CJF recommends project support in the amount of \$25,000 over one year to Northwestern University to advance the work of the Center on Wrongful Convictions.

Grant ID: #20032116

Name of Organization: The Regents of the University of California

Tax Status: 501(c)(3) public charity

Name of Fiscal Sponsor: Not Applicable

Purpose of Grant: to support the U.C. Berkeley School of Law Death Penalty Clinic's Lethal Injection Project to continue providing vital assistance to death-sentenced individuals and litigators fighting lethal injection procedures in various states.

Grant Description: \$50,000 project support renewal over six months to allow the Lethal Injection Project at U.C. Berkeley School of Law to continue providing vital assistance to death-sentenced individuals and litigators fighting lethal injection procedures. The Clinic provides full-time legal consultation on lethal injection issues to litigators, policy-makers, activists, and journalists around the country and participates in state-based advocacy challenging lethal injection through litigation and administrative proceedings. This grant will advance the Criminal Justice Fund's priorities of abolishing the death penalty and eliminating race and class disparities in sentencing. The work of the Lethal Injection Project (Project) also advances the goals of the Campaign to Abolish the Death Penalty by 2025.

Previous OSF Support: \$65,000 Criminal Justice Fund 2010; \$50,000 Criminal Justice Fund 2009; \$50,000 Gideon Project 2008; \$50,000 U.S. Justice Fund Communications Fund 2008

Organization Budget: \$1,285,148 (Berkeley Law Death Penalty Clinic)

Project Budget: \$237,000

Sources of Support: \$75,000 Atlantic/Proteus Action League; \$25,000 Vital Projects Fund, Inc.; \$22,000 Tides/Sheilah's Fund

Amount Requested: \$50,000

Contingency Grant?: No

Amount Recommended: \$50,000 (Criminal Justice Fund, T1: 24016)

Term: 9 months (April 1, 2011 - December 31, 2011)

Matching Requirements: None

Description of Organization:

The University of California was chartered in 1868 and its flagship was established at Berkeley. U.C. Berkeley is one of the world's premier public universities and a wellspring of innovation. The academic community makes key contributions to the economic and social well-being of the Bay Area, California, and

the nation. As of the Fall of 2010, there were 35,838 students including 25,540 undergraduates and 10,298 pursuing graduate degrees. Established in 2001, the Death Penalty Clinic (DPC) at U.C. Berkeley Boat Hall School of Law is dedicated to ending the unfair and unequal administration of capital punishment in the United States. The Clinic works with approximately 16 students each semester in every aspect of litigating a capital case. In collaboration with leading academics, lawyers, and experts from a range of fields, the Clinic also engages students in projects that address systemic inequities affecting capital and non-capital defendants, such as race discrimination and the denial of effective representation. The Clinic currently provides direct, individual representation to death row clients in California and Alabama, and has been integral to the successful resolution of several pre-trial capital cases in Virginia and Alabama. The Clinic also serves as an important resource to capital defense attorneys across the country.

Description of the Project for Which Funding Is Sought:

This grant will allow the highly successful Lethal Injection Project of the U.C. Berkeley School of Law Death Penalty Clinic (DPC) to continue providing services to litigators and abolitionist groups nationwide. The Project provides full-time legal consultation on lethal injection issues to litigators, policy-makers, activists, and journalists around the country, and participates in state-based advocacy challenging lethal injection through litigation and administrative proceedings. The main goals of the Project are to 1) support legal challenges to lethal injection; and 2) educate the public about the realities of lethal injection and support the work of anti-death penalty advocates. To accomplish these goals, the Project staff will pursue several objectives and activities outlined in detail below.

1. Provide Case Consultation

Project attorneys bring expertise and a breadth of knowledge about lethal injection and litigation to support lawyers across the country who otherwise would not have the information necessary to promote their case and survive procedural and substantive hurdles. To provide critical case consultation, Project attorneys will: 1) consult with and assist attorneys across the country; 2) draft and edit pleadings; and 3) assist with discovery.

2. Support Administrative Challenges and Proceedings

Legal challenges under state Administrative Procedures Acts (APA) can invalidate existing execution protocols, halt executions, and draw media and public attention to the many problems surround capital punishment. To support administrative challenges and proceedings, Project attorneys will: 1) assist counsel in up to three jurisdictions to litigate APA challenges; and 2) continue to participate in ongoing administrative proceedings including drafting public comments and coordinating with activists and litigators to coordinate responses to the regulatory process.

3. Assist with Expert Witness Development

Because of the medical and scientific aspects of lethal injection, litigators must confer with experts in order to gain an understanding of how lethal injection works and the risks it poses, and how to pursue their legal challenges in court. To support expert witness development, Project staff will: 1) identify potential experts; 2) educate potential experts about lethal injection; and 3) connect potential experts with litigators in need of consulting and testifying experts.

4. Continue Development of Web-Based Clearinghouse

The Project's website, lethalinjection.org, provides litigators, journalists, and activists with a one-stop shop for all the information they need about lethal injection and has proved to be an invaluable resource to hundreds of users. Because the needs of these groups are different and implicate different concerns,

project attorneys have designed the website to provide different levels of access. The information for journalists and advocates is unsecured, so anyone can come to the website and peruse public records and updates about lethal injection. The section for litigators is password protected, so that the Project is able to offer litigators access to a database of pleadings and other sensitive documents. To support the development of the website, the Project staff will: 1) maintain existing categories and resources; and 2) develop new categories and sections to meet new developments and challenges.

5. Coordinate Communications Efforts with Anti-Death Penalty Activists

Legal challenges to lethal injection—whether substantive challenges that reveal flawed practices, administrative challenges that invalidate an existing protocol, or applications for stays of execution—often attract media coverage and otherwise bring attention to capital punishment. To support coordination with anti-death penalty advocates, Project staff will: 1) participate in and lead strategy calls with advocates, litigators, and communications specialists; 2) draft talking points and media plans; and 3) consult with abolitionists groups during the public hearing regulatory process.

6. Coordinate Strategic Planning

The legal landscape with respect to lethal injection can change quickly and unexpectedly. A botched execution can bring renewed media interest. The Project staff is positioned to coordinate strategic planning around emerging developments by convening strategy calls and meetings with an informal advisory committee and teams of litigators in several states.

Rationale for Recommendation:

This grant will advance the Criminal Justice Fund’s priorities of abolishing the death penalty and eliminating race and class disparities in sentencing. The work of the Lethal Injection Project (Project) also advances the goals of the Campaign to Abolish the Death Penalty by 2025.

While lethal injection litigation continues to halt executions in at least ten states and the federal government,¹ recent developments have provided an opening to further challenge the use of lethal injection. In January 2011, Hospira, the sole domestic manufacturer of sodium thiopental, the first of three drugs used in lethal injections, announced it would cease production of the drug. This move will force many states to conduct time-consuming administrative and legislative processes to change drugs used in their execution protocols. Project attorneys will continue to work with litigators across the country providing them with information about the steps each state must take to address the thiopental shortage.

Moreover, as states try to avoid the drug shortage by seeking unapproved foreign supplies, the Project’s attorneys will continue to work with litigators and advocates to expose what the states are doing, urge courts to enforce federal laws and to ensure that illegally obtained drugs are not used. In particular, Project attorneys have worked with the private bar to file the first major lawsuit in federal court against the FDA to prevent states from importing unregulated and foreign sources of thiopental. Project attorneys will also continue to file open records requests to expose how states acquire the drugs they use to execute prisoners.

¹ Jurisdictions with *de facto* moratoria due to lethal injection litigation include: Arizona, Arkansas, California, Delaware, North Carolina, Kentucky (conducted execution of volunteer but other executions on hold), Louisiana (conducted execution of volunteer but other executions on hold), Maryland, Nebraska, Oklahoma (as of Aug. 2010), Pennsylvania, Washington, and the U.S. Government.

The Project serves as a powerful reminder that challenging and exposing lethal injection procedures, coupled with strategic litigation, can further the goal of abolition. New Jersey abolished the death penalty following successful lethal injection litigation. In Maryland, state legislators recently announced they were gearing up for hearings into revised lethal injection procedures. However, given Hospira's recent announcement, state legislators called off the hearings and prison officials must now revise their lethal injection protocols again. North Carolina, a state that executed approximately five people per year from 2001 to 2006, has not executed anyone in four years, thanks to lethal injection litigation in that state. Lethal injection litigation pending in the U.S. District Court in Washington, D.C., has also stopped the executions of several federal death row inmates. Likewise, executions in California—which threatened to increase in pace dramatically at the beginning of 2006—have now been on hold for almost five years as a result of several lethal injection challenges pending in state and federal courts.

Litigation has lifted the shroud of secrecy that surrounds lethal injection practices, revealing that states routinely carry out executions in a manner that is disorganized, unprofessional, and dangerous, and that lethal injection procedures have placed condemned men and women at risk of extreme pain and suffering. Against that backdrop, the Project is currently providing consultation (through direct support as well as through the lethlainjection.org website) for ongoing and/or planned litigation in as many as nineteen jurisdictions.²

In addition to cutting-edge legal, strategic, and ethical issues, lethal litigation requires a detailed understanding of complicated medical issues and a connection to relevant experts (such as anesthesiologists and pharmacokineticists). While many lawyers do not have the experience to litigate these complex cases successfully, the Project continues to provide invaluable expertise to litigators and advocates across the country. For the reasons stated here, the CJF recommends a project support grant of \$50,000 over nine months to the Regents of the University of California to support the Lethal Injection Project at the U.C. Berkeley School of Law Death Penalty Clinic.

² Arizona, Arkansas, California, Delaware, Florida, Idaho, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, North Carolina, Ohio, Pennsylvania, Tennessee, Washington, and the Federal jurisdiction.

Grant ID: #20032152

Name of Organization: John Jay Legal Services, Inc.

Tax Status: 501(c)(3) public charity

Name of Fiscal Sponsor: N/A

Purpose of Grant: to conduct quantitative and qualitative research in the South Bronx to demonstrate the impact of zero tolerance policing on community stakeholders

Grant Description: \$10,000 project support to John Jay Legal Services over eight months to support research that quantifies the cumulative costs of zero tolerance policing to the residents of a single neighborhood block in the South Bronx. Researchers will conduct polling and focus groups to examine how zero tolerance police interactions, such as stop and frisk encounters, arrests, and summonses for low-level crimes, affect school attendance, loss of jobs, loss of housing, and other mechanisms. The research will also examine other spillover effects of zero tolerance policing on community members, such residents attitudes toward and trust in the criminal justice system. This grant advances the Criminal Justice Fund's priorities of eliminating racial disparities and ensuring a fair and equitable system of justice by supporting the development of research to document the collateral consequences of zero-tolerance policing on poor communities of color in New York City.

Previous OSF Support: N/A

Organization Budget: \$931,706

Project Budget: \$51,705

Major Sources of Support: \$25,105 John Jay Legal Services, Inc. (in-kind); \$6,600 Public Science Project at CUNY Graduate Center; \$5,000 Community Service Society; \$5,000 Individual Contributions

Amount Requested: \$10,000

Contingent Grant?: No

Amount Recommended: \$10,000 (Criminal Justice Fund T1: 24017)

Term: 8 months (May 1, 2011 to December 31, 2011)

Matching Requirements: None

Description of Organization:

John Jay Legal Service, Inc. is the nonprofit corporation under which the Pace University Law School clinical programs operate. Opened in White Plains, New York, in 1976, Pace Law School currently enrolls more than 750 students. Through John Jay Legal Services, the law school offers clinics for students to represent clients

in four different areas: criminal trial advocacy, disability rights litigation and transactional representation; immigration and immigrants' rights; and investor rights/securities arbitrations. The Criminal Justice Clinic at Pace Law School represents indigent clients who are charged with misdemeanor offenses in the Bronx County Criminal Court. Student attorneys enrolled in the Criminal Justice Clinic handle all aspects of the representation, from arraignment through sentencing.

Description of the Project for Which Funding Is Sought:

John Jay Legal Services, through Pace Law School, will conduct empirical research to demonstrate the cumulative impact of CompStat³-based zero-tolerance policing (ZTP) on community residents and stakeholders by studying one discrete geographical area in the South Bronx. John Jay will conduct the research in collaboration with the Public Science Project (PSP) at the Graduate Center of the City University, the Community Service Society (CSS) and the New York Civil Liberties Union (NYCLU). Funding from the Criminal Justice Fund will support stipends for researchers, polling expertise and expenses for a stakeholder convening.

The study will calculate the costs of ZTP to community residents and stakeholders by concentrating on the costs associated with the two main categories of ZTP police interaction: arrests and summonses for low-level crime (e.g. marijuana possession or trespassing) and stop-and-frisk activity. The project researchers will investigate the costs of mass misdemeanor arrests, not only to those arrested but also to neighbors and family members. To calculate these costs, the research team will investigate the following:

1. Days of work and school missed
2. Jobs lost
3. Children removed from custody as a result of a parent's arrest
4. deportation of the family's breadwinner as a result of a low-level misdemeanor arrest
5. Loss of housing
6. Imposition of court fees and fines and
7. Destruction of credit scores.

The researchers will also explore less quantifiable, psychological costs such as:

1. Legitimacy of the criminal justice system
2. Willingness to cooperate with police investigation
3. Feelings of threat, insecurity, safety and support and
4. Responsiveness of police to community complaints and concerns about crime reporting.

The research protocol is inspired by the concept of the Million Dollar Block study which calculated the cost of incarcerating residents of single blocks and raised public consciousness about the wise allocation of criminal justice resources. By focusing on a discrete area, the study's proponents seek to broaden the public perception of the impact of CompStat-based zero-tolerance policing. In addition to the CompStat Block study, advocates and researchers plan to use the research findings to advocate for reform of police practices. John Jay Legal Services will work with its community partners to develop an advocacy plan after the research findings are compiled and analyzed in the Fall of 2011. The research team will gather community stakeholders and advocacy organizations, such as the Center for Constitutional Rights and the NAACP Legal

³ CompStat is an approach to crime reduction employed by NYPD using Geographical Information Systems (GIS) to map crime in weekly crime reports including arrests and summons activity, a report of significant cases, and a report of crime patterns and activities. The reporting is at the precinct, patrol borough and city-wide levels. CompStat also involves weekly crime control strategy meetings. The CompStat approach has also been adopted by other police jurisdictions.

Defense and Educational Fund, in April 2011 to ensure cooperation and to discuss how to leverage shared interests with regard to police reform in New York City. In December 2011, the research team will reconvene to release the final version of the report in a community forum.

Rationale for Recommendation:

This grant advances the Criminal Justice Fund’s priorities of eliminating racial disparities and ensuring a fair and equitable system of justice by supporting the development of research to document the collateral consequences of zero-tolerance policing on poor, communities of color in New York City.

Policing strategy has changed dramatically over the last two decades with the advent of the computer program known as CompStat and the embrace of order and maintenance or zero-tolerance policing (ZTP) strategies. Rather than responding to crime, police now focus resources in high-crime or “hot spots,” which are identified and mapped by CompStat. In theory, police no longer merely respond to crime but prevent crime by proactively allocating resources in targeted areas.

Unfortunately, while the NYPD praises CompStat for crime reduction, the ZTP policing strategies have negatively impacted poor communities of color in New York City through aggressive use of stop-and-frisk activity and a high-level of misdemeanor arrests and summons which continue to feed the African-American and Latino residents into the criminal justice system. In 2010, New York City police officers made over 600,000 street stops, a 3.5 percent increase from stops made in 2009 and “more people were arrested last year in New York City on charges of marijuana possession than during the entire 19-year period from 1978 to 1996....”⁴ Eighty-six percent of those arrested are black or Latino even though whites use marijuana at higher rates. Despite NYPD claims that its policing strategies are effective in reducing crime, there is no conclusive evidence to support the assertion that ZTP has been the primary reason for the historic crime decline in New York City.⁵

The Criminal Justice Clinic of Pace Law School represents dozens of clients annually who are arrested without probable cause and jailed overnight as a result of ZTP. In arraignment interviews, clients tell similar stories regarding the policing of their communities: routine illegal searches, arbitrary arrests and summonses, and generally feeling intimidated by police officers that demonstrate little respect for community residents. To date, the clinic’s data has been limited to anecdotal information. Funding from the Criminal Justice Fund will allow the clinic to partner with other community advocates to fully document the negative collateral consequences of NYPD’s ZTP strategies by polling a broad range of residents in the South Bronx. For the above-mentioned reasons, CJF recommends a project support grant in the amount of \$10,000 to John Jay Legal Services over eight months.

⁴ Alice Speri, “2010 Marijuana Arrests Top 1978-96 Total,” *New York Times*, Feb. 11, 2011 (authority cited is the Drug Policy Alliance).

⁵ Through a separate grant, the Criminal Justice Fund is supporting a team of researchers affiliated with John Jay College of Criminal Justice to explore the historic crime decline in New York City.

Grant ID #20031804

Name of Organization: Make the Road New York

Tax Status: 501(c)(3) public charity

Name of Fiscal Sponsor: N/A

Purpose of Grant: to convene New York City advocates working on police accountability issues to develop campaign goals, policy objectives and strategies that address the negative consequences and racially disparate impact of the New York Police Department's stop-and-frisk practices.

Grant description: \$49,900 project support over six months to Make the Road New York (MRNY) to convene New York City advocates from different sectors (litigators, researchers, community organizers, communications/media specialists) working on police accountability to develop a coordinated strategy to address the negative consequences and racially disparate impact of the New York Police Department's stop-and-frisk practices. This grant advances the Criminal Justice Fund's priorities to eliminate racial disparities and secure a fair and equitable system of justice by reforming police practices.

Previous OSI Support: \$924,880
 \$192,530 Criminal Justice Fund 2010; \$500,000 Seize the Day Fund 2009; \$50,000 USJF Racial Justice Initiative 2006; \$7,350 Strategic Opportunities Fund 2005; \$100,000 USJF Racial Justice Initiative 2004; \$75,000 NYC Community Initiative 2000

Organization Budget: \$6,900,000

Project Budget: \$49,900

Sources of Support: N/A

Amount Requested: \$49,900

Amount Recommended: \$49,900 (Criminal Justice Fund, TI: 24017)

Term: 6 months

Matching Requirements: None

Description of Organization

Make the Road New York (MRNY) promotes economic justice, equity and opportunity for all New Yorkers through community and electoral organizing, strategic policy advocacy, leadership development, youth and adult education, and high quality legal and support services. The organization was created in 2007 through the merger of Make the Road by Walking and the Latin American Integration Center, two grassroots organizations with a track record of supporting and educating immigrant New Yorkers, including youth. The merger created a citywide organization that combines democratic accountability to

low-income people and mix of strategies to confront inequity and economic injustice. The organization is membership-led and based in the low-income communities of Bushwick, Brooklyn, Northwest Queens, and Port Richmond, Staten Island. With more than 7,000 members, MRNY is one of the largest participatory immigrant organizations in New York City.

Description of the Project for Which Funding Is Sought

Building on the work and momentum achieved at a stakeholder convening in October 2010 sponsored by the Criminal Justice Fund and the Human Rights and Reconciliation Programme at The Atlantic Philanthropies, Make the Road New York (MRNY) will convene litigators, researchers, community organizers, communications specialists, and law enforcement to develop advocacy goals, policy objectives and strategies to address the negative consequences and racially disparate impact of the New York Police Department's stop-question-and-frisk (SQF) practices.

Specifically, OSF funding will enable MRNY to coordinate three convenings to facilitate dialogue and action-planning resulting in a more informed and coordinated approach to advocacy intended to limit the negative collateral consequences of NYPD's SQF. The first two convenings will allow groups to be organized along similar practice or affinity areas to discuss issues and develop advocacy goals. The first convening will bring together primarily grassroots, base-building organizations. The second convening will consist of mainly policy and legal organizations. During these initial one-day convenings, groups will build upon agreements formed at the October 2010 stakeholder meeting and develop proposals for coordinated action. During the final two-day convening, all of the affinity groups will come together to discuss the proposals developed in the preceding meetings and form a consensus-oriented advocacy plan that may include agreed upon policy objectives, communications strategy, and proposal for staffing an action campaign. Spitfire Communications (also recommended for funding on this docket) will play a key role in providing communications expertise and media training during each of the three convenings.

To facilitate maximum participation by advocates and philanthropy, MRNY will form a planning committee of eight representatives from OSF, The Atlantic Philanthropies, New York Civil Liberties Union, Center for Constitutional Rights, the Justice Committee, Spitfire Strategies, and Joo-Hyun Kang, an experienced organizer, facilitator and meeting designer. The planning committee will help define the convening participant lists and draft meeting agendas. The committee will also provide feedback in finalizing convening summaries and key findings.

To ensure that all aspects of the convenings are executed well, MRNY will provide central coordination, including supporting meeting logistics, scheduling, agenda development, and meeting facilitation. MRNY will also provide a special rapporteur and develop a final public report.

Rationale for Recommendation

This grant advances the Criminal Justice Fund's priorities of eliminating racial disparities and ensuring a fair and equitable system of justice by directly involving impacted communities to design and advocate for changes to policing practices in New York City.

New York City police officers made over 600,600 street stops in 2010, about a 3.5 percent increase from the more than 580,000 stops the department logged in 2009, the previous recorded high. Only 7 percent of the stops last year led to an arrest, compared with 6 percent in 2009. While there are currently legal challenges to these practices, unfortunately litigation has to date not successfully abated the collateral consequences impacting New York City's predominately African-American and Latino communities. One of the major consequences of the stops has been an alarmingly high rate of black and Latino youth arrested for marijuana possession. According to the Drug Policy Alliance, "more people were arrested

last year in New York City on charges of marijuana possession than during the entire 19-year period from 1978 to 1996....”⁶ Eighty-six percent of those arrested are black or Latino even though whites use marijuana at higher rates. Marijuana drug arrests for even the smallest amounts can lead to lifelong consequences. For example, permanent criminal records impact “young peoples’ position with regard to employment, housing, schooling, credit, occupational licensing, family court, and immigration status.”⁷ Those arrested for marijuana arrests are subjected up to a year’s probation while facing a permanent criminal record.

The success of future work to address NYPD’s SQF policies and practices will require strategic coordination of advocates across multiple sectors. Base-building grassroots organizations can work with communications experts to leverage their presence in the city’s neighborhoods to attract media by putting faces and stories behind the issue while engaging policymakers to discuss concerns. At the same time, researchers, attorneys, and policy specialists can contribute expertise and lessons learned from their long history of police accountability advocacy in New York City. MRNY’s proposal for two smaller convenings from different sectors will enable the various communities to move forward in a strategic and targeted fashion. Similarly, a larger convening, when all sectors come together to identify areas of collaboration, is indispensable for a more coordinated advocacy effort.

Make the Road’s proposed project is timely and crucial to build on the momentum from CJF’s October 2010 convening, which built new and deepened existing relationships of individuals and organizations across sectors among New York City’s advocacy community working on police accountability. In addition to developing specific strategies to address stop and frisk practices in New York City, the outcomes of the proposed 2011 convenings will also inform CJF’s grantmaking priorities for its police accountability portfolio, including grantmaking strategy for 2011 and 2012.

Make the Road is well-positioned to be the convener of the three proposed strategic sessions. The organization has developed trusted partnerships throughout the city with small grassroots organizations and large nonprofit organizations alike. MRNY’s public policy work always includes close collaboration with its partners. For example, MRNY’s relationships with public education advocates supported the development of new city policies, which will require the NYPD and the NYC Department of Education to routinely disclose basic information on school safety, such as the number of students suspended during the school year, the number of suspension-related school transfers, and NYPD activity within NYC public schools. MRNY is also a current CJF grantee and is working with Spitfire Communications to train media spokespeople from organizations in communities directly impacted by NYPD’s SQF practices and to nurture the development of a grassroots coalition that will speak out against NYPD’s practices and advocate for change.

MRNY is developing its infrastructure and capacity as meaningful player advocating for social justice reform in New York City. Over the past four years, MRNY increased its budget from \$2 million to almost \$7 million. Moreover, Make the Road was a lead partner in creating the organization Social Justice Leadership, a Democracy and Power Fund grantee that provides high-quality leadership training to staff of community organizations, labor unions, and other social justice organizations in New York City. For the above-mentioned reasons, the CJF recommends a project support grant of \$49,900 over six months to Make the Road New York.

⁶ Alice Speri, “2010 Marijuana Arrests Top 1978-96 Total,” *New York Times*, Feb. 11, 2011.

⁷ Drug Policy Alliance, “\$75 Million a Year: The Cost of New York City’s Marijuana’s Possession Arrests,” March 2011.

Grant ID: #20032177

Name of Organization: Spitfire Strategies LLC

Tax Status: For-profit entity

Name of Fiscal Sponsors: N/A

Purpose of Grant: to provide strategic communications support and training to advocacy organizations working to address the racially disparate impact of New York City Police Department's (NYPD) stop-and-frisk practices

Grant Description: \$44,554 project support over six months to provide communications and effective messaging expertise and capacity building support to advocacy organizations working to address the racially disparate impact of New York City Police Department's (NYPD) stop-and-frisk practices. Spitfire will collaborate with Make the Road New York to plan and develop communications support at three convenings designed to help organizations develop more coordinated advocacy strategies. This grant supports the Criminal Justice Fund goal of eliminating racial disparities and securing an equitable justice system by challenging the racial inequities of New York City policing practices.

Previous OSI Support: \$482,384
(\$113,064 Criminal Justice Fund 2010; \$169,320 Criminal Justice Fund 2010; \$200,000 Gideon Project 2008)

Organizational Budget: \$6,200,000

Project Budget: \$44,554

Sources of Support: None

Amount Requested: \$44,554

Amount Recommended: \$44,554 (Criminal Justice Fund, TI: 24017)

Term: 6 months

Matching Requirements: None

Description of Organization:

Based in Washington, DC, Spitfire Strategies was founded in 2002 to provide strategic communications solutions to promote positive social change. Spitfire's mission is to help social change organizations use their voice in a strong, clear and compelling way to articulate their vision of a better world. Specifically, Spitfire provides communications assessments, strategic planning, implementation and training to philanthropies and nonprofits.

Description of the Project for Which Funding Is Sought:

Spitfire Strategies will collaborate with Make the Road New York to plan and manage a series of three capacity-building convenings designed to support organizations as they develop a set of coordinated advocacy goals, policy objectives and strategies to address the negative consequences and racially disparate impact of the New York Police Department's stop-question-and-frisk (SQF) practices. These convenings will build upon the work and momentum achieved at a preliminary two-day stakeholder convening held in October 2010 sponsored by Criminal Justice Fund and the Human Rights and Reconciliation Programme at The Atlantic Philanthropies. At that convening, over 30 advocacy organizations gathered to develop an initial framework for analyzing coordinated advocacy to address NYPD's SQF practices. OSF funding will enable Spitfire to accomplish the following during the grant period:

- Serve on the planning committee of three capacity-building convenings led by Make the Road New York while supporting advocacy to address the collateral consequences of NYPD's SQF practices;
- Support the development of the content and agendas of the capacity-building convenings;
- Integrate a communications and messaging framework into advocacy plans that groups develop at the convenings;
- Provide an updated national and NYC media scan of SQF issues so that meeting participants have the most up-to-date understanding of the media landscape (Spitfire originally completed a national media scan in October 2010 with the support of a separate CJF grant);
- Review research findings from the focus groups that Spitfire conducted in December 2010 and package the findings in a format that will be most useful to convening participants (the focus groups were funded with support from CJF under a separate grant);
- Emphasize ways that communications planning can leverage the findings from the focus groups to determine key audience targets and messages;
- Provide a written summary of the key decision points at each of the three convenings as they relate to communications strategy including a communications summary for the final report made available to advocates; and
- Provide strategic counsel and capacity-building support to groups about campaign planning or strategic communications as determined necessary by the planning committee.

Rationale for Recommendation:

This grant advances the Criminal Justice Fund's priorities of eliminating racial disparities and ensuring a fair and equitable system of justice by directly involving impacted communities to design and advocate for changes to policing practices in New York City.

The current NYPD stop-and-frisk policy disproportionately affects poor communities of color in New York City. In 2010, New York City police officers made over 600,000 street stops, a 3.5 percent increase from stops made in 2009. The neighborhoods most impacted by this practice are Brownsville, East New York, Bedford-Stuyvesant, Jamaica, and East Harlem. The residents of these communities most likely to be targeted by the policy are African-American and Latino boys and young men. However, everyone suffers when the rights of some are infringed. When mistrust of law enforcement is high and equal justice is eroded there is a serious threat to public safety. Reducing disproportionate minority contact with law enforcement and demanding fair and effective public safety policies will create a more efficient justice system for all New Yorkers.

As use of the stop-and-frisk-policy by the NYPD has increased so has public debate of the policy. Media coverage of stop-and-frisk has been significant with arguments both pro and con playing out in various

outlets. Community-based groups, policy organizations and other stakeholders seeking to collaborate on an effort to change the policy must take into account the communications context and requirements necessary to secure more equitable police practices. Convincing arguments within the civil rights or public safety frame will require strong messages and messengers and careful analysis of media opportunities and challenges. For example, opportunities may include recent coverage about CompStat incentives and whistleblower allegations that police are suppressing crime reporting and using stop quotas. Some of the key challenges include Commissioner Ray Kelly's popularity and Mayor Bloomberg's support of him. The 2013 mayoral race may provide a key entry point for an advocacy campaign and communications strategy that exploits weakness of NYPD's SQF practices.

Spitfire has the communications expertise needed to support the groups working to address the stop-and-frisk issue in New York City. Spitfire Strategies is deeply committed to increasing the communications capacity of justice reform organizations, supporting targeted policy change efforts, and shifting the national narrative on the criminal justice system from tough-on-crime and overreliance on incarceration to one focused on fair and effective public safety and justice for the communities most affected by crime and violence.

Spitfire has many years of experience working on criminal justice reform issues from death penalty reform to the rights of children with incarcerated parents. Spitfire has worked directly and indirectly with OSF over the last five years to build the capacity of national organizations and state advocates to advance indigent defense reform. Through this work, Spitfire has trained dozens of state advocates to effectively deliver the messages to support the improvement of public defense systems. Spitfire is currently working with Make the Road New York to elevate the stories and voices of individuals directly impacted by NYPD's stop-and-frisk practices by training media spokespersons. Spitfire will bring the same energy, enthusiasm and expertise efforts by advocates to reform NYPD policies and practices. For these reasons, the CJF recommends a project support grant in the amount of \$44,554 to Spitfire Strategies over six months.