

**OSI U.S. PROGRAMS
CRIMINAL JUSTICE FUND
THREE YEAR STRATEGIC PLAN**

August 2009

Criminal Justice Fund Staff

Leonard Noisette, Program Director

Susan Tucker

William Johnston

Adam Culbreath

Terrance Pitts

Christina Voight

Jill Sowards

Angela Cheng

Criminal Justice Fund Board Advisors

Bryan Stevenson

Aryeh Neier

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Section I. Overview and Summary of Goals

Improving the administration of criminal justice and decreasing the country's over-reliance on mass incarceration and harsh punishment have long been core priorities of U.S. Programs ("USP"). Until recently, however, USP's criminal justice reform work was spread across several discrete, free-standing projects (The After Prison Initiative, the Gideon Project, the Sentencing and Incarceration Alternatives Project, and the Soros Justice Fellowships) that were collectively housed within a single Fund (the U.S. Justice Fund), which supported work covering a vast array of civil and criminal issues. Last year, in an effort to facilitate more coordinated grant making and other programmatic activities, USP's criminal justice work was consolidated into a single Criminal Justice Fund.

In the fall of 2008, the Criminal Justice Fund began an evaluation of its work. We conducted a comprehensive review of materials, interviewed current and former grantees, and solicited input from the Fund's board advisors, stakeholders in the field, and leadership and staff of USP. The goal of these efforts was to identify the extent to which the Fund should modify its current grant making priorities and strategies, determine whether there were new areas of work the Fund should undertake, and assess the effectiveness of our grant making. Fund staff held a retreat in the spring of 2009 to discuss the findings of this evaluation and to inform the development of this strategic plan.

The forces driving the growth of criminal justice problems over the past forty years have included profound shifts in economic, social and political realities. These shifts in turn have led to the development of a formidable culture of punishment that permeates every aspect of our justice system. This culture of punishment manifests itself in an ever-expanding range of "zero tolerance" policies – from approaches to law enforcement through collateral sanctions and barriers that deprive citizens of a fair opportunity to participate even after having "paid their debt" to society. Significant as well is the belief that incapacitation – removal of wrongdoers from society by isolating them in prison – is essential to public safety and the goal of reducing crime. Our programmatic focus must understand these realities and directly address both the mindset and the policies and practices they have produced.

Moving forward, the Criminal Justice Fund will continue OSI's investment in promoting open society values by reaffirming our commitment to addressing three critical issues:

- reducing mass incarceration;
- eliminating harsh punishment; and
- eliminating racial disparities and securing a fair and equitable system of justice.

The Criminal Justice Fund will pursue our programmatic goals primarily through grant making to organizations (the bulk of the Fund's work) and to individuals (through the Soros Justice Fellowships). Our grant making will support advocacy, public education, grassroots organizing, litigation and communications. We are committed to building the capacity of a core group of organizations that work across our priority areas and through which many new leaders have and continue to emerge. The Fund will also engage in non-grant making activities, providing technical assistance, developing substantive strategies alongside our grantees, convening advocates, academics and other experts, and promoting communications strategies. In addition, the Fund is determined to identify and recruit new funding partners in criminal justice and related fields, with whom we can identify common cause.

In this strategic plan, we define critical issues as well as opportunities and challenges going forward. We identify guiding principles and operating practices that inform our work. We delineate key programmatic goals and strategies that the Fund plans to implement over the next three years in order to reduce mass incarceration, eliminate harsh punishment and secure a fair and equitable system of justice. And we highlight additional operational activities that the CJF plans to undertake.

Section II. Critical Issues, Opportunities and Guiding Principles

A. Critical Issues

At the core of the work of the Criminal Justice Fund is the desire to promote open society values by reducing the destructive impact of current criminal justice policies on the lives of our fellow citizens. The broad parameters of the problem are well documented. Nationwide last year the prison population grew by 25,000, bringing it to almost 1.6 million. Another 723,000 people are in local jails. In a nation of 230 million adults, this means that one in every 99 people is behind bars. The number of adults on probation or parole at the end of 2007 exceeded 5 million. Taken together, these statistics paint a disturbing picture of an "Incarceration Nation."

Our country's over-reliance on incarceration and correctional control is driven by a culture of punishment that includes heavy-handed law enforcement practices, lack of adequate legal assistance, and criminalization of immigration status. A belief that public safety is achieved through the incapacitation of those who commit crime has led to harsh and excessive sentences, including the death penalty and life without the possibility of parole, which have been the drivers of this problem. Well-documented, too, is the fact that the costs of these policies are borne most heavily by individuals and communities already pushed to the margins of American life – residents of low income communities, racial and ethnic minorities, and individuals suffering from mental illness and drug dependency.

The Criminal Justice Fund will continue its programmatic focus on these key dimensions of the U.S. criminal justice system. We must, however, address a paradoxical aspect of criminal justice reform work. A common refrain from our environmental scan was that “OSI built fields.” However, to the extent that OSI helped support the development of organizations and individuals with a greater capacity to take on a broad range of issues, we may have also, inadvertently, helped reinforce some of the silos that can impair real progress in criminal justice reform. While it is clear to both CJF staff and the advocates we support that the various ills plaguing the criminal justice system are highly interconnected—judicial discretion in sentencing and access to addiction treatment for example—advocacy efforts often fail to make explicit these connections or develop linkages and partnerships that would expand the base of support for reform.

More broadly, divestment in civil society and civil institutions (e.g. inadequate educational systems, untreated substance abuse and mental illness) has led to a greater risk of involvement in the criminal justice system. Yet there is an even more pronounced lack of connection and partnership among progressives working on criminal justice issues and those challenging civil justice/social justice problems. Accordingly, there is a pressing need to foster advocacy that attacks the interrelated nature of these problems and to explore opportunities to cast “criminal justice” issues in a broader frame that exposes, confronts and embraces these intersections.

B. Opportunities and Challenges

We have identified a number of opportunities and challenges presented by the current environment.

Opportunities

- Economic Crisis – The fiscal crisis is forcing government officials and policymakers to confront head-on the excessive cost of mass incarceration and to be more receptive to reform measures that seek to reduce jail and prison populations.
- Growing Support for an Alternative to the “War on Drugs” – Led by the Obama administration and the voices of international leaders, there now exists meaningful dialogue regarding the failure of the “War on Drugs” and the recognition that drug use should be addressed not as a crime but as a public health problem.
- Climate Change/Green Jobs – The influx into communities of resources to address environmental and climate change issues provides an opportunity to link these issues to limited job and career opportunities available to under-employed communities, including people with criminal histories.
- Healthcare Reform – Efforts to provide broader access to healthcare present an opportunity to include within that debate greater availability of treatment for addiction and mental illness as well

as coverage for evidence-based programs proven to reduce recidivism for people convicted of serious felony offenses.

- National Political Climate – Senator Jim Webb’s call for a National Criminal Justice Commission and Congressional interest in juvenile justice reform (e.g., Youth Promise Act, Juvenile Justice and Delinquency Prevention reauthorization) and reentry services (e.g., Second Chance Act) provide opportunities to shine a national spotlight on the many failures of our current criminal justice approaches as well as alternative solutions.

Challenges

- Misguided Direction of Policy Reform - Current prison downsizing efforts routinely focus on parole and probation policies that reallocate savings within the justice system, and are focused almost exclusively on diversion of individuals with substance abuse “addiction,” with an emphasis on drug testing, mandatory treatment, drug courts and other systems of control that present new and different advocacy challenges.
- “Post-race” Frame – President Obama’s election has given rise to discussions of a “post-racial” society, with the notion that racial discrimination is no longer a national problem or a reason for the gross disparities in society.
- The Impact of the Economic Crisis on the Non-Profit Sector – The non-profit sector, on which much criminal justice advocacy relies, has been hit with the loss of both government and private dollars at the same time that there are growing concerns that the economic downturn and growing unemployment may result in a rise in crime and new criminal justice challenges.
- Loss of Foundation Support for Criminal Justice Reform – The closing of the JEHT foundation as well as reduced financial support from other foundations for criminal justice advocacy will mean even greater demand for limited CJF resources.
- Lack of Commitment of the New Administration and the Larger Progressive Movement to Criminal Justice Issues – Despite claims of a transformative moment, both the Obama administration and the broader progressive community have been reluctant to embrace criminal justice reform as a critical issue.

C. Guiding Principles and Operating Practices

While USP has identified a number of guiding principles to govern our collective work, CJF grant making decisions and choice of programmatic activities are particularly informed by our desire to:

- develop leadership and organizational capacity in impacted communities;
- employ and support a multitude of strategies, including advocacy, litigation, organizing, communications, research and analysis, and public education;

- convene grantees to share ideas; and
- foster greater collaboration across various criminal justice fields and related sectors, such as education, health and mental health, housing and employment.

In an effort to improve our effectiveness and that of our grantees, CJF is also committed to examining our grant making activities and assessing our impact on the issues we support. Moving forward, we seek to:

- map the fields and sectors in which we fund;
- explore ways to enhance internal and external communication;
- pursue collaborative grant making opportunities;
- provide technical assistance to grantees;
- evaluate and analyze outcomes from field and cross-field perspectives; and
- explore collaborations across OSI programs and initiatives.

Section III. Goals and Strategies

Each of the program areas that have been merged into the CJF had a number of priority areas and, as a result, a substantial number of active grantees. There are areas of focus to which OSI has made substantial investments and there are also many grantees whose work OSI has long supported. Our purpose here is to refine our grant making priority areas, sharpen our grant making strategies and approaches, and develop new areas. We anticipate some shifts in focus and a rebalancing of resources among our key programmatic goals and strategies. Indeed, the ambitious agenda set forth in the following pages will necessarily require us to contract or discontinue our efforts in some areas in order to expand in others. Nevertheless, while new work is anticipated, much of the work described in the sections that follow is on-going, and reflects OSI's longstanding priorities and commitments in the criminal justice field. While we have made some judgments about how to newly categorize this work, we recognize that many of our programmatic goals and strategies overlap and could easily be categorized in other ways.

A. REDUCE MASS INCARCERATION

The problem of mass incarceration is a by-product of policies and practices that are an outgrowth of a penal approach that privileges incapacitation over other purposes of sentencing individuals for transgressions of the law, and a culture of punishment that attaches increasingly harsh sanctions for a broad range of conduct. The Criminal Justice Fund has identified five areas of focus to attack mass

incarceration: the excessive and economically destructive costs of maintaining the current prison industrial apparatus; harsh and punitive sentencing policies; probation and parole practices that unnecessarily result in extended incarceration, surveillance and re-incarceration for technical violations of conditions of release; drug policy that focuses on interdiction and prosecution rather than access to treatment and a strong public health approach; and the high rate of incarceration of people with mental illness.

1. Attack the Excessive and Economically Destructive Costs of Incarceration

The costs associated with the explosion of incarceration over the past quarter century is staggering; in some jurisdictions jail and prison costs outpace education spending. While the advocacy community has for some time pointed out that such expenditures have not improved public safety, until recently only a handful of policy makers had begun efforts to control these costs. With the collapse of the economy and ballooning deficits at the state and local level, however, officials across the nation have been forced to confront and deal with the crippling effect the addiction to incarceration has had on the ability of government to function properly. This moment of opportunity calls for bold action in support of advocacy and communication strategies designed to change the debate about the cost and utility of incarceration.

Opportunities also exist to expand the base of support for the economic case for significant downsizing of our national prison population. Education advocates confronting huge cuts in school funding, health care advocates and municipal unions, among others, can be made to see that it is in their interest to support more sound use of shrinking public dollars. The time is right as well to seek common purpose with communities that have come to rely on prison as the engine driving their economy. While we have to date devoted insufficient attention to the economic realities associated with the growth of prisons and the dependence of localities on them, we recently awarded a Soros Justice Fellowship to engage residents of prison towns in upstate New York in re-imagining their local economy and creating community economic development plans that do not rely on prisons. Similarly, the continued growth of private prisons has added a perverse financial element to the politics involved in making criminal justice policy. The growth of the private prison industry is a particular problem in the area of immigration detention. We will support community education and advocacy efforts to address these disturbing trends.

Through our funding of Justice Reinvestment initiatives we have sought to direct a portion of public resources saved on prison costs to the development of civil institutions in neighborhoods most directly impacted by destructive mass incarceration policies. We will continue these efforts as well as seek to

expand advocacy for investment in communities that have become dependent on prisons to support their economic well-being.

Strategies:

- Increase support for organizing, advocacy, public education and targeted communications strategies designed to highlight the costly and ineffective aspects of incarceration
- Begin funding efforts to broaden coalitions for support of reducing use of incarceration.
- Continue to support organizing, advocacy, public education and communications strategies at the federal, state and local levels aimed at eliminating private prisons.
- Broaden support of organizing at the local level that engages and mobilizes “prison town” communities for prison reform and other avenues for economic development.
- Continue to support research that identifies alternative regional economic development options for prison towns.
- Continue to support advocacy, public education and communications strategies at the federal and state level that calls for reinvestment of savings from reduced incarceration to address economic needs of both high incarceration communities and localities dependent on a prison economy.

2. Eliminate Harsh and Unjust Sentencing Policies

We currently have a well-developed portfolio of activities addressing sentencing reform, in particular the challenging of policies that target and have disproportionate impact on low income communities and people of color. This work has led to successes in raising the awareness of the racial disparities in sentencing for possession of crack and powder cocaine; reduction of penalties for drug offenses (the recent reform of the Rockefeller Drugs laws in New York is a prime example); calls for the decriminalization of marijuana possession; and the expanded use of alternatives to incarceration.

Our strategy has been to support both national organizations and local grassroots groups, though we have not been as deliberate as we might in making those efforts complementary. CJF is also concerned that reform has largely been limited to drug related offenses, leaving harsh sentencing policies such as “three strikes” laws, and long periods of incarceration for “violent” offenses largely intact. We note the

need to guard against the growing use of drug courts, extensive community supervision and other mechanisms of social control that replace incarceration but impinge unnecessarily on open society values.

Strategies:

- Continue to support advocacy, public education and communication strategies to eliminate mandatory minimums for drug and other crimes at the state and federal level.
- Continue to support grassroots and grass-tops organizing, public education and communication strategies at the state level that promote alternatives to incarceration with conditions that best ensure participants succeed in the programs.
- Begin to support advocacy, public education and communication strategies at the state level that target the reduction of sentence length for multiple convictions and violent offenses.
- Begin to support research and communication efforts that challenge the purported public safety benefits of incapacitation of those convicted of crimes.

3. Reform Parole and Probation Practices

Recent research by CJF grantee JFA Associates revealed that the large growth in state prison and other correctional populations over the past 25 years has in significant part been the result of deliberate practices of parole and probation systems that have led to both an increase in the number of admissions (parole and probation violators in particular) and a significant increase in the average length of stay (the period of time a person serves before being granted parole release). Despite declines in crime rates and arrests, the number of people being revoked for parole violations has continued to escalate. About two thirds of prison admissions consist of people who have had their probation or parole status revoked, often for technical violations as opposed to arrests for new offenses (“Unlocking America,” November, 2007). In order to reduce mass incarceration, these trends must be reversed.

Reducing the length of probation and parole has been a centerpiece of the success of OSI’s Justice Reinvestment initiative, through which our grantees have helped a number of jurisdictions substantially reduce their prison populations and/or avoid building additional facilities. It has also been a large focus of the criminal justice work of OSI-Baltimore.

Strategies:

- Continue to support advocacy, public education and communications strategies at the state level in favor of parole and probation revocations practices that limit re-incarceration and rely on community based sanctions.
- Continue to support advocacy, public education and communications strategies at the state level aimed at reducing terms of probation and parole.
- Begin to support advocacy, public education and communications strategies at the state and local levels that promote more reasonable parole release policies for those convicted of violent crimes and individuals sentenced to long prison terms.
- Begin to support advocacy, public education and communications strategies at the state level that promote fair and rational conditions of parole and probation that are tied to the underlying offense.
- Begin to support advocacy, public education and communications strategies at the state and local level that shift the paradigm of parole and probation supervision to focus more on assistance and support and less on surveillance and enforcement.
- Fund research that compares and analyzes probation and parole policies of the United States with other Western democracies.

4. Foster New Approaches to Drug Policy

Drug policy reform was one of OSI's earliest interests, a concern that has continued as our work in the criminal justice arena has expanded. However, despite the fact that drug prosecutions continue to drive the growth in incarceration and have disproportionately resulted in the punishment of racial minorities, there has not been a place within US Programs where OSI's drug policy reform efforts are coordinated with our other criminal justice priorities. CJF is well-positioned to identify opportunities to broaden drug policy reform efforts by better connecting them, for instance, to our work around sentencing and alternatives to incarceration, and by reframing and linking drug policy reform to other issues in the public discourse (such as public health) as well as to the evolving prominence of drug policy as an issue in the international arena. CJF Program staff has partnered with the International Harm Reduction Development Program and our colleagues in OSI-Baltimore and OSI-DC to draft a separate strategy memo, *Strengthening Voices for U.S. Drug Policy Reform* (July 2, 2009), to develop a comprehensive drug policy reform agenda.

Strategies:

- Begin to support efforts to broaden the dialogue around drug policy reform at the federal and state levels, both by supporting grassroots organizing aimed at incorporating new and multiple voices for reform as well as supporting advocacy, public education and communications strategies aimed at moving the debate towards a public health/harm reduction frame.
- Broaden support for the development of capacity within communities of color to increase public dialogue and community pressure about drug policy.
- Begin to support advocacy and public education at the federal, state and local levels that includes the voice of law enforcement and other unlikely allies in the push for reform.
- Continue to support advocacy, public education and communications strategies at the federal level that promote the inclusion of substance abuse treatment as part of national health care reform.
- Broaden support of advocacy, public education and communications strategies at the federal level that promote the public health benefits nationally and internationally of lifting the ban on needle exchange.

5. Explore Expanded Funding to Address the Criminalization of People with Mental Illness

When the government began closing state-run hospitals in the 1980s, people suffering from mental illness had nowhere to go. Without proper treatment and care, many ended up in our nation's jails and prisons. Today, the criminal justice system has become the de facto mental health system, with the three largest inpatient psychiatric institutions in America being jails—not hospitals. According to the Federal Bureau of Justice Statistics, there are currently 1.25 million inmates with debilitating disorders ranging from schizophrenia to post-traumatic stress disorder abandoned in the U.S. prison system instead of receiving treatment in hospitals. More Americans receive mental health treatment in prisons and jails than hospitals or treatment centers. CJF has for a number of years supported efforts to address this critical intersection of mental health and criminal justice. We anticipate continuing these efforts and plan to assess whether to expand our activities in this area.

Strategies:

- Continue to support research, advocacy, public education, litigation and communications strategies at the federal and state levels that promote mental health solutions to keep people with mental illness out of prison.
- Continue to support research and advocacy that explores reform possibilities at the intersection between the criminal justice and mental health systems
- Explore whether or not to develop more robust portfolio of grantmaking activities in this area

Benchmarks for Identifying Impact of Strategies to Reduce Mass Incarceration

- Reduce the number of people incarcerated in targeted jurisdictions
- Expanded coalition in support of reduction of incarceration and more effective use of public resources
- Progress on probation and parole reform in three to five states
- Continued progress on sentencing reform for those convicted of low level drug offenses
- Increase the diversity of voices advocating for national drug policy reform
- Complete exploration and refinement of scope of mental health related grantmaking activities

B. ELIMINATE HARSH PUNISHMENT

Inextricably related to this country’s over-reliance on incarceration and correctional control are the adoption of policies and practices that favor excessive punishment for an increasing number of behaviors, conditions and statuses. The machinations of this culture of punishment apparatus now begin in our elementary schools, through increasingly aggressive disciplinary processes, and extend to the misguided and costly practice of imposing collateral sanctions on people involved in the criminal justice system that have led to millions disenfranchised from voting and the loss of access to housing, financial aid for education and other benefits of citizenship. We are prosecuting children as adults and in far too many instances sentencing them to lengthy terms of imprisonment, remaining alone among democratic nations in sentencing people under the age of 18 to life without the possibility of parole. We have criminalized and overly-incarcerated immigrant populations. And our use of the death penalty outpaces every other democratic society in the world.

1. End Punitive School Disciplinary Policies

The school-to-prison pipeline refers to the national trend of criminalizing, rather than educating, our nation’s children. The pipeline encompasses the growing use of zero-tolerance and other harsh school-

based disciplinary policies, school-based arrests, disciplinary alternative schools, and secure detention that marginalize at-risk youth and deny them access to quality public education. Harsh disciplinary policies leading to school suspension and expulsion are often the first step in a child's journey through a pipeline that leads to involvement with the criminal justice system.

Growing numbers of school districts employ full-time police officers (or other law enforcement personnel) to patrol middle and high school hallways. With little or no training to work with youth, these officers approach youth as they would suspects on the street, rather than children at school. As a result, children are far more likely to be arrested at school than they were a generation ago. Moreover, schools are much quicker to suspend and expel students than they used to be. The vast majority of these suspensions, expulsions and arrests are for non-violent offenses such as "disruptive conduct" or "disturbance of the peace. There is no evidence that zero-tolerance and other harsh disciplinary policies make schools safer or improve student behavior. On the contrary, research suggests that the overuse of suspensions and expulsions may actually increase the likelihood of later criminal misconduct. Moreover, students of color are disproportionately represented at every stage of the school-to-prison pipeline. African-American students are far more likely than their white peers to be suspended, expelled, and arrested for similar kinds of conduct at school.

Strategies:

- Begin to support research, advocacy, public education and communications strategies at the state and local levels designed to restructure school disciplinary policies and practices and develop model interventions to halt the school-to-prison pipeline.
- Begin to support advocacy, public education and communications strategies at the state and local levels that seek to remove police from schools.
- Begin to support advocacy, public education and communication strategies at the state and local levels that call for the reinvestment of resources from school based law-enforcement to expanded educational and support services for students.

2. Eliminate Unreasonable Barriers to Reintegration for People with Criminal Histories

The "collateral consequences" of criminal prosecutions are growing in number, scope and duration. Deemed collateral because they are not the explicitly articulated direct consequences of a criminal conviction (such as a prison term, parole eligibility or fine), collateral consequences are often unanticipated and frequently not discussed during the criminal process. While many collateral

consequences attach as a result of felony conviction, a surprising variety take hold following far less serious entanglements with the law. Misdemeanor convictions, and even mere arrests, can result in severe and far-reaching ramifications.

Some collateral consequences are the result of deliberate policy decisions to erect legal barriers to full participation in society. Loss of the right to vote and prohibitions around access to public housing, governmental benefits and student loan assistance can be consequences for a conviction of even a minor drug offense. Other barriers are less intentional. Allowing consideration of prior contact with the criminal justice system to affect one's prospect of securing gainful employment, determining eligibility for occupational licenses, and the negative impact of an inquiry on an application for employment or admission to college are all collateral consequences of a criminal history that represent barriers to successful integration in society. Most indirect, but nonetheless important, are the effects on families and entire communities, including children who grow up with a parent in prison, the diminished political power of communities with large numbers of disenfranchised members and the perverse transfer of power to communities where prisons are located caused by the census practice of counting prisoners as residents of the county in which the prison is located, as opposed to their home communities.

While OSI has not historically invested substantially in prison conditions advocacy, we have supported the development of college education programming in prison because we see it related to confronting barriers to reintegration. In light of OSI's recent grant to Bard Prison Initiative to replicate its successful efforts in New York State in up to ten additional states, it is appropriate for CJF to evaluate what other grant making OSI might pursue in this area. We have for similar reasons supported the development of the Civic Justice Corps and its focus on increasing the job preparedness of individuals who have had contact with the criminal justice system. We anticipate continued modest funding to support these efforts as well.

Strategies:

- Continue to support litigation, advocacy, and public education at the federal and state level to eliminate unreasonable barriers to employment and discriminatory practices faced by people with criminal histories.
- Continue to support litigation, advocacy and public education at the federal and state level to remove statutory barriers triggered by drug and other convictions.
- Continue to support the development and expansion of Civic Justice Corps.

- Begin to support research and advocacy at the federal and state levels that links economic stimulus and green economy efforts to the workforce development needs of under-employed communities, including people with criminal histories.
- Continue to support advocacy and public education at the federal level to reform census practices so that people in prison are counted in their home jurisdictions rather than in the communities in which they are incarcerated.
- Continue to support research and advocacy to address issues related to the impact of incarceration on parent/child relationships.
- Continue to support advocacy for the availability of college education in prison.

3. End the Treatment of Children as Adults in Prosecution and Sentencing

Research demonstrates that adolescents' brains are fundamentally different from those of adults. Juveniles differ from adults in their thinking, reasoning and decision-making capacities. For these reasons, juveniles have since early in the 20th century been handled separately in the judicial system. Yet, as a result of more recent harsher criminal justice policies, a significant number of youth are prosecuted in adult court each year. Practices vary dramatically from state to state: 45 states allow juvenile court judges the discretion to have a youth's case tried in the adult criminal court; 15 states allow prosecutors that discretion. Fifteen states require juvenile court judges to automatically transfer a youth's case to adult criminal court for certain offenses or because of the age or prior record of the young person; 29 states automatically require a youth's case to be tried in the adult court based on the age of the youth or the alleged crime or both. Three states—Connecticut, New York, and North Carolina—automatically prosecute 16- and 17-year-olds as adults. Ten states—Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, and Wisconsin—automatically prosecute 17-year-olds as adults. Researchers estimate that as many as 200,000 children are prosecuted as adults every year.

In addition, there are currently almost 2,500 people serving life sentences without the possibility of parole for crimes committed before they were 18 years old. Fifty-nine percent of these people received their sentences for their first-ever criminal conviction. Sixteen percent were between 13 and 15 when they committed their crimes, and 26 percent were sentenced under a felony murder charge where their offense did not involve carrying a weapon or pulling a trigger. The United States stands alone among civilized nations in imposing such a draconian penalty on our youngest citizens. The U.S. Supreme Court

has recently decided to hear challenges to the practice of sentencing youth to die in prison in two cases that will be considered in the 2009 Term of the Court.

Strategies:

- Continue to support litigation, advocacy, public education and communications strategies at the state level to abolish the practice of sentencing juveniles to life without parole.
- Support litigation and communication efforts related to the Supreme Court's decision to hear two JLWOP cases in the Fall of 2009.
- Continue to support advocacy, public education and communications strategies at the state level aimed to limit prosecutions of children under the age of 18 as adults.
- Explore the juvenile justice field to determine whether or not to develop a broader portfolio of grantmaking activities in the juvenile justice area.

4. Abolish the Death Penalty

OSI has been a leading funder of anti-death penalty efforts and has invested significantly in this area since 1999. We have also been instrumental in encouraging the development of anti-death penalty programming at other foundations. The CJF was involved in the creation of the Campaign to End the Death Penalty by 2025, a unified, multi-faceted strategy for abolition developed jointly by funders and advocates in 2007. CJF is also one of several lead partners in a collaborative of foundations, the Funders for Alternatives to the Death Penalty ("FADP") that supports the Campaign. This coordinated Campaign to Abolish the Death Penalty has proven a unique and highly effective model for reform. In the past two years, it has produced many crucial successes in the movement, most recently repeal of the death penalty in New Mexico and substantial limitation of the availability of the punishment in Maryland. The Campaign has succeeded in reducing the number of new prosecution filings seeking the death penalty and of the imposition of capital punishment as a sentence.

Abolition of the death penalty will remain one of the CJF's key priorities. Beyond the relief abolition will bring to the thousands of people who face the death penalty in part because of their poverty, racial discrimination, or other arbitrariness unconnected to the underlying crime, ending the death penalty has the potential to adjust the median of extreme punishment away from death, an essential step in transforming the system of criminal justice away from the irrational appeal of pure retribution that has become common in policy and political discourse. Moreover, abolition of the death penalty will free

criminal justice resources currently consumed by capital prosecutions. If not for the death penalty, jurisdictions could commit far more resources to policing, indigent defense services, community corrections, rehabilitation and other government functions that purport to keep a community safe. The Campaign to End the Death Penalty by 2025 provides a solid strategic framework in which to advance OSI's core death penalty mission.

Strategies:

- Continue coordinated and strategic grant making with other funders participating in the Funders for Alternatives to the Death Penalty donor collaborative and the Tides Death Penalty Mobilization Fund to abolish the death penalty in all 50 states and the federal government by 2025 through a combination of litigation, state and federal advocacy, communications and research strategies. (In accordance with the Campaign Strategic Plan)

5. Reform Policies that Criminalize Immigrants

In the United States today, thousands of immigrants are at risk of detention and deportation based on harsh 1996 federal immigration laws and current enforcement policies impacting noncitizens with current or past encounters with the criminal justice system. These policies demonize immigrants for even the most minor transgression of law. Among the most severe restrictions of immigrant rights, the 1996 laws greatly expanded the “aggravated felony” grounds of deportation and stripped judges of the discretion to grant release from detention or relief from removal to whole classes of non-citizens. Since 1997, more than one million immigrants have been deported from the United States based on criminal convictions. They have left behind an estimated two million spouses and children.

With the advent of these laws and practices, the disastrous immigration consequences of a conviction often far outweigh the criminal ones. Consequences include mandatory detention and deportation, processing in deportation proceedings with limited due process rights, permanent banishment without hope of lawful return, and sometimes death (as an aggravated felony bars even asylum). Those at risk include lawful permanent residents (“green card holders”) as well as noncitizens that are undocumented but have a route to obtain lawful immigration status through such means as having a U.S. citizen in the family.

Strategies:

- Continue to support high impact litigation to protect the rights of immigrants charged with criminal offenses.

- Continue to support research and advocacy at the federal level to reform the current mandatory deportation system.
- Continue to support education of immigrant communities on detention and deportation policies.
- Continue to support education and advocacy to enhance the ability of criminal defense attorneys to address the immigration implications of criminal charges for their clients.

Benchmarks for Identifying Impact of Strategies to Eliminate Harsh Punishment

- Successful school disciplinary policy reform efforts in 3-5 jurisdictions
- Progress in achieving federal policy reform to limit and/or eliminate barriers to reintegration of the formerly incarcerated
- State level reform eliminating the sentencing of juveniles to life without the possibility of parole
- Secure elimination of or moratorium in use of the death penalty in 1-3 states
- Development and implementation of model protocol for effective representation of immigrants in public defender offices

C. ELIMINATE RACIAL DISPARITIES AND SECURE A FAIR AND EQUITABLE SYSTEM OF JUSTICE

The fair administration of justice is a hallmark of an “open society.” Moreover, equal access to justice remains a key value of Americans of every race and class. While the real life application of these principles is often remote from the lives of many citizens, for low income communities, people of color, immigrants and others at greater risk for contact with the justice system, the experience of the system generally falls far short of our constitutional ideal. Moreover, perceptions of fairness derived from media representations, most notably television, stand in stark contrast to the realities of misuse of police power, inadequate representation, and lack of opportunity for meaningful participation in the administration of justice. CJF believes it is critically important to reform the policies and practices at the points of contact where those who are marginalized in society most directly confront the power of the state – street level law enforcement and contact with our criminal courts – and whose deficiencies are directly related to the culture of punishment that supports the excessively punitive practices and resulting mass incarceration we seek to eliminate.

1. Reform Police and Prosecution Practices

Much of OSI's work in the criminal justice area has focused on issues of detention, sentencing, and mass incarceration and their effects on highly impacted communities. While understandable, with the exception of our prior work combating racial profiling, we have not focused significantly on the front end of the criminal justice process, notwithstanding the fact that the vast majority of citizens who come into contact with the system do so for minor offenses. Policing practices and prosecution decisions affect public perceptions of the system and drive back-end consequences of detention, punishment and long-term community impact to which we have devoted much attention and many resources.

Of particular concern are the increasing use of police in schools and the corrosive impact that has on the educational environment; racial bias in the stopping and frisking of individuals in major cities, the vast majority of which lead to no arrest; and the extreme racial disparity in marijuana and low level drug arrests of blacks and Latinos in New York and nationally, notwithstanding similar levels of marijuana use among whites, and the damaging effects of these arrests and criminal records on this group of largely young men of color. Finally, there is increased recognition that racial disparities exist with respect to prosecutorial decisions including whether to prosecute, what charges to file, and appropriate pretrial disposition of cases. In order to address these critical issues and create a more unified strategic approach, we seek to broaden our programmatic activities by beginning to explore a grant making strategy to address these early policing and prosecution stages of the criminal justice system.

Strategies:

- Continue to support litigation, advocacy, public education and communications strategies that challenge racial profiling.
- Begin to support research, advocacy, public education and communications strategies at the state level that promote best practices and innovative approaches in policing and prosecution.
- Begin to support efforts to mobilize communities most affected by overly aggressive policing (African Americans, Latinos, Asian Americans, youth and poor people) to promote progressive reform of policing practices.
- Broaden support for research to analyze stop and frisk policies and low level arrests in a number of jurisdictions.
- Begin to support research, advocacy and communications strategies that collect and disseminate individual stories of experiences with excessive and inappropriate policing.

- Begin to support research to determine if there exists a correlation between reductions in crime and aggressive, “zero-tolerance” policing practices.
- Begin to support research to analyze the exercise of discretion by prosecutors and begin to support advocacy, public education and communications strategies at the state level to address the racially disparate impact of prosecutorial decision-making.
- Begin to support research and analysis of policing and prosecution best practices in other Western democracies.

2. Improve Indigent Defense Services and Systems

Over 45 years ago, the Supreme Court in Gideon v. Wainwright declared that the Constitution’s “noble ideal” of equal justice under law could not be met as long as poor people accused of crimes had no lawyer to defend them. A generation later, Gideon’s promise of a fair playing field is far from realized. What the neglect of Gideon and basic issues of fairness has wrought – long delays, political corruption, prosecutorial misconduct, racial discrimination, inappropriate and wrongful incarceration and deportation– is neither just nor a system.

Two recent reports by CJF grantees highlight the continued persistence of these problems. *Justice Denied: America’s Continuing Neglect of our Constitutional Right to Counsel*, a report of the National Right to Counsel Committee, a project of the Constitution Project, details the endemic and systemic failures of the indigent defense system and recommends twenty-two specific and urgently needed reforms to fix them. The National Association of Criminal Defense Lawyers issued a first-of-its-kind national report “*Minor Crimes, Massive Waste: The Terrible Toll of America’s Broken Misdemeanor Courts*” on the status of misdemeanor courts across the country. The report, which involved 18 months’ worth of research at courts in seven states, concluded that state and local governments are wasting millions of tax dollars to prosecute petty offenses, such as curfew and open container violations, loitering and feeding the homeless. Courts are also violating the constitutional rights of citizens who are being hauled into court, the report claims, and are often coerced into cutting deals without legal representation. Our work in this area is designed to address these persistent problems.

Strategies:

- Continue to build the capacity of key organizations capable of leading indigent reform efforts at the national and state levels.

- Continue to support litigation and advocacy at the state level to address issues related to legal representation in misdemeanor cases.
- Continue to support indigent reform efforts in historically underserved regions of the country.
- Continue to support efforts at the state level to uncover wrongful convictions and attack the policies and practices that contribute to them.
- Increase advocacy for federal funding to support improvement of indigent defense services

Benchmarks for Identifying Impact of Strategies to Eliminate Racial Disparities and Secure a Fair and Equitable System of Justice

- The development of broad-based coalitions in support of reform of police practices in 3-5 jurisdictions
- Completed research examining stop and frisk practices in up to five jurisdictions
- Development of model practices aimed at addressing racial disparities in prosecutorial decision-making
- Reduction of the presence of police in schools in 1-3 jurisdictions
- Increased funding at the federal level for indigent defense services
- Successful indigent defense reform efforts in 3 jurisdictions

D. REALIGNING OUR GRANTS TO ADVANCE OUR REVISED PRIORITIES, BUILD THE CRIMINAL JUSTICE FIELD AND SEED INNOVATION.

The breadth of programmatic activities undertaken by the various criminal justice programs now combined under the criminal justice fund, as reflected in the previous sections, raises the question of whether the Fund’s reach is too broad and not sufficiently deep in certain areas to have meaningful impact. Moreover, as we identify new areas in which to focus our funding and our energies, we will necessarily have to reduce activities in some areas, because of limitations of both our financial and human resources. We expect to realign our grantmaking over the next three years to ensure that our grants are advancing our revised priorities.

In order to build a more robust and interconnected criminal justice field that can advance change long-term, we will provide more general operating support grants to help build the organizational infrastructure, financial stability, and leadership of key grantees whose work cuts across our priority areas. We will also engage in grantmaking to support field-building, leadership development and collaboration across criminal justice sectors and between criminal justice and other related fields. In addition to our ongoing support for national organizations, we will identify a small number of states in which we will concentrate a significant portion of our grantmaking activities for maximum impact at the state level. Where practical and strategically beneficial, our state-based strategy will complement that of other funds. Finally, we will reserve some of our grantmaking budget to seed innovation and invest in new organizations.

Strategies:

- Realign grants portfolio to advance revised priorities, and identify areas where funding can be decreased over time
- Increase multi-year, general support funding to organizations working on multiple Fund priorities and reduce number of project specific grants
- Identify types of technical assistance that the CJF might be well-positioned to provide to its grantees.
- Support field-building, leadership development and collaboration across criminal justice sectors and between criminal justice and other related fields
- Identify states in which to support a range of grantmaking activities
- Reserve portion of annual grantmaking budget to seed innovation and invest in new organizations

Benchmarks for Identifying Impact of Strategies to Realign grants to Advance Our Revised Priorities, Build the Criminal Justice Field and Seed Innovation

- Increase in number of grantees receiving multi-year, general support funding
- Selection of 3-5 states for coordinated, place-based grantmaking
- Identification of 3-5 new grantee organizations per year

Section IV. Operational Activities

A. Organize Donors

Given the small number of donors who expressly include criminal justice reform among their grant making priorities, CJF is determined to identify and recruit new funding partners in criminal justice and related fields such as mental health, family stability and development, education, racial justice, and human rights, with whom we can identify common cause. This need has been made even more acute by the closing of the JEHT Foundation, a key criminal justice funder and CJF partner. The Criminal Justice Fund recently partnered with Atlantic Philanthropies and the Ford Foundation in an effort to provide emergency support to grantees that lost funding when JEHT closed. CJF has also begun to explore other partnerships with Atlantic Philanthropies and the Ford and Public Welfare foundations. We have joined an effort of a number of funders to map criminal justice funding throughout the United States. Going forward, CJF will become more active in organized funder activities, affinity groups and other networking opportunities. We anticipate hosting events for our colleagues in philanthropy to explore opportunities for joint support of key initiatives.

B. Develop a set of non-grant making activities that supports and complements our grant making strategies.

As an operating foundation, OSI is strategically positioned to use its resources to engage in a variety of activities that support our grant making objectives and further our long-term goals. Our environmental scan results revealed an appreciation for and value in past convenings and in the provision of technical assistance, but raised legitimate concerns regarding how to make such activities more useful to the field as well as how to make more transparent the availability of non-monetary resources. The realignment of our programmatic grant making strategies presents an opportunity for us to assess our non-grant making activities as well, including convenings, the provision of technical assistance, and research, and to develop a set of activities that best supports and complements our grant making strategies.

In addition, while CJF fully understands the need for sophisticated communications strategies, we currently lack a clearly defined plan in this area. Questions to resolve include how better to highlight the work of our grantees, when and how CJF should speak directly on policy issues, and how to better enable the Fund and the field as a whole to make effective use of new and emerging communications technologies.

C. Integrate Soros Justice Fellowship Program to Support CJF Priorities

The Soros Justice Fellowships are highly regarded in the field as a vehicle through which new ideas are tested and new leaders developed. We seek to build on this impressive record by refining the Justice Fellowship program so that it is more closely aligned to the priorities of the CJF. We are examining the timing and number of Fellowship solicitations annually, the Fellowship advisory review process, and ways to better maximize intersections and connections between Justice Fellows and CJF grantees. We also seek to ensure that we remain competitive with other nationally recognized fellowship programs. Along similar lines, we will look for opportunities to partner with Open Society Institute Global Fellows and OSI-Baltimore Community Fellows whose projects, backgrounds or interests are complementary to our work.

Planned Activities to Support Operational Goals

- Organize new donors to support Criminal Justice Fund efforts
- Explore ways CJF can most effectively convene grantees in order to share learning and information, especially across criminal justice areas that have acted within silos in the past, and with other fields that share similar goals.
- Develop a communications strategy for the CJF. Prioritize communications opportunities.
- Explore ways to better support the communications strategies of CJF grantees.
- Sponsor activities to provide opportunities for past and current Fellows to engage with broader field of grantees

Section V: Opportunities for Cross-Fund/Cross-Campaign Partnerships

CJF staff has identified a number of opportunities for collaboration with other US Programs funds and campaigns. With the Equality and Opportunity Fund (EOF) and the Campaign for Black Male Achievement (CBMA), we can address the negative and racially disparate effects of school disciplinary practices, and their interference with the educational opportunities of young black men, one of CBMA's key areas of focus. We can join with the National Security and Human Rights Campaign (NSHR) in our work challenging racial profiling practices, consistent with the Campaign's concerns about such activities targeted toward Arab American and Muslim communities.

Our work addressing the intersection of criminal prosecution and immigration is currently supported by EOF through its immigration portfolio, and we look to build on that partnership. Similarly, our focus on the impact on children having a parent who is incarcerated provides an opportunity for collaboration with CBMA in its work to strengthen the role fathers play in the lives of their children. With the

Transparency and Integrity Fund (TIF) we look to join forces to attack prison privatization and “prison gerrymandering” census practices, through which the voting power of high incarceration communities is diluted by counting prisoners as residents of the counties in which they are incarcerated instead of the communities in which they reside. We plan to work more deeply with our colleagues at OSI Baltimore on issues of probation and parole reform, as well as on broadening our drug policy reform efforts to include greater advocacy for treatment as part of national health care reform.

We will also work closely with our colleagues at OSI-DC to seize opportunities for meaningful criminal justice reform at the federal level. Active interest on Capitol Hill in juvenile justice reform, changes in the national approach to drug policy, a more comprehensive approach to reentry of formerly incarcerated people, and the overuse of incarceration are all areas in which we can collaborate.

Longer term, we are particularly interested in working with the Democracy and Power Fund to build leadership in and capacity of communities of color to address criminal justice issues that affect them. With both D&P and EOF, we are eager to work to develop strategies to encourage civil rights advocates and the larger progressive community to embrace criminal justice as an issue central to their reform agenda. We would also like to explore the possibility of collaborative work with EOF’s Gender Rights portfolio around a range of unique issues faced by incarcerated women, as well as with TIF with respect to transparency in the operation of prosecution and police agencies.

Section VI: Timeline

2009:

- Map the field of criminal justice funders and work with partners to organize new donors.
- Continue leadership role in the OSI Seize the Day Initiative.
- Review and refine grant making guidelines and strategies.
- Develop uniform practices with respect to the provision of technical assistance to grantees.
- Explore opportunities for cross-fund/cross campaign partnerships at OSI.
- Begin review and assessment of operational approach of Soros Justice Program.
- Begin exploratory grant making to examine policing practices.
- Begin grant making to expand drug policy reform efforts.
- Assess needs and determine grantmaking priorities and activities in the juvenile justice area.
- Begin assessment to identify states in which to focus grantmaking activities.
- Develop measures to better evaluate impact of grantmaking activities.
- Develop plan for staggering of multi-year grants beginning in 2010
- Prepare a 2010 work plan.

2010: Year One

- Complete review, assessment, and modification of the Soros Justice Fellowship Program.
- Continue and increase donor-organizing activities.
- Reinvigorate CJF's role as convener of grantees to strategize approaches to policy reform and share current practices.
- Assess needs and determine grantmaking priorities and activities related to intersection of criminal justice and mental illness.
- Begin exploratory grantmaking to address the school-to-prison pipeline.
- Begin expanded grantmaking activities to address parole and probation practices.
- Begin grantmaking activities to target reduction of sentence length for multiple convictions and violent offenses.
- Begin grantmaking to broaden activities to engage prison towns in support of reduction in use of incarceration and downsizing of prisons.
- Refine police and prosecution practices grant making strategies.
- Begin adjustment of grant portfolio in accordance with strategic plan.
- Host a CJF Team annual off-site planning retreat.
- Develop 2011 priorities and prepare work plan.

2011: Year Two

- Evaluate impact of CJF over prior two years and adjust strategic activities accordingly
- Host a CJF Team annual off-site planning retreat.
- Develop 2012 priorities and work plan.

2012: Year Three

- Evaluate impact of CJF over prior two years and adjust strategic activities accordingly
- Host a CJF Team annual off-site planning retreat.
- Develop 2012 priorities and work plan.
- Prepare new strategic plan.