

## The Anti-Incarceration Movement: A Crisis Not Wasted

By Joseph Lawler

*Summary: A network of criminal justice advocacy groups has seized on the financial crisis to argue that reducing the number of criminals in prison is a good way to cut state spending. Social radicals are posing as fiscal conservatives—and George Soros is funding their masquerade.*

**R**ule one: “Never allow a crisis to go to waste.” That’s what Rep. Rahm Emanuel (D-Illinois) told the New York Times on the Sunday after Barack Obama won the election. Emanuel is now chief of staff to President Obama, who is using crisis-driven policymaking to nationalize big banks, insurance companies, automakers and other large parts of the American economy. But the global meltdown is also giving non-profit groups a new rationale for advancing their ends—and no policy advocacy groups have been more aggressive in adopting Emanuel’s rule than the supporters of “prison reform.” For them the financial crisis is just the excuse they need to promote their long-time goal: Emptying the prisons.

Over the past 25 years U.S. crime policy has shifted away from the leniency in vogue during the 1960s and 1970s. Convicted criminals today face tougher sentences and longer prison terms. The combined prison and jail population has increased from 330,000 in 1972 to 2.3 million today, and this tough-on-crime stance has yielded sweeping reductions in crime. In 2007, the most recent year for which the Bureau of Justice Statistics provides information, there were 23 million criminal victimizations, down from 44 million in 1973. Violent crimes dropped during this time span as well, from



**Liberal philanthropist George Soros wants to empty the prisons. His foundation, the Open Society Institute, is a principal funder of the so-called prison reform movement.**

52 offenses per 1,000 in 1981 to 20 in 2007. Property crimes decreased from a high of 554 per 1000 in 1975 to just 147 in 2007. These figures suggest that the policies of the past 25 years are a smashing success.

However, critics say having 7.3 million Americans in the criminal justice system imposes costs that are too burdensome in the current economy. Last March a Pew Center on the States report entitled *1 in 31* (for the ratio of Americans in the correctional system) noted that state correctional spending now exceeds \$50 billion annually. The report found that in fiscal 2008 the daily cost of supervising a probationer was only \$3.42 compared to the

**May 2009**

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average daily cost of a prison inmate, which was \$78.95, more than 20 times higher. The study concluded that the monetary cost of a 'lock-em-up and throw away the key' stance now outweighs the benefits—if we assume that supervised probation can be as effective as imprisonment in reducing many types of crime. Left-wing social reformers have seized on this data to reach the conclusion that we can reduce the number of prisoners in the penal system while continuing to cut crime rates *and* ease state budgets.

Sounds great. But perhaps the foes of incarceration have other priorities in mind besides lowering state budget numbers and overall crime statistics. The central fact concerning this public policy debate is the reality that imprisonment affects low-income urban African-Americans, especially young men, more than any other demographic group. And the raw statistics are fairly alarming: one out of every 11 black Americans is in some stage of correctional control. Sixty percent of young male dropouts will go to prison. The list of racial disparities in the system is daunting.

For some all this is evidence of "systemic racism." For instance, they note that minimum mandatory sentences for possession of crack cocaine are far more severe than those for powder cocaine, a

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**Editor:** Matthew Vadum

**Publisher:** Terrence Scanlon

## **Organization Trends**

is published by Capital Research Center, a non-partisan education and research organization, classified by the IRS as a 501(c)(3) public charity.

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**Organization Trends** welcomes letters to the editor.

**Reprints** are available for \$2.50 prepaid to Capital Research Center.

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difference they attribute to racism. The higher incarceration rates for blacks are similarly taken as an indication of racist motives in sentencing and imprisonment.

Beyond these race-based objections are Marxist class-based arguments. Universities are full of academics who assert that criminal law enforcement and imprisonment are forms of social oppression and tools of class warfare. William Kunstler, the attorney for the anti-Vietnam war "Chicago Seven" and a co-founder of the Center for Constitutional Rights (CCR), was perhaps the most notable proponent of this radical left-wing view. CCR is a major player in the anti-incarceration movement. For Kunstler every criminal by definition was a victim of injustice. He once said, "Any criminal trial in this country is an oppression." In Kunstler's view, the biggest obstacle to obtaining justice in America was the U.S. Constitution.

During the recent—and more conservative—past several decades groups like CCR have had fewer opportunities to successfully promote their views. But they are back at it, seizing the recent economic downturn to reframe their position. Using the rationale of cost-cutting, they are persuading many lawmakers to accept radical social policy changes. Last March New York State rolled-back sentencing provisions regarding drug use that were enacted in 1973 by then-Gov. Nelson Rockefeller. Prison reformers cheered when state lawmakers claimed that New York could weather the fiscal storm if it reduced jail time for non-violent first time drug users. They hailed this measure as a victory. But prosecutors and police fear New York will return to an era of more crime that the Rockefeller reforms were enacted to curtail. One New York City special narcotics prosecutor said of the bill, "It seems to have a lot for the convicted defendant... It doesn't seem to have a lot for the community." Said Brooklyn Republican state senator Martin Golden: "There's only one purpose [of the bill], that is to coddle the criminals."

Golden is right. Of course no sensible person wants more people in jail. On the contrary, the eminent social scientist James Q. Wilson, in a 1994 Public Interest article, famously stated, "Very large increases in the prison population can produce only modest reductions in crime rates." Today marginal increases

in the prison population do little to deter potential criminals. But reverting to 1970s levels of incarceration would mean drastic reductions in the prison population that are sure to cause crime to increase. The costs of maintaining the current prison population are high, but the costs to innocent victims in letting criminals get out of jail or declining to put them into jail would be much higher.

The accusation that sentencing policies are racist is one of many willful distortions made by anti-incarceration advocates. Judges and juries do tend to punish so-called "black crimes" more severely—to protect black victims and deter their assailants. They know that inner-city criminals are not deterred by fines or the social stigma of having a rap sheet.

The excuse for the soft laws passed in New York is the one bluntly stated by Golden: to coddle criminals. Across America a battery of advocacy groups is dedicated to weakening criminal justice by reducing sentences and minimizing imprisonment. These groups treat criminals as a category of victim whose just demands require that their representatives be recognized as legitimate special interest groups. Almost all the anti-incarceration organizations share a common thread: they are funded by a few well-known liberal grant-making foundations, such as the Open Society Institute and its principal funder, George Soros.

## **George Soros and the Open Society Institute**

George Soros, the hedge fund manager and would-be philosopher, is the best known advocate of measures to empty the prisons. The public knows him for his pronouncements on politics and the economy, and for his strenuous fundraising efforts to defeat President George W. Bush in the 2004 presidential elections. When spending millions of dollars on political campaigns and various political action committees (PACs) did not achieve his goals, Soros changed tactics and began funding left-liberal ventures such as the Internet-savvy radical activist group MoveOn.org and the Center for American Progress, a think tank closely connected to Democratic politicians and former Clinton administration officials.

While Soros's direct campaign giving comes from his own pockets, he has set up a grant-

making foundation called the Open Society Institute (OSI), which supports his policy-oriented philanthropy and operates its own programs. In 2007 OSI had assets of \$1.3 billion and made \$278 million in grants. Soros personally gave his foundation \$190 million in cash contributions in 2007.

OSI takes a major interest in changing criminal justice policies and reducing incarceration levels. Since 2001 its Sentencing & Incarceration Alternatives Project has provided grants to 70 organizations. The project's mission statement identifies reducing incarceration as a key to achieving racial and class justice. The program's stated focus is to "eliminate race and class disparities in sentencing and incarceration," "reduce the length of criminal sentences and promote judicial discretion in sentencing," "promote alternatives to incarceration that emphasize rehabilitation and treatment," "limit prison growth and prison privatization," and "empower communities most affected by mass incarceration to develop and advocate for alternative policies that address underlying social, racial and economic inequality." Of course, there is no mention of the fact that tough sentences and race *and* class disparities in sentencing and incarceration exist for good reason. Advocating easing up on criminals, without addressing the crimes they commit, merely provides an excuse for misdiagnosing the larger questions of education, poverty and culture that create persistent racial differences in crime.

Each year, OSI sponsors Justice Fellowships for academics, advocates, reporters and attorneys to work on projects to reduce incarceration and lighten criminal sentences. In 2008 OSI made grants of \$1.1 million to fund 18 fellowships. Most of the grant recipients worked on books or scholarly articles attacking the current criminal punishment system. Some engaged in state or local level lobbying campaigns to change policies. For instance, Pitzer College assistant professor Susan Phillips is writing a book about an FBI task force trying to take down L.A. drug gangs. Since the gangs are located in African-American neighborhoods, Phillips is "seeking to recast the gang/drug link as an issue of community social justice rather than strictly criminal justice." She emphasizes the pain the *crimefighters* inflict "on the families of those targeted,



particularly women and children in poverty."

It's not only assistant professors who get grants. OSI funds some of the biggest players in justice system reform, and the resources allowing this sponsorship are the fruit of Soros's financial acumen. The worldwide financial crisis may have crippled the philanthropic capabilities of many billionaires, but Soros is not among them. "I'm having a very good crisis," Soros said after the stock market crashed in September. News stories indicate that his personal gains amount to \$1.1 billion for the past year. For now, the anti-incarceration industry can rest assured that its OSI funding is safe.

OSI is also known for its major projects supporting democratic institutions in former Communist countries. In addition, it funds whistleblower projects and the creation of "independent" (i.e. liberal) investigative media, supports drug legalization, and provides grants to change immigration laws and study policies on the treatment of mental health, death and dying.

One other grantmaker funds many of the same projects receiving OSI support. However, the JEHT Foundation (an acronym for Justice, Equality, Human dignity, and Tolerance) has not been as fortunate as OSI. It made the mistake of investing its assets with Bernard Madoff and it was forced to shut down at the end of January after Madoff's

Ponzi scheme was exposed. JEHT president Robert Crane told *Business Week* that the JEHT Foundation was the largest funder of criminal justice work in the country. Since 2002 JEHT disbursed more than \$100 million in grants, and it had planned a budget of \$45 million for 2009.

JEHT relied almost exclusively on annual contributions from the Betty and Norman F. Levy Foundation. Levy was a New York City real estate mogul who died in 2005 at age 93, and the assets of his foundation (\$244 million in 2007) were invested with his good friend Madoff. The Levy Foundation contributed \$30.2 million to JEHT in 2007; JEHT's grants and sundry expenses were \$28.8 million that year.

### Vera Institute of Justice

The Levy Foundation contributed \$3 million over just the past four years to the Vera Institute of Justice. Vera also received almost \$1 million from JEHT in 2007 and, like other anti-incarceration think tanks, it has received backing from OSI and the Ford Foundation. Vera director Michael Jacobson is a former professor at the City University of New York and its John Jay College of Criminal Justice. He holds a Ph.D. in sociology and in the 1990s was the New York City probation commissioner and then the corrections commissioner under Mayor Rudolph Giuliani.

New York City's acclaimed drop in crime rates has been widely credited to Giuliani's

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tough-on-crime stance, but Jacobson takes the opposite view. He told British lawmakers during a lecture in London in 2005, “The number of people in U.S. jails and prisons reflects a public policy gone mad.” Jacobson uses his credibility as Giuliani’s former lieutenant to promote a policy of lighter sentences and less incarceration, and he presents his views as a nonpartisan, pragmatic approach to crime—even though his old boss has a very different view.

Vera bills itself as a data-driven, objective group (one 2007 report is entitled “Reconsidering Incarceration: New Directions for Reducing Crime”), but the Institute actively works with state governments to reduce their prison population by paroling “non-violent” inmates. However, after a July 2007 home invasion by two non-violent parolees led to the murder of a mother and her two daughters, Governor Jodi Rell, a Republican, announced a suspension of the sort of program favored by Vera.

## National Council on Crime and Delinquency

The oldest criminal justice research organization in America is the National Council on Crime and Delinquency (NCCD). It was founded in 1907 with the goal of keeping children out of the criminal justice system and has evolved into a more broadly anti-incarceration group. NCCD has received support from the Ford Foundation, the Mary Babcock Reynolds Foundation, and the Rockefeller Brothers Fund. NCCD resolutely opposed tough anti-crime measures in the 1980s and 1990s.

While NCCD’s positions have not changed in 25 years, the current fiscal crisis plaguing all the states has given it an opportunity to restate its case. President Barry Krisberg recently told the *New York Times*, “When state budgets are flush, prisons are something that governors and legislators all support, and they don’t want to touch sentencing reform. But when dollars are as tight as they are now, you have to make really tough choices. And so now things are in play.”

In a special report on California’s prisons and the state’s budget crisis Krisberg explained how the state could save money by changing its incarceration policies. “We

are at the point where what occurs behind prison walls is directly linked to whether California can salvage its aging infrastructure of roads, levees, and schools,” he claimed. NCCD graphs show reductions in crime follow police crackdowns on crime, but apparently Krisberg thinks putting criminals in jail has no similar benefit and that it stymies improvements in roads, levees, and schools. NCCD tries to use its work in California as a springboard for advising other states how to roll back prison spending.

Most of NCCD’s revenue comes from federal government grants. In 2007, the most recent year for which information is available, NCCD received only about \$1.7 million in private funding, but \$4.5 million from the federal government.

## The JFA Institute

Yet another anti-incarceration think-tank, the Washington, D.C.-based JFA Institute, has close ties to NCCD where JFA president James Austin was previously executive vice president. Austin and JFA board chairman John Irwin co-wrote many NCCD anti-incarceration white papers in the 1990s. As a March 2005 *Foundation Watch* relates, Irwin argued that “rulers have used imprisonment... to promote a self-serving political economy, to control the surplus population or the ‘dangerous classes,’ and to introduce a form of discipline consistent with the new capitalist mode of production—the factory.” Irwin cited ‘class control’ as the primary reason for increased incarceration in the United States.

JFA’s latest report, *Unlocking America: Why and How to Reduce America’s Prison Population*, is cut from the same neo-Marxist cloth as the authors’ papers for NCCD. Consider one representative passage from *Unlocking America*:

*”But given that most of us commit some type of crimes in our lifetimes, the most severe punishments are targeted toward lower class citizens. It is this class of people we are willing to punish disproportionately to their criminal acts. This willingness to punish them is rooted in our culture of individualism, which holds that we are free-willed and fully responsible for our acts. This belief speaks to our tendency to assign personal blame for every disapproved act. The truth is that*

*many factors, particularly race and economic status, affect our life situations and limit or expand our available choices.”*

The report was funded by OSI.

JFA criticizes individual responsibility as an American mirage but claims criminals are victims. What counts is winning the class struggle.

## The Anti-Incarceration Network

A look at OSI grants to criminal justice and incarceration groups suggests the vast extent of the movement to reduce prison punishment. In 2008 OSI made grants to:

\* A Better Way (\$40,000), a Connecticut-centered state group;

\* Critical Resistance (\$120,000), which equates the abolition of prisons to the abolition of slavery;

\* Ella Baker Center for Human Rights (\$125,000) in Oakland, California, which has 24 full-time staff, including six attorneys;

\* FACTS Education Fund (\$55,000), which seeks to repeal California’s “three strikes and you’re out” sentencing rule;

\* Families Against Mandatory Minimums (\$200,000);

\* Grassroots Leadership (\$120,000), which fights prison privatization and detention centers;

\* Justice Policy Institute (\$125,000), which summed up its 10 years of anti-crime fighting activism by asserting: “Consider a world in which a country’s entire population is under the control of the criminal justice system.... The prison industrial complex has created this reality. More than seven million people—a number equal to the population of Israel—live their lives under the control of the criminal justice system in the United States.”

\* Partnership for Safety and Justice (\$56,000), an Oregon state-based group;

\*Texas Criminal Justice Coalition (\$280,000 for two years);

\*Tides Center (\$150,000), whose Break the Chains project equates the war on drugs to the war in Iraq;

\*W. Haywood Burns Institute (\$150,000 for two years), which supports a project looking into ways to use international law to affect juvenile justice policy.

## The Sentencing Project

Perhaps the most shameless of the anti-incarceration groups is the Sentencing Project. Its executive director, Mark Mauer, has seized on the fiscal crisis with Rahm Emanuel-like fervor, telling the AP, "Prior to this fiscal crisis, legislators could tinker around the edges — but we're now well past the tinkering stage.... Many political leaders who weren't comfortable enough, politically, to do it before can now — under the guise of fiscal responsibility — implement programs and policies that would be win/win situations, saving money and improving corrections."

The Sentencing Project has been banging this particular drum since it was founded in 1986. Its original mission was to train defense lawyers to secure more lenient sentences for convicted criminals. Now the group has branched out into anti-incarceration advocacy and felon disenfranchisement. Along with the ACLU and the Brennan Center for Justice at NYU School of Law, it runs the Right To Vote Campaign. This campaign's mission, according to its website, is "to remove barriers to voting by people with felony convictions."

As its most recent accomplishment in securing the felon franchise, The Sentencing Project touts an executive order by former Iowa Governor Tom Vilsack restoring voting rights to all criminals who have completed a felony sentence. The group also boasts that, in 2006, Connecticut, Florida, and Tennessee changed their laws to promote voter registration by felons.

The Sentencing Project (2007 assets \$2 million, revenues \$1.7 million) was on the defensive last June after Washington Post columnist George Will pointed out that "Liberalism likes victimization narratives and the related assumption that individuals are blank slates on which 'society' writes. Hence liber-

als locate the cause of crime in flawed social conditions that liberalism supposedly can fix." The Sentencing Project responded by noting that "for more than three decades our nation has made unprecedented investments in prison expansion at the expense of other policy options." Apparently these "other policy options" trump the social benefits of deterring crime.

The Sentencing Project successfully generates far more media attention than its limited funding might suggest. That's a tribute to its aggressive advocacy campaigns, which are recognized by its most media-savvy funders. In 2006 OSI and JEHT gave it over \$600,000 in grants.

## Never Let A Crisis Go to Waste

Recently Senator Jim Webb (D-Virginia) outlined the anti-incarceration movement's next step: national prison reform. In an article in the Sunday supplement magazine Parade, Webb wrote, "America's criminal justice system has deteriorated to the point that it is a national disgrace. Its irregularities and inequities cut against the notion that we are a society founded on fundamental fairness.... We are wasting billions of dollars and diminishing millions of lives."

A legion of activists devoted to making excuses for criminals is ready to jump on Webb's bandwagon and take it over. Whatever legislation he proposes is likely to become the launching pad for their agenda, which is sure to be more radical than he realizes. The anti-incarceration movement stands to make great gains in the next year, and the rest of us will dearly pay for its success.

*Joseph Lawler is the Collegiate Network fellow at the American Spectator.*

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Many thanks.

Terrence Scanlon  
President

# Briefly Noted

Although the U.S. Census is supposed to be free of politics, **ACORN** is planning on participating in the decennial count next year. The group signed up with the U.S. Census Bureau in February to help recruit more than a million temporary employees to count every person in the country. "It's a concern, especially when you look at all the different charges of voter fraud...We don't want to have any false numbers," said Rep. **Lynn A. Westmoreland** (R-Georgia).

**Turnaround.** House Judiciary Committee chairman **John Conyers** (D-Michigan) reaffirmed at the end of March that he still plans to launch a congressional probe into the wrongdoings of the radical direct-action group ACORN. "That's our jurisdiction, the Department of Justice," he said. "That's what we handle - voter fraud. Unless that's been taken out of my jurisdiction and I didn't know it." Just last year Conyers defended ACORN, describing it as "a longstanding and well regarded organization that fights for the poor and working class."

Meanwhile, Sen. **David Vitter** (R-Louisiana) tried to prevent ACORN and its affiliates from benefiting from the Obama administration's national service bill that dramatically expands the scope and cost of AmeriCorps. Vitter's amendment to HR1388 would have prevented ACORN from receiving funding and from participating in any program that makes use of government-sponsored volunteers. It was voted down by senators, 53 to 43.

**Common Cause's** state chapters in Florida and New Jersey are going out of business, Tampa Bay Online reports. The chapters of the group, which pushes for so-called campaign finance reform, are closing for lack of funds. Big donors to Common Cause include **Arca Foundation**, **Carnegie Corp. of New York**, and the Chicago-based **Joyce Foundation**. Before he became U.S. president, **Barack Obama** served on the Joyce Foundation's board.

**Jane Hamsher** of left-wing website **Firedoglake** is upset that the liberal interest groups she and other bloggers write about aren't paying left-wing bloggers for propagating the faith. "They come to us, expecting us to give them free publicity, and we do, but it's not a two way street...and people are growing increasingly resentful," she said.

**Government agencies never die.** Attorneys working for the taxpayer-funded **Legal Services Corporation** (LSC) may soon be free to file lawsuits to make government bigger, the **National Legal and Policy Center** reports. Sen. **Tom Harkin** (D-Iowa) introduced legislation ending restrictions on the ability of legal service organizations funded by the LSC to file ideologically motivated lawsuits. Harkin's bill almost doubles the LSC budget from \$390 million to \$750 million. Liberal groups such as the **Leadership Conference on Civil Rights** are lobbying for the measure. In 1981 President Ronald Reagan fought an intense but losing battle to shut down the LSC.

The governments of **Iran** and **Venezuela** have joined forces to create a joint bank aimed at promoting their exports. Venezuela's leftist strongman **Hugo Chavez** said, "Capitalism needs to go down. It has to end. And we must take a transitional road to a new model that we call socialism." Chavez is the South American leader who allows Islamist terrorist groups to operate from his country. We profiled Chavez and his liberal American friends in the March 2008 issue of *Organization Trends*.

**Pat Toomey**, president of the **Club for Growth**, has resigned his post to wrest the Pennsylvania GOP nomination for the U.S. Senate from incumbent Sen. **Arlen Specter**. Toomey's replacement at the club is former Rep. **Chris Chocola** (R-Indiana).