

A conversation with Peter Wagner on July 14, 2014

Participants

- Peter Wagner – Executive Director, Prison Policy Initiative
- Shayna Strom – Director, U.S. Policy, Open Philanthropy Project

Note: This set of notes was compiled by the Open Philanthropy Project and gives an overview of the major points made by Mr. Wagner.

Summary

The Open Philanthropy Project spoke to Mr. Wagner about the potential for reform in several areas of the US criminal justice and prison system. Mr. Wagner explained that the Prison Policy Initiative produces cutting edge research to expose the broader harm of mass criminalization, and then sparks advocacy campaigns to create a more just society. We began by discussing several smaller projects that the Prison Policy Initiative has developed but has not yet raised the funds to implement. Later in the conversation, we discussed strategies to strengthen the infrastructure of the criminal justice reform movement, and then concluded with some larger-scale ideas for reform.

Mr. Wagner explained the mismatch between the need for large-scale campaigns to reverse mass incarceration and over-criminalization and funders' insistence on investing only in small projects with specific campaign-driven deliverables. He explained that the Prison Policy Initiative responds to this funding reality by developing projects that bring about real changes while also serving as parables for the need for larger reforms in the criminal justice system. Often, but not always, these projects focus on how the criminal justice system has grown so large it punishes people who aren't even accused of crimes, such as family members or voters.

Small-scale campaigns

Mr. Wagner suggested the issues listed below could be targeted by campaigns costing between \$10,000 and \$100,000. Progress in these areas would both help individuals and decrease the negative impact of the criminal justice system as a whole.

Racial and correctional impact statements

States and the federal government frequently change the criminal law with little to no information on how those changes will effect prison populations, the budget, or racial disparities. The most infamous example is the crack/powder cocaine sentencing disparity that Congress created almost overnight after the overdose

death of a just-drafted basketball star. To avoid this problem, states are starting to adopt a common-sense preventative measure: create structures for legislators to request racial or economic impact analyses prior to voting on criminal justice-related bills.

There is a long history of states requiring fiscal impact statements and environmental impact statements, but there has never been a comparative study of the different states' approaches at producing these statements or an attempt to codify the best practices

Prison gerrymandering

The US Census Bureau counts incarcerated people as if they live in correctional facilities rather than at their legal residences. Consequently, when district lines are drawn, areas with prisons gain extra influence in the legislative process. This "prison gerrymandering" dilutes the votes of all people who do not live next to large prisons, particularly the urban and minority communities where people in prison disproportionately come from. This misallocation of political clout also creates perverse incentives for legislators with prisons in their districts to support counterproductive criminal justice policy that keeps those prisons full. So far, four states and hundreds of counties have rejected the Census Bureau's prison miscount and ended prison gerrymandering at the state and/or local levels. The Census Bureau is considering a national solution. Mr. Wagner said that although the Prison Policy Initiative founded and continues to lead the national movement to end prison gerrymandering, all of its funding for this work is scheduled to end soon.

Telephone and video calls

In a world where telecommunication is generally low-cost, calls home from prisons and jails are a notable exception, often approaching and sometimes passing \$1/minute. The correctional facilities give monopoly contracts to private phone companies on the basis of which company will kickback the largest share of the revenue. The result is make family communication cost prohibitive, thereby interrupting one of the few things proven to increase the odds of post-release success. While the kickback revenue is typically a very small portion of a correctional facility's income, high call charges constitute a burdensome regressive tax on the typically poor people who have incarcerated family members. The Federal Communications Commission has passed preliminary reform measures – in part inspired by the Prison Policy Initiative's research and advocacy – and is considering further steps. Telephone justice is both a basic bread and butter issue for the families of incarcerated people and an excellent way to get the public involved in the broader harm caused by our criminal justice system.

Some correctional communication companies have branched out in to video visitation, which is "just like Skype" except the quality is bad, they charge up to \$1.50 a minute, and the companies frequently require sheriffs to ban traditional in-

person visitation to stimulate demand for video services. At the time of our conversation, there was no comprehensive study of the industry or any guides to help sheriffs make more informed decisions when dealing with this industry. (Subsequent to this conversation, the Prison Policy Initiative released a comprehensive report entitled “Screening Out Family Time: The for-profit video visitation industry in prisons and jails,” available at <http://www.prisonpolicy.org/visitation/> Mr. Wagner reports that he is currently fundraising for followup advocacy.)

Automatic license suspension

Many states have counterproductive laws that make it harder for people to succeed after their involvement with the criminal justice system. One such policy is a federal law that encouraged states to suspend the drivers licenses of anyone convicted of drug offenses, even if a vehicle is not involved in the offenses, and then charge a hefty fee before the license can be restored. The result is to make it harder for people with past drug convictions to fulfill any personal or employment responsibilities that involve mobility.

The Prison Policy Initiative recently released the first-ever report about the law’s operation in Massachusetts in order to support an ongoing campaign to have the state legislature opt-out of the federal requirement. There is a need for more advocacy in Massachusetts, and the Prison Policy Initiative believes that as many as 16 other states may be enforcing this law and should be encouraged to formally opt-out of the federal requirement.

Movement infrastructure

Mr. Wagner discussed how the lack of basic data and policy information undermines the criminal justice reform movement’s infrastructure, and he gave examples from the Prison Policy Initiative’s work for how to remedy those shortfalls. For example, the federal government stopped publishing data on racial disparities by state in 2005, which hindered advocates’ ability to craft compelling racial justice reform arguments. As a partial solution, the Prison Policy Initiative recently found a new data source to fill in that gap and released a widely-cited report. Similarly, until recently there wasn’t a simple way to answer the basic question “how many people are locked up in this country and why?”, so the organization developed a report that aggregated our disparate systems of confinement to enable policymakers and the public alike to get the big picture of U.S. incarceration.

Mr. Wagner said that the criminal justice system is slow to innovate, and that most new ideas go largely unmonitored. While some developments are legitimate positive innovations, others are harmful and counterproductive fads. Both formal academic study and the more basic — and timely — journalists’ review would remove much

of the mystery that surrounds new policy developments and enrich the larger discourse. Areas that would benefit from research include:

- GPS electronic monitoring programs (particularly concerning whether they are, in practice, oppressive to the poor and whether they are truly an alternative option to imprisonment instead of a new expansion of the criminal justice system to people who previously would never have been incarcerated in the first place).
- Prison diversion programs (e.g., drug courts).
- Gender responsive prisons.
- Large-scale prison releases (Mr. Wagner reported that his research into the historical record indicates that such releases are in fact quite common and safe).

Large-scale campaigns

Mr. Wagner also discussed the possibilities for foundation leadership on large-scale criminal justice reform. Other than an exciting effort being put together by the Public Welfare Foundation, there is not much thinking being directed at such issues, and consequently there is significant potential for impact in these areas by a foundation.

Grants for prison closure

In 1994, the federal government created monetary incentives for states to lengthen prison sentences and build more prisons. Mr. Wagner suggests that this process could be run in reverse, with state grants for community redevelopment after prison closure, and that such closures and redevelopment grants could be incentivized with foundation matching funds. Prison closures are most effective, both politically and in terms of economic impact, when some kind of transition is provided for workers in the community. Giving the states a defined window (e.g., 12 months) in which to decide whether to participate could create stimulus-like urgency and inter-state competition for decarceration.

Bail reform

The cash bail system is a major cause of jail overcrowding. Every day, about 428,000 people who are facing criminal charges are kept behind bars simply because they cannot afford to make bail. Unnecessary confinement wastes taxpayer funds and creates yet another harmful incentive for people to plead guilty and be released for "time served." The whole problem remains largely unaddressed because the agencies with the ability to address the problem aren't the agencies that bear the costs. For example, Mr. Wagner told a story about how some foundations have given grants to court systems to hire clerks to check in with people incarcerated in jails and attempt to reduce bail amounts to what families are able to pay. However, when the grant money runs out, these clerks are usually laid off because the court system

has no financial incentive to save the *jail* system money. (It also doesn't help that the for-profit bail industry lobbies to maintain the current bail status quo.)

Organizations working to reform the bail system include:

- The Justice Policy Institute
- The Pretrial Justice Institute
- The Public Welfare Foundation

Other advice

Mr. Wagner suggests that Open Philanthropy Project focus on campaigns that build the capacity of the criminal justice reform movement and bring new stakeholders to the table.

Other people for Open Philanthropy Project to talk to

- **James Kilgore** – Blogger focused on GPS monitoring. Mr. Kilgore raised over \$3,000 on Indiegogo to write a series of blog posts on this topic (<http://voiceofthemonitored.com/>).
- **Seema Gajwani** – Program Director, Criminal Justice Program, the Public Welfare Foundation.
- **Tracy Huling** – Soros Justice Fellow at Open Society Foundations. Ms. Huling is an expert on the causes and effects of the presence of prisons in rural communities.

All Open Philanthropy Project conversations are available at
<http://www.givewell.org/conversations>