**Summary – Death Penalty Abolition Portfolio Review**

**May 15, 2014**

**Background**

On May 15, 2014, the Justice Fund of U.S. Programs presented a portfolio review of its death penalty abolition grantmaking from 2007 – 2013. The summary below represents the key questions and observations raised during the discussion before the U.S. Programs board.

**Summary**

1. **What is added value of death penalty abolition campaign supported by OSF’s grantmaking?**

The 2025 Campaign to End the Death Penalty by 2025 was formed in 2007 with OSF support and restructured in 2014 under the name – the Eighth Amendment Project. One of the ongoing debates within the anti-death penalty movement over the course of the campaign has been the focus on the amount of resources that should be devoted to state-based policy reform to achieve legislative repeal versus litigation strategies which drive down usage of capital punishment. This question has been the source of much debate and also tension in a field where advocates compete for scarce resources. At times, the debate has been simplified as the policy advocacy versus litigation. Although achieving death penalty abolition requires a combination of strategies including policy, litigation, communications and research, leaders in the field have debated about how to prioritize the strategies. In fact, much of the debate surrounding the formation of the new campaign focused on the issue of priorities. The result is a shift from an old campaign structure that emphasized a multi-sector approach that invested heavily in state-based, legislative repeal campaigns to a new campaign structure that prioritizes litigation and state-based policy strategies that do not focus on legislative repeal.

During the portfolio review, discussant David Cole noted that there has been significant progress towards death penalty abolition since 1998 when OSF first began funding this work. However, Cole noted the successes are not wholly attributable to OSF or the campaign. Furthermore, Cole noted the portfolio review document did not discuss thoroughly enough which OSF investments led to the greatest successes in death penalty abolition. Discussant and U.S. Programs board member Yochai Benker asked the essential question – What did OSF achieve through the campaign that could not have been achieved with the same players working without the campaign? U.S. Programs Board member Deepak Bhargava made the important observation that the OSF-supported anti-death penalty advocacy is a movement and not a campaign. “Talent, money, and strategy are the fundamentals,” according to Bhargava. Additionally, he noted the need to distill state-of-the-art movement-building, particularly since “state-of-the-art” does not transfer across campaigns. Bhargava also noted the need for the field to have a voice in the strategic decisions of the new campaign moving forward. This complex constellation of questions and observations shines a spotlight on OSF’s future investments in death penalty abolition. As the campaign shifts to a new structure, OSF should recalibrate to determine how to measure the impact of its future investments and to what extent the new structure adds value to the goal of ending the death penalty in the United States.

1. **Should OSF examine its lack of investment in communications dollars devoted to death penalty abolition?**

OSF’s most significant investment in anti-death advocacy has been through litigation. Communications work has been significantly underfunded. While several OSF grantees, such as Equal Justice Initiative and the Southern Center for Human Rights, incorporate a multi-sector advocacy approach in their work utilizing a communications element, only 4 percent of OSF funding from 2007 – 2013, supported project grants specifically focused on using communications as a tool to end the death penalty. The underfunding results from a fierce competition for a limited set of funds, a lack of the highest priority placed on communications by the campaign’s leadership, and a frequently conflicting set of demands from the field about which strategies should receive the highest priorities. U.S. Programs board member, Yochai Benkler, noted the lack of investment in communications compared to litigation and asked if this was a good strategy given the need to change public perception about the death penalty.

1. **What does OSF give up and what does it gain by taking part in funder collaboratives?**

When Funders for Alternatives to the Death Penalty (FADP) begin in the late 1990s, OSF played a lead role in attracting new funders to the anti-death penalty movement. Successes included brining on the JEHT Foundation and The Atlantic Philanthropies to fund anti-death penalty work. Although the JEHT Foundation closed its doors, the foundation played a key role in providing significant investments in early death penalty repeal states such as New Jersey and New Mexico. The Atlantic Philanthropies has become the leading investor in the anti-death penalty movement. While FADP provided funders with a space to coordinate funding to align with common goals, there have also been challenges such as a less than clear governance structure. In the transition from the Campaign to End the Death Penalty by 2025 to the a new campaign structure, now branded as the 8th Amendment Project, FADP has transitioned to a new structure that is managed by the Themis Fund at Proteus. The processes by which the new funding structure will operate are still being formulated.

A significant portion of the portfolio review discussion centered on the added value of OSF’s participation in the death penalty funder collaborative and the challenges presented by taking part in funding collaboratives in general. In particular, U.S. Programs board member, Yochai Benkler, noted the difficult governance structure of funder collaboratives, which creates problems with coordination, transparency, duplication of efforts and challenges with managing egos. Board member Bryan Stevenson noted the challenges that arise in funder collaboratives when the participating institutions do not have the same values. Stevenson noted, “In a campaign with different funders, you take on their characteristics in ways that can be problematic.” Stevenson also noted the difficulty in meeting unrealistic funding expectations. FADP members did not raise the level of funding promised when the 2025 Campaign was launched. OSF President, Chris Stone, raised the fundamental question of what OSF gains and what it loses by taking part in funder collaboratives. For instance, Stone noted OSF is “the second biggest funder in FADP, and therefore, should have a decisive say in funding and strategic decisions. “