

## The Excuse-Making Industry: Part I

*Funded by liberal foundations, criminals now have their own influential lobby*

by Robert James Bidinotto

**Summary:** *Most Americans want criminals to be punished. But a vast and influential lobby of social scientists and activists—supported by well-heeled liberal philanthropies—has been working hard to thwart tough criminal sanctions, and to substitute “alternatives to incarceration.”*

**B**uried under the waves of news coverage about last November’s election was a ballot initiative in California that aimed to rewrite the state’s tough “three strikes” sentencing law.

Buried even deeper was the fact that the billionaire who bankrolled much of the campaign to dump President Bush was also a key backer of the campaign against “three strikes.”

International financier George Soros, who underwrote the anti-Bush groups Americans Coming Together and MoveOn.org, chipped in \$500,000 to promote the California ballot measure known as Proposition 66. If passed, it would limit the types of felonies to be counted as “third strikes” against repeat criminals. According to the *San Francisco Chronicle*, it also would have “changed the definition of some felonies, making assault with intent to rape an elderly or disabled person by a juvenile a nonviolent crime, for example.” And it would have applied *retroactively*—which could have freed up to 26,000 inmates convicted under the existing law, according to the California District Attorneys Association. Only an eleventh-hour media blitz, led by California governor Arnold



Leading “excuse-makers” receiving funding from George Soros (bottom center) include (clockwise from bottom left) the Sentencing Project’s Marc Mauer, scholar Todd Clear, as well as Jerome Miller and Herb Hoelter of the National Center on Institutions and Alternatives.

Schwarzenegger, led to the initiative’s 47-53 percent defeat.

Coupled with the re-election of President Bush, this was a big setback for Soros, the most prominent and profligate supporter of leftist causes in America today. One of those causes is “to reduce the United States’ use of excessively punitive policies to respond to complex social, economic, and public health conditions” and “to diminish the role of prisons in the U. S. criminal justice system.” So states the Web site of the U. S. Justice Fund, one of many anti-incarceration projects run by the Soros-funded Open Society Institute.

Soros, in fact, has emerged as the biggest funder of what I have labeled “the Excuse-Making Industry.”

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# Foundation Watch

## The Excuse-Making Industry

As I described it in my book, *Criminal Justice? The Legal System Vs. Individual Responsibility*, the Excuse-Making Industry...

...consists primarily of intellectuals in the social science establishment: the philosophers, psychological theorists, political scientists, legal scholars, sociologists, criminologists, economists and historians whose theories have shaped our modern legal system. It also consists of an activist wing of fellow-travelers: social workers, counselors, therapists, legal-aid and civil-liberties lawyers, "inmate rights" advocates, "progressive" politicians and activists, and so on...

It's a sprawling intellectual consensus...united in a single premise: that the criminal isn't responsible for his behavior... Forces and circumstances outside his control "cause" him to behave as he does. He should be forgiven, or treated therapeutically, or placed in a better environment, or counseled to "cope" with his uncontrollable inner demons. But he must not be held accountable for his actions— and, under no circumstances, punished for what he "couldn't help."

It was this Industry which, during the 1960s and 1970s, initiated a quiet revolution in the criminal justice system. Its proponents managed to rout the last of those who believed the system's purpose was to apprehend and punish criminals. Instead, the new policy experts in criminal justice instituted a long-cherished dream: not punishment, but *rehabilitation* of criminals.

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*In the 1960s and 1970s, the Excuse-Making Industry instituted its long-cherished dream: not punishment, but rehabilitation of criminals.*

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Prisons were renamed "correctional facilities," wardens became "corrections commissioners" and some even referred to their inmates as "clients" with "special needs." Taking cues from U. S. Supreme Court decisions under Chief Justice Earl Warren, judges and lawyers elevated the "rights" of criminals over the rights of crime victims. Probative evidence and confessions were excluded from courtrooms whenever police or prosecutors made the slightest miscues in paperwork or procedures. Rampant plea bargaining minimized criminal charges and sanitized criminal histories. Early-release programs and "diversionary sentences" quickly recycled thousands of hardened felons back onto the streets after they'd served but a fraction of their sentences.

From 1961 through 1969, the number of federal and state prisoners actually dropped every year. The likelihood of serving time for a crime was plunging, too. For every 1,000 arrests in 1961, there were 225 inmates; by 1974, only 93 were behind bars.

And the result of this grand rehabilitation experiment?

An explosion of crime.

## Blood In The Streets

In the early 1960s, at the same time the number of inmates began to plunge, crime rates—which had been relatively flat—began rising sharply. According to the federal Bureau of Justice Statistics, 3,384,160 serious crimes were reported in 1961. By 1974 that number had soared to 10,253,520. Yet despite this *tripling* in crime rates, there were still fewer criminals behind bars in 1974 than in 1961.

Some saw a logical connection. In *Losing Ground*, social scientist Charles Murray noted that liberal leniency had radically altered the incentive structure governing personal behavior. Soon, "a thoughtful person watching the world

around him...was accurately perceiving a considerably reduced risk of getting caught."

Fed up with the crime epidemic, the public demanded changes, and nervous politicians complied. Over the past two decades sentencing got much tougher in most states, with "mandatory minimums" and "three strikes" laws supplanting early parole and various "alternatives to incarceration." The failed rehabilitation binge sparked a reaction: a prison-building binge, to lock away thousands of felons previously "diverted" to the streets. From 218,205 inmates in 1974, prison populations surged to 1,367,856 by 2002.

And the result of this new emphasis on punishing criminals?

A dramatic plunge in crime rates.

According to the Justice Department's annual crime victimization surveys, there were 23 million crime victimizations in 2002, barely half the estimated 44 million in 1973—and this drop came despite a growing national population. Violent crime rates, which peaked in 1981 at 52 offenses per 1,000 population, fell sharply to only 22 victim-

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izations per 1,000 population in 2003. Property crime rates plummeted even more dramatically, from a 1975 high of 554 per 1,000 to just 163 in 2003.

Contrary to claims by anti-incarceration advocates that we were locking up thousands of “minor drug offenders,” the surge in prison populations was overwhelmingly composed of violent and property criminals. In 1980, state prisons held only 173,300 violent offenders and 89,300 property criminals. By 2001 those numbers were 596,100 and 233,000. While the population of drug convicts had indeed grown hugely during that same period (from 19,000 to 246,100), many serving drug sentences also have past records of violence or property crimes. The number of first-time “minor criminals” in prison is actually very small.

You’d think the contrasting results from the “rehabilitation binge” versus the later “incarceration binge” would persuade anyone of the merits of punishment over “rehabilitation” for controlling crime. But you’d be over-estimating the Excuse-Making Industry’s interest in justice and public safety—and underestimating its commitment to an ideology which holds that criminals are society’s victims, not responsible for their actions.

Even while their criminal-coddling policies were wreaking social havoc and filling the nightly news with horror stories, the Excuse-Makers were trying to reverse the trend toward punishing criminals. Funding and choreographing many of these efforts was a New York philanthropy set up by the heir to the Avon cosmetics fortune.

### **Edna McConnell Clark Foundation**

In 1969, Edna McConnell Clark—a daughter of Avon’s founder—expanded the family foundation and put her sons in charge. The foundation decided to focus on a variety of liberal charity projects. One was a “Justice Program,” which “focused on improving the criminal justice system in the United States, and in particular, addressing the issues of sentencing, prison reform and overcrowding.”

Enter Kenneth F. Schoen, described by the *New York Times* as “a pioneer in alternative sentencing programs.” For years Schoen directed the foundation’s Justice Program, where

he wrote that “there are more humane, more productive, and safer ways to punish some people who have violated our laws than putting them behind bars.” Politicians, he said, “have got to change all those mindless get-tough crime laws and mandatory minimum sentencing statutes that they passed in recent years, because these laws and policies are what’s creating the explosion in the prison population.”

Schoen honed this anti-incarceration outlook while inside the belly of the beast. In 1972 he was Deputy Corrections Commissioner in Minnesota, where he engineered the passage of Minnesota’s Community Corrections Act, an “alternatives to incarceration” law. Elevated to state Commissioner of Corrections, Schoen oversaw implementation of the law. That’s where he hit upon his Big Idea.

For Schoen, the big social problem wasn’t the exploding criminal population: it was exploding *inmate* population. So rather than simply build more prisons to address rising crime, Schoen argued that criminal sentencing should be constrained by *existing* prison capacity. In other words, if you have only enough beds to house 1,000 inmates, you should sentence only 1,000 people

prison beds” so as to give more prison time for truly dangerous and violent offenders, while diverting minor offenders to “alternatives.”

By 1991, Minnesota could boast that it was one of only nine states not under court order to reduce prison overcrowding. But that’s because so many of its most dangerous felons were roaming the streets. That same year, the *Minneapolis Star Tribune* published an investigative series unmasking the devastating results of the “sentencing guidelines.” With a parade of horror stories and shocking data, the paper revealed “a gentle brand of justice that gives breaks to rapists and child molesters.” Under the toothless sentencing guidelines, judges were diverting scores of brutal sex offenders into probation and treatment programs. First-degree sex offenders, supposed to serve 43 months under the “guidelines,” actually served an average of only two years behind bars, while 27 percent never went to prison at all.

With that track record, Schoen moved on to New York City to head up McConnell Clark’s Justice Program. There he funneled millions of dollars into conferences, books, reports, polls, prison “overcrowding” lawsuits and executive placement programs, all to help spread his Big Idea nationwide. He hired leading anti-incarceration

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to prison. Even if you have, say, 1,500 convicted criminals, you shouldn’t build 500 more cells. Instead, you should enact “sentencing guidelines” that will redirect the 500 convicts you think least dangerous into some form of “community alternative.”

In 1978, as Corrections Commissioner, Schoen engineered passage of a law setting up a Sentencing Guidelines Commission, which operated on the basis of the Big Idea. He sold it as a way to “free up scarce

groups—the ACLU, the Sentencing Project, the National Center on Institutions and Alternatives, the National Council on Crime and Delinquency—to handle these projects, and to reach foreordained research conclusions.

Schoen also targeted McConnell Clark money to state governments that seemed “receptive” to “what we had learned about alternative sanctions” and were prepared to “apply it to the pervasive problem of rising prison populations.” One participant in the Foundation’s executive search

program, Morris Thigpen, had become Alabama Corrections Commissioner in 1987; and according to the Justice Program's 1988 annual report, "[state] officials agreed that Alabama could not afford to build the new prisons," so "we selected Alabama as the first state in which to focus our resources" and "eliminate the annual prison population growth."

Schoen granted money to Thigpen's Department of Corrections to fund a workshop where state legislators were introduced to anti-prison researchers hyping his Big Idea. He also gave a grant to the state Parole Board to hire Todd Clear, then a Rutgers criminal justice professor, "to

Note that these individuals weren't to be selected because they were a *low* risk, but precisely because they represented a *high* risk. In this "experiment" (with unsuspecting residents in the community), "Approximately 250 high risk felony offenders will be referred to the program in the first year"; five state parole and probation officers would be selected to "maintain intensive supervision caseloads of 25 offenders [each]." Launched in April 1986, "The outcome of this experimental research project will be evaluated," says the pamphlet, "and, if successful, recommendations will be made to the Corrections Division concerning the diversion of carefully selected, incarceration-bound offenders."

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***An Edna McConnell Clark Foundation crime seminar "was like a cult indoctrination," reported one participant. "It was just hammering, hammering, hammering: 'We need to do away with prisons. We need to quit sending people to prisons.'"***

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help identify offenders who can be safely diverted to community-based programs." With McConnell Clark funding, Clear had already performed that same service for the New York State Parole Board. Schoen then hired the Public Agenda Foundation to conduct public focus groups and polls about the popularity of alternatives to prison. He even awarded a grant to the University of Alabama's School of Communication to sponsor a contest with prizes going to media reporters who gave favorable coverage to the "reform" efforts.

McConnell Clark money, and lots of it, went into other states as well. One grant, also administered by Todd Clear, underscored the Excuse-Makers' blasé attitude toward public safety. It was for an experimental Probation Development Project (PDP) in Multnomah County (Portland), Oregon. The stated goals, according the PDP pamphlet: (1) "To increase local capacity for maintaining offenders in the community, and thereby reduce the number committed to state institutions. (2) To provide the high level of structure, surveillance, and responsiveness required for the community supervision of a population of high risk clients." [Emphasis added]

The idea of dumping dangerous criminals out of prison appears to have caught on with budget-minded corrections officials. The April 23-29, 1992 issue of *Willamette Week*, a local paper, reported that "the number of people out on parole and probation in Multnomah County has risen 33 percent in the last five years"—while "the number of POs (Probation Officers) out on the streets has dwindled" from 120 to below 100. And the parolees and probationers they were frantically trying to keep track of included 373 convicted murderers, 388 rapists, 928 guilty of assault, 73 kidnappers, 217 convicted for sodomy and 300 more for sexual abuse, 981 robbers, 76 arsonists, 1,021 burglars...and the list goes on.

McConnell Clark's efforts began attracting attention. I challenged Schoen face-to-face on a national cable talk show hosted by Geraldo Rivera; the National Rifle Association widely circulated a harsh special report on the Foundation, titled "America's Powerful Anti-Prison Lobby"; and in March 1999, Anthony Thornton, reporter for the *Oklahoman*, wrote a searing indictment of "Edna's" machinations in that state.

"This is the story of a how a wealthy New York foundation set up shop at Oklahoma's second-largest state agency in its quest to play puppeteer over the criminal-justice system," Thornton's article began. He revealed that McConnell Clark had spent at least \$862,200 in Oklahoma between 1993 and 1996, with \$476,000 channeled through the corrections department and its quasi-governmental association. Much of the cash "has gone toward junkets for corrections department employees, legislators, judges, district attorneys and other officials key to the fight over truth in sentencing... The foundation's seminar destinations were the stuff that vacations are made of: Hilton Head Island, S.C.; San Francisco; Boston; Savannah, Ga.; Seattle; Phoenix; and Stowe, Vt... 'It was like a cult indoctrination, is what it was. It was just hammering, hammering, hammering: "We need to do away with prisons. We need to quit sending people to prison,"' said Gary Henry, a former district attorney who attended a four-day seminar at Oklahoma's Shangri-La Resort in 1995."

The explosion of publicity had one unintended consequence: the Edna McConnell Clark Foundation shut down its Justice Program. Today its projects mainly target low-income youth with various development and job programs. The only program related to criminals listed on its Web site is a grant to the Center for Employment Opportunities in New York, to fund vocational opportunities for ex-offenders.

### **Soros' Open Society Institute**

About the same time Ken Schoen was closing up shop at Edna, George Soros was opening his doors to a dizzying array of new initiatives in the criminal justice arena.

Soros supports a network of over 30 foundations, many of which operate overseas, particularly in the former Soviet Union and East bloc countries. But at the hub of his network is the Open Society Institute, a grantmaking and operating entity founded in 1993 to promote Soros' initiatives. The U. S. Justice Fund, one of its many programs, plays a vanguard role

in pushing the Excuse-Making Industry's ideas and agenda. "The U.S. Justice Fund," according to OSI's Web site, "is the cornerstone of OSI's strong commitment to reducing the excessive reliance on punishment and incarceration in the United States..."

The Fund cites a half dozen areas of interest, but two projects are central to its anti-punitive activities.

Its Prison Expansion and Sentencing Reform program aims to "diminish the role of prisons in the U. S. criminal justice system and to pave the way for... a larger system of public health and social supports." Meanwhile, Soros Justice Fellowships dole out over \$1.5 million annually in grants to scholars, activists, journalists, documentarians and lawyers who will "advance death penalty reform and abolition efforts," "combat racial profiling," "curtail prison expansion," "advance sentencing reform efforts," "improve public defense services" and the like.

OSI grants go to a virtual *Who's Who* of the Excuse-Making Industry: Families Against Mandatory Minimums Foundation, the Tides Center and Tides Foundation, the ACLU Foundation, the Sentencing Project, National Center on Institutions and Alternatives, National Coalition to Abolish the Death Penalty, Vera Institute for Justice, committees of the American Bar Association plus a host of legal aid and other advocates for criminals. In 2003 Open Society Institute shelled out \$8,484,332 in nearly ninety grants to groups and individuals under the "criminal justice" heading alone.

OSI grants astutely recognize the importance of building a network of advocates to spread the word. For example, a 2003 fellowship was awarded to Michael Blain, a former prisoner, to "organize a network of inmates, former prisoners, and their families to participate in a national movement to advocate for prisoner's right (sic) and criminal justice policy reform." Another grant went to Lori Pompa at Temple University for a course "to foster dialogue between college students and incarcerated people."

Soros Justice Media Fellow Awards bankroll reporters to communicate the advocates' claims. Emily Bazelon, a senior ~~editor for~~ *Legal Affairs*, was given a 2004 grant to write articles to show how shifting power balances in courtrooms "make federal sentences more punitive." David Feige, a writer and public defender, was paid "to write and record a series of commentaries on National Public Radio" while David Dent, a journalist and NYU journalism professor, got a Soros grant to write a book about a classmate serving a life sentence, criticizing underfunded mental health services and describing the socio-economic impacts of building prisons in rural areas.

OSI also pays for neatly slanted public opinion surveys, such as one claiming "most Americans believe the country's criminal justice system comprises an ineffective, purely punitive approach to crime" and favor "dealing with the roots of crime

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*The Soros-established U. S. Justice Fund aims to "diminish the role of prisons in the U. S. criminal justice system" and "advance death penalty reform and abolition efforts."*

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over strict sentencing by a two-to-one margin." The OSI news release adds helpfully: "And at a time when 42 of the 50 states are running budget deficits, the survey findings could be instructive to legislators." Such poll results affirm the old saying, "You get what you pay for."

The Soros empire has formidable assets of cash and manpower: just the Justice Fellowships awarded in 2004 alone amount to \$1.4 million, with even more awards to various groups pushing the anti-incarceration agenda through studies, books, litigation and other activism. Soros' Open Society Institute is more than filling the funding void left by the departure of the Edna McConnell Clark Foundation from the criminal justice field, giving the Excuse-Making Industry a new impetus.

## More Cash for Excuse-Makers

George Soros is not the only philanthropist funding the Excuse-Makers. Millions of dollars in grant funding to curtail criminal punishment has been pumped into the cause by the Public Welfare Foundation, JEHT Foundation, Liberty Hill Foundation and others to be profiled in Part 2 of this report. In addition, millions more in taxpayer dollars are funneled into anti-incarceration efforts by such grant recipients as the Vera Institute for Justice, the Justice Policy Institute and the National Council on Crime and Delinquency.

Next month, we'll "follow the money" going to these groups as well. *FW*

*Robert James Bidinotto is the editor of Foundation Watch and Organization Trends for Capital Research Center. He is also the author of two books and numerous investigative articles on crime.*

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# PhilanthropyNotes

The *New York Times* reports that on January 19, philanthropist **Peter B. Lewis**, chairman of Cleveland's **Progressive Insurance**, resigned from the **Guggenheim Museum's** board of trustees in a dispute over the free-spending ways of its maverick director, **Thomas Krens**. Lewis is best known for his millions in donations to activist groups that supported Democratic presidential candidate **John Kerry**. But since 1993 he has also donated about \$77 million to the Guggenheim, often bailing it out of financial trouble. In 2002 Lewis gave the museum \$12 million—along with an ultimatum to Krens to slash the museum's spending or look for a new job. But other board members backed Krens' vision of building an international network of museums—despite his habit of dipping into the museum's shrinking endowment to cover operating costs. So it was Lewis, not Krens, who would be the one seeking a new outlet for his own free-spending ways.

It seems he already had one in mind. At a closed-door meeting last month in San Francisco, Lewis met with fellow billionaires **George Soros** and his son **Jonathan**, along with banking tycoons **Herb and Marion Sandler**. Undeterred by the election results, they mutually resolved to invest even more heavily in the intellectual future of the left. According to the *Financial Times* of London, one of the participants described the plan as a "joint investment nt to build intellectual infrastructure" and a "deeper progressive bench," providing the left with groups in Washington that can match the influence of conservative think tanks such as Heritage Foundation and American Enterprise Institute. Film producer and real estate heir **Stephen Bing** is also expected to be involved in the investment, and **Andrew Stern**, president of the **Service Employees International Union**, is trying to include organized labor. "Leftwing policy experts have already got wind of the new funds," says the *Times*. "One former aide to Mr. Kerry said there had been talks with the **Center for American Progress** about making permanent the network of foreign policy experts established by Democrats in the 2004 campaign. He said he had been told: 'Money is not a problem.'"

And speaking (again!) of **George Soros**, the **National Legal and Policy Center (NLPC)** has filed a complaint against Soros with the **Federal Election Commission**, alleging "extensive apparent violations of the Federal Election Campaign Act." The NLPC contends Soros failed to disclose transportation and administrative expenditures arising from his October 2004 speaking tour to swing states, where he called for the defeat of **President George W. Bush**. "Since Soros has spent \$18 million promoting campaign finance law, it's the height of hypocrisy for him to run an off-the-books campaign," said **Ken Boehm**, NLPC chairman.

The **Lynde and Harry Bradley Foundation** has announced its 2005 Bradley Prizes, which go each year to individuals who make outstanding contributions on behalf of individual liberty and the values that underpin American society. This year's recipients are **Ward Connerly**, founder and chairman of the **American Civil Rights Institute**; **Robert P. George**, McCormick Professor of Jurisprudence at Princeton University and director of the **James Madison Program in American Ideals and Institutions**; **Heather Mac Donald**, John M. Olin Fellow at the **Manhattan Institute**; and Pulitzer Prize winning columnist **George F. Will**.

