

Going Soft on Juvenile Crime

How the MacArthur and Casey foundations distort youth offender policies

By Fred Lucas

Summary: *Although the young still commit outrageous crimes, two multi-billion-dollar foundations have spent years working to make the juvenile justice system more lenient. Now the Obama Justice Department has also joined in the effort.*

The family of Antonio Torres didn't feel better after the January 24 sentencing of James Lee Allen, now 18. In 2011 Torres was murdered at the age of 42 by a group of four teenagers in Oakland, California. Prosecutors said the armed teens were "hunting" for someone to rob. They stole a gold chain and an iPod from Torres before fatally shooting him in the back as he tried to run away. Allen didn't shoot the gun that killed Torres, but he was charged as an adult with murder and robbery for participating in the crime, the *Oakland Tribune* reported.

Allen ultimately pleaded guilty to a lesser charge of involuntary manslaughter and was sentenced to 12 years, too short for the Torres family. "My concern is that he is going to come out [of prison] and hurt another family," said Maria Torres. "They not only took my brother's life away, they took a part of each of us."

Some advocates would oppose ever trying these four offenders as adults, despite their horrific crime. Forget the question of whether 12 years is too light a sentence. These advocates do not want *any* incarceration for crimes committed by offenders under the age of 18, and their thinking has begun to influence our legal system.

Over the last eight years, the courts have made juvenile justice, even for the worst offenders, more and more lenient. This gradual evolu-



tion follows what Supreme Court Justice Anthony Kennedy has called, "the evolving standards of decency that mark the progress of a maturing society."

Those evolving standards have largely been driven by two left-wing philanthropies, the Annie E. Casey Foundation and the John D. and Catherine T. MacArthur Foundation. These two funders have battled the get-tough-on-crime approach of the 1990s and pushed for alternatives to incarceration for youth offenders. They have also opposed trying minors as adults. These organizations and their allies have had their way in abolishing the death penalty for juveniles (thanks to Justice Kennedy), and eliminating—in most cases—life sentences for youth murderers. They have also forged a tight-knit relationship with the Obama Justice Department and swayed the thinking of a majority of states

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across the country (red and blue) on the issue of crime and punishment for minors.

The scale of change

The Casey Foundation's Juvenile Detention Alternative Initiatives (JDAI) operates in 33 states, while the MacArthur Foundation's Models for Change operates in 16 states. In December 2012, the MacArthur Foundation held a two-day Models for Change summit in Washington, D.C., that brought 400 judges, advocates, probation officers, various other juvenile justice professionals, and even journalists and public relations professionals together. The seventh annual conference included numerous workshops with a heavy theme on storytelling and promoting their views in the media, according to a report by *Youth Today*.

Journalists, who supposedly cover juvenile justice in an objective way, actually conducted a workshop for the advocacy group. Reporters with CBS News, National Public Radio, and the Juvenile Justice Information Exchange delivered speeches and answered questions on how to engage the media and pitch story ideas. (Of course, NPR receives vast sums from both Casey and MacArthur; \$2,162,500 from Casey since 2001 and \$12,933,708 from MacArthur since 1999.)

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Shortly before the conference, the Justice Department's Office of Juvenile Justice and Delinquency Prevention (OJJDP) met with various philanthropic organizations to solicit guidance, said Marlene Beckman, counsel to the assistant attorney general at the federal Office of Justice Programs, according to *Youth Today* (Dec. 6, 2012). The Obama administration approved of the key suggestions regarding collaboration among federal departments, Beckman said.

Earlier that December, the Justice Department issued a report critical of trying youth offenders as adults. The OJJDP's study was titled, "Transfer of Juveniles to Adult Court: Effect of a Broad Policy in One Court." The study "found that the majority of youth transferred to adult court who return to their community resume some level of antisocial activity and many are subsequently arrested or placed in an institutional setting."

The DOJ study also found that "Youth who associated with more antisocial peers resumed antisocial activity more quickly and were re-arrested more quickly than those who had more positive social relationships. This supports the general contention that juveniles, even serious offenders who are transferred to adult court, are highly susceptible to negative peer influences and outside pressures."

Not overwhelmingly convincing results. Who is to say these kids did not have "antisocial" tendencies to start with, given that they committed crimes? The study should not receive a knee-jerk rejection, but note that its findings largely conform with the philosophy of the MacArthur Foundation and Casey Foundation, with whom the Justice Department has worked closely in recent years. In fact, those foundations co-funded the study itself, as did the National Institute of Justice, the William T. Grant Foundation, the Robert Wood Johnson Foundation, the William Penn Foundation, the National Institute on Drug Abuse, the Centers for Disease Control and Prevention, the Pennsylvania Commission on Crime and Delinquency, and the Arizona State Governor's Justice Commission.

In January 2012, the MacArthur Foundation announced a \$2 million public-private partnership with the Justice Department. MacArthur put in \$1 million, and DOJ tossed another \$1 million in taxpayer dol-

lars into projects for states and localities to determine best practices for dealing with juvenile offenders.

Four organizations received the money:

- * The National Youth Screening and Assessment Project at the University of Massachusetts Medical School received a mental health grant to study ways to reduce recidivism.

- * The National Center for Mental Health and Juvenile Justice at Policy Research, Inc. received a grant to provide comprehensive adolescent development and mental health training for juvenile correctional and detention staff to improve their ability to respond to youth with mental health needs.

- * The Center for Children's Law and Policy received a grant to find ways to reduce racial and ethnic disparities within the juvenile justice system.

- * The Robert F. Kennedy Children's Action Corps received a grant to provide solutions to reduce recidivism and out-of-home placement and to improve correctional alternatives for youth in the juvenile justice system.

"Through our historic commitment to juvenile justice reform, MacArthur has identified and piloted effective models in key states. We are excited to collaborate with OJJDP now to support and spread these successful best practices for reform more broadly," said Laurie Garduque, the MacArthur Foundation's Director of Juvenile Justice.

The U.S. Justice Department also showed its close ties to MacArthur and Annie E. Casey in other areas. For example, last year the DoJ sought to address problems with the conditions of a juvenile detention center in Shelby County, Tennessee. In April 2012, Assistant Attorney General for Civil Rights Thomas E. Perez spoke in Memphis about the help the Casey Foundation would provide:

"We will continue to work with the court and the community to resolve these issues," Perez said. "Judge [Curtis] Person has already started to implement some recommended reforms, such as applying for and becoming a designated Juvenile Detention Alternatives

Initiatives site through the Anne E. Casey Foundation and working with the Memphis City Schools and Police Department to implement a summons in lieu of arrest program for a limited number of offenses.”

Charles Stimson, senior legal fellow for the Center for Legal and Judicial Studies at the Heritage Foundation, has criticized the entire anti-incarceration movement that MacArthur and Casey help lead, arguing that the movement has misrepresented the debate.

“To date, this debate has been driven by a misleading lobbying campaign in the form of self-published studies, disingenuous lobbying campaigns before state legislatures, aggressive litigation before the courts, which is appropriate. But what’s inappropriate is the misleading statistics and the false reading of Supreme Court precedent and the scurrilous accusation that this country is in violation of international law by having life without parole sentences for juvenile killers and violent teens in the first place. We’re not,” Stimson said at an August 2009 symposium on juvenile justice after the release of a report he co-authored, *Adult Time for Adult Crimes*. (See <http://www.heritage.org/events/2009/08/adult-time-for-adult-crimes-exposing-the-movement-to-set-free-jvenile-killers-and-violent-offenders>.)

Stimson said advocates seek to frame the debate as if eight- and nine-year-olds are spending the rest of their life in prison. Actors with ages in the single digits are used for photographs in the movement’s reports. “If you look,” he said, you see a very un-subtle practice in “this small yet well-funded movement,” namely, the way “they never use the word *juvenile*, which all of us use in our practices, all the judges use it, all the criminal defense attorneys use it. They use *child* because they want you to think that these are children. They’re not. They’re juveniles. They’re teenagers.”

Stimson stressed that juvenile crime should be a serious issue in the United States. “The United States has the worst crime problem in the western world,” Stimson said. “I look at the UN statistics and the World Health Organization statistics and we lead the world in juvenile crime, and we have done so for decades. Juveniles commit murder, rape, aggravated assault, and other serious crimes

in numbers that dwarf those of America’s international peers. You see, the campaign so far is essentially wrapped in these principles: All the countries are the same around the world. The U.S. has life without parole. Other countries don’t. We’re in violation of international norms. All countries are essentially the same. These are children. We’re mean. And by the way, we’re in violation of international treaties—all of which is demonstrably false.”

A brief history of juvenile justice

The federal view of criminals under the age of 18 changed significantly in 1974 with the passage of the Juvenile Justice and Delinquency Prevention Act by Congress. The law established the Office of Juvenile Justice Delinquency Prevention to support state and local initiatives to improve the juvenile system and prioritize prevention over punishment—all things that sound ever so good in theory. The law has four core requirements: (1) deinstitutionalization of “status offenders” (those whose offenses, like truancy, are only illegal for juveniles); (2) separation of juveniles from adult offenders; (3) removal of juveniles from adult jails and lock-ups; and (4) reduction of disproportionate minority contact, a term that refers to the disparity between minority youth and non-minority youth in the justice system.

Just four years after the sweeping federal law passed, the New York state legislature passed the Juvenile Offender Act in response to a crime committed by 15-year-old Willie Bosket. Bosket robbed and killed two people and then declared when he was arrested, “You can’t do anything to me, I’m only 15.” The comment made news and prompted state lawmakers to act. The 1978 New York state law required automatic transfer of 13-, 14-, and 15-year-olds to criminal court (from juvenile court) for 17 different serious felony crimes such as murder or burglary. New York already tried 16-year-olds in criminal court. The following year, Florida lawmakers decided to give state prosecutors discretion on sending youth offenders ages 14 to 17 to adult courts.

New York and Florida were trailblazers, as teen crime increased in the 1980s and drugs proliferated. Such crimes reached a high point in 1993, prompting 47 states in the 1990s to pass laws that put more juvenile

suspects in adult courts. (*Corrections Today*, February-March 2011)

Congress made the OJJDP conduct a “Conditions of Confinement” study, which was released in 1994. It found poor facilities with high rates of youth injuries, crowded conditions, little mental health attention, and high staff turnover. It also found that federally accredited facilities were no better, on average, than non-federally accredited facilities. The OJJDP launched the Performance-based Standards program to establish national standards for these facilities.

From 2005 through 2012, the U.S. Supreme Court would issue three landmark decisions making the juvenile system more lenient. The high court ruled 5 to 4 in March 2005 to prohibit capital punishment for youth murderers in *Roper v. Simmons*. In this case, 17-year-old Christopher Simmons planned to murder a woman and told his friends they could “get away with it” because they were minors. Simmons and his friends broke into the woman’s house. They tied her hands with electrical wires and covered her entire face with duct tape before tossing her over a bridge to drown.

After Simmons confessed to the murder, he was sentenced to the death penalty. But in the high court, Justice Kennedy swung to the liberal side to abolish the death penalty for minors, writing in the majority opinion about “the overwhelming weight of international opinion against the juvenile death penalty,” and “the evolving standards of decency that mark the progress of a maturing society.”

Five years later, Kennedy would write the majority ruling in *Graham v. Florida* in 2010. Terrance Graham, 16, along with two accomplices was arrested in 2003 for attempted armed robbery of a barbecue restaurant in Jacksonville, Florida. Graham was also charged with assault and battery. He was tried as an adult and pleaded guilty to a felony. A few months later, in December 2003, Graham was arrested again for home invasion. He didn’t admit to this crime, but did admit he violated his plea agreement. In 2006, Graham was sentenced to life in prison without the possibility of parole.

In the majority opinion striking down life without the possibility of parole for minors

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who did not commit murder, Kennedy distinguished between murder and other crimes. “The Court has recognized that defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers,” Kennedy wrote. “Although an offense like robbery or rape is a serious crime deserving serious punishment, those crimes differ from homicide crimes in a moral sense.”

But that distinction withered away in two years, when the Supreme Court combined the cases of *Miller v. Alabama* and *Jackson v. Hobbs* in 2012.

Evan Miller was 14 when he was charged with robbing and beating a man before setting his trailer on fire and leaving him to die. Miller was tried as an adult and found guilty of capital murder, but he was too young under the law to get the death penalty. So he was sentenced to life without parole.

In the other case, Kuntrell Jackson of Arkansas was also 14 at the time he and two other teens were charged with attempting to rob a video store. One of Jackson’s accomplices murdered the female store clerk. Jackson was convicted as an adult of capital murder and aggravated robbery and sentenced to life without parole.

The high court voted 5 to 4, with Justice Elena Kagan writing the majority opinion, holding that the Eighth Amendment to the Constitution prohibits “requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes.”

The problem with mandatory sentences, Justice Kagan wrote, is that “every juvenile will receive the same sentence as every other—the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one.” The *New York Times* reported that as many as 2,000 juvenile criminals across the nation could be affected.

Casey discourages incarceration

The Baltimore, Maryland-based Annie E. Casey Foundation has more than \$2.5 billion in assets. Established in 1948 by Jim Casey, one of the founders of United Parcel Services (UPS), it was named for his mother and originally devoted to children in foster care. That mission evolved into promoting race-based programs and greater federal control over health care and the private sector (see “Helping Children Becomes Advocacy for the Welfare State,” *Foundation Watch*, June 2012).

In 1995, the Casey Foundation launched the “Jobs Initiative Program” to support community-based initiatives in fields such as construction, health care, and manufacturing in five cities to help low-income young workers find jobs. The Casey Foundation also helped fund a 2002 Urban Institute study, “Assessing the New Federalism,” which argued the federal government must increase spending on social welfare programs for employment and child care.

In recent years the Casey Foundation has focused heavily on criminal justice in general and juvenile matters in particular. It has also focused on discouraging incarceration for juveniles, arguing the system should focus entirely on reform (as if the two are mutually exclusive).

Casey issued a 2006 report titled, “Race Matters: Unequal Opportunity Within Criminal Justice,” which claimed discrimination is “embedded” throughout the criminal justice system, working “against women and men of color.” This includes “racial stereotyping and discrimination,” “disproportionality at every step of the criminal justice process,” “statutory biases,” “differential post-release consequences,” and “disparate impact on families and children.”

The foundation gives away about \$150 million in grants each year to many left-wing organizations, including the Tides Foundation; Parents, Families and Friends of Lesbians and Gays Inc.; the American Civil Liberties Union; the National Council of La Raza; the Handgun Epidemic Lowering Plan Network; the Children’s Defense Fund and the Ms. Foundation for Women.

The Casey Foundation set up the Juvenile Detention Alternative Initiative (JDAI) in 1992 with the stated goal to “decrease the number of youth unnecessarily or inappropriately detained; to reduce the number of youth who fail to appear in court or re-offend pending adjudication; to redirect public funds towards effective juvenile justice processes and public safety strategies.” (See <http://www.aecf.org/upload/PublicationFiles/NACoJuvenileDetentionReformGuideforCountyOfficials.pdf>.) The initiative is tied to preconceived notions that the entire criminal justice system is racist: “It is impossible to talk about juvenile detention reform without talking about the disproportionate confinement of youth of color.”

The JDAI has funded programs in 33 states and the District of Columbia, for a total of 140 localities, according to the DoJ. All the programs operate around eight core strategies: collaboration, use of accurate data, development of objective admission criteria and risk assessment instruments, implementation of alternative detention, reform of case processing, re-examination of special detention cases that may result in automatic detention, reduction of racial disparities, and monitoring conditions of confinement.

In 2011, JDAI found itself embroiled in controversy. Crime Victims United, a victim advocacy group that supports tough penalties for criminals, alleged a conflict of interest regarding the Justice Department’s award of a research grant to the National Council on Crime and Delinquency (NCCD). The 2009 grant was to evaluate the effectiveness of JDAI programs across the country. How, asked Crime Victims United, could the NCCD objectively evaluate the Casey Foundation’s work, when it was already a grantee of Casey’s? Over a five year period, the NCCD received \$139,500 from Casey, which also gave the NCCD’s president an award in 2006.

This situation was sufficiently embarrassing that the Justice Department Office of Inspector General launched an investigation of the matter, releasing a report in September 2012. The IG decided nothing inappropriate had occurred, simply because “neither OJP nor the OJJDP has criteria regarding such prospective conflicts.” How convenient.

Models for change

The John D. and Catherine T. MacArthur Foundation was named for the founders of Bankers Life & Casualty (BL&C) Company, the nation's largest privately held insurance company. Founded in 1978, the foundation says it "works to defend human rights, advance global conservation and security, make cities better places, and understand how technology affects children and society." It "believes that every young person should have the opportunity to grow up with a good education, get a job and participate in our communities. Creating a more fair and effective juvenile justice system that supports learning and growth and promotes accountability can ensure that all kids can grow up to be healthy, productive members of our society."

With assets of \$5.2 billion, the organization awards about \$235 million in grants annually, mostly to left-wing groups like the ACLU, the Sierra Club, Friends of the Earth, Earth Justice, Planned Parenthood, National Council of La Raza, Union of Concerned Scientists, Public Citizen, Environmental Working Group, NPR, Arms Control Association, Rainforest Alliance, and the World Organization Against Torture.

The foundation has also made alternatives to incarceration a priority, especially for juveniles, starting in 1996. It is the parent organization of Models for Change, which has spent more than \$100 million on juvenile justice reform since 2004. The initiative is winding down one phase of funding and beginning another. The goals are purportedly to "hold young people accountable for their actions, provide for their rehabilitation, protect them from harm, increase their life chances and manage the risk they pose to themselves and to public safety." It also focuses on "mental health services, juvenile indigent defense and racial and ethnic disparities."

"The initiative does not advance a single 'model' system. Rather, it seeks to demonstrate different ways to improve systems performance and outcomes in four core states," the Models website says. "Four strategic states"—Pennsylvania, Illinois, Louisiana, and Washington—"have been selected for their leadership and commitment to change, geographic diversity, differing needs and opportunities, and likelihood to influence

reforms in other locations. An additional 12 states are involved in Models for Change through participation in action networks," namely, California, Colorado, Connecticut, Florida, Kansas, Maryland, Massachusetts, New Jersey, North Carolina, Ohio, Texas, and Wisconsin.

"Targeted issues include racial and ethnic disparities; re-entry after incarceration; mental health; diversion; evidence-based practices; and the boundary between the juvenile and adult criminal systems," the website says. "Evidence is growing that the reforms being implemented in Models for Change states are increasing public safety, lowering costs, and helping youth," the website says, adding that success is judged at four levels: (1) local demonstration sites showing progress toward goals in the targeted areas of improvement; (2) progress in the targeted areas moving a state toward having a model system; (3) reductions in racial and ethnic disparities; and (4) progress motivating other state and national policymakers to make justice reform a priority.

Unsurprisingly, the MacArthur and Casey foundations both count their work as successful. But there hasn't been enough accountability. Crime Victims United did a study focusing on Multnomah County Juvenile Services as a bellwether locality that fully adopted Casey's JDAI system, which is quite similar to MacArthur's Models for Change approach.

The study reported on a mother who had asked that her troubled son remain incarcerated, but the system released him and he was soon killed. The study also described how the JDAI model alienated police officers and how the non-JDAI areas of Oregon saw a deeper decline in juvenile crime than Multnomah County. The study surveyed more than 250 police officers and found "less than one half of one percent of the officers rated Juvenile Services as being good. Only 8% considered it to be fair, and the remaining 92% called it poor." Employees working in the county's juvenile system were also very critical; the study found their judgment of the system was "very favorable 0%, neutral 19%, somewhat negative 31% and very negative 50%."

Despite such poor performance, the Casey and MacArthur foundations have neverthe-

less had a tremendous influence—directly, in reducing youth incarceration, and indirectly, in moving the needle on what Justice Kennedy called, "the evolving standards of decency that mark the progress of a maturing society."

Fred Lucas is the White House correspondent for CNSNews.com and author of The Right Frequency: The Story of the Talk Radio Giants Who Shook Up the Political and Media Establishment, by History Publishing Company.

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Briefly Noted

Contrary to the mainstream media's reporting, **Progress Kentucky**, the left-wing super PAC that allegedly taped Sen. Mitch McConnell (R-Ky.), has close ties to the Democratic Party. Although party officials have tried to distance themselves from the taping, which may have been illegal, the executive director of Progress Kentucky, **Shawn Reilly**, is a notable Democratic Party activist and veteran community organizer. As CRC discovered, Reilly was a delegate to the 2012 Democratic convention and was a past member of the state party's executive committee. In 2007, he was a "field organizer" for **Americans Against Escalation in Iraq**, a group that reportedly silenced McConnell by heckling him at a public event that year. Progress Kentucky was also accused of racism after its tweets mocked the Chinese ethnicity of McConnell's wife, former U.S. Secretary of Labor **Elaine Chao**.

Project Vote deputy director **Amy Busefink** is lobbying Texas lawmakers in an effort to prevent state officials from verifying if Texas voters are registered in multiple states, J. Christian Adams reports at PJMedia.com. Of course, Busefink shouldn't be anywhere near electoral integrity issues: she was convicted two years ago of being a voter-fraud ringleader during an **ACORN** voter drive in Las Vegas. That wasn't the first time Busefink was involved in shady electoral dealings. Even while under indictment in Nevada she ran the 2010 national voter drive for Project Vote, which was President **Obama's** employer in 1992. Project Vote and ACORN, which went bankrupt in 2010, had long been indistinguishable.

President Obama's latest advocacy group, **Organizing for Action (OfA)**, raised almost \$5 million in the first quarter of this year. Since it was created in January, 109,582 supporters have donated an average of \$44, announced the leftist group, which was formerly known as Organizing for America. The group sprang out of Obama's re-election campaign and now urges supporters to get in others' faces. Its leader, **Jon Carson**, says OfA's most important immediate priorities are "immigration reform, reducing gun violence, and tackling the budget in a balanced way."

The left-leaning **Century Foundation** of New York distinguished itself from the angry socialist horde by not attacking former British prime minister **Margaret Thatcher** when she died last month at 87. **Harold Pollack** praised Thatcher for responding "rather effectively and humanely to the HIV/AIDS crisis" when the disease arrived on the scene in the 1980s. Alas, much of the rest of Pollack's article is ahistorical nonsense in which the writer regurgitates one of the Left's most successful lies in recent decades, to wit, that the Reagan and Bush 41 administrations did nothing to combat HIV/AIDS. The Century Foundation is so far left that its board of trustees includes **MSNBC** host and professor **Melissa Harris-Perry**, who recently attacked the idea that parents should be the sole arbiters of how their children are raised.

Convicted cop killer and Weather Underground terrorist **Kathy Boudin** is now teaching as an adjunct professor at Columbia University's notorious School of Social Work. Boudin serves as director of the school's "Criminal Justice Initiative," and she was also recently named the Rose Sheinberg Scholar-in-Residence by New York University Law School. Boudin served 22 years in prison for her role in a \$1.6 million robbery of an armored-car that left two police officers and a Brinks security guard dead and nine children without fathers. She also has longstanding ties to Columbia, having plotted in 1970 to plant bombs in Butler Library on the university's Morningside Heights campus.