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2002 Annual Report

Children's Advocacy Institute, University of San Diego School of Law

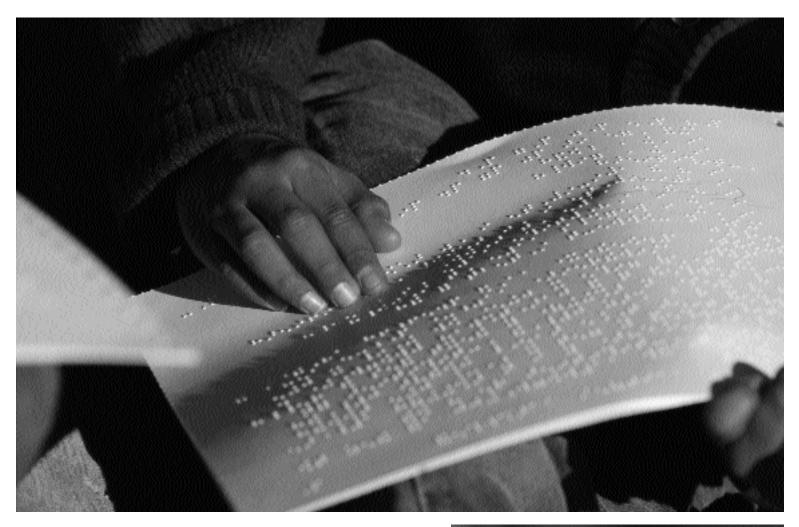
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Children's Advocacy Institute

2002 ANNUAL REPORT



SAN DIEGO OFFICE

University of San Diego School of Law 5998 Alcalá Park San Diego, CA 92110-2429 (619) 260-4806 (619) 260-4753 (fax) childrensissues@sandiego.edu www.caichildlaw.org

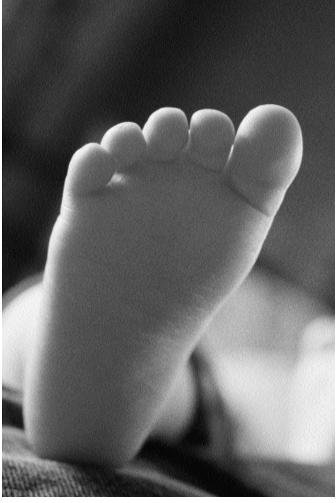
SACRAMENTO OFFICE

926 J Street, Suite 709Sacramento, CA 95814-2704(916) 444-3875(916) 444-6611 (fax)

This annual report covers the activities of the Children's Advocacy Institute between January 1, 2002 and December 31, 2002.

The Children's Advocacy Institute is part of the University of San Diego School of Law. Contributions to CAI are tax-deductible to the extent the law allows.

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Children's Advocacy Institute

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Robert C. Fellmeth

Price Professor of Public Interest Law

s we enter 2003, California faces an unprecedented budget crisis. Over \$30 billion in cuts will have to be made over the next eighteen months to balance the state budget. Further, it is unlikely that cuts will occur during the January to June 2003 period, leaving almost all of the \$30 billion to be absorbed in the 2003-04 fiscal year. Conveying the magnitude of this shortfall is difficult. It is greater than the total deficit facing the 49 other states combined. We could terminate the entire UC and Cal State higher education systems and still have a deficit so large that unprecedented cuts in health care, K-12 education, safety net for impoverished children, and other accounts would be necessary.

The state is responding with hiring freezes, budget cuts, and the same flim-flam arranged by the Wilson Administration when confronting a large deficit a decade ago: "devolution to the counties." Translated, that means the state will send more social spending and child investment accounts to the locals, who are limited by Proposition 13 and two-thirds vote requirements

for new revenue. Thus, the one jurisdiction with taxing powers delegates responsibility to fragmented local jurisdictions, gives them an inadequate and often capped sum, and then walks away—hoping to escape accountability for the consequences.

It is our job to not let that happen. We have to get new revenue where it is needed and make certain that investment in children is tied to revenue sources capable of meeting future needs. We must hold state officials accountable for abdication to counties that are set up to fail.

During the 1991 shortfall, Governor Wilsonto his credit-approved new taxes in order to soften the blow to children. Over one-half of the shortfall was made up in new revenue. Subsequently, revenue increased sufficiently to allow him to reduce class sizes in grades K-3. Thus, Governor Wilson helped children in two ways: he lowered class sizes, and he lessened

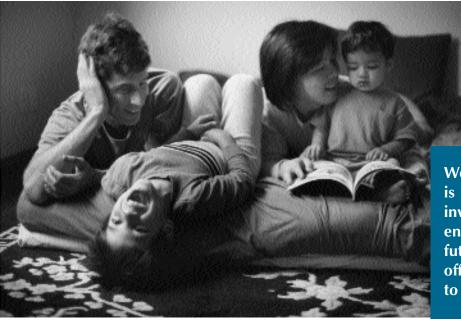


the blow that otherwise would have come from sudden revenue shortfalls. But he also set the precedent for devolution—assigning mental health and some other child-related accounts to counties under a block grant-type format.

Since then, California has done nothing to moderate the volatility of its revenue sources—particularly capital gains and options income revenue. It did not set up a system to "bank" such revenues in strong years to responsibly "income average." It spent the money generated from temporary sources for the usual beneficiaries of a political system responsive primarily to campaign cash: corporations, wealthy adults, and the elderly. Since 1998 alone, over \$5 billion in annual tax cuts were so allocated. Children benefitted from one major expenditure (a refundable child care tax credit), constituting less than 5% of these monies. The tax expenditure increases occurred on a base of \$23 billion already so expended, and these monies continue automatically, increase year after year without review, and even require a two-thirds vote in the Legislature to reduce.

Now the state is in trouble. Above all, our children are in trouble. Governor Davis recently announced that, in resolving the deficit, "no program will be held harmless." Perhaps he should have said "no children's program will be held harmless." Notwithstanding the crisis, the politically active prison guards not only obtained a handsome increase in

We have to get new revenue where it is needed and make certain that investment in children is tied to revenue sources capable of meeting future needs. We must hold state officials accountable for abdication to counties that are set up to fail.



compensation, but a pension sweetener that allows them to retire at age 50 at up to 90% full pay. We shall be paying for essentially the full complement of current prison guards for their twenty–five to thirty years of retirement—quite apart from the additional payments to those who must replace them and do the actual work. As 2003 began, legislative leaders were meeting in Hawaii at a conference sponsored by the prison guard union. Notwithstanding the difficult and important task of this state employee group, other state functions may suffer somewhat more—with those impacting children of greatest concern.

The Governor has thus far refused to match the increased revenue record of his conservative Republican predecessor. Instead, his budget for 2003-04 proposed unprecedented disinvestment in children. California is one of the wealthiest jurisdictions in the world, and personal income is projected to increase 6% in the next fiscal year. But per capita/inflation adjusted spending for children will fall substantially without new revenue. If we invested the same percentage of personal income in our children today as did our parents in 1979, we would essentially cancel the deficit and hold children harmless. That is not likely. Instead, class size reduction is going to stop and likely reverse-with the state's standing to fall back to 49th or perhaps even 50th among the states in numbers of students per teacher.

TANF parents will suffer reductions, and 2003–04 will signal the federal cut-off of safety net support for over 100,000 California children— with more to follow. Increasing the percentage of children with health care coverage, as solemnly promised at the federal and state levels, will not

occur. In fact, by the time the next fiscal year is over, almost 20% of children—mostly children of the working poor—will lack medical coverage.

And investment in higher education will be cut, *just* when our children need it to have future jobs. We already have fewer slots per 18-year-old this year than we did in 1991, and we are going to add to that deficit—*just* when it needs to be reduced.

What do you say about a federal administration that does not relieve the states, but instead cuts its own investment in children substantially? Our federal government recently arranged for \$1 trillion in tax cuts to 2011; almost all of these cuts benefit the elderly, upper middle class, and wealthy. California's annual share of cuts for its adults would alone more than make up for the \$20 billion per year in deficits—by another \$7 billion. Now the President proposes another \$600 billion in cuts to benefit the same groups—and calculated to produce the highest deficit in American history. Who will pay for that deficit? Who will be foreclosed from owning a home because higher real estate prices will now accompany rising interest rates as the federal government borrows? And states like California freeze property taxes for our generation at one-third to one-tenth the level our children



will pay if they somehow are able to afford their own home—a dream our parents made real for us and we are now foreclosing for our children.

If we invested the same percentage of personal income in our children today as did our parents in 1979, we would essentially cancel the deficit and hold children harmless.

While cutting investment in children, the Bush Administration will be increasing defense spending to \$400 billion. That is more than the total military spending of the rest of the world combined—before we add in Homeland Security and the war in Iraq. According to one source, the amount taxpayers in California will pay if the U.S. invades Iraq could provide health care to almost six million children in the state. Reasonable minds can differ about which external threats warrant highest priority or how much should be expended on defense. But how can one responsibly increase such spending while reducing burdens on current adults—earning record personal income—so we can transfer the cost to our children? The Republican leadership's stated motto (plagiarized from the Children's Defense Fund) of "leave no child behind," is properly stated "leave no child unburdened."



completed. Terrell was sexually abused by his foster parent over a three-month period. Terrell subsequently filed a complaint against the County (among others), alleging causes of action for violation of mandatory statutory duties and negligence, arising out of the County's placement of Terrell in the home and supervision of Terrell thereafter.

The court rejected Terrell's arguments, finding that a county has no mandatory duty to protect foster children from sexual abuse. The court held that county social worker decisions relevant to protection of children are discretionary,

What do you say about the leader of the California Republican party who declares publicly that any Republican legislator who votes for any revenue increase should be impeached? And it is not a problem with just one political party. What do you say about a Democratic Governor whose inaugural address focused on our highest ethical obligation—to replicate our forefathers' sacrifice for their children—and then proposes a small regressive sales tax increase, a tiny income tax increase for the wealthy, and unprecedented disinvestment in children?

The Democratic party has its own anti-child aspect—centering on a commitment to adult reproductive license at the expense of what is perhaps a child's most basic right: simply to be intended by two adults. Rather than offend the sexually-related rights of adults, they would countenance without comment an unwed birth rate of 30%, and dismiss as politically incorrect any discussion of the 65% rate among African-Americans and 40% among Hispanics. Although willing to condemn teen pregnancies, the much more substantial problems—births to adult unwed women and paternal abandonment—are not to be discussed. Apparently the children involved—mostly below the poverty line and living at an average income level about one-fifth the children of married couples—are of an undetermined race and gender, and are hence without political identity.

Other problems add to this travail. In 2002, the Second District Court of Appeal in Los Angeles issued a baffling published opinion holding that an allegedly molested foster care child could not recover from a county for its negligence (*County of Los Angeles v. Superior Court, Terrell R., Real Party in Interest*, 102 Cal. App. 4th 627 (2002)). Los Angeles County had placed eleven-year-old Terrell with a "family friend" who had been certified as a foster parent by a state licensed foster family agency even though several certification requirements had not yet been and that the only mandatory duty a county owes to a child placed in foster care is a monthly visit by a social worker. The court held that the primary intent of state child welfare law is to preserve familial relationships, not to protect children from abuse.

In the famous case of *Deshaney v. Winnebago County* 489 U.S. 189 (1989), the U.S. Supreme Court disappointed child advocates in holding that because four-year-old Joshua Deshaney was no longer in the protective custody of the state (he had been returned to his father), the state had no further duty to protect him from abuse. The Court there overlooked repeated evidence of abuse, a mandatory reporting system, and the father's violation of his agreement to comply with specified requirements. Child advocates knew that *DeShaney* precluded state accountability for children who had been returned to their homes after being taken into state custody, but we believed that accountability applied where children are still under state control and "protection." Regrettably, *Terrell R.* extends non-accountability to these children as well.

CAI wrote an *amicus* letter brief to the California Supreme Court urging review and reversal. We were joined by the National Association of Counsel for Children. We cited eighteen applicable sections of state law that use the words "shall" and "must" with regard to the protection of children. Many of these provisions were violated with regard to Terrell. We pointed out that if these safeguards for children are not in the "duty" category, but are instead considered matters of local administrative discretion, juvenile courts could well lack authority to issue orders of mandate to compel agency performance for child protection. With just two justices voting to hear the case (Justices Kennard and Moreno), the California Supreme Court denied review. Accordingly, we will sponsor a measure in 2003 to legislatively reverse this decision. We are pleased that three senior members of the Legislature have agreed to carry it.

Our other foster care legislation requires some new investment, and it is unlikely that any measure requiring monies will be enacted in 2003 or 2004—even 2005 is in doubt. But we shall place such measures in front of our policymakers nevertheless. Success depends on state revenue reform and on the willingness of our public officials to do what is right. Needless to say, we are worried.

The people appear to be ahead of the politicians, even those with rotating focus groups and wet fingers aloft. For thirty years, almost two-thirds of the population opined in polls that income taxes are too high. In late 2002, that changed. A majority now thinks taxes are about right or should be increased, and an unprecedented percentage believe that wealthier citizens should be paying more. The concept of additional taxes earmarked for education or other important child investment is beginning to enjoy strong popular support. CAI will attempt to build upon that support.

We recognize that there is some important truth to the conservative critique that the social service establishment may expend whatever sum is allocated to it, and then seek more. And we agree with conservatives who believe that children need parents and strong families—they should not be pieces of paper flowing across the desks of social workers. We are in a position to advance some of these conservative strategies because, unlike many child advocates, we do not depend upon service providers for our funding.

So we have two touchstones to guide our budget advocacy. First, we should be investing at least the same percentage of our personal income as did our parents. Second, the state has an obligation to invest effectively for children, and we cannot support spending simply because it is allocated in their general direction. Hence, we did not support the Governor's decision to give \$1,000 to every kid who scores in the top 10% on a statewide test. We did not support giving large bonuses to teachers based on a single year of test improvement. And we support the forced allocation of a percentage of revenues for *independent* evaluation of efficacy. When child advocates ask for increased investment in public programs, they have an obligation to hold accountable the results of their own advocacy.

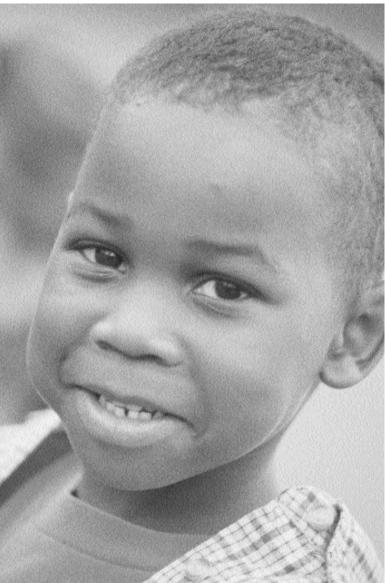
Thus far, CAI has not been successful in moderating the liberal Democratic orientation toward private license and child deprivation, nor in moderating the conservative Republican drive to cut public investment—regardless of need and particularly where directed at impoverished children. We have not been successful even in convincing the state that emancipating foster youth should be fully covered up to age 21 so long as they are in school and working for a degree or license (which was the case for all foster children until the 1970s). But we are comforted that in our area of endeavor, success most often comes not to the fast hare, but to the persistent tortoise. Our goals remain from last year:

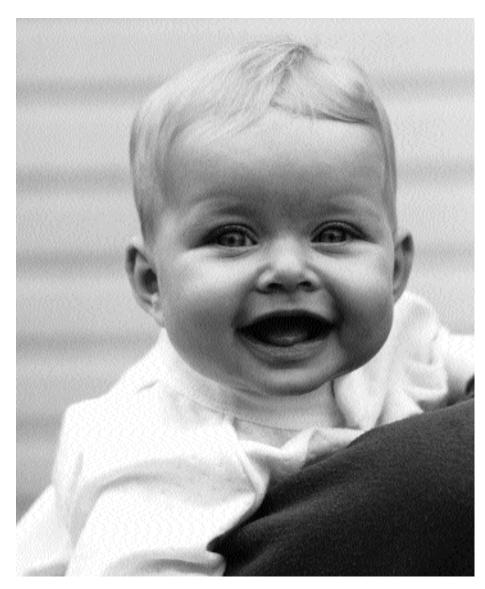
■ Protect children most in need, particularly as the economic downturn increases the numbers of families requiring TANF assistance, just when the surplus TANF funds from prior caseload reduction is depleted, and as over 100,000 children face federal TANF cut-offs.

■ Fund the required work obligation and child care system of CalWORKs, as mandated by the federal 1996 Personal Responsibility and Work Opportunity Reconciliation Act, work for a reauthorization in 2003 that does not require single parents to work a full 40 hours arbitrarily, and which rewards those who work over 20 hours a week.

■ Find a way to stimulate medical coverage for children. Continue to push for universal coverage for children, recognizing the fact that only 7% of uninsured children are ineligible for coverage. Advocate to cover all kids, and where a child's expenses exceed \$1,000 in a year, bill parents post hoc on a sliding scale.

■ Ensure children's access to appropriate and timely health care by increasing Medi-Cal reimbursement rates for pediatric specialists—who currently receive a fraction of what Medicare pays





for the same procedures for the elderly. Neurospecialists, orthopods, ENT physicians, and others are in short supply for impoverished children, and waiting lists endanger the health of many. Children should have the same supply of practitioners for their needs as do adults, including the elderly—and federal law so provides.

■ Improve child care coverage, a daunting task given proposed major cuts.

■ Work for investment in our own foster children. They remain substantially unadopted and in "foster care drift" moving from placement to placement. A substantial number of the over 100,000 neglected children under court supervision have been labeled "unadoptable." About 80% of adoptions come from family foster care, but these providers receive one-eighth or less of the amount paid per child to the less personal group homes. Raising family foster care rates, increasing the number of family foster homes, setting up a certification program for family foster care providers raising special needs children (and providing them with an add-on stipend), creating a dedicated state office charged with increasing the quality and quantity of family foster care supply and quality at the state level, and related reforms have been at the top of CAI's legislative agenda for four straight years. And for four straight years, the Legislature has killed our measures in its fiscal committees' "suspense files," a device that allows meritorious bills to be terminated with prejudice but without any public vote.

Reverse *Terrell R*. legislatively, and provide decent transition to emancipation for foster youth, as discussed above.

■ Preserve class size reduction. Test results indicate that it is succeeding. Extend it to grades 4–12, and increase teacher supply and competence.

Expand higher education slots, including community colleges and vocational schools, so a higher percentage of youth have a higher education opportunity and realistic employment prospects. That means an investment more substantial than the population bulge now moving into senior high school years.

We shall publish our *California's Children's Budget 2003–04* in May 2003. For more than ten years, this document has served as a detailed compilation of census and other data on the status of children, a discussion of new caselaw and statutes, and a presentation of actual adjusted spending from 1989 for all state accounts, including local and federal monies, in eight substantive child-related subject areas.

We shall continue to publish our *Children's Regulatory Law Reporter* to make more visible the rulemaking and related decisions made within the executive branch. This is where child advocacy is needed. Those with

a profit stake in these decisions are well represented. Children need to have their own advocates before these important decisionmakers. Thanks to grants from The California Wellness Foundation and generous anonymous donors, we now have resources to participate in agency rulemaking on behalf of children. When necessary, we are also in a position to litigate to ensure agency compliance. A single change in a regulation may determine whether 2,000 or 200,000 children benefit from a public program—as legislatively intended.

We shall continue to publish the *Children's Legislative Report Card* to highlight important legislative proposals that would help improve the health and well-being of our children, and to present our legislators' public votes on those measures.

The Children's Advocates Roundtable will continue to meet under our sponsorship, to plan joint and common action among the 200 participating advocacy organizations that are concerned about children.

Our academic and clinical programs will continue, including the introductory law course on child rights and two child advocacy clinics, one enabling our students to represent abused and neglected children in San Diego's juvenile dependency court (under the supervision of attorneys from the Public Defender's Office), and one providing students with the opportunity to engage in policy advocacy on a statewide level.

We recently published our text, *Child Rights and Remedies* (Clarity Press, 2002), designed for use in law Child advocates must have a vision of minimally acceptable commitment to our children. Certainly it should be no less than the promises our grandparents and parents fulfilled at much greater sacrifice than we ask of our peers.

schools, as well as graduate schools of social work, political science, public health, and education. The text includes coverage of child advocacy and the systemic barriers to representation of child interests in legislatures, agencies, and courts. It includes national census data on the status of children, combined with leading cases, questions for discussion, and commentaries across the spectrum of child-related issues, including reproductive rights; rights to custody, support, emancipation; child civil liberties; criminal prosecution or involuntary civil commitment; protection from abuse and rights as victims/witnesses; rights to property, contract, and tort recovery; safety net sustenance; child care; education rights; health, safety, and medical care; and special needs.

Our staff remains skeletal, about one-half its needed critical mass. Our areas of greatest need from 2002 continue, and include:

Expansion of our Information Clearinghouse for Children, to make it a generator of media stories about the plight of children, to raise public consciousness. We need to increase attention to children beyond school shootings, and find the journalistic handles apparently necessary for public attention. Lacking votes and campaign money, that is our major available asset.

Funding to conduct research and a comprehensive campaign on the obligations of the male gender to children.

■ Funding to launch a self-sustaining "Child Friendly" trademark program. Created as a separate entity, the Child Friendly Foundation would license its trademark for use on qualified products to indicate that the product is safe for children and is not made through exploitive child labor. The Foundation would assist the marketplace, stimulate responsible corporate behavior, and generate licensing fees, the bulk of which would be given to child advocacy organizations.

■ CAI and its parent organization, the Center for Public Interest Law, are seeking a grant to develop a Masters in Public Interest Law or Child Advocacy at the University of San Diego School of Law, to increase the quantity and quality of public interest advocates (including child advocates), and to provide a unique educational experience for a wide range of attorneys—from recent law graduates to veteran practitioners who want to shift priorities in their later years.

■ It remains our goal to convince a child-spirited attorney, business, or individual to endow the nation's first child advocacy "chair" or faculty position. The holder of the chair—which would be named after the generous funder—would be a full-time advocate for children, and would engage in clinical teaching of future child advocates. Such a position would leverage impact by training advocates as well as through litigation and advocacy for children in the year 2010. And it would still be there plugging away for children in the year 2110, and 2210, and 2310. A portion of the endowment would generate income which would add to the base, to accommo-

date inflation and maintain a viable presence in perpetuity. How would it be possible to leave a more important permanent legacy?

It is important that we not fall prey to the trap of lowered expectations-that we not merely be grateful cuts do not eviscerate all child investment. We have an ethical obligation to our children and to their children. It is not properly compromised because we have already decided to give ourselves billions of dollars in tax cuts or because we are focused on external enemies. Child advocates must have a vision of minimally acceptable commitment to our children. Certainly it should be no less than the promises our grandparents and parents fulfilled at much greater sacrifice than we ask of our peers. Couples should plan for the miracle of creating a child. The public sector should provide help for the impoverished: safe and nurturing child care, a decent education and the chance for higher education for a job in the international economy of the 21st century, the chance to own a home and afford children, and an earth that is not befouled nor bereft of its resources. With occasional failings, our great grandparents, grandparents, and parents performed magnificently in providing these things for us. Now it is our turn.

We cannot accept the notion that taking one-half of the federal tax cuts and sharing it with our children, so we can come close to the performance of our predecessors, is politically untenable. It has to be on the table, and we have to put it there. And every time they take it off, we have to put it back. And if we have to get in their faces, then we get in their faces. Clearly, that time has come.

In order to continue our efforts, CAI depends on the generosity of others. In 2002, CAI received assistance from many persons and organizations, to whom we are most grateful. This list includes the members of our own Council for Children, whose dedication and support we appreciate tremendously. We also thank The ConAgra Foundation, Inc., the Rosenberg Foundation, The Leon Strauss Foundation, The Ryland Group, Inc., The California Wellness Foundation, our extremely generous anonymous grantors and donors, and numerous individuals as acknowledged in CAI's 2002 Development Report. We are also eternally grateful to Sol and Helen Price—who have provided us with a continuing legacy of support which allows us to function.

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Robert C. Fellmeth, Executive Director Children's Advocacy Institute Price Professor of Public Interest Law

n 1989, Professor Robert C. Fellmeth founded the Children's Advocacy Institute as part of the Center for Public Interest Law (CPIL) at the University of San Diego (USD) School of Law. Staffed by experienced attorneys and advocates, and assisted by USD law students, CAI works to improve the status and well-being of children in our society by representing their interests and their right to a safe, healthy childhood.

CAI represents children—and only children—in the California Legislature, in the courts, before administrative agencies, and through public education programs. CAI educates policymakers about the needs of children—about their needs for economic security, adequate nutrition, health care, education, quality child care, and protection from abuse, neglect, and injury. CAI's aspiration is to ensure that children's interests are effectively represented whenever and wherever government makes policy and budget decisions that affect them.

CAI's legislative work has included revision of the state's regulation of child care facilities; the requirement that children wear helmets when riding bicycles; a series of laws to improve the state's collection of child support from absent parents; a law assuring counsel for abused children in need of legal representation; a swimming pool safety measure; the "Kid's Plate" custom license plate to fund children's programs; and others. CAI's litigation work has included intervention on behalf of children's groups to preserve \$355 million in state funding for preschool child care and development programs, and a writ action to compel the Department of Health Services to adopt mandatory safety standards for public playgrounds. CAI annually publishes the California Children's Budget, a 650-page analysis of past and proposed state spending on children's programs. Other CAI publications include the Children's Regulatory Law Reporter, presenting important child-related rulemaking proposals under consideration by state agencies and indicating their potential impact on children, and the Children's Legislative Report Card, highlighting important legislative proposals that would improve the health and well-being of our children, and presenting our legislators' public votes on those measures. Since 1996, CAI's Information Clearinghouse on Children has worked to stimulate more extensive and accurate public discussion of children's issues.

In 1993, CAI created the Child Advocacy Clinic at the USD School of Law, to help provide child advocates to the legal profession. In the Clinic, law student interns practice law in dependency court, representing abused children under special certifica-



Robert C. Fellmeth with Sol & Helen Price

tion, or engage in policy advocacy at the state level, drafting legislation, research and writing reports, and assisting in litigation projects. Many graduates of this program have gone on to become professional child advocates.

CAI's academic program is funded by the University of San Diego and the first endowment established at the University of San Diego School of Law. In November 1990, San Diego philanthropists Sol and Helen Price contributed almost \$2 million to USD for the establishment of the Price Chair in Public Interest Law. The first holder of the Price Chair is Professor Robert Fellmeth, who also serves as CAI's Executive Director. The chair endowment and USD funds combine to finance the academic programs of both CPIL and CAI. To finance advocacy activities, CAI professional staff raise additional funds through private foundation and government grants, test litigation in which CAI may be reimbursed its attorneys' fees, and tax-deductible contributions from individuals and organizations.

The Children's Advocacy Institute is advised by the Council for Children, a panel of distinguished professionals and community leaders who share a vision to improve the quality of life for children in California. CAI functions under the aegis of the University of San Diego, its Board of Trustees and management, and its School of Law.

CAI represents children—and only children in the California Legislature, in the courts, before administrative agencies, and through public education programs.

Academic Program

AI administers a unique, two-course academic program in child advocacy at the University of San Diego School of Law. The coursework and clinical experience combine to provide future lawyers with the knowledge and skills they need in order to represent children effectively in the courts, the Legislature, and before administrative agencies.

Child Rights and Remedies

Students must complete Professor Robert Fellmeth's three-unit course, *Child Rights and Remedies*, as a prerequisite to participation in the Child Advocacy Clinic. *Child Rights and Remedies* surveys the broad array of child advocacy challenges: the constitutional rights of children, defending children accused of crimes, child abuse and dependency court proceedings, tort remedies and insurance law applicable to children, and child property rights and entitlements.

Child Advocacy Clinic

The Child Advocacy Clinic offers law student

interns two options: (1) in the dependency court component, they may work with an assigned attorney from the San Diego Office of the Public Defender, representing abused or neglected children in dependency court proceedings; or (2) in the policy project component, students work with CAI professional staff involved in state agency rulemaking, legislation, test litigation, or similar advocacy.

During 2002, seven law students (Janis Burnett, Karolyn Cardomon, Jessica Heldman, Ronda King, Kelly Kyes, Enrique Monteagudo, and Jonathan Yates) participated in the policy section with Professor Robert Fellmeth. Each student worked on semester-lo0ng advocacy projects such as analyzing counties' competency standards for attorneys representing children in dependency court; researching, analyzing, and summarizing recent child-related reports and studies; researching prospective litigation projects; researching and analyzing data supporting family foster care rate increases and other CAI legislative proposals; preparing a matrix indicating the various types of school settings and the enrollment, teacher credentialing requirements, and accountability for each; and researching child-related condition indicators for CAI's *California Children's Budget 2002–03*.

Also during 2002, eight law students (Janis Burnett, Daniel LaVoie, Maria-Belleza Parlade, Ashley Ray, Jennifer Salem, Michelle Wouden, Jonathan Yates, and Bethany Zeps) participated in the Child Advocacy Clinic's dependency section. In addition to working at the Public Defender's Office assisting attorneys in the representation of abused and neglected children in dependency court proceedings, these students attended weekly classroom sessions conducted by Professor Fellmeth.



Warren Hall, University of San Diego School of Law

Other CAI Student Intern Activity

In addition to the interns involved in the Child Advocacy Clinic, several other students provided valuable assistance to CAI's professional staff during 2002. The projects on which these students worked during 2002 included researching statistical information for the *California Children's Budget*; analyzing child-related regulatory proposals introduced by state agencies and drafting sections of the *Children's Regulatory Law Reporter*; researching, analyzing, and summarizing recent child-related reports and studies; and researching the status of dependency court proceeding confidentiality laws across the nation. CAI is especially grateful to many students for their hard work and dedication during 2002, including USD law students Heather Boxeth, Chris Parker, Karen Prosek, and William Wade, and USD undergraduate Courtney Grant.

James A. D'Angelo Outstanding Child Advocate Awards

On May 24, 2002, the USD School of Law held its Graduation Awards Ceremony. At that time, CAI had the pleasure of awarding the James A. D'Angelo Outstanding Child Advocate Awards to two graduating law students for their exceptional participation in CAI's Child Advocacy Clinic.

Maria-Belleza Parlade and Ji Kwon were recognized for their exemplary participation in the dependency section of CAI's Child Advocacy Clinic, where they effectively represented abused and neglected children in San Diego County. These students worked directly with assigned attorneys from the Dependency Section of the San Diego Office of the Public Defender, representing children in dependency court proceedings. It is difficult, often heartbreaking work, and it requires special care, since the future of a child usually hangs in the balance. Both students greatly impressed their supervising attorneys with their dedication and commitment.

The award is a tribute to Jim D'Angelo (BA '79, JD '83), who passed away in April 1996. Funding for the award is made possible by generous donations from several USD School of Law alumni. CAI is grateful to Hal Rosner (JD '83) and all of Jim's classmates for their generous gifts.

California Children's Budget 2002-03

t a July 3, 2002 press conference in the State Capitol, CAI released its tenth annual *California Children's Budget*. The *California Children's Budget 2002–03* is a 640-page analysis of condition indicator data; legislative, regulatory, and court developments; major childrelated federal/state/local spending from 1989, adjusted for inflation and population; the Governor's proposed budget as revised in May; and recommended spending.

California faced a \$23 billion budget deficit for 2002–03. Although acknowledging that changes had to be made in the state's revenue and spending plan, the *California Children's Budget 2002–03* was highly critical of Governor's Davis' proposals to close the budget gap. The *Children's Budget* contends that the state's budget shortfall was not being made up from a balanced assessment, but involved a record \$11.6 billion in cuts— almost entirely to children—and \$11.2 billion in deferred obligations requiring further cuts down the road. Only 2% of the proposed solution came from genuinely new revenue.

Among other things, the *California Children's Budget 2002–03* made the following points:

(1) The wealthy of California are richer than anytime in history, and pay the lowest percentage of income in local and state taxes—lower than even the bottom one-fifth in income. (2) The number of California children in poverty remains close to its historical high, at 2.6 million.

(3) California's public school classes are again the largest in the nation.

(4) New higher education slots are not increasing above population and future employment for youth depends on new capacity expansion investment—a lot of it.

(5) 1.1 million California children eligible for health care coverage do not have it, despite federal money to provide it at a 2-1 match.

(6) Child care demand is at its highest level, and current supply and subsidy for the working poor meets about 20% of the need.

(7) The state has assumed the role of parent to over 100,000 foster care children, and neglectfully abandons most of them at age 18 years without providing them with the educational or vocational opportunities necessary to become productive members of society.

The *Budget* illustrated how our policymakers are not only disinvesting in children, but also burdening future budgets—and future taxpayers—in order to close the gap for a single year. The largest single such deferral is the use of the tobacco settlement funds intended to recompense victims of smoking addiction abuse. Instead of providing restitution to victims (de-addiction services, youth anti-smoking education), "tobacco securitization" floats a bond for \$4.5 billion to relieve the general fund, and commits future tobacco settlement revenues to pay-off the principle and interest over the following 22 years it will be received. The

total cost over the 22 years will be \$7.9 billion, assuming an optimistic low interest rate of 5%. The payments will consume about 75% of the anticipated \$10.56 billion tobacco settlement amount due the state to 2024. These substantial payments will be made each year for the next 22 to mitigate a deficit for 2002–03, all to avoid new revenue demand on present taxpayers.

As noted in the *Children's Budget*, the parents of today's adults invested significantly more in their children—even though they had less. To illustrate this, the *Budget* takes general fund spending—primarily for children—as a percentage of personal income 25 years ago; that same percentage today would yield \$12.4 billion more in spending than the Governor's proposal for 2002–03. The Budget notes that—as one of the wealthiest jurisdictions in the world—California is fully capable of making that same type of investment in today's children. To generate this additional funding, the state could adjust

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state taxes to recapture one-half of the federal 2001 tax package sharing it between children and taxpayers 50-50 (\$13 billion); raise the corporate profit tax from 8.8% to 9.9% (\$1 billion); tax alcohol equitably (similar to other states) (\$2 billion); raise the personal income tax high bracket to 14% (\$4.15 billion); temporarily suspend new tax expenditures granted since 1997 (except for the child care tax credit) (\$5.85 billion); roll back unjustified or obsolete tax expenditures (\$3.5 billion); leverage state spending to fully use available federal funds (\$ 3 billion); and obtain energy excess payment refunds (\$1 billion).

The California Children's Budget 2002-03 was distributed to every member of the California Legislature and, as with previous Children's Budgets, became a valuable resource document for state budget negotiations. Funding for research, publication, and dissemination of the California Children's Budget 2002-03 was provided in part by grants from The ConAgra Foundation, anonymous donors, and The California Wellness Foundation (TCWF). (Created in 1992 as an independent, private foundation, TCWF's mission is to improve the health of the people of California by making grants for health promotion, wellness education and disease prevention programs.)

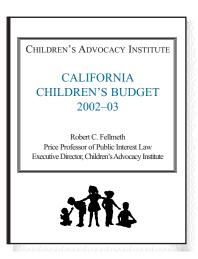
For a copy of the *California Children's Budget 2002–03* or the Executive Summary, contact CAI at (619) 260-4806. The document is also available on the Internet at www.caichildlaw.org.

Children's Regulatory Law Reporter

Another of CAI's unique publications is the *Children's Regulatory Law Reporter*, which focuses on an often ignored but very critical area of law: regulations adopted by government agencies. For each regulatory proposal discussed, the *Children's Reporter* includes both an explanation of the proposed action and an analysis of its impact on children. The publication is targeted to policymakers, child advocates, community organizations, and others who need to keep informed of the actions of these agencies.

In 2002, CAI released the sixth issue of the *Children's Reporter* (Vol. 3, No. 2), which discussed over forty proposed and recent California regulatory changes which affect children. Among other things, this issue discussed rulemaking proposals on California's new permanent amusement ride safety inspection program; foster care financial audit requirements; the Cal Grant Entitlement Award Program; childhood lead poisoning; the CalWORKs and Food Stamp programs; child support; child care; and reclassification of English learners.

Also during 2002, CAI staff drafted the seventh issue of the *Children's Reporter* (Vol. 4, No. 1), which will be released in early 2003. This issue discusses over fifty proposed and recent California regulatory changes which affect children. Among other things, this issue discussed rulemaking proposals on CalWORKs' sixty-month time limit procedures; child support provisions; implementation of the Food Stamp Reauthorization Act of 2002; Medi-Cal provider rates; newborn screening program fee increases; the Early Start



Intervention Program; child care provider notification requirements; the California high school exit examination; charter school procedures; the Supportive Transitional Emancipation Program; and other foster care and child welfare services.

The current and back issues of the *Children's Reporter* are available on CAI's website at www.caichildlaw.org.

Children's Legislative Report Card

Yet another unique and informative CAI publication is its *Children's Legislative Report Card*, an annual document which

analyzes California legislators' votes on child-friendly bills.

In November, CAI published the 2002 edition of its *Children's Legislative Report Card*, which included a narrative description of the major childrelated issues considered by the Legislature in 2002, as well as detailed descriptions of 25 childfriendly bills in the areas of economic security, health and safety, child care, education, and child abuse prevention and intervention. Because this was the final year of a two-year session, this issue of the *Report Card* included each legislator's cumulative score for the entire 2001–02 legislative term.

The *Report Card* included a chart documenting each legislator's floor votes on these bills. Through their votes on important bills, legislators can make a real difference in the lives of California's chil-

dren. All too often in the political arena, legislators "take a walk" rather than stand up for children—and children suffer as a result. The *Report Card* provides a record of children's policy progress in the legislative session, and the votes that made it happen.

CAI is pleased to announce that 38 legislators received 100% marks for the 25 bills graded in the 2002 term. Further, the following 23 legislators received perfect scores of 100% for the entire 2001–02 term: Senators Richard Alarcon, Liz Figueroa, and Betty Karnette, and Assemblymembers Elaine Alquist, Wilma Chan, Edward Chavez, Judy Chu, Ellen Corbett, Manny Diaz, John Dutra, Hannah-Beth Jackson, Fred Keeley, Paul Koretz, Carol Liu, John Longville, Fran Pavley, Simon Salinas, Kevin Shelley, Joseph Simitian, Darrell Steinberg, Virginia Strom-Martin, Helen Thomson, and Pat Wiggins.

The *Report Card* also discussed the difficulty in commanding accountability in the legislative process because of the use of the "suspense" file. Instead of allowing committee members to debate the fiscal merits of each measure, bills die in the suspense file because the Senate and Assembly Appropriations Committees refuse to pull them out for a public vote. Many significant bills for the most vulnerable children failed to make the priority list for release from the suspense files. Further, many of the bills killed in suspense files passed on bipartisan votes with wide margins in policy committees and in prior floor votes. Although the practice of setting aside policy items with major cost implications until the Budget Act is passed and revenues are accounted for is fiscally sound, suspense file decisions should ultimately be made in a public forum with public votes to ensure accountability.

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In the Legislature

uring 2002, second the year of a twoyear legislative cycle, most legislators were again preoccupied with a variety of matters unrelated to substantive children's issues. For example, California's economic situation and the Legislature's struggle to approve a state budget, the primary and November elections, the September 11th tragedy, and a series of child abductions dominated legislative discussions and action. The daunting challenge facing CAI Senior Policy Advocate Lupe Diaz was focusing the Legislature's attention on the impact that its budgetary and policy decisions were having on children.

advocacy



During 2002, the second year of a two-year legislative cycle, most legislators were again preoccupied with a variety of matters unrelated to substantive children's issues.

The Budget and the Legislature. 2002 started with January projections of a \$12 billion deficit, which quickly escalated to a more dire \$23.6 billion deficit in the May Revise. The 2002–03 budget, as enacted, guaranteed a \$12–\$15 billion deficit in Fiscal Year 2003–04, with a minimum \$10 billion deficit each year for the next five years.

The budget approved by the Legislature was a disaster, and left many tough decisions to the Governor. Instead of demanding revenue enhancements to close the deficit, legislators enacted AB 593 (Oropeza), which encouraged the Governor to make further cuts to the budget sent to his desk. The budget approved by the Legislature included no new taxes—rejecting the modest retraction of a recent vehicle license fee increase and cigarette taxes. The Legislature also refused a return to previous state tax rates on the wealthy and did not consider seriously alcohol taxation where California's assessments are among the nation's lowest. The major revenue enhancement was a two-year delay in a recent corporate tax break—after which the benefit is sweetened enormously for future general fund reduction.

In 1991, when the state faced a \$12 billion shortfall, Republican Governor Pete Wilson increased taxes to make up one-half of it. However, notwithstanding the Democratic majority, this year's budget reduces investment in children substantially and moves forward enormous costs for future years. As a result, next year's budget process will be even more difficult, and portends yet deeper disinvestment in children. This "transfer forward" was accomplished through an array of accounting devices (*e.g.*, paying the last month of 2002–03 bills in the first month of 2003–04, skipping one year in required contributions to state pension funds, taking all special fund monies and borrowing against them, etc.) The tobacco settlement money due the state over the next 22 years will be mostly used to pay for a \$4.5 billion bond for a single year of general fund relief—at a cost of \$7.9 billion including interest. Little of this money collected from tobacco companies for unfair competition in addicting children will be used for smoking prevention or de-addiction services.

Other Issues Attracting the Legislature's Attention. February was a busy month for the Legislature. The deadline to submit legislative proposals was in late February and the March primary was held on March 5. One-third of the Assembly and one-half of the Senate seats were either up for election or reelection. A significant amount of staff time and resources were devoted to reelection efforts, which meant less time for the development of new measures and other legislative work.

More disturbing was the series of child abductions that took place during the summer. Although most of the child abductions featured prominently in the media were stranger abductions, less than 10% of all child abductions are in fact committed by strangers; the vast majority of abductions are committed by immediate or extended family members and friends of the family. The incidence of stranger abductions has actually declined over the last decade. However, because dramatic news stories and "Amber alerts" were compelling, the Legislature made child abductions the central child safety issue of the session. The Legislature ignored other equally compelling child safety issues, and most suffered budget cuts. For example, the final budget approved by the Governor eliminated 500 child welfare service worker positions, thus crippling the ability of child protective service workers statewide to adequately respond to child abuse and neglect reports in a timely manner. In addition, the final budget reduced funding for the adoptions program by \$5.2 million, making it less likely that children in the foster care system will transition to a stable and loving environment.

Specific Child-Related Area #1: Child Care. Once again, the Governor started the year by announcing his intention to reform the state's child care system, presenting policy proposals that were designed to utilize "existing resources" to "more efficiently serve the State's neediest families." The Governor contended that the current subsidized child care system is marred by equity problems—former welfare families are more likely to receive subsidized assistance than non-welfare families of the same income category. The Children's Advocacy Institute agrees there is an equity problem—all low-income families that are eligible for subsidized care are not receiving child care assistance because the state funds the system at a woefully inadequate rate.

The Governor's January 2002 budget proposal included draconian changes to the subsidized child care system—about 20,000 children that are currently served would have lost subsidies. The pending budget deficit and the Governor's insistence on reforming the system resulted in major policy proposals that would have been detrimental to California's low-income and working poor families. The reforms were expected to result in savings of \$400 million in the five primary child care programs and would have been "reinvested" in additional child care spaces. Among the proposed changes, the following were the most detrimental: income eligibility reduced from the current 75% of the state median income (SMI) to 66%; elimination of services for 13-year-old children; and reduction in reimbursement limits from the 93rd percentile of the regional market to the 75th percentile of the regional market for child care providers.

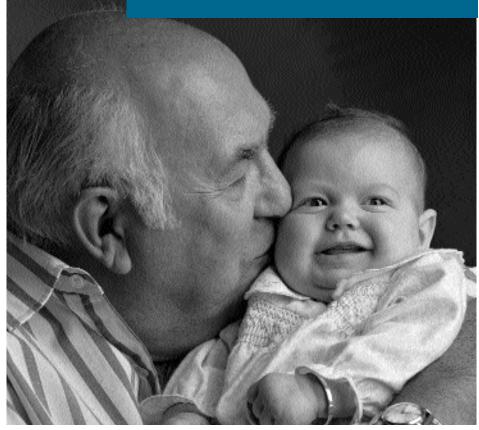
Although child advocates in Sacramento believe that the Governor tried to enlist a legislator to author his proposed child care reform proposal, no such measure was introduced by the legislative deadline in February, and the Governor rescinded his proposal in the May Revise. Although the Governor ended up fully funding the subsidized child care system, he noted that new reforms would be reintroduced in his January 2003 budget proposal.

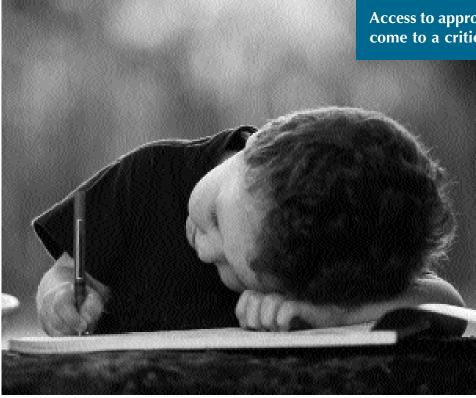
Specific Child-Related Area #2: Education. The Governor's January 2002 proposed budget completely eliminated the \$39 million Healthy Start program appropriation; this followed his unsuccessful November 2001 attempt to cut the program as part of his mid-year budget slashing. Healthy Start is a little known program created to serve children and families who attend schools where the majority of students enrolled are Medi-Cal or Healthy Families-eligible (*i.e.*, an income at or below 250% of the Federal Poverty Level). Healthy Start coordinates and integrates service delivery of tutoring, counseling, family support and parent education, prenatal and maternal health care, physical and mental health, education and after-school programs, substance abuse prevention and treatment, youth development and skills building, and community involvement.

Citing the budget deficit, the legislative budget committee chose to fund the program at a reduced \$19 million, sufficient to fund current grantees in the implementation phase but not provide for any new planning proposals. Interestingly, the Healthy Start program was one of the few social service programs not entertained for funds slashing by the Republican Caucus. Unfortunately, however, Governor Davis cut the program down to \$2 million in the final budget.

The Governor touted his support of the Before and After School Program by proposing a \$75 million increase in January, which was expected to serve an additional 79,000 school-age children. However, that \$75 million included (1) \$29.7 million that had been suspended mid-year; (2) the elimination of the Latch Key program; and (3) funds from the reorganization of the child care system. The elimination of the Latch Key program was rescinded in the May Revise after major opposition by advocates and negative media attention. Over 6,000 school-age, low-income children would have been affected and most children would not have been able to access the Before and After School Program due to differences in criteria between the two programs.

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Specific Child-Related Area #3: Foster Care. In 2001, foster care was declared to be the "number one legislative priority" of Assembly Democrats. The Legislature developed eleven proposals to reform the foster care system and committed to an increase of \$330 million over five years to fund the proposals. Unfortunately, by the end of the legislative session, few significant proposals remained on the table—most were either watered down or pegged as "fiscal" and lost in the suspense file in one of the appropriations committees.

That trend continued in 2002. AB 1330 (Steinberg), a CAIsponsored bill, would have increased the rates to foster family homes and made other much-needed changes to reform the foster care system. Because it was keyed as a fiscal bill, it remained in the suspense file for most of the legislative session, and was eventually amended to address a non-foster care issue.

In light of AB 1330's fate, CAI focused its attention on AB 886 (Simitian) and SB 1677 (Alpert) (another CAI-sponsored bill). AB 886 requires the court to appoint a responsible adult to represent the educational needs of a child when parental rights are removed. SB 1677 appoints an education surrogate whenever a responsible adult is not identified and strengthens the duties of the surrogate parent. The bills work in conjunction with each other so that foster children have immediate access to special education and appropriate wrap-around services. Both of these bills were approved by the legislature and signed by the Governor.

Access to appropriate education and services has come to a critical juncture for foster children. Although 65% of children residing in group homes or licensed children's institutions (LCI) are eligible for special education, only 15% have education surrogate parents authorized to ensure they receive appropriate educational services. While some parents or guardians may properly represent the needs of the foster child, most of the 18,416

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group home/LCI children have become wards or dependents of the court because their parents are unable or unwilling to serve in this role. Group home and LCI children typically do not have a relative caretaker or foster parent who can act as a surrogate parent because education is often ignored as a factor when placing children in foster care. They are termed "the state's most vulnerable and at-risk population" because 46% of group home children require special education but may not be getting it.

Specific Child-Related Area #4: Health Care. Opposing the Governor's January proposal to eliminate the Child Health and Disability Prevention Program (CHDP) required much time and energy from child advocates, as well as certain legislators. Over 1.1 million California children continue to be eligible for, but

are not enrolled in, Medi-Cal or the Healthy Families Program. These children—as well as others who are not eligible for Medi-Cal or Healthy Families—rely on CHDP for primary and preventive care, including immunizations, lead poison screenings, and well-child exams, as well as hearing, vision and dental screenings. CHDP serves as the final safety net for children in foster care and juvenile hall, undocumented children, and children who fall off of Medi-Cal due to administrative barriers.

By the time of the May Revise, Governor Davis had rescinded his proposal and actually dedicated additional funds for a "CHDP Gateway" to enroll children receiving CHDP through a web-based program. Further, the CHDP program now proposes to pre-enroll children to Medi-Cal or Healthy Families, and makes them immediately eligible for up to two months of CHDP health assessments and comprehensive care. Although this was a victory for health care advocates, there is a more efficient system. Rather than making parents work through the maze of ten different public health programs, each with its own eligibility standards and enrollment procedures, the state could enroll all children in a state health insurance program and retroactively charge a small fee to families with an income over 250% FPL. Doing so would leave only about 7% of the state's children without coverage—significantly less than the 20% of children lacking coverage under the current system.

The parental expansion in Healthy Families was also a rallying point for health care advocates and certain members of the Legislature. Over 300,000 low-income and working poor parents would be eligible. The final budget indefinitely delays the program expansion, with the Governor citing on-going costs and budget deficits as the primary reasons.

Specific Child-Related Area #5: Child Poverty. Legislative issues dealing with social services fared slightly better this year. SB 1264 (Alpert), as originally introduced, would have (1)

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allowed CalWORKs children to keep income earned from competitive educational awards; (2) permitted dependent children attending school full-time to continue receiving aid until age 19; (3) enabled children who have a diagnosed learning disability and who are enrolled in special education to continue receiving aid until age 21; and (4) exempted from welfare-to-work requirements dependent teens under 18 who have their high school diploma if they are enrolled in a post-secondary program. By the end of the legislative session, however, the bill dealt only with the issue of academic competitive scholarships and its inclusion in the family's income for purposes of CalWORKs eligibility. SB 1264 recognized that CalWORKs-dependent children are currently penalized if they win an award in competitive academic, scholastic, or educational events (e.g., merit-based scholarships, awards in speech or essay contests, etc.). While state or federal scholarships based upon need are exempt from income, a meritbased award is counted as unearned income and results in a dollar-for-dollar reduction in the family's public assistance grant. Advocates successfully argued that the original CalWORKs legislation did not intend to penalize children for excelling in school.

AB 2116 (Aroner) would have made significant changes for low-income and working poor families, but it did not make it out of the suspense file. AB 2116 would have created extensions and "clock-stoppers" for the sixty-month CalWORKs time limit for families when (1) the state or county has an insufficient number of jobs to provide employment for those individuals required to participate in welfare-to-work activities; (2) the recipient satisfies the work participation requirement entirely through unsubsidized employment; and (3) the state or county lacks the resources to fund welfare-to-work activities or necessary support services. Many CalWORKs families reach the sixty-month lifetime ban on January 1, 2003; the future is bleak for the many children in those families that will soon lose the "adult portion" of assistance.

In Sum: Legislative Child Abandonment. Children did not fare well in the California Legislature during 2002. Once again, legislators continued the trend of disinvestment in children's services, refusing to address real issues that require serious consideration and—in many cases—serious financial commitment. As a result, children will suffer. Moreover, the Legislature has burdened future budgets for years to come. The Legislature and Governor categorically reject revenue increases, regardless of need, while approving \$5.7 billion in state tax benefits since 1999. They do not consider rescinding these (or \$24 billion in other tax expenditures) now locked in and reducing general fund monies for children. While personal income is projected to increase 6% in the next fiscal year—rising to record levels—adult-centric public officials assess Californians \$13 billion less for children as a percentage of income than did the adults of 1979.

Children face a media focusing on idiosyncratic drama, and which promotes public anathema for responsible taxation/investment. And they face public officials who betray the sacrifices and values of America's parents—going back to our founding. Unless leadership soon can be found to reverse the 2002 record, the next legislative session may prove to be the most damaging to children in the modern era.

In the Courts

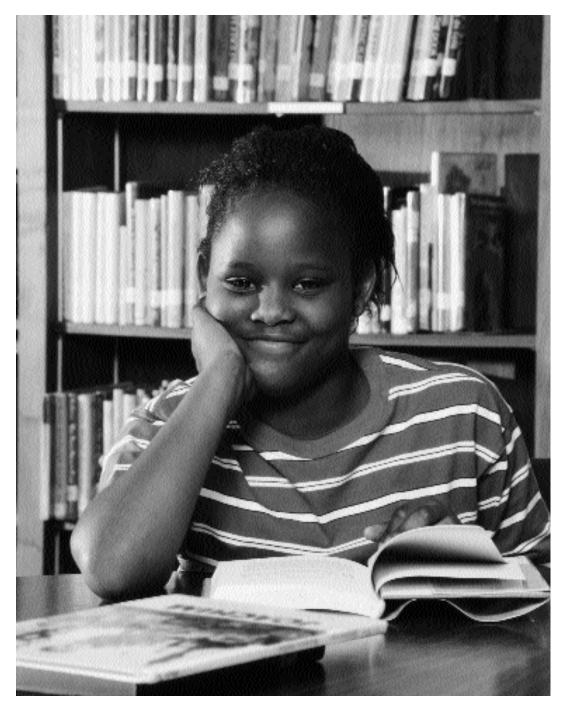
Funding from generous grantors and donors enabled CAI to hire attorney Debra Back in 2002 to perform litigation and regulatory advocacy. During the latter half of the year, Debra engaged in extensive research into several issues where litigation might be necessary in order to protect children. For example, CAI is currently looking into possible litigation to assure timely and appropriate access to medical care for children covered by Medi-Cal. Another area currently being examined is the state's implementation of the rent and utility voucher safety net assurance for children affected by TANF sanctions to their families. A third area of concern is the implementation of the state's zero tolerance expulsion laws by school districts and school administrators, and the resulting disproportionate impact on culturally-diverse children.

Additionally, CAI continued to participate as amicus curiae in important litigation. For example, CAI drafted and submitted an amici curiae letter on behalf of CAI and the National Association of Counsel for Children in support of Real Party in Interest, Terrell R.'s, Petition for Review with the California Supreme Court in County of Los Angeles v. Superior Court. In the underlying case (102 Cal. App. 4th 627 (2002)), the Second District Court of Appeal held that-aside from the duty of a social worker to visit the foster child one time per month, and a very general duty to place a foster child in a certified foster family home (even if the foster family home is not properly certified at the time of placement)-a county and its employees owe no other duties to the child, and have complete immunity for failing to ensure that the child is placed and maintained in a safe environment. In its brief, CAI argues that the primary intent of the state's child welfare laws is child protection, and further contends:

The appellate court's decision is sweeping, and would irresponsibly negate the intent of the law. The decision would allow a county to escape liability for breach of the mandatory statutory provisions and rules assuring the safety of these children. The court's disenrollment of much of the state's child welfare system has the puzzling exception of continued accountability for periodic social worker visits. That anomaly is not the result of statutory analysis, but picks a rather isolated mandate due to a recent decision by the same district holding such visits to be mandated. However, it then unwrites over 19 major sections of California law and applicable judicial precedents....

In a disappointing ruling, the California Supreme Court denied review of the case. In 2003, CAI will attempt to reverse the impact of the decision through legislation.

Once again, legislators continued the trend of disinvestment in children's services, refusing to address real issues that require serious consideration and—in many cases—serious financial commitment. As a result, children will suffer.



In Administrative Agencies

One of the few child advocacy organizations with expertise in the regulatory forum, CAI represented children's interests before various administrative agencies during 2002. Grants from The California Wellness Foundation (TCWF) and anonymous donors have enabled CAI to greatly expand its ability to research and monitor proposed regulatory actions affecting children's health and safety.

For example, during 2002, CAI staff implemented a rulemaking tracking system which enables us to immediately identify new regulatory proposals affecting children. Information regarding each such proposal is added weekly to a master spreadsheet; this information identifies the agency commencing the action and includes a brief description of the proposed rulemaking, the deadline for written public comments, the date and location of the scheduled hearing (if any), the deadline to request a public hearing, and references the portion of the California Children's Budget discussing the subject matter of the regulation. This information is also added to the regulatory advocacy portion of the CAI website (www.caichildlaw.org), along with links to the actual regulatory proposals and related documentation on the agency websites.

In addition to entering the relevant information into the rulemaking tracking spreadsheet and adding it to the CAI website, CAI staff also obtains and reviews all relevant materials regarding each proposed regulatory action affecting children's health and safety; these materials typically include the agency's notice of proposed rulemaking, initial statement of reasons, and proposed text of the regulatory changes. Based on a careful review and analysis of those materials, CAI staff determines if written comments/testimony are warranted.

During 2002, CAI staff submitted public comments/testimony on several proposed regulatory actions, including the following:

• On August 23, 2002, CAI submitted a written comment to the Department of Health Services (DHS) questioning DHS' proposed Newborn

Screening Program fee in-crease. This action sought DHS' second fee increase to this program in six months, resulting in a cumulative increase of over 42%. Such an increase could very well deter a low-income mother from paying out-of-pocket for the screening.

◆ On October 16, 2002, CAI submitted a written comment to the Department of Social Services (DSS) regarding its proposed child care provider notification regulatory changes. Although CAI agreed with the overall goal of the rulemaking package—which required child care licensees to inform parents of their right to criminal record exemption information regarding adults associated with the child care facility—CAI expressed two concerns regarding the scope of the proposed language.

• On October 16, 2002, CAI submitted a written comment to DSS regarding proposed changes to CalWORKs' 180-day family

reunification extension provisions. Among other things, CAI noted that the proposed changes do not indicate how counties will be making the determination that services are necessary for family reunification; the lack of such specificity could result in inconsistent or arbitrary decisions being made by different counties.

◆ On November 13, 2002, CAI submitted a written comment to DSS regarding proposed regulations implementing the state's new Supportive Transitional Emancipation Program. Although CAI agreed with the overall goal of the rulemaking package—which promotes self-sufficiency by providing an assistance payment to emancipated foster youth until their 21st birthday under specified circumstances—CAI expressed concern that the proposed regulations failed to implement two important provisions of the statute creating the program.

Additionally, CAI produced another issue of its *Children's Regulatory Law Reporter*, which describes child-related rulemaking proposals by state agencies and analyzes the resulting impact on children. Volume 3, Number 2, released in Spring 2002, discussed over forty new and pending regulatory proposals. New

regulatory proposals discussed in Spring 2002 issue included the Department of Social Services' foster care financial audit requirements; the Department of Industrial Relations' new permanent amusement ride safety inspection program regulations; the California Student Aid Commission's adoption of regulations implementing the new Cal Grant Entitlement Award Program; and the Department of Health Services' amendments to regulations implementing the Childhood Lead Poisoning Prevention Fee Program.

In the Public Forum

Expansion of CAI Website. During 2002. CAI's website underwent a major redesign and expansion, as well as a change of address. The new site, at www.caichildlaw.org, includes a number of new features designed to inform other child advocacy organizations, and the general public, about important child-related issues. For example, the new website includes regulatory alerts on child-related rulemaking proposed by state agencies such as the Department of Health Services, the Department of Social Services, and the Board of Education. These alerts, updated weekly, provide summaries of the regulatory proposals, deadlines for public comments, and links to the agencies' websites where more information can be obtained.

Among other things, the new CAI website contains agendas and minutes for meetings of the Children's Advocates Roundtable; information on CAI's academic program and advocacy activities; all CAI publications, reports, and press releases; and links to other child advocacy organizations, government officials, and other helpful resources.

Information Clearinghouse on Children. In 1996, CAI instituted the Information Clearinghouse on Children (ICC), with the goal of stimulating more extensive and accurate public discussion on a range of critical issues affecting the well-being, health, and safety of children. Supervised by CAI professional staff, the ICC provides a research and referral service for journalists, public officials, and community organizations interested in accurate information and data on emerging children's issues. The ICC has an extensive mailing list of media outlets, public officials, and children's advocacy organizations, and distributes copies of reports, publications, and press releases to members of the list, as appropriate.

CAI is grateful to The California Wellness Foundation and the Maximilian E. & Marion O. Hoffman Foundation, Inc. for their past support of the Information Clearinghouse on Children.



Children's Advocates' Roundtable

uring 2002, CAI continued to coordinate and convene the Children's Advocates' Roundtable monthly meetings in Sacramento. The Roundtable, established in 1990, is an affiliation of roughly 200 statewide and regional children's policy organizations, representing over twenty issue disciplines (*e.g.*, child abuse prevention, child care, education, poverty, housing, juvenile justice). The Roundtable is committed to providing the following:

■ a setting where statewide and locally-based children's advocates gather with advocates from other children's issue disciplines to share

resources, information, and knowledge, and strategize on behalf of children;

■ an opportunity to educate each other about the variety of issues and legislation that affect

children and youth facilitating prioritization of issues and minimizing in-fighting over limited state resources historically

budgeted for children's programs;

an opportunity to collaborate on joint projects that promote the interests of children and families; and

■ a setting to foster a children's political movement, committed to ensuring that every child in California is economically secure, gets a good education, has access to health care, and lives in a safe environment.

Although many Roundtable members cannot attend each monthly meeting, CAI keeps them up-to-date on Capitol policymaking and what they can do to help through "Roundtable FAXblasts" of meeting minutes and e-mail updates. The Roundtable also maintains an updated directory of California children's advocacy organizations and is exploring other joint projects, such as a dedicated page in the statewide children's newspaper, the Children's ADVO-CATE. Unlike many collaborations which seem to winnow away with age, the Children's Advocates' Roundtable has grown in membership and influence with policymakers each year.

Child Support Assurance Pilot Projects

During 2002, CAI continued its leadership role in promoting the implementation of quality child support assurance (CSA) programs, as authorized in AB 1542 (Chapter 270, Statutes of 1997), California's welfare reform law, and as expanded in CAI-sponsored AB 472 (Chapter 803, Statutes of 1999). County child support assurance programs guarantee payment of a minimum level of child support for each child with an established child support order, which is assigned to the county. One model suggested in the law sets the monthly child support assurance payment as follows: \$250 for the first eligible child, \$125 for the second eligible child, and \$65 for each subsequent eligible child, but counties are permitted to set different payment schedules. That way, if a child support payment is not forthcoming from the noncustodial parent, the county takes the hit, not the child. If child support is collected in excess of the

The Roundtable, established in 1990, is an affiliation of roughly 200 statewide and regional children's policy organizations, representing over twenty issue disciplines (e.g., child abuse prevention, child care, education, poverty, housing, juvenile justice).



Because assured child support decreases the reliance on public assistance, CAI will continue to advocate for the implementation of the CSA model.

guaranteed level of support, that money is also passed through to the custodial parent. This assures custodial parents employed in low-wage jobs of regular monthly child support payments to make ends meet without resorting to welfare.

Although the CSA concept provided a new and innovative way to reduce the number of children in poverty, many factors have been working against its fullfledged implementation. In addition to the cumulative years of appointments by the slow Governor, inadequate staffing, workload issues, and higher departmental priorities, fiscal constraints have virtually halted the implementation of CSAs in California. Because assured child support decreases the reliance on public assistance, CAI will continue to advocate for the implementation of the CSA model.

The Children's Advocacy Institute is grateful to the Rosenberg Foundation for its support of CAI's work on this project.

Treatise on Child Rights and Remedies

In 2002, CAI Executive Director Robert Fellmeth com-

pleted *Child Rights and Remedies*, a treatise designed for use in law schools, as well as graduate schools of social work, political science, public health, and education. The text, published by Clarity Press, includes coverage of child advocacy and the systemic barriers to representation of child interests in legislatures, agencies, and courts. It includes national census data and the status of children, combined with leading cases, questions for discussion and commentaries across the spectrum of child related issues, including reproductive rights; rights to custody, support, emancipation; child civil liberties; criminal prosecution or involuntary civil commitment; protection from abuse and rights as victims/witnesses; rights to property, contract and tort recovery; safety net sustenance; child care; education rights; health, safety and medical care; and special needs.



Interaction with National Child Advocacy Organizations

CAI remains actively involved in major national child advocacy organizations. As mentioned above, CAI Executive Director Robert Fellmeth serves on the Development and Bylaws committees of the National Association of Counsel for Children (NACC), and actively participates as a member of the NACC Board of Directors.

Professor Fellmeth also serves as counsel to the Board of Directors of the National Association of Child Advocates, with chapters of advocates now in more than forty states. He is on the Board of Foundation of America: Youth in Action, and chairs the Board of the Maternal and Child Health Access Project Foundation, which advocates for the health of infants and pregnant women among the impoverished of Los Angeles.

Lawyers for Kids

tarted by CAI in 1996, Lawyers for Kids offers attorneys the opportunity to use their talents and resources as advocates to help promote the health, safety, and well-being of children; assist CAI's policy advocacy program; and work with CAI staff on test litigation in various capacities. Among other things, Lawyers for Kids members stand ready to assist CAI's advocacy programs by responding to legislative alerts issued by CAI staff.

special projects



Price Child Health and Welfare Journalism Awards

In 1991, CAI created a nonprofit charitable corporation to administer the Price Child Health and Welfare Journalism Awards. These awards are

presented annually for excellence in journalism for a story or series of stories that make a significant impact on the welfare and well-being of children in California and advance the understanding of child health and welfare issues in this state.

At a special luncheon on September 14, 2002, CAI honored the 2002 Award recipients. The first place award winner was the *Los Angeles Times* series, "Crashing Hard Into Adulthood," reported by Phil Willon, with photographs by Gail Fisher. Written over the course of a year, these compelling articles chronicle the lives of three 18-year-olds as they emancipate out of the foster care system, being cut loose to fend for themselves.

The second place award was shared by two entries. *The Sacramento Bee's* series titled "Kids on Meds," reported by Dorsey Griffith, with photographs by Lezlie Sterling, examines the growing trend of treating children with behavioral and emotional problems with new and unusual prescription medications most of which have never been tested on children. *The Oakland Tribune's* series, "Special Education: The Broken Promise," reported by Jill Tucker, Kristin Bender, Suzanne Bohan, Lisa Friedman, and Josh Richman, with photographs by Sean Connelley, shines much-needed light on California's \$4.5 billion special education program, revealing a system deserving of a failing grade.

CAI gratefully acknowledges the dedication of the members of the selection committee who reviewed numerous submissions from California daily newspaper editors: Chair Gary Richwald, Phil Willon of the Los Angeles Times (center) received the Price Child Health and Welfare Journalism Award from Alan Shumacher, M.D., F.A.A.P. (left) and Gary Richwald, M.D., M.P.H. (right).

M.D., M.P.H.; Louise Horvitz, M.S.W., Psy.D.; Dana C. Hughes, M.P.H., M.S.; Lynn Kersey; Alan Shumacher, M.D., F.A.A.P.; and Dr. Robert Valdez, Ph.D. CAI also thanks the accounting firm of Ernst & Young for its professional *pro bono* assistance.

Child Friendly Foundation

At the suggestion of CAI Council for Children member Martin Fern, CAI staff has created the Child Friendly Foundation, a separate and stand-alone nonprofit organization not affiliated with CAI or the University of San Diego. The goals of the Foundation are to (1) promote child friendly products in the marketplace by licensing a trademark for use on qualified products to indicate that the product is safe for children and is not made through exploitive child labor; and (2) distribute the proceeds of its licensing program to child advocacy organizations throughout the country. Thus, the Foundation will assist the marketplace, stimulate responsible corporate behavior, and provide muchneeded funding for groups focusing on substantive child-related issues. CAI appreciates the commitment and contributions of all of the members of Child Friendly's Board of Directors: Martin Fern, Esq.; Gary Redenbacher, Esq.; Tony Samson, Esq.; Marvin Ventrell, Esq.; Gary Richwald, M.D., M.P.H.; and Professor Robert Fellmeth.

AI is grateful to Sol and Helen Price for their gift of the Price Chair Endowment, which has helped to stabilize the academic program of CPIL and CAI within the USD School of Law curriculum; to the Weingart Foundation for its 1992 grant enabling CAI to undertake a professional development program; and for generous grants and gifts contributed by the following individuals and organizations between January 1, 2002, and December 31, 2002, and/or in response to CAI's 2002 holiday solicitation:

Abbott Laboratories John S. and Jacqueline B. Adler Annette Aguirre Prof. Larry Alexander Mr. and Mrs. Victor N. Allstead, in memory of Robert Fellmeth, Sr. Anzalone & Associates, Inc. Maureen J. Arrigo Alan D. Bersin Vickie Lynn Bibro and John H. Abbott Carol O. and Frank J. Biondi, Jr. Robert and Lucinda Brashares Anne M. Braudis Penny and Roy Brooks

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The Development Report includes all contributions received from January 1, 2002, through December 31, 2002, and/or in response to CAI's 2002 holiday solicitation. While every effort has been made to ensure accuracy, we ask readers to notify us of any errors and apologize for any omissions.

-The Editors

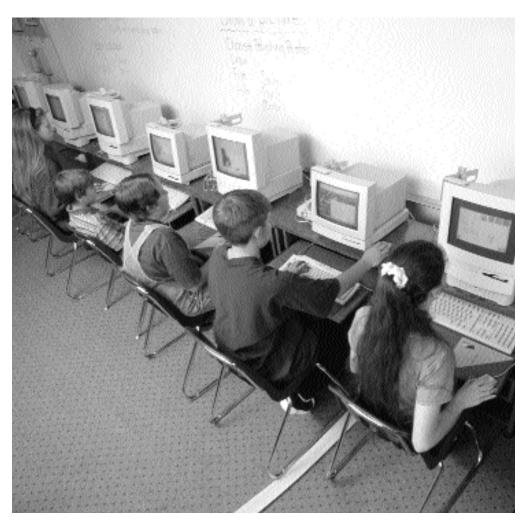
CAI staff

Robert C. Fellmeth is CAI's Executive Director; he is also a tenured professor and holder of the Price Chair in Public Interest Law at the University of San Diego School of Law. He founded USD's Center for Public Interest Law in 1980 and the Children's Advocacy Institute in 1989. In the children's rights area, he teaches Child Rights and Remedies and supervises the Child Advocacy Clinic. Professor Fellmeth has 30 years of experience as a public interest law litigator, teacher, and scholar. He has authored or co-authored 14 books and treatises, including a law text entitled Child Rights and Remedies. He serves as a member of the Board of Directors of the National Association of Counsel for Children, the Maternal and Child Health Access Project Foundation, and Foundation of America: Youth in Action, and he is counsel to the board of the National Association of Child Advocates.

Elisa Weichel is CAI's Administrative Director and staff attorney. Among other things, Weichel directs all of CAI's administrative functions, including fundraising, development, and outreach; oversees all of CAI's programs and grant projects; serves as Editor-in-Chief of CAI's *California Children's Budget* and *Children's Regulatory Law* *Reporter*; coordinates the drafting and production of the *Children's Legislative Report Card, CAI Annual Report*, and *CAI NewsNotes*; staffs CAI's Information Clearinghouse on Children, responding to requests for information from government officials, journalists, and the general public; collaborates with and assists other child advocacy and public interest organizations; serves as webmaster for the CPIL and CAI websites; and performs legal research, litigation, and advocacy. Weichel, a graduate of the USD School of Law (J.D., 1990), was 1989's Outstanding Contributor to the Center for Public Interest Law's *California Regulatory Law Reporter*. Before taking her current position with CAI, Weichel served for several years as staff attorney for CPIL.

Julianne D'Angelo Fellmeth is the Administrative Director of CAI's parent organization, the Center for Public Interest Law (CPIL). She is responsible for all administrative functions of CPIL and all of its programs and grant projects. In addition to managing the master budget of CPIL/CAI, she team-teaches regulatory law courses with Professor Robert Fellmeth at the USD School of Law and coordinates CPIL's academic program. D'Angelo Fellmeth is a 1983 *cum laude* graduate of the University of San Diego School of Law, and served as editor-inchief of the *San Diego Law Review* in 1982–83.

Guadalupe (Lupe) Diaz served as the Senior Policy Advocate in Sacramento for both CAI and its parent organization,



the Center for Public Interest Law until her resignation in March 2003. In addition to conducting CAI's legislative and policy advocacy, Diaz chaired the Children's Advocates Roundtable, a network of 200 California child advocacy organizations representing over twenty issue disciplines (e.g., child abuse prevention, child care, education, child health and safety, poverty, housing, nutrition, juvenile justice, and special needs). Diaz previously served as a fiscal analyst for the Mexican American Legal Defense and Educational Fund (MALDEF) in Sacramento, and has substantial experience in the state budget and legislative process. She has a bachelor's degree from the University of California at Berkeley and a master's degree from the Lyndon B. Johnson School of Public Affairs at the University of Texas.

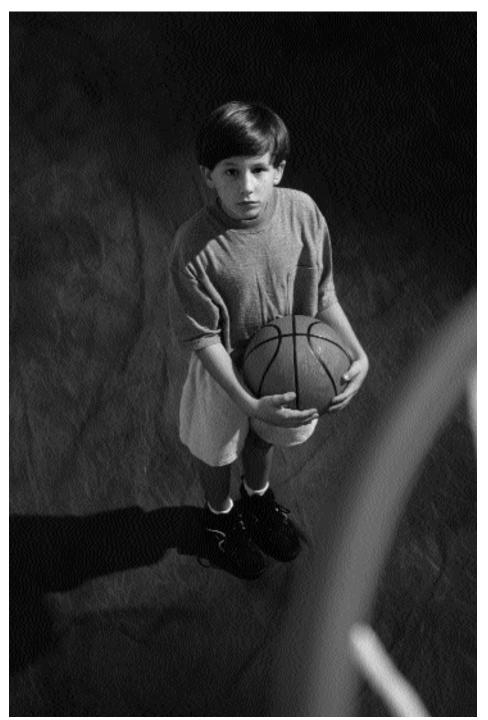
Debra Back, CPIL/CAI Staff Attorney, serves as CAI's primary litigator in state and federal court impact litigation on behalf of children and consumers in all phases from development through trial, appeal, and attorney fee application. Additionally, Back advocates before administrative agencies and the legislature on issues impacting children's welfare, health, and safety, as well as consumer protection, and is chief author of CAI's Children's Regulatory Law Reporter. Back participated in CPIL's academic program while studying at the USD School of Law, and was honored by CPIL as 1999's Outstanding Contributor to the California Regulatory Law Reporter. Following graduation, Back worked as Associate Attorney with the Law Office of Marc O. Stern, where she honed her skills as a civil litigator in cases ranging from consumer litigation to professional negligence, medical malpractice, toxic torts, and investment fraud. Back joined CPIL/CAI in August 2002.

Collette Galvez serves as CPIL/CAI Staff Attorney and Associate Editor of the California Regulatory Law Reporter. Among other things, Galvez edits law student reports for publication in the Reporter and engages in legislative and regulatory advocacy on occupational licensing and/or consumer protection issues. Galvez graduated magna cum laude from the USD School of Law in 1997 and received her L.L.M. cum laude in 2001. While studying at USD, Galvez participated in the academic programs of both CPIL and CAI, and in 1997 was honored by CPIL as Outstanding Public Interest Advocate and by CAI as Outstanding Child Advocate. Before joining CPIL/CAI, Galvez worked as a Staff Attorney for the YWCA Legal Advocacy Program, and as a Volunteer Attorney for the Legal Aid Society of Hawaii. Galvez joined CPIL/CAI in July 2002.

Stephanie Reighley performed bookkeeping and donor relations responsibilities

in CAI's San Diego office until her resignation in January 2003. She tracked revenue and expenses in several CAI accounts, provided staff support services for CAI fundraising activities, and was responsible for all gift processing. She also staffed the semiannual meetings of CAI's Council for Children. Reighley worked for CAI from 1994–2003.

Louise Jones served as CAI's office manager in Sacramento from 1996 until April 2003. She tracked legislation, monitored Sacramento office expenditures, and maintained communication with the San Diego office. She also staffed the monthly meetings of the Children's Advocates' Roundtable.



Cynthia Dana is CAI's office manager in San Diego. She provides support services for Professor Fellmeth and for CAI's academic and advocacy programs (including CAI student interns). Dana has worked for CAI since 2001.

Kathy Self performs bookkeeping and donor relations responsibilities in CAI's San Diego office. She tracks revenue and expenses, processes grant and fundraising activities, and provides support services to CAI professional staff, the CAI Council for Children, and the CAI academic and advocacy programs. Self joined CAI in February 2003.

AI is guided by the Council for Children, which meets semi-annually to review policy decisions and establish action priorities. Its members are professionals and community leaders who share a vision to improve the quality of life for children in California. The Council for Children includes the following members:

Thomas A. Papageorge, J.D., Council Chair, Head Deputy District Attorney, Consumer Protection Division, Los Angeles District Attorney's Office (Los Angeles)

Martin D. Fern, J.D., Partner, Luce, Forward, Hamilton & Scripps, LLP (Los Angeles)

Birt Harvey, M.D., Professor of Pediatrics Emeritus, Stanford University (Palo Alto)

Louise Horvitz, M.S.W., Psy.D. (Los Angeles)

Honorable Leon S. Kaplan, Los Angeles Superior Court (Los Angeles)

Paul A. Peterson, of counsel to Peterson & Price, Lawyers; founding Chair of the CAI Board of Advisors (San Diego)

Gary F. Redenbacher, J.D., attorney at law (Santa Cruz)

Gary A. Richwald, M.D., M.P.H. (Los Angeles)

Blair L. Sadler, President and Chief Executive Officer, Children's Hospital and Health Center (San Diego)

Gloria Perez Samson, Principal, Castle Park High School (Chula Vista)

Alan E. Shumacher, M.D., F.A.A.P., retired neonatologist; Past President of the Medical Board of California; President, Federation of State Medical Boards of the United States (San Diego)

Owen Smith, President, Anzalone & Associates (Sylmar)

CAI Council for Children and Staff

Front row, from left to right: Dr. Birt Harvey (Council); Dr. Alan Shumacher (Council); Gary Redenbacher (Council);
Owen Smith (Council); Dr. Gary Richwald (Council); Gloria Perez Samson (Council); and Martin Fern (Council).
Back row, from left to right: Hon. Leon Kaplan (Council); Debra Back (staff); Heather Boxeth (student intern);
Elisa Weichel (staff); Lupe Diaz (staff); Janis Burnett (student intern); Jessica Heldman (student intern);
Collette Galvez (staff); Robert Fellmeth (staff); and Paul Peterson (Council).
Council members not pictured: Louise Horvitz, Tom Papageorge (Council Chair), and Blair Sadler.











