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Children's Advocacy Institute

2004 ANNUAL REPORT

This annual report covers the activities of the Children's Advocacy Institute between January 1, 2004 and December 31, 2004.

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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EXECUTIVE DIRECTOR'S MESSAGE

Child advocates throughout the nation sounded a common concern in 2004—a continuing trend toward public disinvestment in children. In the middle of the year, I was invited to write the lead article for the American Bar Association's HUMAN RIGHTS journal's issue on children at risk. The topic I addressed was "Child Poverty in the United States." To be published in early 2005, this short article summarizes the needs of children from the national perspective. I repeat the HUMAN RIGHTS article below for an explication of federal priorities and hopes, followed by a discussion of events and plans at the state level.

Child Poverty and the Status of Children Nationally in 2004

Johnny S. was eleven years old and his homeless mother had his five-year-old sister to worry about. So she left him on a street corner in Ocean Beach, a neighborhood in San Diego. Johnny looked for his mom for four days before he was picked up by social workers. He scrounged for odd jobs and conned a restaurant manager into letting him wash dishes for three hours a night, earning just over $135. When the social workers found him, he had every penny in his pockets. He had confined himself to just one meal at the restaurant because "Mom needs [the money]." Johnny is a bright-eyed boy with above average intelligence. However, he has a slight stoop due to a correctable bone malformation, and his teeth have painful cavities. He has not been to school for two years. He presents a microcosm of child poverty in America: a child with strong potential and admirable character but with health problems, an educational deficit, and likely relegation to group home foster care or to the streets. Regrettably, Johnny is not unique. He lives in our wealthiest state and, until gathered up, was sleeping under bushes by the beach, in the shadows of $5 million homes.

For two decades, child poverty has been fluctuating between 10–20% of the population, with an overall upward trend. It declined somewhat during the late 1990s, and welfare rolls fell substantially. But those hopeful signs obscure three caveats: (1) the increase appears to have resumed since 2000, and in the context of a now-limited and reduced welfare reform safety net; (2) "severe poverty," that is, income less than half of the federal poverty line, has increased (but is not precisely measured); and (3) large numbers of children are living below or near the poverty line. This last grouping now represents 37% of all American children, 42% of its infants and toddlers, 58% of its African American children, and 62% of its Latino children. [1]

Child advocates are concerned about both ends of this spectrum: the severe poverty, portending permanent damage, and the imminent creation of a large Third World underclass of intractable poverty. The latter concern is reflected in overall increasing income disparities, with the upper 1% of Americans now earning as much as the bottom 38% combined. And the concern is underlined by barriers to upward mobility driven not only by childhood poverty but by preclusive real estate and rent inflation; growing energy, gasoline, and healthcare costs; and small increases in the higher education capacity—including community college and technical training—that most will need for employment in the international economic labor niche of the United States. This effective contraction is joined by many years of tuition increases well above inflation. Impediments to mobility for the young include unprecedented economic solicitude for older adults and a record federal deficit for the future taxpayers who are now our children. Add to this deficit more ominous Social Security and Medicare obligations. Harvard Law School's Howell Jackson projects an obligation of more than $30 trillion, $100,000 for each child over the next generation. Unless policies radically change, it will double and perhaps quadruple the regressive and already substantial payroll deductions for the

[1] National Center for Children in Poverty, Columbia University, Low Income Children in the United States—2004 (www.nccp.org).

youth who secure employment. Child advocates increasingly decry our unique cross-generational taking. Instead of the long-standing American tradition of older adults investing in the young, which particularly represents an opportunity for the impoverished, we are burdening our children with unprecedented debts and future costs.

A Closer Look

Contrary to public perception, the parents of impoverished children are not consuming beer while watching soap operas, engaging in what some call "welfare as a way of life." Data reveal that 56% of these low-income families have at least one full-time working parent, 28% work part-time, and only 16% are unemployed, many of whom would be willing to work if employment were available.[2] However, the single most striking variable underlying child poverty is single parenthood, caused by divorce and unwed births. The latter have risen over the last thirty years from below 10% of all births to over 30%. Contrary to the common view, these births are not to teenagers; the vast majority of these births are to adult women. Paternal support for these children is minimal, with average payments amounting to less than $35 per month per child, and almost half of that going not to families but to repay state and federal governments for welfare payments.[3] Most of these children live below the poverty line. Perhaps the most remarkable number from the U.S. Census reports is the difference between the median income of a female single head of household with two or more young children (about $11,000 in annual income) and the median for those children in a family of a married couple (well over $50,000).[4]

The conundrum for children like Johnny is the need for two incomes to support high rents and other rising costs of living. His mother is caught between the rock of child care obligations for her children—which she either provides or finds $5,000 per year per child to finance—and the hard place of a single wage earner unlikely to net much more than her child care costs for two or more children. Current federal policy makes the hard place harder because she is limited to sixty months of Temporary Aid to Needy Families and, even if working part-time, is given no credit for those months of income where she works less than thirty-two hours. Remarkably, the Bush administration currently proposes a forty-hour minimum work week for such parents, with each month of full-time shortfall generating possible sanctions, including the sixty-month lifetime cutoff.

Child poverty involves both private decisions and public disinvestment. Hence, the causes mentioned by commentators tend to turn on their respective political leanings. Conservatives cite reproductive irresponsibility, sexual license, lack of paternal commitment, as well as deficits and unfair burdens imposed on the young by the old, limiting their future aspirations. Liberals cite reduction of the safety net, a minimum wage that

[2] *Id.* [3] *See* Children's Advocacy Institute, *California Children's Budget 2004–05*, Ch. 2, at www.caichildlaw.org/CB_2004-05/ Chapter_2_2004–05.pdf.
[4] *Id.*

is not adjusted to inflation and has declined to below the poverty level for parents of two or more children, and education disinvestment that jeopardizes future employability for an impoverished class. Is it possible that both are correct?

According to many child advocates, the problem facing children is the truce silently in force between these traditional political antagonists. Each appears to have surrendered its agenda favorable to impoverished children in return for the surrender of the others. Hence, popular culture now purveys with impunity the notion that single parenthood is simply a different and somehow charming choice, with those dozens of sit-com and other adult models (from Rachel on Friends to Roz on Frasier) suffering no financial repercussions, child care dilemmas, or worries. Indeed, our fantasy parents in the media often do not seem to work for a living; the rent is magically paid. No male appears to pay child support, nor does any child appear to need it. Rather, our media flood us with sexual stimulation and commendation without apparent negative childbirth consequences, replete with Cialis and Viagra ads for hours of male "hardening" while hypocritically eschewing condom ads. Child advocates contend that liberal adults have surrendered (or been overborne) in the direction of momentous public disinvestment in children, especially impoverished children, with safety net support and education opportunity suffering the largest cuts. And child advocates complain that both adult political groupings (although purportedly deeply divided) have conspired to violate through deficits and huge obligations to the elderly the one pact always drawn in favor of children: that adults do not take from their children, but give to them.

A Search for Answers

If these complaints have merit, what is the answer? One prescription is to reverse the trade-off between private license and child disinvestment into the opposite proposition, one demanded from the body politic. The Honorable Charles D. Gill has advanced the public commitment aspect in a proposed constitutional amendment. The U.S. Constitution is oriented to inhibit the coercive power of the state vis-à-vis private, individual liberties. However, the constitutions of most developed nations also interpose some affirmative obligations on the state, obligations that need not impede checks on state coercion. Similarly, the U.N. Convention on the Rights of the Child, signed and ratified by every nation except the United States and Somalia, posits some minimal affirmative obligations to our children. Such a compact may properly specify only those obligations that are clearly commended as a common floor: that our children will not be homeless, will receive adequate care and nutrition to develop healthy brains, will have minimal health coverage and educational opportunity so they may provide for themselves and their children in turn. What is the opposition to such a constitutional amendment, spelled out with sufficient specificity to be enforceable? Is it that we, unlike our less affluent contemporaries in Europe, cannot afford it?

We reserve for our Constitution measures that may be politically unpopular but are a consensus "rule of the game" underlying our society. Although denied "suspect class" status in equal protection cases, what group is more politically impotent than impoverished children? And what commitment do we have more basic than this one?

Would support for such a formalized pledge benefit from a cultural sea change that private decisions to have children warrant the preparation and respect that the miracle of childbirth implies? That the decision includes the simple and minimal obligation of parents simply to intend a child, and of a father to provide for his children? Assume such a commitment were an acknowledged part of our culture and became as politically incorrect to transgress as would an insult to a gay person or someone dependent on a wheelchair. What would be the prospects for such a constitutional commitment, and to child investment in general, in such an altered environment?

One need not have a long conversation with Johnny to appreciate the merits of both a constitutional amendment and a cultural commitment to children.

The Status of Children Within California in 2004

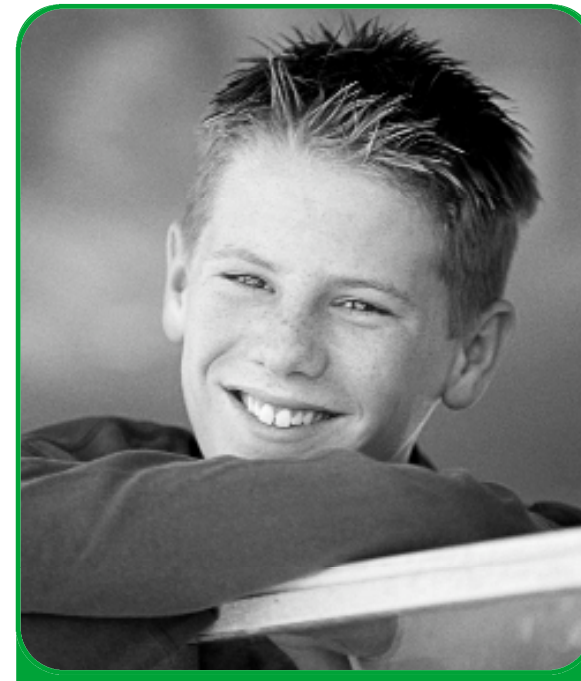
The child disinvestment policies of the "boomer" generation of adults nationally has been well represented in California. As with the federal policy of deficit spending, the state has pushed over $40 billion in obligations forward over the next twenty years merely to generate $10 to $15 billion in revenue from 2003 to 2007.

The Governor and many commentators continue the intellectually dishonest trend of discussing budget trends over the years without adjusting for inflation or population. Hence, the Governor announces that his spending proposal for 2005–06 is $5 billion more than the current budget year and that California's only problem is "spending," as in overspending. Here is what the Governor is not telling us, and given his sources of information, may well not know. His 2005–06 budget is $11 billion less in general fund spending than in 2001–02 when adjusted for population and inflation. Looking at a responsible measure of public investment, such as total personal income, California needs to spend $13 billion more than is proposed to match the percentage of adult income committed one generation ago (in 1977–78).

The following questions need to be put to the Governor and the Legislature:

1. Why aren't today's adults asked to *at least* match the investment commitment of less affluent adults 25 years ago?
2. Our K–12 investment is now in the cost adjusted bottom five nationally and our class sizes rank 49th; exactly how is this "overspending"?
3. Our higher education investment is not increasing sufficiently to add to the percentage of youth with community college to university opportunity; is it "overspending" to offer a higher percentage of our 18-year-olds that chance when it will be necessary for future jobs?
4. Is it intellectually honest to declare there to be a prohibition on new revenue for the bloated state while raising rates for several children and youth-oriented programs—such as higher education tuition and fee increases of 40–100%, record increases for foster care and child care provider license renewal fees, and health premiums for the working poor (and while proposing premium obstacles for much child Medi-Cal coverage)?
5. If the state is getting short-changed in federal dollars, and the Administration intends to keep its pledge to get all available monies out of Washington, D.C., why have we lost over $3 billion in federal funds available at a 2–1 match, constituting the largest give-back in U.S. history, by failing to cover 800,000 California children eligible for basic medical coverage?

This Governor faced a budget shortfall not of his making, but so did two previous Republicans: Reagan and Wilson, both of whom chose a balance of 50% in reductions and 50% in new revenues. When Governor Schwarzenegger faced the $13 billion deficit in 2003–04, instead of proposing $6.5 billion in new revenue, he actually reduced revenues by $4 billion by cutting back



Here is what the Governor is not telling us, and given his sources of information, may well not know. His 2005–06 budget is $11 billion less in general fund spending than in 2001–02 when adjusted for population and inflation.

The "kill the beast" mentality permeating current Party leaders in Sacramento fails to appreciate that the beast they seek to starve is that part of the state that nurtures our children.

the Vehicle License Fee from its 2% of value level that had been extant for forty years. Instead of reducing the $13 billion deficit by half, he made it $17 billion, and then he started to cut and borrow—from youth who will pay much of the bill over the next twenty years.

California's disinvestment in children is the culmination of three decades of undiscussed policies that shred the general fund. First is the real "elephant in the room," Proposition 13. The problem with this initiative is not its policy foundation—that government spending should be limited (in this case to 1% of the market value of real property). But the initiative does something else—it freezes assessments at just above 1977 levels. Hence, older adults and any business in existence at that time are paying a fraction of the property taxes than do new business sites or youth attempting, however improbably, to buy a home. In fact, youth will now pay commonly ten times the taxes as will older adults for the same governmental services—taxed according to "market value" and while occupying a home of exactly the same "market value" as the tax-favored senior. The rationale here has been to allow the impoverished elderly to remain in their homes—a goal achievable through annuities, borrowing opportunity, or even tax deferral until death of both spouses. But instead the state has created a seemingly unconstitutional system of discriminatory taking from the young, assessed entirely for the benefit of those who are older and have long been in place, a group otherwise highly favored through tax (pension) policies and unrestrained social welfare policies (Social Security, Medicare, etc.). Moreover, the extent of just the property tax assessment cross-subsidy from the young to the old, and from new businesses to their older competitors, now exceeds $20 billion annually. Apart from the basic ethical issue it raises, that is money lost to the general fund. It means California has high sales and income taxes together with the ubiquitous regressive payroll taxes, while estate taxes have been largely abolished, and property taxes on the wealthy are among the lowest in the nation.

Adding to the gradual shredding of the tax base from property tax inequity is the growth of special state tax breaks—credits and deductions—now reaching $30 billion per year. The enactment of such general fund reducing measures requires but a majority vote. They continue indefinitely unless affirmatively ended and that requires a two-thirds vote. California's supermajority requirement to enact a budget and to increase revenues—and simple majority requirement to reduce revenue—is at the procedural heart of the state's abandonment of child investment. A radical and disciplined minority can stymie additional child spending. Only one other state has a similar structure. Regrettably, Republican leadership within the Legislature—and now extending to the Office of Governor—has become a doctrinaire force preventing adequate state revenue for general fund use. The "kill the beast" mentality permeating current Party leaders in Sacramento fails to appreciate that the beast they seek to starve is that part of the state that nurtures our children. Their target excludes the law

enforcement/prison spending sector that has increased five-fold over the last generation (adjusted for inflation and population). It focuses its effect on education and child health and welfare investment. Such spending is not the feeding of a malefactor. It is not a beast they are starving — it is vehicle through which we invest in our children and their future.

As with our national discussion above, our concern over the anti-child investment ideologies of the right coincides with the failure of traditional Democrats to address the social liberalism that disadvantages children. With unwed births remaining above 30% and with the vast majority of those children living in abject poverty, the left demands that adult reproductive rights remain off the table. It pretends that the problem is merely teen pregnancy—while over 80% of unwed births are to adult women.

The result is now a perfect storm afflicting the state's children, as the national truce between the parties is implicitly extended to California with a vengeance. Now we have private irresponsibility and public disinvestment—and children have no real champion within the state's political structure.

And the right's view of the social service establishment as a ravenous maw without spending limitation has some merit. Democrats do not stand up to their own union and special interest adult groupings on behalf of children. They do not impose accountability on public agencies. They do not insist on vertical structures where children are assured the same persons to deal with from beginning to end, favoring instead horizontal structures created for the convenience of bureaucracies. Under the typical liberal agency structure, each child has fifty social workers who change identity and function and for whom the child is merely paper and reports flowing across desks. They propose vast new initiatives—such as Proposition 10 and the recent stem cell research and mental health measures—that involve billions of dollars in public funding, often channeled into wasteful spending for public agency and social service funding of questionable value and delivered at enormous collateral cost.

The national critique of both parties discussed above applies within California as well—both parties fail children. Democrats will not stand up and correct the Proposition 13 intergenerational inequity, even though now *in extremis*. They will not even propose new revenue or examine tax expenditures seriously. They will not agree to accountability measures to accompany spending—as our *California Children's Budgets* have recommended for fifteen years. Instead, during the Davis Administration, they sought to commit hundreds of millions to "Governor's scholarships" of $1,000 checks to every high school senior scoring in the upper 10% of the STAR tests (while the state abandons most of its own foster children at the age of 18 and while class sizes ranked 49th nationally).

The new Governor, to his credit, is willing to take on the anticompetitive and self-serving districting system of the state as undemocratic. But he will not correct the antidemocratic spending and tax supermajority structure. If one wants to demonstrate fidelity to democratic principles, why not pick an issue that disadvantages one's philosophy, rather than one that self-servingly will help one's political party? Moreover, the Republicans have surrendered the social responsibility agenda of former Governor Pete Wilson. Although far from perfect, at least the party then raised the issue of private responsibility—that children should be intended by two adults, that family mattered, that fathers were not merely sperm donors. Now the Republican Governor professes social liberalism—surrendering perhaps the most child-beneficial aspect of Republican philosophy. The result is now a perfect storm afflicting the state's children, as the national truce between the parties is implicitly extended to California with a vengeance. Now we have private irresponsibility and public disinvestment—and children have no real champion within the state's political structure.

CAI's Work in 2004

CAI released its most extensive state budget analysis to date in July 2004, covering the proposed 2004–05 budget as revised in May 2004. The 700-page report is available on the CAI website (www.caichildlaw.org) and covers general economic trends, child poverty, nutrition, health care, special needs, child care, education, child protection, and juvenile justice in nine successive chapters. Each chapter discusses "condition indicators" relevant to its subject matter and draws upon the latest research available from academic journals and government reports. The *California Children's Budget 2004–05* also discusses recent regulatory and statutory changes and recent caselaw in each respective chapter subject area, followed by a discussion of state, local, and federal spending in the accounts relevant to chapter subjects—with trends from 1989 properly adjusted for population and inflation changes. Appendices include discussion of methodology and index sources used. This budget document also presents evidence available of spending efficacy, and offers an alternative "*Children's Budget*" of altered or additional investment—with spending augmentation specifically identified. The *California Children's Budget 2004–05* also offers twenty sources of untapped revenue to choose from to provide adequate child investment and at least match the percentage of personal adult income expended on children by the previous generation.

Although the Legislature made minor alterations to some of the Governor's proposed budget cuts, most were enacted. CAI's alternative "*Children's Budget*" was entirely rejected, as was virtually any new child-related spending. The deficit posture of the budget prompts Department of Finance designation of almost any improvement in child services as entailing a "cost" of more than $100,000, which leads to its probable termination in what is termed the "suspense file" of the Senate or Assembly appropriations committees, where such legislation is usually killed without public vote. The existence of this "suspense file" mechanism inhibits legislators from proposing cost generating proposals—even where substantial federal monies may be captured or where extreme cost savings will occur over a three-, five- or ten-year period.

CAI issued two issues of its *Children's Regulatory Law Reporter* during 2004, covering rulemaking of the Department of Education, Department of Health Services, Department of Social Services, Department of Developmental Services, California Youth Authority, and other child-focused state agencies. CAI not only monitors this rulemaking by state agencies, but comments extensively on proposed rules prior to their adoption, as permitted under California's Administrative Procedure Act. CAI's associated Center for Public Interest Law has long specialized in regulatory practice before state agencies on behalf of consumers, and CAI draws upon that background in similarly advocating for children. Important decisions concerning statutory interpretation and implementation are made by this rulemaking process—which does not occur as visibly as does legislation, and is decided in a forum lacking child representation. For many of the proceedings in which CAI participates, we are regrettably one of the few entities commenting solely from the perspective of children and not a short-term or profit-stake interest.

As part of its advocacy for children at the capitol, CAI issued its *Children's Legislative Report Card* covering the 2004 session—the final year of the two-year legislative cycle. For the first time, CAI decided to include in the Report Card a sampling of "suspense file" casualties—child-related bills that were relegated to the suspense file and died without a public vote. The Senate or Assembly is empowered to remove bills from committee by floor motion and vote; since no legislator so acted on the particular bills featured in the 2004 Report Card, CAI attributed a negative vote to each legislator, reducing the highest score obtainable by any legislator to 90%.

The Children's Advocates Roundtable was convened by CAI during 1990 to prevent a persistent pattern of Gubernatorial bargaining that would pit child advocates against each other—with preservation of the education budget conditioned on child welfare cuts, or child care reductions, or vice versa. The 1990 combine of 18 child-related groups presented a united voice to then-Governor Wilson, and helped generate new revenue and the moderation of radical proposed cuts—particularly for impoverished children. CAI has continued to organize and direct the Roundtable over the past 14 years. Its membership has grown to over 300 child-related organizations meeting together, and in committees focusing on child welfare (foster care), child care, and health.

CAI's Plans for 2005

CAI will continue to produce its unique publications in 2005. However, production of the lengthy *California Children's Budget* will be delayed until after enactment of the final budget in early July in order for the document to (1) reflect our policymakers' final budgetary decisions and (2) frame CAI's advocacy for the following year. A new and shorter budget report will respond to the Governor's May Revision

in early June. And op eds and other advocacy will punctuate the budgetary timeline, from January through July.

CAI's legislative advocacy will focus on the budget process, but will also include advocacy on CAI-initiated measures, primarily focusing on the foster care system. For example, one CAI-sponsored measure will seek to expedite the adoption of foster care children in certain circumstances.

CAI will continue its work to assure true presumptive eligibility for medical coverage. With less than 5% of the state's children lacking medical coverage and unqualified for public coverage, the time has come to stop the system of filtering, premiums, barriers, and individual enrollment, and to declare children covered, period. Where one of the small percentage uncovered and ineligible receives more than $500 in services in a given year, parents can be billed on a sliding scale post hoc. Such a sea change in coverage philosophy is consistent with Congressional intent in enacting the State Child Health Insurance Program promising a 2–1 federal match. This approach will end the costly red tape and social work employment from 17 separate programs with different eligibility requirements, and allow the state to recover its full measure of available federal funds. We have yet to decide how and when to press for this long-term solution for child health coverage, but will continue to offer it as an alternative at every opportunity.

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CAI will continue to offer its dependency court and policy clinics as part of its academic program. A record number of students has applied for each of these clinics, with eighteen scheduled to participate during the Spring 2005 semester—nine in each clinic. And we are grateful to find an increasing number of entering students who inform us that they have chosen the USD School of Law specifically because of CAI's academic and advocacy programs and reputation. These are students who view child advocacy as their intended career, and for whom CAI's investment will yield a long-term return.

CAI continues to participate in impact litigation, authoring an amicus brief for the California Supreme Court in *Elisa B. v. Superior Court* (and two companion cases) considering the rights of children where same-sex couples who have been their parents dissolve their relationship. CAI's brief focuses not on the marital rights of homosexual adults, but on the rights of children to support from and a relationship with those persons—of any gender—who have functioned as a parent and are

so regarded by them. And CAI is considering initiating impact litigation in three areas: (1) Medi-Cal pediatric rates that have fallen to record low levels and now impede medical service supply for children in violation of federal statutory command; (2) the failure of counties to provide required Independent Living Program (ILP) services to newly-emancipated foster children (over the age of 18)—particularly those who move to a different county and are told by both their original county and by their new county of residence that such assistance must come exclusively from the "other" jurisdiction; and (3) the state's failure to comply with emancipation requirements for children prior to age 18 to facilitate their transition to independent living.

CAI has followed up on its successful sponsorship of AB 1151 (Chapter 847, Statutes of 2003). One of its provisions for the first time allows disclosure at the county level of the names, birth dates and death dates of children who die while in foster care. CAI has surveyed the counties under the authority of this statute and learned that during the first eight months of 2004, 40 children died while in foster care jurisdiction of the state. CAI hopes to bring media attention to the plight of these children, whose status is diminished by public policies cloaking their circumstances and problems in secrecy.

First Star has selected CAI as one of three sites nationally for its Multidisciplinary Centers of Excellence project.

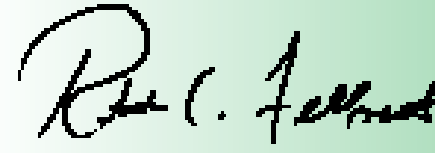
CAI will also continue to work on the national level. I continue to serve as counsel to the Board of Directors for Voices for America's Children and on the Board of Directors of the National Association of Counsel for Children (NACC). Selected as secretary of the NACC by the membership in late 2004, I now sit on the Executive Committee. CAI will be more involved in national policies through our affiliation with both of these organizations.

I also will continue to serve on the Board of Directors for First Star, a national organization dedicated to improving life for child victims of abuse and neglect. First Star has selected CAI as one of three sites nationally for its Multidisciplinary Centers of Excellence project, discussed in more detail in the following report. CAI hopes to participate by initiating a masters program in child advocacy law, and in assisting in the multidisciplinary education of lawyers, social workers, educators, and health professionals. In the long run, that education will include certification training, judicial education and conferences, and national advocacy for children. First Star will continue its work for the competent legal representation for abused children, and for lessening the confidentiality that inhibits public accountability for their plight.

We were recently pleased to see the American Bar Association, in the same issue of Human Rights featuring the article from us excerpted above, honoring as "Human Rights Heroes" four persons known for their career child advocacy work. All four are longstanding friends and colleagues: Margaret Brodkin of San Francisco, Carol Kamin of Arizona, Jane Spinak of Columbia University, and Barbara Bennett Woodhouse of the University of Florida. (Interestingly, Columbia University and the University of Florida are the other two partners selected by First Star for inclusion in the MCE project noted above.) Few of the celebrities dominating this nation's media have approached having the positive impact on our nation and her children of these four advocates. They are CAI's heroes.

As always, we are grateful for the help of our friends, starting with our Council for Children. Two new members joined the Council in 2004, Phyllis Tyson, Ph.D., one of the nation's premier experts on child psychology, and Bob Black, M.D., a leader among the state's pediatricians in the fora where state policy is decided. However, one member of our Council who was critically important to our creation and continuation, respected San Diego attorney Paul Peterson, resigned from the Council in 2004. Paul and Barbara Peterson have been supporters of CAI from even before its beginning, and Paul served as the Council's founding chair for several years. We are eternally grateful for the Petersons' commitment to our goals, and for their generous support over the past several years.

As always, we are grateful to all of our friends and supporters. Every gift to us, starting with the extraordinary generosity of Sol and Helen Price, imposes on us a fiduciary obligation to perform consistent with our benefactors' expectations. That will remain our lodestar in 2005.



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

HISTORY & PURPOSE

In 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 the clarification of the state's duty to protect children in foster care, and declaration that the state assumes an obligation of the highest order to ensure the safety of children in foster care; the improvement of educational outcomes for foster children; the 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 700-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 certification, 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.

Robert C. Fellmeth with Sol and Helen Price

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.

2004 ACTIVITIES & ACCOMPLISHMENTS
ACADEMIC PROGRAM

CAI 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

Warren Hall, University of San Diego School of Law

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 engage in policy work with CAI professional staff involved in state agency rulemaking, legislation, test litigation, or similar advocacy. In addition to their field or policy work, Clinic interns attend a weekly seminar class.

During 2004, five law students (Rafila Burt, Liam Duffy, Nicole Kwock, Bridget Howze, and Meredeth Ruston) participated in the policy section. Each student worked on semester-long advocacy projects such as analyzing counties' competency standards for attorneys representing children in dependency court; preparing a database of services and programs for emancipating foster youth in San Diego County; analyzing the child-related impact of statewide ballot measures; 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; and researching child-related condition indicators for CAI's *California Children's Budget.*

During 2004, eleven law students (Adriana Cordoba, Rachael Glasoe, Jared Jarvis, Nicole Kwock, Dan Lavoie, Karen Prosek, Julie Yang, Nichole Lobley, Ameca Park, Kerrie Taylor, and Kristin Wirgler) 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.

Also during 2004, several students engaged in in-depth work with CAI as part of independent supervised research projects. These students were Jessica Heldman, Ameca Park, Summer Peterson, and Karen Prosek.

James A. D'Angelo Outstanding Child Advocate Awards

On May 28, 2004, 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 Award to Jessica Heldman, Dan Lavoie, Summer Peterson, and Meredeth Ruston, four graduating law students, for their exceptional participation in CAI's Child Advocacy Clinic.

Jessica Heldman was an important part of CAI for the three years. In her first year of law school, even before she was eligible to participate in CAI's academic program, she volunteered a substantial amount of time and energy to CAI's program. She followed that up by participating in both of CAI's clinics, and by excelling in both. In addition to devoting two semesters to our dependency clinic, Jessica participated in our policy clinic, where she performed extensive research and

analysis of issues pertaining to the cross-over of children between dependency and delinquency courts.

Summer Peterson and Dan Lavoie also devoted two semesters each to CAI's dependency clinic, where they assisted in the representation of abused and neglected children in dependency court. Meredeth Ruston devoted three semesters to CAI's policy clinic, where she compiled an extensive database of services and programs available to emancipating foster youth in San Diego County, and also engaged in extensive research on the state's use of federal adoption funds.

The work performed by Jessica, Summer, Dan, and Meredeth was truly exceptional, and their contributions to the field of child advocacy have only just begun.

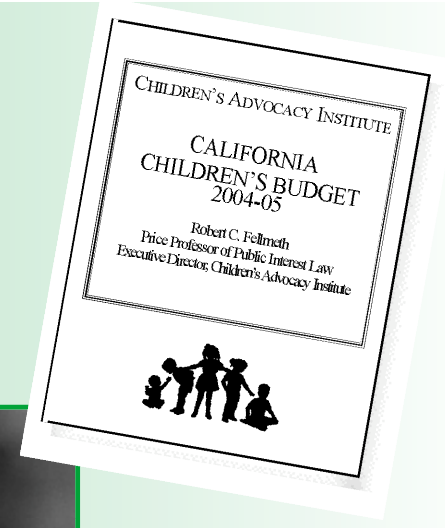
The award is a tribute to Jim D'Angelo (BA '79, JD '83), who passed away in 1996. To his own two children and all children with whom he came into contact, Jim shared tremendous warmth, patience, love, concern, and laughter; he was the consummate child advocate. Funding for the award is made possible by 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.

Joel and Denise Golden Merit Award in Child Advocacy

In 2004, graduating law student Jessica Heldman established the Joel and Denise Golden Merit Award in Child Advocacy, which will be presented annually to University of San Diego School of Law students who use their legal skills to impact the lives of children in foster care. This award seeks to encourage students to work on behalf of foster children, thus enabling the foster children of San Diego to benefit from the innovative efforts of young legal advocates. The award, which will be presented for the first time in Spring 2005, is named in honor of Jessica's parents: Joel, a gifted and generous attorney who works to vindicate civil rights, and Denise, a tireless child advocate and exceptional adolescent therapist. Most importantly, both are role models of unconditional love and support, which every child deserves.

California Children's Budget 2004–05

On June 24, 2004, CAI released its 11th annual comprehensive report of state spending on children today, documenting the Golden State's continuing disinvestment in children and its future. The *California Children's Budget 2004–05* provided analysis of the Governor's budget proposals, tracking of the state's spending from 1989 to the present, and examination of "condition indicators" for California's children. Some of the Children's Budget's important findings include the following:



Spending on discretionary programs, where most child-related spending occurs, reached a modern-era record low of 3% in year 2000; in 2004, it dropped to 2.6%.

❦ Income inequality is increasing in California, with the state dividing into three groups: a top 5% enjoying unprecedented wealth, a middle class declining from 80% of the population to 60%, and an underclass increasing from 15% of the population to 35%. The new underclass is predominantly young.

❦ The total of the 2001 and 2003 Congressional reductions is $37.7 billion per year in reduced federal personal income taxes for California's adults. As tax savings increase, investment in children progressively declines year to year. Overall federal revenue, as a percentage of gross domestic product, is now at its lowest level (15.8%) since 1950; in 2000, the percentage was 20.7%. Spending on discretionary programs, where most child-related spending occurs, reached a modern-era record low of 3% in year 2000; in 2004, it dropped to 2.6%.

❦ California's tax system expended almost $30 billion in foregone revenues from particularized deductions and credits, up from $24 million in 2000–01. These "tax expenditures" amount to 40% of all state general fund spending. There are now 268 tax expenditure programs (197 at the state level and 71 local). Most beneficiaries are special interests and the elderly.

❦ The proposed budget would have imposed new sanctions on families where CalWORKs requirements were not met or where the sixty-month lifetime benefit limit was reached. Current state policy reduces grants for such persons by the "parent's share"—or from $669 per month as the maximum proposed for 2004–05 for the benchmark mother and two children to about $470 per month. The proposed budget then would have taken another

The *Children's Budget* suggested that Californians should devote the same percentage of their personal income to general fund expenditures as did the previous generation.

25% from the remaining amount (the "child's share"), reducing TANF maximum safety net grants to $350 for the benchmark family. Adding in average Food Stamp benefits for all three would have produced about $610 per month in total resources for food, rent, utilities, clothing, and all other necessities—thus providing these families with assistance at just 47% of the federal poverty line.

Among other things, the *Children's Budget 2004–05* warned that the deal made between the education community and Governor Schwarzenegger could plummet California to the 50th in the nation in regionally-adjusted per student spending. Additionally, it documented that the Governor's proposed cuts to the poverty safety net (CalWORKs plus Food Stamps) would have put recipient families at 70% of the federal poverty level—a level that disregards California's disproportionately high cost of living. Proposed cuts to higher education and increased barriers to medical coverage would have further undercut opportunity for California's children.

The *Children's Budget* concluded that cuts and deferral of obligation, which Governor Schwarzenegger continues, does not resolve the "structural deficit." Instead, the proposed budget aggravates the shortfall and defers the debt obligation to the next generation. To reverse this trend, the *Children's Budget* suggested that Californians should devote the same percentage of their personal income to general fund expenditures as did the previous generation. In 1978–79, general fund expenditures constituted 7.4% of personal income; the Governor's 2004–05 budget would cut that commitment to 6.13%. If raised to the 1978–79 level, General Fund revenues—and thus the state's investment in children—would increase by $15 billion.

Interestingly, CAI noted that Governor Schwarzenegger's proposed budget was more steadfast in its abdication of children than those of his Republican predecessors. When faced with the choice between protecting adults' tax rates or investing in children, Governor Schwarzenegger chooses the former; in case after case, children take a cut in lieu of additional revenue contributions from adults. When faced with similar budget situation, Governors Reagan and Wilson cut spending, but they also enhanced revenues, to reduce the detrimental impact on children.

In addition to examining California's spending trends, the *California Children's Budget 2004–05* included recommendations for structural reform to prevent continued deficits, identified twenty revenue sources to reverse the current underinvestment in California's children, and summarized major legislative and legal developments affecting children statewide.

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 regarding the actions of these agencies.

In 2004, CAI released two issues of the *Children's Reporter* (Vol. 5, No. 1 and Vol. 5, No. 2). New regulatory actions featured in those issues included the following:

- the Department of Social Services' (DSS) proposed amended CalWORKs regulations regarding education awards/scholarships and work requirements for minors following high school graduation;
- DSS implemented the Transitional Food Stamp Program for households terminating their participation in CalWORKs;
- the Board of Education proposed sanctions for local education agencies that fail to comply with special education mandates;
- DSS proposed regulations to clarify its licensing staff's authority and ability to remove and copy facility records during inspections or audits;
- the Board of Education proposed regulations for the designation of persistently dangerous schools;
- DSS proposed regulations to implement quarterly /prospective budgeting, instead of monthly reporting, for the CalWORKs and Food Stamp programs;
- the Managed Risk Medical Insurance Board proposed regulations to streamline enrollment of Access for Infants and Mothers (AIM) infants in the Healthy Families Program;
- the Department of Education proposed uniform complaint procedures in response to the settlement of *Williams v. State of California*; and
- the California Department of Youth Authority proposed regulations to ensure that wards have reasonable opportunities to exercise religious freedom.

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

Children's Legislative Report Card

Yet another informative CAI publication is its *Children's Legislative Report Card*, an annual document which analyzes California legislators' votes on child-friendly bills.

In October, CAI published the 2004 edition of its *Children's Legislative Report Card*, which included a narrative description of the major child-related issues considered by the Legislature in 2003, as well as detailed descriptions of 21 child-friendly bills in the areas of poverty/economic security, health and safety, child care, education, child protection, and juvenile justice.

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 children. 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.

Of the 21 featured bills, the document indicates each legislator's floor votes on 17 bills that moved through policy and fiscal committees and achieved votes on both the Assembly and Senate floors. For the first time ever, this *Report Card* also reflects legislators' actions—or inactions—on four additional bills, two of which were passed by the Assembly but died without public vote in the Suspense File of the Senate Appropriations Committee, and two of which were passed by the Senate, but died without public vote in the Suspense File of the Assembly Appropriations Committee. For those measures, the *Report Card* reflects the floor vote cast by legislators in the house of origin, and a "NO" vote for legislators in the other house—reflecting the fact that each legislator in that house allowed the bill to die in the Suspense File without a vote. Thus, this *Report Card* reflects each legislator's actions on 21 total measures. As a result of the Report Card's new format, the top score possible is 90%.

"For the past several years, child advocates have been frustrated by legislators' failure to take affirmative action to move child-friendly measures through the legislative process—or at least for failing to demand a public vote to determine the fate of those measures, " explained CAI Executive Director Robert C. Fellmeth. "This year, CAI decided to hold legislators accountable for at least some of that inaction."

Of the 21 measures featured in the Report Card, 17 were sent to the Governor's desk for his consideration. "For the record, our 'child advocate' Governor vetoed over half of those child-friendly bills," noted CAI Staff Attorney Elisa Weichel.

The *Report Card* serves as a tool to educate and inform Californians of their elected leaders' progress toward improving the status of and outcomes for California's children. The current and past issues are available on CAI's website at www.caichildlaw.org.

ADVOCACY

In the Legislature

Overview. In October 2003, incumbent Governor Gray Davis suffered a historic recall by California voters. Republican actor Arnold Schwarzenegger was elected to replace him. Governor Schwarzenegger was sworn into office on November 17, 2003, with much pomp and circumstance. The change in administration would be the most significant event affecting the 2004 legislative year.

The Schwarzenegger Factor. The new Governor entered office with strong support from the electorate. The rejection of Gray Davis was based on a combination of cited failures by his opponents—the mishandling of the energy crisis, frustrating indecision, preoccupation with fundraising, cynical proposals such as the granting of $1,000 "Governor scholarships" to those scoring high in statewide tests at the voting age of 18, and budget gimmicks that shoved huge obligations forward to future years.

The Schwarzenegger Administration started with an extended "honeymoon" period from the media—perhaps predictable given prevalent deference to celebrity. Several signs augured well for the children of California. The new Governor had been the sponsor of Proposition 49, the "after school initiative" that assigned a minimum proportion of new General Fund revenues for the expansion of programs for child care—particularly those involving use of school facilities otherwise underutilized after the school day. The new Governor also promised to stand up to special interests, give children a high priority, resist the simplistic blandishments of the radical right, and increase opportunity through economic (business) expansion. His image was helped by his pleasant nature and brimming optimism, and burnished by the patina of masculine courage that some may imply from his celluloid film persona.

State Capitol, Sacramento, CA

As a candidate, the new Governor often touted his role in sponsoring Proposition 49 and publicly announced his support for the Healthy Families subsidized insurance program for children, typically declaring: "We have to make sure that every child in California is insured. That is the most important thing....We have a Healthy Families program here in California, and it is a very, very good program….If I become governor, I would immediately go out there and get it out so everyone knows about it and every one signs up because we must insure our families, the low-income families, especially the children."

The Governor made a series of momentous decisions shortly after taking office and before the 2004 legislative year began. First, he appointed Donna Arduin as Director of the Department of Finance (DOF), a critical post in formulating the state budget and coordinating with the Legislature. Ms. Arduin had served in a similar capacity in Florida, New York, and Michigan. In Florida, Arduin had instituted enrollment caps in the state's equivalent to California's Healthy Families program, causing thousands of children to lose coverage. Her record was one of fiscal cuts without substantial sensitivity to their consequences—especially for children.

Second, and more troubling, were the early direct fiscal decisions of the new Governor himself. The state faced the largest deficit in its history—a structural shortfall of well over $11 billion. Some of that deficit was the result of improvident spending, ranging from the $1,000 scholarships noted above to extraordinary pension benefits for the state's politically powerful prison guards. And the problem was exacerbated by the bursting of the dot-com bubble which had been giving the state substantial state personal income and corporate tax revenue. But as documented in the California Children's Budget 2004–05 (see www.caichildlaw.org), these explanations miss a fundamental dynamic in the state—the relentless shredding of the tax base through the enactment of what are now more than $30 billion in annual tax deductions, credits and exemptions. Unlike direct spending, these favors continue indefinitely unless affirmatively ended, and then require a two-thirds supermajority to terminate or even to lessen to any degree. Accordingly, their imposition is an unsurprising goal of the 1,200 registered lobbyists in the Capitol—few of whom represent the interests of children.

A proper measure of public child investment in education, safety net provision, child care, protection from

This discrimination against the young and its promised financial burden for the state's future children raise a profound ethical issue that neither the new Governor, nor the Legislature, have had the courage to address.

abuse, and other spending is a percentage of some measure of adult wealth that adjusts for population and inflation, such as gross domestic product or personal income. Taking the last, the 1978–79 commitment to the General Fund (most of which is invested in children) was 7.35%. That same commitment would produce $11 billion more than the 2003–04 budget provided for children. The difficulty facing the state is less overspending than a gradual wasting away of state resources.

The shortfall is much exacerbated by the Proposition 13 property tax structure that substantially freezes real property assessments (and hence taxes) at 1977 levels—thus imposing ten or more times the taxes on youth seeking to buy a home than are paid by older adults for the same services. Existing corporations enjoy an even greater disparity over youth starting a new business. This discrimination against the young and its promised financial burden for the state's future children raise a profound ethical issue that neither the new Governor, nor the Legislature, have had the courage to address. That equal protection infirmity is separate and apart from the core element of Proposition 13—limiting property taxation to no more than 1% of a property's value. And the inequity the disparate assessments create grow year after year—and will continue to grow, raising profound ethical issues.

The underfinancing of the state General Fund is reflected in the number of state employees; California has among the lowest number per resident in the nation. More ominously is the funding of the single most important account for future generations: public education. In 2004, Education Weekly, a respected national source, measured the respective investment of the 50 states in K–12 education. Using 2001 data, California—once the national leader in public education—ranked 44th in the nation, between Mississippi and Louisiana.

Previous Republican administrations had faced unexpected and severe state deficits: Reagan in the late 1960s and Pete Wilson in 1991. Each had faced down reflexive "starve the beast of government" Republican legislators and made up the difference half by spending cuts (some disadvantageous to children) and half from new revenue. In current dollars, these new revenues would exceed $4 billion. However, Governor Schwarzenegger—facing a larger deficit than his predecessors—not only did not add revenue, instead subtracted $4 billion due the state annually from the Vehicle License Fee, a major source of revenue for local government. That cut was from a longstanding statutory base for VLF revenue. Instead of reducing the deficit from $11 billion to $5–7 billion, as his responsible Republican predecessors had done, he increased it from $11 billion to $15 billion.

The new Governor's solution was not to end the irresponsible fiscal policies of the recalled Davis Administration, but to magnify and legitimize (legally) a larger array of payment deferrals and obligation extensions.

Complicating the Governor's populist "reduce taxes" measure were the accounting hijinks of the Davis Administration, which had confronted an even larger deficit in 2003–04 and cloaked it in spending deferrals—many of which were arguably unlawful (borrowing or taking from pension and other special funds, spending twenty years of Tobacco Settlement Funds in two years by using the promised revenue for immediate bonds, paying June's bills in July to place them in the next fiscal year, and the floating of other allegedly unconstitutional bonds obligating future revenues).

The new Governor's solution was not to end the irresponsible fiscal policies of the recalled Davis Administration, but to magnify and legitimize (legally) a larger array of payment deferrals and obligation extensions. These policies were not interposed as a kind of "income averaging" to spread a deficit over two or three years of economic recovery—but involve payment obligation or income losses over the next ten to twenty years and beyond. Hence, the $11 billion shortfall from the General Fund commitment of one generation ago as a percentage of their adult personal income now becomes $15 billion under the 2004–05 budget, and the 7.35% commitment of personal income for General Fund investment has shrunk to 6.13%.

The Governor's initial budget proposal of 2004–05 followed the same pattern of former Governor Pete Wilson in his 1991 budget cuts, with the brunt of the reductions being borne by children, with safety net, foster care (abused children in state custody), health, and education taking huge cuts. California, one of the wealthiest states in the nation—with personal income projected substantially higher—would disinvest primarily in her children. Both in 1991 and in 2004, the Legislature refused to approve many of the more draconian reductions. But their rejection was softened in 1991–93 by revenues additions that allowed their moderation. In 2004–05, little new revenue was authorized—requiring an unprecedented deferral of payment to future years. This state version of deficit spending, approved by the electorate after a vigorous campaign by the new Governor, replicates to some degree the remarkable federal turnaround from $5 trillion in surplus to $4 trillion in deficits now projected to burden our children nationally (in addition to much higher projected payroll taxes for Social Security and Medicare support of the elderly). The primary exception to the absolute line against new state revenue were substantial increases in tuition and fees for higher education, and a doubling and tripling of license fees for child care and foster care providers.

Prior conservative administrations, particularly that of Pete Wilson, rather courageously took a strong public stance against private irresponsible adult behavior toward children. That administration pushed a "responsibility" agenda aimed at lessening unwed births that constitute a major cause of child poverty. It touted private reproductive responsibility and advanced numerous initiatives to further the interests of chil-

dren, from the right of a child to be intended by two adults, to child support collection. And although fiscally conservative, when confronting more tax reductions against the public investment needs of children, it tolerated some measure of the former for the benefit of the latter, as discussed above. However, in his first year in office, Governor Schwarzenegger has represented the "perfect storm" of policies adverse to the interests of the state's children. His "social liberalism" inhibits the stimulation of private responsibility that was a hallmark of the prior Republican administration. At the same time, he has declined to stand up to the radical "neo-con" Republican legislative leadership who oppose any new tax revenues categorically (unless labeled "fees" and assessed against the politically weak). That opposition is in extremis notwithstanding two Congressional tax cuts that will save California adults an average of $37 billion per year through 2011. The expenditure of public funds at the state and local level over federal spending is a time honored principle of conservatives, but the portion of these momentous federal cuts recaptured by the state for more locally directed child investment is zero. At the same time, the state's $30 billion in tax deductions, credits and exemptions continue to proliferate and grow, from the horse owner deduction to the yacht write-off.

The expenditure of public funds at the state and local level over federal spending is a time honored principle of conservatives, but the portion of these momentous federal cuts recaptured by the state for more locally directed child investment is zero.

The 2004–05 Budget. The most important legislative output in 2004 was the enactment of the state budget and its associated trailer bills, approved in the context of a new initiative outlining future budgetary limitations and a bond encumbering future budgets by $15 billion plus accrued interest over a twenty-year period of repayment. An underlying structural feature of the state budget process is its requirement of a two-thirds vote to increase revenue, and a separate two-thirds vote to spend money. Only two other states have similar impediments to majority rule. That both revenue and spending in the budget can be blocked by a minority has been used since 2001 by Republican legislators to deprive the state of General Fund resources at historical or prudent levels for children. Hence, children are now caught in a cauldron of conservative surrender to social liberalism combined with liberal impotence to provide public investment in children. The Governor's placement at the apex of this two-party unstated contract against the interests of children cements its efficacy. The substantive consequences of the private license and public disinvestment include the following:

❦ Health Coverage. Over 800,000 California children continue to lack basic health coverage—coverage that is provided to children in every other developed nation in the world and to all of the elderly of the state and nation (costing five times the price of child coverage, and for a population with half the child poverty rate). Those uncovered children are primarily of the working poor and their parents who choose to seek medical attention for their children will pay three to five times the price paid by public payors and private insurance. Ironically, the Congress has announced a national policy to cover all children up to 250% of the poverty line and provides a 2–1 federal

repeated foster care placement changes and impersonal group home existence until abandoning them to the streets at age 18. The federal jurisdiction has warned the state that it is out of compliance with minimum standards. Instead of increasing our commitment to these children to provide at least minimally adequate protection and care, Governor Schwarzenegger removed from the budget $17 million in child welfare spending—an action which could sacrifice related federal matches and lead to the firing of 700 child protection workers at the county level. Legislation designed to moderate the confidentiality of juvenile dependency court to allow public examination of these failures was defeated. And over the last four years, substantive attempts to increase family foster care rates and supply have failed, despite the fact that the proposed increases would still leave the larger and more politically powerful group homes with compensation more than five times the levels paid to family foster care providers—where 80% of foster care adoptions originate. Finally, legislative proposals to continue foster care protection past 18 years of age where youth are in school or training for meaningful employment have died.

❦ Safety Net. The state-set basic compensation for impoverished children has declined to a record low, from above the poverty line in the 1980s, now to 70% of the line, and the Governor has proposed deeper cuts. Meanwhile, unwed births continue at a remarkable rate of 30%—with the vast majority not to teens, but to adult women. Meanwhile, child support collection from absent fathers is less than $38 per month per child and the Governor has substantially cut the budget of the Department of Child Support Services. Collections for 2005 are estimated to be level or even lower than the minimal levels now collected for impoverished children.

match. But the state maintains a fragmented system of enrollment, qualification, filtering, premiums and bureaucracy to keep these eligible children from basic coverage, and will send a record amount of federal monies back to Washington, D.C. The Legislature has refused to enact a modest "true presumptive eligibility" system and the Governor has violated his campaign statements by failing to move toward universal enrollment, and maintaining barriers to coverage.

❦ Foster Care Betrayal. California has one-fifth of the nation's abused and neglected children in foster care. That the state performs its role as parent to these children ineffectively is apparent to all familiar with this system—a failure the Children's Advocacy Institute documents through its clinic representing hundreds of those children. In recent years, the Assembly Democrats held hearings and acknowledged California's betrayal of these children, relegating them to

❦ Child Care. While after-school and preschool programs were not cut, general child care for the working poor is inadequate and the Governor proposes radical reductions in compensation for those who care for children—to levels well below the poverty line or minimum wage. Meanwhile, the vaunted Proposition 49 after-school care upon which the Governor's "child advocate" reputation rests remains moribund.

The state-set basic compensation for impoverished children has declined to a record low, from above the poverty line in the 1980s, now to 70% of the line, and the Governor has proposed deeper cuts.

❦ K–12 Education. The new budget cuts education to well below the constitutional minimum guarantee as enacted by the electorate in 1988. As noted above, it occurs against a base of disinvestment moving the state to 44th nationally as of 2001. The changes in 2003 and in the legislatively-enacted budget in 2004 likely bring the state to 49th nationally in spending, and 49th in class size.

❦ Higher Education. Despite substantial fee and tuition increases, the capacity of higher education is subject to unprecedented constriction. A much smaller proportion of 18-year-olds will have UC and State College opportunity—at the very time future employment prospects require it.

During 2004, CAI continued its leadership role in budget advocacy, working especially hard to protect programs that impact child health and welfare. For example, CAI was part of an advocate group that lobbied against the 2004–05 proposed cuts to the CalWORKs and Food Stamp programs. The group was successful in staving off the cuts in the final budget, thanks to an approach that combined directly lobbying the legislature, grassroots approaches like rallies, and media campaigns.

Legislative Arena. The budgetary performance described above had extreme effects on legislation in general. When such deficits occur, they lead to child-related legislation following this path: (1) The measure is introduced with congratulatory press releases by the author and sponsor; (2) it receives unanimous and often bipartisan assent in policy committee and often through one house; (3) the Department of Finance opines that the measure involves more than $150,000 in public expense (and almost any legislative measure can be so interpreted); and (4) the bill is then deposited into what is termed the "Suspense File" of the Appropriations Committee of the Senate or Assembly, and there it dies without public vote. This process led to the demise of over twenty important measures in 2002, and a similar number in 2003. By 2004, most authors had ceased the make-work of attempting to introduce constructive legislation to improve the efficacy of services to children—knowing these measures were bound for the ignominy of suspense file termination.

Although the legislative arena lacked the import of prior years, several initiatives were addressed:

❦ The effort to establish universal preschool continued from the previous legislative year and seemed to be gaining momentum. After a March ballot initiative to create universal preschool faltered, Assemblymembers Darrell Steinberg (D–Sacramento) and Wilma Chan (D-Oakland) reasserted their commitment to their universal preschool bill, AB 56. Negotiations on the issue continued well into the last month of the legislative session, with apparent success. Steinberg, who was Chair of the Assembly Budget Committee, succeeded in putting money into the budget to be used to implement the bill. However, the funding did not survive the budget process. Ultimately, it became clear that the Governor was not ready to sign a far reaching universal preschool bill. The momentum for the bill sputtered out at the end of session, and the Governor's proposal to change the date for kindergarten entry would move school preparation in the opposite direction by eliminating tens of thousands of five-year-olds from kindergarten entry.

❦ Assemblymember Marco Antonio Firebaugh (D-South Gate) authored a bill that would have prohibited smoking in a car when there was a child in a car seat present. Though there was no official opposition to the bill, it was killed by the Legislature three different times. The first two times, Firebaugh skillfully maneuvered the legislative process to resurrect the idea in another bill. However, the third attempt was unsuccessful and the bill died by one vote in the Assembly Governmental Organization Committee.

Child-Related Legislation. The modest successes for children from the Legislative session, i.e., those bills approved by the Legislature and sent to the Governor for his signature or veto, are discussed below. The end result of the current financial conundrum is the general failure of the Legislature to enact a meaningful number of significant bills. Indeed, most legislation relevant to children is reduced to symbolic form or to the initiation of the ubiquitous "study." The decline in substantive character occurs in a setting of recurring child poverty, declining education spending, general child disinvestment, and constriction of county finances upon which child mental health, protection from abuse, emergency room coverage of children without health insurance, and other services for children depend. And perhaps most troubling, the spending forward of funds that has become the hallmark of both the Davis and now the Schwarzenegger Administrations promises many years of continued shortfall and state nonfeasance toward the state's children and her future.

❦ SB 339 (Alpert) would have enacted the Private Child Support Collection Act, to address the growing number of complaints about private child support collectors involving excessive fees, false and deceptive advertising, and the failure to disclose important rights forfeited by child support obligees when they assign these debts to private companies. Among other things, the measure would have regulated private child support collectors by setting their fees, requiring specified disclosures to potential clients, permitting cancellation of contracts under certain circumstances, and regulating advertising.

On September 30, 2004, this bill was vetoed by the Governor, who found some of the provisions in this bill to be "particularly onerous to the industry and to parents seeking choices."

❦ AB 2669 (Garcia) implemented many of the recommendations from the "Collectibility Study" mandated by SB 542 (Burton) (Chapter 480, Statutes of 1999). The most significant provision of AB 2669 changed the order in which child support payments on arrears are credited to principal first, then interest, upon full implementation of the California Child Support Automation System in 2009. Prior to this change, arrears were credited to interest first, then principal. Applying payments to principal ahead of interest allows a non-custodial parent, especially one who is also paying current support, to pay down some of the debt every month, and may prevent non-custodial parents from becoming discouraged and disappearing from their children's lives completely because they are unable to maintain their debt service.

This bill was signed by the Governor on August 24, 2004 (Chapter 305, Statutes of 2004).

❦ AB 2832 (Lieber) would have increased the minimum wage from $6.75 per hour to $7.25 as of January 1, 2005, and $7.75 as of January 1, 2006. Although it is higher than the federal minimum wage of $5.75, California's current minimum

wage of $6.75 per hour is the lowest on the West Coast. The California Budget Project estimates that over 58% of minimum wage earners in California are 25 years of age and older. Increasing the minimum wage would have helped boost the incomes for California's lowest-paid working families, who are abundantly represented in the ranks of minimum wage workers, while reducing their reliance on publicly funded safety net programs to help meet their basic needs.

On September 18, 2004, this bill was vetoed by the Governor, who viewed the measure as a barrier to his goal of making California more businessfriendly.

❦ SB 379 (Ortiz) would have required hospitals to (1) establish a charity care policy for the provision of low cost care for qualifying patients; (2) inform such patients of their rights and the financial options available to them to pay their hospital bills; and (3) make a good faith effort to negotiate a payment plan with self-pay patients before sending their outstanding bill to collections. These provisions would have helped prevent the likely financial hardship that uninsured Californians, 80% of whom are from working families, face when seeking medical care. It also would have removed a barrier to accessing care, since the prospect of hardship deters people from seeking much needed care.

On September 22, 2004, this bill was vetoed by the Governor, who preferred to allow the hospital community to continue to implement its recently adopted voluntary guidelines.

❦ SB 1196 (Cedillo) expanded Express Enrollment, which allows the use of National School Lunch Program application information to determine Medi-Cal eligibility, to Healthy Families and any other county or locally-sponsored health insurance program when the child does not qualify for Medi-Cal; however, the information may only be so utilized upon parental consent. This will efficiently connect some of California's one million uninsured children to existing health coverage.

This bill was signed by the Governor on September 24, 2004 (Chapter 729, Statutes of 2004).

❦ AB 1793 (Yee) required video game retailers to post a sign that informs consumers about the video game rating system, and to make a brochure available to consumers, upon request, that explains the rating system. This will help educate parents about the video game rating system and aid in the selection of appropriate games for their children.

This bill was signed by the Governor on September 21, 2004 (Chapter 630, Statutes of 2004).

❦ SB 1343 (Escutia) would have required the Superintendent of Public Instruction to establish a taskforce to develop an Infant and Toddler Care Master Plan, which would include (among other things) identification of broad state policy goals making high quality and affordable child care and development services for children through age three available for every California family. It also would have included a framework of specific actions needed to accomplish the goals; strategies to target underserved communities, families and children; efforts to mitigate deficiencies in resources available for current child care needs for infants and toddlers; and an estimate of the cost of providing high quality child care in center-based facilities and homes. A Master Plan would help California address the growing and largely unmet need of child care for infants and toddlers in a deliberate, holistic way.

On September 29, 2004, this bill was vetoed by the Governor, who felt it was duplicative of existing policy.

❦ AB 72 (Bates) required each child care resource and referral agency to remove from the program's referral list a licensed child day care facility that has a revocation or temporary suspension order or is on probation. Child care resource and referral programs help parents find child care programs to meet their needs. This will give parents greater assurance that referred providers meet the state's licensing requirements.

This measure was signed by the Governor on August 27, 2004 (Chapter 358, Statutes of 2004).

❦ AB 825 (Firebaugh). Existing law establishes a variety of public education programs with specific criteria for eligibility and rules regarding the use of funds provided for those programs; these categorical programs are established to assure that education resources are used to meet specific pupil, school, or school district needs. This bill consolidated a total of 22 K–12 education categorical funding programs and most supplemental instruction hourly reimbursement programs into six categorical block grants effective with the 2005–06 fiscal year. This will give school districts more flexibility in providing programs while protecting the major program funding categories, thus enabling school districts to focus on serving student needs instead of bureaucracy.

This bill was signed by the Governor on September 29, 2004 (Chapter 871, Statutes of 2004).

❦ AB 1897 (Reyes) would have required, beginning July 1, 2005, each school district with one or more high schools to appoint a preferential voting pupil member to the governing board of the school district. According to the California School Boards Association, approximately half of California's school boards lack a student member to represent their students. This

bill would have helped ensure that student voices are represented in decisions directly affecting them, and would have stimulated youth leadership.

On September 24, 2004, this bill was vetoed by the Governor, who opined that "mandating that school districts appoint a preferential voting student member to local school board is unnecessary since existing law already provides a mechanism for student representation on local school boards."

❦ AB 129 (Cohn) authorized the probation department and the child welfare services department in any county to create a protocol which would permit a minor who meets specified criteria to be designated as a dual status child (a child who is child under the jurisdiction of both departments). Prior to this bill, only California and Colorado used an either/or approach to jurisdiction in juvenile justice cases; the other 48 states either use or have some form of dual status approach. Establishing the dual status classification in California will improve the juvenile justice system and yield valuable information about the best approaches to such cases.

This measure was signed by the Governor on September 10, 2004 (Chapter 468, Statutes of 2004).

❦ AB 488 (Parra) required the Department of Justice to establish an Internet site disclosing information pertaining to registered sex offenders beginning on or before July 1, 2005. This will help ensure that parents have easy access to information that will aid them in protecting their children from registered sex offenders in their communities.

This bill was signed by the Governor on September 24, 2004 (Chapter 745, Statutes of 2004).

❦ AB 1895 (Nation), among other things, would have required the juvenile court to appoint an immigration attorney to a dependent child who is not a U.S. citizen or a lawful permanent resident and is unable to reunify with his/her parents, if the court determines that it is in the child's best interests. All undocumented children within California's juvenile justice system run the risk of being deported, even when in foster care, guardianship, or after adoption. However, they are eligible for special juvenile immigrant status (SJIS), which would protect against deportation and provides a streamlined process for obtaining permanent residence. SJIS requires timely application, which an immigration attorney would help facilitate. SJIS status will help increase successful, permanent placements for these children.

On September 30, 2004, this bill was vetoed by Governor Schwarzenegger, who opined that the measure was unnecessary because "[c]ounties already have the option of appointing an attorney to assist in resolving the immigration status of a child."

❦ AB 2496 (S. Horton) created the Child Welfare Services (CWS) Program Improvement Fund in the State Treasury to receive grants, gifts, or bequests made to the state from private sources; instructed the Department of Social Services to use the money, to the extent possible, as a match to obtain federal dollars; and specified that monies received through this fund shall be used to augment federal, state or county funds made available for the CWS Program Improvement Fund. This fund will help capitalize on the philanthropic community's de-sire to contribute to the improvement of CWS and expand the funding available for the ongoing efforts.

This bill was signed by the Governor on July 15, 2004 (Chapter 168, Statutes of 2004).

❦ SB 449 (Escutia) would have required the juvenile court to take the educational needs of a minor into consideration when making any orders related to the care of the minor. It also would have required the probation officer's social study to include a description of the minor's educational needs and recommendations for meeting those needs and, when possible, preserving the stability of the minor's educational program. The bill would have established additional provisions to maintain a minor's access to and stability of his/her educational needs. Thus, this bill would have helped ensure that delinquent youth receive basic educational instruction, which is one of the foundations of rehabilitation, the basis for the juvenile system.

On September 30, 2004, this bill was vetoed by the Governor because it would have added additional responsibilities to county courts and probation departments, and would have cancelled out portions of a bill he signed earlier.

❦ SB 1151 (Kuehl) would have clarified the definition of the term "circumstances and gravity of the offense" for purposes of evaluating whether a juvenile should be tried in juvenile court or moved to adult criminal court. Specifically, this bill would have provided that the legal standard of the circumstances and gravity of the offense includes the actual alleged behavior of the minor; the minor's degree of involvement in the crime; the level of harm actually caused by the minor; and any other matter that may affect the circumstances and gravity of the offenses. Because current law does not specify how a court should evaluate the circumstances and gravity of the offense, inconsistent fitness determinations are being made by juvenile courts throughout the state. By providing specific criteria for courts to consider, this bill would have helped ensure consistency in the types of cases being transferred from juvenile court to adult criminal court, and would have ensured that only the most appropriate cases are moved into the adult system.

On August 27, 2004, this measure was vetoed by the Governor, who opined that it would "prohibit[] some of the most serious juvenile offenders from being treated as adults in the criminal justice system."

❦ SB 215 (Alpert). The lack of coordination among agencies and organizations that serve children and youth often prevents them from receiving the services they need and the experiences necessary for successful development. California youth would be better served if programs and activities to improve their well-being were guided by a coordinating structure, led by the Governor, to increase the coherence and effectiveness of policies and practices, and that specify clearly stated outcomes. Accordingly, this bill would have enacted the Youth Policy Act and created the California Youth Policy

Council (CYPC) to coordinate state policy regarding youth development and prevention efforts affecting youth.

On September 29, 2004, this bill was vetoed by the Governor, who opined that "[t]he establishment of a new council is not necessary as the Legislature and the Administration can create councils to advise them without statutory authority."

Government Restructuring Proposals. The Governor's budget included policy changes beyond those enumerated above—few of them beneficial to children. They included the appointment of a California Performance Review (CPR) Commission to restructure and streamline state government; the intent was that proposals emanating from this process would be introduced during the 2005 legislative session. The early indications from the process were dismal for children. Initial recommendations included the transfer of authority from boards and commissions that must meet and make decisions in public, and that carryover between administrations for continuity—to new "departments" whose heads make decisions in the privacy of their offices in private, and who serve at the pleasure of the Governor.

CPR recommendations also included depriving impoverished families of the first $50 in child support collection now sent to families before recompensing the state for TANF support. That payment is a modest but important benefit for these families and provides added incentive to assist the state in collection and for fathers to make payments since at least some of it accrues to the child.

The CPR recommendations did include a number of recommendations that could have beneficial impact for children, depending critically upon their details which were not yet decided. As part of its governmental review process, the new Administration launched into a broad analysis of California's Medi-Cal system in the hopes of reigning in some of the cost. This process, which was dubbed the Medi-Cal Redesign, began in conjunction with the budget process and is also ongoing.

Although many of the CPR recommendations consisted of admonitions to comply with federal standards and to seek maximum federal monies where available to the state, they miss the largest opportunities for such savings. As the discussion above suggests, the largest single failure to capture federal money in the nation's history (failure to claim State Child Health Insurance Program money for child health coverage at a 2–1 federal match) could be manageably prevented with true presumptive eligibility for children, and would accomplish momentous streamlining and elimination of social workers and red tape. One problem with the CPR's recommendations is the underlying mission—to avoid at all costs any expenditure of monies not now being expended for any purpose, whatever the benefits to children or the long-run savings. The prime directive of the Schwarzenegger Administration to date has not been children or investment in the future, but the protection of tax cuts. While the Legislature has been unwilling or unable to chart a different course, it has moderated the extreme cuts. The end result of this interaction has been the deferral of obligation many years into the future. This continuing structural shortfall yields likely gridlock and continued child disinvestment for at least the next five to ten years, as discussed above.

Two weeks after the CPR report's release, hearings began around the state to provide an opportunity for public comment. Advocates were frustrated by the limited access afforded at these hearings and the inability to truly deal in detail with the issues. Each hearing had an invited panel and then public testimony. For any of the witnesses the most time allowed for testimony was five minutes. Even at the conclusion of the hearings, questions remained about implementation of the CPR recommendations.

Conclusion. The legislative and budget year largely saw the status quo maintained for California's children. Most programs of consequence to children staved off potentially devastating budget cuts. There was little significant progress made on the legislative front, but little lost ground. Unfortunately, status quo is not meeting the needs of California children. Our education system is not up to par, an issue that continues to resonate with Californians. Almost one million children remain uninsured. Too many foster children are not having their basic needs met and are at great risk of becoming homeless or unemployed upon leaving the system. California's children need real leadership on their behalf. Though there are shining individual examples of leadership on behalf of children, it is largely missing from the Legislature as an institution. And regrettably, Governor Schwarzenegger has yet to live up to his campaign assertion of being a child advocate.

In the Courts

Overview. Funding from generous grantors and donors enabled CAI to create a staff attorney position, filled by Debra Back Marley, who performs litigation and regulatory advocacy. In 2004, 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 regarding timely and appropriate access to medical care for children covered by Medi-Cal; the state's implementation of the rent and utility voucher safety net assurance for children affected by TANF sanctions to their families; housing and other assistance for former foster youth participating in independent living programs; and 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.

Litigation Criteria. Under CAI's litigation criteria, the following criteria must be met:

❦ If successful, the case will have a major beneficial impact on California children (including both the number of children affected and the type and degree of impact).

❦ The litigation subject matter is relevant to the jurisdiction of the legislative, executive or judicial branches within California and/or the United States, and is consistent with the mission statement of CAI.

❦ The subject matter of the litigation must be important to the health, safety, security, rights, or opportunities of children.

❦ If successful, the case will change policy to leverage an advantage for children beyond the interests of the named parties.

❦ Sufficient and available resources exist to pursue the litigation, including staff time and costs, taking into account discovery, expert witness and other litigation expenses, and potential recompense for costs.

Further, the following criteria must be considered:

❦ If successful, the case will assist impoverished children or another disadvantaged child population.

❦ Other organizations may contribute resources to the litigation.

❦ The likelihood of success is substantial—both by itself and in comparison with other means of challenging the issue (*e.g.*, legislation, rulemaking, media coverage)—or the litigation will substantially enhance those other means of influence.

❦ Another person/entity is unlikely to bring the litigation or is unlikely to bring the litigation in a timely manner, or, if so brought, the matter may not be litigated with the requisite skill or intent to provide an advantageous outcome for children.

Unlike a client-driven civil practice, litigation at CAI often comes through untapped channels: we hear of problems that occur across counties and local areas, or we hear similar complaints from children or youth being serviced through the public system. Due to the nature of the litigation CAI seeks to be involved in, our Staff Attorney makes frequent contact with other attorneys for public agencies, non-profit and advocacy groups, and private attorneys in order to stay abreast of changes in current law and policy, as well as to identify and pursue projects when issues or opportunities arise. With numerous contacts at the local, state, and federal level, CAI can better navigate the issues children face and determine where best to utilize its expertise.

In Administrative Agencies

Overview. One of the few child advocacy organizations with expertise in the regulatory forum, CAI represented children's interests before various administrative agencies during 2004. 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.

CAI utilizes a rulemaking tracking system to 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.

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.

Comments on 2004 Regulatory Proposals. During 2004, CAI Staff Attorney Debra Back Marley submitted public comments/testimony on several proposed regulatory actions, including the following:

❦ On May 5, 2004, CAI submitted comments to DSS regarding its rulemaking proposal on transitional Food Stamps and the face-to-face interview requirement. Among other things, CAI noted that new section 18901.10 of the Welfare and Institutions Code (created by AB 231) essentially changed the presumption from mandating that all county welfare departments (CWDs) conduct face-to-face interviews with all applicants for Food Stamps both at initial certification and recertifications unless there is a hardship to mandating that all CWDs exempt households from complying with the face-to-face interview requirement when appropriate. However, CAI noted that the proposed language in section 63-300.4 does not comport with the intent of the statute; in particular, the presumption to favor alternatives to face-to-face interviews is not apparent from the language. CAI also pointed out proposed regulatory language that appears to conflict with statutory provisions, and noted certain statutory provisions that had not been implemented by the rulemaking proposal.

❦ On June 25, 2004, CAI submitted comments to CDE on its rulemaking package pertaining to the California English Language Development Test (CELDT), raising concerns about proposed language providing that whenever a pupil transfers from one school district to another, the pupil's CELDT records shall be transferred by the sending district within 20 calendar days upon a request from the receiving district where the pupil is now enrolled. CAI pointed out that (1) there is no federal requirement that a 20-day period be afforded to districts for transfer of records; (2) it is unclear from the proposed regulations whether the receiving district will require receipt of the CELDT test results prior to assigning the pupil to an appropriate classroom or for other needed services; and (3) the regulations do not clarify how they would work vis-a-vis the new time limits regarding transfer of educational records for foster children under AB 490 (Steinberg) (Chapter 862, Statutes of 2003).

❦ On June 25, 2004, CAI submitted comments to CDE on its rulemaking package defining persistently dangerous public elementary and secondary schools. Among other things, CAI noted that the proposed regulations do not address rele-

vant federal law requiring state to establish and implement a statewide policy requiring that a student who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school. CAI also noted that the term "incident" should be defined for purposes of LEAs making determinations regarding persistently dangerous schools. Also, CAI questioned what action CDE would take with regard to a school labeled as persistently dangerous.

❦ On September 3, 2004, CAI submitted comments to CDE on its rulemaking package on school bus and school pupil activity bus passenger restraint system use. Among other things, CAI expressed concern that proposed subsection 14105(e), Title 5 of the California Code of Regulations, does not have sufficient clarity to be implemented properly and uniformly by school districts. The subsection specifically excludes from wearing a seatbelt "a passenger with a physically disabling condition or medical condition which would prevent appropriate restraint in a passenger restraint system, providing that the condition is duly certified by a licensed physician or licensed chiropractor who shall state in writing the nature of the condition, as well as the reason the restraint is inappropriate." CAI contended that this section creates more questions than it answers. For instance, the terms "physically disabling condition" and "medical condition," which could exempt a child from wearing a seatbelt, are not defined. CAI urged CDE to provide more guidance for school districts on these issues so that the legislative mandate to increase safety in school buses can be realized.

Children's Regulatory Law Reporter. Also in 2004, CAI produced two issues of its *Children's Regulatory Law Reporter*, which describes child-related rulemaking proposals by state agencies and analyzes the resulting impact on children (*see supra* for more information on the *Children's Regulatory Law Reporter*).

Concerns Regarding "Emergency" Rulemaking. During 2004, CAI continued to witness state agencies' widespread use—and misuse—of the emergency rulemaking process authorized by the California Administrative Procedure Act (APA). Emergency rulemaking allows agencies—under specified circumstances—to adopt regulatory changes on an expedited basis, without going through the formal rulemaking process set forth in the APA. Government Code section 11346.1 authorizes agencies to engage in emergency rulemaking if the agency "makes a finding that the adoption of a regulation or order of repeal is necessary for the immediate preservation of the public peace, health and safety or general welfare."

To many advocates, Governor Schwarzenegger's order suspending pending regulations for six months seemed redundant, gratuitously insulting to state officials, and unnecessarily probusiness, as such an order would give many companies a reprieve on proposed consumer and environmental rule changes—arbitrarily and apart from any hearing on the merits.

Although emergency regulations stay in effect for only 120 days, readoption of the same changes by agencies for additional 120-periods is extremely common.

The increasingly common use of the emergency rulemaking process concerns CAI for various reasons. For example, it delays the public's ability to comment on changes until after they are already in effect. Further, the "emergency" nature of some of these packages is less than obvious. CAI has voiced its concern to some of the relevant agencies, and is considering raising this issue directly with the Office of Administrative Law and the Legislature.

Continuing Impact of Governor Schwarzenegger's Rulemaking Suspension. On another note, our efforts to monitor state agency rulemaking relevant to children was impacted by Governor Schwarzenegger's executive order—issued the day he took office—suspending all proposed state regulations for 180 days pending a thorough review. He also called for each agency in the state to conduct a 90-day review of all regulations adopted, amended, or repealed in the last five years "to determine if they are necessary, clear, consistent and are not unnecessarily burdensome or cause undue harm to California's economy." All findings of these reviews were to be submitted to the Governor's Legal Affairs Secretary.

Child advocates—especially those familiar with the regulatory process—questioned the motivation for the Governor's action. The APA sets forth the process that most state agencies must undertake to adopt regulations, which are binding and have the force of law. The rulemaking process includes a submission to the Office of Administrative Law (OAL), an independent state agency authorized to review agency regulations for compliance with the procedural requirements of the APA, as well as for six specific criteria: authority, clarity, consistency, necessity, reference, and nonduplication. Also, the APA requires an agency to make findings for each proposed regulatory change regarding any significant adverse economic impact on business; potential cost impact on private persons or businesses; small business impact; assessment of job creation or elimination; and effect on housing costs. Thus, the type of scrutiny called for by the Governor's executive order was already in place, along with several other procedural safeguards.

To many advocates, Governor Schwarzenegger's order suspending pending regulations for six months seemed redundant, gratuitously insulting to state officials, and unnecessarily pro-business, as such an order would give many companies a reprieve on proposed consumer and environmental rule changes—arbitrarily and apart from any hearing on the merits. The order impacted children by discouraging agencies from engaging in any rulemaking until the suspension was lifted. Due to the Governor's action, state agencies proposed fewer new regulatory packages in 2004 than otherwise would have been the case.

In the Public Forum

Information Clearinghouse on Children. Since 1996, CAI has maintained the Information Clearinghouse on Children (ICC), to stimulate 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.

COLLABORATION & LEADERSHIP

Children's Advocates' Roundtable

During 2004, CAI continued to coordinate and convene the Children's Advocates' Roundtable monthly meetings in Sacramento. The Roundtable, established in 1990, is an affiliation of over 300 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 infighting 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 e-mail updates; the Roundtable also maintains an updated directory of California children's advocacy organizations. 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.

During 2004, members of the Roundtable united to present policymakers with joint advocacy on several issues, such as state budget priorities; opposition to proposed Medi-Cal provider rate cuts; and opposition to other health care program cuts and changes. Highlights from recent Roundtable meetings include the following: Assemblymember Darrell Steinberg attended a Health Subcommittee meeting; Roundtable participants contributed ideas for meetings to be held between a representative group of advocates and Kim Belshé, Secretary of California's Health and Human Services Agency; Roundtable submitted a letter regarding budget priorities to Legislature and the Governor; Assemblymember Firebaugh attended a Roundtable meeting to ask for support of AB 2997, a bill to prohibit smoking in cars with kids present; and the Roundtable submitted a letter to the California Performance Review (CPR) Commission regarding the review process.

Multidisciplinary Centers of Excellence

First Star, a national child advocacy organization, is currently in the process of establishing Multidisciplinary Centers of Excellence (MCEs) at a few selected law schools throughout the nation. MCEs will offer comprehensive training to those professionals responsible for the welfare of abused and neglected children across the U.S., such as doctors, judges, lawyers, nurses, social workers, teachers and police officers. The MCE curriculum will incorporate course work from nationally-recognized schools of law, social work, nursing, psychology and public health, and students will learn to apply a holistic, integrative approach to the child's situation, needs, and interests.

CAI is pleased to announce that the first such MCE agreement was recently formalized between First Star and the University of San Diego School of Law, where CAI is based. The MCEs will feature multidisciplinary classroom-based and experiential curriculum modules for students enrolled in graduate schools of law, medicine, social work, education, nursing, public health and psychology. The MCEs will also offer continuing education courses for professionals currently working in areas relevant to children and child protection, including judges, attorneys, law enforcement officers, social workers, guardians ad litem, Court Appointed Special Advocates, and administrators. A distance-learning component will link the partner institutions, and make the curriculum available to individuals nationwide. As best practices are discussed, analyzed and taught in the MCE classrooms, faculty and students will lead the way in raising advocacy standards for children in the U.S.

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 Board of Directors for the National Association of Counsel for Children (NACC), and will serve as NACC Secretary during 2005–06. Professor Fellmeth also serves as counsel to the Board of Directors of Voices for America's Children, an organization 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.

SPECIAL PROJECTS

Members of the CAI Council for Children join representatives of the Orange County Register, First Place recipient of the 2004 Price Child Health and Welfare Journalism Award. From left: Keith Sharon and Rebecca Allen (Orange County Register); Louise Horvitz, Alan Shumacher, and Tom Papageorge (CAI Council for Children); and Jenifer McKim and Cathy Lawhon (Orange County Register).

Legislator of the Year Awards

In 2004, CAI Senior Policy Advocate Alecia Sanchez presented its Legislator of the Year and Children First Awards to Senator Martha Escutia (D–Whittier) and Assemblymember Marco Firebaugh (D–South Gate), respectively.

CAI awards Legislator of the Year to a legislator who has consistently fought for children's well-being and has been an exemplary leader on behalf of California's children. A legislator's score on CAI's annual *Children's Legislative Report Card*, the content of his/her bill package, and other acts of support outside the voting process are contributing factors in the decision. Senator Escutia was named Legislator of the Year in recognition of her tireless legislative efforts to ensure the health and well-being of all children living in California; her role as an outspoken and unapologetic agent for these children and their families; and her influence in shaping important child-friendly legislation as Chair of the Senate Committee on the Judiciary.

The Children First Award recognizes a legislator for who went against the status quo or resists political expediency to support children's issues. Assemblymember Firebaugh earned this award because of his tenacious work to keep important but politically challenging issues that affect children's health before the Legislature, specifically secondhand smoke in cars and lead in candy. His dedication has helped raise awareness of the issues, which will help protect the health of our children.

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 October 16, 2004, CAI honored the following 2004 Award recipients:

First place was awarded to the *Orange County Register* series, "Toxic Treats," reported by Jenifer B. McKim, Valeria Godines, William Heisel, Keith Sharon, and Hanh Quach, a six-part investigation which sheds light on a hidden health threat facing our children: lead contained in Mexican candy.

Second place was awarded to the *San Mateo County Times* for series, "A Tiny Life Lost—The Short, Sad Life of Angelo" by Emily Fancher and Amy Yarbrough, detailing the tragic loss of an eight-month-old infant who was allegedly killed by his father while under the supervision of San Mateo County's child welfare system.

Third place was awarded to the *Oakland Tribune* for its compilation of stories entitled "Chazarus Hill's Story & Follow Up" by Michele Marcucci, Harry Harris, Brenda Payton, and Douglas Fischer, detailing the death of a three-year-old child, allegedly at his father's hands, and the child protection agency that had been informed of potential abuse but refused to provide an immediate response.

CAI gratefully acknowledges the dedication of the members of the selection committee who reviewed numerous submissions from California daily newspaper editors: Chair Gary Richwald, M.D., M.P.H.; Louise Horvitz, M.S.W., Psy.D.; Dana C. Hughes, M.P.H., M.S.; Lynn Kersey; Gloria Perez Samson; Alan Shumacher, M.D., F.A.A.P.; and Dr. Robert Valdez, Ph.D.

Implementation of the Mental Health Services Act

Following the passage of Proposition 63, the Mental Health Services Act (MHSA), in the November 2004 general election, CAI set out to ensure that children's interests are fully included in the implementation of the measure. CAI's overriding goal for the implementation of the MHSA is that children's interests and needs are met as intended by the initiative's language. CAI's greatest concern is that there is no explicit language in the Act requiring that a specified portion of funds be used to address mental health needs of children and youth. Even at this early phase of implementation, CAI believes the state must establish accountability measures and require that counties include children and youth in the planning process.

CAI will continue to monitor the implementation of this measure in 2005 and beyond.

Lawyers for Kids

Started 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.

DEVELOPMENT REPORT

CAI 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, 2004, and December 31, 2004, and/or in response to CAI's 2004 holiday solicitation:

Vickie Lynn Bibro and John H. Abbott
Alan Sieroty Charitable Directed Fund
Prof. Larry Alexander
Mr. and Mrs. Victor N. Allstead
Anzalone & Associates
Ms. Maureen Arrigo
Steve Barrow
Robert and Lucinda Brashares
Penny and Roy Brooks
Dana Bunnett
Carlos Carriedo
Prof. Nancy Carol Carter
Laurence P. Claus
Joan & Burnett Cohen
ConAgra Foods Foundation
Consumers First, Inc./Jim Conran
David and Sandra Cox
Whitney & Don Cramer
Joseph Darby
Steven B. Davis
Norene Debruycker
Peter Deddeh
Richard Edwards
Dr. Brian and Nancy Fellmeth
David and Julie Forstadt
Anne Fragasso
Mr. Gene F. Erbin & Donna L. Freeman
George & Betsy Gardner
Honorable Charles D. Gill
Elizabeth Givens
Jeremy Golden
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Hon. William Q. Hayes
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Dorothy and Allan Jonas
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John Malugen
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Hon. H. Lee & Mrs. Marjorie Sarokin
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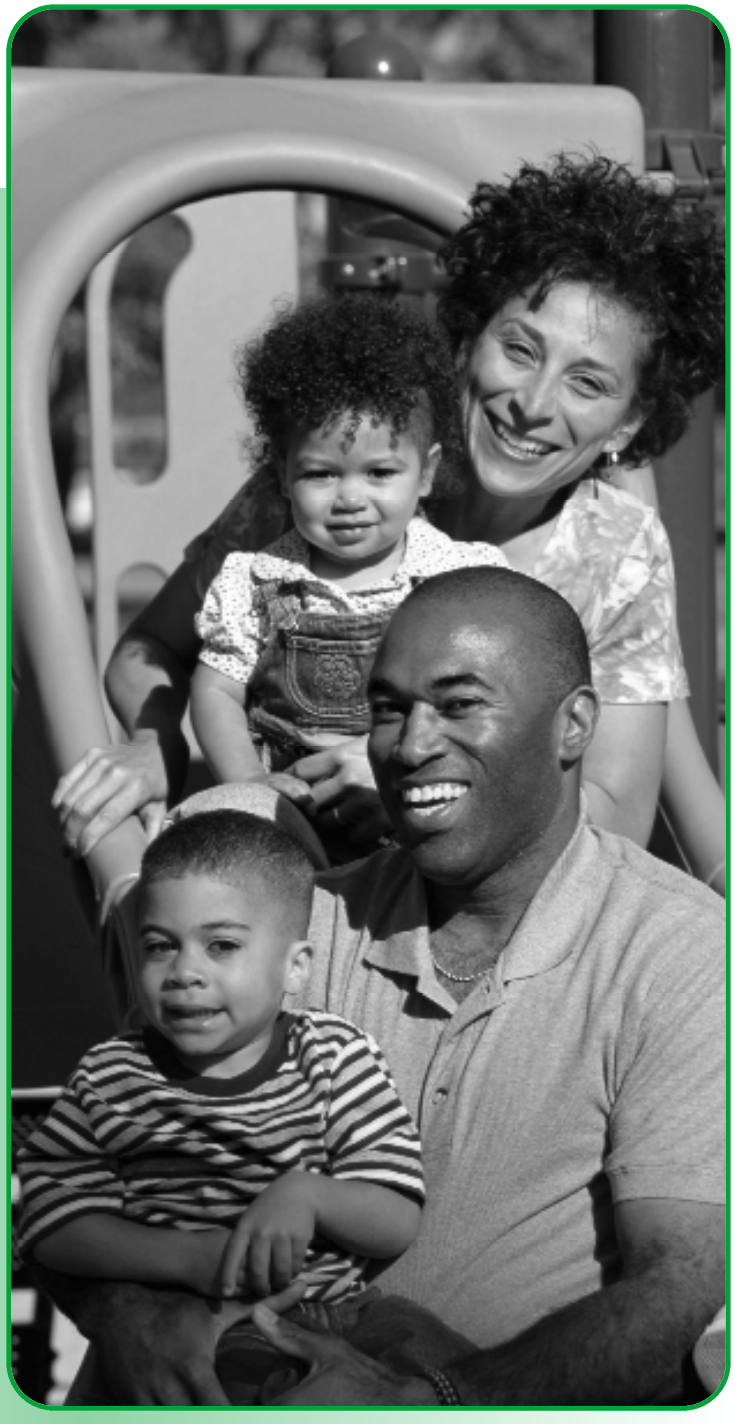
Len Simon and Candance Carroll
Thomas Smith
Allen Snyder and Lynne Lasry
Brooke and Richard Toscano
Edmund Ursin
Nancy Lee Vaughan
Elisa Weichel
Carrie Wilson
Prof. Fred Zacharias



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

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 over 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 (serving as NACC Secretary in 2005–06), the Maternal and Child Health Access Project Foundation, and Foundation of America: Youth in Action, and he is counsel to the board of Voices for America's Children.

ELISA WEICHEL

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

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-in-chief of the *San Diego Law Review* in 1982–83.

S. ALECIA SANCHEZ

S. Alecia Sanchez is CPIL/CAI's Senior Policy Advocate. In addition to conducting CAI's legislative and policy advocacy, Sanchez chairs the Children's Advocates Roundtable, a network of 300 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). Sanchez previously served as legislative aide to Assemblymembers Marco Antonio Firebaugh and Virginia Strom-Martin, and has substantial experience in the state budget and legislative process. Sanchez, who graduated cum laude from Claremont McKenna College, joined CPIL/CAI in October 2003.

DEBRA BACK MARLEY

Debra Back Marley, CPIL/CAI Staff Attorney, served until May 2005 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, Marley advocated before administrative agencies and the legislature on issues

impacting children's welfare, health, and safety, as well as consumer protection, and was chief author of CAI's *Children's Regulatory Law Reporter.* Marley joined CPIL/CAI in August 2002.

COLLETTE CAVALIER

Collette Cavalier served as CPIL/CAI Staff Attorney and Associate Editor of the *California Regulatory Law Reporter* until April 2005. Among other things, Cavalier edited law student reports for publication in the Reporter and engaged in legislative and regulatory advocacy on occupational licensing and/or consumer protection issues. Before joining CPIL/CAI, Cavalier worked as a Staff Attorney for the YWCA Legal Advocacy Program, and as a Volunteer Attorney for the Legal Aid Society of Hawaii. Cavalier joined CPIL/CAI in July 2002.

KATHY SELF

Kathy Self performs bookkeeping and donor relations responsibilities in CPIL/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 CPIL/CAI in February 2003.

MARISSA MARTINEZ

Marissa Martinez is CPIL/CAI's office manager in San Diego. She provides support services for Professor Fellmeth and for CPIL/CAI's academic and advocacy programs (including CAI student interns). Martinez joined CPIL/CAI in August 2003.

LILLIAN CLARK

Lillian Clark is an intern in CPIL/CAI's Sacramento office. Clark provides support services for CAI's Senior Policy Advocate, CAI's legislative advocacy program, and the Children's Advocates Roundtable. Clark started her internship in February 2005.

CAI COUNCIL FOR CHILDREN

The CAI Council for Children: back row, left to right: Kathy Self (staff); Hon. Leon Kaplan (Council); Birt Harvey, M.D. (Council); Robert Black, M.D. (Council); Owen Smith (Council); James McKenna (Council); Gary Redenbacher (Council); Elisa Weichel (staff); and Marissa Martinez (staff).
Front row, left to right: Gary Richwald, M.D. (Council); Alecia Sanchez (staff); Robert Fellmeth (staff); Tom Papageorge (Council); Debra Back Marley (staff); and Gloria Perez Samson (Council). Missing Council members: Louise Horvitz, M.S.W., Psy.D.; Blair Sadler; Alan Shumacher, M.D.; and Phyllis Tyson, Ph.D.

CAI is guided by the Council for Children, which meets regularly to review policy decisions and advise on 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)
Robert Black, M.D., pediatrician (Monterey)
Louise Horvitz, M.S.W., Psy.D. (Los Angeles)
Honorable Leon S. Kaplan, Los Angeles Superior Court (Los Angeles)
James B. McKenna, Managing Director; Chief Investment Officer, American Realty Advisors (Glendale)
Gary F. Redenbacher, J.D., attorney at law (Santa Cruz)
Gary A. Richwald, M.D., M.P.H., Consultant/Educator (Los Angeles)
Blair L. Sadler, President and Chief Executive Officer, Children's Hospital and Health Center (San Diego)
Gloria Perez Samson, retired principal (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, Past President, Anzalone & Associates (Sylmar)
Phyllis Tyson, Ph.D., child psychologist (La Jolla)

Emeritus Members
Birt Harvey, M.D., Professor of Pediatrics Emeritus, Stanford University (Palo Alto)
Paul A. Peterson, of counsel to Peterson & Price, Lawyers; founding Chair of the CAI Board of Advisors (San Diego)

Children's Advocacy Institute

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