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Children's Advocacy Institute

2008 ANNUAL REPORT



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This annual report covers the activities of the Children's Advocacy Institute
between January 1, 2008 and December 31, 2008.

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

The Status of Children in Today's Society

Farewell to 2008, a disappointing year for California's children. Virtually no legislation involving General Fund cost was entertained. It did not matter that without such legislation in some areas, federal money is left on the table.

It did not matter that some legislation would result in long-term or mid-term public savings. In general, legislation involving short-term cost (in the often questionable estimation of the California Department of Finance) was deposited in what the Legislature calls the "Suspense File" of one of its two appropriations committees. This is a graveyard destination in a time of General Fund pressure, as only a small number of bills approved by legislative leaders emerge for vote. Hence, as is customary in California, legislators could announce child-friendly bills and their colleagues could cast public votes of approval, only to have the measures die in a suspense file without public vote.

But the fate of children in 2008 pales in relation to their prospects for 2009. The state Legislature enacted a tardy and dishonest budget applicable to 2008–09 that is likely to project to over \$40 billion in deficits through fiscal 2009–10. The state could end its K–12 school system at 6th grade, fire every middle and high school teacher in the state, and still have a deficit. The continuing crisis means little legislative progress for children in 2009. And on the budget side, disinvestment is likely to be severe. This abandonment of children by adults will be reflected in the following ways:

- **Child poverty is increasing and the public safety net protecting them from the harm of extreme poverty is shrinking.** One

Reciting these developments in repetition of previous warnings risks the appellation of "chicken little" false alarmism. Except that the sky, while it has not fallen, is in point of fact demonstrably darkening for children.

generation ago, the basic safety net of Temporary Assistance for Needy Families (TANF) and Food Stamps approximated the federal poverty line; it has since fallen to below 60% of that benchmark. The federal poverty line itself represents less than one-half of the California Budget Project's calculated "self sufficiency" budget for California. Further, *de minimus* coverage for over 300,000 children now depending on "child-only" TANF assistance (at a safety net level of below one-half of the poverty line) may be wholly eliminated in 2009–10.

- **Child care assistance is contracting markedly, particularly for the working poor.** They receive child care help to obtain employment but are likely now to be abandoned shortly after obtaining work—leaving them to face child care costs rivaling their entire earnings.
- **Over one million California children lack basic health care coverage, while coverage for the elderly costing seven times as much each is universally assured.** Indeed, the state General Fund was unable in late 2008 to finance even the one-third state match for new child enrollment in Healthy Families. For families whose children are uncovered, this means little preventive care and reliance on emergency room care—with billing at three to five times the cost paid by private and public insurers. An operation and short stay in the hospital means financial ruin for working poor families. Taking a child in for treatment continues to feed the largest source of personal bankruptcy in the state—collection of medical bills.
- **K–12 education investment is in sharp decline.** The state has dropped to 47th among the 50 states in per pupil spending—and class sizes fell to 49th.
- **Higher education fees and tuition are at record levels** as state officials, eschewing evil "tax increases," make an exception by increasing fees for child care and foster care licensure and higher education tuition. And symptomatic of the overall malaise, higher education capacity is being slashed. Far fewer youth will have a chance at college, at any cost. Once the pride of the nation, the state's public and higher educational systems have declined markedly.

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Perhaps succor can be found in the new federal administration. Here, billions in new spending are in prospect. But two problems attend the looming federal approach. First, will the state be able to provide the match necessary for the new largesse? Second, federal policies promise our young the largest accumulated debt to be visited upon the grandchildren in human history—however one wishes to measure it. According to U.S. Comptroller General David Walker, Medicare, Social Security, and the public debt are now projected at over \$50 trillion in unfunded liability for those Americans now being born and their children. He projects that we are adding \$1 trillion a year to that daunting total. We have promised the current group of elderly a set of benefits that vastly exceed their contribution to its financing.

Regrettably, the now dominant Medicare element of over \$30 trillion is likely to exceed these alarming totals, for the elderly are a powerful lobby, and medical advances focus on life extension. Coverage has and will grow beyond heart and eye surgeries to everything from power chairs to Viagra, and a likely growing menu of body and organ replacement surgeries at many times the cost any has contributed. This is not to denigrate the need for medical care and proper respect for our elders (which now includes yours truly) but it is not ethically tenable to provide a blank check to be paid by future generations (unlikely to receive the same care when they age). The ethical conundrum is underlined by our current denial of any coverage at a fraction of the cost for over eight million children nationally.

Nor do the elements of Walker's calculation exhaust the list of future unfunded liability. We have another \$1 trillion or more from "defined benefit" pension and medical coverage arranged by state and local workers. And the federal government's role to insure private pensions has been little discussed, but forms another layer of liability.

Beyond these projections is the current bailout and stimulus packages approach, adding at least another \$1 trillion a year in additional federal spending deficit beyond Walker's projections or these additional elements. Basic math applied to conservative projections raises a proper three alarm warning. To carry the conservative level of \$50 trillion at a modest 4.5%, our grandchildren will have to pay over \$20,000 per family in current dollars. That is almost one-half of median family income. This extraordinary burden just carries it, and assumes it does not increase further—an assumption already breached. The Obama administration, seeking to please a wide spectrum of interests, will apparently accede to massive tax cuts.

One proposal involves a larger cut than the disastrous Bush cuts of 2001 and 2003 combined. The Bush reductions cost budgetary revenue of about \$300 billion a year over their ten-year enacted term in additional unfunded liability (quite apart from unfunded war and future veteran casualty care costs). Instead of ending that burden, the new administration proposes to maintain those cuts, and then to more than double them with an additional subsidy of \$340 billion in foregone revenue, raising the total to \$640 billion a year. Not only will the total unfunded liability rise, perhaps to above \$65 trillion when all is said and done, but the prodigious printing of money has a predictable future effect—raging inflation. That carrying charge on the \$50 to \$65 trillion will not be 3–5%, but likely 7–9%, and perhaps much more. And if the Chinese stop buying our paper, the amount necessary to finance these commitments could mushroom quickly. The double-digit inflation now in opportunistic gestation will provide a double whammy for our children and grandchildren, as the

interest rate rises with inflation to carry the unkind legacy of the Boomers, so will the living costs of the next generation.

The current underfunding and focus on the here and now and

on "we adults" have the classic earmarks of traditional embezzlement (the violation of a trust by redirecting money intended for one purpose into another that benefits the diverter).

Federal policies focusing on the care and comfort of relatively wealthy older adults is exacerbated by the federal elimination of inheritance taxation. Such modest sharing with the society that made the accumulation of fortunes possible are hardly "death taxes." In the sound-bite wars that determine too much of our political discourse, they are more accurately "unearned privilege taxes." The person assessed is not Nick Hilton as a price for dying, it is Paris Hilton as a modest assessment of her received gratuity. Those who work for a living commonly pay much higher taxes on income as do investors who gamble in derivatives or stock indexes, while those who do nothing for millions of dollars as a birth-determined gift are taxed nothing. These policies lower public revenues and add to the growing gap between rich and poor, based on nothing more than the same criteria we rejected in choosing a meritocracy over governance by inherited royalty in 1776.

What is the answer for children? It is to make the same sacrifices the Greatest Generation made for its children—one the Boomers they parented are failing to pass down the line. Notwithstanding a recession, California represents one of the wealthiest jurisdictions on earth. It is locked into paralysis borne of three structural flaws:

What is the answer for children? It is to make the same sacrifices the Greatest Generation made for its children—one the Boomers they parented are failing to pass down the line.



(a) Both parties have gerrymandered the state to minimize competition, concentrating anti-state zealots in about 20% of the state's legislative districts.

(b) Unlike almost every other state, California requires a two-thirds vote to enact a budget.

(c) The Republican caucus, curiously eschewing their "individualism" ethic, adopted a rule binding all to vote with its majority. Hence, 18% of the most radical representatives block child investment—a greater affront to democratic values than the often criticized 40% required to block action in the U.S. Senate.

The sacrifice here demanded is trivial compared to our parents' performance for us. The state can select from a relatively painless menu: tax corporations at a level typical of other states; restore the longstanding 2% vehicle license fee improvidently reduced; examine closely the more than \$30 billion in tax credits, deductions and exemptions now extant; apply sales taxation to professional services; and/or reform property taxation by assessing all property at actual value.

The last point concerning property taxation properly applies to businesses as well as residences. The elderly may properly delay property taxes until death if fixed incomes produce difficulties,

but they are now benefitting from a radical cross-subsidy between generations as inequitable as any tax system extant anywhere. Established businesses and our elderly are locked into assessments at just above 1977 levels, while young adults trying to buy a commercial property or house pay about eight times their property tax levels. Perhaps property tax rates should be reduced dramatically, but the old do not equitably demand one-eighth the burden of the young to finance the same government services for all. Even if such a reform were revenue neutral, its distribution against the young lacks ethical foundation.

Importantly, the 2001/2003 federal tax cuts gave California's wealthy class \$37 billion per year in additional income. Some combination of the five measures listed above to recapture about one-third of this amount would retain most of the tax subsidy while (a) eliminating the state deficit; (b) allowing the state to capture federal matching funds otherwise foregone; (c) restoring safety net protection and educational opportunity; (d) medically covering the state's children (as every other civilized nation accomplishes); and (e) allowing spending decisions to be made at the state level consistent with stated conservative principles of federalism. Ironically, the current federal bailout proposal for 2009 will up the savings for California taxpayers to more than \$75 billion per year. Only 20% or less of these savings

captured at the state level and expended there would allow the state its full share of federal match funds for child-related spending. Instead, the state appears to be in political paralysis—largely driven by ideological extremists who empathize with wealthy adults and who regrettably dominate the current Republican legislative caucus, as discussed above.

But the problem is more complicated than the structural ability of a small minority to determine allegedly democratic outcomes. The Republican clique does have some important messages to impart about the limitations of government, the importance of outcome measurement and accountability of agencies, the need to use market and self-regulating forces rather than “top down” dictation of policy by public authority, the tendency of Democrats to sequentially expand a social service establishment by hiring more and more public employees, and the failure to demand personal responsibility.

The last element purportedly a part of conservative concern includes the most momentous decision human beings make—to create a child. That message is in particular order where unwed births rise from levels of 8% a generation ago to 37% today—with most of the involved children living in poverty amidst a collapsing safety net. Interestingly, the children of married couples live in families with median incomes well above \$50,000, not 50% more or double, but about five times the family income of their contemporaries born to unwed mothers. The poverty from unwed births is driven by improvident sexual license, contraception ignorance, and paternal abandonment. Absent fathers of such children pay an average of less than \$60 per month per child, and almost half of that money goes to state/federal accounts as TANF compensation. Regrettably, it is considered politically incorrect to talk about such things by both parties. But the Republicans have largely surrendered these laudable principles. Instead of a partnership for children, where they back child investment conditional on this list of defensible principles, they have surrendered them in order to win from Democrats an ongoing public disinvestment in children. There has been an implicit deal struck that allows each party to essentially sacrifice its laudable pro-child agenda in return for the excision of the other party’s counterpart. There has not been a “contract with America” by public officials, but an undiscussed “contract on California’s children” by both parties.

CAI’s Work During 2008

Under these difficult political conditions, what has CAI been doing? What we can. Forging a new alliance of the religious right, law

enforcement, and moderates of both parties. Providing a website that outlines the costs of child disinvestment. Convening the Children’s Advocates’ Roundtable in Sacramento to facilitate effective influence and lobbying coordination. Working on media relations and trying to stimulate public coverage of child issues. We stopped some cuts, and helped effective friends of children in the Legislature and agencies where we could—but a declaration of accomplishment given the realities facing our clients would be unbalanced and irresponsible. On balance, we need to be much more effective and successful. And the current collapse of newspapers and the rash of journalist firings reduces our most potent arsenal—detailed journalistic exposés that the Price Child Health and Welfare Journalism Awards organization honors annually for effective child coverage.

We did have some modest successes and additional opportunities for 2009, and we outline those in some detail in this *Annual Report*—but do not be misled. The children of California and this nation are in trouble. The Boomers appear to be a rather unique generation in self-indulgent excess—in marked contrast to the generation preceding it.

On the positive side, we have seen an increase in the number and dedication of our students, many of whom tell us they decided to attend USD because of CAI. Our Child Rights and Remedies class has a bumper crop of child advocate future stars. And most of them participate in intensive clinics representing abused children in dependency court and/or accused youth in delinquency court, or participating in our policy advocacy work. And the juvenile court has asked us to provide “educational representatives” for foster and delinquent kids, where trained adults are needed to facilitate education for these children.

Statewide, we performed our second year of training for new dependency court attorneys (representing the county, parents and children) under the federal Children’s Justice Act grant, and we will continue that work in 2009. This program brings together leading scholars and practitioners for 20 hours of training of new dependency court counsel in two sessions each year. The program has trained over 300 attorneys in the state to date and we expect the total to surpass 500 in 2009.

We have selected as legislative and litigation goals the protection of foster children—the 77,000 children who have been removed from their homes due to abuse and neglect. These children have had judicially determined unfit parents. The court (the state) has become their parent. Choosing this child-related issue as our primary focus

is based on three factors: (a) these children are in a system where largely gratuitous confidentiality shields the system from democratic accountability; (b) CAI is part of a law school well suited to examining the legal system enmeshing them and has direct access to the courts and these children; (c) these children are among our most vulnerable and are now parented by the state—and in a democracy such as this, that means each of us is personally responsible to each and every child in foster care. CAI is focusing on four major deficiencies in the child welfare system:

- First is a failure to engage in prevention, which properly includes laying down the gauntlet of personal responsibility and reducing unwed birth rates and the related problem of paternal child support failure; implementing meaningful parenting education in middle or high schools; and addressing the quiet epidemic of substance abuse, specifically meth addiction.
- Second is the undersupply of family foster care providers. As noted above, these providers receive an average of \$530 per month per child while the group homes can receive close to \$5,000 per month per child. The state's refusal to increase family foster care rates over the last several years (the last increase was 5% in 2001) has led to supply diminution. The number of children in non-kin family placements has fallen from 16,000 to 6,666 from 2001 to 2009.

That undersupply, in turn, leads to fewer placement choices for children, more difficulty in placing children near parents who may warrant reunification, separation of siblings, movement between schools, and fewer adoptions.

The last consequence is particularly serious because family foster care providers are the source of the vast majority of non-kin adoptions.

- Third, foster children are given short shrift in the judicial proceedings that determine their fate. They are often not even present when decisions are made concerning where they are to spend the remainder of their childhood. They are usually given attorneys (a right CAI has worked hard to assure), but in most of the state's judicial districts counsel is effectively removed in the critical appellate proceedings when the county or parents appeal. And the caseloads of attorneys are two to three times the levels allowing for minimally competent representation. The leading Kenny A. federal case indicates the more than 100 children per attorney jeopardizes the 5th and 6th amendment rights of these child clients. Many counties in California (including San Diego) have caseloads double and triple that standard, and even higher—caseloads that preclude counsel from talking with their clients

except in *pro forma* fashion in many cases. These confidential judicial proceedings, so important to the child parties involved, also suffer from judicial caseload excess. Courts, serving as the legal parents of these children, should not have more than 300 children before them at any one time. Many have over 1,000.

- Fourth, when foster kids emancipate at age 18, they are essentially abandoned to the streets by the state. On average, a typical young adult does not achieve self-sufficiency until age 26, and private parents give a median of \$44,500 to their children after the age of 18 to assist them achieve that self-sufficiency (in addition to allowing many of them to remain at home while in school or obtaining initial employment). In contrast, limited federal and state assistance for former foster youth amounts to less than 25% of the total that private parents invest in their children—a disgraceful performance in marked contrast to the “family values” rhetoric of public officials whose children these are.

CAI took several steps in 2008 to address these areas. For example, one of our highest priorities is tackling the fourth issue listed above—namely, improving outcomes for youth who age out of the foster care system by improving the resources and services provided to

them by the state. Continuing our efforts funded by The California Wellness Foundation, CAI recast its Transition Guardian Plan into the Transition Life Coach (TLC) proposal, using terminology that garners more positive responses from the target population. The TLC plan, discussed in more

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detail on page 26, replicates what competent private parents do for their young adult children. When a foster youth is 16, he, his attorney, his social worker, and the court would develop a plan for self-sufficiency as an adult. The court would appoint a trustee or “coach” to help monitor the youth's progress, and would give the coach the authority to administer a fund for that youth equal to at least the median amount private parents devote to their children post-18 (now approximately \$50,000). During 2008 CAI secured the clarification of the law on this point, explicating the right of juvenile courts to make “orders or appointments” relevant to funds for dependent children, including those youth after aging out at 18. CAI then directed its focus toward identifying funding sources for the TLC plan, one of which might be the Mental Health Services Act (Proposition 63), which collects \$1.7 billion annually. The Act makes prevention of mental illness a high priority, and specifically references the need for transition to adulthood from age 16–25 as of special concern. CAI contends that no population warrants this



kind of investment more than foster children, given their vulnerable profile, outcome measures in terms of suicide, homelessness, arrests, and status as the state's own legal children.

During 2008, CAI also continued our efforts to increase foster family home rates. Despite two compelling reports released in 2007—a CAI report on the state of family foster care compensation and supply entitled “*They Deserve a Family*” and a report entitled, “*No Family, No Future*,” by the County Welfare Directors Association of California and Legal Advocates for Permanent Parenting, documenting the decline in family foster care supply—legislation that would have increased these rates failed that year in the Legislature, falling prey to the “suspense file” mechanism discussed above. Disappointed with the performance of Sacramento, CAI filed suit in federal district court in October 2007 on behalf of all three of the state's associations of family foster care providers. CAI attorneys were joined by counsel from one of America's premier law firms, Morrison & Foerster. Our case alleges that federal law requires that family foster care rates be

set at levels that compensate actual out-of-pocket costs, itemizing the elements covered. The 50% federal match mandates compliance with minimum federal standards. On the same day our case was filed, the University of Maryland released a major national study of foster care costs and rates, concluding that California's rates were more than 40% below the applicable cost standard. During late 2008, U.S. Federal Court Judge William H. Alsup granted partial summary judgment to the plaintiffs. His order supported the theory of CAI's case and declared the state in violation of federal standards. The case, described in more detail on page 17, has been appealed by the state and is now before the 9th Circuit Court of Appeals.

During late 2008, U.S. Federal Court Judge William H. Alsup granted partial summary judgment to the plaintiffs. His order supported the theory of CAI's case and declared the state in violation of federal standards.

Other efforts CAI made during 2008 to address the child welfare deficiencies identified above are described in detail in the appropriate sections of this *Annual Report*. Additionally, CAI extended its foster care emphasis into the national arena. During 2008 CAI joined with First Star in Washington, D.C. to release a national report on the transparency of state laws when children die or suffer near-death injuries from abuse or neglect. The report, researched and written by CAI legal intern Emily Reinig and discussed in detail on page 25, received substantial public coverage nationally and at the local level, including articles in *USA Today*, *The New York Times* and *The Washington Post*, PBS radio, regional radio and television, and over 500 daily newspapers—with coverage especially (and gratifyingly) intense in the low-graded states. During the latter half of 2008, CAI and First Star worked with child advocates on the national level and in many of states to propose and enact new statutes and rules to allow for fuller disclosure of the circumstances and causes of child deaths from abuse and neglect.

In addition to our work on foster care issues during 2008, CAI also worked on several child health-related issues, including the following:

- CAI continued to encourage the Legislature to provide health care coverage to all of the state's children. Specifically, CAI has proposed that California adopt "true presumptive eligibility," which would sensibly reverse the current irrational "you're not covered unless you're enrolled" system to by covering all children and for the few who incur high treatment costs, billing their parents on a sliding scale *post hoc*.
- Beyond overall coverage, CAI has also been looking into the status of public health in the state's schools. A majority of the state's children are in public school most of the day for most of the year. What are the benefits and costs of attention to their health where they spend so much of their time? What are the advantages of having school nurses available to them? How many schools have some medical expertise available? As described on page 28, CAI legal intern Shelly Kamei researched these questions during 2008, receiving over 500 survey responses from nurses and education professionals. CAI will be releasing Shelly's findings during early 2009.
- We attempted once again to enact legislation assuring former foster youth continued medical coverage after they age out of the child welfare system. Although guaranteed in theory, their coverage has been limited by unnecessary paperwork allowing their arbitrary excision from coverage. Our legislation to resolve the problem failed in 2008 but will be reintroduced in 2009.

Further, CAI's Homeless Youth Outreach Project continues to provide homeless children and youth with legal services and related

assistance. Under the direction of CAI Staff Attorney Kriste Draper, our advocacy helps these youth access resources and services they need, and includes areas such as welfare, housing, health care, mental health services, education, immigration, and criminal matters. During 2008, Kriste and CAI have been looking closely at a Juvenile Hall practice that appears to discriminate against homeless youth and youth in the foster care system. Youth who are arrested and find themselves in Juvenile Hall are usually released to their parents pursuant to court order. But kids who are homeless or in foster care are often left in Juvenile Hall for many weeks or even months because, according to authorities, there is no place to put them. This over-incarceration extends beyond a sentence as a ward of the court and is both unlawful and unconstitutional. Interestingly, a private parent who so rejects a child may be criminally liable for neglect; it appears that the State on occasion is committing the same abandonment offense. CAI is currently working with local officials to resolve this issue, but if cooperation cannot be achieved, anticipates the possibility of litigation on point in 2009.

Looking Ahead to 2009

In 2009 we have the elevation of Karen Bass to the Speakership of the Assembly, and of Darrell Steinberg to the position of *President Pro Tempore* of the Senate. Both are child advocates and, if finances and the dysfunctional structure of the state budget process allow, better times may be ahead. And better times may be ahead federally as well, in the form of the Obama administration—with the important caveat concerning the deferral of funding to future generations discussed above. Currently, the largest share of the federal budget is devoted to debt payments and defense. This nation, with 4% of the world's population and no superpower enemies, now spends more money on its military than every other country in the world combined. Concerns at the federal level that must be addressed include the lack of secure federal funding for the State Child Health Insurance Program (which we expect will be forthcoming in early 2009), and the underfunding of No Child Left Behind, as well as threats to student loan viability, higher tuition nationally, and housing costs (despite the predatory lending problem) that remain high and compromise the dream of home ownership for debt-burdened young adults. But of greatest concern over the longer range is the growing future burden from the federal deficit and unfunded liability discussed above.

In addition to working on the specific issues discussed above, CAI will continue with its core institutional work, including its collaboration with other child advocates and its educational mission. Such on-going work includes:

- Convening the Children's Advocates' Roundtable, a network of over 300 organizations interested in children's issues. Created by CAI in 1991, it meets monthly in Sacramento to share information

and plan advocacy strategy. The Roundtable's work in 2009 will be especially important given the budget shortfall. CAI hopes to add new force to child advocacy by working with two groups with powerful voices at the local level: law enforcement and the religious community.

- Monitoring the activities of state and federal agencies and commentary on pending rulemaking for CAI's *Children's Regulatory Law Reporter*. That commentary will include coverage of the Recommendations of the California Blue Ribbon Commission on Children in Foster Care, as well as proposed regulatory changes from the Judicial Council, the Department of Social Services, the Department of Education, the Department of Health Care Services, and the Department of Public Health, among others.
- Commencement of impact litigation where warranted, as well as contribution of amicus curiae briefs in pending litigation as appropriate, including imminent challenges to new federal regulations disproportionately affecting foster children's access to appropriate and timely health care.
- Education of law students and practitioners as described above.
- Continued collaboration with the San Diego Juvenile Courts and the San Diego Office of the Public Defender aimed at improving the educational experience for children and youth involved in the juvenile court system; specifically, CAI will be recruiting, training, and overseeing responsible adults to act as Educational Representatives for children and youth involved in dependency or delinquency proceedings.
- Increasing involvement with First Star nationally, including the joint release of two reports in 2009—a report card analyzing the performance of the 50 states in the provision of competent counsel for abused and neglected children in dependency court, and a report revealing to what extent states expropriate monies belonging to foster children (bequests, survivor benefits, insurance, earned income, etc.) to reimburse themselves for the cost of providing foster care.
- Continued involvement with Voices for America's Children, where we serve as counsel to the Board.
- Greater involvement with the National Association of Counsel for Children (NACC), where yours truly serves as Vice Chair of the Board and chairs the Search Committee seeking a successor to NACC President Marvin Ventrell, who left the organization in January 2009. That participation will also include presentation

of two panel sessions at NACC's annual conference in August 2009 in Brooklyn—one on the Transition Life Coach plan of CAI for foster child success as adults (discussed on page 23), and the other on litigation techniques to increase the supply of family foster care suppliers, with Morrison and Foerster counsel assisting CAI as part of that presentation.

- New involvement with the American Bar Association (ABA), including collaborating with First Star, NACC, and the ABA to develop a model state act on child representation in dependency court.
- Continued efforts aimed at the creation of a Masters of Law Program in Child Advocacy, which would create a multidisciplinary educational opportunity for new law graduates and for veteran counsel who seek a career change in the service of children. This program is supported by First Star and is part of its Multidisciplinary Centers of Excellence plan. On a related note, CAI will begin more extensive coordination with the Joan B. Kroc Institute for Peace & Justice here at USD; that cooperation will include development of curriculum materials on international child rights, and the participation of School of Peace Studies graduate students in the School of Law's Child Rights and Remedies course.

A Note of Thanks

As always, we are grateful for the help of our friends and supporters, especially our Council for Children, our donors, and our grantors. We are gratified to find a majority of the faculty of the USD School of Law contributing to our work from their personal pockets. We know that every gift to us, starting with the extraordinary generosity of Sol and Helen Price over the years, and longstanding friends such as Paul Peterson and Louise Horvitz, imposes on us a fiduciary obligation to perform consistent with their expectations.



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



Robert C. Fellmeth with Sol and Helen Price

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 offers an academic program that trains law students to be effective child advocates. Each fall semester, CAI Executive Director Robert C. Fellmeth teaches *Child Rights and Remedies*, which surveys the broad array of child advocacy challenges, including 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. Since 1993, CAI has also offered the **Child Advocacy Clinic** at the USD School of Law. In the Clinic, law student interns have three unique opportunities: (1) they can practice law in Dependency Court, representing abused or neglected children; (2) they can practice law in Delinquency Court, representing minors charged with offenses;

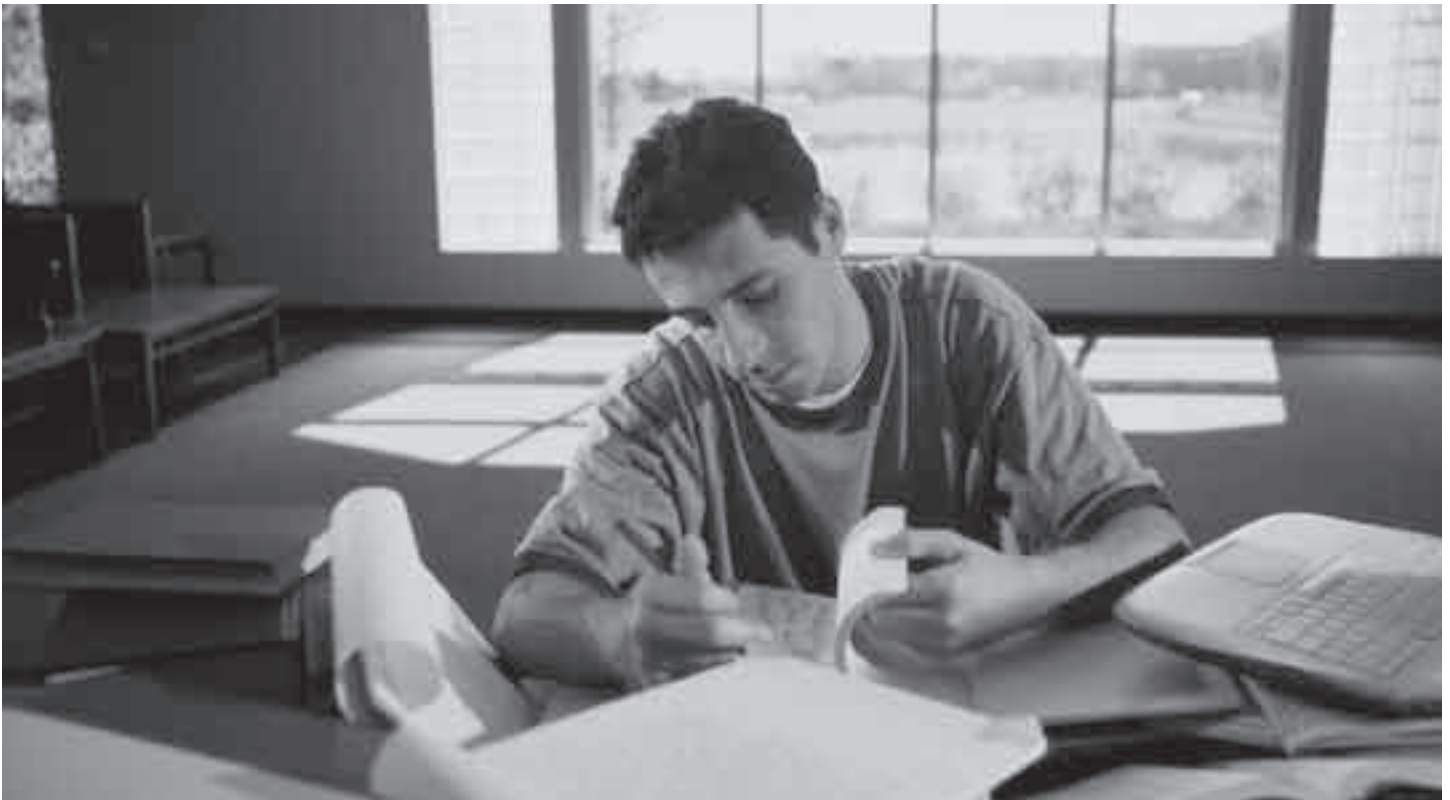
and (3) they can engage in policy advocacy at the state level, drafting legislation, participating in regulatory proceedings, researching and writing reports, assisting in impact litigation, or working on special projects. Many graduates of this program have gone on to become professional child advocates.

In addition to its academic program, CAI’s advocacy works to protect and promote children’s interests across the state and nation. 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 Plates” custom license plate to fund children’s health and safety programs; and others.

CAI’s impact litigation has included a lawsuit challenging the state’s stagnant foster family home reimbursement rates as being too low to being in compliance with federal law, which requires that licensed foster parents be paid enough to cover the actual cost of providing food, clothing, shelter, daily supervision, school supplies and daily incidentals; 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 has published the *California Children’s Budget*, an extensive 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 1990, CAI has convened and chaired the **Children’s Advocates’ Roundtable**, an affiliation of over 300 statewide and regional 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 a setting where statewide and locally-based advocates gather with advocates from other 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.

Since 1996, CAI’s **Information Clearinghouse on Children** has worked to stimulate more extensive and accurate public discussion on a range of issues affecting the well-being, health, and safety of California’s children, but providing a research service for journalists, scholars, and public officials.

In 2006, CAI launched the **Homeless Youth Outreach Project (HYOP)** under the direction of Equal Justice Works Fellow Kriste Draper, providing homeless youth with a clinic where they can receive legal assistance necessary to secure services to which they are entitled. The HYOP partners with homeless youth shelters, outreach centers, and schools to provide a legal clinic to assist these youth in accessing health care coverage, education, and government benefits. Initial two-year funding to launch the HYOP was provided by Sony Electronics, Inc., and other funding has been provided by the

San Diego County Bar Foundation, the BNSF Foundation, the Simon-Strauss Foundation, and others; CAI is currently seeking continuation funding to extend this important project beyond the two-year term of the Fellowship.

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.

However, to finance 100% of its advocacy activities, CAI must raise external funds through private foundation and government grants, contracts, attorneys’ fees, *cy pres* awards, 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.

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

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, including 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 three unique options: (1) in the **Dependency Clinic**, they work with an assigned attorney from the San Diego Office of the Public Defender, representing abused and neglected children in Dependency Court proceedings; (2) in the **Delinquency Clinic**, they work with an assigned attorney from the San Diego Office of the Public Defender, representing minors charged with committing various offenses; and (3) in the **Policy Clinic**, students engage in policy work with CAI professional staff involved in state agency rulemaking, legislation, impact litigation, or related advocacy. Other

research and advocacy opportunities are available to law students through Independent Supervised Research and work-study positions. During calendar year 2008, 31 law students participated in CAI’s clinical programs:

11 law students (Courtney Bolin, Mishaela Graves, Rebecca Heatherman, Tara Hunter, Shelly Kamei, Briana Monahan, Sarah Quinnear, Emily Reinig, Carolyn Sam, Rebecca Wu, and Lauren Yip) participated in CAI’s Policy Clinic and/or on Independent Supervised Research projects. Students worked on semester-long advocacy projects such as researching prospective litigation projects; researching and analyzing data supporting family foster care rate increases and other CAI legislative proposals; analyzing and comparing each states’ public disclosure policies regarding cases of abuse or neglect that result in child deaths or near deaths; and statewide research on the status and availability of school nurses in California public schools.

14 law students (Muna Amadi, Michael Bender, Kevin Bradley, Hanna Choi, Julia Davis, Taled El-Sabawi, Victoria Furman, Ryan Janisse, Marina Katsnelson, Chelsea Priestap, Elizabeth Reinking, Evangelina Woo, Rebecca Wu, and Lauren Yip) participated in CAI’s Dependency Clinic. In addition to working at the Public Defender’s Office two days each week, assisting attorneys in the representation of abused and neglected children in Dependency Court proceedings, these students attended weekly classroom sessions conducted by Professor Fellmeth and CAI staff attorneys.

6 law students (Michelle Butler, Hanna Choi, Kevin Cleveland, Colin Donnelly, Laura Sheppard, and Angela Silvestri) participated in CAI’s Delinquency Clinic. In addition to working at the Public Defender’s Office two days each week, assisting attorneys in the representation of minors in Delinquency Court proceedings, these students attended weekly classroom sessions conducted by Professor Fellmeth and CAI staff attorneys.



Recipients of the 2008 James A. D’Angelo Outstanding Child Advocate listen as Prof. Robert C. Fellmeth honors them during the 2008 Graduation Awards Ceremony of the University of San Diego School of Law. Pictured (left to right): Jason Carr, Mishaela Graves, and Kristy Gill. Not pictured: Emily Reinig.

Additionally, CAI was pleased to provide internships to two non-law students during Summer 2008. Harvard College student Kati Vaughn and Kearny High School student Bianca Palomares volunteered much of their summer to working at CAI, gaining experience in the field of child advocacy.

The late-enacted budget for 2008–09 relied heavily on borrowing and gimmicks. It produced a budget that was billions out of balance before the ink was dry.

James A. D'Angelo Outstanding Child Advocate Award

On May 16, 2008, 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 graduating law students **Jason Carr**, **Kristy Gill**, **Mishaela Graves**, and **Emily Reinig**, for their exceptional participation in CAI's Child Advocacy Clinic.

All four students participated in the policy, dependency and/or delinquency sections of the Child Advocacy Clinic over multiple semesters. The work performed by Jason, Kristy, Mishaela, and Emily was outstanding and contributed significantly to improving the health and well-being of countless children.

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 a true 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 is presented annually to current University of San Diego School of Law students who use their legal skills during their law school years to positively 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 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.

The 2008 recipient of the Joel and Denise Golden Merit Award in Child Advocacy was **Rebecca Wu**, in recognition of her willingness to use her knowledge, skills, and compassion to better the lives of San Diego's foster children.

Advocacy, Research, and Publications

Legislative Activity

Overview of 2008 Legislative Year. The past year was historic for California, and not in a good way. The chief policymaking document in this — the world's sixth largest economy — is the annual State Budget, currently about \$100 billion in General Fund spending. The budget process requires a two-thirds vote for passage; California is one of just three states with such a supermajority requirement. Although burdening spending, the structure favors tax break enactment to current levels exceeding \$30 billion in deductions, credits and exemptions — achievable by majority vote and ended only by two-thirds vote. Adding to the problem is gerrymandering reducing competitive districts, and a Republican caucus rule binding all of its members to majority vote. Accordingly, an unrepresentative group of 17% of our elected representatives are able to block much-needed child investment.

Another irony underlies the values-defining budget debate: the 2001 and 2003 Bush tax cuts saved California taxpayers (the relatively wealthy among us) an average of \$37 billion per year every year to 2011 at least. And the new Administration in Washington, D.C. apparently intends to maintain that reduction, and to enact additional tax expenditures. The dilemma now confronting California child advocates is dual:

- First, we are creating a massive unfunded liability for future generations (already projected at over \$50 trillion by Comptroller General Walker). The cost to merely carry the total federal debt we are loading on our grandchildren — at a modest 4.5% interest rate — will amount to over \$20,000 per annum in current dollars for each of our families.
- Second, the state will continue to lack its own resources and will depend on federal priorities and bailout. And even as to federal assistance, it is unclear how the state will provide its share of the match for impoverished children (TANF), child welfare, or medical coverage.

The problems facing child advocates were exacerbated by the failures of 2008. The late-enacted budget for 2008–09 relied heavily on borrowing and gimmicks. It produced a budget that was billions out of balance before the ink was dry, transformed into a crisis by the “collapse” (the Legislative Analyst's word) of state revenues in the



wake of the broader economic downturn. The current damage in California from the level of abrogation now extant includes a deficit of over \$40 billion over the next two years. Even so, CAI and other groups successfully argued that foster children should be spared cuts, a fate helped by federal matching fund leverage for most accounts. Both parties do appear to acknowledge the special status of abused and neglected children for whom the state is now the legal parent. These are our children in a direct sense. But they continue to suffer from serious shortfalls in public investment:

- The caseloads of attorneys who represent them are in many counties three times the maximum permitted by constitutional standard, and courts (who serve as their legal parents) have caseloads several times the level needed to perform effectively.
- Foster parents who actually provide care for these children are compensated at about one-half the actual cost of care in violation of federal law, resulting in fewer family placements and adoptions; and
- Although private parents average \$45,000 per child post-18

California needs a Legislature that once again champions future generations of children by refusing to shoulder them with crushing debt just so their parents can selfishly enjoy services without paying for them.

to help their young adult children achieve self-sufficiency, California provides less than one-quarter of that amount for its foster children, who fall off the proverbial cliff when they turn 18, with poverty, homelessness, arrest rates and disability dwarfing any other population.

In other areas impacting our kids—such as the basic safety net (TANF), health care, child care, K–12 education, and higher education—the state has been gradually reducing child investment. California, once providing over 90% of the federal poverty line (a very low safety net for California), has now sunk to below 65% of that line, and now threatens to go much lower, and to abandon 320,000 children from all support. Our state’s K–12 system, once the pride of America, now ranks 47th in funding per child. Our higher education system, its proud hallmark, now imposes record tuition and fees and is cutting back admissions and opportunity markedly. Our state’s moral commitment to her children has been sunk by ideological rationalizations for Boomer Generation indulgence by one party, and self-inflicted impotence by the other.

California needs a Legislature that once again champions future generations of children by refusing to shoulder them with crushing

debt just so their parents can selfishly enjoy services without paying for them. The Republicans have a point in eschewing “top down” government bureaucracy as the answer to everything. They rightly remind us of personal responsibility and of the many failures of the Democrats to call out the citizenry on unwed births and child support failure, and on excessive license. And they are needed to challenge the efficacy of every government program, demanding outcome measures, accountability, and sunsets that terminate programs unless affirmatively re-justified.

But there is a difference between skepticism and hard questions about government and demands for accountability, and the doctrinaire diminution of public investment in our children and our future. And as CAI’s *Children’s Legislative Report Card* reflects, the price children pay for adult non-feasance is not just disinvestment. For not only is the safety net diminished, child care lacking and educational opportunity diminished—but even modest improvements are blocked. Any measure, even if it saves money over three years or costs virtually nothing, is procedurally blocked by the “suspense file” game allowing the elimination of bills without public vote, or it is not even proposed because of its certain fate. This hidden impediment does not just extend to expensive reforms—it reaches the most elementary corrections with minor ancillary cost, or even long-term savings.

For the most part, the legislative victories noted below are among the far too few meaningful child-related measures that made it through the legislative process. Lying beneath these measures is a much, much larger body of economic abandonment and prematurely scuttled legislative proposals. For 2008, it is what was not voted upon that mattered the most.

2008 Notable Legislative Victories for Children. One of the most noteworthy results of the 2008 legislative year is that foster care funding was protected from cuts. CAI was extremely vocal in the fight against budget cuts in child welfare, and also contributed to other noteworthy accomplishments, including the following:

■ **AB 3051 (Jones)** provides children subject to dependency hearings a greater opportunity to attend and participate in their hearings by requiring the court to allow a child present at his/her juvenile court hearing who so desires to address the court and participate in the hearing; requiring the court in a juvenile court hearing, where the child who is the subject of the hearing is 10 years of age or older and is not present at the hearing, to determine whether the minor not only was properly notified, but also was given an opportunity to attend; requiring the court, if the child was not properly notified or, if he/she wished to be present and was not given an opportunity to be present, to continue the hearing to allow

the child to be present, unless the court finds that it is in the best interest of the child not to continue the hearing; requiring the court to continue the hearing only for that period of time necessary to provide notice and secure the presence of the child; and permitting the court to issue any and all orders reasonably necessary to ensure that the child has an opportunity to be present. The measure also provides that existing law shall not be construed to prevent a court that assumes jurisdiction of a minor child, pursuant to Section 300 of the Welfare and Institutions Code, or a probate court, as appropriate, from issuing orders or making appointments, on motion of the child’s counsel, necessary to ensure the appropriate administration of funds for the benefit of the child; orders or appointments regarding those funds may continue after the court’s jurisdiction is terminated. This measure was passed by the Legislature and signed by the Governor on July 21 (Chapter 166, Statutes of 2008).

■ **SB 1457 (Steinberg).** Current law prohibits the Scholarshare Investment Board from accepting contributions from any nonpublic entity, person, firm, partnership or corporation that is not designated for a specified beneficiary. This bill establishes the California Scholarshare Advancement Vehicle for Education (CalSAVE) program within the Scholarshare trust to fund scholarships for beneficiaries to be determined by the Board; categories of potential beneficiaries will include foster youth and youth in at-risk categories, among others. This measure was passed by the Legislature and signed by the Governor on September 28 (Chapter 474, Statutes of 2008).

■ **AB 2096 (Bass).** With respect to dependent children and wards of the juvenile court, this measure extends to group homes the reasonable and prudent parent standard in determining whether to give permission for a child to participate in extracurricular, enrichment, and social activities, and requires that the group home take reasonable steps in determining the appropriateness of the activity. This measure was passed by the Legislature and signed by the Governor on September 28 (Chapter 483, Statutes of 2008).

■ **AB 2310 (Maze)** requires county welfare departments to provide specified information and documents to a youth in the foster care system who has reached the age of majority before the juvenile court terminates jurisdiction over that individual. For example, departments must provide the youth with a letter that includes his/her name and date of birth; the dates during which the child was within the jurisdiction of the juvenile court; a statement that the child was a foster youth in compliance with state and federal financial aid documentation requirements; if applicable, the death certificate of the parent or parents; and if applicable, proof of the child’s citizenship or legal residence. The measure is aimed at enabling youth who age out of the dependency system to be as equipped as possible to

access the resources and services to which they are entitled as former dependents of the juvenile court. This measure was passed by the Legislature and signed by the Governor on July 16 (Chapter 131, Statutes of 2008).

■ **SB 1612 (Kuehl)** permits a minor who is the parent of a child who is the subject of certain proceedings, including those involving child dependency, parentage, and guardianship to appear in court without a guardian ad litem (GAL). This bill requires a court to appoint a GAL in these circumstances if the court finds that the minor parent is unable to understand the nature of the proceedings or to assist counsel in preparing the case. Supporters noted that teen parents in both dependency and family law cases have the same rights and responsibilities as adult parents, and should be able to communicate their desires directly to their attorneys without a presumption that they are “incompetent” simply because they are under the age of eighteen. This measure was passed by the Legislature and signed by the Governor on July 22 (Chapter 181, Statutes of 2008).

Legislative Report Card. CAI’s *2008 Children’s Legislative Report Card* attributed grades to California legislators for their votes on child-related legislation during the second year of the 2007–08 legislative session. The grades reflect each legislator’s votes on 23 bills that ran through policy and fiscal committees and achieved votes on both the Assembly and Senate floors. The *Report Card* also includes two additional bills, an Assembly bill that was killed in the Suspense File of the Senate Appropriations Committee, and a Senate bill that was killed in the Suspense File of the Assembly Appropriations Committee. For those measures, each legislator in the house of origin will receive a “yes” or “no” vote, depending on how he/she voted

when the bill came up for a floor vote. Each legislator in the other house—where the bill died—will receive a “no” vote, reflecting the fact that they allowed the bill to die in the Suspense File without an affirmative vote. Thus, the *Report Card* reflects each legislator’s actions on 25 total measures.

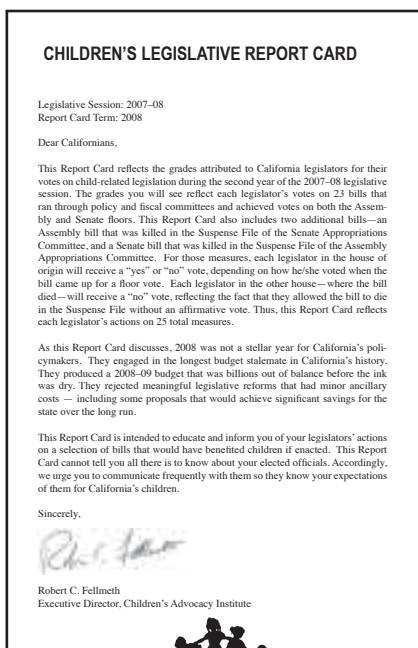
The *Report Card* is intended to educate and inform the public of legislators’ actions on a selection of bills that would have benefited children if enacted.

Legislative Awards. Each year, CAI selects legislators and legislative staff to honor for their outstanding work on behalf of children and youth. CAI’s **Legislator of the Year** award is presented 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. For 2008, CAI presented its Legislator of the Year award to **Assemblymember Dave Jones**, in recognition of his courage in authoring and tenacity in fighting for AB 3051, legislation that will help abused and neglected children be heard and seen by the courts that decide their fate, give foster youth a better understanding of the process and a sense of control over their lives, and better inform courts and improve their decisions, and which clarifies the court’s authority to issue orders or make appointments necessary to ensure the appropriate administration of funds for foster children; and for his longstanding support of efforts to improve the status of California’s children.

The **Legislative Staff Member of the Year** award is presented to legislative staffers whose dedication to children’s issues has been exceptional over time, and who put forth exemplary effort in furtherance of legislation that would elevate the status of our state’s children. CAI felt that two legislative staffers — **Robert Herrell** and **Leora Gershenson** —deserved this award for 2008 because of their commitment and hard work leading to the enactment of AB 3051 (Jones) (discussed above), which would not have been enacted without their outstanding efforts.

Advocacy in the Courts

Overview. On occasion, when other forms of advocacy fail to bring about the desired result for children, advocates must turn to the courts for relief. Having the ability to engage that forum on behalf of children is an invaluable resource to CAI. 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. To that end, CAI staff makes frequent contact with advocates and individuals from public agencies, non-profit groups, and advocacy groups, as well as 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. The investigatory phase of litigation, including requesting public records, communicating with agency and administrative representatives, locating plaintiffs throughout the state, and conducting legal research, often takes several months to





conduct for each matter listed below. The following is an update of litigation-related work conducted by CAI in recent months.

Foster Family Home Rate Litigation. In 2008, CAI continued to work on its lawsuit in U.S. District Court for the Northern District of California, on behalf of state-licensed foster parents in California, many of whom receive less assistance per month from the state than the average cost of kenneling a dog, challenging the lawfulness of California's low foster family home payments under federal law. CAI, with the pro bono assistance of **Morrison & Foerster LLP**, is representing the **California State Foster Parent Association**, **Legal Advocates for Permanent Parenting**, and the **California State Care Providers Association**, and is asserting that assistance rates set by the California Legislature fail to adequately reimburse foster parents for necessities as required by federal law.

Furthermore, CAI is arguing that the assistance rates have failed to keep pace with the California Necessities Index (CNI), a component of the Consumer Price Index (CPI) that has risen more than 25% since 2001. In 2008, the average assistance per child paid to licensed foster parents was about \$530 a month. Citing a recent study from

the California Budget Project, a non-partisan and nonprofit fiscal reform group, the suit maintains that an average monthly payment of \$709 is required for the state to be in compliance with federal law. A joint report released in October 2007 by the University of Maryland School of Social Work and the National Foster Parent Association sets the minimum average rate for adequate care in California even higher—at \$777.

Federal law requires that licensed foster parents be paid enough to cover the actual cost of providing food, clothing, shelter, daily supervision, school supplies and daily incidentals. According to the lawsuit, California foster-care payments currently cover only a fraction of these costs, resulting in a steep and steady decline in recent years in the number of Californians willing to become foster parents. Some counties—for example, Sacramento and San Bernardino—have seen the number of willing foster families drop by more than 50%.

Perversely, this costs the state money, the lawsuit says, because a shortage of foster parents means that abused and neglected children are placed in far more expensive group homes. Many of the 10,000 children who were in family foster homes in 2001 but are now in



meeting that federal obligation. It does not track foster care costs; it does not analyze the adequacy of its rates; and it has no mechanism for making adjustments to rates that may be needed.

The case has been appealed by the state and is now before the 9th Circuit Court of Appeals.

Potential Litigation. During 2008, CAI staff researched several areas where litigation might be warranted to protect and/or promote the interests of children and youth. One such area that CAI is looking at involves some counties' inappropriate over-detention of children in juvenile halls (locked and secured facilities comparable to jail for adults). For example, foster youth who are arrested for allegedly committing an offense are typically sent to Juvenile Hall to await a further decision by the Juvenile Court on their most appropriate placement. In many cases, despite a Juvenile Court order directing the child welfare agency to place the youth back in an appropriate dependency placement, many youth are held at Juvenile Hall for days, weeks, or even months while they wait for the agency to find an appropriate placement.

Another area CAI is researching involves unmanageable caseloads for attorneys representing children and youth in dependency court proceedings. CAI believes that some caseloads for minors' counsel have become so overwhelming that they deprive the children of the effective assistance of counsel. The National Association of Counsel for Children has recommended that a full-time attorney represent no more than 100 individual clients at a time; the California Blue Ribbon Commission on Children in Foster Care recently found that the average caseload for minors' counsel is 273 clients per attorney, with some counties experiencing caseloads of more than 500 to 600.

CAI will continue researching these and other areas during 2009 to determine if litigation is warranted.

Regulatory Advocacy

Overview. One of the few child advocacy organizations with expertise in the regulatory forum, CAI represented children's interests before various administrative agencies during 2008. CAI staff monitors child-related rulemaking proposals as they are released by the state agencies that implement various laws directly impacting children's health and well-being. The regulatory proceedings in which CAI participated during 2008 included the following:

California Blue Ribbon Commission Recommendations. The California Blue Ribbon Commission on Children in Foster Care was convened in 2006 to develop and recommend to California's Judicial

other placements are in group homes at \$5,000 per month each. An increase in family foster rates from \$530 to \$800 a month would restore many of those family home placements and enhance supply for the ideal scenario—competition among prospective homes for each child. If supply is restored, only 400 children (5% of the enhanced supply) moved from the group home alternative pays for the entire increase. After that, it is relative profit for the state. That the state pays more money out-of-pocket to put kids in institutional settings where outcomes are demonstrably worse appears to be a sad testament to mathematical incompetence.

The record in this case documents—through state official deposition admissions, expert reports, and uncontested data—the state's failures to (a) monitor costs and (b) pay close to the out-of-pocket costs of care for the state's own children. In late 2008, U.S. Federal Court Judge William H. Alsup granted partial summary judgment to CAI's clients. His order supported the theory of CAI's case and declared the state in violation of federal standards stating the following:

The record in this case indicates that California's rates are not based on the [federal] statutory criteria; in fact, it indicates that California has no mechanism in place to ensure that it is

Council the steps that courts and their partners can take to improve outcomes for children in foster care. During 2008, CAI reviewed and commented on draft recommendations released by the Commission; generally, the Commission's draft recommendations called for the state to keep families together whenever it is safe and possible to do so; change the way that dependency courts do business in California; increase collaboration between courts and their partners to better serve children and their families; and provide the resources that are needed to get the job done. CAI submitted several specific additional recommendations, including the following:

- The Judicial Council should adopt specific performance measures that assess the efficacy of reunification, including longitudinal studies of families where reunification was authorized.
- The courts and partnering agencies should examine current medical evidence regarding the treatment of drug dependence and how medical treatment supports reunification practices.
- State and local child welfare agencies should actively engage in recruiting and supporting foster family homes, a separate office within the state Department of Social Services should be committed to supply and quality increase, and family foster care rates should be increased by no less than 40% immediately to comply with federal law and enable reasonable supply restoration for reasonable adoption opportunity.
- The Judicial Council should work with federal and state leaders to support or sponsor legislation to extend the age to which youth receive foster care assistance from age 18 to age 25. This change should apply to those children who at age 18 cannot be returned home safely, who are not in a permanent home, and who choose to remain under the jurisdiction of the court. If the court terminates jurisdiction prior to a youth's 25th birthday, the youth should have the right to reinstatement of jurisdiction and services until he/she reaches age 25.
- Child welfare agencies should actively engage in finding and encouraging adults to act as mentors for foster youth who are not able to be reunited with their family.
- The Judicial Council and the state Department of Social Services should work together to urge Congress, the state Legislature, and state and local agencies to ensure that existing THP-Plus programs sustain a level of funding sufficient to maintain and expand program capacity to meet the demonstrated need of youth emancipating from the foster care system.

- The Judicial Council and the state Department of Social Services should work together to urge the state Legislature to adopt a transition guardian program or other method allowing supervision of funds to be allocated and customization to the needs of individual youth.
- The Judicial Council should work to ensure that child representation at the appellate level is automatic and presumed.
- The Judicial Council should work with the AOC to adopt Rules of Court requiring that each child's attorney handle no more than 188 cases at a time.
- The Judicial Council should work with the AOC to agree to a ceiling of no more than 500 cases for juvenile dependency court judges—given their special responsibilities as the parents of the children within their respective case loads. The AOC should study the caseloads of Juvenile Court Judges handling dependency cases to determine if some number under 500 is an appropriate standard.
- The Judicial Council should work with the Child Welfare Council as well as local courts and agencies to adopt performance measures that track the progress of youth who emancipate from California's foster care system until they are 25 years old.





- **The Judicial Council should work together with the state Department of Social Services and local county agencies to promote the sharing and public disclosure of accurate and consistent information pertaining to child fatalities in foster care and child fatalities and near fatalities due to child abuse or neglect.**
- **The Judicial Council and the state Department of Social Services should work together to urge Congress, the state Legislature, and state and local agencies to arrange appropriate study of the immediate savings attributable to placing fewer children in group homes, and the long-term effects of adoptions and permanence.**
- **The Judicial Council should request the State Proposition 63 Commission to sponsor a legislative set-aside of 8% of the Mental Health Services Act revenue for a fund for each child aging out of foster care. That fund would comport with the Proposition 63 stated priorities of prevention of mental illness and the achievement of self-sufficiency for transition-age youth ages 18–24. It will be customized by youth to best accomplish mental health and transition to adulthood among the clearly most vulnerable population in the state under its stated priorities. The Judicial Council should announce not only its support of such a commitment, but its own**

commitment to appoint transition guardians to administer such funds, and to supervise their proper administration.

In several areas, the Blue Ribbon Commission modified its recommendations in response to CAI's comments and suggestions. The Commission is now developing an implementation plan and will present it to the Judicial Council in December 2009.

Judicial Council Implementation of SB 39. In 2007, CAI and the National Center for Youth Law co-sponsored SB 39 (Migden) (Chapter 468, Statutes of 2007), which revised and streamlined the state's procedure for releasing information pertaining to child deaths resulting from abuse or neglect. Among other things, SB 39 (1) provided for the release by a county welfare agency of specified information regarding a deceased child where the death is reasonably suspected to be the result of abuse or neglect, within five days of the child's death; (2) where a child's death is substantiated to be from abuse or neglect, establishes a process for the release of specified documents in a county welfare agency's juvenile case file, without court review and for the release of other documents in the case file after a petition is filed and opportunity is given for interested parties to object to the release of those other documents; and (3) clarifies existing law relating to the release of a juvenile case file when a child has died due to abuse or neglect, including the presumption of disclosure unless statutory grounds for non- or partial-disclosure or redaction of information exist.

During 2008, the Judicial Council proposed several revisions to rules of court and court forms to implement portions of SB 39. CAI submitted several comments to the Judicial Council in response to its proposed changes, including the following:

- CAI objected to the fact that a proposed form revision requires the person requesting records pertaining to child abuse or neglect fatalities to specify the names of the children. •CAI noted that individuals requesting this information may not know the names of the children involved, such as in the case of newspapers or child advocacy organizations seeking to obtain information about child abuse and neglect fatalities in order to ensure the efficacy of the overarching child welfare system.
- CAI also objected to the fact that a proposed form revision asks for the relationship of the requesting individual to the child and also asks for a detailed statement of reasons for requesting the file. An individual's reasons for requesting this information is not relevant and requiring this information frustrates the spirit and intent of SB 39.
- CAI also objected to the fact that the same forms are to be used to request information on child abuse and neglect

fatalities as would be used to request information on living children. As a result, the process to request information on fatalities is unduly confusing, overly burdensome, and contrary to the streamlining intent of SB 39.

Juvenile Court Performance Measures. In 2006, CAI was a co-sponsor of AB 2216 (Bass) (Chapter 384, Statutes of 2006), which requires the Judicial Council to adopt, through a rule of court, Dependency Court performance measures designed to complement and promote federal Child and Family Services Review outcome measures and all the California Child and Family Service Review System outcome indicators “so that courts are able to measure their performance and track their own progress in improving safety, permanency, timeliness, and well-being of children and to inform decisions about the allocation of court resources.” In 2007, the Judicial Council published notice of its intent to adopt Cal. Rules of Court, Rule 5.505, to implement AB 2216. CAI commented on that original proposal, and the Judicial Council responded by modifying its proposal in many respects to reflect CAI’s suggestions.

In 2008, the Judicial Council released its revised proposal for review. CAI responded with several comments to this version, as well. Among other things, CAI urged the Judicial Council to collect data for probation-supervised children, as well as children in child welfare-supervised foster care. CAI suggested that the types of data that should be collected include, but is not limited to, the percentage of children who are dependents of the court and for whom a delinquency petition is filed; the percentage of children who are dependents of the court, for whom a delinquency petition is filed, and who remain detained pending a hearing pursuant to Welfare and Institutions Code § 241.1; the percentage of children who are dependents of the court, for whom a delinquency petition is filed, and who remain dependents after a hearing pursuant to Welfare and Institutions Code § 241.1; the percentage of children who are dependents of the court, for whom a delinquency petition is filed, and who become wards of the court after a hearing pursuant to Welfare and Institutions Code § 241.1; the number of days, on average, a dependent child remains detained after the child is found to remain a dependent at a hearing pursuant to Welfare and Institutions Code § 241.1; and the number of days, on average, a dependent child remains detained for a specified offense in comparison to the number of days a non-dependent child remains detained for the same offense.

Advocacy 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.

Opinion/Editorial Pieces. An opinion/editorial piece written by CAI Executive Director Robert C. Fellmeth was published in the Sacramento Bee on December 24, 2008. In *My View: GOP Must Renew its Conservative Principles*, Fellmeth opined that

California needs the Republican Party of Reagan and Wilson to resurge. When confronting a similar deficit in 1991, Gov. Wilson agreed to resolve the shortfall using 50 percent cuts and 50 percent new revenue. The Republican governor—finally—is similarly inclined. The extremism of the Republicans in the Legislature in defense of child disinvestment (against the state and public revenue) lacks perspective on the future and is devoid of the important empathy with our youth that we rightly require of our leaders.

...

For California to work again, we need the return of a principled, far-sighted and fact-consequences-based Republican Party.



Collaboration & Leadership

Children's Advocates' Roundtable

CAI continues 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 and postings on CAI's website.

During 2008, the Roundtable made a concerted effort at building a grassroots campaign in opposition to proposed budget cuts for children's programs; this effort included the creation of a website dedicated specifically to this effort, where advocates can post and find issue papers on budget issues, stories of how the cuts would impact children across the state, and information on upcoming hearings and meetings, and the public can access that information and find out how they can voice their opposition to the proposed cuts. The website—www.childrendutyfuture.org—was used by advocates, policymakers, the media, and the general public as a source of information regarding the budget crisis and how it was affecting California's children.

Multidisciplinary Centers of Excellence

In conjunction with First Star, a national child advocacy organization, a Multidisciplinary Center of Excellence (MCE) is in formation at the University of San Diego (USD) School of Law. During 2008, CAI staff continued efforts toward establishing USD's MCE, which will provide an unparalleled interdisciplinary curriculum to the many professionals who work on behalf of maltreated children: lawyers, psychologists, social workers, nurses, teachers, CASAs, police officers, and judges. The MCE program is designed as a model of evidence-based practice that can be replicated nationwide for the training of child welfare professionals.

Since 2002, First Star has worked to develop the MCE program as a model of best practice that can be replicated nationwide for the training of child welfare professionals. Each MCE will provide an unprecedented interdisciplinary curriculum that draws from coursework in law, psychology, social work, public health and medicine. This curriculum is being developed through a series of conferences

that involve the leading experts at child advocacy centers around the country.

First Star's MCE's are designed to provide comprehensive, multidisciplinary training for professionals responsible for the

welfare of abused and neglected children across the country. In addition to classroom-based courses for advanced degree students of law, social work, psychology, nursing and public health, the MCEs will offer special First Star certification to those beginning careers in child welfare and also continuing education to practicing judges, attorneys, social workers and other child welfare professionals nationwide through distance-learning technology. The MCEs are a pilot program for reinventing the training standards for America's child welfare workforce, with an emphasis on court-appointed attorneys and guardians ad litem for children. It is hoped that the MCE model will be replicated at universities throughout the country, and thereby establish a new public-private paradigm for interdisciplinary collaboratives that benefit children.

The ultimate benefit of MCEs is to improve the care of children in the foster care system such that more children, despite their maltreatment, have the skills, well-being and capacity requisite to the development of a healthy and productive society. To date, child welfare practice and policy have been dominated by a framework best described as a child/parent/state triangle, wherein authority over children is allocated to the private sphere of the autonomous family.

The website—www.childrendutyfuture.org—was used by advocates, policymakers, the media, and the general public as a source of information regarding the budget crisis and how it was affecting California's children.

State provision of support and services must generally be tied to some finding or admission of family failure or dysfunction. The more intrusive the intervention, the more compelling the reason for intervening must be. If instead, child welfare is viewed through an “ecological” lens, the focus is on overlapping “systems” that include families, peer groups, faith communities and neighborhoods. The MCEs recognize the importance of this more child-centered perspective and seek to build stronger relationships between the various support networks that protect and nurture our children.

Interaction with National Child

Advocacy Organizations

CAI remains actively involved in major national child advocacy organizations. CAI Executive Director Robert Fellmeth serves on the Board of Directors for the **National Association of Counsel for Children** (NACC), currently serving as NACC Vice-Chair. Professor Fellmeth also serves as counsel to the Board of Directors of **Voices for America’s Children**, an organization with chapters of advocates in more than forty states. He also serves on the Board of Directors of **First Star**, and he 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.

During 2008, CAI began work on two major projects with First Star. The first is an update to First Star’s 2007 report entitled, *A Child’s Right to Counsel. First Star’s National Report Card on Legal Representation for Children*. The update, which will be released in 2009, will grade states on how well they protect the legal rights of foster children by providing trained, competent, independent counsel with reasonable caseloads to represent foster children throughout the dependency court process (including any and all appeals). The second report will examine to what extent states withhold funds belonging to foster children (e.g., survivor benefits, SSI, inheritances, earnings, judgments/settlements, etc.) in order to reimburse the state for the cost of foster care; this report will also be released in 2009.

Special Projects

Improving Outcomes for Transitioning Foster Youth

During 2008, CAI continued its work on a grant from **The California Wellness Foundation** to inform policymakers and other stakeholders about promising programs and policies affecting the health and well-being of California’s youth aging out of the foster care system. To date, some of the activities taken by CAI on this project include the January 2007 release of a master report entitled, *Expanding*



Transitional Services for Emancipated Foster Youth: An Investment in California’s Tomorrow, at a press conference in the Governor’s Press Room at the State Capitol. The report, written primarily by CAI Staff Attorney Melanie Delgado and San Diego attorney Karen Prosek McCready, detailed how state and federal laws and programs fail to provide California’s emancipated foster youth with a meaningful opportunity to attain self-sufficiency. While some state and federal funding is available for former foster youth, it is sorely inadequate to provide the support necessary to enable these youth to transition to self-sufficiency. In California, current programs for emancipated foster youth are fragmented and underfunded, fail to provide comprehensive assistance and services, and do not reach a significant number of former foster youth in a meaningful way.

The report also included details on CAI’s proposed Transition Guardian Plan (since renamed the **Transition Life Coach (TLC)** program) which would replicate as closely as possible the commitment of responsible parents during the transition of their children into

independent adulthood. Under CAI's proposal, former foster youth who opt to participate in the TLC program would receive a monthly stipend and support services. The stipend is sent to a court-appointed adult (the TLC) who meets with the youth on a monthly basis to distribute the funds, plan for their use, and verify the youth's continuing progress toward self-sufficiency. The stipend would be based on the youth's needs, but would typically range from a high of \$850 per month in the first year of participation down to \$258 per month during the fifth year of participation. The fund would be flexible to allow for adjustments as needed, but would generally decrease as the youth becomes more self-sufficient. An important element of the TLC program is the Coach position itself. Ideally, this person will be someone with a prior relationship with the youth — to accomplish the continuity otherwise lacking for many of these children. The Coach may be the foster care provider, a relative, a CASA, the youth's attorney, or some other person who

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is competent, responsible, cares about the youth and in whom the youth has confidence.

CAI also unveiled the results of the nation's first **transitional services cost-benefit analysis**, which shows that significant cost savings would be attributable to keeping former foster youth out

of prison and off welfare, and helping them become self-sufficient, tax-paying members of society. Using just those three factors, CAI's analysis shows a benefit-to-cost ratio of 2.98 to 1 (or 1.85 to 1 present value) for one cohort and 3.1 to 1 (or 1.9 to 1 present value) for 40 cohorts.

During 2008, CAI kept the issue of increased funding and improved services for transitioning foster youth a priority for advocates, policymakers, and the general public. One of CAI's main areas of focus during 2008 was identifying funding sources for the TLC program. To that end, CAI looked closely at **Proposition 63, the Mental Health Services Act (MHSA)**, to determine how funding from this initiative may be leveraged to provide extended benefits and services to youth who age out of California's foster care system. Foster youth have a high incidence of mental health issues, and transition age foster youth should properly be a priority for MHSA funding. CAI is researching the MHSA and how it could best be used to benefit youth in and leaving foster care, and is advocating for funding to be specifically allocated to meet the needs of transition age foster youth. CAI is also reviewing each county's **Community Services and Supports (CSS)** and **Prevention and Early Intervention** plans as they are being released. In 2009, CAI will release a report detailing how counties are spending MHSA funding for the benefit of transition age foster youth. CAI will also include in its report a framework for using MHSA funds to better address mental health issues faced by transition age foster youth.

Also during 2008, CAI worked closely with several foster youth organizations—such as San Diego Foster Youth Initiative's LEAP (Leadership Empowers All Possibilities) Board—to help educate former foster youth about government and enable them to engage in advocacy, including taking them to Sacramento so they can contribute their valuable insights and ideas on how best to improve outcomes for foster youth.

CAI is extremely grateful to The California Wellness Foundation for the opportunity to engage in this very worthwhile endeavor.



Dependency Counsel Training Program

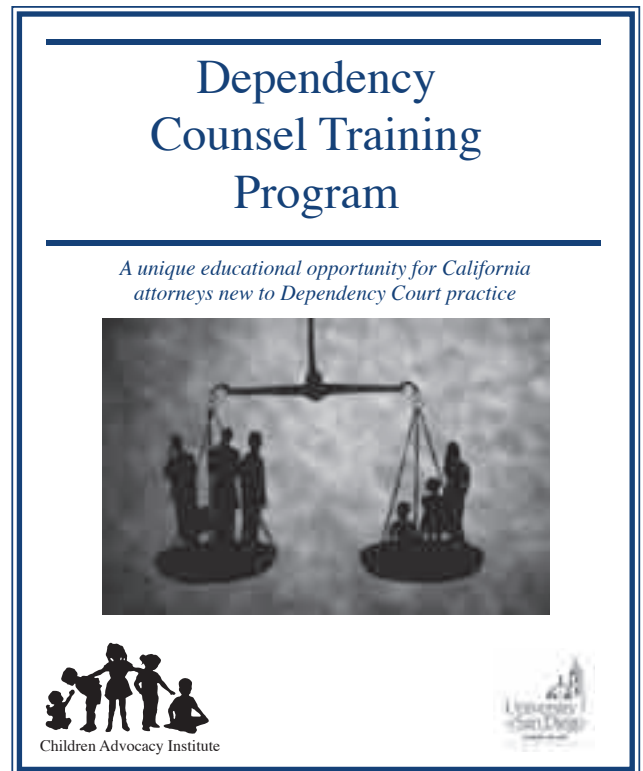
The California Emergency Management Agency (Cal EMA) (formerly the Governor's Office of Emergency Services) has selected CAI to receive a grant through the federal Children's Justice Act, with the purpose of developing a curriculum and training attorneys who are new to Dependency Court practice. The purpose of this training is to ensure that attorneys appearing in Dependency Court—whether they are representing the county, parents, or children—are properly prepared for the extremely important, unique, and challenging work in which they are engaged.

During 2008, CAI made slight modifications to the curriculum developed in 2007, and presented two 20-hour sessions in Riverside and Oakland. These sessions, which qualify as Minimum Continuing Legal Education (MCLE) for attorneys in attendance, covered a wide range of information related to the Dependency Court process, including an overview of child welfare law and practice; discussions of mental health issues, child development, and substance abuse issues; a comprehensive discussion of each hearing in the Dependency Court process, including practice tips from veteran lawyers representing parents, children, and the county; the appellate process and collateral proceedings; educational advocacy; and specific trial advocacy training. In addition, a special segment of the curriculum was taught by former foster youth, who discussed their own personal experiences with attorneys in the Dependency Court system and provided insights from their unique perspectives.

The sessions were provided free of charge to new Dependency Court counsel, and each participant was also given two important treatises for use in their day-to-day practice: *California Juvenile Courts Practice and Procedure* by Gary Seiser and the Hon. Kurt Kumli, and the National Association of Counsel for Children's *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases*, edited by Marvin Ventrell and Donald Duquette.

CAI is extremely grateful to the following experts who—together with CAI's own Robert Fellmeth and Christina Riehl—served as 2008 trainers in the Dependency Counsel Training Program:

<i>Nancy Aspaturian</i>	<i>Randall Harris</i>	<i>David Meyers</i>
<i>Josanna Berkow</i>	<i>Leslie Heimov</i>	<i>Prof. John E. B. Myers</i>
<i>Frank Birbak</i>	<i>Sophia Herman</i>	<i>Janine Molgaard</i>
<i>Jenny Chung</i>	<i>Dr. Marilyn Kaufhold</i>	<i>John Passalacqua</i>
<i>Lisa Conradi</i>	<i>Dr. Tom Lyon</i>	<i>Alex Stalcup, M.D.</i>
<i>Katie Ford</i>	<i>Martha Matthews</i>	<i>Robin Vanderlaan</i>
<i>Cassandra Harris</i>	<i>Candi Mayes</i>	



Approximately 160 attorneys attended the 2008 trainings, from every area of the state. The attendees found the trainings to be extremely useful — evaluations of the trainings averaged more than 4.5 points out of 5 in all areas.

CAI was honored to receive a third year grant from Cal EMA to conduct training sessions in 2009, and is currently planning and coordinating those events.

Public Disclosure of Child Abuse Deaths and Near Deaths

Approximately 1,500 children die every year as a result of abuse or neglect in the U.S., and countless more children suffer near fatal injuries caused by abuse or neglect. Pursuant to the federal Child Abuse Prevention and Treatment Act (CAPTA), states receiving CAPTA funding must have provisions that “allow for public disclosure of the findings or information about” abuse or neglect cases that result in child death or life-threatening injuries. All 50 states and the District of Columbia accept federal funds under CAPTA.

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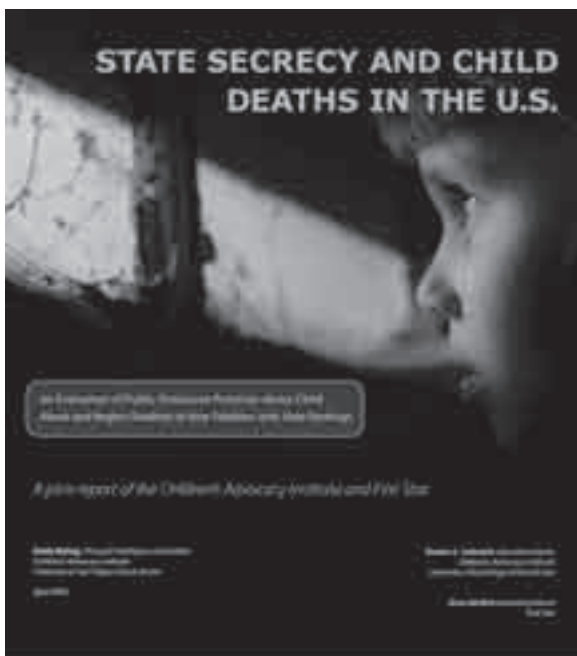


During 2008, CAI legal intern Emily Reinig completed an extensive project of identifying and analyzing each state’s abuse and neglect

death and near death public disclosure policy, and grading the states based on the following criteria:

- Does the state have a public disclosure policy as mandated by CAPTA?
- Is the state’s policy codified in statute, or is it contained in regulation or written (or oral) policy?
- What is the ease of access to the information (does the policy use mandatory or permissive language, and is the release of information contingent on conditions precedent)?
- What is the scope of information authorized for release, and are there exceptions that decrease the type of information that will be released?
- Does the state allow public access to Dependency Court (abuse/neglect) proceedings?

As part of her research, Emily contacted the State Liaison Officers for Child Abuse and Neglect, as well as other officials from state social services agencies and child fatality review teams across the country, and solicited their assistance and cooperation in providing information and reviewing her results. CAI staff worked closely with Emily to review the results of her research, which were compiled into a major report entitled, entitled “*State Secrecy and Child Deaths in the*



U.S.,” co-published by CAI and First Star and released at a press conference at the U.S. Capitol on April 29, 2008.

Among other things, the report concluded that the majority of U.S. states fail to release adequate information about fatal and life-threatening child abuse cases, adhering to misguided and secretive policies that place confidentiality above the welfare of children and prevent public scrutiny that would lead to systemic reforms. Only a handful of states fully comply with the legislative intent of federal law mandating public disclosure of the deaths and near deaths of abused or neglected children, according to the report.

The report issued letter grades from “A” to “F” based on an analysis of the child death and near death disclosure laws and policies of all 50 U.S. states and the District of Columbia. Only six states—Nevada, New Hampshire, California, Indiana, Iowa and Oregon—receive top

grades of “A” or “A-.” Twenty-eight states receive a “C+” or lower grade. Ten states flunked entirely: Georgia, Maryland, Montana, New Mexico, North Dakota, Pennsylvania, South Dakota, Tennessee, Utah and Vermont received a grade of “F”.

The report concluded that the majority of U.S. states fail to release adequate information about fatal and life-threatening child abuse cases, adhering to misguided and secretive policies that place confidentiality above the welfare of children and prevent public scrutiny that would lead to systemic reforms.

CAI and First Star are calling on Congress and individual state legislatures to adopt stronger policies and laws that demand closer examination of the handling of child abuse cases that result in child deaths or near deaths. Specifically, CAI and First Star are pushing for changes in state and federal laws, including:

- Clarified language in federal law (CAPTA). CAI and First Star acknowledge that the public disclosure mandate as written in federal law is vague and leaves too much room for interpretation by states.
- Changes that would clarify and strengthen disclosure requirements so states know how to comply with the intent of the legislation.



CAI/First Star press conference at the U.S. Capitol, April 29, 2008. Left to right: Peter Samuelson (First Star); Angeliqe Marriner (First Star); Dominic Slowey (Slowey McManus LLC); Christina Pamies (First Star); Robert Fellmeth (CAI); Emily Reinig (CAI); Jeff Hild (Legislative Director, Rep. Pete Stark); Amy Harfeld (First Star); Shawn Huff (Foster Care Alumni of America).

- Amendments to state policies and laws. To make disclosure policies more enforceable, the advocacy groups want state legislatures to more clearly articulate and strengthen their policies and modify their statutes to require maximum transparency in cases of death and near death caused by abuse or neglect.
- Separating disclosures from criminal proceedings. Currently, some states, such as Minnesota and North Carolina, will not release information about a child fatality or near fatality unless a person is criminally charged. Disclosures should not be dependent on a district attorney's decision to prosecute.

The report generated a tremendous amount of media attention, which in turn sparked discussions in many states regarding their policies. Since the release of the report, CAI and First Star staff have continued to work at the federal level to strengthen and expand the CAPTA requirement, as well as with various states seeking to improve their policies.

School Nurse Shortage

The National Association of School Nurses recommends a ratio of one school nurse for every 750 students who require a normal level of care, and lower ratios for students who require additional care. However, no law currently requires California schools to have a school nurse on staff until after the school has clearly identified an individual student with a special need covered by federal disability law. In addition, several statutes undermine the role of a school

nurse by providing for self-administered care by students, delegation of health care to other faculty, performance of services by non-credentialed nurses and outsourcing of health care to external nurses and physicians. This situation leaves many students at risk.

CAI has become concerned about this situation and is considering sponsoring legislation to remedy this situation. During 2008, CAI legal intern **Shelly Kamei** conducted extensive research on the state of school nursing and provision of health care services in California public schools. As part of her research efforts, Shelly conducted a survey of California school nurses and administrators and received close to 500 responses from across the state. She analyzed the results of the survey responses and gathered data that will assist in the drafting of legislation that will protect the health of California's children while they are in school. A report by Shelly detailing her findings and recommendations will be published by CAI in early 2009.

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, including but not limited to child health, health care reform, child nutrition, child safety, child poverty, child care, education, child abuse, and juvenile justice.



Dr. Gary Richwald (far right) with recipients of the 2008 Price Child Health and Welfare Journalism Awards: (from left) Hilbert Morales and Rosario Vital, *El Observador*; Karen de Sá, *The San Jose Mercury News*.

The recipients of the 2008 Price Child Health and Welfare Journalism Awards were the following:

- 1st Place: *The San Jose Mercury News* series, “Broken Families, Broken Courts,” written primarily by Karen de Sá, an extended series exposing the failings in the state’s Juvenile Court system.
- 2nd Place: *The Sacramento Bee* series, “Unprotected,” written by Marjie Lundstrom, with contributors Amy Pyle, Mitchell Brooks, Autumn Cruz, and Sheila Kern, an ongoing series on the Sacramento County child protection system.
- Special Award: *El Observador*, for five bilingual articles focusing on child-related health and well-being topics.

CAI gratefully acknowledges the dedication of the members of the selection committee who reviewed the numerous submissions: Chair Gary Richwald, M.D., M.P.H.; Anne Fragasso, J.D.; Louise Horvitz, M.S.W., Psy.D.; Dana C. Hughes, M.P.H., M.S.; Hon. Leon Kaplan (Ret.); Lynn Kersey; Gloria Perez Samson; Alan Shumacher, M.D., F.A.A.P.; Dr. Robert Valdez, Ph.D.

Homeless Youth Outreach Project

Under the direction of Equal Justice Works Fellow Kriste Draper, CAI’s Homeless Youth Outreach Project provides legal assistance to youth living on the streets of San Diego, without the usual security, stability, and support that a family unit provides. The specific goals of this project are to:

- Provide a legal clinic to the homeless youth population of San Diego County through schools, shelters and outreach centers, such as Stand Up For Kids’ outreach center in downtown San Diego.
- Assist homeless youth in accessing healthcare coverage available to them and acquiring an education and the proper resources necessary to be successful in school.
- Refer homeless youth to other social service and legal agencies within the community for assistance with any issues that may be beyond the scope of this project.
- Contact and build partnerships with various medical clinics, schools and other agencies in San Diego to raise awareness and education on the problems facing homeless youth within San Diego and how we can assist in their empowerment
- Hold quarterly education seminars with the homeless youth to educate them on their rights and the tools available to help them be successful.
- Recruit, train and supervise volunteer attorneys and law students to assist at the on-site legal clinics and with ongoing case representation to ensure project longevity and sustainability.

- Continually self-evaluate itself through client surveys and developmental meetings with CAI and other partnerships to ensure that the project is effectively and successfully meeting the needs of the homeless youth in a sustainable manner.

CAI is extremely grateful to Sony Electronics, Inc., the San Diego County Bar Foundation, the BNSF Foundation, the Strauss-Strauss Foundation, and the Kohala Foundation for supporting this much needed effort to help homeless youth transition to safer environments and brighter futures.

Educational Representatives

When a child is placed into foster care — and in particular when a child is put into a group home placement, as opposed to a foster family home — there is often no adult in the child’s life who is willing and able to participate in making educational decisions on his/her behalf. For those children, the court is required to appoint educational representatives to represent the child in the identification, evaluation, and educational placement of the child and with the provision of the child’s free, appropriate public education. This includes representing the child in all matters relating to the child’s education including the stability of the child’s school placement; placement in the least restrictive educational program appropriate to the child’s individual needs; the child’s access to academic resources, services, and extracurricular and enrichment activities; the child’s access to educational supports necessary to meet state academic achievement standards; school disciplinary matters; and other aspects of the provision of a free, appropriate public education. An educational representative is also required to meet with the child at least once and as often as necessary to make educational decisions that are in the best interest of the child; be culturally sensitive to the child; comply with federal and state confidentiality laws; participate in, and make decisions regarding, all matters affecting the child’s educational needs in a manner consistent with the child’s best interest; and have knowledge and skills that ensure adequate representation of the child.

In San Diego County — and probably in most counties across the state — there is a severe undersupply of adults who are willing and able to serve as a foster child’s educational representative. To be an educational representative, a person must be a responsible adult who does not have a conflict of interest, defined as any interests that might restrict or bias his/her ability to make educational decisions. If a court is unable to identify an educational representative for a child who is eligible for special education services, the court must then refer the child to the local school district to appoint a surrogate parent. This arrangement troubles many child advocates, who are



concerned that some school district appointments are not always conflict-free. Further, if a court is unable to identify an educational representative for a child who is not eligible for special education services, the law does not specify how such an appointment is to be made — and these children often languish indefinitely with no adult available to make decisions regarding their education, unless the court takes on this role itself.

To help increase the supply of educational representatives, CAI has been working with the **San Diego County Juvenile Court**, the **Public Defender's Office of Child Advocacy**, and others to develop a program through which CAI will recruit, train, and supervise law students and others who are willing to serve as educational representatives for foster youth. During 2008, CAI recruited interested individuals, held an 8-hour training program, and continued efforts to finalize the process for appointment of educational representatives by the Juvenile Court.

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.

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 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, 2008, and December 31, 2008, and/or in response to CAI's 2008 holiday solicitation:



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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

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 (currently holding the office of NACC Vice-Chair), First Star, and the Maternal and Child Health Access Project Foundation; and he serves as counsel to the Board of Directors of Voices for America's Children.

Elisa Weichel is CAI's Administrative Director and staff attorney. Among other things, Weichel directs all of CAI's administrative functions, managing CAI's master budget and coordinating all fundraising, development, and outreach; oversees all of CAI's programs and grant projects; serves as Editor-in-Chief of CAI's *Children's Regulatory Law Reporter*, coordinates the drafting and production of the *Children's Legislative Report Card* and the *CAI Annual Report*; supervises legal interns participating in CAI's academic program, as well as other volunteers; 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; oversees the CAI website; 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 the Center for Public Interest Law.

Ed Howard is CAI's Senior Counsel, based in the Sacramento office. In addition to conducting CAI's legislative and policy advocacy, Howard performs litigation activities and chairs the Children's Advocates Roundtable, a network of 300 California child advocacy organizations representing over twenty issue disciplines. Howard's expertise in California legislative politics and policy stems from his years as Special Counsel and Chief Policy Advisor to a State Senator and Chief Consultant of

two standing California legislative committees. Howard received his B.A. from The George Washington University's political science program in Washington, D.C. and received his J.D. from Loyola Law School, where he was awarded the American Jurisprudence Award for Constitutional Law and was selected as Chief Justice of the Moot Court. He is a member of the State Bar of California, and as well is admitted to practice law before the Ninth Circuit and United States Supreme Courts.

Christina Riehl serves as CAI Staff Attorney in the San Diego office, primarily handling CAI's litigation and related activities. Before joining CAI, Riehl worked as staff attorney with the Children's Law Center of Los Angeles, where she represented minor clients in dependency court proceedings. Prior to that, she interned with the Honorable Susan Huguenor, currently the presiding judge in San Diego Juvenile Court. Riehl is a graduate of the USD School of Law, where she participated in the CAI academic program.

Melanie Delgado serves as CAI Staff Attorney in the San Diego office, working on CAI grant projects, litigation, and related activities. Delgado has extensive expertise in the area of services, programs, and funding for youth aging out of the foster care system. Before joining CAI, Delgado worked as a paralegal with a San Diego law firm and volunteered with Voices for Children in the Case Assessment Program, where she reviewed the files of children under the jurisdiction of the dependency court to ensure their interests were appropriately being addressed. Delgado is a graduate of the USD School of Law, where she participated in the CAI academic program, and was a co-recipient of the James A. D'Angelo Outstanding Child Advocate Award in 2006.

Kriste Draper serves as CAI Staff Attorney, overseeing the Homeless Youth Outreach Project. Draper has been an advocate for the homeless for several years, ever prior to starting law school. Draper is a graduate of the USD School of Law, where she participated in the CAI academic program, and was a co-recipient of the James A. D'Angelo Outstanding Child Advocate Award in 2006.

Christina Falcone serves as Executive Assistant, performing bookkeeping and donor relations responsibilities in CAI's San Diego office. She tracks revenue and expenses, processes grant and fundraising activities, and provides support services to CAI professional staff, the CAI Council for Children, and the CAI academic and advocacy programs.

Rebecca Licavoli serves as office manager in the San Diego office, where she helps to coordinate and support law student participation in the academic program; supports CAI's various advocacy activities and grant projects; and recruits, trains, and oversees work study students. A *summa cum laude* graduate of Sonoma State University, Rebecca previously worked for the Rincon Valley School District, reporting directly to the Superintendent of Curriculum.

Alicia Dienst is responsible for office management and outreach coordination, including coordination of the monthly meetings of the Children's Advocacy Roundtable in the Sacramento CAI office. She is involved with the legislative and policy advocacy activities as well as administering the day to day office functions of that office. Dienst received her BA in psychology and her MSW from the California State University in Sacramento.





The CAI Council for Children:

Back row: Hon. Leon Kaplan (Ret.); Gary Redenbacher (Council Chair); Dr. John Goldenring; Dr. Alan Shumacher; James McKenna; Robert Fellmeth (Price Professor of Public Interest Law, CAI Executive Director).

Front row: Blair Sadler; Owen Smith; Dr. Robert Black; Dr. Gary Richwald (Council Vice-Chair).

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

Gary F. Redenbacher, J.D., Council Chair

attorney at law (Santa Cruz)

Gary Richwald, M.D., M.P.H., Council Vice-Chair

consultant/ educator in public health, preventive medicine, & communicable diseases (Los Angeles)

Robert Black, M.D.

pediatrician (Monterey)

Louise Horvitz, M.S.W., Psy.D.

Licensed clinical social worker, individual and family psychotherapist (Los Angeles)

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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)

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