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2010 Annual Report

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CHILDREN'S Advocacy Institute

2010 ANNUAL REPORT



San Diego Office

University of San Diego
School of Law
5998 Alcalá Park
San Diego, CA 92110-2429
(619) 260-4806
(619) 260-4753 (fax)

Sacramento Office

717 K Street, Suite 509
Sacramento, CA 95814
(916) 444-3875
(916) 444-6611 (fax)

info@caichildlaw.org
www.caichildlaw.org

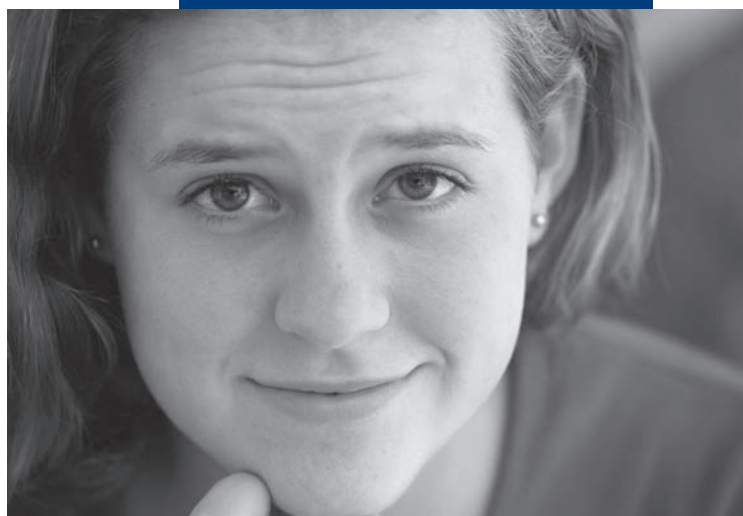
This annual report covers the activities of the Children's Advocacy Institute
between January 1, 2010 and December 31, 2010.

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

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EXECUTIVE DIRECTOR'S MESSAGE

THE EVOLVING BACKGROUND: CHILDREN AND INTERGENERATIONAL EQUITY

It is not unusual for people in the here and now to be blind to the later judgment of human history. From any era, a view of prior history has hindsight and perspective often lost in contemporary passions. Here in 2011, we certainly look back to find a sordid human history that includes ineffable cruelty to people who are a bit different—often in the name of righteousness. In its time each such cruelty was, for at least a large population, insulated from the harsh judgment of cruelty and hypocrisy that the distance of time will bring. We look back now and easily condemn numerous historical acts accepted in their time, from witch burning and the inquisition to imperialistic wars, to unspeakable genocide. For Americans, we have some basis for national pride in our history of relative tolerance, democratic values and assistance to others. And we also largely agree about our own egregious errors: Slavery and violent racism, the massacre of Sioux women and children at Wounded Knee, the Japanese internment camps, and other affronts to our own values that we quietly concede from the wisdom of later reflection.



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

So how will current adults be viewed through that future lens, in fifty or one hundred years? We honor our predecessors partly because of the legacy they left us—we have the feeling that we were somehow in their thoughts. We know that the founders of America were generally wealthy, comfortable adults who risked much for political ideals, and the American generations over the last 230 years since have similarly earned our admiration and gratitude. What Tom Brokaw called the Greatest Generation, in particular, has our deserved respect: Overcoming a depression, defeating fascism, rebuilding Europe, and then creating a system of public education that was the envy of the world for their children, and at the same time creating a national system of transportation, water development, parks and many other investments in their nation and children. They enacted civil rights laws and created a safety net for children and for the elderly. They built a nation of productivity, one that reveres human freedom and has a tradition of sacrifice for its children and grandchildren.

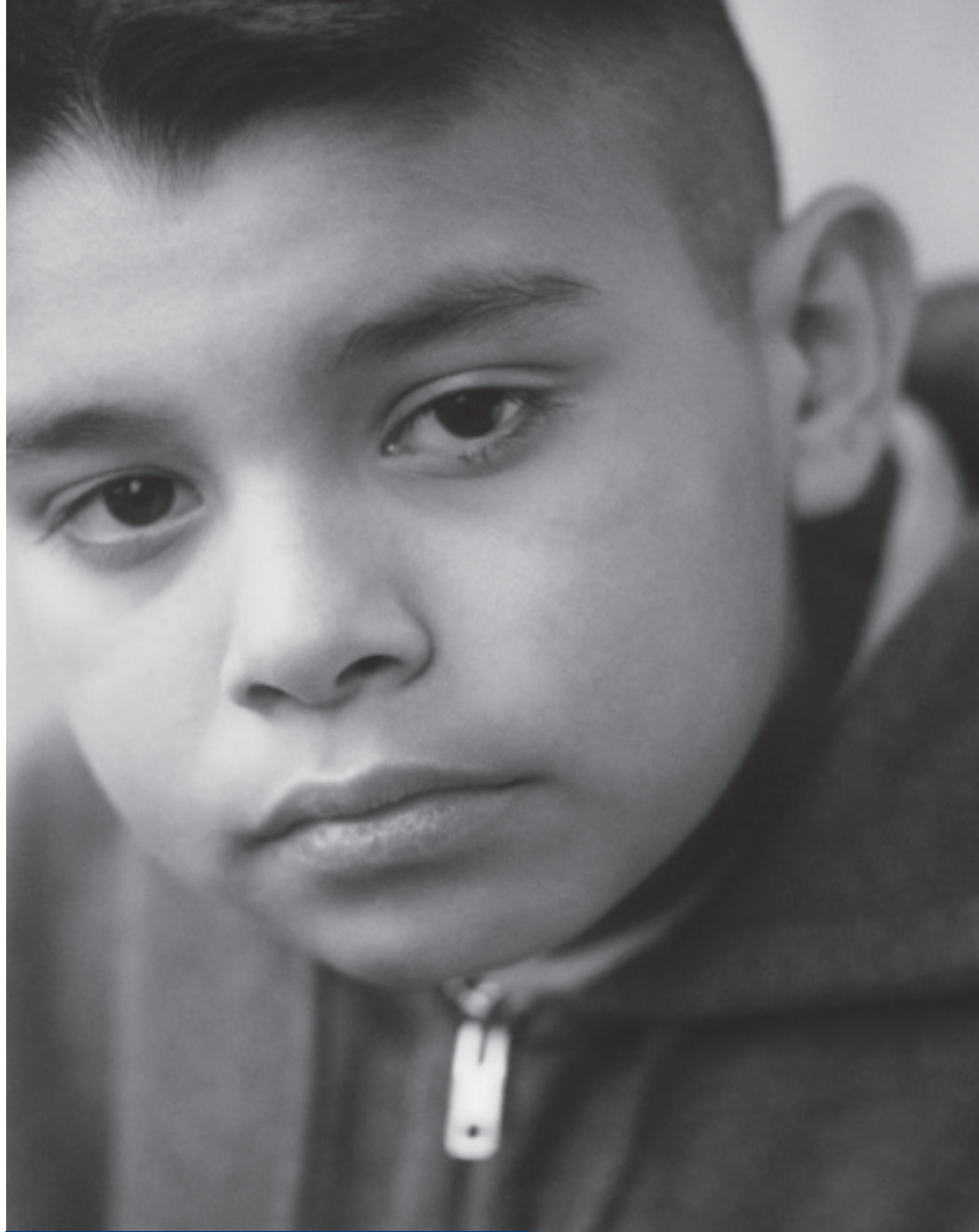
But the current generation of Boomers does not appear to closely follow their precedent. On the environmental side, there is substantial disregard for future impacts, ranging from wasteful exploitation of one billion years of accumulated oil, gas and coal accumulation, to the creation of non-biodegradable waste, over-population, ocean degradation and a host of serious future costs. Beyond the concern over our permanent imprint on the planet is an equally troubling indicator of debt imposition on those who follow us. The collection of pension and extraordinary medical care by the Boomers as they reach senior status may have strong social justice foundations—where and if the generation benefitting pays for its costs. Data from the U.S. Government Accountability Office published in 2008 projects an accumulating deficit, primarily for Medicare and Social Security, which will exceed \$52 trillion in obligations over the following 75 years. Related obligations (Medicare, Medicaid, Social Security and debt interest) subsumed 48% of the federal budget in 2006 and now make up the majority of it. Discretionary spending has declined from 67% of the budget in 1967, to less than 38% today (see <http://www.gao.gov/cghome/d08501cg.pdf>).

And it now appears that these numbers have been overly conservative. More recent data suggests that the total projected debt may be closer to \$60 trillion rather than \$52. Those factors include a \$4 trillion increase in the national debt since the 2006 data. That now \$56 trillion assumes little increase in medical costs when the opposite has been the pattern. Indeed, these costs for the elderly know little

likely limitation. It does not include unfunded increases that are likely from trends in prescription benefits and a plethora of new medical benefits — from routine hip replacements and major eye surgeries to power chairs, Viagra, and organ replacement options. Any limitation on what could easily be an account to subsume all other accounts is subject to demagogic references as “rationing” health care, or to government “death panels” who will kill Grandma. This focus on one group is interesting in light of the effective denial of all health care coverage to eight million children (at one-seventh the per capita cost). But that is little discussed and is apparently quite tolerable.

The \$56 trillion does not include unfunded, sometimes extraordinarily generous pensions for local and state employees, teachers, utility workers and others with substantial presence in state capitals. The total is now approaching \$60 trillion and is likely to grow at over \$1 trillion per year through 2011 and beyond. How much is \$60 trillion? It comes out to over \$500,000 per American family. To carry this understated sum of at a modest 4.5% (not to pay any of it off), our grandchildren will have to pay over \$24,000 per family per year in current dollars, about one-half of total median family income before taxes.

Changing demographics makes these future consequences both more likely and of greater concern. As noted, we have promised to the current generation of elderly (those now age 50 and above) a legally enforceable commitment to provide benefits that vastly exceed their contribution to its financing. Adding to this unusual imbalance are two demographic changes — longer lives and smaller families. A much reduced population of young and producing adults per elderly beneficiary will now be paying their unfunded liability. The pyramid allowing four or five persons in productive adult years to pay for each senior citizen is suffering substantial reduction. The population pyramid is looking less like a broad Egyptian structure and more like the Washington Monument — with a lot of weight on the bottom part.



“The population pyramid is looking less like a broad Egyptian structure and more like the Washington Monument — with a lot of weight on the bottom part.”

Adding to the concern is the disastrous consequence of either another economic downturn or even a small increase in required interest payments to finance these current and future deficits. A two percent increase in the amount needed to print more money based on government bond sale would have a momentous impact on the burden of these unfunded obligations — as if they are not already frightening enough. How ironic that the major source of current security for the United States is the full faith and credit from the People's Republic of China, a totalitarian regime. Our officials rightly warn of the pitfalls of dependency on Middle Eastern nations and the OPEC cartel, but less attention is paid to our supine posture before a communist regime with nuclear weapons that is now our largest national creditor. The share of U.S. debt held by foreign investors was 28% as recently as 1996. It is now over 50%.

Our political vision has been clouded by the anti-government, anti-deficit demonstrations of the “tea party” movement, which has distracted from this legitimate critique with class warfare rhetoric. The problem we have is that some of these conservatives eschew contribution to the next generation, and glorify — or at least rationalize — self-indulgence. It is as if we are not somewhat of an interdependent community, as if we have no obligation to others, as if everything we have achieved we each accomplished alone and without assistance. Public schools did not educate us or our colleagues or customers, the roads beneath our vehicles magically appeared, the water running through our showers was arranged by each of us acting alone, the monopolies generating our electricity are best left to exact what they will, our parks will occur through private charity alone, our cities will develop best by unimpeded market decision (until the guy next door decides to put in a gas station), and so on. They buttress this theme with anti-government rhetoric that is the longstanding hallmark of American demagoguery. Certainly skepticism about “the state” is well warranted, but not blind, categorical rejection. And the “tea party” folk do not help their cause by objecting primarily to the \$14 trillion federal budget deficit — which is of concern, but has some justification — while largely ignoring the much larger unfunded liability for politically sacrosanct Social Security and especially Medicare.

In return, liberal America ignores the critique wholly. Representative Ryan will introduce a certainly flawed Medicare reform proposal in early 2011. But rather than acknowledge the

deficit problem or propose a less flawed alternative that might involve some additional contribution from the Boomer beneficiaries, the left will seize upon the tried and true demagoguery of the right. Mark these words: They will use the same rhetoric about “attacking health care for the elderly” that was used unfairly by the right against the President's health care reform statute. One part of this dilemma is the large number of high-voting/contributing elderly entitlement beneficiaries. Another part is the excessive influence over Democrats of public employee unions — with their protection of often untenable pension burdens to be imposed on future taxpayers.

Children suffer from a double whammy — their interests are not advanced by either political party. Democrats eschew personal responsibility and government accountability, and sign off on virtually unlimited future debt for our children. Meanwhile, Republicans rationalize public disinvestment, except for a blank check to the Department of Defense (leading to a nation with 4% of the world's population now expending about as much on military accounts as the rest of the world combined).

The current political debate is a distractive argument between two “teams.” Each of them is willing to mislead about the other. It seems to be a reflection of human character: The love of allegiances with “groupings” and “labels” so our team can compete and vanquish their miserable adversaries. The Yankees will prevail! The Cardinals will win! The Packers, with their tradition and character, will return as champions! It is as if forty-year-old baseball or football fanatics have formed political teams and are immaturely filtering all reality to promote their side.

It is interesting that respected Nobel Prize winning economist Paul Samuelson, who passed away in December of 2009, is often cited for legitimate government deficit spending in times of recession. He also took the lead in warning about the combined deficit we are imposing on future generations. Neither party is really paying attention to both sides of his legacy either.

Exacerbating the problem, it is a diffuse and gradual dilemma steeped in economics and jargon, and so it evokes little interest from the media, or from the short-sound-bite culture we have become. A thought too long to be thumbed into a twitter message confines political discussion to sloganeering and name calling.

And children are otherwise not at the table where political and budget decisions are being made. One thing we at CAI have learned over the past twenty years is that government is primarily a mediator

*“A thought too long
to be thumbed into
a twitter message
confines political
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name calling.”*

between those who contend before it. And it is irresistible to come up with a benefit that kicks the can down the road to those who will follow — and who are not at the table.

To add to the political weakness, children are lightly represented where decisions are made. For example, one study has established that the American Association of Retired Persons (AARP) alone spends more than 25 times as much on federal registered lobbying as do all of the child advocates at the U.S. Capitol combined (over \$25 million per annum versus just under \$1 million). The elderly vote heavily, and the median age of large campaign contributors is over 68 years of age.

CALIFORNIA'S CONTINUING CHILD DISINVESTMENT

California not only reflects the ethical problems of the Boomers, but it accentuates them. California is among the wealthiest jurisdictions in the world, but we complain about our rather average burden, including property tax levels that are among the lowest in the nation. The structure of the state's property tax reflects the intergenerational inequity outlined above. It is an *ad valorem* tax (Latin for a tax on market value). But we have substantially frozen real property at just above 1977 levels for us older folks (rates can increase no more than 2% per annum while market growth since 1977 is many, many times that rate). This means that young adults who do not have parents to inherit property from or cannot otherwise maintain the artificially low market value assessment, commonly pay five to ten times what Boomers pay in taxes for the same value property and the same public services. The Proposition 13 limitation of taxation to 1% of a property's value is not the problem — instead, it is how it is assessed, on a dishonest market value basis, so the elderly who owned in 1977 and before, can take billions from younger generations.¹ The practice of wildly disproportionate taxation favoring those who were here earlier than others is a rather naked violation of the American tradition of fairness and intergenerational equity.

The exploitation of our young by the Boomers in our state is not only unquestioned, any criticism of the arrangement is considered political suicide by those in both parties.

California is perhaps the worst offender nationally in its unfunded pension and medical coverage benefits for public employees. It has joined the ubiquitous “defined benefit” format of current public pensions. California adds to the national unfunded liability of \$60 trillion discussed above with high additional unfunded liability for state workers, school district teachers and employees, and city and county personnel. The City of San Diego alone has an over \$2 billion unfunded public pension/medical obligation liability. Teachers, special district employees and even utility retirees have piled up substantial pension/medical obligation deficits for our children to pay. Some public employees are now able to retire at age 55 or younger at full salary — and some make substantially more than full salary upon retirement.

Regrettably, the California example of adult self-indulgence reaches beyond long-term debt deferral practices. The year 2010 was the state's fifth straight year of public child-investment contraction. The 2009–11 federal subsidies to states are not in prospect for 2011–12. Some recovery, evident in early 2011, is likely to reduce the projected \$20 billion deficit, but only marginally. Cuts are likely to hit the child safety net yet again, as they have since 2006. As noted in last

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year's message, the Legislature's “Suspense File” process shoves any bill costing public funds into a special category in the Senate and Assembly Appropriations Committees. The vast majority of them die without vote or accountability — as has now been the case since 2007.

Our manifestation of gene-rational self-indulgence has taken many forms, as updated below from last year's discouraging message:

❖ Child poverty is increasing and the public safety net is being withdrawn in a steady pattern of strangulation. One generation ago, the basic safety net of Temporary Aid to Needy Families (TANF) and Food Stamps approximated the federal poverty line in California; it has since fallen to less than 50% 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.

¹The purported basis for this inequity, to prevent the elderly on a fixed income from losing their homes as the value rises, is easily resolved by delaying taxation until the death of the owning couple; the pressure from increased value is easily accommodated by a small portion of the sale of a property that will have increased many fold in value.



- ❖ California has one of the lowest levels of participation in federal food stamps in the nation — as its state government gives those who need food help little priority — even when the funds to provide it are entirely federal.
- ❖ Child care assistance is in jeopardy for 2011–12, including especially for the many single parents who require such care in order to maintain employment.
- ❖ Despite the passage of federal health reform legislation in early 2010, almost one million California children lack basic health care coverage — while coverage is universally assured for the elderly (who cost seven times as much each). Indeed, the state General Fund was unable in 2010 to provide even the one-third state match for new child enrollment in Healthy Families, and has had to expropriate funds intended for other purposes, including the special fund approved by voters to help children ages 0–5.

- ❖ For families whose children remain 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.
- ❖ The new federal health care reform law will extend private insurance dependency coverage of children to age 26 (the median age of self-sufficiency). And California is among the first to create an “Exchange” under the new law — one that will give families the bargaining power to buy affordable coverage. It might help. And Massachusetts has proved it is possible.
- ❖ California’s foster children suffer alarming outcomes upon reaching adulthood. A large percentage of them do not obtain a high school diploma, and only about 3% obtain any post-high school degree. They are substantially unemployed, have very high arrest rates, and the largest group in our homeless shelters are not military veterans, but former foster youth. California’s dependency court judges assume parental jurisdiction of all of these children. In a democracy, we together are their parents — and we are neglectful.
- ❖ Our payments to family foster care providers — from which adoptions most often occur — stand at about 1/10th the amount per child paid to the commercial group homes who have skilled lobbyists at the Capitol. The amount paid to foster families is 35% below the enumerated out-of-pocket costs that federal law requires they be paid. And the number of foster children in the more desirable family foster care homes has gone from 15,000 to below 5,000 in the past eight years — as costs have increased and compensation has not. There can be little supply when taking on a child will require the sacrifice of your savings and pension — as has increasingly been the case in our state. We hope that 2011 will rectify that violation, as the Ninth Circuit has commanded in CAI’s *Wagner* case (discussed below).
- ❖ Another fiscal shortfall occurs as foster children age into adulthood at 18. While we all as individual parents provide about \$50,000 as a median amount for our children after age 18, the state provides less than 1/5th this amount, and it is skewed to a small number. The few former foster youth able to reach college might be able to access Cal Grants, the Guardian Scholar program, or the Transition Housing Placement Program that gives limited, temporary funds in a “top down”, social worker-administered application for a small number of youth. This scheme is well-intentioned, and it helps some — but these programs do not approach the help

we give our own children who are not parented by us through the state. Nor is the recent federal Fostering Connections Act implementation likely to seriously rectify this shortfall as it is likely to be implemented under California's AB 12 vehicle (discussed below).

- ❖ 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 now fall to 49th, with thousands more teacher lay-offs now in process. The state is also near the bottom of the nation in non-teacher support at its public schools: librarians, nurses and counselors.
- ❖ Higher education fees and tuition are at record levels as state officials, eschewing evil “tax increases”, make an exception by increasing higher education tuition (as well as increasing fees for child care and foster care licensure). General Fund spending on prisons used to be much less than higher education investment. Today the General Fund spending on correctional programs is \$10 billion — double the General Fund commitment to the once-famed UC and California State college systems. Apart from General Fund retraction, federal Pell grants have now fallen to a small fraction of annual tuition. College kids now graduate with unprecedented debt. The Cal Grant system has not kept pace with higher education costs for the students covered.
- ❖ Symptomatic of the overall malaise, public higher education capacity (especially classes offered) is being slashed. And a substantial percentage of public higher education loan amounts are now directed at “for profit” vocational schools that advertise heavily, do not disclose often dismal employment success of graduates, and leave their students with six figure debts and growing default rates against public accounts. The sacrifice here demanded of California's adults is far less than our parents' performance for us.

To increase revenues to address these deficiencies, the state can select from a relatively painless menu:

- ❖ tax corporations at a level typical of other states;
- ❖ eliminate corporate tax avoidance;
- ❖ tax alcohol at the level other states commonly assess;
- ❖ restore the longstanding 2% vehicle license fee improvidently reduced by former Governor Schwarzenegger, an action that caused California to lose \$5 billion per annum in revenues;
- ❖ examine closely the *nearly \$50 billion* in annual tax credits, deductions and exemptions that currently exist (which are not examined annually — or ever — and require a two-thirds vote to end);
- ❖ apply sales taxation to professional services;
- ❖ tax internet sales and allocate to states; and/or
- ❖ reform property taxation by assessing all property at actual value — perhaps reducing the 1% of value tax limit to ½ of 1% in the bargain.

Importantly, the 2001/2003 federal tax cuts gave California's wealthy class \$37 billion per year in additional income. Some

“Today the General Fund spending on correctional programs is \$10 billion — double the General Fund commitment to the once-famed UC and California State college systems.”

combination of the 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); while (e) allowing spending decisions to be made at the state level consistent with stated principles of federalism. While fiscal conservatives properly objected to the 90% income tax rates for the wealthy brackets applicable in the 1970s, current high rates are less than half those levels, and are further undermined by credits and exceptions that lead the net tax paid as a percentage of income to be less than that assessed the lower middle class. Meanwhile, major industries have used a burgeoning tax advice legal industry to avoid contribution and route income into or through foreign tax havens. The oil industry, in particular, which should pay an add-on fee for the external cost of unrenewable resource exhaustion

visited on the future, instead receives the opposite — tax subsidies to stimulate extraction.

The Republican philosophy has 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. Indeed, it appears from those of us observing liberal politics over the past thirty years that the inexorable extension of what is consistently advocated is fewer and fewer children with responsible parents, and more cared for by 10, 20, 30 or more social workers, each performing a narrow task — and for whom these children are unavoidably part of a transitory “caseload.” The personal responsibility theme 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 40% 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 — almost *five times* the family income of their contemporaries born to unwed mothers. 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, both parties appear to avoid discussing these cultural problems. The adult-centric media characterizes such subject matter as a politically incorrect insult to “single mothers” or women in general. Or perhaps is it subtle discrimination against homosexual adults or parents. Or perhaps it is racially biased because of the high incidence of paternal abandonment among African-Americans. It appears that the often similar categories of the children involved —

with their due share of females, homosexuals and minorities — do not count.

It appears that Republicans have largely surrendered their principles of personal responsibility. Instead of a partnership for children, with support for investment conditional on this list of defensible principles, they simply demand state contraction (except for the military and prisons). They dare not offend the elderly — the welfare state there is sacrosanct. Personal responsibility is not demanded — they will just remove the safety net for the kids. And people do not pay their own way, they steal from those who follow. 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 children” by both parties.

LOOKING BACK AT 2010

In response to California’s ongoing disinvestment in its children, we had our work cut out for us during 2010. As the rest of this Annual Report details, we spent the year litigating major impact cases and participating as *amicus curiae* in other important cases; sponsoring key pieces of legislation; advocating before state and



federal administrative officials; drafting and releasing momentous research reports; advocating before policymakers at every level of government; educating and training law students and attorneys to be effective child advocates, including providing three unique clinical opportunities for USD School of Law students; providing leadership to and facilitating collaboration with the nation's other leading child advocacy organizations; engaging at the local level to provide direct legal advocacy for homeless youth and educational advocacy for delinquent youth; and much more.

Our research, advocacy and leadership efforts continued to include a special focus on five aspects of child welfare commonly given short shrift: the stimulation of public visibility for the foster care system, whose children benefit from democratic accountability; advocating for prevention, including the reduction of 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; restoring the collapsing supply of family foster care providers as discussed above, including work with three of the state's leading foster parent associations, and litigation to compel compensatory payment (see discussion of the *Wagner* case below); ensuring reasonable court and attorney caseloads so quality decisions are made in juvenile court affecting the childhood of these children of the state (see discussion of the *E.T.* case below); and increased assistance and opportunities for foster children post-18, to give them a reasonable chance at self-sufficiency, including both the optimum implementation of the federal Fostering Connections Act and CAI's own TLC model (discussed below).

We had some victories, such as in *Wagner*, a federal lawsuit that has led to higher payments for California's family foster homes, and our efforts to raise

*“Keffeler did not
excuse agencies
serving as
representative payees
from their affirmative
fiduciary duties to
ensure that such
use best serves the
unique interests of
each child beneficiary
— a determination
that must be made
on a individualized,
case-by-case
basis following
a meaningful
examination of each
child's circumstances,
special needs, age,
etc.”*

awareness about the need to give our state's foster youth a meaningful opportunity to attain self-sufficiency and independence after leaving care. But there is so much more to do.

LOOKING AHEAD TO 2011

In its academic program, CAI will continue its core course in Child Rights and Remedies, and its three major clinics: dependency court, delinquency court, and policy (research and work with CAI staff counsel on litigation, legislation and rulemaking). The third edition of our textbook, *Child Rights and Remedies*, will be published by Clarity Press in 2011; the updated text will include a substantial new chapter on International and Future Child Rights. That extension is part of CAI's effort to coordinate with the Joan B. Kroc Institute for Peace & Justice (KIPJ) here at USD, and we expect that KIPJ graduate students will be enrolled in Child Rights and Remedies during 2011. We will also continue to pursue efforts to create a Masters of Law in Child Advocacy, bringing together courses from KIPJ, the School of Leadership and Education Sciences, the Hahn School of Nursing and Health Science, and other courses and clinics offered through the USD School of Law (including Margaret Dalton's special education course). And finally, we hope to develop the beginning of a Continuing Legal Education program that confers CLE credit on attorneys interested in juvenile law issues; this work will follow-up on the three-year Children's Justice Act contract CAI fulfilled from 2006–09, during which we developed and implemented an extensive training program for California attorneys new to Dependency Court practice.

In an expansion of our advocacy component, during 2011 CAI expects to



can be altered; ensuring medical coverage for all children (just as it is provided for seniors); stimulating K–12 education opportunity (and accountability) and in helping youth to finance meaningful higher education; and calling for more vigilant enforcement and oversight of federal programs impacting children and youth.

Other advocacy projects we will pursue in 2011 include efforts to bring our family foster home rate litigation (discussed below) to closure with the successful enforcement of the district court order, now affirmed by the Ninth Circuit; that order will not only rectify the underpayment of costs to family foster care providers, but will mandate an annual consumer necessities index annual adjustment so the historical atrophy of that compensation does not reoccur. And we also expect a Ninth Circuit opinion in our lawsuit challenging the caseloads of attorneys representing abused and neglected children in Sacramento County, we and will continue that litigation if the holding so allows. CAI has been helped by *pro bono* co-counsel Morrison & Foerster in the former case and by Winston & Strawn in the latter.

New litigation projects may include a challenge to rules adopted by the Department of Social Services (DSS) to implement SB 39 (Migden) (Chapter 468, Statutes of 2007). This statute was co-sponsored by CAI to provide increased disclosure of child deaths from abuse and neglect in California. CAI contends that the DSS rules do not implement the statute as intended and have allowed for substantial avoidance and concealment. CAI has been working with the DSS to formulate rules that comply with applicable intent but may have to litigate the matter to compel proper rule implementation. Morrison & Foerster attorneys have been assisting CAI in this work.

CAI may also bring test litigation challenging the seemingly automatic local government confiscation of federal and other benefits properly directed at named child beneficiaries, a practice openly taking place throughout the nation. Although *Washington State Department of Social and Health Services v. Keffeler* (2003) 537 U.S. 371 held that a foster care agency serving as a foster child's representative payee did not violate the Social Security Act's anti-attachment provision when using the child's benefits to reimburse itself for the cost of the child beneficiary's foster care placement, *Keffeler* did not excuse agencies serving as representative payees from their affirmative fiduciary duties to ensure that such use best serves the unique interests of each child beneficiary — a determination that must be made on a individualized, case-by-case basis following a meaningful examination of each child's circumstances, special needs, age, *etc.* Should federal legislation not succeed, CAI would be interested in narrowing the *Keffeler* decision to justifiable parameters.

CAI shall continue to work for presumptively public dependency court and foster care systems. While confidentiality and protective orders may sometimes be approved in the interests of involved

bring a Washington, D.C.-based attorney/advocate on staff to work on federal child-related issues. That work will include the release of several new national reports, advocacy before federal legislators and agency officials, and further collaboration with national organizations such as Voices for America's Children, First Star, the National Association of Counsel for Children, and the American Bar Association (ABA), the National Child Abuse Coalition, the National Foster Care Coalition, and the Children's Leadership Council. Specific issues to be addressed at the federal level include the adoption of an ABA Model Act on child representation in dependency court; strengthening the implementation of the Child Abuse Prevention and Treatment Act (CAPTA) regarding the provision of representation for dependent children and in guidance to states on their public disclosure policies regarding child abuse or neglect fatalities and near fatalities; reducing the confiscation of Social Security disability, survivor and other benefits for foster children, and requiring that such funds be held in reserve for the youth to use as they age out of foster care; appropriate implementation of the Fostering Connections to Success federal statute in a flexible manner, so the now dire outcomes of foster children as they become young adults

children, the current system of cloaking 77,000 California abused and neglected children behind secrecy does not serve them well in a democracy. CAI will work for court orders, rules and statutory change that strike an appropriate balance between legitimate confidentiality and public debate over children who are in the state's effective custody.

Our state legislative advocacy program will include sponsorship of several bills during 2011, including a measure to effectively reverse the gubernatorial veto of the measure protecting homeless youth from debt collection foreclosure of employment or housing (see discussion below); we are optimistic that the new Governor will sign this measure. We will also try again to clarify that under existing law, only the intentional act of an insured foster parent precludes coverage under the Foster Family Home and Small Family Home Insurance Fund — not *any* intentional act by *any* individual. And we hope to introduce four additional measures to assure presumptively public dependency court proceedings; create county child welfare task forces to streamline often cumbersome paperwork requirements on child protective service workers — impeding their presence in the field to effectively protect abused children; require notice to counsel of dependent children whenever a county or agency applies to act as their “representative payee”; and clarify that foster youth warrant priority and explicit inclusion in Proposition 63 transition age youth coverage.

These goals are regrettably limited, and reflect the difficult fiscal setting discussed at some length above. We shall also sponsor or support measures that stimulate effective Medi-Cal coverage of foster kids from 18 to 26 years of age and the restoration of what is called “dual jurisdiction” between delinquency and dependency courts; and we will be engaged in proposing refining legislation or DSS rulemaking to effectuate the goals of the federal Fostering Connections to Success Act and AB 12 (Beall) (Chapter 559, Statutes of 2010).

CAI will also monitor other legislation and rulemaking, including education, disability, and health measures. The last will include the development of the California health benefit exchange that will implement a major part of federal health reform, and will possibly enable substantial numbers of children to achieve coverage — particularly since federal law requires the private coverage those exchanges will facilitate to include all dependents (with no prior condition exclusion) up to age 26. And CAI will work hard on budgetary issues that underlie much of our investment in the disability prevention, safety net, health coverage, and educational opportunity of our children.

With regard to federal legislative priorities, we will be working on the re-introduction of three important measures that were not enacted during 2010 — the Foster Children Self-Support Act of 2010, the Foster Youth Financial Security Act of 2010, and the Foster Children Opportunity Act.

Other CAI core projects that will continue throughout 2011 include our Homeless Youth Outreach Project, which provides legal advocacy for San Diego County's homeless youth; our Educational Representative Program, which coordinates with the San Diego Juvenile Courts, the San Diego Office of the Public Defender, and the San Diego County Probation Department to improve the educational experience for children and youth involved in the juvenile court system; publication of our *Children's Legislative Report Card*, reviewing and grading the Legislature's efforts to improve the health and well-being of California's children and youth; and monitoring and analysis of state and federal regulatory proposals, for discussion in our *Children's Regulatory Law Reporter*.

CAI collaborative work will also continue, including convening the Children's Advocates Roundtable, a network of over 300 organizations interested in children's issues; 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. CAI will also continue to engage with the governance of First Star, Voices for America's Children, the Maternal and Health Access Foundation, and the National Association of Counsel for Children.

A NOTE OF THANKS

As always, we are grateful for the help of our friends and supporters, especially our CAI 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 the late 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.

We are painfully aware that we have lost both Sol and Helen Price. Their passing does not diminish our duty to represent their ideals for child representation — we now make up an important part of their legacy. And we have the difficult task of matching the many other elements of that legacy. All of us at CAI feel their presence, and what they would want us to do is our guiding lodestar.



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

ABOUT THE CHILDREN'S ADVOCACY INSTITUTE



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 is now California's premiere academic, research, and advocacy organization working to improve the lives of children and youth, with a special emphasis on improving the child protection and foster care systems and enhancing resources that are available to youth aging out of foster care and homeless youth. Through its offices in San Diego and Sacramento, and an affiliate office in Washington, D.C., CAI seeks to leverage change for children and youth through impact litigation, regulatory and legislative advocacy, and public education.

Active at the local, state, and federal levels, CAI's efforts are multi-faceted, comprehensively and successfully embracing all tools of public interest advocacy to improve the lives of children and youth. Such efforts include an academic program, educating and training law students and practicing attorneys to be effective child advocates; impact litigation and *amicus curiae* activity; research and public education; legislative and regulatory advocacy; leadership,

coordination and public awareness; engagement in targeted direct service activity; and the development of innovative solutions to better serve children and youth.

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

CAI's academic program is funded by USD and the first endowment established at the USD School of Law. In 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 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, *ex pres* awards, and tax-deductible contributions from individuals and organizations.

ACADEMIC PROGRAM

CAI administers a unique 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. In addition to its longstanding training of law students to become child advocates, CAI engages in other academic endeavors, such as the training of volunteers to serve as Educational Representatives for youth under the jurisdiction of the Juvenile Court, and trainings for attorneys new to Dependency Court practice, including training programs for the new Dependency Legal Group of San Diego (DLGSD) that since July 1, 2010 has provided representation to children and parents in San Diego County Dependency Court proceedings.

CHILD RIGHTS AND REMEDIES

Students must complete the three-unit course, **Child Rights and Remedies**, as a prerequisite to participation in the Child Advocacy Clinic. This course 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. In 2010 a record 43 students took Child Rights and Remedies, with a majority also participating in CAI's clinical programs, where they represented abused children in dependency court and/or accused youth in delinquency court, or participated in our policy advocacy work.

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 DLGSD, 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 2010, 29 law students participated in CAI's clinical programs:

- ❖ Eleven law students (Brady Bohlinger, Caroline Bolton, Breeanna Fujio, Anne Grossenburg, Rebecca Hagge, Daniel Kim, Grace Pineda, Matt Heim, Jaclyn Mraz, Brian Reed, and Jessica Springer) participated in CAI's Policy Clinic. Students worked on semester-long advocacy projects such as
  - researching and analyzing child abuse and neglect fatality information;
  - advocacy efforts to increase resources available to—and thus improving outcomes for—transition age foster youth;
  - reviewing California's zero tolerance policies for school discipline cases;
  - researching and analyzing how jurisdictions deal with sexually exploited minors;
  - researching state practices with regard to the interception and use of foster children's Social Security benefits;
  - drafting an amicus curiae brief to the California Court of Appeal in a pending dependency case; and
  - analyzing and responding to legal research requests from attorneys at DLGSD.
- ❖ Ten law students (Alexandra Byler, Lisa Cheng, Justine Elgas, Mary Elizabeth Grant, Catherine Hampton, Jace Kim, Kelly Phillipson, Nicole Smith, Megan Swezea, and Rebecca Weinrib) participated in CAI's Dependency Clinic. In addition to spending 16 hours each week assisting attorneys from DLGSD and the San Diego County Counsel's Office in the representation of parties in Dependency Court proceedings, these students attended weekly classroom sessions conducted by Professor Fellmeth and CAI staff attorneys.
- ❖ Eight law students (Stephen Britt, Betsy Couch, Breeanna Fujio, Melody Gillis, Anna Howard, Matthew Ivey, Brenden Shaw, and Patrick Winn) participated in CAI's Delinquency Clinic. In addition to spending 20 hours each week assisting attorneys from the San Diego Public Defender's Office in the representation of minors in Delinquency Court proceedings, these students attended weekly classroom sessions conducted by Professor Fellmeth and CAI staff attorneys.

JAMES A. D'ANGELO

OUTSTANDING CHILD ADVOCATE AWARD

In May 2010, CAI had the pleasure of awarding the James A. D'Angelo Outstanding Child Advocate Award to graduating

law students **Noah Aleshire, Phil Ciccarelli, Julia Davis, Mary Elizabeth Grant, Grace Pineda, and Elizabeth Rodriguez**, for their exceptional participation in CAI's Child Advocacy Clinic. These students participated in the policy, dependency and/or delinquency sections of the Child Advocacy Clinic over multiple semesters, advancing the rights and interests of children and youth. Their efforts 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.



"CAI, and Professor Fellmeth in particular, had a tremendous influence on both my time at USD Law and my career. Bob's guidance and example led me to my current position as a policy analyst for the Centers for Disease Control and Prevention in Atlanta, where I work on developing public health policies to prevent child injury and unintentional drug overdoses."

—**Noah Aleshire**

2010 Recipient of the James A. D'Angelo Outstanding Child Advocate Award



"Working with Elisa and Bob was both rewarding and eye opening. My experience working for CAI exposed me to the everyday fight on the ground by working side by side with the volunteers, lawyers, and social workers who dedicate themselves to helping children on a daily basis as well as the behind the scenes fight to change policy and legislation at the local, state, and federal level. The work the center does on behalf of children in San Diego, California, and the Nation is invaluable."

—**Phil Ciccarelli**

2010 Recipient of the James A. D'Angelo Outstanding Child Advocate Award



"I decided to go to USD Law School because I wanted to be a dependency lawyer and I knew the Children's Advocacy Institute was one of the best training programs in the country for this area of the law. Being involved with the Children's Advocacy Institute was one of my most rewarding experiences in law school. I am forever grateful for Professor Fellmeth's guidance and support. I know my experience with the Children's Advocacy Institute will have a positive influence on the rest of my career."

—**Julia Davis**

2010 Recipient of the James A. D'Angelo Outstanding Child Advocate Award



"My involvement with the Children's Advocacy Institute was the most rewarding and memorable part of my law school experience. Working under Bob Fellmeth helped me realize my passion for wanting to do my part to help our society and for that I am grateful. I appreciate everything my involvement with the Children's Advocacy Institute did for me, and even more, I appreciate everything all those involved do for our society."

—**Elizabeth Rodriguez**

2010 Recipient of the James A. D'Angelo Outstanding Child Advocate Award



"As part of CAI's delinquency clinic, I clerked for the San Diego Public Defender Juvenile Delinquency Division where I had the unique opportunity to appear in court as a law student, supervised by a Deputy Public Defender. I also had the pleasure of closely working with CAI's dedicated staff attorneys as part of the Policy Clinic. I researched existing nationwide laws pertaining to child prostitution and participated in a comprehensive work-group consisting of child advocates, district attorneys, and other experts in an effort to draft a law that ultimately resulted in a Los Angeles-based pilot project that treats child prostitutes as victims. CAI truly exposes law students to various child advocacy issues through practical experience. I am glad I was part of such an outstanding organization."

—**Grace Pineda**

2010 Recipient of the James A. D'Angelo Outstanding Child Advocate Award



"By participating in the Children's Advocacy Institute, I gained invaluable practical experience. I was provided with the opportunity to work with highly experienced attorneys specializing in children's advocacy and work. Their dedication and hard work, in addition to their passion to help the children on whose behalf they worked, inspired me. I gained invaluable skills in interviewing clients and looking beyond their words to uncover their needs. The roundtable every week with Professor Fellmeth, the CAI staff, and other program participants gave me a well rounded view of the problems and solutions involved in children's advocacy. My decision to participate with CAI was the best decision I made in law school and was the most rewarding. Professor Fellmeth, Elisa Weichel, and the other staff at CAI have my utmost gratitude."

—**Mary Elizabeth Grant**

2010 Recipient of the James A. D'Angelo Outstanding Child Advocate Award

JOEL & 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 2010 recipient of the Joel and Denise Golden Merit Award in Child Advocacy was **Brenden Shaw**, in recognition of his willingness to use her knowledge, skills, and compassion to better the lives of San Diego's foster children. Brenden's own words reflect the impact the experience was having on him:



"Participating in the [CAI] clinics has taught me a great deal about child advocacy, and has put me in a position to continue advocating for foster youth in the future. I believe directly representing foster youth has given me a foundation in child advocacy law that will allow me to advocate for children at the policy level...I believe through statutory reform, many issues that foster youth face can be addressed before they ever manifest in the life of a child."

—**Brenden Shaw**

2010 Recipient of the Joel and Denise Golden Merit Award in Child Advocacy

ADVOCACY RESEARCH & PUBLICATION

Legislative Advocacy

CALIFORNIA LEGISLATIVE

PRIORITIES

During 2010, CAI formally sponsored the following four bills:

- ❖ **SB 1279 (Pavley)** (Chapter 116, Statutes of 2010) created the Los Angeles County Juvenile Sex Trafficking Prevention and Protection Project, and allowing the state's largest county to replicate the Alameda County experiment and begin alternative civil approaches to rerouting these children—as new statutes in New York and Illinois are attempting.
- ❖ **SB 945 (Liu)** (Chapter 631, Statutes of 2010) gives youth who come into delinquency jurisdiction but who would also qualify as dependents (lacking fit parents) the opportunity to receive information about and access to services available to the latter group, particularly as they age out of care.
- ❖ **AB 2206 (Hill)** would have clarified that California's foster parent liability insurance fund excludes coverage for intentional acts of the insured foster parent—not categorically for any intentional act committed by any person. While intentional acts of the insured are often excluded from coverage for public policy reasons, a recent appellate court opinion misinterpreted the liability insurance fund statute (whose wording was written by CAI Executive Director Bob Fellmeth) to hold that an intentional act by *anyone* mooted coverage. After being passed out of the Assembly Human Services Committee on a 5–0 vote (with one member not voting), AB 2206 died without a public vote in the suspense file of the Assembly Appropriations Committee.
- ❖ **AB 2264 (De Leon)** would have precluded wage garnishment and credit foreclosure of homeless youth for certain ticket and fine liability, for offenses such as loitering. Homeless youth are particularly vulnerable to citation for these routine offenses, and when the corresponding fines go unpaid, jurisdictions turn the accounts over to collection agencies. The credit of those youth, clearly unable to pay, is then ruined—creating a barrier to any chance for self-sufficiency. Interestingly, collection agencies, aware of the uneconomic and counterproductive current practice, did not oppose the bill. Nevertheless,

Governor Schwarzenegger vetoed it, contending that it would unnecessarily limit the judicial discretion of homeless courts. Ironically, in our experience, homeless courts support measures like this that eliminate gratuitous obstacles to their provision of self-sufficiency opportunity to homeless youth.

CAI will reintroduce new versions of AB 2206 and AB 2264 in 2011.

CHILDREN'S LEGISLATIVE REPORT CARD

For the second year in a row, in 2010 CAI was unable to individually grade members of the Legislature for their performance during a legislative year. In reviewing the child-friendly bills introduced and passed by the legislature during 2010, it was impossible for CAI fairly to grade each member. While many bills had and have merit, both the number of them and their ambition were insufficient to warrant gradations between legislators. As the 2010 Report Card noted,

The performance of our California legislators in addressing the needs of our children over the last two years has been disappointing. In 2009, we were unable, for the first time, to grade members of the Legislature on their achievements for the next generation. Rather, each member received an "incomplete" for that year because legislators effectively reduced or rejected public child investment across a wide spectrum of meritorious need. Child-investment measures involving small expense clearly repaid with child-benefit and program savings over the next three or ten years, were not successful given the Legislature's budget deficit-driven twelve-month immediate-return horizon. Regrettably, the overall lack of commitment of adult officials to our children in 2009 reflected a pattern of desiccation and decline across almost the entire spectrum of government-sponsored efforts to address child need, with no effort to come up with creative alternatives.

As with 2009, we tried to grade members for 2010. As in 2009, we ran sample grades based on the meager list of child-helpful bills we tracked. But, like in 2009, we were unable, in good conscience, to assign grades that reflected a fair comparative

contribution to improving the lives of California's children. Such a measurement assumes some observable significant forward movement from the cumulative effort. The scarcity of grade-worthy, bellwether bills meant that missing a single vote had disproportionate effects on a grade. While sometimes members will intentionally not vote on a measure (which has the parliamentary effect of a negative vote), sometimes they miss a vote because they are legitimately and temporarily indisposed, and may well know the margin does not require their vote. This is especially true late in the session, when the votes come fast and furiously. In most times, this is statistically smoothed over by a large cluster of votes on a large number of ambitious child supportive bills. But, once more, not this year.

Hence, CAI again gave the Legislature as a whole a grade of "Incomplete." And since any democratic institution holds its controlling membership accountable for its final performance, each member properly received an "Incomplete." We hope to see more ambition and fortitude from our policymakers during 2011, but early indications are not encouraging.

FEDERAL LEGISLATIVE ADVOCACY

During 2010, CAI worked with members of Congress and other advocates on legislation aimed at better protecting the financial security of foster children and establishing financial mechanisms to facilitate their transition out of care. H.R. 6193, the **Foster Youth Financial Security Act**, would have prevented identity theft by requiring that all foster children have their credit reports reviewed and cleared prior to leaving care. H.R. 6192, the **Foster Children Self Support Act**, would have helped foster children with disabilities and those who have lost one or both of their parents, by requiring states to use the Social Security benefits of those children for their needs, not as a state revenue source. Introduced by Rep. Pete Stark (D-CA) and Rep. Jim Langevin (D-RI), these bills would have helped foster youth leave care with a meaningful opportunity of becoming successful adults. Although these important measures were not enacted during 2010, CAI expects that they will be

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re-introduced in 2011, and will continue its advocacy to encourage the introduction of these bills in the Senate as well. CAI will continue working with these and other members of Congress who are committed to improving outcomes for the nation's foster youth.

Also during 2010, CAI continued to urge federal legislators to strengthen the public disclosure, reporting and enforcement provisions of the federal **Child Abuse Prevention and Treatment Act (CAPTA)**. Among other things, CAPTA provides that in order to be eligible to receive CAPTA funds, states are required to adopt "provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality." This congressional mandate reflects the determination that information about these tragic incidents helps drive systemic reform where it is warranted, and enables the public to hold child welfare systems accountable. However, a 2008 CAI report, "*State Secrecy and Child Deaths in the U.S.*", revealed that although all states receive CAPTA funds, some states have no public disclosure policies at all, while other states have public disclosure policies that are permissive, conditional and/or overly restrictive — and thus not in compliance with CAPTA's spirit or intent. After analyzing, comparing and grading each state's policies, CAI was forced to give many states scores of "D" or "F".

During the 2010 reauthorization of CAPTA, CAI provided Congressional leaders with the findings of its 2008 report, and urged them to amend the CAPTA public disclosure requirements in four specific respects:

- 1) clarify that states are required to release information in cases of both child abuse/neglect fatalities *and* near fatalities (some states have policies only regarding fatalities);

- 2) clarify that public disclosure of information regarding such cases is mandatory, and that policies regarding such disclosure may not include discretionary or permissive language;

- 3) clarify that states may not impose restrictive conditions, exceptions or limitations on the release of this information; and

- 4) indicate exactly what types of information states are to disclose.

Although CAPTA was not so amended, the members of the Senate Committee on Health, Education, Labor and Pensions adopted committee report language acknowledging the need to address CAPTA's shortcomings on this topic. Specifically, the language states as follows:

The committee believes that the duty of child protective services, required in CAPTA Sec. 106(b)(2)(x), to provide for the mandatory public disclosure of information about a case of child abuse or neglect which has resulted in a child fatality or near fatality ensures improved accountability of protective services and can drive appropriate and effective systemic reform. However, the committee is aware that not all States are in compliance with these CAPTA requirements. The committee calls upon the Secretary of Health and Human Services to develop clear guidelines in the form of regulations instructing the States of the responsibilities under CAPTA to release public information in cases of child maltreatment fatalities and near fatalities, and to provide technical assistance to States in developing the appropriate procedures for full disclosure of information and findings in these cases.

Accordingly, CAI's 2011 efforts in this regard will turn to regulatory advocacy, urging the Secretary of Health and Human Services to comply with this legislative directive by providing clarification and technical assistance regarding states' compliance with CAPTA's public disclosure policy requirement.



frustrating the intent of the Legislature in enacting the statute, DSS' flawed implementation is impeding the public's ability to identify areas in the state's child welfare system where systemic reforms are warranted.

Also during 2010, CAI participated in the initial efforts to implement **AB 12 (Beall)** (Chapter 559, Statutes of 2009), the California Fostering Connections to Success Act. The enactment of AB 12 was a potentially significant step forward, as it could give many foster children an enhanced chance to attain self-sufficiency by allowing them to remain in foster care past the age of 18, as long as they are engaged in a specified activity aimed at preparing them for their transition to self-sufficiency. But there are problems that could undermine the promise of AB 12, and there are issues that require substantial additional work in order to ensure that it and other measures aimed at helping these youth actually effectuate the intended result. CAI's role in the implementation of AB 12 is focused on identifying and resolving collateral and important shortfalls not specifically addressed by AB 12. CAI's advocacy is aimed at ensuring that California's scheme (1) provides maximum flexibility and age appropriateness for the post-18 population, while (2) requiring the youth to be appropriately engaged in activities that will meaningfully prepare them to be independent and self-sufficient, thus allowing them to forego the negative outcomes currently being experienced by youth aging out of California's foster care system (for a related discussion, see below for information on CAI's efforts to improve outcomes for former foster youth).

FEDERAL

REGULATORY ADVOCACY

CAI's major areas of federal regulatory advocacy during 2010 involved DHHS' implementation of the Fostering Connections to Success and Improving Adoptions Act of 2008. The Act envisioned that the Secretary of Health and Human Services would adopt regulations to implement some of its provisions; for example, one of the Act's provisions refers to a new "supervised setting in which the individual is living independently, in accordance with such conditions as the Secretary shall establish in regulations." CAI urged DHHS to implement the Act in a way that affords age-appropriate living arrangements for post-18 youth while also meaningfully preparing them to be self-sufficient and independent. CAI also urged that DHHS consider authorizing a living arrangement where an accountable, trusted adult is responsible for dispersing foster care

Regulatory Advocacy

CALIFORNIA

REGULATORY ADVOCACY

During 2010, CAI engaged state agency officials on a variety of significant child-related matters. In addition to monitoring and commenting on pending agency rulemaking proposals, CAI continued to pursue amendments to DSS regulations implementing **SB 39 (Migden)** (Chapter 468, Statutes of 2007), a CAI-sponsored bill intended to improve California's public disclosure policies regarding child abuse or neglect fatalities. CAI urged DSS to modify regulatory language that is inconsistent with SB 39. In addition to

maintenance funds to the foster youth and supervising that youth's living setting (as opposed to requiring these youth to continue to be subjected to direct state or county agency oversight).

Although the Secretary has not yet adopted regulations implementing the Act, it did issue a Program Instruction on July 9, 2010; in addition to providing some guidance to states with regard to the Act's implementation, the Program Instruction also provides flexibility with regard to the types of acceptable living arrangements for post-18 foster youth as CAI had requested:

"[A] title IV-E agency has the discretion to develop a range of supervised independent living settings which can be reasonably interpreted as consistent with the law, including whether or not such settings need to be licensed and any safety protocols that may be needed. For example, a title IV-E agency may determine that when paired with a supervising agency or supervising worker, host homes, college dormitories, shared housing, semi-supervised apartments, supervised apartments or another housing arrangement meet the supervised setting requirement. We encourage the title IV-E agency to be innovative in determining the best living arrangements that could meet an older child's needs for supervision and support as he/she moves toward independence. Further, we note that a title IV-E agency should continue to work with youth who are in supervised independent living settings to form permanent connections with caring adults. This could take the form of determining whether guardianship, adoption or living with other caring adults remains appropriate options for an older youth, and if so, helping the youth to work towards those outcomes.

Impact **Litigation**

MAJOR CASES

CAI scored a major victory in *California Foster Parents' Association v. Wagner*, obtaining a federal district court judgment

holding that compensation paid to California's family foster care providers was substantially below out-of-pocket costs and not in compliance with federal law. The result of the state's low foster home compensation has been the drop in family foster care providers from over 15,000 in 2002 to under 5,000 currently—an unsurprising result given foster parents' need to dip into savings and pensions to care for these children. An increase in compensation will allow the supply to increase, which will mean more adoptions, better outcomes, and actually less direct cost because many children not in families are in the major alternative of institutional group homes that cost almost

ten times as much per month per child as do the family placements. In 2010, the district court's judgment was upheld by the Ninth Circuit Court of Appeals, and CAI expects to see the judgment enforced with 25 % to 40% increases effectuated during early 2011.

Turning to its other major case, CAI expects to argue *E.T. v. George* before the Ninth Circuit in early 2011. This case seeks to clarify the clear right of dependency children to attorney guardians ad litem. In dependency proceedings, the Juvenile Court is deciding the future of children every bit as much as it is in delinquency proceedings, where the leading *In Re Gault* case has long required counsel for children. On the dependency side the children have done nothing wrong—but will ultimately have every detail of their lives decided by the state, in many cases for the full 18 years of childhood. Accordingly, the case for counsel in such a judicial process is arguably a *fortiori*. The case also challenges the unconscionable caseloads in Sacramento of courts (1,000 children per court "parent") and of counsel (380 children per attorney).

The district court regrettably held that these issues are subject to exclusive state court jurisdiction and invoked the doctrine of "abstention" to walk away from the case. While an individual dependency case is appropriately subject to such abstention because the state courts are the judicial forum for such proceedings, and should be bypassed for contemporaneous, conflicting proceedings in federal court,

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compliance with
federal law."***



E.T. is much different. It is not a challenge to any particular state court case involving any particular child, but a class action contesting the constitutionality and federal statutory compliance of budget decisions. Those decisions happen to be made by the Administrative Office of the Courts controlled by the State Supreme Court (as a budgetary, administrative decision). The abstention here on appeal to the Ninth Circuit would mean that the only remedy would be the state court system, which is hardly in a position to reverse an administrative decision made by the California Supreme Court. Hence, the district court decision effectively elevates the state judiciary above federal law and constitutional limitation. It is an effective abdication of the core federal judicial function.

AMICUS CURIAE

ACTIVITY

During 2010, CAI also filed three *amicus curiae* briefs:

- ❖ CAI's most significant *amicus curiae* brief during 2010 was to the U.S. Supreme Court in the case of *Camreta v. Greene*, which presented the problem of a social worker seeking to question a teen in an office at the youth's high school about suspected

“In early 2011, the National Law Journal selected CAI’s amicus brief to the U.S. Supreme Court in Camreta v. Greene as the nation’s ‘Brief of the Week.’”

sexual abuse. The Ninth Circuit’s opinion held that such interviews were “seizures” and could not occur without either parental consent or a court order equivalent to a probable cause search warrant. Unfortunately, the majority of sexual abuses are committed by those performing a parental function, with the non-offending parent often regrettably assuming a protective

posture. And the probable cause predicate alternative requires a level of “reliability” in the information that the interview with the child is sometimes required to produce — creating a catch-22 blockage to needed inquiry. In an *amicus* brief filed in December 2010, CAI argued that even though such an inquiry must have basis, that standard should be “reasonable suspicion” not “probable cause.” The difference is important and appropriate where the inquiry is civil and focused on child protection. In early 2011, the National Law Journal selected CAI’s *amicus* brief to the U.S. Supreme Court in *Camreta v. Greene* as the nation’s “Brief of the Week.” The Supreme Court held oral argument on this matter on March 1, 2011.

- ❖ In November 2010, CAI filed an *amicus curiae* brief in *In Re M.C.*, an interesting case considering whether a child, born during the legal marriage of two women but conceived as the result of a premarital relationship between one of the women and a man, may have three presumed parents, one of whom is the child’s biological mother, one of whom is the child’s presumed mother because she and the child’s biological mother were married when the child was born, and one of whom is the child’s presumed father because he promptly came forward and demonstrated his commitment to his parental responsibilities, to the extent the biological mother and circumstances allowed. CAI explored the law and advocated for a formulation that allows liberal conferral of parental status on multiple parents, with the best interests of the child the lodestar.
- ❖ In October 2010, CAI joined the Public Justice Center, Legal Aid Bureau, Randall & Sonnier, and Susan Leviton as *amici curiae* in *Myers v. Baltimore County Department of Social Services*, a case challenging the Baltimore agency’s interception and use of a foster youth’s survivor benefits without ever notifying the youth that such funds were available and were being received on his behalf by the Agency. The lawsuit, and now the appeal, argue that the Agency’s actions are unconstitutional, violate the Social Security Act, and violate the agency’s inherent fiduciary duty to serve the best interests of foster children. The brief of *amici curiae* argues that the Agency’s actions diminish each affected child’s chances of developing into a healthy and responsible adult, and urges the Court to require that the Agency use such benefits in a manner that directly furthers the child’s individually-determined best interests. Alternatively, amici argue that if the Agency is allowed to retain a foster child’s survivor benefits as reimbursement for services rendered,

the Agency must not do so in any particular case without first providing direct notice to the child and presenting a detailed accounting of the agency’s particular expenditures on behalf of the child in question.

As an aside, CAI also pursued its own case in San Diego Juvenile Court consistent with the position of *Myers* in the *amicus* above. In the San Diego case, the County had been receiving Social Security benefits belonging to two brothers due to their father’s status as disabled and then diseased; the County used such funds to reimburse itself for the cost of the boys’ care. CAI’s Kriste Draper successfully argued for and obtained a court order mandating that the sums expropriated by the County be deposited in an account for the youth in trust, to be made available to them under court supervision upon reaching 18 years of age. Although the County’s “takings” policy is typical of other jurisdictions, it chose not to appeal the order commanding its transfer of these monies to the legally directed beneficiaries.



Special **Projects**

IMPROVING OUTCOMES FOR TRANSITIONING FOSTER YOUTH

One of CAI's primary objectives is to provide more opportunities and assistance for youth aging out of foster care, in order to help them achieve better outcomes, attain self-sufficiency, and become healthy and independent adults. CAI's Transition Life Coach (TLC) plan replicates for foster youth what competent private parents do for their young adult children — provide emotional support, guidance, encouragement, stability and financial assistance during the difficult transitional years of 18–26. Looking at just the financial assistance alone, research shows that the average private parents dole out approximately \$50,000 to their adult children during their transition to self-sufficiency. Foster youth typically get no more than \$5,000 in financial assistance for a year or two after exiting care — and many get nothing at all.

Under the TLC plan, a collaborative process involving the foster youth, his/her attorney and social worker, the juvenile court, and a court-appointed coach would result in the development of a transition plan for each youth, based on each youth's specific goals, interests, needs and resources. Ideally the coach would be an adult already in the youth's life, somebody the youth already respects and trusts; if such a person is not available, the TLC plan would identify an appropriate coach for each youth. The coach would serve as a stable presence in the youth's life, mentoring her as appropriate, encouraging her to stick to her transition plan and guiding her toward appropriate resources

“The report documented a general avoidance of the state’s own children by its officials in allocating the substantial Prop. 63 monies. CAI believes that during 2011, San Diego County will sets itself apart from other counties by committing a significant amount of Prop. 63 funds to address the unique needs of transition age foster youth.”

or opportunities to help her do so, just as a responsible parent would do. The TLC plan would also make some funding available to help the youth progress toward the goals of her transition plan, just as a responsible parent would do.

CAI believes that one funding source for the TLC plan should be the Mental Health Services Act (Prop. 63), which collects \$1.4 billion annually. The Act makes prevention of mental illness a high priority, and specifically references the transition to adulthood (from age 16–25) as an area 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, etc., and status as the state's own legal children.

Although disappointed that state officials will not allocate a small percentage of Prop. 63 funds to fulfill this seminal obligation to these children, CAI started to advocate for the local San Diego County Prop. 63 board to fund a pilot project in San Diego County. CAI have obtained the written endorsement of the previous and current presiding judges of juvenile court (the Hon. Susan Huguenor and the Hon. Cynthia Bashant, respectively)—who would be the key arrangers of this help. CAI obtained endorsements from leaders throughout the community: former Sheriff Bill Kolender (formerly on the statewide Prop. 63 Commission), former Mayor Susan Golding (now executive director of the San Diego Child Abuse Prevention Foundation), District Attorney Bonnie Dumanis, and others.

During 2010, CAI also released a major report researched and authored by CAI's Melanie Delgado. *Proposition 63: Is the Mental Health Services Act Reaching California's Transition Age Foster Youth?* reviewed the first wave of Prop. 63 spending to see how much was being allocated for

emancipating foster youth county by county — and included commentary, description and grades. The report documented a general avoidance of the state’s own children by its officials in allocating the substantial Prop. 63 monies.

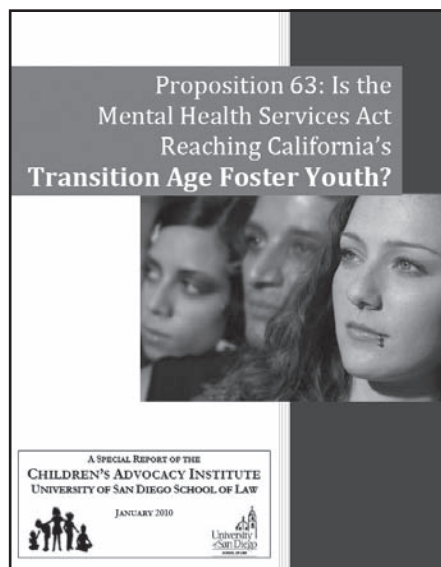
On a bright side, CAI believes that during 2011, San Diego County will set itself apart from other counties by committing a significant amount of Prop. 63 funds to address the unique needs of transition age foster youth. CAI will continue its advocacy efforts to encourage other counties to follow San Diego’s lead in this regard.

In a related effort, CAI devoted significant time in 2010 toward researching and drafting an upcoming report entitled *The Fleeing of Foster Children*, which will discuss various ways in which state and federal laws and policies prevent foster youth from attaining financial self-sufficiency after aging out of care. For example, the report will describe how funds belonging to foster children, and which are to be used in each child’s best interest, are instead automatically diverted by local governments to compensate themselves for the cost of foster care. The report will also document how foster children commonly become victims of identity theft, and offer suggestions for reducing the opportunities for that kind of victimization. CAI expects to release the report at a Congressional briefing at the U.S. Capitol in early 2011.

CAI is grateful to The California Wellness Foundation and Price Charities for funding a portion of CAI’s work on behalf of transition age foster youth.

COMBATING THE SEXUAL EXPLOITATION OF MINORS

In March 2010, CAI sponsored a meeting of interested parties to explore our interest in combating the sexual exploitation of minors, and in ensuring that youth who are the victims of such exploitation are directed into appropriate counseling and treatment. Current abuse has been enlarged by effective immigration of



*“Children arrested
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exchange sex
for money.”*

helpless girls into nations with a ready market — including especially the United States. Children arrested for “prostitution” are commonly treated not as victims, but as criminals — as if a 15-year-old who cannot even enter into an enforceable contract should be criminally liable for an agreement to exchange sex for money. But it is the norm. CAI’s meeting brought together state experts including several participants from Alameda County’s promising pilot project to decriminalize child prostitution, as well as Robin Sax, former Los Angeles County Deputy District Attorney; Peter Samuelson, First Star President; Prof. Miranda McGowan of the USD School of

Law; Amy Alley, Communications Director/Deputy Legislative Director for Assemblymember Sandre Swanson; and other experts. The meeting produced a number of conclusions, including the clear need for California to join the 49 other states that routinely allow “dual jurisdiction” of a child between delinquency and dependency courts. Our state uniquely requires courts to choose one or the other in most counties — meaning that a foster child arrested for “prostitution” loses her juvenile court parent and is wholly transferred over to delinquency court and the more punitive offices of juvenile hall. Regrettably, in addition to immigrants, the other major exploited population for sex trafficking consists of children in foster care — where pimps obtain access without the kind of protection parents often provide. Reinstating dual jurisdiction in California, which will provide an opportunity to better address the needs of sexually exploited minors, will be a major legislative goal for CAI in 2011–13.



“CAI’s research to date indicates that several states have significantly improved their public disclosure policies since the 2008 release of CAI’s initial report.”

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 due to 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.

An April 2008 report released jointly by CAI and First Star—*“State Secrecy and Child Deaths in the U.S.”*—revealed that few state public disclosure policies adequately further CAPTA’s legislative intent with regard to these gravest cases of abuse and neglect. Information about these tragic incidents—information that helps drive systemic reform where warranted, and enables the public to hold child welfare systems accountable—is withheld by many jurisdictions. Specifically, 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. The report found that 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.

The report generated a tremendous amount of media attention, which in turn sparked discussions in many states regarding their policies and at the federal level regarding CAPTA itself, and during 2010, CAI continued to engage in several activities to follow up on the momentum generated by the report. At the federal level, CAI advocated for amendments to the CAPTA statute, which is currently vague and leaves too much room for interpretation by states, to help clarify and strengthen disclosure requirements so states know how to comply with the intent of the legislation (for more information, see Federal Legislative Advocacy, *supra*). At the state level, CAI assisted advocates and officials in several states who were pursuing amendments to state policies and laws that would increase transparency and promote more effective reporting and reform in this area. CAI is currently researching and drafting the 2nd edition of this report, which is expected to be published in early 2012; CAI’s research to date indicates that several states have significantly improved their public disclosure policies since the 2008 release of CAI’s initial report.

A CHILD'S RIGHT TO COUNSEL

During 2010, CAI engaged in several activities aimed at ensuring that abused and neglected children in the foster care system receive client-directed representation by trained, competent attorneys handling manageable caseloads. For example, CAI continued its advocacy in support of the American Bar Association's proposed Model Act Governing the Representation of Children in Abuse, Neglect and Dependency Proceedings, urging that a comprehensive model law regarding child representation during dependency court proceedings would have the following features:

- ❖ It broadly defines "proceeding" to include all stages and does not allow the avoidance of representation at point of adoption, in cases of voluntary placement, or in appellate proceedings.
- ❖ It separately defines and elucidates the role of a "court appointed adviser".
- ❖ It specifies that children are parties to dependency court proceedings.
- ❖ It provides for timely appointment of counsel, for conflict management, and for proper qualification.
- ❖ It applies the rules of professional conduct to counsel, and provides for client confidentiality and work-product protection.
- ❖ It requires counsel to meet with the child prior to each hearing and to visit the child in placement, and it outlines the other obligations that attend representation.
- ❖ It properly gives weight to the child's preferences and instructions, with exceptions properly drawn and based on diminished capacity.
- ❖ It allows for the appointment of a guardian ad litem in the event representation of the client's wishes is not feasible or where the child is incapable of directing representation.
- ❖ It includes the prescription that all court hearings include the presence of the child (or determine why not).

CAI will continue its advocacy in support of the ABA Model Act in 2011.

Also in 2010, CAI continued to follow up on its 2009 release—in conjunction with First Star—of *A Child's Right to Counsel—A National Report Card on Legal Representation for Abused & Neglected Children (2nd Ed.)*. This national report, which was released at a press conference held in the U.S. Capitol, graded 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. The report found that most states do not adequately protect the rights of abused and neglected children, leaving them exposed to the vagaries of the juvenile court system without adequate legal representation. To ensure that children are properly represented in these proceedings, CAI continues to advocate for:

- ❖ an amendment to the federal Child Abuse Prevention and Treatment Act (CAPTA) requiring that all abused and neglected foster children receive quality client-directed representation in dependency proceedings;
- ❖ passage by the American Bar Association of a Model Act that would serve as a prototype for states to establish uniform standards for representing children in dependency cases (discussed *supra*);
- ❖ implementation of a loan forgiveness program for child advocate attorneys, since compensation in this field of practice is prohibitively low;
- ❖ adoption of caseload limits of 100 clients so attorneys can focus enough attention on each case; and
- ❖ support to ensure that abused and neglected children receive quality representation in all court proceedings that determine their futures.

CAI and First Star plan on releasing the 3rd Edition of *A Child's Right to Counsel* in late 2011 or early 2012.

HOMELESS YOUTH OUTREACH PROJECT

During 2010, CAI's Homeless Youth Outreach Project (HYOP) continued to provide homeless children and youth with legal services and related assistance. Under the direction of CAI Staff Attorney Kriste Draper, HYOP operates weekly clinics that provide homeless youth from throughout San Diego County with the opportunity to discuss their legal issues with an attorney. CAI's 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.



CAI is grateful to Sony Electronics, Campland by the Bay, the San Diego County Bar Foundation, and the Simon-Strauss Foundation for supporting CAI's Homeless Youth Outreach Project.

EDUCATIONAL REPRESENTATIVE PROGRAM

During 2010, CAI staff and volunteers continued to serve as Educational Representatives for troubled youth currently under the jurisdiction of the Delinquency Court. Under appointment by the San Diego County Juvenile Court, an Educational Representative assumes the educational decisionmaking rights for a youth and represents the youth in all matters dealing with the provision of the child's free, appropriate public education, such as the stability and appropriateness 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; and school disciplinary matters, among other things.

PRICE CHILD HEALTH AND WELFARE JOURNALISM AWARDS

In 2010, CAI administered the 19th annual Price Child Health and Welfare Journalism Awards. These awards are presented 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. CAI was pleased to present the 2010 Price Child Health and Welfare Journalism Awards to the following:

First Place, Daily Newspapers (Tie):

- ❖ *The Sacramento Bee's* investigative series on Sacramento County's child welfare system by Marjie Lundstrom; and
- ❖ *The Los Angeles Times* for the "Innocents Betrayed" series by Garrett Therolf, Kim Christensen and Hector Becerra.

First Place, Weekly Newspapers:

- ❖ *The East Bay Express* for "Rethinking Juvenile Justice" by Sam Levin; "A Safe Place for Troubled Teens" by Laurie Udesky; and "A Father's Quest" by Erin Gilmore.

First Place, Electronic Media:

- ❖ Daniel Heimpel for www.FosteringMediaConnections.org.

CAI gratefully acknowledges the dedication of the members of the selection committee who review the numerous submissions received by CAI each year: 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.; and Dr. Robert Valdez, Ph.D.



2010 Price Child Health and Welfare Journalism Luncheon. Pictured (l-r): Laurie Udesky, Marjie Lundstrom, Dr. Alan Shumacher (CAI Council for Children); Daniel Heimpel; Sam Levin; Hector Becerra; Dr. Gary Richwald (CAI Council for Children); and Garrett Therolf.

Leadership, Outreach and Collaboration

“CAI significantly increased its work at the national level — aware that children in other states face similar disinvestment, and that ideas and resources from outside the state may be needed for children here.”

EXPANDED NATIONAL ADVOCACY AND COLLABORATION

During 2010, CAI significantly increased its work at the national level — aware that children in other states face similar disinvestment, and that ideas and resources from outside the state may be needed for children here. CAI’s 2010 activities at the national level included the following:

- ❖ CAI worked on media relations to stimulate public coverage of child issues, and increased our involvement with the National Association of Counsel for Children (currently chaired by CAI Executive Director Bob Fellmeth), Voices for America’s Children, First Star, the ABA, and other national organizations.
- ❖ During 2010, CAI contracted with Amy Harfeld, a Washington, D.C.-based attorney and advocate, to implement CAI’s policy agenda at the federal level, including representing CAI before federal legislators, agency officials and other policymakers, collaborating with national child advocacy organizations on projects of mutual interest, and promoting CAI’s agenda in the media. *CAI is extremely grateful to Voices for America’s Children for generously providing office space for Amy.*



- ❖ In June 2010, CAI co-chaired the annual Forum of Voices for America’s Children in Berkeley.
- ❖ In November 2010, CAI sponsored the Western Regional Meeting of Voices for America’s Children members at USD.
- ❖ Throughout 2010, CAI conducted research for three national reports that are scheduled to be published in 2011 or early 2012; all three reports are joint projects of CAI and First Star. The first report, entitled *The Fleecing of Foster Children*, will discuss various ways in which state and federal laws and policies prevent foster youth from attaining financial self-sufficiency after aging out of care. For example, the report will describe how funds belonging to foster children, and which are to be used in each child’s best interest, are instead rather automatically diverted by local governments to compensate themselves for the cost of foster care. Next, CAI and First Star will release the 2nd Edition of *State Secrecy and Child Deaths in the U.S.*, calling for more transparency in the reporting of deaths and near deaths of children from neglect and abuse. Third, CAI and First Star will release the 3rd Edition of *A Child’s Right to Counsel: A National Report Card on Legal Representation for Abused and Neglected Children*, calling for adequate legal representation for foster children. CAI and First Star have released reports on the latter two subjects in prior years; we believe that repeated studies put telling continuing attention on states failing to measure up to model laws. All of CAI’s national reports are released in conjunction with congressional briefings/press conferences at the U.S. Capitol, with substantial attendance and historically successful media coverage.



Founding members of the Youth Advisory Board include Melissa Lechner, Helena Kelly, and Mercediz Hand.

YOUTH ADVISORY BOARD

During 2010 CAI organized a Youth Advisory Board, consisting of several young adults who have personal experience with the foster care system, the juvenile justice system, homelessness, exploitation, and other issues of concern to CAI. In addition to advising CAI on our advocacy efforts, members of the Youth Advisory Board engage directly in their own advocacy by contributing to CAI's blog, sharing their personal stories, testifying before boards, commissions, legislative committees and other policymaking entities, participating in key meetings and events, etc.

CHILDREN'S ADVOCATES ROUNDTABLE

During 2010, CAI continued to coordinate and convene the monthly meetings of the Children's Advocates Roundtable 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 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 2010, CAI coordinated informative Roundtable discussions on a variety of topics, including the following:

- ❖ **Saving the Healthy Families Program —How Did They Do It?**, a panel discussion featuring James Gross, Nielsen, Merksamer, Parrinello, Mueller & Naylor LLP; Tim Morrison, 100% Campaign; and Suzie Shupe, California Children's Health Initiatives (March).

- ❖ Is the Mental Health Services Act Reaching California's Transition Age Foster Youth?, presented by Melanie Delgado, Children's Advocacy Institute (March).
- ❖ What Does the Federal Health Care Reform Victory Mean for California's Children and Families?, featuring Anthony Wright, Health Access; Teri Boughton, California HealthCare Foundation; and Myesha Jackson, Policy Consultant, Office of Senate President Pro Tem Darrell Steinberg (April).
- ❖ Redistricting, the Open Primary and Electoral Reform: How will these initiatives affect the California political landscape and therefore, access to resources for California's children?, featuring Steve Maviglio, Forza Communications, The Majority Report; Eric McGhee, Public Policy Institute of California; Rosalind Gold, National Association of Latino Elected Officials; and Trudy Schafer, League of Women Voters (May).
- ❖ State Budget Update, featuring Jean Ross, California Budget Project; Lenny Goldberg, California Tax Reform Association; Michael Scippa, Marin Institute; Todd Bland, Legislative Analyst's Office; and Jennifer Troia, Senate Budget and Fiscal Review Committee (June).
- ❖ What's Up for Children on the Federal Stage?, featuring Patricia Rucker, CTA; Cathy Senderling-McDonald, County Welfare Directors Association; Amy Harfeld, Children's Advocacy Institute; and Jessica Bartholow, Western Center on Law and Poverty (October).
- ❖ What Will the 2010 General Election Results Mean for California's Children? with Dan Morain, Sacramento Bee; and Jason Kinney, Cal Strategies (November).

CAI LAUNCHES NEW BLOG

In October 2010, CAI launched a new web log (blog) to contain postings regarding significant and timely issues impacting children and youth. Available at <http://caichildlaw.blogspot.com/>, the blog contains commentaries and personal reflections, videos, and information about various CAI projects. Blog entries posted during 2010 included The Status of Children in Today's Society; Life After AB 12; What is SB 39?; There is a Dual Jurisdiction Problem in California; and Myths about Homeless Youth.

LAWYERS FOR KIDS

Lawyers for Kids offers attorneys and law students the opportunity to use their talents and resources as pro bono 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.

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Create Blog

Views from the Children's Advocacy Institute

Monday, October 11, 2010

The Status of Children in Today's Society

The Greatest Generation survived a depression, fought a world war against three major military powers, rebuilt Europe, and profoundly invested in its children—creating an infrastructure of transportation, parks, water development, generously provided safety net for children, and public education that was the envy of the world. We, their children—today's Boomer adults—are not passing it down the line. Our legacy appears to be the disassembling of this historical commitment to children. California reflects some of the hallmarks of this self-indulgence—a jurisdiction whose adult generation has gained uncommon wealth and comfort from the investment of our predecessors. The manifestation of generational self-indulgence has taken many forms:

- Child poverty is increasing and the public safety net is being withdrawn in a serial pattern of strangulation. One generation ago, the basic safety net of Temporary Aid to Needy Families (TANF) and food stamps approximated the federal poverty line in California; it has since fallen to now approach 50% 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.

Screen capture of CAI's inaugural blog entry (see <http://caichildlaw.blogspot.com/>).

About the Authors

The Children's Advocacy Institute
The Children's Advocacy Institute, of the University of San Diego School of Law, works to improve the health, safety, and well being of children. In addition to its academic component, CAI engages in regulatory and legislative advocacy, impact litigation and public education

government makes policy and budget decisions that will impact them. Visit www.caichildlaw.org.

■ Many of the candidates running for office are threatening to eviscerate the meager TANF safety net remaining. They apparently do not understand (or care) that not only are the levels record lows, but parents

2010 DEVELOPMENT REPORT

CAI is grateful to the late 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, 2010, and December 31, 2010, and/or in response to CAI's 2010 holiday solicitation:

John Abbott and Vickie Bibro

Prof. Larry Alexander

Victor Allstead (*In Memory of Robert B. Fellmeth*)

Anzalone Associates

Maureen Arrigo

Prof. Carl A. Auerbauch

Benitez v. Gra Gar Settlement Fund (cy pres funds)

Lance Beizer

Lois Bonfert (*Donation to the Catherine and Julia Fund for the Protection of Children*)

Robert and Lucinda Brashares

Alan and Susan Brubaker (*In Memory of James A. D'Angelo*)

Dana Bunnett

Prof. Karen Burke

Cindy Caplan (*Donation to the Catherine and Julia Fund for the Protection of Children*)

Carlos Carriedo

Thomas and Prof. Virginia Carter

Prof. Laurence Claus

James Conran

Consumers First, Inc.

Paula Cordeiro

Prof. Lynne Dallas (*In Memory of Mildred Allen Peterson*)

Hon. Uley Norris Damiani

Prof. Joe Darby

Steven B. Davis

De Anza Campland LLC

The M. Chris Dickson Foundation

Joy D. Eden

Gary Edwards

Samantha Everett

Fidelity Charitable Gift Fund

David Fordstadt

Anne Fragasso

Hon. Ronald Frazier

Donna Freeman

Prof. C. Hugh Friedman

Sister Sally Furay (*Society of the Sacred Heart*)

Joel C. Golden

Dr. John M. Goldenring

Constance Goldin

GoodSearch

James and Patricia Goodwin (*In Memory of James A. D'Angelo*)

Law Offices of Susan Gorelick

Alex Green

Zo Guthrie

Amy Harfeld

John Hart

Dr. and Mrs. Birt Harvey

Judith and Edgar Hayden

Prof. Walter Heiser

Hervey Family Non-Endowment Fund

Adrienne Hirt and Jeffrey Rodman

Howard Hom (*Donation to the Catherine and Julia Fund for the Protection of Children*)

Dr. Louise Horvitz

Katherine Hughes

Theodore Hurwitz

iPod Nano Cases Settlement Fund (*cy pres funds*)

The James Irvine Foundation

Prof. Yale Kamisar

Hon. Leon Kaplan

Kazan, McClain, Abrams, Fernandez, Lyons, Greenwood,

Harley & Oberman Foundation Inc.

Josephine Kiernan

Prof. Adam Kolber

Kathryn Krug (*In Memory of James A. D'Angelo*)

Maria Larson

Prof. Herbert and Jane Lazerow

Joanne H. and John W. Leslie (*In Memory of James A. D'Angelo*)

Jim and Prof. Janet Madden

John Malugen

Debra Marley

Michael Marrinan

John P. Massucco

James and Gayle McKenna Trust

Barbara and Edwin Miller

Prof. John and Margo Minan

John and Betsy Myer (*In Memory of James A. D'Angelo*)

Maria Kara Nelson (*Donation to the Catherine and Julia Fund for the Protection of Children*)

NRG Wage and Hour Settlement Fund (*cy pres funds*)

Frances and James Peterson

Paul and Barbara Peterson

Peterson Charitable Foundation

Price Family Charitable Fund

Aycha and Charles Rae

Dr. Enid Rayner and Dr. John Mickey

Gary Redenbacher and Renae Fish

Dr. Gary Richwald and Sue Bayley

Kim Rohr

Hal Rosner

Tony and Gloria Samson

San Diego County Bar Foundation

The San Diego Foundation

Kathleen Self

William Seubert

Duane Shinnick

Shinnick & Ryan LLP

Alan E. Shumacher, MD and Harriet Shumacher

Leonard Simon and Candace Carroll

The Simon Strauss Foundation

Cynthia Simpson and David Pugh

Owen Smith

Prof. Thomas Smith

Prof. Allen Snyder and Lynne Lasry

Sony Electronics, Inc.

Adam Steigrod

Howard Susman

Sofia Thayer

Tamara Vail

Prof. Jorge and Lynda Vargas

Nancy Vaughan

Voices for America's Children

Howard Wayne

Jane Wells

Sonia Williams

Carrie Wilson

Maria Yeck

Marjorie and Ya-Ping Zhou

Kathryn Zunich

Anonymous Donors

While every effort has been made to ensure accuracy, we ask readers to notify us of any errors and apologize for any omissions.

—The Editors

CAI STAFF AND CONSULTANTS

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 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; 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 and as Legal Editor for Lexis Law Publishing.

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 Senior 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, formerly 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.

AMY

HARFELD National Policy Consultant, served under contract to CAI during 2010 to implement CAI's national advocacy agenda in Washington, D.C. In addition to representing CAI before federal legislators, agency officials, and other policymakers, Harfeld actively participates in several national coalitions and collaborations that further CAI's objectives and goals. She also performs research and analysis regarding CAI's legislative and regulatory policy advocacy and assists in the research and drafting of CAI special reports. Harfeld has been an advocate, educator, and public interest attorney for over 15 years. After obtaining her JD

from the City University of New York School of Law, she prosecuted child abuse and neglect cases for New York City's Children's Services, and then served for three years as the Executive Director of First Star, a national child welfare non-profit in Washington D.C.

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.

AARIKA

GUERRERO 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.



CAI COUNCIL FOR CHILDREN

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)

John M. Goldenring, M.D., M.P.H., J.D.

Medical Director, Riverside Physician's Network (San Diego)

Hon. Leon S. Kaplan (Ret.)

Retired Judge, Los Angeles Superior Court (Los Angeles)

James B. McKenna

President, Am Cal Realty, Inc. (Studio City)

Thomas A. Papageorge, J.D.

Head, Consumer Protection Unit, San Diego District Attorney's Office (San Diego)

Gloria Perez Samson

Retired school administrator (Chula Vista)

Alan E. Shumacher, M.D., F.A.A.P.

Retired neonatologist; Past President of the Medical Board of California; President, Federation of State Medical Boards of the United States (San Diego)

Owen Smith

Past President, Anzalone & Associates (Sylmar)

Emeritus Members

Birt Harvey, M.D.

Professor of Pediatrics Emeritus, Stanford University (Palo Alto)

Paul A. Peterson, J.D.

of Counsel to Peterson and Price, Lawyers (San Diego)

Blair L. Sadler, J.D.

Past President and Chief Executive Officer, Children's Hospital and Health Center (San Diego)



CAI Council for Children. Pictured (l-r): Tom Papageorge; Jim McKenna; Dr. Alan Shumacher; Gary Redenbacher; Prof. Bob Fellmeth (CAI Executive Director); Gloria Perez Samson; Dr. Gary Richwald; Owen Smith; and Hon. Leon Kaplan.
Not pictured: Dr. Robert Black; Louise Horvitz; and Dr. John Goldenring.



HELP US HELP KIDS!

We greatly appreciate your continued support of CAI's work. Here are a few different ideas for how you can help us help kids:

- ❖ Make a tax-deductible donation to CAI using the attached envelope or by visiting our website at www.caichildlaw.org/support-cai.htm.
- ❖ Make the Children's Advocacy Institute your charity of choice when using www.goodsearch.com to conduct Internet searches or www.goodshop.com when shopping online. GoodSearch is a Yahoo-powered search engine that donates about a penny per search to CAI each time you use it to search the Internet. GoodShop is an online shopping mall which donates up to 30% of each purchase to CAI. Hundreds of vendors — stores, hotels, airlines, and other goods and service providers — are part of GoodShop, and every time you place an order, part of your purchase price will go directly to CAI!
- ❖ Volunteer to serve as an Educational Representative for a youth under the jurisdiction of San Diego County's Delinquency Court.
- ❖ For attorneys involved in class actions resulting in a *cy pres* distribution fund, identify CAI as a potential recipient of those funds (Code of Civil Procedure section 384 lists "child advocacy programs" as eligible recipients of *cy pres* distributions).
- ❖ Join Lawyers for Kids, which gives attorneys, law students, and others in the legal community the opportunity to use their talents and resources as advocates to promote the health, safety, and well-being of children; assist CAI's policy advocacy program; and work with CAI staff on impact litigation or by offering expertise in drafting *amicus curiae* briefs.
- ❖ Subscribe to receive E-NewsNotes, periodic emails from CAI about important legislative or regulatory proposals, significant litigation, new reports and publications, and other important events that impact the health and well-being of California's children.
- ❖ Participate in the monthly meetings of the Children's Advocates' Roundtable and/or follow the Roundtable activities on Facebook.
- ❖ Purchase a Kids' Plate, a special license plate featuring one of four special symbols: a star ★, a hand 🖐️, a plus sign +, or a heart ♥. Proceeds support local and statewide programs to prevent child injury and abuse, as well as childcare health and safety programs.

For information on all of these opportunities, please visit CAI's website at www.caichildlaw.org, call us at (619) 260-4806, or email us at info@caichildlaw.org.



