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## 2011 Annual Report

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

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A young child stands in profile on a grassy hill, holding a small, glowing orb in their outstretched hand. The child is wearing a blue patterned shirt and grey pants. The background is a soft, hazy sunset with warm orange and pink tones. The text "Children's Advocacy Institute" is overlaid in a large, bold, yellow font with a black outline, positioned in the lower right quadrant of the image.

# **Children's Advocacy Institute**

**2011 ANNUAL REPORT**

This annual report covers the activities of the Children's Advocacy Institute between January 1, 2011 and December 31, 2011.

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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# Table of Contents

<b>2</b>	<b>Executive Director's Message</b>	<b>27</b>	<i>The Fleecing of Foster Children</i>
<b>14</b>	<b>About the Children's Advocacy Institute</b>	<b>30</b>	The Transition Life Coach
<b>15</b>	<b>Academic Program</b>	<b>31</b>	Implementation of AB 12
<b>15</b>	Child Rights and Remedies	<b>33</b>	Public Disclosure of Child Abuse Deaths and Near Deaths
<b>15</b>	Child Advocacy Clinic	<b>33</b>	National Report Card: State Secrecy and Child Deaths
<b>17</b>	James A. D'Angelo Outstanding Child Advocate Award	<b>33</b>	Federal Implementation of CAPTA Public Disclosure Guidelines
<b>18</b>	Joel and Denise Golden Merit Award in Child Advocacy	<b>34</b>	A Child's Right to Counsel
		<b>34</b>	ABA Model Act
<b>19</b>	<b>Advocacy, Research and Leadership</b>	<b>34</b>	National Report Card: <i>A Child's Right to Counsel</i>
<b>19</b>	Legislative Advocacy	<b>34</b>	Counsel for Children in Family Court Proceedings
<b>19</b>	California Legislative Priorities	<b>35</b>	Dependency Counsel Training Program
<b>19</b>	<i>Children's Legislative Report Card</i>	<b>35</b>	Homeless Youth Outreach Project
<b>20</b>	Federal Legislative Advocacy	<b>36</b>	Educational Representative Program
		<b>36</b>	Price Child Health and Welfare Journalism Awards
<b>22</b>	Regulatory Advocacy	<b>36</b>	<b>Leadership, Outreach and Collaboration</b>
<b>22</b>	California Regulatory Advocacy	<b>36</b>	National Advocacy and Collaboration
<b>22</b>	Federal Regulatory Advocacy	<b>37</b>	Youth Advisory Board
<b>23</b>	Impact Litigation	<b>37</b>	Children's Advocates Roundtable
<b>23</b>	Family Foster Home Rate Litigation	<b>38</b>	CAI Blog Activity
<b>24</b>	Minor's Dependency Counsel/Caseload Litigation	<b>39</b>	Lawyers for Kids
<b>25</b>	SB 39 Enforcement	<b>39</b>	<b>Looking Ahead to 2012</b>
<b>26</b>	<i>Amicus Curiae</i> Activity	<b>42</b>	<b>2011 Development Report</b>
		<b>46</b>	<b>CAI Staff</b>
<b>27</b>	Special Projects	<b>46</b>	<b>CAI Council for Children</b>
<b>27</b>	Improving Outcomes for Former Foster Youth	<b>48</b>	<b>Help Us Help Kids</b>



# Executive Director's Message



**Robert C. Fellmeth**

Executive Director, Children's Advocacy Institute  
Price Professor of Public Interest Law

## CAI THEMES FOR 2011 AND FORWARD: CHILD WELFARE, INVESTMENT AND INTERGENERATIONAL EQUITY

For the last several years, our annual report message to you has focused on intergenerational equity. Increasingly, CAI will call attention to the implications of what we are leaving behind for our children and grandchildren. That legacy has become a compelling issue for responsible child advocacy given its extraordinary dimensions, yet it continues to be ignored or deceptively framed by the Boomer generation now dominating both political parties. It raises arguably a set of central human ethical choices, and

attention to it is especially appropriate for those who are a part of academia—with a purported ethos of independence from favored interests.

Arguably, adult self-indulgence is now ascendant across a wide spectrum. Certainly a full range is provided by environmental depredations alone—from overpopulation to the “drill baby drill” call for permanent and irreparable consumption of a billion years of accumulated plant and animal life for the convenience of a few generations.

### **Federal Unfunded Liability for Future Generations**

Perhaps as stark an example is provided by our federal medical/pension systems. How do their benefits and obligations array between generations? As with many economic issues, esoteric terminology may define important differences. For example, there are two types of pension/medical plans: “defined contribution” and “defined benefit.” In the former, one deposits money in an account and then benefits are drawn on its value later. In the latter, one promises a level of benefits, and then provides them at a later time—whatever their cost and whatever the amount deposited by the beneficiaries to provide them. This last alternative has been increasingly exposed for its seminal flaw: the imposition of a potentially ruinous obligation on future generations to provide promised benefits.

One exposing factor has been the Sarbanes-Oxley Act and related accounting reforms requiring public funds to calculate “unfunded liability” for pension systems. Another has been former Comptroller General David Walker, who in 2008 projected an

**And it now appears that the overall unfunded liability projection has been overly conservative. More recent data suggest that the total projected debt may not be \$52 trillion, but over \$60 TRILLION.**

accumulating deficit, including the federal budget, but primarily for Medicare and Social Security, at over \$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 the overall unfunded liability projection has been overly conservative. More recent data suggest that the total projected debt may not be \$52 trillion, but over \$60 trillion. Those additions include a \$4 trillion increase in the national debt since the 2006 data, and the pharmacy and other benefits going to the elderly in Medicare. Moreover, this last source is especially likely to push the actual total well over \$60 trillion, since it comes from a source of irresistible growth with little to moderate it. The limits on what will be considered properly publicly subsidized for the elderly are unclear but are cast in terminology of “the right of the elderly to live, and with dignity.” Similar sentiments do not appear to persuade when applied to an uninsured child requiring a similar body enhancement or replacement. Current discussion characterizes any limitation on medical benefits to those in their last several years of life as “rationing” health care, or government “death panels” that 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). Nor is the failure of the Patient Protection and Affordable Care Act of the Obama Administration to cover most of those children under likely scenarios in many states any part of its critique.

#### **Added Unfunded Liability from State Sources**

Nor does the likely federal “unfunded liability” of \$60 trillion plus from Medicare, Social Security and federal budget deficits include unfunded, sometimes extraordinarily generous pensions for local and state employees, teachers, utility workers and others with substantial presence in state capitals. During the last months of 2011, a Stanford University study counting the unfunded liability for public employee pensions placed California’s total (counting not all of them) at \$500 billion. Unless the California projected unfunded liability is less than the average amount, we can conservatively add another \$4 trillion to the deficit on our children from this additional state level source. And this projection does not include all of the medical coverage obligations for public employees that in some jurisdictions exceed the pension payment “defined benefit” projection.

#### **The Total Bill and Carrying Costs for Our Children**

The federal and state debt for the Boomers and their children will require our grandchildren and their children to spend

well over \$25,000 per year in current spending just to carry it (without reduction) at a modest 4%. That amounts to about one-half of the family median income—before other taxes. Can such a disaster actually be in the offing? If so, why is it only discussed by expert economists in obscure reports or neo-conservatives—who themselves avoid two of the real cost sources (Social Security and Medicare) and blame it all on the federal deficit and public pensions? But all four of these generational sources of “takings” are involved. And the two exempt from complaint are by far the largest.

Changing demographics make these future consequences both more likely and of greater concern—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 narrowing. It is less a graduated pyramid than a Washington’s Monument spike—with a lot of weight on the bottom blocks. We are replicating the

“money for nothing and chicks for free” ethos of Greece, only slightly behind them temporally.

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 2% increase in the amount needed to attract investment in the government bonds that provide the backing for all we print would have a momentous impact on the amount we shall owe for its repayment. And as uncertainty about full repayment grows, that interest rate will rise, exacerbating the cost, further jeopardizing repayment, and producing the kind of spiral that we do not seem to recognize until it happens. Although one of our human traits is the ability to reasonably predict consequences, we seem to be unable to do so, as happened in the collapse of 2008, where hindsight makes the untenable bubble absurdly obvious. We are facing both a much higher and a much more predictable cliff with our deficits. All one has to do now to predict it is to remember sixth grade math—or visit Athens. But it is not seriously on the public policy table.

How ironic that the major source of current security for the U.S. 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

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cartel, but less attention is paid to our supine posture before the nuclear weapon-holding Communist regime 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%.

#### **Government Passivity, Labor/Business Political Domination and Short Term Horizons**

The psychological/political genesis of the moral malaise of the Boomers is not surprising to those of us who have worked on behalf of children. It is partly driven by growing passivity of legislatures. Even the terminology now extant reveals the trend. Legislators are no longer the “sponsors” of legislation (as they were when most of us took ninth grade civics). They may “carry” the bill, but its “sponsor” is now—openly—the private lobby group proposing, writing and supporting it. And those legislators now mediate between “stakeholders”—the groups represented by those same lobbyists. Our legislatures listen to the “stakeholders” and primarily mediate between them. The American Association of Retired Persons alone spends 25

times as much on registered lobbying as do all of the child advocates at the U.S. Capitol combined, including our Amy Harfeld. She has colleagues from Voices for America’s Children and occasionally Children’s Defense Fund or Fight Crime—Invest In Kids, or a few others, but she is hardly part of a typical K Street influence machine.

#### **The Hypocrisy and Anti-Child Agenda of the Right**

Our political vision has been clouded by the anti-government, anti-deficit demonstrations of the “tea party” movement, and other conservatives who do seem to acknowledge the deficit problem, but who twist it into an attack on government and seek its diminution in a kind of undifferentiated top-down simplistic antipathy. How ironic that most of them, at the same time, defend a contribution level to the Department of Defense that now totals more military spending for the U.S. than the entire rest of the world combined. Apparently, the only thing standing between us and a takeover by Muslim radicals are the 11 military bases we have in Germany.

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They brag repeatedly—to the point of a catechistic chant—that “we are the greatest nation in the history of the earth.” The undeniable fact that we do have much to be proud about does not obscure the arrogance of assuming no other nation has advanced humanity or shown generosity or tried to stop wars or conferred freedom on its people, or provided for the least among them, or responsibly tended their natural assets. Some have and many have not. But our self-proclaimed braggadocio from everyone from Hannity to most of those running for office, confirms for much of the planet the regrettable image of the arrogant American braggart. We need a few less elixir salesmen and P.T. Barnum clowns engaging in national public relations, and more drawn from the admired heroic characters of our culture, such as James Arness, Henry Fonda, Jimmy Stewart and Gary Cooper. The roles they played are admired because of their depiction of proper civil discourse about our laudable acts. Each of them avoided self-congratulatory talk, were embarrassed by praise. As was the strong trait of the entire Greatest Generation, they did not boast. They did not need to, because they walked the walk—and when you walk the walk, you do not need the bleatings of talking heads. Many of those now filling our airwaves and Internet, with messages reaching billions of people, have not built anything and exalt individual greed as they relentlessly ignore future impacts on our children and the future earth. But somehow they manage to compensate for their vacuous record with peacock strutting, and effusive self-mooring.

While the Right has conferred a blank check with patriotic rhetoric to the defense and criminal justice sectors, they seem to forget why we have so prospered. A lot of it has been our investment in each other—including the wonderful precedent set by the Greatest Generation. That group, those born between 1900 and 1930, left a proud legacy. It surmounted a devastating depression, defeated fascism, generously rebuilt Europe (without—as is traditional for conquerors in human history—assuming control of the defeated nations). It built an infrastructure in the U.S., from water projects to parks to transportation. It built the most advanced and accessible educational system in the world. It created a safety net for the poor. It assured medical care and retirement help for the elderly. And it taxed itself at a rate far above what we now pay for these purposes.

Today’s Right wing is cynical, amoral and completely self-indulgent. They rationalize their irrationality 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. These

political characters are the ultimate ingrates, pretending they each, individually “did it all.” What is most galling is the memory of those Marines hitting the beaches of Iwo Jima and so many other places. The father of Yours Truly is among them. They were fighting and dying for all of us, not just one group, and most of all for our children they knew would follow them in their nation.

It is amazing how the Right can acknowledge with apparently genuine sentiment their true heroism, and then betray it by misunderstanding what it was for. They did not die for an advantageous capital gains tax rate so the wealthy could make more from investment income than those working net from their labor. They ran into bullets recognizing that they well might die, in the company of their colleagues, all watching out for each other and hoping that the nation performs likewise in their absence. That is not to say they favored socialism; certainly the American tradition has always been to minimize government involvement—to leave as much as possible to the efficient allocation of the market. But they were sophisticated enough to well recognize that any market has flaws, that it may need restoration of lost prerequisites to function as intended, and may need adjustment for external costs and for abuses from fraud. In other words, a market with fair rules to a large extent defines our commitment to each other to be fair.

Indeed, they demonstrated the ultimate example of such mutual reliance, each depending on the other. But they fought with a shared vision that while much lies with the individual, and free markets are our presumed allocators, the kind of investment in our infrastructure, in our education, and in our respect for the earth, is also our shared vision for our planet and our children.

### **The Hypocrisy and Anti-Child Agenda of the Left**

In return, the Left ignores the unfunded liability that the Boomers are imposing on the next three and more generations. The Republican Congress introduced a flawed Medicare reform proposal during 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 seized upon the tried and true demagoguery of the Right. As we predicted in our Remarks in our 2010 Commentary to you, they did in fact “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.” As noted last year, one part of this dilemma is the large number of high-voting/contributing elderly entitlement beneficiaries. Another part is the excessive influence over Democrats by public employee unions—with their protection of often untenable pension burdens to be imposed on future taxpayers.





## **Children are NOT represented by either political party.**

Children are not represented 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 and complain about a tax burden that is now the lowest percentage of Gross Domestic Product over the past sixty years. And both celebrate a tax system with many billions of dollars in unexamined tax expenditures (exempt income, deductions, credits)—much of it for special interests at the federal and state levels. They have grown apace, continue unless affirmatively ended, and require a two-thirds vote to terminate or reduce.

It appears that both of our political parties largely betray their ethical obligations to the next generation, competing mostly in the manner and symbolism of their abdication. Each has formed “teams” replete with symbols and worship-words and they now compete with each other in mutual vilification. And the media loves it. It appeals to the most fundamental media bias—folks are interested in a contest, a race, a competition with winners and losers. And ideally it is one that has the facility of a mini-morality play. If one side is ahead, it hopes that others will be gaining—to attract attention and make it a more exciting contest. And it hopes the audience will see one or the other as representing evil.

The world is a 1910 silent film of the mustached evildoer tying the helpless damsel to the tracks. It is amusing that the current political contest is complicated by two things in common—both sides want to capture the same worship words (*e.g.*, “freedom”) and they seek to pander rhetorically to the “middle class” of current (voting/campaign funding) adults. And older voters are favored in every respect: They vote at much higher rates, and the median age of major campaign contributors is well over 65.

### **The Judgment of History**

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 2012, 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 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. As Americans, 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.

So how will current adults be viewed through that future lens, in one hundred or two hundred years? We honor our predecessors of the last 300 years especially—partly because of the legacy they left us, and 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, especially those of our parents and grandparents. Whatever their misjudgments, they helped democratize the world. And they gave us a remarkable nation with the infrastructure investments recounted above, and with our young having access to higher education, meaningful work, and home ownership. Those dreams are now not nearer to our children; they are in retraction. We are not passing it down the line. Although benefitting from so much that was done for us, we Boomers are disinvesting in future generations, and burdening them to a degree without human precedent.

### **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 (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 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. 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.

As discussed above, California is among the general trend of states not responsibly limiting future taxpayer liability for promised public worker pensions. 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. In some jurisdictions, the promised medical benefits exceed in projected cost even the disturbingly high pension payments due and payable.

Regrettably, the California example of adult self-indulgence reaches beyond long-term debt deferral practices. The

year 2011 was the state's sixth straight year of public child-investment contraction. The 2009–11 federal subsidies to states are now in decline. The budget for 2011–12 projects to a substantial deficit, with a \$9 billion shortfall estimate for 2012–13. Cuts are

likely to hit the child safety net yet again, as they have since 2006. As noted in last 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 generational self-indulgence has taken many forms, as updated below from last year's discouraging message:

- ▶ Child poverty is increasing nationally and in California, and the public safety net is being withdrawn in a steady pattern of strangulation. TANF level safety net levels have yet again been cut in 2011. 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.
- ▶ California continues to trail most of the nation in food stamp participation. This could be an optimistic indicator if the state did not have a record number of families and children in need. An extraordinarily low 50% of

**Although benefitting from so much that was done for us, we Boomers are disinvesting in future generations, and burdening them to a degree without human precedent.**

the state's eligible are receiving this modest help, while many states exceed two-thirds participation. The state has moderated some of its irrational barriers in 2010 and 2011, including the fingerprinting and reapplication every three month requirements, but only a small fraction of calls for information about qualifying are even answered. The state has neglected its state's impoverished children in obtaining assistance from the federal treasury.

- ▶ 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 and efforts to implement it proceeding through 2011, almost one million California children lack basic health care coverage.
- ▶ 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 outside of mortgage defaults: Collection of medical bills.
- ▶ Compensation under Medi-Cal for pediatric subspecialist compensation continues to be a fraction of the sums paid for the same procedures for the elderly under Medicare, resulting in long delays and short supply for orthoped, neuro, and many other services. Federal law prohibits any compensation system that discriminates against any particular patient group—but the courts have thrown all challenges out on an intellectually dishonest basis, holding essentially that nobody able to sue has requisite “standing” to do so. The result effectively abdicates enforcement of federal standards that, as stated, prohibit the current egregious discrimination in physician compensation for the elderly over children.
- ▶ 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 a four-year college degree. California's AB 12 was enacted to implement the federal Fostering Connections to Success Act, and we are concerned that this well-intentioned help to children in need of it will succumb to the traditional “top down” social worker controlled system of paperwork and applications—without buy-in

by the youth, without involvement of the court who has been the legal parent of the child, without the attorney for the child's participation, and without any mentor or other personal guidance for the youth. CAI fears it will be, once again, simply more social workers for whom these youth are caseloads. And as the study of Illinois youth kept in its system to age 21 found, the result is merely a short delay of the fall off the cliff for these “children of the state.”

- ▶ Symptomatic of the overall disinvestment, public higher education capacity (especially classes offered) is being slashed. Tuition is being increased at extraordinary rates and to prohibitive levels for many youth. 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.

Importantly, the 2001/2003 federal tax cuts gave California's wealthy class \$37 billion per year in additional income. Some combination of easily available measures to recapture about one-third of this amount would retain most of the tax subsidy while (a) eliminating the state deficit; (b) allowing the state to capture federal matching funds otherwise foregone; (c) restoring safety net protection and educational opportunity; (d) medically covering the state's children (as every other civilized nation accomplishes); and (e) allowing spending decisions to be made at the state level consistent with stated 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 the Legislative Analyst's Office revealed at the end of 2011 now totals over \$45 billion each year. Every one of these exclusions, deductions and credits continues indefinitely unless affirmatively ended—and that requires a two-thirds vote as a “tax increase.”

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 5, or 10 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 over 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. The 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, the American Right does not support investment in children based on responsible state accountability—a defensible position—but simply demands 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 as the Republican Congress advertised in 1996. There has been an undiscussed “contract against children” by both parties.

## OVERVIEW OF CAI’S 2011 EFFORTS AND ACTIVITIES

In response to California’s ongoing disinvestment in its children, we had our work cut out for us during 2011. As the rest of this Annual Report details, we spent the year litigating major impact cases and participating as *amicus curiae* in others; sponsoring state legislation; advocating before state and federal administrative officials; drafting and releasing research reports; advocating before policymakers; and educating and training law students and attorneys to be effective child advocates. The last includes providing three clinical opportunities for USD law students—representing children in juvenile dependency court and juvenile delinquency court and working with CAI staff counsel



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on its projects. In addition to research and advocacy policy endeavors, those projects include working with other leading child advocacy organizations and engaging at the local level to provide direct legal advocacy for homeless youth and educational advocacy for delinquent youth, among other things.

During 2011, our research, advocacy and publication work emphasized five aspects of child welfare commonly given short shrift: (a) stimulating public visibility for the foster care system, whose children benefit from democratic accountability; (b) advocating for prevention, including the reduction of unwed



birth rates and the related problem of paternal child support failure; (c) restoring the collapsing supply of family foster care providers, including, litigation to compel compensatory payment, (d) establishing reasonable court and attorney caseloads so quality decisions are made in juvenile court affecting the lives of these children of the state, and (e) ensuring reasonable assistance for foster youth who age out of foster care—who now receive only a fraction of the help given to the children of private parents and who generally have no family to fall back upon.



Since its inception, Prop. 63 has generated well over \$6.5 billion in new revenue. A small fraction of that could have been used for widespread adoption of the TLC elements throughout California, and we advocated zealously in that regard. However, CAI's 2010 study of the initial Prop. 63 grants made by the 58 counties found that none followed the TLC model or anything close to it. In fact, 90% of California's transition age foster youth lived in counties that failed to use Prop. 63 funds to create programs that could meaningfully meet

the needs of this especially vulnerable population.

We made progress in 2011 along some these lines, and engaged in other work for children, as outlined in the Report below, including the following highlights:

► **Advocacy on Behalf of Transition Age Foster Youth and Homeless Youth.** During 2011, much of CAI's advocacy focused on transition age foster youth and homeless youth (related populations, as many youth regrettably transition from the foster care system to homelessness). Regarding transition age foster youth, CAI continued to follow up on its 2010 report, authored by our Melanie Delgado, that analyzed the inclusion or exclusion of transition age foster children from grants authorized under Proposition 63 (the Mental Health Services Act)—grants that are intended to go to new programs for new recipients and not merely supplant current spending, thus diverting this significant sum of \$1.4 billion a year to augment mental health services. One stated priority of the initiative is prevention and another is self-sufficiency for youth ages of 16–25 (apparently recognizing that the median age for self-sufficiency is approximately 26).

We continued to advocate for the use of Prop. 63 funds to implement CAI's "Transition Life Coach" (TLC) model—where the court parent does not abandon but stays involved (as they want to do) by administering the help thru the well established "trust mechanism", with a personal trustee working with the youth and checks and balances from court oversight—with youth input from start to finish in an adjustable plan for adult success.

Thus, one of CAI's 2011 priorities, and one of its noteworthy accomplishments in this regard, was the enactment of CAI-sponsored AB 989 (Mitchell) (Chapter 640, Statutes of 2011), which adds critical language to Prop. 63, explicitly requiring counties to consider the needs of "transition age foster youth" when implementing Prop. 63-funded programs. So now we have "transition age foster youth," "prevention", and "self-sufficiency" as key components of the initiative. What will happen now? We are not overly optimistic, and have come to believe that even where grant categories requiring all grants to be for "prevention" or must be new and "innovative", real prevention and innovation are generally absent.

San Diego County released a \$1.8 million Request for Proposals for a Prop. 63-funded program that will feature some key elements of the TLC model. For example, the San Diego County program, which will run for at least one year but possibly up to three, will integrate coaching, mentoring and teaching strategies in order to help transition age youth (half of whom must be transition age foster youth) successfully transition to independent living; further, the program will provide housing funds and flexible funds that might be used for things such as tuition, vocational training, transportation, living expenses, etc. During 2012 and beyond, CAI will closely monitor the implementation and outcomes of the San Diego County program, and will advocate for its expansion and replication across the state.

As is discussed in more detail below, during 2011 CAI also published a national report, *“The Fleeing of Foster Children—How We Confiscate Their Assets and Undermine Their Financial Security”* which focused on several state and federal policies that impede the financial security of youth who age out of care, including interception of their public benefits, rampant and unchecked ID theft of foster youth, and failure to help them secure benefits they deserve before leaving care.

Turning to CAI’s advocacy on behalf of homeless youth, AB 1111(Fletcher) will prevent them from suffering collection enforcement on minor tickets (e.g., loitering) that to date effectively prevents them from reaching self-sufficiency. The \$10 ticket becomes a \$50 ticket if not paid, which then translates into a \$200 collection bureau action that can ruin the credit of a youth for up to 7 years. Ironically, support for the bill included some of the agencies, well aware that the results of their collection actions were not revenue at all, but simply the descent of the debtors into a deeper and deeper hole.

► **A final win in California Foster Parents’ Association v. Wagner.** After winning at the federal district court level, and then in the Ninth Circuit, CAI brought an enforcement action to compel a recalcitrant state to change bring its foster family home rates into compliance with federal law. During 2011, we achieved a final success, with a new All County Letter distributed to the counties and requiring more than a 30% increase in this compensation to families caring for these children.

CAI’s Ed Howard and Christina Riehl worked with a dedicated team of pro bono attorneys at the firm of Morrison and Foerster to achieve this result. And MoFo responded to its victory by generously contributing to CAI much of the firm’s share of attorneys’ fees.

► **A Petition for Rehearing in *E.T. v. Tani Cantil-Sakauye*.** The *E.T.* case is a class action on behalf of Sacramento’s foster children, whose attorneys have caseloads of 388 children each and are unable to perform basic services necessary for their protection and success. The case is against the California Supreme Court and its administrative arm, the Administrative Office of the Courts (AOC). The Supreme Court’s own Blue Ribbon Commission on this subject matter set 188 as the absolute maximum caseload for these attorneys. But hypocrisy can prosper in ironic places. Our case narrowly contests the practice in one county and by class action format (where all of the implications of the requested order and all defenses can be heard). It is a case contending that effective counsel is constitutionally commanded, and where those counsel serve as mandatory Guardians Ad Litem

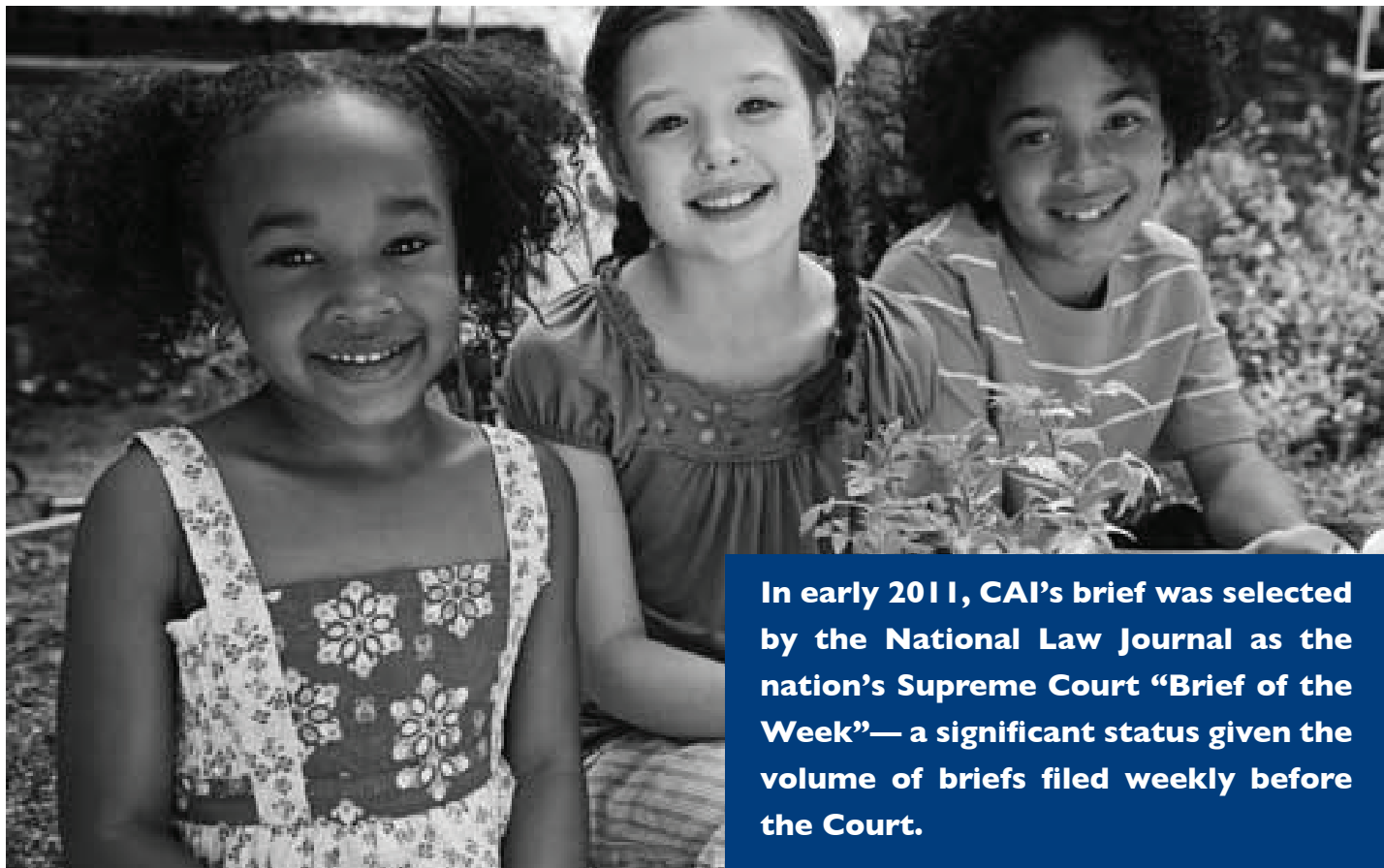
(GALs) required under federal law—bolstered by many billions of dollars in federal aid.

An “abstention” decision not to even review the state court offenses is borne of a wrong headed deference violating the basic purpose of the federal courts to check abusive and violative “state action.”

► ***Butterfield v. Lightbourne.*** In late 2011, we filed a new case, *Butterfield v. Lightbourne* in San Diego County Superior Court. Robert Butterfield is one of the founders of the San Diego Child Abuse Prevention Foundation. We seek here to challenge the rules adopted by the California 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 abuse and neglect deaths in California. CAI contends that the DSS rules do not implement the statute as intended and have allowed for substantial avoidance and concealment. Among other problems, the rules eliminate reports of abuse or neglect deaths where the culprit is not the parent. So abuse by boyfriends, child care providers, school officials, and a host of other persons entrusted with a child’s safety or care will be concealed. That is not how the statute reads nor was intended. We expect the case to go to trial in San Diego Superior Court in 2012.

► ***Children’s Legislative Report Card.*** During 2011, CAI issued its 2010 *Children’s Legislative Report Card*, and for the second straight legislative year gave the entire Legislature a grade of “incomplete”—reflecting the lack of appropriate leadership and the plethora of cuts, tuition hikes, disinvestment, child care cuts, education cuts (leaving the state near the bottom in cost of living adjusted spending per pupil, with the second largest class sizes in the nation), *et al.* But in 2012 we shall issue a Report Card with grades that cover the 2011 legislative year—acknowledging several measures that go beyond symbolism or non-substantive technical clarifications. So after being held back for two years, our Legislature passes through to the next grade—barely. However, rest assured that most of them need home schooling and private tutoring to learn what they need to know about the children of our state.

► ***Amicus to U.S. Supreme Court in *Camreta v. Greene*.*** In December 2010, CAI filed an *amicus* brief in the critical *Camreta* case, which concerned a middle school child who had told several different friends the details of molestations occurring at home from her step-dad. Child Protective Services, as is standard, sought to interview the child in a neutral setting by placing her in a private room at her school. She was not the subject of a criminal investigation. Far from it, she was rather



**In early 2011, CAI's brief was selected by the National Law Journal as the nation's Supreme Court "Brief of the Week"—a significant status given the volume of briefs filed weekly before the Court.**

a victim subject to possible civil protection. There was a peace officer at the interview, but the child was not the suspect and it was controlled by the child protection social worker. The Ninth Circuit bizarrely held that no such interview could ever take place unless the parent consents or there is a probable cause search warrant. But the parents are most often complicit in such an offense.

Our brief that a "Reasonable Suspicion" standard was the correct lodestar was joined by Voices for America's Children, First Star and other child advocacy groups. In early 2011, CAI's brief was selected by the National Law Journal as the nation's Supreme Court "Brief of the Week"—a significant status given the volume of briefs filed weekly before the Court. CAI's National Policy Advocate Amy Harfeld attended the oral arguments in person. The Court eventually held in mid-2011 that the case was not ripe for appellate review, but took the unusual step of nevertheless "vacating it" *en toto*, fortunately removing it as a source of precedent.

► **A National Office.** During 2011, CAI hired its first full-time national policy advocate based in Washington, D.C., Amy Harfeld. Amy is an experienced child rights attorney, with experience as a law guardian, child abuse prosecutor, non-profit leader at First Star, and project leader at the ABA. Amy represents CAI's national policy agenda in a number of national children's coalitions, organizes press conferences and congressional briefings, and works to advance CAI's federal advocacy agenda both in Congress and

in other federal agencies. Voices for America's Children graciously donates office space for this work at its Vermont Avenue location, giving Amy easy access to other child advocates, including the new Children's Leadership Council, hosted by Voices.

Amy's work has included the release of reports including CAI's *Fleeing of Foster Children* report (discussed below), *State Secrecy and Child Deaths in the U.S.*, and the report on *A Child's Right to Counsel*. For the past few years, CAI has worked at the federal level on the adoption of an ABA Model Act on child representation in dependency court—and that effort achieved an important success during 2011, passing the ABA House of Delegates in August. Longstanding opposition to a model requiring an attorney as the child's Guardian Ad Litem disappeared, and the new model, close in its terms to the First Star submission authored by CAI staff and others, was adopted.

► **The Fleeing of Foster Children National Report.**

In March 2011 CAI released a new national report, *The Fleeing of Foster Children*, at a Congressional briefing in Washington D.C. The third topic area of CAI's national child welfare examination of state statutes and rules, this Report focuses on the states' outrageous confiscation of foster children's Social Security survivor and disability benefits. Children in foster care have their monies intercepted to compensate the state for child care costs that the states are already obligated to pay and that exist separate and apart from these sums that are payable to the children. Although the

regrettable *Keffeler* Supreme Court case held that such takings did not necessarily violate the Social Security Act, there are multiple unlawful practices that occur regularly in their diversion. For example, states generally require that such monies be devoted to the “best interests of the child”—not to county confiscation. Also, counties are seventh (and last) on the list of “representative payees” who are to decide how the funds are to be administered for the child; the current pattern is to ignore the first six recommended classes of payees—most of whom would probably conserve the bulk of the funds for the child—and in fact to conceal the receipt of the funds from those explicitly higher priority representatives of the child. The Report lays out how the states accomplish their takings, their rationalizations, and the violations of fiduciary duty involved. It also discusses the related issue of identity theft of older foster children who can suffer a double whammy: monies for special needs taken, and unmonitored or unfixed negative credit reports hampering basic needs.

The Report was released at a Congressional Briefing in the U.S. Capitol Building, with both Representatives Stark and Langevin passionately presenting findings and announcing intentions to pursue legislative solutions. The press conference and the Report were widely covered, appearing not only on public broadcasting stations, but two television networks, *USA Today*, numerous radio stations, the *New York Times*, AP and 500 dailies.

#### ► **Third Edition of Child Rights and Remedies.**

In 2011, Clarity Press published the third edition of the law (and graduate) school text, *Child Rights and Remedies*. The new edition updates data and caselaw, and adds a major chapter on international law and the future of child rights and remedies. The chapter concerns the traditional subject of the Hague Conventions; the major conventions relevant to children, including the Convention on the Rights of the Child, the International Court of Justice and the International Criminal Court; and the application of international law domestically. It also includes a discussion of world trends that jeopardize the future of child rights, particularly the generational betrayal that is the focus on much of this commentary, and which extends worldwide. It includes the unfunded liabilities for adult care and comfort in other nations, overpopulation issues, and environmental depredations, among other issues.

► **Work on Governance and Conferences of National Organizations.** CAI has been especially active in the governance of national organizations. During 2011 I chaired the board of the National Association of Counsel for Children (NACC), served as counsel to the Board of Voices for America’s Children, chaired the board of the Public Citizen Foundation, and served on the boards

of First Star in Washington D.C. and the Maternal Child Health and Access Foundation in Los Angeles. Our work with these other entities includes helping very competent staffs coordinate with other organizations, set priorities, assist in educational efforts, and achieve visibility and resources.

CAI made a number of significant presentations at national and regional meetings of child advocates. For example, CAI presented at NACC’s 2011 Conference in San Diego, bringing together a panel to discuss issues pertinent to youth aging out of foster care; that panel included two foster youth recently emancipated into adulthood who participate on CAI’s Youth Advisory Council. As is often the case, the remarks of the youth were the most valuable part of the presentation, with direct evidence and articulate descriptions of how the system looked from the inside. Delgado was the principal author of the chapter in the program materials on the subject. Also, CAI participated at the Western Regional Meeting of Voices in Berkeley, and was one of two chapters to present information on current activities.

#### **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 that a majority of the faculty of the USD School of Law contribute 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 Robert and Alison Price especially, as well as Paul, Barbara, and James Peterson, Louise Horvitz, and Janet Madden, imposes on us a fiduciary obligation to perform consistent with their expectations.

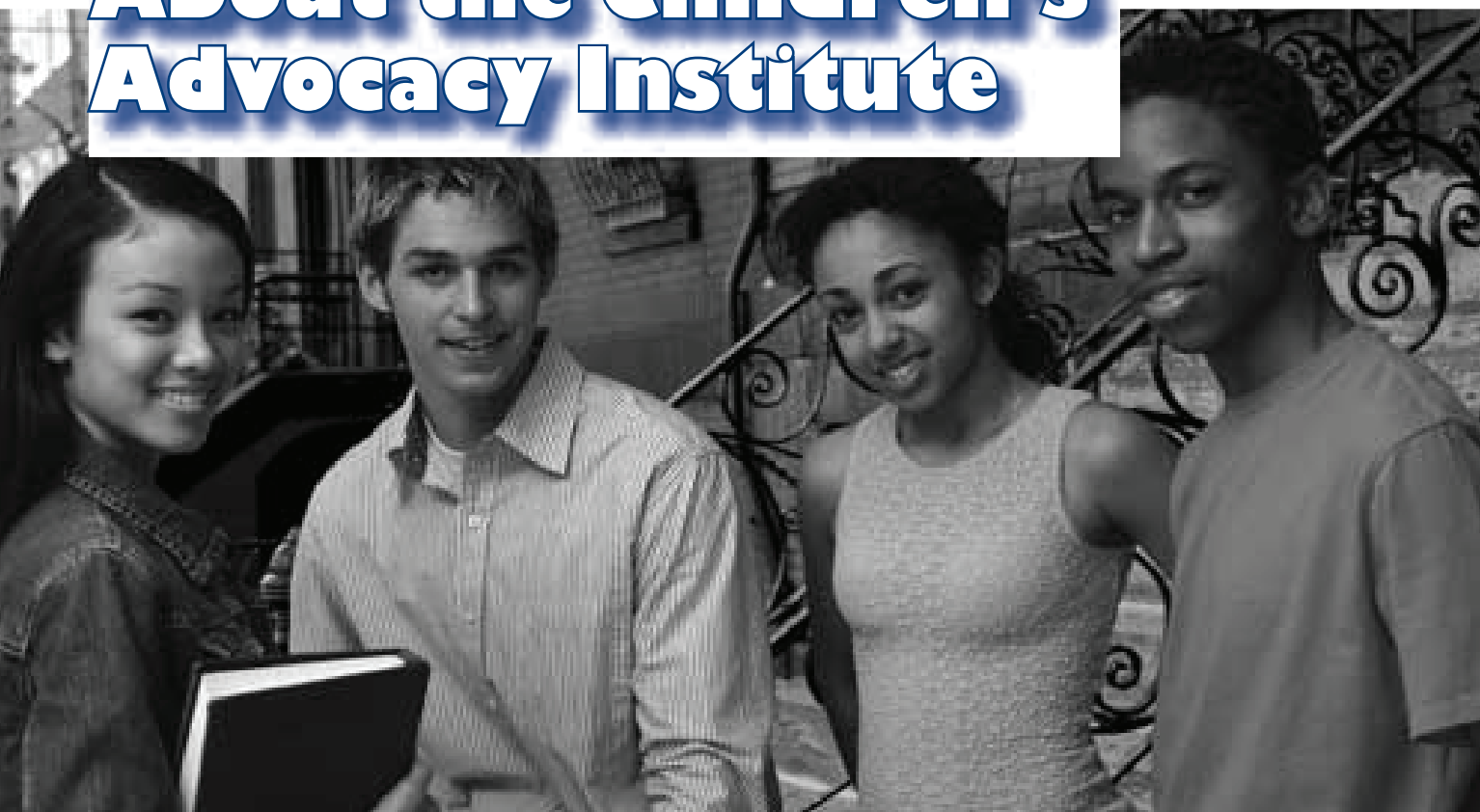
We are painfully aware that we have lost both Sol and Helen Price. Their passing does not diminish our duty to represent their ideals for child representation—we now make up an important part of their legacy, and we have the difficult task of matching its many other laudable elements. All of us at CAI 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, *cy 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 engaged in Dependency Court practice.

## 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 the Fall 2011 semester, 27 students took Child Rights and Remedies, making them eligible to participate in CAI's clinical programs, where they can represent abused children in dependency court and/or accused youth in delinquency court or participate in CAI's policy advocacy work.

Also in 2011, Prof. Fellmeth published the 3rd Edition of *Child Rights & Remedies*, the treatise for his course. Published by Clarity Press, this new version features up-to-date discussion of key state and federal caselaw, statutes and regulations that define children's rights in the U.S., and also includes an expanded and thorough analysis of the status of children internationally, as well as a discussion of international dangers that may impact children's rights and remedies. The back cover features testimonials from some of the nation's leading child and public interest advocates, including consumer advocate Ralph Nader; Howard Davidson, Director of the American Bar Association's Center on Children and the Law; William Bentley, President and CEO of Voices for America's Children; Maureen Farrell-Stevenson, President of the National Association of Counsel for Children; and Prof. John E.B. Myers of the University of the Pacific, McGeorge School of Law.



## 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 2011, 28 law students participated in CAI's clinical programs:

- ❖ Twelve law students (**Johnathan Abrams, Brady Bohlinger, Betsy Couch, Suzanne Gorelick, Adam Juel, Jenny Lieser, Cristina Lizarraga, Silvia Romero, Sarah Shelvy, Julieclaire Sheppard, Natalie Valdes, and Kim Washington**) participated in CAI's Policy Clinic. Students worked on semester-long advocacy projects such as



- ▶ researching and updating data for CAI national report cards on states' child abuse and neglect fatality and near fatality public disclosure policies, and states' policies on the appointment of counsel for children in Dependency Court proceedings;
- ▶ researching the federal government's non-enforcement of federal mandates;
- ▶ researching California's implementation of mandated foster parent reimbursement rate increases and related issues;
- ▶ identifying ways to improve California's foster parent liability fund;
- ▶ 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;
- ▶ identifying ways to eliminate red tape from California's foster care system and stimulate adoptions;
- ▶ identifying ways to help former foster youth retain the Medi-Cal benefits they are entitled to;
- ▶ researching the authority of the Juvenile Court to order a variety of services for children and youth when warranted;
- ▶ analyzing and responding to legal research requests from attorneys at DLGSD.

- ❖ Eight law students (**Rosanne Golob, Britni Hageman, Danielle Hubbard, Nicole Jacobs, Casey Jenkins, Sarah Shelvy, Lydia Strunk 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 (**Alexandra Byler, Lisa Charukul, Elizabeth Chiba, Brandon Darnell, Tatum Everhart, Melissa Gibbs, Courtney Magner and Sarah Shelvy**) 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.
- ❖ Several other students interned with CAI on a paid or volunteer basis, working on a variety of policy advocacy projects. These students included **Patrice Darlin, Farbod Faraji, Sarina Fritz, Anna Howard, Sunny Lee, and Megan Swezea**.



# James A. D'Angelo Outstanding Child Advocate Award

In May 2011, CAI had the pleasure of awarding the James A. D'Angelo Outstanding Child Advocate Award to graduating law students **Betsy Couch**, **Breanna Fujio**, **Melody Gillis**, **Anna Howard**, and **Brenden Shaw**, 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.



*"Being involved with CAI and a student of Professor Fellmeth were the most rewarding parts of my law school experience. CAI stands for the principle that the law and its practitioners should advocate for those most vulnerable in our society. This ideal and the practical experience I received through CAI guide me as I embark on my legal career."*

—Elizabeth Couch

**2011 Recipient of the James A. D'Angelo Outstanding Child Advocate Award**



*"I still feel so lucky that I found Professor Fellmeth and CAI while I was in law school. The clinics and course were what I thought law school should be about— interactive, informative, and of course, interesting! There was never a dull moment and I am so grateful for the time I got to spend with CAI. I can honestly say that Professor Fellmeth was truly an inspiration for me as well as everyone who works as a child advocate."*

—Breanna Fujio

**2011 Recipient of the James A. D'Angelo Outstanding Child Advocate Award**



*"Professor Bob Fellmeth is the electricity that innervates and invigorates both the Children's Advocacy Institute and his students' desire to stimulate and affect positive change. Through our small round-table discussions I learned to think and argue creatively on behalf of the children I was lucky enough to represent."*

—Melody Gillis

**2011 Recipient of the James A. D'Angelo Outstanding Child Advocate Award**



*"I came to law school with the goal of one day representing children during foster care and adoption proceedings. To my delight, USD had a specific institute which focused on these same goals. Thus, I was able to take a class about child advocacy with Bob Fellmeth, intern with dependency lawyers in Los Angeles, successfully defend a minor charged with battery at a juvenile delinquency trial, and do over 50 hours of pro-bono research for CAI. I feel fully equipped now to achieve my goal!"*

—Anna Howard

**2011 Recipient of the James A. D'Angelo Outstanding Child Advocate Award**



*"Participating in the [CAI] clinics 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

**2011 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 2011 recipient of the Joel and Denise Golden Merit Award in Child Advocacy was USD School of Law student **Justine Elgas**, who has already begun to use her knowledge, skills, and compassion to better the lives of San Diego's foster children. During her second year of law school, Justine spent an entire semester interning at the Dependency Legal Group of San Diego,

where she spent a minimum of two full days each week assisting in the representation of abused or neglected children; she also worked for the San Diego Volunteer Lawyer Program's Education Law Project, advocating on behalf of dependents' educational issues.



*"It was not until I became involved in the Children's Advocacy Institute's Dependency Clinic, when my own client, a mere toddler, appeared on Adopt 8, that I knew my heart and my future legal career belonged to dependent children."*

—**Justine Elgas**

**2011 Recipient of the Joel and Denise Golden Merit Award in Child Advocacy**

# Advocacy, Research and Leadership

## Legislative Advocacy

### California Legislative Priorities

During 2011, CAI formally sponsored the following four bills:

- ❖ **AB 1111 (Fletcher)** prohibits a court from garnishing wages or levying a bank account for the enforcement and collection of fees, fines, forfeitures, or penalties imposed by a court against a person under 25 years of age who has been issued a citation for truancy, loitering, curfew violations, or illegal lodging that is outstanding or unpaid if the court obtains information that the person is homeless or has no permanent address. This bill authorizes a court to use these collection procedures when that person is 25 years of age or older, or if the court subsequently obtains evidence that the individual is no longer homeless. AB 1111 was signed by the Governor on October 4, 2012 (Chapter 466, Statutes of 2011).
- ❖ **AB 989 (Mitchell)** requires programs contained in county Mental Health Services Act plans, which are required to include services to address the needs of transition-age youth, to also consider the needs of transition-age foster youth. AB 989 was signed by the Governor on October 9 (Chapter 640, Statutes of 2011).
- ❖ **AB 1015 (Calderon)** would require each county to consult with stakeholders, including but not limited to, county child welfare agencies and probation agency staff at all levels, foster care providers, children's attorneys, and current and former foster youth when developing county self-assessments, county improvement plans, or similar reports required by any subsequent changes to the California Child and Family Service Review System. AB 1015 is pending in the Senate Appropriations Committee.
- ❖ **AB 1110 (Lara)** would require additional reporting and court oversight concerning the receipt of Supplemental Security (SSI) income for foster youth. Specifically, this bill would require social workers to include in their supplemental reports to the court the following information about SSI: whether the foster child has been screened for SSI eligibility; whether an application for federal SSI benefits has been filed on behalf of the foster child; any information regarding the

status of a pending application; and whether the county has applied to become the child's representative payee for SSI benefits and whether the county or an individual known to the county has been appointed to serve as a representative payee for a child who is receiving SSI benefits while in the county's custody. This bill would also require that the county provide written notice to the child's counsel 30 days in advance if the county intends to file with the federal Social Security Administration (SSA) to be appointed as the representative payee of a child who is an SSI recipient at the time they are taken into protective custody; authorize a child's counsel to request an accounting of how a foster child's SSI benefits are being expended if the county is the child's representative payee; and require, at the periodic status review hearing for a foster child, the reviewing body make certain determinations including determining the efforts of the child welfare agency to submit an application and pursue federal SSI benefits eligibility, including information about who has been designated as the representative payee for the youth in the event the benefits are approved, and efforts to pursue reconsideration and appeals when appropriate. AB 1110 died in the Assembly Appropriations Committee.

Additionally, CAI strongly supported **AB 73 (Feuer)**, which would have created a four-year pilot in three counties, to test whether California should consider moving from presumptively closed juvenile dependency hearings to presumptively open juvenile dependency hearings.

### *Children's Legislative Report Card*

After issuing "Incomplete" grades to the members of the Legislature in 2009 and 2010 for failing to adequately advance the interests of California's children and youth, CAI returned to its standard grading system in the **2011 Children's Legislative Report Card**. However, as described below, CAI's decision should not be taken as a sign that the Legislature significantly improved the interests of children and youth during 2011, nor that it even held children harmless when making tough budgetary decisions.

*Although it was tempting to give every legislator a failing grade and pretend that all of this is somehow their fault and not ours. But that*

*would be just a comforting vanity. This year, there were enough good child-improving bills introduced and worked by enough sincere legislators to warrant a traditional legislative report card. None of the bills that served as the basis for our grades will dramatically improve the lives of the bulk of California's children. None of the bills—considered separately or collectively—fairly represent a meaningful commitment to “paying it forward” proportional to our moral responsibility to children. None do more good for children than the harm being detailed by [the California Budget Project].*

*But, while we yearn for real political leadership that would abandon hopes of future office or re-election and do whatever it took to right these progressively and ever-more permanent wrongs, such leaders are rare in history and almost never come from elected office. So, rightly or wrongly, we grade our legislators on the curve of, well, legislators, operating in an inherited political context mostly not of their making.*

The 2011 *Children's Legislative Report Card* identified 39 child-friendly bills that were passed by the Legislature and sent to the Governor for his consideration, and presents each legislator's floor votes on those measures. Additionally, the Report Card identified two additional bills — one that was killed in the Senate Appropriations Committee's suspense file and one that was killed in the Assembly Appropriations Committee's suspense file; these bills symbolize all of the meritorious child-friendly measures that legislators allowed to die without a public vote. For purposes of the *Report Card*, each and every legislator's failure to pull those bills from suspense qualified as a “NO” vote for children, and was reflected as such in the grading.

## Federal Legislative Advocacy

During 2011, CAI worked with Congressional members and staff, as well as with other advocates and coalitions, on several pieces of legislation aimed at issues such as enhancing child protection, reducing the incidence of child abuse and neglect fatalities and near fatalities, better protecting the financial security of foster children, and establishing financial mechanisms to facilitate foster youth's transition out of care. Such efforts included the following:

❖ The **Child and Family Services Improvement and Innovation Act**, signed into law on September 30, 2011 by President Barack Obama, is significant legislation that makes changes to several federal child and family welfare programs. Key provisions of the measure include the following:

- ▶ enhanced health care improvements for foster children;

- ▶ new IV-B state plan requirements (states must describe what they are doing to reduce time in foster care for children under 5, and what they are doing to address their developmental needs, and must describe sources of data used to gauge their number of child maltreatment deaths and how data sources examined to compile those numbers will be broadened);
- ▶ better assurance that caseworkers make monthly visits to children in foster care;
- ▶ extension of the Promoting Safe and Stable Families Program through 2016;
- ▶ extension of the Court Improvement Program through 2016;
- ▶ clarification that the educational stability mandate for foster children applies to each placement, not merely the initial placement;
- ▶ a mandate requiring states to get every foster child who is 16, and then annually thereafter until discharged from care, consumer credit reports, and requiring states to provide the child assistance in interpreting and resolving inaccuracies in those reports before leaving care, including when feasible getting assistance for the child from their court-appointed advocates;
- ▶ required documentation of how IV-E savings from the revisions of federal law on adoption/guardianship assistance funding are re-invested in IV-B services, and specifically on reinvestment in post-adoption services;
- ▶ extension of HHS state waiver authority through 2014; and
- ▶ authorization of up to 10 state waivers (called Demonstration Projects); all waiver applications from states must address how they will address at least 2 of 10 policy-related areas of improvement (called Child Welfare Program Improvement Policies).

❖ The **Foster Youth Financial Security Act**, introduced in September 2011 by Representative James Langevin (D-RI), would require that states assist children in foster care in making the transition to independent living by redressing identity theft or credit fraud issues. Among other things, the measure would ensure that young adults transitioning out of care have basic documents and tools for achieving independence; protect against identity theft and credit fraud by requiring that foster care agencies review the credit reports of all foster children, and take action to clear them if there is an inaccuracy, prior to leaving care; and end the use of a child's Social Security number as an identifier in the child



welfare system. The bill would also ensure that youths leave foster care with the documents they need, and require agencies to help them apply for state benefits and financial aid, educate them about obtaining health and auto insurance, and provide them and any interested caretakers with financial literacy courses before exiting care.

❖ Finally, the **Protect our Kids Act** was introduced in December 2011 by Senator John Kerry (D-MA) and Senator Susan Collins (R-ME) and Ranking Member Lloyd Doggett (D-TX), Joseph Crowley (D-NY), and 10 members of the House Ways and Means Committee. This measure would create a National Commission on Child Abuse and Neglect Deaths to study and evaluate federal, state, and private child welfare systems and develop a national strategy to prevent and reduce child abuse and neglect fatalities. Among other things, the Commission would be charged with studying the feasibility of establishing a system that accurately records incidents of child abuse and neglect; practices that can prevent fatalities from child abuse and neglect; the role of parental

substance abuse, parental mental health issues, and domestic violence in increasing the incidence of child abuse and neglect; the adequacy and effectiveness of programs, including child health services, mental health services, child protective services, child welfare services, education, child care, juvenile justice services, and law enforcement activities, designed to identify and prevent child and youth fatalities that are intentionally caused or that occur due to negligence, neglect, or a failure to exercise proper care; the effectiveness of federal, state, and local policies and systems aimed at appropriately identifying and collecting accurate, uniform data on child fatalities in a coordinated fashion, including the identification of the most and least effective policies and systems in practice; the potential impact of a federal law mandating the review of fatalities of children; and possible modifications to confidentiality laws that would increase access to information and better protect child victims. Significantly, this bill stems from a congressional hearing and GAO publication released in the summer of 2011 that found that deaths from child abuse and neglect are significantly



underreported and there is no national standard for reporting such deaths, and that an increased understanding of deaths from child abuse and neglect can lead to improvement in agency systems and practices to protect children and prevent child abuse and neglect.

## Regulatory Advocacy

### California Regulatory Advocacy

During 2011, 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 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. When regulatory advocacy failed to produce the desired changes to DSS' regulatory language, CAI filed a petition for writ of mandate in San Diego County Superior Court (see Impact Litigation, *infra*).

Also throughout 2011, CAI continued to participate in the regulatory implementation of **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). For more information on the implementation of AB 12, please see *Improving Outcomes for Former Foster Youth*, below.

### Federal Regulatory Advocacy

One of CAI's major areas of federal regulatory advocacy during 2011 continued to be 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 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). This advocacy was successful, resulting in the issuance of a very broad definition of living arrangements that will enable youth to transition out of care in ways that are supportive to their reality.

Another area of CAI's federal regulatory advocacy during 2011 focused on follow-up to the 2010 reauthorization of CAPTA. Because of advocacy by CAI and other child advocacy organizations regarding the need to strengthen state reporting requirements regarding the disclosure of findings and information on child abuse and neglect fatalities and near fatalities, 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:

**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.**

*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 focused on urging the Secretary of Health and Human Services to comply with this legislative directive by providing clarification and technical assistance regarding states' obligations under and compliance with CAPTA's public disclosure policy requirement. To date, DHHS has not issued regulations that are responsive to the Committee's directive and has indicated that such regulations are not forthcoming; CAI will continue to advocate in this regard during 2012.

## Impact Litigation

### Family Foster Home Rate Litigation

During 2011, CAI continued its efforts to secure higher reimbursement rates for California's foster parents, and in so doing, increase the quality and quantity of family home placements for the state's abused and neglected children. In *California Foster Parents' Association v. Wagner*, filed in 2007, CAI and pro bono co-counsel Morrison & Foerster (MoFo) challenged the state's low foster home compensation — rates so low that thousands of family foster care providers could no longer afford to welcome foster children into their homes. In 2008, CAI obtained a federal district court judgment holding that the compensation paid to California's family foster care providers was substantially below out-of-pocket costs and not in compliance in federal law; that finding was affirmed by the Ninth Circuit Court of Appeals in August 2010. Although the California Department of Social Services (CDSS) did eventually decide upon a new method for determining

rates, it did not implement its new method in a timely manner. In April 2011 CAI and MoFo returned to court, filing a motion for further relief. On May 27, 2011, the U.S. District Court granted that order, and compelled CDSS to implement its new method for determining the rates of payments to foster parents. Specifically, the Court ruled as follows:

*Defendants have now had a full and fair opportunity to come into compliance with federal law. They have not done so. Therefore, plaintiffs' second motion for further relief is GRANTED. The State of California shall send checks to foster parents at the new rates beginning with the next round of checks.*

*Defendants shall implement the rate methodology and specific rates described in the defendants' submission dated April 8, 2011..., effective immediately. The rate schedule stated in defendants' April 8 filing is as follows:*

Age Range	0-4	5-8	9-11	12-14	15-19
New Rate Structure	\$609	\$660	\$695	\$727	\$761



*Defendants shall adjust the rates stated above annually, no later the first day of the State's fiscal year, to reflect the change in the CNI for the current fiscal year as outlined in defendants' April 8 filing. Such adjustments shall be made, and are not subject to the availability of funds. By MAY 31, 2011, defendants shall issue an official release setting forth the above-stated rate increases, effective that date.*

*If defendants William Lightbourne and Gregory Rose refuse to or fail to comply with this order, then they must appear personally (not just through counsel) and show cause why they should not be held in contempt on July 28, 2011, at 2:00 p.m.*

IT IS SO ORDERED.

CDSS did begin to implement the new rates in accordance with the court's May 27 order. If properly and fully implemented, the court-ordered increases in compensation will allow the family foster home 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.

### Minor's Dependency Counsel/Caseload Litigation

During 2011, CAI and pro bono co-counsel Winston & Strawn continued work on **E.T. v. George**, which 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).

In 2010, the U.S. 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, *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 was an effective abdication of the core federal judicial function, and CAI sought relief by appealing the matter to the Ninth Circuit Court of Appeals.

On April 14, 2011, CAI argued the matter before the Ninth Circuit. In a September 13, 2011 opinion affirming the District Court's decision to abstain, the Ninth Circuit engaged in an entirely unprecedented application and transformation of prior abstention caselaw, one that will require district courts in the Ninth Circuit to abstain whenever a case “intrudes upon the state's administration of its government”—which every public interest case will. If this opinion stands, it will make facial challenges to state policymaking impossible in the Ninth Circuit, if, for example, the regulation facially challenged will impact different people differently (*e.g.*, state reimbursement rates set across-the-board but impact different recipients differently based upon their individual means), and it very well might mean that foster children as a class can never file suit in federal court for anything because, by definition, their whole lives are touched by state court and state court administrative decision-making.

**If properly and fully implemented, the court-ordered increases in compensation will allow the family foster home 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.**

On October 4, 2011, CAI filed a Petition for Rehearing and a Petition for Rehearing En Banc, asking the full Ninth Circuit to review the matter. Several leading child advocacy and public interest organizations and legal scholars—including AdvoKids, Dean Erwin Chemerinsky, Prof. Allen Ides, Prof. Karl Manheim, the American Civil Liberties Union of Southern California, the Western Center on Law and Poverty, Voices for America's Children, Juvenile Law Society, First Star, and Associate Professor Daniel Hatcher—submitted *amicus curiae* filings to the Ninth Circuit in support of CAI's position. On October 26, 2011, the Ninth Circuit ordered the appellees to file a response to CAI's petitions. At this writing, CAI is awaiting the Ninth Circuit's ruling.

### SB 39 Enforcement

On September 14, 2011, CAI and pro bono co-counsel Morrison & Foerster filed a petition for writ of mandamus in *Butterfield v. Lightbourne and California Department of Social Services*, challenging regulations adopted by DSS to implement CAI-sponsored SB 39 (Migden) (Chapter 468, Statutes of 2007); that measure sought to enhance the public's access to information regarding child abuse or neglect fatalities, in order to "promote public scrutiny and an informed debate of the circumstances that led to the fatality thereby promoting the development of child protection policies, procedures, practices, and strategies that will reduce or avoid future child deaths and injuries."

In the lawsuit, CAI claims that DSS' regulations unlawfully block disclosure of key, child abuse and neglect death-related information in the following ways:

- The regulations improperly condition disclosures on a causation requirement between a child's abuse/neglect and the child's death that is not found in SB 39. Thus, if a county knew a child had a lengthy history of malnourishment but left the child with her parents, and the child later dies on the playground, key county documents remain secret if the autopsy concludes that the immediate cause of death was heat exhaustion. The regulations ignore the important fact that ongoing neglect may contribute to a child's death and thereby deprive the public of any ability to evaluate the need for systemic reform following such cases. Respondents' but-

for causation is not supported by SB 39, which mandates disclosure in "[a]ll cases in which abuse or neglect leads to a child's death."

- The regulations illegally allowed information to be withheld if any law enforcement official claims that release would jeopardize a criminal investigation or proceeding, when SB 39 says only that the district attorney responsible for proving cases in court may make that determination. At the time CAI filed its lawsuit, this regulatory requirement endured even though DSS agreed it was illegal; since the time of the filing, DSS has purported to remove the offending language from the regulation.

- The regulations improperly condition the release of child death-related documents on an agency determination that the abuse or neglect was inflicted by the parent/guardian/foster parent in whose home the child was residing at the time of death. There is no such limiting condition in SB 39, and in fact DSS' regulations would serve to exclude deaths caused by, for example, live-in boyfriends or grandparents. DSS' own 2009

data show that the parent/guardian was identified as the alleged perpetrator in only 63% percent of child abuse or neglect cases; thus, this regulation could allow nondisclosure of information in over one-third of all child abuse or neglect fatalities.

- The regulations improperly provide that when a child fatality has occurred as a result of abuse and/or neglect by a non-residential licensed child care provider, the county shall direct any public request to the appropriate licensing department or agency that has jurisdiction over the facility. SB 39 does not require the fatal abuse or neglect to have occurred in the child's home in order to trigger public disclosure; the location of the abuse and the identity of the abuser are, under the statute, irrelevant to whether disclosure must be made. The statute draws a distinction between "cases in which the child's death occurred while living with a parent or guardian" and "cases in which the child's death occurred while the child was in foster care" solely to differentiate between the kinds of documents to be released.

At this writing, the parties are engaged in discovery.

**CAI and pro bono co-counsel Morrison & Foerster filed a petition for writ of mandamus in *Butterfield v. Lightbourne and California Department of Social Services*, challenging regulations adopted by DSS to implement CAI-sponsored SB 39.**



## Amicus Curiae Activity

- ❖ In September 2011, CAI participated as *amicus curiae* in *In Re the Termination of M.S.R. and T.S.R.*, a matter pending before the Supreme Court of the State of Washington. CAI joined fellow *amici* KidsVoice, the National Center for Youth Law, First Star, the National Association of Counsel for Children, Children's Law Center of California, Juvenile Law Center, Prof. Michael Dale and Prof. Theodor Liebmann in a brief providing the court with information pertaining to the appointment of legal counsel for children in termination of parental rights (TPR) proceedings. While Washington recognizes that legal representation for children is appropriate in some cases, the *amici* brief urged the Court to recognize the constitutional right to legal representation for all children in TPR proceedings—a process that will have tremendous impact on their future safety, permanency and well-being.

**The National Law Journal selected the Children's Advocacy Institute's amicus curiae brief to the U.S. Supreme Court in *Camreta v. Greene/Alford v. Greene*, filed in December 2010, as the "Brief of the Week."**

Oral arguments were held in this matter on October 18, 2011; at this writing, the Washington Supreme Court has not released its opinion.

- ❖ On February 23, 2011, the National Law Journal selected the Children's Advocacy Institute's *amicus curiae* brief to the U.S. Supreme Court in *Camreta v. Greene/Alford v. Greene*, filed in December 2010, as the "Brief of the Week." These

cases, which were be the subject of oral argument before the Court on March 1, 2011, involved a Ninth Circuit holding that requires parental consent or a warrant (or similar court detention probable cause order) under Fourth Amendment standards, before Child Protective Services social workers can conduct an in-school interview

of a suspected child abuse victim.

In its brief, which was submitted in support of neither party, CAI argued that the Ninth Circuit's ruling imposes a serious barrier that will impede and potentially halt some child abuse investigations. Requiring parental consent is problematic because parents are involved in 80% of child abuse cases. The alternative obstacle of a probable-cause based warrant or detention order is complicated by both the time and resources required for its acquisition, and the fact that probable cause achievement typically comes from the child interview itself, not before the interview takes place — which creates a "Catch-22" preclusion to effective CPS inquiry.

CAI Executive Director Robert Fellmeth explains CAI's position: "We have all sorts of checks and balances in the system when someone has taken a child without basis from the home or where the state has intervened inappropriately or excessively. But if a CPS worker does not remove a child who is being raped or tortured every night, there is no safeguard....I'm not saying you should be able to interview for any reason. I want reasonable suspicion. I just know what probable cause means. I know the difference between the two, and that's the line you don't want to cross when protecting a victim and you're only game in town."

On May 26, 2011, the Court issued a disappointing opinion in which it declined to address the merits of the case



by instead finding the case to be moot: “In a dispute of this kind, both the plaintiff and the defendant ordinarily retain a stake in the outcome. That is true of Camreta, who remains employed as a child protective services worker, and so has an interest in challenging the Ninth Circuit’s ruling requiring him to obtain a warrant before conducting an in-school interview. But [the minor] can no longer claim the plaintiff’s usual stake in preserving the court’s holding because she no longer needs protection from the challenged practice. She has moved to Florida and is only months away from her 18th birthday and, presumably, from her high school graduation.”

Benefits program (OASDI) and/or the Supplemental Security Income for Aged, Blind and Disabled (SSI) program. Generally a child entitled to such benefits is required to have a representative payee appointed by the Social Security Administration (SSA) to manage his or her funds, and to ensure that the funds are used to serve the best interests of the child beneficiary. A duly appointed representative payee serves in a fiduciary capacity to the beneficiary. For most child beneficiaries, SSA appoints the

child’s parent or guardian to serve as representative payee. However, that is often not possible or appropriate for foster children, and SSA is required to identify and select the representative payee who will best serve the child’s interests, using a preference list contained in federal regulations. Although the list provides guidelines that are meant to be flexible, foster care agencies are ranked last in order of preference. However, the assignment of the foster care agency as representative payee for a foster child is practically automatic in most states. Instead of conducting a meaningful, proactive inquiry to determine who would best serve a child’s interests, SSA often automatically appoints the foster care agency—neglecting a critical oversight step in the appointment

process. Regrettably, most of those agencies then routinely confiscate foster children’s SSI and OASDI money to pay for the cost of foster care. The vast majority of states openly admit to — and actually defend — taking and using foster children’s Social Security benefits to pay for child welfare services that these children are entitled to receive as a matter of right.

► Children often have no idea that states have applied for benefits on their behalf, let alone that the states are confiscating the funds. Before it selects a representative payee, SSA is required to notify the beneficiary and give the beneficiary an opportunity to appeal SSA’s decision. Because of their age, foster children are typically not notified directly about the impending appointment, nor are most of them even told they are eligible for (or receiving) benefits. Instead, for most foster youth, SSA provides notice solely to the child’s legal guardian or legal representative — and this is



## Special Projects

### Improving Outcomes for Transitioning Foster Youth

Each year, 30,000 of the nation’s foster youth “age out” of the foster care system and are expected to become independent, self-sufficient and tax-paying members of society with no familial support or safety net and little or no assistance from others. Not surprisingly, they struggle to obtain employment and housing, attain their educational goals, and maintain their physical and mental health. During 2011, one of CAI’s main areas of focus continued to be improving outcomes for transition age foster youth; two of CAI’s major efforts in this regard are described below.

❖ ***The Fleecing of Foster Children.*** On March 16, 2011, at a Congressional briefing at the U.S. Capitol, CAI and First Star released a joint report entitled ***The Fleecing of Foster Children: How We Confiscate Their Assets and Undermine Their Financial Security***, which discussed ways in which state and federal laws, policies and practices impede foster youth from attaining financial self-sufficiency after aging out of care. U.S. Representatives Pete Stark (D-CA) and Jim Langevin (D-RI) joined CAI and First Star in releasing the report, which revealed the following about the struggles and challenges facing transition age foster youth:

► Thousands of children in foster care are eligible for benefits from the Old Age, Survivors and Disability Insurance



*CAI Holds Congressional Briefing at the U.S. Capitol to Release Report on the Fleeing of Foster Children. Pictured, left to right: Alex Myers and Jaleesa Suell (foster care alumni); Prof. Robert Fellmeth (CAI); Amy Harfeld (CAI); Hon. Pete Stark (D-CA); Kriste Draper (CAI); Peter Samuelson (First Star); and Prof. Daniel Hatcher (University of Baltimore School of Law).*

often the same state or county agency that is applying to be the child's representative payee in the first place. Current federal law does not require the foster care agency to notify the child, the child's attorney/guardian ad litem (GAL) or the juvenile court (which is ultimately responsible for the child's well being) that it has applied to be or has been appointed as a foster child's representative payee. Without notification, the child, the child's attorney/GAL and the juvenile court have no opportunity to notify SSA that there is a parent, relative, family friend, or other person in the child's life who might be a more appropriate choice or to provide input on how the money should be spent to further the child's best interest. The result is a rather clandestine process in which the foster care agency applies to be representative payee, is appointed, and uses a child's benefits to benefit itself. Many youth leave foster care unaware that they had been receiving benefits— and for those receiving SSI, they leave care unprepared for the cumbersome redetermination process that awaits them.

► Unfortunately, foster children are not accessing all the government programs available to them while they are in care or after they age out of care. Among 25 states responding to a survey of state child welfare agencies, 7 indicated that SSI

eligibility screening was not routine. This is particularly troubling because these are youth who, through no fault of their own and by institutional design, have only the government to act on their behalf in this regard.

► Most parents encourage their kids to save money that comes their way, perhaps from part-time employment, bequests, gifts, etc. Saving for the future is a basic value that all responsible parents imbue in their children. However, foster youth are given disincentives to save for their future. For example, foster youth who are eligible SSI benefits because of a qualifying disability are not allowed to accumulate resources that exceed \$2,000 — a figure that has been in place since 1989 and is not indexed for inflation. While the SSI cap applies to all SSI beneficiaries, not just foster kids, its impact is arguably more severe for children who lack a familial support system and will be expected to support themselves. While some mechanisms allow for the accumulation of assets beyond the \$2,000 cap, those vehicles carry their own restrictions and can be burdensome for foster youth to create and maintain.

► Identity theft is a growing problem in the foster care system. Parents, grandparents, family members, foster parents, social workers, group home personnel and many others regularly



have access to a foster youth's Social Security number — which is often used as their identifier — and other personal information. Too often, this access is abused for everything from opening credit cards to fraudulently providing identification for criminal matters. Many foster youth do not learn that their identities have been stolen and their credit destroyed until they have exited care and apply for credit. Identity theft can have devastating consequences. Former foster youth may face problems finding safe and adequate housing; they may be denied loans for cars and other larger necessities, and they may be denied financial aid and the opportunity to attend college, all as a result of identity theft that occurred while they were in foster care. Complicating the problem further is the reality that repairing credit problems caused by identity theft can be a complex, expensive, and time-consuming process, and most jurisdictions do not provide appropriate assistance to foster youth in this regard.

The report and briefing resulted in significant media focus on the issues raised by CAI and First Star, generating hundreds of news reports and considerable public discussion throughout the country — all of which helped push forward various legislative proposals at the state and federal levels. For example, the federal **Child and Family Services Improvement and Innovation Act**, discussed above, now requires states to get every foster child who is 16, and then annually thereafter until discharged from care, consumer credit reports, and to provide the child assistance in interpreting and resolving inaccuracies in those reports.

Also during 2011, CAI engaged in a number of other projects and activities as a result of the *Fleeing* report, such as participating in a forum held by the Federal Trade Commission and the U.S. Department of Justice to discuss child identity theft, during which government, business, non-profit, legal service providers, and victim advocates explored the nature of child identity theft and how to resolve child identity theft problems; collaborating with IDentityTheft911, an organization interested in assisting foster youth in identifying and resolving credit fraud and identity theft; and responding to a request from the Social Security Administration's Office of the Inspector General to discuss its upcoming nationwide investigation into the misuse of foster children's Social Security numbers.



*Rep. Pete Stark (D-CA) (above) and Rep. Jim Langevin (D-RI) (below) speak at CAI's Congressional briefing.*





❖ **The Transition Life Coach.** 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. During 2011, CAI continued to advocate for the implementation of the **Transition Life Coach (TLC)** plan, which 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 or opportunities to help her do so, just as a responsible parent would do. The TLC plan would also make funding for housing and other living expenses 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 California's 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.

While disappointed that state officials will not devote a small percentage of Prop. 63 funds to fulfill this seminal obligation to these children statewide, CAI turned its focus to urging policymakers to do so at the local level, and engaged in an extensive public education effort to inform local leaders of the need to provide more assistance and support to transition age foster youth. On July 13, 2011, San Diego County issued a Request for Proposals (RFP) for innovative solutions to the challenges, problems and barriers facing transition age youth in general and transition age foster

youth in particular. Using a model that features many elements of the TLC plan, the County solicited the design and implementation of a project that integrates coaching, mentoring and teaching strategies resulting in a successful transition to independent living—and which includes funding assistance to help transition age foster youth with housing as well as “flex funds” to assist with other living expenses. Pursuant to the County's RFP, the selected program will run for one year with a \$1.8 million budget, and the County would have the option to extend the program for two additional years at \$1.8 million each year. Under the County's

proposed budget, \$360,000 would be allocated to housing; \$50,000 would be allocated to flex funds; and over \$1.3 million would ostensibly be available for administrative costs and overhead.

In September 2011, CAI submitted a proposal responsive to the County's RFP. Key elements of CAI's proposal included the following:

- The Program would serve 60 youth during the project year, 40 of whom would be from the foster care system, and 20 of whom would be from other systems or identified through other means (homeless youth, youth exiting the juvenile justice system, youth engaged in mental health systems, etc.).
- Compared to the County's suggested budget, CAI's program would more than double the total amount of funding available to youth participants in the form of housing assistance and

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flex funds. Specifically, CAI's proposal would allocate \$500,000 to housing assistance and \$500,000 to flex funds—thus directing substantially more financial assistance to the youth than was originally envisioned by the County.

- Under the supervision of a program manager, three program coordinators would each have direct responsibility for and involvement with 20 youth participants.
- Each youth participant would be matched up with a transition life coach, a responsible, appropriate adult who will provide support, encouragement, stability, mentoring and guidance to the youth necessary to help the youth meet his/her goals.
- Much like a parent does with his/her transition age child, the coordinator, the youth, and the coach would engage in a collaborative process to develop a transition plan specific to each individual youth, and determine the resources, activities, and efforts necessary to achieve the goals of that plan.
- The program staff would identify existing community resources, services, programs and events that would be appropriate opportunities for the youth participants to engage in as they work toward meeting the goals of their transition plans.
- The program staff would identify areas where specialized teaching/training opportunities would be beneficial to assist the youth participants in meeting the goals of their transition plans.
- CAI secured the participation of several key local entities, organizations, programs, and individuals from throughout San Diego County, all of whom would offer assistance to implement the program, including the San Diego Juvenile Court, Dependency Legal Group of San Diego, the Public Defender's Office (Juvenile Delinquency Division), StandUp for Kids, and experts in the fields of mentoring, physical and mental health and well-being, educational and vocational counseling, life skills training, and more.

Unfortunately, San Diego County did not select CAI's proposal for funding. Regardless, CAI will closely monitor the implementation and effectiveness of the selected project, and will continue its advocacy efforts to encourage other counties to follow San Diego's lead in using MHSA funds to provide programs developed specifically for transition age foster youth.

❖ **Implementation of AB 12.** During 2011, CAI continued to participate in the implementation of **AB 12 (Beall)** (Chapter 559, Statutes of 2009), the California Fostering Connections to Success Act, implementing the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. 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 (extended foster care, or EFC), 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, with the focus on 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.

During 2011, the state's implementation of AB 12 included DSS' release of three All County Letters and one All County Information Notice, detailing different aspects of AB 12 and containing implementation instructions for California's 58 counties; the Legislature's enactment of AB 212 (Beall) (Chapter 459, Statutes of 2011), making various federal compliance, technical and clarifying changes to AB 12; and the Judicial Council's amendment and/or adoption of Rules of Court and forms implementing AB 12.

Pursuant to the implementation taken place to date, as of January 1, 2012, the following non-minors are eligible for EFC: those who turned 18 in 2011 and were in foster care under the jurisdiction of the juvenile court on January 1, 2012; those who turn 18 in 2012 or thereafter; those who are on probation and under an order for foster care placement at age 18 during the time frames specified in 1 and 2; those who are eligible for either state or federal AFDC-FC; and those who are in a non-relative legal guardianship established through the juvenile court and sign a mutual agreement. In order to remain eligible for EFC, a non-minor dependent must be completing secondary education or a program leading to an equivalent credential; be enrolled at least half-time in an institution which provides post-secondary or vocational education; be participating in a program or activity designed to promote or remove barriers to employment; be employed for at least 80 hours per month or be incapable of doing any of the above activities due to a short or long-term medical condition, as verified by a health care practitioner. Youth who choose to participate in EFC must sign a Mutual Agreement acknowledging that they are voluntarily agreeing to remain in foster care in supervised placements as court dependents, and agreeing to comply with program requirements and eligibility conditions.

CAI has some concerns about the implementation of AB 12 and the federal Fostering Connection Act, such as the following:

- ▶ As noted above, in order to maintain eligibility for EFC, participating youth must either be engaged in one of four specified activities, or be incapable of doing so due to a short or long-term medical condition as verified by a health care practitioner. The specified activities should properly be ones that will meaningfully prepare these youth to become self-sufficient, independent young adults; otherwise, youth will be in no better position to attain positive outcomes for themselves when they leave care at 19, 20, or 21 than they would be at 18. CAI is concerned about the activity described as “participating in a program or activity that promotes or removes barriers to employment”—an extremely broad category that encompasses activities such as volunteering and participating in an internship. Such programs or activities are supposed to be individualized based on a youth centered assessment of skills and needs, and according to DSS, this option should be used as a “back-up plan” in case a non-minor dependent intentionally or unintentionally experiences a break in participation in an educational or employment activity part way through a six-month eligibility certification period. While CAI supports flexibility that will keep youth in the program while they are temporarily not engaged in one of the more life-enhancing activities, CAI is concerned that some youth who use this EFC eligibility condition on a long-term basis might not be doing enough to appropriately prepare themselves for the challenges and responsibilities of living independently.
- ▶ Young adults participating in EFC are subject to monthly case manager visits, and the majority of such visits must be conducted at the youth’s place of residence. This is the same requirement that applies

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to foster children under the age of 18, and thus federal law fails to make any distinction between the needs and circumstances of children in foster care and the adults participating in EFC. CAI commends DSS for recognizing that some non-minor dependents will be living with roommates or in dorm settings and for encouraging case managers to be flexible in when and where they

visit non-minor dependents, to the extent possible, to help respect the youths’ privacy; however, CAI is concerned that case managers will still be required to meet the potentially intrusive federal requirement of regularly visiting each young adult at his/her place of residence.

- ▶ Young adults participating in EFC are subject to monthly case manager visits, and the majority of such visits must be conducted at the youth’s place of residence. This is the same requirement that applies to foster children under the age of 18, and thus federal law fails to make any distinction between the needs and circumstances of children in foster care and the adults participating in EFC. CAI commends DSS for recognizing that some non-minor dependents will be living with roommates or in dorm settings and for encouraging case managers to be flexible in when and where they visit non-minor dependents, to the extent possible, to help respect the youths’ privacy; however, CAI is concerned that case managers will still be required to meet the potentially intrusive federal requirement of regularly visiting each young adult at his/her place of residence.
- ▶ Given the challenges the counties historically have had with providing enough THP-Plus placements to meet the demand of transition age foster youth, CAI questions the ability of counties to accommodate the demand for the more flexible, independent and less restrictive placement settings that are appropriate for young adults participating in EFC; CAI is concerned that these youth might be required to stay in unduly restrictive placements while they wait for more age-appropriate options to become available.

In order to address these and other concerns, CAI will continue to advocate at the state and federal for clarification or amendment as warranted.

*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.*

## Public Disclosure of Child Abuse Deaths and Near Deaths

Over 1,700 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.

❖ **National Report Card: State Secrecy and Child Deaths.** During 2011, CAI continued to follow up on the momentum brought on by the 2008 release of “*State Secrecy and Child Deaths in the U.S.*,” a joint report of CAI and First Star that revealed how 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—is 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 *State Secrecy* report also sparked public discussions within many states regarding the need to improve their specific disclosure policies, and during 2011 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 also conducted extensive research for the 2<sup>nd</sup> edition of the report, which is expected to be published in April 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.

*CAI is grateful to Voices for America’s Children for generously supporting CAI’s work to improve the public disclosure of child abuse and neglect fatalities and near fatalities.*

❖ **Federal Implementation of CAPTA Public Disclosure Guidelines.** The *State Secrecy* report generated a tremendous amount of media attention, which in turn sparked discussions at the federal level regarding CAPTA itself. Because of advocacy by CAI and other child advocacy organizations regarding the need to strengthen state reporting requirements regarding the disclosure of findings and information on child abuse and neglect fatalities and near fatalities, the U.S. 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 focused on 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. To date, the Secretary has not issued regulations that are responsive to the Committee’s directive, and has indicated that no such regulations are forthcoming, so CAI will continue to advocate in this regard during 2012.

## A Child’s Right to Counsel

During 2011, CAI continues its efforts to ensure that across the country, abused and neglected children in the foster care system receive client-directed representation by trained, competent attorneys handling manageable caseloads.



❖ **ABA Model Act.** In August, after three years of negotiations and advocacy by CAI and other organizations, the American Bar Association adopted the **Model Act Governing the Representation of Children in Abuse, Neglect and Dependency Proceedings** at its annual meeting in Toronto.

This new Model Act calls for client-directed, traditional attorneys for all children in dependency cases who are verbal and able to express their wishes, and will hopefully serve as a model for states who do not yet guarantee the right to counsel, as well as for the federal government during the next reauthorization of CAPTA. Specific provisions of the Model Act include the following:

- ▶ it broadly defines “proceeding” to include all stages of the dependency case 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 that representation of the client’s wishes is contrary to his/her best interests or where the child is incapable of directing representation; and
- ▶ it includes the presumption that children should personally attend all court hearings.

❖ **National Report Card: *A Child’s Right to Counsel*.** Also in 2011, CAI and First Star continued to follow up on their 2009 release of *A Child’s Right to Counsel—A National Report Card on*

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*Legal Representation for Abused & Neglected Children (2<sup>nd</sup> Ed.)*. This national report, which was released at a congressional briefing at 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;
- ▶ implementation of a loan forgiveness program for child advocate attorneys, since compensation in this field of practice is prohibitively low; and
- ▶ adoption of state and federally imposed caseload limits of 100 clients so attorneys can focus appropriate attention on each case;

CAI and First Star plan on releasing the 3<sup>rd</sup> Edition of *A Child’s Right to Counsel* in May 2012.

❖ **Counsel for Children in Family (Custody/Visitation) Court Proceedings.** Toward the end of 2011, CAI began looking into issues concerning the appointment of counsel for children in family law proceedings. California law provides that if the court determines that it would be in the best interest of a minor child, the court may appoint private counsel to represent the interests of that child in a custody or visitation proceeding. The role of the child’s counsel is to gather evidence that bears on the best interests of the child, and present that admissible evidence to the court in any manner appropriate for the counsel of a party. If the child so desires, the child’s counsel shall present the child’s wishes to the court. The counsel’s duties, unless under the circumstances it is inappropriate to exercise the duty, include interviewing the child, reviewing the court files and all accessible relevant records available to both parties, and making any further investigations as the counsel considers necessary to ascertain evidence relevant to the custody or visitation hearings.

Although state law authorizes the appointment of counsel for children in custody/visitation cases, CAI is concerned that such appointment is sporadic and arbitrarily varies greatly county by county. Family law proceedings are often extremely contentious and highly emotionally charged, and many involve allegations of domestic abuse, child abuse, or child neglect. In such cases it is hard to imagine the circumstances where it would not be in the best interests of the children to be represented by their own attorney. CAI will continue to research this matter and expects to release a report and/or recommendations by the end of 2012.

❖ **Dependency Counsel Training Program.** In 2011, CAI continued to provide training to attorneys engaged in Dependency Court practice, as it has since 2007 when it received a three-year grant under the federal Children's Justice Act, administered by the Governor's Office of Emergency Services, to develop a curriculum and train attorneys who are new to Dependency Court practice. Although that grant ended in 2010, CAI has continued to provide a range of multidisciplinary trainings to attorneys and others involved in Dependency Court practice.

In March 2011, CAI co-sponsored a two-day advanced training in Los Angeles entitled, "Dependency Counsel Training Program 201: Using Witnesses to Build Your Case." CAI Senior Staff Attorney Christina Riehl pulled together an impressive panel of presenters, including Dr. Thomas Grogan, Dr. Mark Labowe, Dr. Tom Lyon, as well as attorneys Nancy Aspaturian, Robert Gulemi, Leslie Heimov and Candi Mayes. Sessions included topics such as the role of doctors in dependency cases—including how to interview them as expert witnesses and utilize their expertise to build a case; a discussion of common medical myths that arise in dependency cases, and the medical truth as it pertains to those myths; basic facts about injuries common to dependency proceedings (fractures, bruises, burns and retinal hemorrhaging); and methods for assessing the credibility of child witnesses.

### **Homeless Youth Outreach Project**

During 2011, CAI's Homeless Youth Outreach Project (HYOP) continued to provide homeless children and youth with legal services and related assistance. On a sad note, HYOP founder Kriste Draper resigned from CAI in May due to her husband's transfer out-of-state. Kriste was the driving force behind HYOP for the five years since she launched the project in 2006, and her passion and dedication to helping homeless youth made quite an impression on her friends and colleagues—as well as on the many young people she helped during her time at CAI. Before leaving, Kriste spent several weeks training her successor, CAI Staff



Attorney Melanie Delgado, who now operates HYOP's 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.

In December 2011, CAI helped facilitate Sony Electronics' 5th annual holiday party for HYOP clients and other homeless youth, held at the StandUp for Kids shelter in downtown San Diego. In addition to providing a delicious holiday dinner with all of the fixings, Sony gave homeless youth gifts such as sleeping bags, backpacks, toiletries, clothes, electronic devices, and more. As with prior years, the event was an overwhelming success.

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



Journalism Awards to the following:

#### **Daily Newspapers:**

- ❖ **1st Place:** Los Angeles Times—*Continuing Coverage of the Troubled Los Angeles Department of Children & Family Services*, by Garrett Therolf
- ❖ **2nd Place:** Los Angeles Times—*Grading the Teachers*, by Jason Song, Jason Felch, and Doug Smith

#### **Weekly Newspapers:**

- ❖ **1st Place:** East Bay Express—*Pushing Foster Children Off the Plank*, by Angela Kilduff

#### **Electronic Media:**

- ❖ **1st Place:** VoiceofSanDiego.org—*Compilation of Articles on Preschool and Child Care*, by Emily Alpert
- ❖ **2nd Place:** CaliforniaWatch.org—*As Early Elective Births Increase, So Do Health Risks for Mother, Child*, by Nathanael Johnson; *Spending Far from Equal Among State's School Districts, Analysis Finds*, by Louis Freedberg and Stephen K. Doig; and *School Health Centers Expand Despite Lack of State Funding*, by Louis Freedberg

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.; Hon. Leon Kaplan (Ret.); Lynn Kersey; Gloria Perez Samson; Alan Shumacher, M.D., F.A.A.P.; and Dr. Robert Valdez, Ph.D.

## **Leadership, Outreach and Collaboration**

### **National Advocacy and Collaboration**

During 2011, CAI actively engaged in advocacy at the national level. In addition to the federal legislative and regulatory advocacy described above, much of CAI's national work involves participation in various coalitions of children's groups across different spectrums of work, including close collaboration with coalitions such as the National Child Abuse Coalition, the Child Welfare & Mental Health Coalition, the National Foster Care Coalition, the Children's Leadership Council, the Children's Rights Litigation Committee of the ABA Section of Litigation, and Voices for America's Children.

Additionally, CAI and the USD School of Law co-sponsored the annual premier event of the National Association of Counsel for Children (NACC)—the 2011 National Child Welfare, Juvenile, and Family Law Conference, which was held in Coronado

### **Educational Representative Program**

During 2011, 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 2011, CAI celebrated the 20th Anniversary of the 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 2011 Price Child Health and Welfare





**2011 Price Child Health and Welfare Journalism Luncheon.** *Prof. Bob Fellmeth (CAI Executive Director) is pictured with four of the recipients of the 2011 Price Child Health and Welfare Journalism Award: Angela Kilduff; Nathanael Johnson; Garrett Therolf; and Emily Alpert.*

on August 30-September 1. The event, which is designed primarily for attorneys who practice child welfare, juvenile and family law, also attracted professionals from the fields of medicine, mental health, social work, probation, law enforcement, and education. In addition to co-sponsoring the event, CAI presented a session entitled, “Building a Bridge from Foster Care to Financial Self-Sufficiency,” providing information on barriers to financial self-sufficiency that face older foster youth who are transitioning out of care. CAI staff, together with former foster youth, presented information that attorneys need to know about these barriers, how to help their clients avoid or overcome them, and innovative ideas for broader advocacy.

**CAI and the USD School of Law co-sponsored the annual premier event of the National Association of Counsel for Children (NACC)—the 2011 National Child Welfare, Juvenile, and Family Law Conference.**

## Youth Advisory Board

During 2011, CAI continued to convene meetings of its Youth Advisory Board, which consists 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 2011, continued to coordinate and convene 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 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.

In 2011, CAI revamped some features of the Roundtable. For example, meetings are now held quarterly, instead of monthly; advocates can attend and participate via conference call; and each meeting features a substantive presentation by a different member of the Roundtable on an emerging issue of importance, as well as timely information on budget matters, legislative proposals, and other matters. During 2011, the Roundtable discussions included the following:

- ❖ In January, CAI convened a panel to discuss the issue of commercially sexually exploited children. Speakers included CAI's Kriste Draper; Barbara Loza-Murieta, facilitator of the Alameda County Sexually Exploited Minors Network; Amy Alley, Communications Director/ Deputy Legislative Director for Assemblymember Sandré Swanson; Nola Brantley, Executive Director and Co-Founder of MISSEY, Inc., a community-based organization serving sexually exploited youth; Daphne Phung, founder and Executive Director of California Against Slavery, which advocates for strengthening current human trafficking laws and increasing victim's rights; and Rosario Dowling, California Against Slavery Regional Director and State Capitol Liaison.
- ❖ In May, Health Access California presented a panel on fulfilling the promise of healthcare reform for children and implementing and improving the Affordable Healthcare Act in California. The panel discussion included an overview of the law



Three of the Founding Members of CAI's Youth Advisory Board:  
*Pictured (l-r): Mercediz Hand; Helena Kelly; and LaQuita Clayton.*

and what California has yet to do by Anthony Wright, Executive Director, Health Access California, as well as presentations on current legislation to improve eligibility, enrollment, and consumer assistance by

Elizabeth Landsberg, Legislative Director, Western Center on Law and Poverty; continuing issues on children's coverage and getting ready for 2014 and beyond by Deena Lahn, Policy Director, Children's Defense Fund; and an on-the-ground perspective on getting children the care and coverage they need by Alison Lobb, Policy Analyst, California Coverage & Health Initiatives.

- ❖ In September, the First Five Association of California presented information on the Preschool Makes a Difference Initiative, with speakers including Sean Casey, Executive Director, First 5 Contra Costa Oral Health Initiative; Jill Blake, Executive Director, First 5 Butte Newborn Home Visitation Initiative; Linda Fong, Program Planner, First 5 Sacramento Early Childhood Mental Health; and Moira Kenney, Statewide Program Director, First 5 Association of California.
- ❖ In November, the California Youth Connection (CYC) presented information regarding the implementation of AB 12 and future advocacy efforts around foster care, featuring Chantel Johnson, CYC's Legislative and Policy Coordinator (a former foster youth and a foster parent) and Janay Swain, CYC's Statewide Youth Council Coordinator. The November Roundtable also featured a presentation on triage homes for medically fragile foster children by child advocate Dusty Copeland.

### CAI Blog Activity

During 2011, CAI made a number of postings to its web log (blog) 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; some are written by CAI staff, while others are written by members of CAI's Youth Advisory Board and other guest bloggers. Blog entries posted during 2011 covered topics such as the status of children in 2011; barriers preventing former foster youth from attaining self-sufficiency;

**The Roundtable, established in 1990, is an affiliation of over 300 statewide and regional children's policy organizations, representing over twenty issue disciplines.**

advocating for foster children's issues in an era of financial conservatism and program cuts; a former foster youth's perspectives on where cracks exist in the foster care system; and foster family home reimbursement rates.

### 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.

## Looking Ahead to 2012

### Release of Two Major National Report Cards.

During 2012, CAI, in conjunction with First Star, will release the 2<sup>nd</sup> Edition of *State Secrecy and Child Deaths in the U.S.* and the 3<sup>rd</sup> Edition of *A Child's Right to Counsel*. Both of these reports will include the grading of states on their statutes and rules. Both are continuation studies of their subjects, following initial reports and tracing the progress of states in improving (or retracting) their child protection laws. The former, analyzing states' concealment of information about child abuse or neglect deaths and near deaths—notwithstanding a disclosure mandate in CAPTA—will be released in April 2012 at a Congressional briefing at the U.S. Capitol, and will grade the states on their performance in enacting statutes and rules that allow the public to access information about abuse or neglect deaths and near deaths. The latter, which grades states on the extent to which they ensure legal representation for children in dependency court proceedings, will be released in May, also at a Congressional briefing at the U.S. Capitol.

### Publication and Release of a New National Study of DHHS Enforcement of Federal Child Welfare Standards.

Congress has included minimum provisions for the protection of children as a prerequisite to state eligibility for many billions of



dollars in federal aid. Those provisions are relevant to the secrecy of child abuse deaths, representation of children by counsel addressed in the other two CAI reports above, and are relevant to other issues such as caseloads of social workers, treatment of foster youth aging out and a host of minimum statutory (and Constitutional) standards the states must obey. Current compliance is achieved through flimsy “assurances” obtained from each state governor prior to receiving federal funds, and scattered lawsuits by child advocacy groups with marginal funding and reach. The cases take years to yield enforcement and affect only a small percentage of jurisdictions to secure compliance.

But it is the purpose of the executive branch to assure state compliance with federal law and Congressional intent, and it has enormous power to do so on a massive scale. CAI’s research during 2011 indicates that the U.S. Department of Health and

Human Services (DHHS) has done little to nothing to meet its oversight and enforcement obligations, resulting in widespread non-compliance with federal floors intended to protect and advance the interests of children. During 2012, CAI will document the performance, or nonfeasance, of DHHS in a national report.

#### **Campaign to Defend Students from Exploitation.**

During 2012, USD will bring together some of its most effective programs, including CAI, the Center for Public Interest Law (CPIL), the School of Law’s Legal Clinics, and the School of Leadership and Education Sciences’ Center for Education Policy and Law to launch a major initiative aimed at addressing the increasing exploitation of young adults, including veterans and former foster youth, by the private for-profit post-secondary education sector. Although American youth need higher education, there is a spiraling record of boiler room sales to vulnerable youth to sign up for marginal “educational” programs at very high tuition levels financed by public grants and loans. For some of these schools, few students graduate or obtain the desired employment as a result, and many are unable to repay the loans pocketed by the schools. The end result has become a growing number of schools with high profit that spend little on education, but a great deal on marketing and lobbying. They leave in their wake tens of thousands of unemployed former students with ruined credit—unable to repay the expensive loans and with reduced prospects. Those defaults have reached levels jeopardizing the continuation of grants and loans for schools with effective and bona fide programs (both non-profit and for-profit).

In its part of the project, CAI and CPIL will use studies and evidence to advocate in Sacramento and state capitols, as well as in Washington, D.C., for defensible standards to moderate

current high levels of abuse by this burgeoning industry. CAI and CPIL will together draw from the other two USD elements of the project and will also work with three of the nation’s leading experts to draft model statutes and rules and advocate for enactment and adoption at the state and federal level.

#### **Support for Open Juvenile Dependency Courts.**

CAI will continue to support a Blanket Court Order issued by Presiding Los Angeles Juvenile Court Judge Michael Nash, which provides a procedure for allowing the media and public into Dependency Court proceedings to the extent state law allows, and we will defend

**During 2012, CAI, in conjunction with First Star, will release the 2<sup>nd</sup> Edition of State Secrecy and Child Deaths in the U.S. and the 3<sup>rd</sup> Edition of A Child’s Right to Counsel.**

that Order in court as necessary. Ideally, the model of open courts with particularized confidentiality where in the best interests of a child, will become the standard statewide. That arrangement protects child sensitivity where necessary, while continuing the critical democratic check on the state that here has every detail of 70,000 foster children within its domain. During 2012 CAI will also launch a new project entitled, “Foster Kids First: Does Press Coverage Help Foster Kids?”, in which we will monitor and analyze the quality and quantity of media coverage of Los Angeles County Dependency Court matters and attempt to identify beneficial or detrimental impacts of such coverage.

**Acceleration of Advocacy for the TLC Model for Aging Out Foster Children.** During 2012, CAI will continue to monitor counties’ use of Prop. 63 funds to serve transition age foster youth, and will continue to advocate in that regard. We will also be closely monitoring the implementation and outcomes of the San Diego County Prop. 63-funded program discussed above. CAI will augment that effort with continued monitoring of California’s AB 12 (implementing the federal Fostering Connections to Success Act in California), and will advocate for regulatory and statutory refinements as appropriate.

**Appointment of Counsel for Children in Family Court Proceedings.** CAI is starting a statewide study of the extent to which Family Courts appoint counsel for children in divorce and custody proceedings. The contentious nature of divorce proceedings often sweeps into its vortex child victims within the family. These children may live in an atmosphere of domestic violence, child molestation accusations, and the too-often use of children as pawns in the emotional battling of their parents. We have requested the relevant data from the Administrative Office of the Courts and are presented with important questions for inquiry: How would these proceedings be affected by counsel for involved children, who could inquire and advise the court from the perspective of the child’s best interests? What are California’s criteria for such appointments? How is that criteria actualized in the various counties? Some contend that many counties only make such appointments where the parents can afford and will finance it, and deny it in all other cases, whatever the need or the merits. Is there merit to that accusation? What would be a model rule and policy on such appointments? What would be their cost-benefit

implications? CAI will study this subject through 2012, with the hope of presenting a helpful, illuminating report of findings during late 2012 or early 2013.

**Expanding Advocacy Through Social Media Platforms.** During 2012, CAI will be planning, developing and implementing a social media strategy that will enable us to use new technologies and networking capabilities to enhance our substantive work. This will include establishing a presence on Facebook, Twitter and other emerging social media platforms, and leveraging those technologies to expand the scope and reach of our advocacy, public education and outreach efforts.

**Continuation of Core Programs.** During 2012, CAI will continue to offer its academic program. Our substantive course,

Child Rights and Remedies, now includes international human rights students from the Joan B. Kroc School of Peace Studies at USD. We hope that the Public Interest Law “concentration” offered to law students that now includes a “focus” on child advocacy will be altered to elevate child advocacy as its own, separate “concentration” or major. We

will continue to offer USD law students the opportunity to engage in three unique advocacy opportunities in our dependency, delinquency and policy clinics. And we will continue efforts to establish a Masters of Law in Child Advocacy.

We will continue to operate our Homeless Youth Outreach Program, which provides legal advocacy for San Diego County’s homeless youth and includes work with our Youth Advisory Council. We will also continue to expand 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 protect the education of youth in the juvenile courts.

We shall continue and expand our efforts and advocacy at the national level. As over the past two decades, we shall work with NACC, with yours truly serving as an *emeritus* member of the Executive Committee for 2012 and 2013; CAI’s close friend and colleague Jan Sherwood from Northern California will be succeeding me as NACC Board President. We shall continue as counsel to the Board of Voices and a member of the boards of First Star and of the Maternal and Child Health Access. CAI shall be presenting a panel discussion on DHHS enforcement (or non-

**CAI will launch a major initiative aimed at addressing the increasing exploitation of young adults, including veterans and former foster youth, by the private for-profit post-secondary education sector.**



enforcement) of federal child welfare standards among the states at the NACC national conference in August in Chicago.

We will continue to engage in legislative and regulatory advocacy at the state and federal levels. We shall continue 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's blog will be augmented with new posts from staff, guest contributors and our own Youth Advisory Council members.

CAI collaborative work within California will also continue, including the quarterly convening of the Children's Advocates Roundtable in Sacramento, a network of over 300 organizations interested in children's issues. CAI will continue 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.

And CAI will, for the 21<sup>st</sup> year, present the Price Child Health and Welfare Journalism Awards to journalists who most skillfully report on the status of children in daily newspapers, weekly publications, and in electronic media.

#### **Reintroduction of CAI's California's Children's Budget**

**and Information Clearinghouse on Children.** During 2012, CAI will be considering the reintroduction of its *California Children's Budget*, a 600-page study and report CAI published annually from the early 1990s through 2004. It was a major investment in time and resources and has not been renewed for the last several years. But in 2012, the need for detailed scholarship on empirical trends, cost-benefit indices and spending trends adjusted for population and inflation has never been more urgent. These detailed reports trace federal, state and local spending and adjusted trends across hundreds of accounts grouped by subject area: poverty (safety net), child care, health coverage, disability, child abuse, education, and juvenile justice.

The Information Clearinghouse on Children provided an important service to journalists interested in covering child issues. It summarized esoteric scholarly reports into more easily digestible format, helped academic research obtain more popular exposure, provide leads for journalists, and supply names of experts for inquiry and quotation. Because of the decline in resources for investigative journalism, this kind of service has never been more needed. And it now has the affirmative opportunity to find ways to directly reach the citizenry through a new technologies and networking opportunities such as social media platforms, YouTube postings, *et al.*

## **2011 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, 2011, and December 31, 2011, and/or in response to CAI's 2011 holiday solicitation:

**Marek Adamo**

**Howard and Nancy Adelman**

**Prof. Larry Alexander**

**Anzalone & Associates**

**Maureen Arrigo**

**William M. Benjamin**

**Vickie Lynn Bibro and John Abbott**

**Melanie Branca**

**Paula Braveman**

**Alan and Susan Brubaker (*in memory of James A. D'Angelo*)**

**Dana Bunnett**

**Prof. Karen Burke**

**Peter and Suzette Burnside**

**Carlos Carriedo**

**Prof. Nancy Carol Carter**

**ComputerShare (*Asabi v. Santander cy pres funds*)**

**Jim Conran**

**Consumers First, Inc.**

**Ann D'Angelo (*in memory of James A. D'Angelo*)**

**Nancy D'Angelo (*in memory of Peter T. D'Angelo*)**

**De Anza Campland**

**Steve Davis**

Albert DeLeon	Barbara and Edwin Miller
Jill Dickerson	Haida Massoud Mojdehi
M. Chris Dickson Foundation	Morrison and Foerster
Liam Duffy	John B. Myer ( <i>in memory of James A. D'Angelo</i> )
Joy Eden	Carl Oshiro
Gary Edwards	James and Frances Peterson
Suzanne Evans	Paul and Barbara Peterson
Samantha Everett	Peterson Charitable Foundation
Anne Fragasso	Price Family Charitable Fund
Donna Freeman and Gene Erbin	Phillip Raffe and Lois James
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Beth Givens	Gary Redenbacher and Renae Fish
Joel C. Golden	Marianne Rempe
Dr. John M. Goldenring	Dr. Gary Richwald and Sue Bayley
GoodSearch	Hal Rosner ( <i>in memory of James A. D'Angelo</i> )
Jim and Patti Goodwin ( <i>in memory of James A. D'Angelo</i> )	Ron Russo
Susan Gorelick	Dorian Sailer
Mishaela Graves	Gloria Samson
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Dr. Birt Harvey	Shinnick & Ryan LLP
Judith and Edgar Hayden	Dr. Alan and Harriet Shumacher
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Prof. Yale Kamisar	Sony Electronics
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Mike and Susan Marrinan	<i>Anonymous Donors</i>
John Massucco	
James B. McKenna	
Hilda Medina	

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

—The Editors

# CAI STAFF

**ROBERT C. FELLMETH**, CAI's Executive Director; 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**, CAI's Administrative Director and Staff Attorney, 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 all of CAI's special reports, as well as regular publications such as 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; collaborates with and assists other child advocacy and public interest organizations; serves as an Educational Representative under appointment by the San Diego Juvenile Court; 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**, CAI's Senior Counsel / Senior Policy Advocate based in Sacramento, conducts CAI's legislative and policy advocacy and is active in CAI's impact litigation program. He also co-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**, CAI Senior Staff Attorney in the San Diego office, conducts litigation activities; performs research and analysis regarding CAI's legislative and regulatory policy advocacy; assists in the research and drafting of CAI special reports; and serves as an Educational Representative under appointment by the San Diego Juvenile Court. 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,** CAI Staff Attorney in the San Diego office, works on CAI grant projects, litigation, and related activities; performs research and analysis regarding CAI's legislative and regulatory policy advocacy; assists in the research and drafting of CAI special reports; and serves as an Educational Representative under appointment by the San Diego Juvenile Court. Delgado has extensive expertise in the area of services, programs, and funding for youth aging out of the foster care system. She also co-chairs the Children's Advocates Roundtable, a network of 300 California child advocacy organizations representing over twenty issue disciplines. 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,** CAI Staff Attorney, oversees the Homeless Youth Outreach Project; performs research and analysis regarding CAI's legislative and regulatory policy advocacy; assists in the research and drafting of CAI special reports; and serves as an Educational Representative under appointment by the San Diego Juvenile Court. 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. Kriste resigned from CAI in May 2011 due to her husband's transfer out-of-state.

**AMY HARFELD,** National Policy Director, implements 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,** Executive Assistant, performs bookkeeping and donor relations responsibilities in CAI's San Diego office. She tracks revenue and expenses, processes grant and fundraising activities, and provides support services to CAI professional staff, the CAI Council for Children, and the CAI academic and advocacy programs.

**AARIKA GUERRERO,** Executive Assistant, serves as office manager in the San Diego office, where she helps coordinate and support law student participation in the academic program; support CAI's various advocacy activities and grant projects; and recruit, train, and oversee 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)*

## 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.

*Special Prosecutor, Economic Crimes Division, San Diego District Attorney's Office; Professor-in-Residence, University of San Diego School of Law; Of Counsel, Center for Public Interest Law (San Diego)*

## GLORIA PEREZ SAMSON

*Retired school administrator (Cibola 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)*

### **LOUISE HORVITZ, M.S.W., PSY.D.**

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

### **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; Prof. Bob Fellmeth (CAI Executive Director); James McKenna; Dr. John Goldenring; Dr. Alan Shumacher; and Gloria Perez Samson. Not pictured: Dr. Robert Black; Hon. Leon Kaplan; Dr. Gary Richwald; Gary Redenbacher; and Owen Smith.*

# 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](http://www.caichildlaw.org/support-cai.htm).
- ❖ Make the Children's Advocacy Institute your charity of choice when using [www.goodsearch.com](http://www.goodsearch.com) to conduct Internet searches or [www.goodshop.com](http://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 Juvenile 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](http://www.caichildlaw.org), call us at (619) 260-4806, or email us at [info@caichildlaw.org](mailto:info@caichildlaw.org).







