

University of San Diego

Digital USD

CAI Annual Reports

Children's Advocacy Institute

1-1-2012

2012 Annual Report

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

Follow this and additional works at: https://digital.sandiego.edu/law_cai_annual

Digital USD Citation

Children's Advocacy Institute, University of San Diego School of Law, "2012 Annual Report" (2012). *CAI Annual Reports*. 15.

https://digital.sandiego.edu/law_cai_annual/15

This Book is brought to you for free and open access by the Children's Advocacy Institute at Digital USD. It has been accepted for inclusion in CAI Annual Reports by an authorized administrator of Digital USD. For more information, please contact digital@sandiego.edu.

Children's Advocacy Institute

2012 Annual Report







Table of Contents

About the Children's Advocacy Institute.....	2
From the Desk of the Executive Director	3
I. The Setting for Child Advocacy in America.....	3
A. Financial Commitment to the Next Generation.....	3
B. Long-Term Commitment to the Earth	5
C. The Political/Internet World.....	5
II. 2012 Accomplishments and 2013 Plans	7
A. Producing the Child Advocates of Tomorrow	7
B. Litigation	10
C. Campaigns, Reports and Presentations.....	12
• <i>Public Disclosure of Child Abuse and Neglect Deaths and Near Deaths</i>	12
• <i>A Child's Right to Counsel</i>	13
• <i>Improving Outcomes for Transition Age Foster Youth</i>	14
• <i>Improving the Dependency Court Process</i>	17
• <i>Private For-Profit Education Abuses</i>	17
• <i>Federal Neglect of Child Welfare Laws</i>	18
D. Legislative Advocacy	18
• <i>California Priorities</i>	18
• <i>Children's Legislative Report Card</i>	20
• <i>Federal Priorities</i>	20
E. Collaboration with National Colleagues.....	21
F. Collaboration with California Colleagues.....	22
G. Advisory Board Activity.....	23
III. A Note of Thanks	24
CAI Staff	26
CAI Council for Children.....	26
CAI Youth Advisory Board.....	27
Help Us Help Kids	28



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, Sacramento and 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, *cypres* awards, and tax-deductible contributions from individuals and organizations.

From the Desk of Executive Director

I. The Setting for Child Advocacy in America

This report summarizes where we at CAI are in our advocacy for children—including our major work of 2012 and our plans for 2013. In previous reports, we discussed the cultural and political obstacles we face. We are again obliged to outline summarily the nation's systemic political and cultural obstacles faced by all child advocates.

A. FINANCIAL COMMITMENT TO THE NEXT GENERATION

We have for several years discussed inter-generational equity and our underlying concern for the performance of my Baby Boomer generation (those born from 1945 to 1970). Our group benefitted mightily from the hard work and sacrifice of our parents and grandparents—a legacy too many of us have taken for granted. The Boomer “talking heads” on television and radio manifest much braggadocio about how “great” we are—referring to their own generation—in marked contrast to the understatement and quiet gratitude that were the hallmarks of the “Greatest Generation” to come before us. The many loud self-congratulatory braggarts among us do not seem to appreciate the rather marked contrast between their record in providing for us, and our imminent legacy to those who will follow us. The Greatest Generation who became adults in the 1930s and 40s overcame a massive depression, defeated the fascists in a worldwide conflagration that killed and disabled many millions. They provided free higher education for returning GIs. Then they rebuilt Europe, including our enemies. Indeed, history lacks many examples of victorious nations who did not stay on and exploit the conquered, but instead helped the aggressive peoples who attacked them to recover their lands and their livelihoods. Our parents even delegated power back to those very peoples. And, by the way, it worked rather well.

They then taxed themselves (including a bracket for the wealthy not at 31%, but 89%). They used the proceeds to give us our infrastructure: These include water projects we never think about that have made us the most agriculturally productive nation on earth. They created interstate highways, airports and a modern rail system. They invested heavily in parks and wilderness. And they invested in each other, with social security, a safety net for impoverished children, school lunches, and medical coverage for

seniors. And for us, their children, they made reachable the two most important dreams of every American child not enjoying inherited privilege — educational opportunity and the chance to own a home. They created the most advanced free public education system in the world, including higher education opportunity for millions that was reachable and affordable. And they made it possible for an impoverished generation of youth — by the millions — to drive a car to places near and far, and to pull into a garage with a home and yard that was ours. One other thing. They paid for it. They did not pass onto us a massive unfunded liability.

Regrettably, our record does not match theirs. For starters, we have been and continue to raise higher education tuition unconscionably and contracting higher education capacity. And we have created a huge industry of fraudulent private for-profit colleges who mislead students, charge high tuition, exploit public subsidy and arrange for ruinous loans, only to spend a small percentage of revenue on education. Most of the endeavor is on deceptive advertising, with low graduation rates and few jobs in the areas of alleged training, and problematical qualification for licensure. The result has been public monies wasted in record amounts, and private credit ruination, particularly shameful given the identity of the two most prolific victim groups, veterans and foster children (see discussion of our advocacy relevant to this problem below). Beyond education abuse, we have inflated home prices to unaffordable levels.

Most condemnable, we are not paying for much of anything, and particularly not for the benefits we have arrogated unto ourselves through Social Security and Medicare. Rather, **we are leaving behind a deficit that has no parallel in human history, and we are not talking about it honestly.** Even child advocates are not doing it; our group is infected with the “money for nothing and chicks for free” zeitgeist that demarks the political liberals traditionally relied upon by those of us who advocate for children. Nor are conservatives willing to face down the demagoguery of the left, they seem to prefer advancing their own demagoguery.

Focus groups now dictating political messaging have led both parties to ignore the can kicked down the road — except it is not just a can, it is an incendiary and ticking nuclear warhead that everyone pretends does not exist. Both political parties have decided that “the middle class” is the group most folks identify



with, so that focus-group ascertained phrase is the centerpiece of current political rhetoric. Any mention of the immoral deficit is diverted into an absurd series of accusations about “death squads for Grandma.”

The unfunded liability for the benefits of current Boomers just now entering beneficiary age is now likely to reach above \$60 trillion before those now born are eligible for much of it. We have handed current seniors blank checks. Since I am among them, let me concede that we have handed them out to ourselves. And we know that when the next generation reaches 65 they will have the promise of what we have received (indeed, the sacred pledge to be similarly awarded) but they will not have the funds. We shall be gone, and they will not be able to come close to our benefits — not within the proverbial mile. In fact, they will have an ineffable deficit to carry forward all of their productive years just to pay for what we are getting over the next 20 to 40 years that many of us will survive. These are not made up numbers, they are the application of current revenue rates and current liability costs — in an evolving world with fewer children per senior. Our population is no longer the broad-based pyramid where we can percolate down the burden to those beneath us. It is more like the Washington Monument, with a lot of weight on the bottom levels.

The blank check here includes ever-increasing medical benefits for our seniors, a group with seven times the per capita medical coverage costs of children and $\frac{1}{2}$ the poverty level. But 8 million

kids remain medically uncovered, with ObamaCare likely to dent it only marginally given the refusal of many states to implement it, and with universal cuts to safety net protection for impoverished kids — a surprising and shameful number of whom suffer from hunger. One illuminating commentary on that hunger comes from the documentary “A Place at the Table” released in early 2013.

That \$60 trillion is an unimaginable sum. One trillion is a million times a million. If you took \$1 million every day from the time of Christ, through the Roman empire, medieval and reformation eras, and the entire history of our nation — you would still need another 6 centuries of \$1 million per day before you would reach \$1 trillion. So this is serious business. And I can assure you that our liberal friends are much worse on this issue than are our conservative colleagues. It is an inflamed Achilles heel. A blind spot. The Tea Party is the one group occasionally acknowledging this problem. Ironically, that actually stimulates its dismissal by most political commentators. If you have a group that is self-indulgent and wrong about 5 issues, being right about the 6th issue does not serve its prospects well. Number 6 is grouped with the ridiculous other five and all are dismissed based on the overall disrespect for the group raising it.

How often do we quietly wonder: Why did nobody — or so few — see that savings and loan/junk bond debacle of two decades ago or that energy deregulation miasma of one decade ago, or that 2008 financial collapse? None of the above really required us to be prescient geniuses. **To see the coming deficit crisis of massive unfunded liability, all that is needed is 4th grade math skills, some measure of honesty, and the personal character to care about what we pass down the line. All three may be missing from the Boomers.**

And here is a likely prospect we all might face sooner rather than later: What is going to happen when the People’s Republic of China decides to stop buying our 2% bonds, and we have to pay 3%, or 5%?

California manifests much of the current ethical malaise. Proposition 13 is an important example. The 1% of assessed valuation is not the issue. It probably should be $\frac{1}{2}$ of 1 percent. The real issue is that this is an “ad valorem” tax, a tax on market value of real property. But those valuations are artificially frozen at a small percentage above 1977 values, so my personal home is

actually worth fifteen times what I paid for it 40 years ago, but is assessed at under 2 times what I paid for it. And I can borrow up to its actual value — or fifteen times more than I paid for it. But my son, buying an identical market level home next door, will pay 8 times my property taxes for the same services we both receive. That discrimination against our children is based entirely on their “newly arrived” status. That is, we are taxing the young at many times the level we are paying based on that status alone. Adding to this, every corporation owning property in 1977 simply changes its stockholders and keeps its artificially low valuation, so the next generation of entrepreneurs who form their own corporations and buy property will be paying 5-10 times the amount as their Boomer competitors for the same services. And the correction of this outrageous inequity is considered political suicide. We have our work cut out for us.

B. LONG-TERM COMMITMENT TO THE EARTH

Unfunded liability hardly exhausts the counts in a hypothetical indictment of my generation. We have hardly been the trustees of the earth. We are plundering it, leaving waste and radioactive material and exhausting non-renewable resources like Roman patricians. That list of takings is a very long one. Underlying some of it: We have more than doubled the human population during just my lifetime — it is now over 7 billion and climbing apace. It has gone up 20 fold in just the last blink of human evolution. And now much of the human population living at the margin expects the same per capita energy consumption and resource extraction enjoyment that has succored us.

The billing of future generations for our care and comfort is replicated on the environmental cost side, where Boomers are plundering the planet without regard to the effect on our legatees. The list here is long, from the oceans and reefs, to flora and fauna, to non-biodegradable refuse, to the exhaustion of precious underground water assets (e.g., the Ogallala Aquifer watering the American breadbasket), to the depletion of thousands of non-renewable assets, to the production of millions of tons of radioactive waste with thousands of years of lethal half-life for an average nuclear plant life of 30 years each. Each human activity should carefully measure its long-term impact. Those that minimize negative impact (such as solar power) warrant

high cross subsidy, while those that impose costs are properly prohibited or at least assessed fees to stimulate less-costly means and finance mitigation.

C. THE POLITICAL/INTERNET WORLD

The above two basic concerns of children — financial opportunity/equity, and a whole earth — generally depend upon a political system that reflects the ethical sensibilities of all of us as individuals and parents. As persons, we care about those who follow us and have some appreciation for those who passed it down the line to us. Regrettably, organized interest groups do NOT represent the individual consciences of their membership, but rather notions of group advantage, as the political advocacy of the American Association of Retired Persons (AARP) for seniors and trade associations generally well exemplify. Those associations of corporate interests are of special concern. They are allowed to collude for political influence under the *Noerr – Pennington* doctrine. The potent, organized representation of interests with a predetermined economic asset to protect often conflicts with the interests of our children and grandchildren. They lack motivation to preserve the earth's assets far into the future, but rather to exploit fully and quickly the assets where they have an ownership claim. They have a motive to use government not as a vehicle to moderate external, future costs, but as one to impede competition and allow the unfettered assessment of future generations.

Exacerbating this imbalanced political setting is a government of remarkable passivity, enabling the determinative vector influence of organized interests that focus on selective grouping and here and now gain. Our legislators are now primarily mediators. Language betrays much about political reality. Publicly elected legislators are no longer even the named “sponsors” of bills anymore, as that label is now openly given to the private groups writing them. Increasingly, those representing these private groups are former legislators and legislative staff. Washington D.C. is not the only situs of an incestuous “beltway.”

And the process is driven by what are openly called “stakeholders” — typically, financially self-interested individuals or entities — among whom policy is decided. Children are rarely considered stakeholders, and have few representatives available



in Sacramento to advocate for them. CAI is one of the very few representing only the interests of children among the 1,200 registered lobbyists in California. **In D.C., AARP alone spends 25 times as much on registered lobbying as do all of the child advocates at the Capitol combined, including our Amy Harfeld.** She has colleagues from a few child advocacy organizations, but we are hardly a part of any K Street influence machine. Indeed, this profound imbalance of influence underscores the importance of transparency and public knowledge about foster kids and other child issues — often gratuitously diverted to secret venues.

The influence of the financially self-interested is further enhanced by their ability to conceal who they are, especially in the growingly important First Amendment forum of the Internet. Public interest entities have long defended the rights of the audience/electorate to know who is lobbying, and speaking and funding — in both commercial and political messaging. The denigration of the audience's right to know who is talking (and who is financially behind the talker) necessarily occurs with the elevation of “concealment” itself as a First Amendment right. Regrettably, Public Citizen, a group that has traditionally promoted transparency in political campaigns so the electorate knows who is speaking and who is paying them to speak, has been imprudently advancing concealment over disclosure — based on the positive attributes of whistleblower disclosures. But that interest is already well met by the anti-SLAPP and Whistleblower statutes that prevent sanctioning against those who tell the truth, and includes in that protection the larger number where the source announces himself or whose identity is known by the accused.

The collateral cost of concealment as a First Amendment value is profound. It lessens the accountability of those now able to reach many thousands with awful accusations and bullying. Anonymity is a driving force behind the most egregious abuses of the Internet — abuses that, ironically, lower the credibility of the medium as a whole against the most basic First Amendment asset of credible information transmission. And it has even more profound implications for any statutory or rulemaking effort for speaker or funder identification. With the Constitutional, categorical supersession of concealment over disclosure, any such requirement then must be a compelling state interest to limit that concealment right. Accordingly, any such limitation must be narrowly tailored. In practical terms, this will mean concealment will remain for messaging not just before an election or that does not urge a particular vote, or limited by any number of conditions that will further advance concealment and audience/electoral ignorance.

A free speech forum's rules arguably serve the underlying purpose behind the First Amendment — not only the ability of the messenger to make a noise, but also of the audience to determine the truth. That ability is advanced in revealing the identity (which allows exposure of the interests and qualifications) of the message's source. Exacerbating all of that is the fact that Internet Service Providers all have categorical immunity from libel and so elevate anonymous (concealed source) speech to the same level as responsibly attributed messages. And this “hide all you want” not only lowers the credibility of communications to the point that real evidence and thoughtful advocacy is undermined, but turns all communications into rather undifferentiated “noise” — hardly the hallmark or purpose of the First Amendment. It is not only a politically disadvantageous milieu for child advocates, but this Internet world stimulates the bullying of children, since much mischief flows where nobody has the elementary accountability that comes from speaking identifiably and openly.

We would rather not repeat year after year similar warnings in a format that sounds too much like a rant. But perhaps those of us graced by tenure have an obligation to say unpleasant things if we think they are true. **And so here is my message to my Boomer peers: We are takers. We are classic embezzlers — diverting monies properly intended for others to ourselves. We are not “passing it down the line” as did our predecessors — and we should be.**



II. 2012 Accomplishment and 2013 Plans

Turning to happier subjects, we review what we have done this past year and our plans through 2013.

A. PRODUCING THE CHILD ADVOCATES OF TOMORROW

During Fall 2012, 32 students took *Child Rights and Remedies* class, which surveys the broad array of child advocacy challenges, including the constitutional rights of children, defending children accused of crimes, child abuse and dependency court proceedings, tort remedies and insurance law applicable to children, and child property rights and entitlements.

During the Spring, Summer and Fall semesters of 2012, over 20 students participated in one or more of CAI's three clinical opportunities. Ten students (Lisa Charukul, Justine Elgas, Matthew Felder, Georgia Gebhardt, Suzanne Gorelick, Patrick Guerrero, Marie Mondia, Collin Ogata, Silvia Romero, and Sarah Shelvy Vaona) represented children and parents in our Dependency Court Clinic, five students (Adam Juel, Aneke Matre-Stokes, Amanda Edmonson, Yangkyoung Lee, and Julieclaire Sheppard) advocated on behalf of juveniles accused of crimes in our Delinquency Court Clinic, and six students (Jonathan Abrams, Jazmine Gregory, Carina Hinton, Sarbani Mukherjee, Silvia Romero, and Julieclaire

Sheppard) worked in our Policy Clinic, where they helped our in-house counsel with our litigation, national and state reports, and legislative and regulatory advocacy program, among other things. Several other students (including Megan Swezea, Lisa Charukul, Amber Littlejohn, Aneke Matre-Stokes, Silvia Romero and Annie Kinsey) participated in our work in other capacities.

In May 2012, we honored seven of our law students for their exceptional work on behalf of children. CAI presented its annual James A. D'Angelo Outstanding Child Advocate Award to six graduating law students — Alexandra Byler, Justine Elgas, Lydia Strunk, Megan Swezea, Sarah Shelvy Vaona, and Kim Washington — and we presented the Joel and Denise Golden Merit Award in Child Advocacy to then 2L student Georgia Gebhardt. We expect to add many of these seven students' portraits and resumes to the "Trailblazer Wall" in our student room over the next five to ten years — where they will join many former students already featured for their work in the child advocacy and/or public interest law fields.

While overall enrollment at most law schools has been in marked decline over the last several years — applications are down 20% nationally — our *Child Rights & Remedies* class registration will be increasing to at least 35 for next year. Moreover, I sit on the Admissions Committee and have noticed a discernible increase in



the number of applicants citing USD's centers in energy, public interest law, and child advocacy as their motivation for applying here.

And during 2012, the USD School of Law made a highly beneficial change in the grouping of curriculum courses. Students can now be recognized for a number of concentrations — analogous to an undergraduate major. Those concentrations now include environmental law, public interest study, and child rights, paralleling the three centers in these areas, respectively. The Child Rights Concentration requires the courses and clinics offered by CAI, in combination with other important assets that we have long coordinated with, such as Family Law, Margaret Dalton's Education and Disability Clinic, and Frank Kemerer's course in Education

Law at the School of Education (SOLES). In addition, the Kroc School of Peace Studies, to provide a focus on international child rights, is sending students to CAI after we substantially expanded that subject in the Third Edition of our *Child Rights and Remedies* law text last year.

During 2013, we will continue to offer *Child Rights and Remedies* and our three unique clinical opportunities, but we will be adjusting our Delinquency Clinic into a unique program where the students will be assigned to evaluate at-risk youth more comprehensively in order to identify and advocate to remedy areas of need (*e.g.*, education, school discipline, mental health, child welfare, disability) — with the goal of addressing underlying issues in order to help the youth avoid future delinquency sanctions.

MEET SOME NEW CHILD ADVOCATES...



"Working with the Children's Advocacy Institute was the highlight of my law school career because I got to see firsthand the enormous impact those of us in the legal field can make in the lives of children who otherwise may not have a voice in determining their futures."

—Alexandra Byler, 2012 Recipient of the James A. D'Angelo Outstanding Child Advocate Award



"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, 2012 Recipient of the Joel and Denise Golden Merit Award in Child Advocacy



"Starting law school at USD, I was most excited about the Child Advocacy Institute at USD. Professor Fellmeth encouraged my interest in juvenile law through his course and by graciously allowing me to pick his brain on international issues relating to juvenile dependency. My participation in the Dependency, Delinquency, and Policy Clinics reinforced my desire to pursue a career in Juvenile Dependency and gave me the perfect platform to apply for jobs and interview in the field. I am glad to say I now represent children in Juvenile Dependency full time, and I owe a big thanks to CAI for getting me here!"

—Sarah Shelvey Vaona, 2012 Recipient of the James A. D'Angelo Outstanding Child Advocate Award



"Before entering law school, I had a curious interest for child advocacy law. After having the opportunity to learn the importance of child advocacy law under the direction of Professor Fellmeth and participate in CAI's dependency clinic while in law school, I now have a passion for child advocacy and plan to focus my legal career in this area of the law. Without a doubt, CAI has made a huge impact in my life and is an invaluable program at the University of San Diego School of Law."

—Georgia Gebhardt, 2012 Recipient of the Joel and Denise Golden Merit Award in Child Advocacy

B. LITIGATION

During 2012, we followed up our *California Foster Parents' Association v. Wagner* (Lightbourne) case by monitoring state compliance with the increased rates due family foster care providers, as well as the connected compensation for KinGAP and adoption assistance payments. After some initial issues were resolved, all seems to be working as intended. And 2012 saw California's final foster care provider group — foster family agencies (non-profit organizations that recruit, certify, and train foster parents for children who require more intensive care than a typical family foster home might be able to provide) — file its own lawsuit to seek similar increases for that placement type. We continued to monitor the implementation new rates to assure that the families providing care receive the increases. We want to see supply increase to provide more choices so siblings

can be placed together, children do not have to move between schools and more are adopted. We believe the case is moving things in this preferred direction.

On the negative side, our petition to the Supreme Court to review the regrettable decision of the Ninth Circuit in *E.T. v. Tani Cantil-Sakauye* failed, notwithstanding two brilliant *amicus curiae* briefs — one from Erwin Chemerinsky, Karl Mannheim, the ACLU of Southern California and the Western Center on Law and Poverty, and the other from the National Association of Counsel for Children, Voices for America's Children, the Juvenile Law Society, and First Star. The Ninth Circuit decision is a regrettable precedent abdicating federal court responsibility over state court proceedings notwithstanding constitutional violations and caseloads of 388 child clients per attorney — both precluding



compliance with federal law that underlies billions in federal funds. This deferral is based on the notion of equitable “abstention” — as if requiring dependency court caseloads that allow counsel to perform mandatory tasks would interfere with state court proceedings. In contrast, in the leading precedent of *In Re Gault*, a previous U.S. Supreme Court (very different justices) examined due process infirmities in the juvenile court and held that each proceeding in all fifty states must be revised to (a) assure specific pleadings, (b) provide competent counsel, (c) assure right of confrontation and testimony under oath with cross examination, (d) provide a transcript and (e) ensure right of appeal. All of this was based on a single Arizona case, and, needless to say, the notion of “interfering” in state court proceedings was hardly on the table. The empathy lines now focus not on checking state courts, but on solicitude. For the *E.T.* case involved no interference with any pending case, seeking only a budgetary policy that allows children to have counsel able to perform required tasks, and requiring the courts to have less than 1,000 children each over whom they exercise full parental responsibility.

On the positive side, **in late 2012 the San Diego Superior Court granted the petition for writ of mandate sought by CAI against the Department of Social Services (DSS) in *Butterfield v. Lightbourne*** (Robert Butterfield is one of the founders of the San Diego Child Abuse Prevention Foundation). We here challenged the rules adopted by DSS to implement SB 39 (Migden) (Chapter 468, Statutes of 2007). This statute was co-sponsored by CAI to provide increased disclosure of child deaths from abuse and neglect in California. CAI contended that the DSS rules did not implement the statute as intended and have allowed for substantial avoidance and concealment. Among other problems, the rules eliminated disclosure of deaths from abuse or neglect 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. In 2012, the Hon. Judith Hayes granted CAI’s petition as to each of the four features of the rules as prayed by petitioners. The petitioner was represented by CAI’s Ed Howard, Christina Riehl and yours truly, as well as by Steve Keane of Morrison & Foerster. In 2013 we hope to negotiate curative rules and to persuade DSS to accept the order as issued by the court in lieu of a time consuming appeal.

During 2012 we pressed our objections in the pending class action settlement of *Fraley v. Facebook*, in which Facebook proposed to give millions of dollars to a plaintiff firm purporting to represent not only Facebook adult members, but also the millions of child Facebook subscribers in order for a court order that purported to allow Facebook, contrary to longstanding law, to unilaterally expropriate any postings of child subscribers (those from 13 to 18 years of age allowed on Facebook) from writings and even photos, and then repackaged the child’s postings by Facebook as it sees fit, for use in commercial “sponsored stories.” Facebook would receive payment from commercial interests to arrange for this privacy incursion, sending the postings of children, repackaged as its desires or consistent with maximum profit, to whomever it might choose. Facebook claimed that a notice in its “terms and conditions” small print constituted categorical consent by the youth, and that effective parental consent was not necessary. CAI was the major voice of dissension at the final hearing on the initial proposed order, but our arguments were largely disregarded by federal district court Judge Richard Seeborg (the initially assigned judge had expressed serious doubts about the privacy implications of the proposed order, but she eventually recused herself). CAI intends to present objectors and objections at the final hearing in May 2013, and if necessary will take the issue to the Ninth Circuit, where it hopes to be joined by the major child advocacy organizations nationally, as well as by Public Citizen and others.

During 2012, CAI also joined in the filing of an *amicus curiae* brief to the U.S. Supreme Court in *Florida v. U.S. Department of Health and Human Services*, supporting the child benefits from the federal Affordable Care Act (ACA). Drafted by the National Health Law Program (NHeLP) and joined by thirty-eight prominent organizations of health care providers, consumers, and local health officials from around the country, the *amicus* brief examines the nature and history of the Medicaid program from its enactment. The brief places the ACA’s expansion — which extends coverage to eligible persons up to 133% of the Federal poverty level — in this historical and legal context. The brief notes that the ACA’s Medicaid expansion is consistent with the history and purpose of the Medicaid program and will provide an additional 16 million individuals with health coverage they otherwise would not be able to afford.

In 2013, we anticipate the resolution of pending cases, and will file new litigation as warranted. CAI also expects to be active in several *amicus curiae* filings.

C. CAMPAIGNS, REPORTS AND PRESENTATIONS

• Public Disclosure of Child Abuse and Neglect Deaths and Near Deaths. During 2012, CAI and First Star released the 2nd Edition of State Secrecy and Child Deaths in the U.S., which examines and grades state policies regarding public disclosure of findings and information about child abuse or neglect fatalities and near fatalities.

The federal Child Abuse Prevention and Treatment Act (CAPTA) mandates such disclosure in order to ensure accountability in the child welfare system and help the public identify and fix systemic problems in the child welfare system.

Encouragingly, some states had improved their public disclosure policies since our initial report was published in 2008; however, we found that many states still do not assure the public of receiving this vital information in a timely manner—and a few states had actually moved in the wrong direction by amending their policies to limit disclosure. As with the 2008 report, this report enjoyed major coverage, with radio and television coverage of our Capitol Hill briefing, national press stories, and hundreds of local papers covering the grades and critiques within the respective states—all of which will hopefully lead to more meaningful attempts to improve public disclosure policies across the nation. During 2013, CAI's Christina Riehl, Elisa Weichel and Amy Harfeld will continue to work with state and national officials and advocates interested in improving their public disclosure policies.

During 2012 CAI was also actively engaged with the U.S. Department of Health and Human Services' (DHHS) Administration for Children and Families (ACF) with regard to ensuring states' compliance with CAPTA's public disclosure mandate. Although ACF Acting Secretary George Sheldon indicated a willingness to work with CAI to facilitate state compliance, ACF regrettably took a major step backwards in this regard by amending its Child Welfare Policy Manual (CWPM) to provide various loopholes that states will use to avoid disclosure. For example, the revised CWPM provide that information about child abuse or neglect deaths or near deaths is to be publicly disclosed when "pertinent to" the child abuse or neglect that led to the fatality or near fatality; however, without ACF guidance regarding what information is "pertinent to" the abuse or neglect

that led to the death or near death, we believe that some states will unilaterally and without further explanation simply declare that none of the case file information is "pertinent to" the death or near death in order to avoid disclosure. And in fact, we have seen that happen already in at least one state.

We were also dismayed at the reversal ACF's CWPM revisions took on the issue of state discretion to deny disclosure. **Because federal law (CAPTA) clearly requires states to publicly disclose child abuse or neglect death or near death information, the prior version of the CWPM correctly emphasized that states have no option or discretion when it comes to releasing such information**—even if a state claimed that that disclosure would be contrary to the best interests of the child, the child's siblings, or other children in the household. **With no corresponding change in CAPTA to justify such a reversal in its position, ACF revised the CWPM to explicitly allow states to withhold information in order to ensure the supposed safety and well-being of not only the child victim and other related children—but also the parents and family.** CAI strongly disagrees with ACF's recent amendments, due in part to the fact that Congress already engaged in a balancing test and determined that with regard to the specific, limited and extreme cases of child abuse or neglect death or near death, the value of disclosure outweighs any relevant privacy concerns. There is no indication whatsoever that Congress intended to allow states to pick and choose the cases of child abuse or neglect death and near death for which they will provide public disclosure—something that ACF's regrettable amendments to the CWPM now appears to do, basically rendering the CAPTA public disclosure requirement moot. CAI is currently pursuing various avenues to address ACF's inappropriate and *ultra vires* actions.

Also during 2012, CAI spent much time assisting child advocates within various states on efforts to improve public disclosure policies and practices. For example, CAI's Christina Riehl was a guest panelist at the Kentucky Youth Advocates' October 2012 Step Up For Kids conference, speaking on a panel discussing ways to increase transparency in Kentucky's child welfare system.



• **A Child's Right to Counsel.** Also in 2012, CAI and First Star released the 3rd Edition of *A Child's Right to Counsel—A National Report Card on Legal Representation for Abused & Neglected Children*, which examines to what extent each state's laws assure that every abused and neglected child is represented by a trained, competent client-directed attorney throughout the duration of the child's dependency proceeding. CAI compares each state's laws to a model law that CAI drafted several years ago, and which itself contributed greatly to the Model Act

Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings adopted by the American Bar Association (ABA) adoption in August 2011.

In early 2012, CAI's Amy Harfeld published a law review article — *The Right to Counsel Landscape After Passage of the ABA Model Act—Implications for Reform*, 36 NOVA L. Rev. 325 (2012) — outlining exemplary and deficient state statutes, and was a presenter at the Nova Southeastern University Law Center's symposium on "Improving Outcomes for Children," a two-day program aimed at increasing public awareness of the need for all abused and neglected children to have legal representation and providing advocates and policymakers with information that can be used to advance state and federal legislative reform.

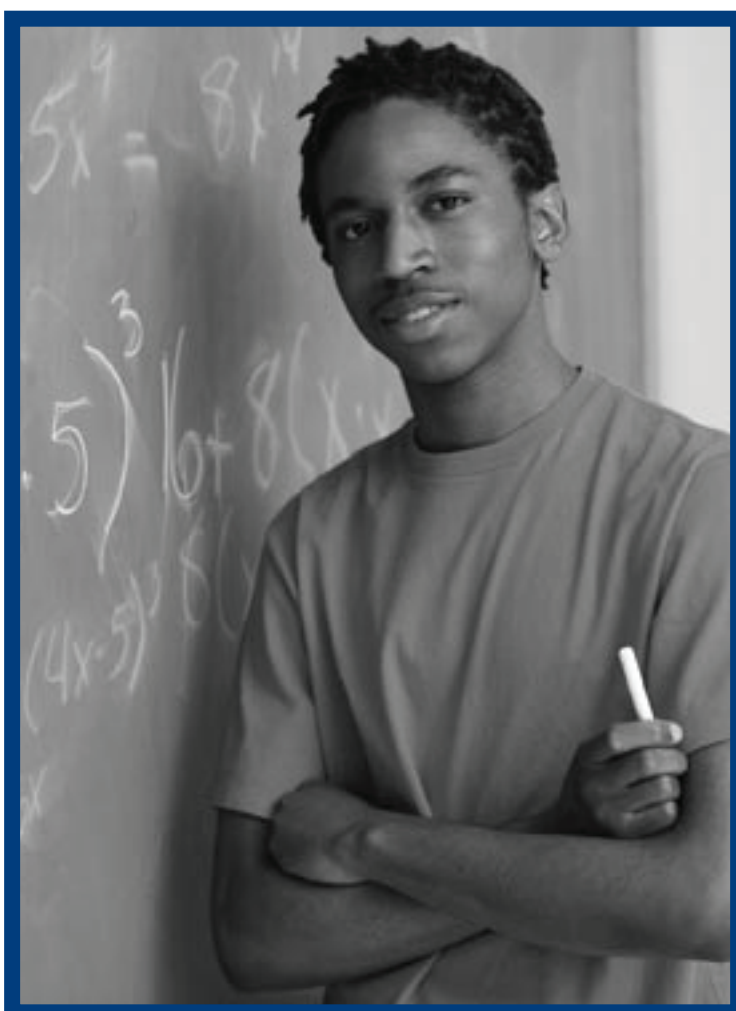
Amy Harfeld and Christina Riehl remained actively involved with the ABA's Section of Litigation Children's Rights Litigation Committee; in addition to participating in monthly strategy planning



• **Improving Outcomes for Transition Age Foster Youth.**

Following up on our 2011 report, *The Fleeing of Foster Children*, CAI continued its efforts to improve outcomes for youth aging out of foster care by informing policymakers and other stakeholders at the state and federal levels about promising policies and programs to improve the health and well-being of transition age foster youth (TAFY).

During 2012, CAI continued to work at the state and national level on the various issues discussed in the *Fleeing* report, such as the need to conserve foster youth's Social Security benefits for their use upon aging out of care; efforts to guard against foster youth identity theft and credit fraud, and to help TAFY resolve such problems where they have occurred; and ensuring that TAFY have a range of age-appropriate opportunities available to them to help them bridge the gap from childhood to self-sufficient adulthood.



sessions, Christina edited stories that showcase the important role that minor's counsel have in dependency proceedings, and the benefits of providing such representation for children; those stories will be used on the Committee's website and in ongoing advocacy efforts to ensure that all abused and neglected children have attorney representation in the proceedings that will determine their fate.

And throughout 2012, several student interns worked with Christina Riehl and me on another area where enhanced legal representation for children may be warranted — family court proceedings. We are looking at a variety of issues, such as under what circumstances children subject to contentious divorces are appointed counsel to protect their interests; whether such child representation is provided only for parents who are able to pay; what the benefits and costs of such counsel are in terms of outcomes, timing and expense; and what the current applicable court and other rules are and what the record of compliance is in this regard. CAI is currently working with various colleagues, including Bob Jacobs, to examine this important area.

For example, Amy Harfeld served as a panelist at the Federal Trade Commission's multi-agency presentation on identity theft of children, addressing the issue as it relates specifically to foster youth. As a result of this event, the FTC released a guide to assist in preventing identity theft against children, and Amy co-published an article in the ABA Newsletter with Cathy Krebs on the issue. We are actively engaged in legislative advocacy in Washington, D.C. to monitor new legislation requiring credit checks of older foster youth and advocating for more extensive legislation on this issue.

In addition to those national efforts, during 2012 CAI's Melanie Delgado researched and drafted two reports relevant to California's TAFY population. The first report analyzes California's first full year of extended foster care pursuant to AB 12 (Beall) (Chapter 559, Statutes of 2010). Tentatively titled *12 in '12*, the report will measure the state's performance in implementing the federal Fostering Connections to Success Act, which was intended to produce better outcomes for foster youth by allowing them to remain in care up to age 21 while engaging in activities that will prepare them to be self-sufficient when they eventually age out of care. The report, which will be released during 2013, will examine the results of the state's first year of extended foster care implementation and analyze the extent to which participating youth are engaging in meaningful endeavors that will in fact prepare them to be self-sufficient when they leave care.

Melanie also spent time in 2012 working on a follow-up report to CAI's 2010 report, *Proposition 63: Is the Mental Health Services Act Reaching California's Transition Age Foster Youth?* That report reviewed the extent to which counties were using the initial distributions of Proposition 63 funds to fund programs specifically addressing the needs of TAFY. We had hoped that TAFY, considered to be about the most at-risk population for mental health services (having suffered the loss of their original parents as "unfit," and commonly being subjected to difficult and disruptive movement between placements), would be a major beneficiary of Proposition 63, which generates about \$1 billion in revenue annually. When Melanie conducted her original research, only one of the several MHSA funding phases had been implemented, but her findings with regard to that phase was disappointing — only one of the state's 58 counties had used Proposition 63 funds to create a program aimed at the unique needs of TAFY. While other counties created programs that served transition age youth generally (lumping TAFY in with several other "priority" populations), those programs typically lacked capacity to adequately serve such a large pool of eligible individuals and the services offered were not tailored to meet the specific needs of TAFY.

Since the release of our 2010 report, several more phases of MHSA funding have come online; additionally, in 2011, CAI won enactment of legislative changes that now specifically cite foster children as a target population for MHSA funding. Our follow-up report, which will be released during 2013, will determine whether these recent developments resulted in any better commitment of MHSA funding to address the specific needs of TAFY.



And an overarching element of all of our work on behalf of transition age foster youth is advocacy to implement our Transition Life Coach (TLC) plan as an option to help youth successfully transition to self-sufficiency. Unlike any other program currently available to TAFY, the TLC model replicates the typical parent/child relationship to the extent possible for youth in the foster care system. A participating youth would, in consultation with his/her



attorney, court-appointed special advocate (CASA), social worker, and others involved in his/her case, choose an appropriate adult with whom the youth has an existing relationship to be the youth's "coach." (If no such adult can be identified, a volunteer would be appointed by the court.) After a thorough background check, the court would appoint the adult as trustee over funds equivalent to the amount of money expended by the average parent on their child after age 18. The coach and youth, in consultation with the youth's attorney, CASA and any other appropriate individual, would develop a transition plan specific to the interests and abilities of the youth — identifying what the youth's goals are and laying out what the youth needs to do to achieve those goals. The plan would be flexible, and the coach would assist the youth in much the same way that a parent does — encouraging and assisting them in staying on course, and providing funds for appropriate expenses (rent, board, tuition, transportation, vocation training) that will help the youth attain his/her goals. If the youth goes off-track, the

coach (like a parent) could refuse to provide funds until or unless the youth gets back on track with the transition plan. If the youth has questions, concerns or issues with the coach, he/she would have the option of taking those concerns to the court, which would retain jurisdiction to monitor the activities of the coach and the use of the fund.

We believe that the TLC model is a viable, promising, and necessary alternative to the options currently available to transition age foster youth. It provides foster youth with the same type of one-on-one support and customized assistance that is typically provided to their peers; it doesn't require these young adults to stay "in the system" or "in care" like extended foster care does; and it provides oversight and accountability through the court's continued jurisdiction over the coach and the funds. We believe that if implemented, the TLC model would prove to be a worthwhile option to help many transition age foster youth make the difficult transition to self-sufficiency.

CAI is grateful to The California Wellness Foundation for its support of much of the work CAI does on behalf of transition age foster youth, specifically our efforts to inform policymakers and other stakeholders about promising policies and programs to improve the health and well-being of this vulnerable group.

• Improving the Dependency Court

Process. During 2012, CAI supported an order issued by Los Angeles County Juvenile Court Presiding Judge Michael Nash that facilitated the media's attendance at dependency court proceedings except when the best interests of the child warrant confidentiality.

CAI agrees with Judge Nash that federal and state law authorize public access to dependency court proceedings under certain circumstances, and we believe that greater transparency and accountability of the dependency court system is necessary in order to fully protect and promote the interests of the children involved. To that end, CAI's Ed Howard and I co-authored an op-ed that was published in the LOS ANGELES DAILY JOURNAL on March 21, 2012, entitled *Order Opening Dependency Courts: Nothing New Except Procedure*, which addressed and dispelled various misconceptions that had been voiced in opposition to Judge Nash's order.

Also during 2012, CAI launched a new campaign entitled *Foster Kids First: Does Press Coverage Help Foster Kids?* As part of this new initiative, CAI consultant Johner Riehl has been monitoring media coverage of Los Angeles dependency court matters and comparing it to coverage in other counties and with LA County's historic coverage. During 2013, CAI will release a report based on this monitoring which will evaluate whether any children were harmed or their privacy invaded due to Judge Nash's order, discuss any improvements of dependency court deliberations and results for foster children that may have occurred as a consequence of press coverage or access, and review any public official to the press coverage, if any.

And during 2012 and 2013, two articles I contributed to will appear in the peer review journals of the pediatric profession. The purpose here is to improve the accuracy and efficacy of expert witness testimony from health professionals in dependency proceedings. One of the chapters is co-written with the highly respected Dr. David Chadwick of the Rady Children's Hospital.

The two articles are a chapter entitled *Expert Testimony in Child Related Litigation* (w/David Chadwick, M.D.), THE HANDBOOK OF PEDIATRIC FORENSIC PATHOLOGY (ed. by R. Byard and K. Collins), Springer Publishing (2013) and *Legal Issues*, Chapter 31 id CHILD MALTREATMENT, PHYSICAL ABUSE AND NEGLECT (ed. D. Chadwick, A. Giardino, R. Alexander, STM Learning) Encyclopedic Volume, 4th ed. (2013).

• Private For-Profit Education Abuses.

During 2012, CAI successfully sponsored AB 2296 (Block) (Chapter 585, Statutes of 2012), which requires specified disclosures by private for-profit postsecondary schools—many of which were marketing deceptively to youth, including foster children turning 18 and young veterans.

Too often, these schools charge high tuition, spend public funds and generate high debt for their students, with dubious results. For many of them, most of the revenue goes to marketing and profit, not education. Senator Tom Harkin's recent federal reports document low graduation rates and paltry placements in jobs, while students expend now most of the public funds intended for effective education and many suffer loan collection demands and credit ruin. CAI and CPIL have joined with a USD-wide campaign to address these abuses, directed by former USMC Colonel Patrick Uetz. The campaign includes a new Veterans Clinic directed by another former Marine, Bob Muth, and CAI and CPIL are responsible for the advocacy portion of the project. Along with our campaign team members of Elisa Weichel and Christina Riehl in San Diego, Ed Howard in Sacramento, and Amy Harfeld in D.C., we have joined with Jamie Studley and Liz Voigt of Public Advocates in California, and we are getting key help from Bob Shireman and noted youth education advocate David Halperin in D.C. to work for federal reform. The state work has resulted in the revitalization of the key regulatory entity—the Bureau of Private Postsecondary Education (BPPE). The next step during 2013 will be to bring those schools currently exempt from that regulation (and the required disclosures of the Block bill noted above)—a task expedited by a federal rule originating with Bob Shireman while with the federal Department of Education that any school receiving federal funds had to submit to minimal state licensure and regulation.

Nationally, the effort includes working with class action counsel and especially public prosecutors enforcing unfair

competition law. We shall encourage our peer child advocates to work for model legislation in their respective states, and continue the public disclosures and reporting work of Halperin to keep the issue on the national agenda. President Obama responded to this issue during 2012 with a major Executive Order to address some abuses which the Project will be monitoring in 2013. In addition, the Project hopes to call attention to federal legislation that would limit public monies spent for marketing (rather than education) for school recipients. And CAI will work for rulemaking from the Bureau of Consumer Financial Protection, which may have interest in the loan-related abuses, and the Federal Trade Commission, with broad authority over deceptive advertising.

• **Federal Neglect of Child Welfare Laws.**

During 2012, CAI students and staff continued to research and draft a report critiquing the manner in which federal child welfare laws are monitored, enforced and implemented by the federal government. 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 pertain to a wide range of issues, including the disclosure of child abuse deaths and near deaths and the representation of abused and neglected children addressed in two CAI reports discussed above, but they are also relevant to other issues such as social worker caseloads and responsibilities, services for youth aging out of foster care, and a host of minimum statutory (and Constitutional) standards that states must comply with in order to receive child welfare funding. Currently, the federal government engages in minimal enforcement, with “oversight” often taking the form of mere assurances of compliance from each state governor. Scholarly reports and journalistic exposés from all over the country have revealed areas of rampant noncompliance by states, and private lawsuits have achieved some, though limited, compliance, but such lawsuits are extremely expensive and time-consuming, and recently federal courts have begun to turn their backs on those seeking private enforcement of federal child welfare laws — all as the federal government itself abdicates its primary responsibility to ensure that the laws are followed.

It is the purpose of the executive branch to assure state compliance with federal law and Congressional intent, and it has power to do so on a massive scale. The U.S. Department of Health and Human Services (DHHS) is responsible for carrying out Congressional intent, for assuring state compliance with constitutional and statutory standards, and for monitoring states’ use of billions in federal monies intended for the protection of

children from abuse and neglect. **CAI’s initial research indicates that DHHS has failed 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 presented a panel discussion at the National Association of Child Advocates (NACC) annual conference in Chicago, providing an initial insight into its critique of the enforcement and oversight of DHHS and its Administration on Children and Families (ACF). Among other things, the panel discussed options DHHS has for enforcement activity, such as the use of monetary penalties and sanctions — as many other branches of the federal government have done successfully — to ensure state compliance with mandatory federal floors.

CAI will follow up this presentation by publishing a detailed, comprehensive report on DHHS and ACF performance in this regard — and the report will also examine to what extent the other two branches of federal government have fulfilled (or shirked) their respective roles with regard to federal child welfare laws.

D. LEGISLATIVE ADVOCACY

• **California Priorities.** In addition to our work on **AB 2296 (Block)** (Chapter 585, Statutes of 2012), discussed above, CAI’s Ed Howard worked on several other California legislative priorities during 2012. For example, CAI-sponsored **AB 1751 (Pan)** (Chapter 637, Statutes of 2012) clarifies the authority of dependency court judges to have effective access to all contact information about a child’s absent parent. Allowing access to the California Parent Locator Registry and Central Registry — including data on parents owing child support — allows the court to find any person who might later challenge a successful adoption based on lack of notice, and may facilitate the inclusion of many more relatives for placement opportunity. CAI-sponsored **AB 1434 (Feuer)** (Chapter 519, Statutes of 2012) adds certain college and university personnel to the state’s list of mandated reporters.

Two of CAI’s legislative priorities were unfortunately not enacted during 2012. **SB 1476 (Leno)** would have moderated the regrettable “bright line” requirement that only two persons may achieve legal recognition as a parent. The bill was generated partly as an attempt to respond to the recent *In Re M.C.* case; there, a married lesbian couple with a child fathered by a man during an apparent affair of one of them had their child removed by Child

Protective Services based on meth use and domestic violence. The father was a qualified and willing parent, viewed by the court as a placement in the child's "best interest." But the limitation of the two parent static specification prevented that decision — one the court openly regretted. Due to no fault of their own, many children may bond with and rely upon more than two parents during the course of their childhood. To give legal status to more than two parents is certainly not a designedly common occurrence, but it is one that may be equitable and just under particular circumstances. Our bill would not have expanded the definition of parentage in any way; it simply would have allowed courts to find that a child has more than two natural or adoptive parents if pre-existing parentage claims or presumptions are satisfied by more than two persons and where doing is necessary to serve the best interests of the child. Regrettably, the bill became part of the culture wars, with Rush Limbaugh picking it up as a manifestation of the "Gay agenda." How ironic that the precipitating case concerned the court's inability to protect the parental rights of a heterosexual father. The bill won enactment notwithstanding its generally irrational opposition. However, Governor Brown vetoed it, with a message that seemed to invite a retry, which CAI will pursue in 2013.

CAI also failed in 2012 to achieve the reversal of the *Brandon S.* case. That decision prevented effective insurance coverage for family foster parents from a state fund established for that purpose. Such coverage is essential to attract foster parents. Some foster children may present some liability hazards, but typical homeowners insurance will not cover them. Accordingly, CAI was instrumental in winning enactment of a state insurance fund to accomplish that otherwise missing coverage. In *Brandon S.*, a bizarre opinion was issued that the Fund cannot pay out where there is any "fraudulent, dishonest, or intentional act perpetrated by anyone against a foster child." Hence, if a babysitter or a neighbor or *any person* (not just the foster parent) engages in any intentional act that results in damage, there is NO coverage by the Fund. While intentional torts *by the insured* should properly be excluded, the breadth of this erroneous decision means that the Fund will not perform in many circumstances where coverage is warranted — thus raising liability and decreasing willingness of families to take on foster children. CAI's efforts to cure this problem have been hampered by the fact that paying more claims may cost the Fund money (virtually no claims have been paid in its current form), and that means it technically costs the state money, and as such, it is subject to major legislative barriers that are erected quite high when the state is under financial pressure, as it has been for most of the past decade. Nevertheless, CAI shall try again in 2013 or 2014.



In addition to following up on our successful private for-profit educational abuse efforts and resubmitting unsuccessful measures from 2012, also on CAI's state legislative agenda for 2013 will include the following:

- CAI will sponsor an initiative to provide a funding source for two purposes — establishing defensible caseloads for minor's counsel and juvenile courts (see *E.T.* case discussion above) and implementing CAI's TLC model for helping transition age foster youth adult achieve self-sufficiency (see discussion above).
- CAI will sponsor a bill to restore dual status to children in juvenile court. Currently, California is the only state to take a youth in dependency court whose legal parent is the dependency judge, and then when there is a criminal charge pending against the youth, effectively terminate that parent. No other state removes a child's parent simply because there is a pending criminal charge against the child — particularly where the parent is not guilty of abuse or neglect and has the means to help his/her child.

- CAI hopes to address one of the problems outlined in our *Fleeing of Foster Children* national report by requiring notice to the court and the child's attorney whenever there is a Social Security or similar benefit due the child. Currently, the pattern is to notify only the county agency, which then seizes the money for its own account. Ideally, federal law would be changed to mandate that all survivor, SSI and other benefits be deposited into an account supplementing the underlying obligation to provide basic care. Each such child beneficiary should receive the intended benefits from any source directed at him/her. But such deposit and the cessation of what is essentially state embezzlement will be much reduced if those who legally parent and represent the children involved know that the benefit is due and coming. Hopefully, we can use passage of such a measure to stimulate its replication in other states.
- Finally, CAI may work to protect social worker whistleblower protection, strengthen the foster care ombudsmen program, and work hard to assist our colleagues in their legislative proposals where beneficial to children.

• **Children's Legislative Report Card.** In 2012, CAI continued its annual publication of a legislative report card, grading state legislators on their votes on key child-related bills. As in previous report cards, we displayed each legislator's final floor vote on the selected bills; however, we also debit each legislator once to reflect all of the negative child votes they indirectly make through the "suspense file" minuet that has been created — whereby every bill costing out any outlay of public funds (even if capable of saving many millions over three or five or ten years) is automatically dumped into the Appropriations Committee's suspense file in one of the two houses. Each bill so dumped into suspense then dies without a public vote unless it is affirmatively removed from the file. In one year we counted 22 major measures benefitting children that were killed without a public vote, and hence without accountability. Since this evasion of accountability is arranged by the body's own rules, we select one measure from each house that clearly should have won enactment but was defeated without vote, and we ding every legislator in each house for failure of their respective bills — and we shall continue to do that until or unless the Legislature ceases the use of suspense file referral as a means to kill meritorious legislation. In fact, for

2009 and 2010, reflecting the low number of child-friendly bills enacted and the suspense file execution of so many good bills, we summarily issued an "incomplete" grade to the entire body. If only we could hold them back a grade!

• **Federal Priorities.** During 2012, Amy Harfeld in CAI's D.C. office monitored and advocated on a number of pending and/or proposed pieces of federal legislation impacting children in and out of the child welfare system. Much of the year's advocacy was spent on fighting draconian new cuts to federal spending which would have dire consequences for children, the child welfare system, and poor families generally. **While we would prefer to focus our work on increasing federal investments in these children and youth, the political and economic climate forced us into a defensive stance during 2012.**

One bill that we successfully lobbied to enact was the Protect Our Kids Act of 2012. While noteworthy, it will not itself accomplish CAI's goals for children — and at the measure's current pace of implementation, it might not accomplish its own goals either. The Protect Our Kids Act of 2012 (H.R. 6655/S. 3705) establishes a commission consisting of twelve members (six to be appointed by the President and six to be appointed by congressional leaders) to develop a national strategy and recommendations for reducing fatalities resulting from child abuse and neglect. By the measure's express terms, appointments of the members of the Commission were to have been made not later than 90 days after the date of enactment of the Act (Jan. 2, 2013), which means all appointments were to be made by April 2, 2013. As of July 2013, however, only six of the twelve commissioners have been appointed. Although President Obama has selected six candidates, they are still being vetted and have not been appointed to the new Commission; this delay is preventing the Commission from commencing its work, as it is authorized to hold its first meeting only after a majority of Commissioners have been appointed.

Congress also passed the Uninterrupted Scholars Act, which ensures greater educational continuity and opportunity for youth in foster care. We are currently monitoring the implementation of this act. We are also carefully looking at how the identity theft and credit check/repair provisions of the Child Welfare Improvement and Innovation Act are being implemented and to what effect.



Regarding federal legislation on the table for 2013, CAI will be concentrating on the Foster Children Opportunity Act (important to immigrant children, and especially those eligible for Special Immigrant Juvenile Status); the Foster Youth Self-Support Act (to prevent the expropriation of foster child Social Security survivor and disability payments due them by counties); the Foster Youth Financial Security Act (including credit abuse prevention for emancipating youth); and immigration reform legislation that we will work to ensure has beneficial provisions for children and foster youth alike. In addition, following up on our federal advocacy on bills relating to sex trafficking of minors and foster youth, we will work to ensure introduction of passage of the End Sex Trafficking Act of 2013, which would work to hold the consumers of commercial sex accountable rather than the workers themselves, as well as other measures in this arena.

E. COLLABORATION WITH NATIONAL COLLEAGUES

CAI continues to develop its national presence in Washington, D.C. In addition to participating in several national coalitions, such as the National Foster Care Coalition, the National Child Abuse Coalition, the Coalition on Human Needs, and the Child Welfare and Mental Health Coalition, CAI's Amy Harfeld has coordinated CAI's work with the American Bar Association, the National Association of Counsel for Children (NACC), Voices for America's Children, and many other national groups. For several months, Amy served as the Director of the Children's Leadership Council, the largest multi-issue coalition of children's advocacy organizations in the nation.

I remain on the Board of First Star and NACC (the latter of which I recently concluded a two-year term as Board President),



and I continue to serve as counsel to the Board of Voices for America's Children.

F. COLLABORATION WITH CALIFORNIA COLLEAGUES

CAI continues to convene the Roundtable of child advocates in Sacramento. **Every three months CAI's Melanie Delgado and Ed Howard organize a conference that includes presentations from public officials and state and national experts in subject matters relevant to current state issues.** The Roundtable members include almost 300 organizations with various interests in child-related state policy.

Participants at the Roundtable attend a three-hour meeting to learn about current issues and to plan common strategies for child advantage. During 2012, CAI facilitated Roundtable presentations on a variety of timely topics, including the California child welfare realignment and its implications; improving services, opportunities and outcomes for California's foster youth; education issues and information on Proposition 30 and Proposition 38; a "Let's Get Healthy California" Task Force update; legislative changes impacting health homes for vulnerable children and youth; and an online personal health recordkeeping system for transition age foster youth.

CAI also works closely with advocates in other counties. For example, I sit on the Board of the Maternal and Child Health Access Foundation in Los Angeles, which originated at CAI and now is a major education and health coverage resource for women and infants in Los Angeles. Lynn Kersey continues to

direct its operations and serves as an important expert resource for statewide advocacy and in the legislative and rulemaking decisions of Sacramento.

Within San Diego County, CAI works with numerous entities helping children and youth. Our Homeless Youth Outreach Program, overseen by Melanie Delgado and myself with the assistance of CAI consultant Jason Carr, continues to provide legal advocacy, information and referrals for San Diego County's homeless youth. Our Educational Representative program continues to provide volunteers willing to take on the educational decisionmaking rights and responsibilities for youth involved in Juvenile Court proceedings. We continued to provide our placement clinics in both dependency practice (through Dependency Legal Group of San Diego) and delinquency practice (through the Public Defender's Office) — although the latter is shifting more to the preventive side as the students will seek to find rehabilitative and preventive services for accused delinquents. In addition, a new student-initiated program called ACES works to provide education assistance to children within the county; I serve as its faculty adviser and it is organized and largely staffed by former and current CAI clinic students. And Melanie Delgado continues to sit on the San Diego County Juvenile Justice Commission, serving as First Vice Chair during 2012.

During 2012, CAI also continued to staff the Price Child Health and Welfare Journalism Awards, which have been presented annually since 1992 to recognize excellence in journalism, and specifically to recognize significant stories, series, or bodies of work that advance the understanding of, and enhance public discourse on, child health and well-being issues, including but not limited to health, health care reform, child nutrition, child safety, child poverty, child care, education, child abuse, foster care, former foster youth, juvenile justice, and children with special needs. During 2012, the Daily Newspaper First Place award was presented to The Sacramento Bee for *The Girl With 100 Scars* by Marjie Lundstrom, and the Electronic Media First Place award was presented to Ryann Blackshere for her compilation of online articles on foster care and transracial adoption.

G. ADVISORY BOARD ACTIVITY

Over the last several months, CAI succeeded in expanding its Council on Children, an advisory body that helps guide our work. After many years of service to CAI, several Council members have shifted to *emeritus* member status, including Dr. Birt Harvey, Paul Peterson, Dr. Louise Horvitz, Blair Sadler, and Owen Smith. The remaining members of the Council authorized us to invite five



individuals to join the Council, and we are extremely honored to report that all five accepted: noted child advocate Anne Fragasso, family law expert Sharon Kalemkarian, child welfare expert David Meyers, and two highly respected former legislators: Christine Kehoe and Denise Ducheny.

CAI has continued to convene its Youth Advisory Board, which consists of young adults who have personal experience with the foster care system, the juvenile justice system, homelessness, exploitation, and/or other issues of concern to CAI. In addition to advising CAI on 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.

III. 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 humbled that so many faculty members and administrators 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 Paul Peterson, Louise Horvitz, Janet Madden and Robert Price, imposes on us a fiduciary obligation to perform consistent with their expectations.

We are also thankful for the generous grants and gifts contributed by the following individuals and organizations between January 1, 2012, and December 31, 2012, and/or in response to CAI's 2012 holiday solicitation.¹ These funds support CAI's advocacy, outreach, and public education efforts at the local, state and federal levels; without them — without you — CAI would not be able to do what we do.

Prof. Larry Alexander
Richard Annis
Anzalone & Associates
Maureen Arrigo
Prof. Carl A. Auerbach
Bank of America/Biogen Idec, Inc. (*matching gift*)
Bob Bavasi
William M. Benjamin
Vickie Lynn Bibro and John Abbott
Dr. Robert Black
Ann Bradley
Robert Brasheres
Paula Braveman
Roy Brooks (*in memory of Penny Brooks*)
Susan and Alan Brubaker
Dana Bunnett
Carlos R. Carriedo
Candace Carroll
Steven Carroll
Shannon Kelley Castellani
Gordon and Judy Churchill
Prof. Laurence Claus
Jim Conran
Consumers First
Sandra Cox (*in memory of Carol Cramblet*)
Margaret Dalton
Ann D'Angelo (*in memory of James A. and the Hon. Peter T. D'Angelo*)
Julianne D'Angelo Fellmeth (*in memory of James A. and the Hon. Peter T. D'Angelo*)
Nancy D'Angelo (*in memory of James A. and the Hon. Peter T. D'Angelo*)
Steve Davis
De Anza Campland, LLC

David Durkin
Joy Eden
Rich Edwards & Ellen Hunter
Fidelity Charitable Gift Fund / Birt Harvey
David Forstadt
Anne E. Fragasso, Esq.
The Hon. Ronald F. Frazier
Donna Freeman and Gene Erbin
Prof. C. Hugh Friedman
Hon. Charles Gill
Steven Gillis
Beth Givens
Joel C. Golden
John Goldenring, MD, MPH, JD
David Goldin
Hon. Jan Goldsmith
Goodsearch
Jim and Patti Goodwin (*in memory of James A. D'Angelo*)
Susan Gorelick
Amy Harfeld
Dr. Birt Harvey
Prof. Walt Heiser
Craig Higgs
Adrienne Hirt and Jeffrey Rodman
Louise & Herb Horvitz Charitable Fund
Peter J. Hughes (*in memory of Walter Zable*)
Theodore Hurwitz
Jewish Community Foundation
Hon. Leon Kaplan
Josephine Kiernan
Kathryn E. Krug
Alexandra Kwoka
Lynne Lasry
Douglas D. Law
John and Joanne Higgins Leslie
Ruth Levor
Prof. Janet Madden
John C. Malugen
Manchester Financial Group, L.P.
Mike and Susan Marrinan
John P. Massucco
James B. McKenna
Hilda Medina
Edwin Miller
Prof. John Minan
John and Betsy Myer (*in memory of James A. D'Angelo*)
Laurel Olson
Carl Oshiro
Tom Papageorge
James and Frances Peterson
Paul and Barbara Peterson
Prof. Theresa Player
Dr. Enid Lynn Rayner and Dr. John V. Mickey
Gary Redenbacher and Renae Fish

¹While every effort has been made to ensure accuracy, we ask readers to notify us of any errors and apologize for any omissions.



Gary A. Richwald and Sue Bayley
 Hal Rosner (*in memory of James A. D'Angelo*)
 Rosner, Barry, & Babbitt, LLP (*in memory of James A. D'Angelo*)
 Adrian Rowe
 Thomas Rummel
 Ron Russo
 Blair Sadler
 Mrs. Amy E. Salinas
 Gloria Samson
 Gregory Saybolt
 Sempra Energy (*matching gift*)
 Duane Shinnick
 Shinnick & Ryan LLP
 Dr. Alan Shumacher
 Alan Sieroty (*in honor of Beth Meltzer*)
 The Simon Strauss Foundation
 Owen Smith
 Thomas Smith
 Prof. Allen Snyder
 Sony Electronics Inc.
 Abigail Stephenson
 Howard E. Susman
 Edmund Ursin
 John K. Van de Kamp
 Nancy Vaughan
 Howard Wayne
 Carrie Wilson

Marjorie Zhou
 Anonymous Donors

One final note about Sol and Helen Price, whose gift of the Price Chair Endowment ensures consistent funding for the academic program of the Center for Public Interest Law and the Children's Advocacy Institute. Their passing will never diminish our duty to represent their ideals for child representation — we strive to be an important part of their legacy. All of us at CAI feel their presence, and what they would want us to do is our guiding lodestar.

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

CAI Staff

Robert C. Fellmeth *Executive Director*

Elisa Weichel *Administrative Director/ Staff Attorney*

Ed Howard *Senior Counsel*

Christina Riehl *Senior Staff Attorney*

Melanie Delgado *Staff Attorney*

Amy Harfeld *National Policy Director / Senior Staff Attorney*

Mercedes Lanznaster *Executive Assistant*

CAI Council for Children

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

Council Chair: **Gary F. Redenbacher, J.D.** *attorney at law*

Council Vice-Chair: **Gary Richwald, M.D., M.P.H.** *Consultant Medical Director, California Cryobank*

Council Members: **Robert Black, M.D.** *pediatrician*

Denise Moreno Ducheny *Attorney, Former State Senator*

Anne E. Fragasso, Esq. *California Appellate Project, Staff Attorney*

John M. Goldenring, M.D., M.P.H., J.D. *Medical Director, Riverside Physician's Network*

Sharon Kalemkiarian, CLS-F Partner, Ashworth, Blanchet, Christenson and Kalemkiarian

Hon. Leon S. Kaplan (Ret.) *Retired Judge, Los Angeles Superior Court*

Christine Kehoe *Former California State Senator*

James B. McKenna *President, Am Cal Realty, Inc.*

David M. Meyers *Chief Operating Officer, Dependency Legal Services*

Thomas A. Papageorge, J.D. *Special Prosecutor, Economic Crimes Division, San Diego District Attorney's Office*

Gloria Perez Samson *Retired school administrator*

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*

Emeritus Members: **Birt Harvey, M.D.** *Professor of Pediatrics Emeritus, Stanford University*

Louise Horvitz, M.S.W., Psy.D. *Licensed clinical social worker, individual and family psychotherapist*

Paul A. Peterson, J.D. *of Counsel to Peterson and Price, Lawyers*

Blair L. Sadler, J.D. *Past President and Chief Executive Officer, Children's Hospital and Health Center*

Owen Smith *Past President, Anzalone & Associates*



CAI Youth Advisory Board

CAI's Youth Advisory Board consists of several young adults who have personal experience with the foster care system, the juvenile justice system, homelessness, exploitation, and/or other issues of concern to CAI. In addition to advising CAI on 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.

Members: **Helena Kelly • Mercediz Hand • LaQuita Clayton • Melissa Lechne**

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

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

**San Diego Office**

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

Sacramento Office

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

info@caichildlaw.org
www.caichildlaw.org

This annual report covers the activities of the Children's Advocacy Institute
between January 1, 2012 and December 31, 2012.

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.

© 2013 by the Children's Advocacy Institute

