

CONFIRMATION

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PROFESSIONAL

TEACHING

PRACTICES

VITA

Spike Jorgensen

Home Address: P.O. Box 132
Tok, Alaska 99780

Telephone: 907-883-5331

Business Address: ALASKA GATEWAY SCHOOL DISTRICT
P.O. Box 226
Tok, AK 99780

Telephone: 907-883-5151

Personal Information Married, two children, citizen of the United States, resident of Alaska. Birthdate, November 12, 1942. Height 6'1", Weight 210 lbs.

Education University of Wyoming, Laramie, Wyoming, 1970-1972. Doctorate in Educational Administration, 1976.

Northern Arizona University, Flagstaff, Arizona, 1967-1968, M.A.T. in Biology, Minor in Public School Administration.

University of Arizona, Tucson, Arizona, Summer Session 1966.

Black Hills State College, Spearfish, South Dakota, 1961-1965, B.S. Biology, Chemistry, Speech.

Professional Service,
Societies, and Honors

Alaska Council of School Administrators, Board of Directors
Alaska Association of School Administrators
Wyoming Association of School Administrators, President
National Academy of School Executives, State Academy Leader
Alaska and Wyoming Delegate to AASA
Association for Supervision and Curriculum Development
American Association of School Administrators
PHI Delta Kappa, Secretary-Treasurer
Kappa Delta Pi (education)
American Association of University Professors
Who's Who in American Colleges and Universities
International Society for General Semantics

Employment
Experience

Alaska Gateway School District, Tok, Alaska
Superintendent of Schools, 1979 to present

Sublette County School District No. 1, Pinedale, Wyoming
Superintendent of Schools, 1972-1979

University of Alaska, Fairbanks, Alaska
University of Wyoming, Laramie, Wyoming
Lecturer and Extension Professor, 1974 to present

University of Wyoming, Laramie, Wyoming
Graduate Administrative and Teaching Intern and Research
Assistant

Department of Education Administration, 1970-1972
Wyoming Educational Needs Assessment Project, 1971-1972

Faith Public Schools, Faith, South Dakota
Principal and Teacher of Grades 7-12, 1969-1970

Colome Public Schools, Colome, South Dakota
Superintendent of Schools, Principal and Teacher of Grades K-12
1968-1969

Buffalo Public Schools, Buffalo, South Dakota
Teacher, Biology and Speech, Grades 7-12, 1965, 1966, 1967

Western South Dakota, during undergraduate years
Auctioneer, Rodeo Announcer, Building Subcontractor, Teacher

Post Graduate Seminars and Institutes

Columbia University, New York, Superintendents' Conference
Two week invitational, 1978

American Association of School Administrators, Leadership
Conferences, Atlanta, 1977, and New Orleans, 1978.

National Academy of School Executives' Seminars

Computers in the Schools, Atlantic City, 1983

Small Schools, Los Angeles, 1980

Negotiations by Lifton, Sheridan, 1979

Conflict Management, New Orleans, 1979

Public Relations, Atlanta, 1977

Effective Communications, Atlantic City, 1976

Time Management, Dallas, 1975

Evaluating the Instructional Staff, Calgary, 1974

Evaluation of Administrative Performance, San Francisco, 1973

National Curriculum Study Institute (ASCD)

Curriculum Evaluation, Seattle, 1977

Post Graduate Seminars and Institutes University of Alaska, Alaska Pacific University
Superintendent Training Academy, 1980

Alaska Native Foundation
The School Board and Curriculum Making, 1980

Community Service: Alaska Professional Teaching Practices Commission, Secretary
Tok Area Chamber of Commerce, Vice-President
Sublette County Historical Society, Vice-President
Harding County Junior Chamber of Commerce, Charter President
YGOP State Central Democratic Precinct Committeeman
Special Awards for Junior Miss Pageantry
C-V Ranch, Inc., Founding Board of Directors (Special Education Facility), Jackson Hole, Wyoming
Auctioneer and Rodeo Announcer (Volunteer Service Locally)
AFSC Volunteer in Norwegian Institutions
Wyoming Council for Children and Youth

Professional Presentations Network for Outcome Based Schools
Mastery Learning in Small Schools, 1983

American Association of Schools Administrators
Participative Decision Making, Atlantic City, 1975
Building a Research Base for Effective Schools, Las Vegas, 1976

National School Boards' Association
Recruiting and Retaining an Effective Staff in Small Schools,
Miami, 1979

State School Board and Administrators Presentations
Program Development-Needs Assessment, Casper, 1972
Evaluation of the Superintendent, Jackson Hole, 1973
Staff Development and Participative Decision Making, Thermopolis, 1975
Supervision of Building Projects (Clerk of the Works), Sheridan, 1977
Local Control of Schools, Fairbanks, 1980
Board Meeting Organization and Procedures, Thermopolis, 1975-1977

WSBA New School Board Member Workshops

Travel Traveled extensively on the North American Continent from Mexico to Alaska, and in Northern Europe including the U.S.S.R.

Primary Experience Background Curriculum Development
Theoretical and Applied Educational Research
Board Meeting Agendas and Information
Policy Development and Implementation
Building Programs (bonds to buildings)
Budget Preparation and Administration
Staff Selection, Evaluation, and Training
Public Relations and Communication Plans, Presentations, Practices and Releases
Cost Benefit Program Analysis
Master Plan Development and Administration
School Climate Maintenance and Supervision
Professional and Community Service Activities
School Governance Design and Technique
Applied School Law
Specifications' Development and Purchasing Procedures
Staff and Public Participatory Governance Programs
Special Services Programs, Design and Implementation (Gifted and Talented, Special Education)
Community School and Advanced Placement Programs
Food Service Program Improvement
Professional and Ethical Practices in Administration

Special Interests Special interests other than education and community service include hunting, fishing, backpacking, photography, travel, and outdoor writing.

Supplemental Information NOT AVAILABLE FOR EMPLOYMENT AT THIS TIME.

Karen M. Ryals
16665 Lena Loop Road
Juneau, Alaska 99803

GENERAL BACKGROUND

Sixteen years of experience in education in Alaska, including: five years secondary teaching experience, supervisory experience, curriculum development, and six years administrative experience at the State level. These have been with all ages and educational levels.

CURRENT POSITION

1980 - present: Education Administrator I with the Alaska Department of Education, Office of Adult and Vocational Education.

PAST EXPERIENCE

July 1978 - December 1979: Program Manager, Career and Vocational Education, Alaska Department of Education.

June 1974 - May 1978: Instructor (Lecturer): Juneau-Douglas Community College.

I developed and taught courses for the Juneau-Douglas Community College including "Wild Game for the Table", "Food from the Sea", "Infant and Child Nutrition", and "Mexican Cooking".

December 1976 - February 1977: Consultant: University of Alaska.

I designed and developed a plan for a statewide training program for Title 20 Education Programs in Homemaker-Home Health Aide Training.

March 1975 - September 1976: Instructor: Homemaker-Home Health Aides Incorporated, Juneau.

I coordinated instruction and assisted with selecting applicants for the Homemaker-Home Health Aide positions.

August 1970 - June 1974: I was an Instructor and Department Chairperson for Juneau-Douglas Borough School District, Home Economics Department.

I taught secondary Home Economics courses designated as Family Living, Advanced Food Preparation, and Service Advanced Clothing Selection and Construction, Occupational Training for Waiter-Waitress and Food Service. I supervised another employee, completed curriculum development, department planning, and budget. I was responsible for designing and developing a new Home Economic facility and program for the Floyd Dryden Junior High School. In addition, I acted as advisor to Future Homemakers of America, a vocational student leadership organization.

ADDITIONAL INFORMATION

High School Honors

Honor Student
Activities Award - outstanding Student
Girls State Representative
FHA - Individual, Chapter, and State Degree
Selected for U.N. IOOF Pilgrimage Delegate - 1963

College Honors

Statewide PTA Scholarship - Home Economics Education Scholarship
Home Economics Association Award Scholarship from Spokane Chapter of AHEA
Selected for Golden Circle - Senior Women's Honorary
Ellen Richards Home Economic Award - Local Chapter - Outstanding Student

Community Services

Instructed for community schools program - gardening; candlemaking; Kid's
in the Kitchen
Served as elected director - Glacier Highway Electric - 1974-1978
Offices held - President
Vice-President
Treasurer
Secretary

Assisted Cooperative Extension Service - University of Alaska, in Marine
Science Program and 4H Gardening Program - Home Economics Pamphlet review.

Member - Alaska Home Economics Association and American Home Economics
Association

Phi Delta Kappa

Juneau Garden Club

Alaska State Nutrition Committee

Alaska State Vocational Association and American Vocational
Association

Professional Teaching Practices Commission

Award

Alaska State Vocational Association "Leadership in Vocational Education"
award - 1980.

"Alaskan Home Economist of the Year" award in 1983.

August 1968 - June 1969: Instructor: Juneau-Douglas Borough School District.

I taught secondary home economics courses designated as Home Economics I and Home Economics II. In addition, I acted as advisor to the Juneau-Douglas High Pep Club.

EDUCATION

<u>Institutions</u>	<u>Year</u>	<u>Degree</u>
Eastern Washington State College	1964-1968	B.A. Home Economics Educ B.A. Home Economics
San Francisco City College	1970	FEAST Program
Alaska Methodist University	1972	Curriculum Development Course
University of Alaska	1974-1978	Masters of Arts in Secondary Education
National Rural Electric Cooperative Association Director Training	1975-1978	Administrative Management Program (Non-degree progra

REFERENCES (local)

Dr. Alan Barnes
Southeast Regional Resouce Center
538 Willoughby Avenue
Juneau, AK. 99801

Dr. Phillip Hocker
University of Alaska
11120 Glacier Highway
Juneau, AK. 99803

Ms. Robbie Stell, Past President
Alaska State Vocational Association
17 1/2 Mile Glacier Highway
Juneau, AK. 99802

August 1968 - June 1969: Instructor: Juneau-Douglas Borough School District.

I taught secondary home economics courses designated as Home Economics I and Home Economics II. In addition, I acted as advisor to the Juneau-Douglas High Pep Club.

EDUCATION

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National Rural Electric Cooperative Association Director Training	1975-1978	Administrative Management Program (Non-degree program)

REFERENCES (local)

Dr. Alan Barnes
Southeast Regional Resource Center
538 Willoughby Avenue
Juneau, AK. 99801

Dr. Phillip Hocker
University of Alaska
11120 Glacier Highway
Juneau, AK. 99803

Ms. Robbie Stell, Past President
Alaska State Vocational Association
17 1/2 Mile Glacier Highway
Juneau, AK. 99802



• ALASKA COUNCIL OF SCHOOL ADMINISTRATORS •
326 Fourth St., Suite #510 Juneau, Alaska 99801 586-9702

an organization of Alaskan School Administrators

April 9, 1984



The Honorable Mae Tischer
House of Representatives
State Capitol, Pouch V
Juneau, AK 99811

Dear Representative Tischer:

The Alaska Council of School Administrators would like to take this opportunity to support Mr. Spike Jorgensen for reappointment to the Professional Teachers Practice Commission. Mr. Jorgensen has been the representative from the Superintendents association and continues to have their support, not only on the commission, but as an officer of the the State Administrators Association. His professional integrity, as well as his knowledge of issues faced by the Commission, makes him a valuable asset to the Professional Teachers Practice Commission.

We urge legislators to support this nomination.

Sincerely,

Don MacKinnon
Executive Director

DM:clc

DIVISION OF
FAMILY &
YOUTH SERVICES
INVESTIGATION

Box 188
Douglas, AK 99824
April 4, 1984

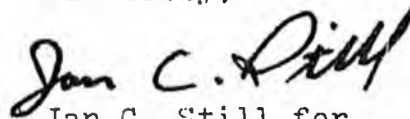
Member of the House and Senate
State Capitol
Pouch WF
Juneau, AK 99811

Dear Senators and Representatives:

A number of parents and foster parents across the state have complained to their legislators or to members of the house HESS committee concerning abuses and improper action at the hands of DFYS administrators and/or social workers. Many of these complaints concern the administration of recently passed child abuse laws and the unjustified removal of children from their families. Other complaints concern unjustified abuse charges brought against foster parents by DFYS. One Juneau foster parent had to pay \$24,000 in attorney's fees to clear his name of DFYS's groundless abuse charges.

The members of Alaska Citizens for Families (ACF) were surprised on April 3, 1984, when the house HESS committee refused a request by its chairperson to investigate the Division of Family and Youth Services and their treatment of parents and foster parents. The ACF considers it irresponsible by the legislature to pass new child abuse legislation that gives DFYS more power over parents and their children while ignoring parents and foster parents complaints. We consider this investigation so important that a moratorium on all HESS legislation is requested until this investigation has been accomplished.

Sincerely,



Jan C. Still for
Alaska Citizens for Families

to determine whether legislative action is necessary to resolve possible procedural or legal deficiencies in present practice and or to reduce, increase or decrease appropriations required to perform the tasks of the division.

4/2/84

HOUSE HESS COMMITTEE
INVESTIGATION OF THE DEPARTMENT OF HEALTH AND SOCIAL
SERVICES, DIVISION OF FAMILY AND YOUTH SERVICES

considers questions concerning

PURPOSES The purposes of the investigation by the House HESS Committee will ~~be to determine~~ if the Department of Health and Social Services, Division of Family and Youth Services, ~~has used state funds inappropriately; and to determine if legislative action is necessary to remedy problems subsequently identified.~~

SCOPE The Committee will investigate questions ~~concerning~~ *concerning* the Department of Health and Social Services, Division of Family and Youth Services, raised ~~in testimony before the Committee.~~ *by members of the public* Initially the investigation will concentrate on the following cases: Bernie Holland, Jan Stahl, and Eileen Hahn (~~Turning Point Boys Ranch~~); however, the investigation will probably not be limited to these cases and may be extended to include additional questions, ~~as appropriate.~~ *result which may occur as a part of from the investigation*

PROCEDURE Mason's Manual of Legislative Procedure, Part X (Pages 570 - 586), and Title 24 of the Alaska Statutes will govern all investigative hearings by the Committee.

STAFF Bill Lovell and Kimberly Babcock, both of the HESS Committee staff, will be responsible for coordinating, scheduling, and providing staff support for, the investigation. The Committee will be advised on legal matters by Billy Berrier at the Legislative Affairs Agency, Division of Legal Services. No additional staff is anticipated at this time.

SCHEDULING Persons asked to testify before the Committee will be given at least 24-hours notice. The Committee will schedule no more than 2 persons per investigative hearing. Persons may be asked to appear before the Committee more than once. The Committee will continue to hear bills as necessary and in a manner consistent with Committee policy announced earlier.

FUNDING At this time, no requests for additional funding are anticipated.

/wtl

4/3/84

HOUSE HESS COMMITTEE
INVESTIGATION OF THE DEPARTMENT OF HEALTH AND SOCIAL
SERVICES, DIVISION OF FAMILY AND YOUTH SERVICES

PURPOSES The purpose of the investigation by the House HESS Committee will be to consider questions concerning the Department of Health and Social Services, Division of Family and Youth Services, in order to determine whether legislative action is necessary to resolve possible procedural or legal deficiencies in present practice; or to redirect, increase or decrease appropriations required to perform the responsibilities of the division.

SCOPE The Committee will investigate questions concerning practices of the Department of Health and Social Services, Division of Family and Youth Services, raised by members of the public in testimony before the Committee. Initially the investigation will concentrate on cases involving Bernie Holland and Jan Stihl; however, the Committee investigation will probably not be limited to these cases and may be extended to include additional questions, which may result from the investigation.

PROCEDURE Mason's Manual of Legislative Procedure, Part X (Pages 570 - 586), and Title 24 of the Alaska Statutes will govern all investigative hearings by the Committee.

STAFF ^{Existing} ~~Bill Lowell and Kimberly Babcock~~, both of the HESS Committee staff, will be responsible for coordinating, scheduling, and providing staff support for, the investigation. The Committee will be advised on legal matters by ~~Billy Berrier, Director~~ of the Division of Legal Services. No additional staff is anticipated at this time.

SCHEDULING Persons asked to testify before the Committee will be given at least 24-hours notice. The Committee will attempt to schedule no more than 2 persons per investigative hearing, but may do so if necessary. Persons may be asked to appear before the Committee more than once. During the course of the investigation, the HESS Committee will continue to hear bills as necessary and in a manner consistent with Committee policy announced earlier.

FUNDING At this time, no requests for additional funding are anticipated.

/wtl

HOUSE HESS COMMITTEE
INQUIRY INTO THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES,
DIVISION OF FAMILY AND YOUTH SERVICES

Pursuant to Sections 795 and 798 of Mason's Manual of Legislative Procedure, the House Health, Education and Social Services Committee resolves to commence an inquiry into the the Department of Health and Social Services, Division of Family and Youth Services, in accordance with the following provisions.

PURPOSE

The purpose of the inquiry by the House HESS Committee will be to consider specific questions within the scope of the inquiry concerning the Department of Health and Social Services, Division of Family and Youth Services, in order to determine whether legislative action is necessary to resolve possible procedural or legal deficiencies in present practice; or to redirect, increase or decrease appropriations required to perform the responsibilities of the division.

SCOPE

The scope of the HESS Committee inquiry will include questions concerning practices of the Department of Health and Social Services, Division of Family and Youth Services, with respect to the case of Mr. Bernie Holland. Specifically, the HESS Committee will address the following question; *subject to the time indication limitation*

Were the procedures used by the Department of Health and Social Services, Division of Family and Youth Services, in the revocation of Mr. Bernie Holland's license to operate a foster home in the state, such that a need for corrective legislation was demonstrated?

While the circumstances of this particular case are being examined, the purpose of the inquiry is to develop information which may lead to legislation. Determining the merits of this particular case is not within the scope of the inquiry.

PROCEDURE

Mason's Manual of Legislative Procedure, Part X (Pages 570 - 586), and Title 24 of the Alaska Statutes will govern all

investigative hearings by the Committee. Persons asked to testify before the Committee will be given at least 24-hours notice. The Committee will attempt to schedule no more than two persons to testify per investigative hearing, but may schedule more than two persons if necessary. Persons may be asked to appear before the Committee more than once. Testimony will be limited to those persons requested to testify by the Committee.

Actual hearing time by the HESS Committee relating to the inquiry will be limited to a period not to exceed eight hours.

During the period of the inquiry, the HESS Committee will continue to hear bills as necessary and in a manner consistent with previously announced Committee policy.

STAFF

The HESS Committee staff will be responsible for coordinating, scheduling, and providing appropriate staff support for the inquiry. The Committee will be advised on legal matters by the Legislative Affairs Agency, Division of Legal Services. No additional staff is anticipated at this time.

FUNDING

At this time, no requests for additional funding are anticipated.

MODIFICATIONS

All of the provisions of this inquiry are subject to modification by a majority vote of the members of the HESS Committee at any time.

/wtl

HOUSE HESS COMMITTEE
INVESTIGATION OF THE DEPARTMENT OF HEALTH AND SOCIAL
SERVICES, DIVISION OF FAMILY AND YOUTH SERVICES

Pursuant to Sections 795 and 798 of Mason's Manual of Legislative Procedure, the House Health, Education and Social Services Committee resolves to commence an investigation of the Department of Health and Social Services, Division of Family and Youth Services, in accordance with the following provisions.

PURPOSE The purpose of the investigation by the House HESS Committee will be to consider questions concerning the Department of Health and Social Services, Division of Family and Youth Services, in order to determine whether legislative action is necessary to resolve possible procedural or legal deficiencies in present practice; or to redirect, increase or decrease appropriations required to perform the responsibilities of the division. ~~SPECIFICALLY,~~

SCOPE The Committee will investigate questions concerning practices of the Department of Health and Social Services, Division of Family and Youth Services, raised by members of the public in testimony before the Committee. ~~Initially the investigation will concentrate on two specific cases: Bernie Holland and Jan Stihl; however, the Committee investigation will probably not be limited to these cases and may be subsequently extended to include additional questions, which may result from the investigation.~~ SPECIFICALLY, The Committee wishes to

hearing
time
limit?

address
address

PROCEDURE Mason's Manual of Legislative Procedure, Part X (Pages 570 - 586), and Title 24 of the Alaska Statutes will govern all investigative hearings by the Committee. Persons asked to testify before the Committee will be given at least 24-hours notice. The Committee will attempt to schedule no more than two persons to testify per investigative hearing, but may schedule more than two persons if necessary. Persons may be asked to appear before the Committee more than once. Testimony will be limited to those persons requested to testify by the Committee.

the
following
~~specific~~
questions.

During the period of the investigation, the HESS Committee will continue to hear bills as necessary and in a manner consistent with previously announced Committee policy.

STAFF The HESS Committee staff will be responsible for coordinating, scheduling, and providing appropriate staff support for, the investigation. The Committee will be advised on legal matters by the Legislative Affairs Agency, Division of Legal Services. No additional staff is anticipated at this time.

FUNDING At this time, no requests for additional funding are anticipated.

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4/3/84

HOUSE HESS COMMITTEE
INVESTIGATION OF THE DEPARTMENT OF HEALTH AND SOCIAL
SERVICES, DIVISION OF FAMILY AND YOUTH SERVICES

Pursuant to Sections 795 and 798 of Mason's Manual of Legislative Procedure, the House Health, Education and Social Services Committee resolves to commence an investigation of the Department of Health and Social Services, Division of Family and Youth Services, in accordance with the following provisions.

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SCOPE The Committee will investigate questions concerning practices of the Department of Health and Social Services, Division of Family and Youth Services, raised by members of the public in testimony before the Committee. Initially the investigation will concentrate on two specific cases: Bernie Holland and Jan Stihl; however, the Committee investigation will probably not be limited to these cases and may be subsequently extended to include additional questions, which may result from the investigation.

PROCEDURE Mason's Manual of Legislative Procedure, Part X (Pages 570 - 586), and Title 24 of the Alaska Statutes will govern all investigative hearings by the Committee. Persons asked to testify before the Committee will be given at least 24-hours notice. The Committee will attempt to schedule no more than two persons to testify per investigative hearing, but may schedule more than two persons if necessary. Persons may be asked to appear before the Committee more than once. *During the course period* of the investigation, the HESS Committee will continue to hear bills as necessary and in a manner consistent with Committee policy announced earlier. Testimony will be limited to those persons requested to testify by the Committee.

STAFF The HESS Committee staff will be responsible for coordinating, scheduling, and providing appropriate staff

support for, the investigation. The Committee will be advised on legal matters by the Legislative Affairs Agency, Division of Legal Services. No additional staff is anticipated at this time.

FUNDING At this time, no requests for additional funding are anticipated.

/wtl



Official Business

Alaska State Legislature

House of Representatives

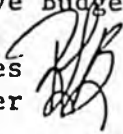
REPRESENTATIVE
RAMONA L. BARNES

MAJORITY LEADER

ANCHORAGE
2230 PAXSON
ANCHORAGE, ALASKA 99504
(907) 337-7904
POUCH V
JUNE AU, ALASKA 99311
(907) 465-3718

MEMORANDUM

TO: Representative Bettisworth
Chairman, Legislative Budget and Audit Committee

FROM: Representative Barnes 
House Majority Leader

DATE: March 19, 1984

I request that a Legislative Performance Audit be conducted of the Division of Family and Youth Services of the Department of Health and Social Services.

My particular concerns in this regard center on the handling of cases involving sex abuse of minors. I have had repeated constituent complaints alleging insensitive and unprofessional conduct on the part of DFYS staffers in handling these cases. Also, it has been alleged to me that one case involves a serious conflict of interest.

Inquiries by me and my staff into these matters indicate that there are adequate grounds for serious concern.

RB/rt



HOUSE OF REPRESENTATIVES

OFFICE OF THE MAJORITY LEADER

Room 216
STATE CAPITOL

CONFIDENTIAL CONFIDENTIAL CONFIDENTIAL

To: Ramona Barnes, Majority Leader
From: Jim Wood, PA
Date: March 22, 1984
Re: Allegations of Improprieties in the Division of Family and Youth Services.

These allegations pertain to the Anchorage Office of DFYS, Department of Health and Social Services and their handling of child sex abuse and foster care programs.

1) In the Wilson case (Mrs. Pat and daughter) Cheryl Mann, a DFYS social worker, was interviewing the victim, a female minor, in the presence of the child's mother. Ms. Mann inquired as to what the adult male perpetrator had done to her. The child, not knowing the sophisticated term masturbation, replied, "He made me jack him off."

At that time Ms. Mann burst into fits of laughter. Upon regaining her composure, Ms. Mann then reprimanded the child, noting that, "You don't use that kind of language when you're talking to professionals."

Complaints by the mother of insensitive and unprofessional conduct on the part of Ms. Mann were dismissed by both Dolly Coke and Sue Harris, the unit supervisor. She was told that her concerns should be centered on her daughter, rather than on the conduct or performance of the DFYS office.

Dolly Coke, in recent conversation with Representative Barnes' office, defended Cheryl Mann's performance, and her departure from the office with a good recommendation.

Other statements by Mrs. Wilson indicate that DFYS staffers, rather than explaining their procedures and the reasons why they were acting in accordance with the requirements of the law and in the best interest of the child, ~~staff~~ ~~staff~~ relied on threats to obtain Mrs. Wilson's cooperation; repeatedly threatening to take her daughter away from her if she did not do as they said.

Mrs. Wilson requested assistance from Representative Barnes in correcting what she considers gross improprieties and unprofessional conduct on the part of DFYS personnel that was upheld by supervisors. She asked, also, for assistance in obtaining legal counsel to file a lawsuit against the state in case these abuses were not corrected forthwith.

PRIVILEGED AND RESTRICTED INFORMATION -- NOT TO BE RELEASED.

2) In the Parker case (Mr. and Mrs. Joe), Representative Barnes was asked for assistance/guidance in the case of the Stearns children. The children (one male, one female) of Lynn Stearns told the Parkers they were both being physically and sexually abused by Bruce Dittman, live-in companion of their mother. The Parkers reported the alleged abuse to police, who notified DFYS. DFYS took custody of the children.

Initial concerns of the Parkers were as follows:

Lynn Stearns is an employee of the DFYS. (She had told the Parkers she was a social worker, handling abused children. This heightened their concerns. DFYS officials told Representative Barnes' office, however, that she was a secretary). The Parkers' children are close friends of the Stearns children. The Stearns children visited the Parkers frequently; often spending the night. The Parkers stated they had grown to love the Stearns children, and felt that after the trauma these children had suffered as a result of being taken into custody, then to a DFYS facility, interviewed, questioned, etc.; that a visit from friends would be helpful and supportive. They were told they could not visit the children by Dolly Coke, the DFYS social worker assigned to the case. When they later appeared at the shelter and again asked if they could visit the Stearns children, they were allowed to do so. When Dolly Coke learned they had visited the children, she became highly incensed and irate. The Parkers feared the incident would jeopardize their chance to obtain custody of the Stearns children; which they had requested. At this point, they requested guidance from Representative Barnes' office.

Additional concerns surfaced subsequently, which aggravated the Parkers concerns that there would be built-in bias in favor of Lynn Stearns, due to her working relationship and association with the social worker handling the case. Ms. Coke admitted to Representative Barnes' office that, indeed, she had counseled Ms. Stearns for previous problems.

Discussion with the prosecutor in the Dittman case revealed that Ms. Coke had permitted Ms. Stearns to visit with the children prior to the grand jury proceeding where Mr. Dittman was indicted; and that Ms. Stearns had coached the children in how to respond to questioning; thus breaking her pledge that she would not attempt to tamper with witnesses in the proceeding. It would appear that this was a serious indiscretion that would call into question either Ms. Coke's objectivity or her judgment.

Ms. Stearns reportedly refused to believe that Mr. Dittman would harm her children; but lashed out at the children instead; calling them liars, thieves, delinquents, etc. and alleged that they were likely to have sex together if opportunity permitted. Based on her allegation, the Parkers assert, the Stearns children were split up. The Parkers feel that this action was improper in that it was taken on the basis of nothing more than a totally baseless allegation by Ms. Stearns arising out of an angry, resentful reaction to her boy friend's arrest and that it was only the relationship between Ms. Coke and Ms. Stearns that resulted in any credence being placed in such a transparent and totally predictable and false allegation.

The Stearns daughter has been placed in a foster home run by a good friend of Ms. Stearns. The Parkers see this as another example of favoritism to Ms. Stearns that is rooted in a conflict of interest situation. As Ms. Stearns has access to her daughter, and has not accepted the fact that her daughter has been abused, the Parkers fear that Ms. Stearns will attempt to coerce her daughter to retract her testimony regarding her abuse.

A serious concern of the Parkers as well as Representative Barnes is that Ms. Coke of DFYS resents the fact that the Parkers contacted Representative Barnes and Senator Rodey and requested guidance. Ms. Coke reportedly threatened the Parkers, saying that they were going to get into serious trouble for violating the privacy of the children. Representative Barnes and Senator Rodey both feel strongly that constituents have a right to contact their elected representatives any time and on any topic they choose. State agencies must understand and accept this right as fundamental in a democratic society. It appears very probable that Ms. Coke's resentment will prejudice the Parkers' opportunity to visit the Stearns children and receive fair consideration in their request for being awarded custody of them.

The Parkers stated they were also concerned that the Stearns children were not receiving needed care. To their knowledge, neither has received any counseling to help them overcome the trauma they have suffered, and both were in need of eye exams, glasses, etc. for extended periods of time.

Lastly, the Parkers stated that the Stearns daughter was extremely lonely, distraught, and miserably unhappy when they met her by chance; yet she is not permitted to visit her brother, the Parkers, or anyone except her mother, whom she both dislikes and distrusts.

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES

A PROFESSIONAL CORPORATION

801 W. TENTH, SUITE 300

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MICHAEL A. BARCOTT*

KAREN L. RUSSELL
LEE S. GLASS
RICHARD B. BROWN
TIMOTHY A. MCKEEVER
JOHN F. CLOUGH III
RICHARD L. WAGG
GREGORY F. COOK
ROBIN G. WILCOX
JAMES B. PENTLARGE
LEON T. VANCE
DIANE L. DALEY**

NORMAN C. BANFIELD
OF COUNSEL

HERBERT L. FAULKNER (1882-1972)
FRANK M. DOOGAN (1923-1977)

* ADMITTED IN WASHINGTON & ALASKA
** ADMITTED IN WASHINGTON ONLY

ANCHORAGE OFFICE

DENALI TOWERS NORTH
2550 DENALI STREET, SUITE 700
ANCHORAGE, ALASKA 99503 2774
(907) 274-0666
TELEX: 090-26-455

SEATTLE OFFICE

FIFTH AVENUE PLAZA
800 FIFTH AVENUE, SUITE 3740
SEATTLE, WASHINGTON 98104
(206) 292-8008
TELEX: 70-4212

January 30, 1984

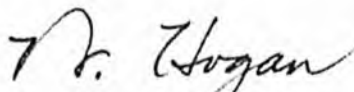
To Whom it May Concern:

This is to advise you that Mr. B.G. Holland incurred legal bills, with this firm, in the denial of foster home license matter as follows:

<u>Bill date</u>	<u>Amount</u>
4/13/83	\$ 1,892.62
5/ 9/83	2,511.14
8/18/83	26.52
9/26/83	17,691.42
11/14/83	94.11
	<hr/>
	\$ 22,215.81

Please contact me if you require additional information.

Yours truly,



William Hogan
Office Manager

Mr. B. G. Holland



Deposits recieved:

3/8/82	\$ 1,000.00
4/18/82	3,700.00
4/25/82	3,000.00
	<u>7,700.00</u>

Bills:

2/12/82	# 05491	\$ 38.63	
4/13/83	11998	1892.62	
5/9/83	12579	2511.14	
9/26/83	14687	<u>17,691.42</u>	
			<u>22,133.81</u>
			\$ 14,433.81

PROMISSORY NOTE

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\$ 14,433.51

Juneau, Alaska
~~October~~ 7, ~~1983~~
JANUARY 7, 1984

FOR VALUED RECEIVED, the undersigned promises to pay to the order of Faulkner, Banfield, Doogan & Holmes at 801 W. 10th Street, Suite 300, P. O. Box 1150, Juneau, AK 99802-1150, or at such other place as payee shall designate, the sum of Fourteen Thousand, Four Hundred Thirty-three Dollars and Eighty-one Cents (14,433.81), together with interest on the unpaid balance thereof at all times at the rate of eight percent (8%) per annum. Said sum and interest are due and payable in installments of \$500 on the first day of each and every month commencing ~~November 1, 1983~~ FEBRUARY 15, 1984 and continuing until said note is fully paid.

If any of said installments of principal or interest is not paid within ten (10) days after the same become due and payable, the whole of the principal sum then remaining unpaid, together with interest that shall have accrued thereon, shall forthwith become due and payable at the election of the holder of this note; PROVIDED, HOWEVER, that the maker or guarantors of this note may pay any or all unpaid installments before their respective maturity dates and reduce the principal amount thereof accordingly.

Presentment for payments, notice of non-payment, protest and notice of protest for non-payment are hereby waived, and each and every person signing or endorsing this note binds himself hereon as a principal and not as a surety, and agrees that the time for payment of such note may be extended by payee without notice, and agrees that in case suit or action is brought to collect this note, or any portion thereof, to pay,

15 paid within ten (10) days after the same become due and
16 payable, the whole of the principal sum then remaining unpaid,
17 together with interest that shall have accrued thereon, shall
18 forthwith become due and payable at the election of the holder
19 of this note; PROVIDED, HOWEVER, that the maker or guarantors
20 of this note may pay any or all unpaid installments before
21 their respective maturity dates and reduce the principal amount
22 thereof accordingly.

23 Presentment for payments, notice of non-payment, protest
24 and notice of protest for non-payment are hereby waived, and
25 each and every person signing or endorsing this note binds
26 himself hereon as a principal and not as a surety, and agrees
27 that the time for payment of such note may be extended by payee
28 without notice, and agrees that in case suit or action is
29 brought to collect this note, or any portion thereof, to pay,
30 in addition to the costs of said suit or action, a reasonable
31 sum as attorney's fees.

32

Bernard George Holland
P.O. Box 67
Juneau, Alaska 99802

1772h
Gregory F. Cook
Faulkner, Banfield, Doogan & Holmes
P.O. Box 1150
Juneau, AK 99802-1150
(907) 586-2210

STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF FAMILY AND YOUTH SERVICES

In the matter of Bernie and)
Mary Holland, a Licensed Child)
Foster Home,)
Respondents.) NO. 4190

CHRONOLOGICAL SUMMARY

1972 Mary and Bernie Holland begin accepting foster children into their home in Juneau, Alaska

1972-1981 H&SS consistently evaluates Holland foster home as one of the best in Alaska.

October 1978 H&SS/DFYS adopts regulations governing foster child care

September 16, 1981 Artie J, a foster child placed by the State at the Holland's home, sexually molests the Holland's 8 year old son. Hollands request State remove AJ from their home and obtain psychological counseling for him.

Mid-October, 1981 Rumors circulate at DFYS that BG Holland will complain to Ombudsman about State's "mishandling" of AJ case. Rumors circulate at DFYS that Bernie Holland uses drugs, beats his wife, molests female employees.

October 31, 1981 AJ, placed in Gisel foster home, rapes and sodomizes young daughter of foster parents. State had obtained no psychological counseling for AJ. H&SS' worries escalate regarding possible complaint to Ombudsman by Mr. Holland.

October 23 - November 9, 1981 Dr. Lobo investigates Holland House, finds rumors unsubstantiated. H&SS Pugh telephones BG Holland and states: "You won't get a license for your group foster home; no money in the budget this year, or next year."

1 November 1, 1981 H&SS employee Danneker tells Father
2 Lobo "If it wasn't for those goddam
3 Hollands this would never have
4 happened." (AJ's rape incident of
5 10/81 at Gisel home)

6 November 13, 1981 BG Holland makes formal complaint to
7 Ombudsman re H&SS failures on AJ
8 case.

9 November-December, 1981 Alaska Foster Parent Association
10 tells BG Holland "If you file a
11 complaint, DFYS will lay formal
12 allegations against you. That's
13 their standard operating procedure
14 in Anchorage."

15 December, 1981 All foster children removed from BG
16 Holland home. H&SS explains this as
17 merely coincidental and "natural
18 attrition."

19 June 4, 1982 Holland House group home provisional
20 license signed by Kay Smith, H&SS
21 (license # 235005)

22 June 4, 1982 Highly laudatory personnel
23 evaluation for Father Lobo received.

24 June 8, 1982 Father Lobo attends H&SS meeting to
25 discuss Holland group home
26 application. Lobo speaks favorably
27 of Hollands. All administrators
28 opposed to granting Hollands a group
29 home license.

30 June 10, 1982 H&SS, Mr. Pugh, calls meeting with
31 BG Holland, Reece, Hansen, Monroe, &
32 Walker to reject Holland group home
application.

June, 1982 H&SS, Mrs. Borkowski hears Mr. Reece
at Regional Office, call BG Holland
("that son of a bitch...").

July, 1982 H&SS, Mrs. Borkowski, hears Reece
and Smith say about BG Holland
"We'll shut him up and he'll never
get his hearing..." (to appeal
denial of group foster home license).

July 13 (or 16?), 1982 DFYS decides to suspend Father Lobo

July 14, 1982 Danny H. and Mickey H. accuse BG
Holland of bad actions.

July 15, 1982 Evening meeting: H&SS Olson, BG
Holland, Dr. Brandaman, Dr.
Horchover, Mickey H. Mickey H.

1 admits allegations against BG
2 Holland were lies by her and Danny
3 H; only an attempt to show anger,
4 frustration.

5 July 16, 1982

6 H&SS, Mr. Reece, receives written
7 and oral reports from Probation
8 Officers Olson and Anderson clearing
9 BG Holland. Reece orders Danneker
10 to investigate and "get Holland,
11 I've got my orders."

12 July 16, 1982

13 DFYS orders highly unusual
14 investigative procedure: Holland
15 file removed from "Family" side of
16 DFYS (Father Lobo) and permanently
17 given over to "Youth Services" side
18 of DFYS (Danneker, Reece and AJ's
19 Probation Officer, Mr. Wild).

20 July 23, 1982

21 H&SS, Danneker and Tuovinen arrive
22 unannounced at BG Holland home, make
23 allegations against BG Holland of
24 child molestation; call BG Holland
25 "asshole"; threaten to remove all
26 foster children from Hollands.
27 Danneker and Tuovinen present a
28 formal written document accusing the
29 Hollands of thirteen allegations,
30 including child molesting/sexual
31 abuse.

32 July 28, 1982

33 Danneker receives phone call tipping
34 him off that BG Holland is aware of
35 Danneker's misbehavior in Wrangell
36 *smoking dope* (sleeping with foster mother,
37 smoking marijuana in ^{State} vehicle
38 while on duty; being caught smoking
39 marijuana in ^{State} vehicle by child
40 he was assigned to supervise as the
41 child's probation officer).

42 August 5, 1982

43 Laurie Vaughn conducts Standard by
44 Standard evaluation of Holland
45 House. Hollands cooperate fully.

46 August 6, 1982

47 H&SS, Mr. Reece, asks Alaska State
48 Troopers to investigate BG Holland
49 to see if BG Holland had access to
50 AJIS system. AST later reports
51 Holland has no access to AJIS.

52 August 11, 1982

53 Alaska State Troopers respond to
54 H&SS Monroe's request for criminal
55 history information on Mary and BG
56 Holland. AST later reports no
57 criminal history exists.

1 August 17, 1982

Investigator Danneker makes final report directly to Mr. Pugh. Report was approved by Reece and finds all allegations uncontradicted. Recommends license revocation.

2
3
4 August 20, 1982

Danny H files affidavit with H&SS stating all charges made 7/15/82 against BG Holland false

5
6 September 27, 1982

DFYS officially closes its "investigation" of Hollands. DFYS concludes "most allegations were uncontradicted." Notifies Hollands of conclusions.

7
8
9 November 11, 1982

BG Holland requests and receives meeting with Commissioner Beirne, H&SS to seek settlement. Botelho tells Holland "Danneker bungled the investigation." Botelho tells Holland "Reece doesn't think you have been punished enough."

JAN. meet

Dec. meet

10
11
12
13 December 1, 1982

H&SS, Mr. Reece, files formal accusation of BG Holland incorporating by reference thirteen allegations of 7/23/82.

14
15 December 2, 1982

H&SS, Mr. Reece, receives letter from Danny H. admitting falsity of charges against Hollands; DH explains reasons for making false charges.

16
17
18 December 3, 1982

BG Holland requests meeting with Mr. Reece to discuss settlement.

19
20 December 15, 1982

H&SS, Mr. Reece, receives letters from Mickey H. and Kathy S. admitting falsity of charges against BG Holland.

21
22
23
24 Dec 20, 1982.

AST investigates BG Holland upon insistence of Lew Reece for interfering with an investigation and divulging ^{confidential} information to another foster parent.

25
26
27
28
29 JAN 19, 83

Botelho & Pugh ask Holland to meet with them.

This paper is a "Chrono" of events that have happened since September 1981

1. In September 1981 we put in an application for a group home license for teenagers.
2. On September 23, 1981 we had a fourteen year old child removed from our home as my wife caught him trying to molest our eight year old son.
3. Mid-October 1981--- Rumors began to spread around the Regional office about our over-reacting towards having that child removed from our home that was trying to molest our son. The P.O. Bob Wild wrote a report to Dr. Tony Mander and called us over-reactors for having the child removed when we did.
4. Further rumors were spreading in the office-- I beat my wife, drink excessively, use drugs, and molest my female employees.
5. Dr Alinio Lobo "informally checked" on these rumors from Oct 1981 through November 1981 and found no wrong doing, in fact just the oposite.
6. October 30, 1981---m there was a meeting in the Regional office that was called by Ms. Kay Smith. The meeting was about my proposed group home proposal. In attendance was Dr. Lobo, Ms Kay Smith, Mr. Lew Reece and Myself. During the meeting, my proposal was rejected for group home application and an improved version was asked for.
7. October 31, 1981---m The same 14 year old boy who we had removed from our home was arrested by the Alaska State Troopers for rape and sodomy on a 6 year old girl who was a member of the household the boy was placed in by his P.O. Wild.
8. November 12, 1981-- I recieved a telephone call from Mr. John Pugh the Director of Family & Youth Services while I was at work at the Alaskan Coin connection located at 723 West 10th Street. He called to tell me that no funds existed in the budget to support my group home. I informed him that I have never asked the department for money and he stated that the department suffered a huge budget cut and that funds would not be available for the next year for my group home. His conversation than got around to Art Johnson and the incident in our home and he said to me " We've had staff meetings concerning that incident and we've got our asses covered."
9. November 13, 1981-- I filed a written complaint with the State Ombudsman's office of Gross Negligence against the P.O. Bob Wild. I also stated in that same corresspondance that I was told about the no funds for the group home.
- 6-82/10. When Ms. Smith learned of my filing a complaint she stated to Helen Borkowski that " His name is shit in my book" And when Ms. Borkowski asked her who she was talking about she said "That Bernie Holland""He filed a complaint with the Ombudsman's office and now he can't be trusted, he'll probably go running to the Ombudsman every chance he gets".

101A.

→ Investigated by Lobo.

11. Between the dates of November 13, 1981 and December 15, 1981 all the children were removed from our home. Ms Smith testified under oath that this was due to "natral attrition".
- 12, December 11, 1981--- Mr. Lew Reece wrote a confidential memo to Mr Dave ARnold with a copy to Mr John Pugh telling him of my meeting with them on October 30, 1981 and my group home proposal.
13. January 13, 1982 --- Submitted my new group home proposal and when Ms Smith saw this she stated in from of Ms Helen Borkowski " The nerve--- he'll get his license ~~amx~~ over my dead body.
14. In March 1982 the division began sending hard core cases to our home as they were then under investigation by the Ombudsman's office.
15. In May 1982 the Ombudsman sent a copy of his findings to Mr. John Pugh and on June 7, 1982 Mr Pugh acknowledged the Ombudsman's report with a letter dated June 7, 1982. By this acknowledgement he was aware of my group home plans.
16. June 4, 1982 Ms Kay Smith signed the license approval form and then went to Central Office and had a meeting with Ms Yvonne Walker concerning my group home license, and in fact gave her a copy of my Program Evaluation & Licensing Recommendation. A meeting was held in the C.C. and my license was denied that day. The same day as approval. Everyone denied this meeting except the secretary Ms Helen Borkowski who stated she recieved a telephone call from Ms Smith who stated she was in Walkers office.
17. June 8, 1982-- a meeting was held in Central Office with John Pugh, Yvonne Walker, Connie Hansen, Alinio Lobo and Pat Monroe. My License was discussed and denied at that meeting. Connie Hansen stated under oath that it was denied at this meeting and Dr Lobo left this meeting with the same feeling. At 11:30 am that same date I was in Dr Lobo's office when he recieved a phone call from Yvonne Walker telling him of the meeting and to bring the important documents for this case. Dr Lobo had my file at that time as it was on his desk because he copied my Standard-By-Standard Evaluation, Program Evaluation & Licensing Recommendation as well as the CWS 80A for me. Pugh stated he read my file and program evaluation before that June 8, 1982 meeting and had questions for Dr Lobo and Connie Hansen. It's impossible because my file never left the Regional Office until the 9th of June 1982. Pat Monroe called me the afternoon of June 8th and wanted a meeting with me on the morning of the ninth to discuss my license. I set up a meeting the 10th of June and during that meeting John Pugh denied my license three times. Pat Monroe stated she took my file home the night before to study it upon orders from John Pugh and found too

18. June 8, 1982-- at approx. 7:30 pm I saw Dr Lobo at the Junction Airport and he stated to me that he thought my license was going to be denied from what went on at the meeting he was at earlier that day in C.O. He further stated my license was pulled from the clerks desk.
19. Dr Lobo testified he had possession of my file untill 5:00 pm on June 8, 1982 because he put pertinent documents back into my file upon his return from C.O.
20. June 7, 1982 John Pugh wrote a letter to the Ombudsman acknowledging receipt of his report.
21. June 14, 1982--- I telephoned Ms. Pat Monroe in the C.O. and asked her for a written denial based upon her office's verbal denial on June 10, 1982.
~~XXXXXXXXXXXX~~
22. Written denial done by Pat Monroe on June 15, 1982--- Signed by Ed Walker.
23. Late June 1982--- The secretary Ms Helen Borkowski overheard a talk between Mr. Lew Reece and Ms Kay Smith, once it was learned I filed for a hearing concerning this denial of licensure,---- to thwart my hearing by counteracting made up allegations that would silence me once and for all.
24. July 14, 1982-- Danny Joe Harrison was sent back to jail for violation of his probation. He was contacted by Robert Danneker and then ~~made~~ **was helped to MAKE** allegations against us. **w/ DANNEKER**
25. July 15, 1982-- Mickey Horschover made complaints against us to her P.O. Marlyn Olson--- A meeting was held that evening with her father Dr. Robert Horschover, her psychologist Dr Sonya Brandaman, myself and P.O. Olson. At that meeting she stated that the only reason she was complaining was because she was tired of being punished by the state. And that "Being at Bernie & Mary Holland's house was probably the best thing that ever happened to her because she would probably be dead from drugs or something else". Mr Olson stated he would write his report reflecting we were clear from any wrong doing.
26. During that week the probation department interviewed all residents in my home and on the 16th of July 1982 Mr. Norm Anderson and Mr Marlyn Olson's report to their superior Mr Lew Reece showed no wrong doing in my household and that collusion existed between Mr Danny Harrison and Ms Mickey Horschover. Mr Reece told his P.C.'s that these reports were bullshit and that he had his orders from upstairs and he was going to get that bastard meaning me.

27. I received a telephone call from an individual telling me even tho I was cleared of any wrong doing, Reece had his orders to get me and that allegations, and this individual told me what they were, would be laided upon me within two weeks.

28. July 23, 1982--- Mr Robert Danneker and Ms Carolyn Touvenen came to my residence and served my wife and I with thirteen allegations. For 1 1/2 hours they harrassed us into trying to answer them with thrates of removing the children and at one point Danneker said to me "Just answer the allegations asshole.

29. At 10:42 p m Robert Danneker (friday night) called my house to tell me they had completed part of there investigation and that he would be serving them on me the next morning at 9:00 am . That evening at 6:00 pm two of my foster children walked down to the office at 515 willoughby ave and Danneker told them they had new homes for them.

30/ On Junly 24, 1982 I wrote a letter to Mr Danneker telling him I would not answer his allegations.

31. On July 27, 1982 Mr. Danneker wrote me a letter telling me I was impeding his investigation and thereby violated three statutes and that I had ten days to answer him in regards to these allegations..

32. On September 27, 1982 the Division found that all these allegations except one was true. It was referred to the Attorney General's office.

33. On September 23, 1982 the Asst A G informed me that no evidence exists confirming these allegations and that he would take no action on my license when the regional office sent it to him and he called Fred Baxter to tell him of this.

34. I attended a meeting with the Commisioner Helen Beirne with the Asst A G and all she wanted me to do was answer the allegations. She stated that Pugh had really trying to get ahold of me. I refused to sit down with him as he lied at the Oct 4-7 hearing about not knowing about my license application and reading the files, on June 8, 1982.

35. On Oct 11, 1982 I filed purjury charges against Pugh and Monroe with the D A's office with documentation against Pugh.

*Ombud
Findings*

36. Nov Met w/Beirne

37. JAN 83 Settlement + comprmise Agreement

38. Apr Notice of Hearing

39.

MEMORANDUM

State of Alaska

TO: Mr. Lew Reece
Regional Administrator
Southeast Region
Youth Services

DATE: July 16, 1982

FILE NO:

TELEPHONE NO:

FROM: N.L. Anderson
Probation Officer ID
Youth Services
Juneau

SUBJECT: Abuse Allegations

On July 14, 1982, I received a phone call from Bernie Holland, foster parent, about Danny Harrison, one of my clients placed in the Holland home. Mr. Holland said he was about have Harrison removed. Harrison was: (1) lying; (2) failing to perform chores; (3) associating with people he had been restricted from; (4) ripping off other foster children in the house; (5) trying to "scam" Mr. Holland on an unemployment check ploy. I asked Mr. Holland to have Harrison report to me at 11:00 a.m.

Harrison called me at 9:30 a.m. to say he could not come at 11:00, that he had a State Office Skills test scheduled at that time. I instructed Harrison to report at 1:00 p.m. instead.

Upon returning to the office after lunch break, there was a note in my box that Harrison had come in at 12:25 p.m. to see me. At 1:15 p.m. Mr. Holland called to ask if I had seen Harrison. I told him of the test conflict and that Harrison was a no-show for the new time. Mr. Holland said Harrison was in his room playing his guitar.

I drove to the Holland residence to take Harrison for a urine sample, per court order. One of the people he had been associating with is a rather well known (to this office) cocaine user.

On the way to the testing center, Harrison denied allegations Mr. Holland had made earlier of violating the foster home rules and/or Conditions of Release. Upon arriving at the urine testing center, Harrison would not produce a urine sample, saying the timing was bad and he could not urinate. After 15 minutes, I took him to the Johnson Center. Upon threat of being detained, Harrison produced a more than ample urine sample within 5 minutes. Returning to the Holland residence Harrison continued to deny any wrong doing on his part. I decided to have a meeting with Mr. Holland, Harrison and myself to resolve the matter.

I explained to Mr. Holland that Harrison was denying any wrong doing. Mr. Holland, in Harrison's presence, outlined the problems he was having with Harrison. Harrison then admitted to most of the charges, but tried putting the blame on other Foster children in the home or saying "I'm trying to be good, you can't expect me to change overnight". He continued to deny the unemployment check "scam". Mr. Holland then called Officer McCracken, JPD, to whom Harrison had boasted of the "scam". With the three of us listening, McCracken outlined the conversation he had with Harrison:

Harrison had gone to the Unemployment Office and changed his mailing address from Hollands' to General Delivery. Harrison's plan was to put two of the anticipated checks into his restitution savings fund and hold one back, telling Mr. Holland he had not received it. He planned on blowing the money from the third check.

After this conversation, Harrison admitted it was originally his plan to run the "scam", but since hadn't received the checks yet, and therefore, hadn't pulled off the scam, he hadn't done anything wrong.

Mr. Holland I spoke at length with Harrison about the wrongness of this "scam", whether he had pulled it off or not. Harrison maintained that he had done no wrong. At this point, Mr. Holland left the room. I spoke with Harrison for about 5 minutes and then I left. During that 5 minutes, Harrison had completely changed his story and, in Mr. Holland's absence, was again denying any of his wrong acts. As I left, I saw Mr. Holland and asked him to call me the next day if he decided he no longer could work with Harrison. Mr. Holland asked me to remove him immediately, that he felt he could no longer work with Harrison.

Since the Juneau Receiving Home in the past has refused to accept Harrison and he has no relatives in Juneau, I transported him to the Johnson Center for detention. The staff at Johnson was busy with adult prisoners, so Harrison and I had to wait in the lobby for 30 minutes.

During this wait, Harrison became more and more agitated about being detained. He started by saying the only reason for detention was a "personality conflict" between he and Mr. Holland. Then he said that he "was going to blow the whistle on Bernie tomorrow in Court". He explained that Mr. Holland had physically abused him saying that Mr. Holland had hit him in the arm with a stick on several occasions. In the most recent, Harrison said he shoved Mr. Holland onto the kitchen table after Mr. Holland struck him, breaking the table. Mr. Holland then jumped up and challenged him to fight. The matter diffused with no further blows. Harrison said Merick Habon, another foster child with the Hollands, could verify this.

On July 15, I conducted a low key interview with Habon. Bob Dannaker, Foster Care Coordinator, was present. Habon said he was quite happy at the Holland home, that he had not been subject to any verbal or physical abuse. (This is significant, since Habon comes from a very abusive natural home and was fearful upon placement that the foster home would function the same way). He said he had never seen Mr. Holland hit Harrison, either with a stick or a fist. He did say the two have engaged in "friendly" wrestling matches and shadow box with one another.

Habon said the kitchen table was replaced with a more sturdy picnic-type table several days ago because the other table was starting to sag towards the middle. (I was in the Holland house 10-14 days ago for a reception for Lt. Governor Miller and can verify the old table was rather wobbly).

In conjunction with allegations Twiggy Horchover made about Mrs. Holland using foul or abusive language, Habon said this had never happened. That it was his experience she was rather quiet. He did say that Mr. Holland does use foul language in the house occasionally.

Habon volunteered that Harrison had been in trouble at the house recently for failing to do chores and for being caught in the girls living area.

At 2:30 p.m. on July 15, a detention hearing was held on Harrison. Following the hearing, I asked Harrison in his attorney's presence to give me a taped statement about the physical abuse. I explained to the attorney that I had an obligation towards the other children placed there if an abusive situation existed. Harrison immediately went into private counsel with the attorney. The attorney then advised me that Harrison's only complaint was of a "personality conflict" between Harrison and Mr. Holland. He explained the "conflict" as being Mr. Holland calling Harrison a "shitbag" and "worthless" in front of the other children.

I told the attorney Harrison had alleged he had been hit with a stick and physically roughed up by Mr. Holland. The attorney again conferred with Harrison and returned to report that Harrison said he had never been hit or otherwise assaulted. Further, Harrison declined to give any taped statement about the "personality conflict".

#12

Complaint registered to:

Division of Family & Youth Services
515 Willoughby Avenue
Juneau, Alaska 99801

000239

Regarding: Bernie & Mary Holland Foster Home Licensed
(Name of Facility)

Address: P.O. Box 67, Juneau, AK Unlicensed

Phone: 586-1724

Date complaint received: July 15, 1982

The following complaints were received by the Division of Family and Youth Services regarding the above facility:

1. Allegation that Bernie and Mary Holland yell and direct vulgar and abusive language towards foster children. [7AAC 50.450, (2)]
2. Allegation that Bernie Holland frequently hits foster children with a stick, ruler, yardstick and his hands. [7AAC.50.450, (1) (5)]
3. Allegation that Bernie Holland squirted lemon juice into a resident's mouth, as punishment, and in the process of the resident resisting, used force to open the resident's mouth by holding the jaw and applying pressure. [7AAC 50.450, (1)]
4. Allegation that Bernie and Mary Holland are providing Day Care in their home for from 2-5 children. [7AAC 50.430(b) (d)]
5. Allegation that there is not sufficient space for each foster child to have specific place to keep his/her own personal possessions. [7AAC 50.540(c)]
6. Allegation that the Holland children have played with, destroyed, broken or lost the foster childrens personal possessions. [7AAC 50.420(e)]
7. Allegation that the Holland children are allowed to annoy and "bug" the foster children. When a conflict arises over this issue, that the foster children are verbally abused, and that "the foster children are always wrong, and the Holland children are always right". [7AAC 50.450, (2) (5)]
8. Allegation that adult boarders are living in the Holland foster home and that they are sharing sleeping quarters with foster children. [7AAC 50.420]

NOTIFICATION OF COMPLAINT

Complaint registered to: Division of Family & Youth Services
515 Willoughby Avenue
Juneau, Alaska 99801

000240

Regarding: Bernie & Mary Holland Foster Home Licensed
(Name of Facility)

Address: P.O. Bcx 67, Juneau, AK Unlicensed

Phone: 586-1724

Date complaint received: July 15, 1982

The following complaints were received by the Division of Family and Youth Services regarding the above facility:

9. Allegation that adult boarders participate in the family meetings and trials and are allowed to vote on foster childrens punishment [7AAC 50.410(a)]
10. Allegation that three foster children and one adult boarder sleep in a bedroom with no windows. [7AAC 50.560(e)(3)]
11. Allegation that family meetings are held late at night and often last from 11:00 p.m. to 2:00 a.m., and that foster children do not get enough sleep because of this and that one foster child fell asleep at a meeting and was punished for it. [7AAC 50.410]
12. Allegation that Bernie Holland has belittled and used cruel and derogatory remarks when describing a foster child to other foster children, and to other persons who have entered the foster home. [7AAC 50.450(2)]
13. Allegation that Bernie Holland patted a female resident on the bottom, grabbed a female resident around the waist and while "wrestling, grabbed her legs to get a cheap feel." [7AAC 50.410]

STATE OF ALASKA

WY S. HARRISON, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES
DIVISION OF FAMILY AND YOUTH SERVICES

515 Willoughby Avenue
Juneau, Alaska 99801
Phone: (907) 586-1861

September 27, 1982

Bernie and Mary Holland
P.O. Box 67
Juneau, Alaska 99802

Dear Mr. and Mrs. Holland:

This is to inform you that the Division's investigation of complaints regarding your foster home has been concluded. You have responded to allegation #10 that foster children have been relocated from the basement to the upstairs bedroom. With that exception, no response or corrective action plan to the allegations which were delivered to you on July 23, 1982 has been received by the Division. You have continued to be unwilling to discuss the allegations, therefore the findings in this letter are based solely on the Division's investigation without any information provided by either of you.

INVESTIGATION FINDINGS

1. Allegation: Bernie and Mary Holland yell and direct vulgar and abuse language towards foster children.

Findings: 75 percent of the foster children interviewed stated that verbal and vulgar language had been directed at them, or other foster children, in the home.

Required: "..... in no event may any child in care be subjected to verbal abuse...." 7 AAC 50.450,(2).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

2. Allegation: Bernie Holland frequently hits foster children with a stick, ruler, yard stick and his hands.

Findings: 87 percent of foster children interviewed stated they had been hit by Mr. Bernie Holland with either a stick or his hand. A majority of foster children interviewed stated that they witnessed Mr. Holland hitting other foster children.

Required: ".....in no event may a child in care be disciplined by shaking or by delivering a forceful blow with hand or weapon..." 7 AAC 50.450,(5).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

3. Allegation: Mr. Bernie Holland squirted lemon juice into a resident's mouth as punishment, and in the process of the resident resisting, used force to open the resident's mouth by holding the jaw and applying pressure.

Findings: Although this allegation is an isolated incident with the alleged victim graphically describing what happened, there is no corroborating evidence to support the allegation.

Required: ".... in no event may a child in care be subjected to unusual, severe, cruel, capricious, humiliating, or unnecessary punishment;" 7 AAC 50.450,(1).

Conclusion: This allegation is found to be unsubstantiated. This means that the violation could have occurred as alleged, but the evidence is not conclusive, or sufficient evidence is not available to make a determination.

4. Allegation: Mr. Bernie and Mrs. Mary Holland are providing day care in their home for 2-5 children.

Findings: 100 percent of the foster children interviewed stated that they observed day care being provided in the Holland home.

Required: Number of foster children permitted in home, ".... no more than eight children in all are permitted in any one home..." ".... no more than five children of any age who are unrelated to the foster parents are permitted." 7 AAC 50.430(b)(d).

Day care of children and commercial care for the aged, or maternity, or convalescent patients may not be combined with foster care of children without prior approval of the Division representative. 7 AAC 50.440(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows the standard was violated.

5. Allegation: There is not sufficient space for each foster child to have specific place to keep his/her own personal possessions.

Findings: This allegation deals specifically with the female residents who lived in the basement and shared a room with an alleged boarder. All female residents interviewed stated that they did not

have enough room for their possessions due to the alleged boarder using up most of the available space.

Required: "..... there must be a sufficient space and a specific place for each child to keep his own clothing and personal possessions." 7 AAC 50.450(c).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

6. Allegation: The Holland children have played with, destroyed, broken or lost the foster children's personal possessions.

Findings: 85 percent of the foster children interviewed stated that they had either had lost, or had destroyed or had broken personal possessions due to the Holland children. They also stated that even though they complained to the Holland's about the situation, it was never corrected.

Required: ".....foster parents must show evidence of being responsible, mature individuals of reputable character who exercise sound judgement and display the capacity to provide good care for children." 7 AAC 50.410(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows the standard was violated.

7. Allegation: The Holland children are allowed to annoy and "bug" the foster children. When a conflict arises over this issue, that the foster children are verbally abused, and the "foster children are always wrong, and the Holland children are always right."

Findings: 80 percent of the foster children interviewed stated that they felt "bugged" at times by the Holland children, and when the issue was confronted the foster children were yelled at for causing a disturbance.

Required: "..... in no event may a child in care be denied treatment equal to that of the foster parents' own children as a method of discipline;..." 7 AAC 50.450(7).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

8. Allegation: Adult boarders are living in the Holland foster home and they are sharing sleeping quarters with foster children.

Findings: That there are two additional adults living in the Holland foster home without proper knowledge of the Division.

Required: "Foster parents shall report to the Division representative any significant changes in the household...that would affect the ability to care for foster children." 7 AAC 50.420(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows the standard was violated.

9. Allegation: Adult boarders participate in the family meetings and trials and are allowed to vote on foster children's punishment.

Findings: A majority of foster children interviewed stated they had been subject to or observed alleged boarders participating in family meetings or trials.

Required: "Foster parents must show evidence of being responsible, mature individuals of reputable character who exercise sound judgement and display the capacity to provide good care for children." 7 AAC 50.410,(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

10. Allegation: Three foster children and one adult boarder sleep in a bedroom with no windows.

Findings: By personal observation from myself, Carolyn Touvinen, CCS II, and personnel admission from Mr. Holland, this was found to be true.

Required: ".....each foster home must have one or more windows which are large enough for emergency exit and rescue in each sleeping room."

Conclusion: This allegation was found to be valid upon inspection. However, Mr. Holland agreed to move the foster children to another room, which was accomplished within a 24-hour period. Therefore, at this date, the allegation is found to be invalid as long as that particular room is not used for foster children, or until the room is brought up to standards.

11. Allegation: Family meetings are held late at night and often last from 11:00 p.m. to 2:00 a.m., and that foster children do not get enough sleep because of this and that one foster child fell asleep at a meeting and was punished for ...

Findings: A majority of foster children interviewed stated that family meetings and trials could and would last until all hours of the night, and also stated punishment was dealt out for falling asleep.

Required: "Foster parents must show evidence of being responsible, mature individuals of reputable character who exercise sound judgement and display the capacity to provide good care for children." 7 AAC 50.410,(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

12. Allegation: Bernie Holland has belittled and used cruel and derogatory remarks when describing a foster child to other foster children, and to other persons who have entered the foster home.

Findings: All foster children interviewed in regard to the allegation stated they had been subject to or witnessed another foster child be subjected to belittlement or derogatory remarks.

Required: ".....in no event may a child in care be subjected to verbal abuse, derogatory remarks about himself or members of his family...." 7 AAC 40.450,(2).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

13. Allegation: Bernie Holland patted a female resident on the bottom, grabbed a female resident around the waist and while "wrestling, grabbed her legs to get a cheap feel".

Findings: A female foster child made this complaint (patting on bottom) in writing. She stated that it happened and that she did not like it. The wrestling incident was observed by another foster child, who thought that Mr. Holland's behavior was inappropriate. This incident (wrestling) is also in a written statement.

Required: "The foster parents must show evidence of being responsible, mature individuals of reputable character who exercise sound judgement and display the capacity to provide good care for children." 7 AAC 50.410,(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows the standard was violated.

In addition to the July 23, 1982 allegations, the Division became aware of additional non-compliance items when a standard-by-standard evaluation was conducted on your home from August 4, 1982 to August 6, 1982 for consideration of your application to operate a residential child care facility. The following areas would be in non-compliance under 7 AAC 50.310 to 7 AAC 50.620:

1. 7 AAC 50.410(1) - "An annual license may not be issued without written evidence that all members of the household 16 years of age or older are free from active tuberculosis;"

According to the standard-by-standard evaluation there was no record of written evidence that this requirement has been met. On September 21, 1982 tuberculin clearances dated September 16, 1982 were received for both of you. If there are any other adult members of the household, additional tuberculin clearances are required.

2. 7 AAC 50.560(b) - "A 5-lb ABS dry chemical fire extinguisher or its equivalent must be charged at all times and strategically located; more than one is required for multi-level homes."

The standard-by-standard states that there is only a 2 1/2 lb. ABC extinguisher in the basement area which has been previously used as living space for foster children. While the Division has interpreted and implemented the above requirement as meaning that there must be a 5lb. extinguisher on every level of a multi-level home, the Division concedes that your home has two acceptable extinguishers and therefore, meets the requirement for more than one for multi-level homes. Correction is advised, but not required.

3. 7 AAC 50.570(f) - "Firearms must be unloaded and stored in a place inaccessible to young children. Ammunition must be stored separately in a place inaccessible to children."

It was reported in the standard-by-standard that one hand gun was accessible to children while loaded and that the gun was unloaded in front of the licensing worker. There is no issue with compliance at this time as the gun was unloaded. However, in the future all guns must remain unloaded and ammunition stored separately and inaccessible to children.

EVALUATION AND RECOMMENDATION

All of the above allegations are of a serious nature and all except #3 were found valid upon investigation. The three additional findings in the recent standard-by-standard evaluation are also serious. You have demonstrated a total lack of cooperation with the Division in dealing with the allegations. If corrections have occurred, you have failed to inform the Division. For example, at least six telephone calls to your attorney were necessary to obtain the tuberculin clearances.

September 27, 1982

Given the pattern of violations, and your refusal to respond or to formulate a corrective action plan, the Division is referring your case to the Department of Law for consideration of license modification, license suspension, or revocation. You will be informed of the Department of Law's recommendation to this Department.

Sincerely,



Lew Reece
Regional Administrator
SERO - Juneau

Enclosure

LR:JRP:PM:pvk

STATE OF ALASKA

JAY S. PALSMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES
DIVISION OF FAMILY AND YOUTH SERVICES

515 Willoughby Avenue
Juneau, Alaska 99801
(907) 586-1861

December 1, 1982

Bernie and Mary Holland
Box 67
Juneau, Alaska 99802

Dear Mr. and Mrs. Holland

RE: Holland Foster Home

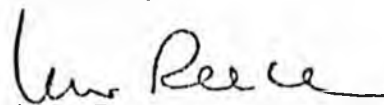
You are hereby notified that the enclosed Accusation has been filed with the Department of Health and Social Services, Division of Family and Youth Services. The Division of Family and Youth Services will conduct a hearing, if requested, to decide the issues presented in the Accusation.

Notice of Defense and Request for a Hearing

The enclosed accusation was prepared pursuant to AS 44.62.360 and sets forth the issues that will be decided by the Department of Health and Social Services, Division of Family and Youth Services. This letter constitutes notice as required by AS 44.62.380 that you may request a hearing on the issues set forth in the Accusation.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the Division of Family and Youth Services within 15 days after receipt of the enclosed Accusation, the Division of Family and Youth Services pursuant to AS 44.62.530 will decide in your absence the issues presented in the Accusation. The request for a hearing may be made by delivering or mailing the enclosed Notice of Defense to the Division of Family and Youth Services in the enclosed envelope, postage prepaid. Mailing of the Notice of Defense signed by you or on your behalf and returned to the Division of Family and Youth Services within 15 days in the enclosed addressed envelope, postage prepaid, acknowledges receipt of the enclosed Accusation and constitutes a notice of defense pursuant to AS 44.62.390.

Sincerely,



Lew Reece
Regional Administrator

Enclosures

Accusation
Notice of Defense
Envelope (postage prepaid)

123

IFW:JRP-PM:ksw

Bruce M. Botelho
Assistant Attorney General
Office of the Attorney General
Pouch K
Juneau, Alaska 99811
(907) 465-3603

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF FAMILY AND YOUTH SERVICES

In the matter of Bernie and)
Mary Holland, a Licensed)
Child Foster Home,)
Respondent.)

Facility No. 4190

ACCUSATION
(AS 47.35.040, AS 44.62.360)

Petitioner Lew Reece, Regional Administrator, Division of Family and Youth Services, Alaska Department of Health and Social Services, alleges:

1. This is a proceeding authorized by AS 47.35.040(b) and AS 44.62.360 to condition child foster home license 4190, held by Bernie and Mary Holland, hereinafter "respondents."

2. The respondents were issued License No. 4190 on May 23, 1982 authorizing them to operate a child foster home at 707 West 10th Street, Juneau, Alaska.

3. On or about July 15, 1982 the Division of Family and Youth Services received complaints from two youths who had been placed in the respondents' home. The allegations consisted for the most part of charges that respondents had been physically or verbally abusive, had taken inappropriate disciplinary measures, had failed to exercise restraint over their own children, had provided day care services, and had adult boarders in the home without division approval.

4. The division immediately initiated an investigation. The investigation included interviews with respondents and several youths who had been in respondent's care. Respondents refused to discuss most allegations with the division, claiming that the division had harrassed them and declaring:

"In regard to your expectations of receiving a telephone call from me . . . to discuss those "allegations;" As I expressed during our meeting on July 23, 1982, these "allegations" will not be addressed by me . . ."

5. On July 27, 1982 the division again urged respondents to reply to the allegations. No reply was received.

6. In the succeeding weeks the division, through the Department of Law, attempted to conciliate with respondents, to no avail.

7. On September 27, 1982 the division finally closed its investigation and, because of the summary failure of respondents to address the complaints, concluded that most allegations were uncontradicted. (Accordingly, the division referred the matter to the Department of Law for further action.) *Lie! They recommended revocation.*

8. The Department of Law again initiated steps to reconcile the differences between respondents and the division, including scheduling of a meeting with Helen Beirne, Commissioner of Health and Social Services.

9. Respondent Bernie Holland has consistently refused to formally respond to the allegations, making it difficult, if not impossible, for the development of on-going professional relationships between the division and the licensed home, a prerequisite to determinations of compliance with state law.

10. Respondents' failure to cooperate, as set forth above, is a basis for conditioning of respondents' license under AS 44.62.360.

ACCORDINGLY, Accuser requests that

1. Foster Home Care License No. 4190 be amended to include the following conditions:

- a. licensees will notify the department of all non-related adults living in the home for more than 21 days;
- b. licensees will seek department approval of all day care services provided in the home;
- c. licensees will provide the department a written description of their behavior management and discipline techniques (including any planned use of corporal punishment or family trials) within 30 days of issuance of the license with conditions; and
- d. licensees will cooperate with all department requests for information related to the operation of their child foster home, license 4190.

DATE:

12/1/82



Lew Reece

STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF FAMILY AND YOUTH SERVICES

In the Matter of:

Bernie and Mary Holland
Child Foster Home

Respondent

Facility No. 4190

NOTICE OF DEFENSE

The respondent, pursuant to AS 44.62.390, hereby acknowledges service of the Accusation or Statement of Issues and gives notice of defense on the following grounds:

A hearing on the matters set forth in the Accusation or Statement of Issues is requested.

DATE: _____

Respondent

Mailing
Address: _____

NOTE: This Notice of Defense must be signed by or on behalf of respondent, must set forth respondent's mailing address and must be filed with the Division of Family and Youth Services within 15 days of receipt.



ombudsman

John B. Chenoweth

State of Alaska

Reply to:

- 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011
- Pouch W0
Juneau, Alaska 99811
(907) 465-4970
- P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

MEMORANDUM

TO: John B. Chenoweth, Ombudsman

THRU: Duncan C. Fowles, Ombudsman Regional Representative

FROM: Prudence Aronson, Ombudsman Assistant *Prune*

SUBJ: Ombudsman Complaints J82-0689, J82-0728, J82-1136, and J82-1188

DATE: January 28, 1983

Four complaints, J82-0689, J82-0728, J82-1136, and J82-1188, direct the attention of the office to investigatory and licensing practices of the Southeast Regional Office of the Division of Family and Youth Services. Due to the interrelationship of the four, they were examined at the same time by this investigator.

Throughout this memorandum, the names of minors involved in these complaints have not been used, rather initials were substituted for their names.

A summary of my investigation of each complaint is provided below:

J82-0689

Bernie and Mary Holland filed a complaint with this office on July 26, 1982, alleging that the Division of Family and Youth Services (DFYS) is failing to conduct a proper investigation of their foster home license, and is harassing them. Investigation of their complaint has focused on whether the agency had sufficient reason to initiate an investigation, and whether the investigation was properly conducted.

The Hollands are Juneau residents with a decade of experience in foster care involving Juneau youth. Their complaints were filed with the Juneau office after they were served a NOTIFICATION OF COMPLAINT by officials of the Division's Juneau regional office. The officials advised that the notification, containing 13 allegations, was served in conjunction with information received by division personnel during the preceding 10 day period. Investigation of the allegations was a prerequisite to a decision by division officials to modify or revoke the Hollands' foster home license.

A copy of the notification is attached to this memorandum.

Background:

On July 14, 1982, Norm Anderson, Probation Officer II, transported a minor, D.H., to the Johnson Human Services Center for detention purposes. In a memorandum from Mr. Anderson to Lew Reece, Regional Administrator, DFYS, dated July 16, 1982, Mr. Anderson states:

During this wait, D.H. became more and more agitated about being detained. He started by saying the only reason for detention was a "personality conflict" between he and Mr. Holland. Then he said that he "was going to blow the whistle on Bernie tomorrow in court". He explained that Mr. Holland had physically abused him saying that Mr. Holland had hit him in the arm with a stick on several occasions. In the most recent, D.H. said he shoved Mr. Holland onto the kitchen table after Mr. Holland struck him, breaking the table. Mr. Holland then jumped up and challenged him to fight. The matter diffused with no further blows. D.H. said M.H. (male), another foster child with the Hollands, could verify this.

Mr. Anderson also reports in this memorandum that M.H. (male) said the kitchen table was replaced with another table, since the older table was sagging. Mr. Anderson confirms that "the old table was rather wobbly." M.H. described Mary Holland as a quiet person, and that she did not use "foul or abusive language." M.H. does indicate that Bernie Holland has used foul language. No written statement from M.H. was taken by DFYS.

In a memorandum from Candace Canfield, YCIII, Johnson Human Services Center to Marlyn Olson, Probation Officer III, dated July 14, 1982, it was reported that D.H. told both Ms. Canfield and Margaret Pugh, Program Director, Johnson Human Services Center, that Bernie Holland hit him, and that Mr. Holland uses a stick to hit people, including D.H. Also, D.H. and Bernie Holland, on more than one occasion, stayed up late arguing. D.H. closed by saying that M.H. (female) was also hit with a stick, and would confirm this information. Ms. Pugh then called Marlyn Olson and requested Mr. Olson immediately visit the Johnson Human Services Center.

Mr. Olson indicates in his file notes of July 14, 1982, that when Mr. Olson met with D.H., D.H. had already contacted his attorney. Mr. Olson reported that D.H. said his attorney advised D.H. to remain silent. Mr. Olson wrote in his notes that, "He did elude [sic] however two serious problems..." Mr. Olson also indicates that D.H. felt that M.H. (male) and M.H. (female) could corroborate his statements.

In his July 16, 1982 memorandum, Mr. Anderson states:

On July 15, I conducted a low-key interview with M.H. (male). Bob Danneker, Foster Care Coordinator, was present. M.H. said he was quite happy at the Holland home, that he had not been subject to any

verbal or physical abuse. (This is significant, since M.H. comes from a very abusive natural home and was fearful upon placement that the foster home would function the same way). He said he had never seen Mr. Holland hit D.H., either with a stick or a fist. He did say that the two have engaged in "friendly" wrestling matches and shadow box with one another.

The last two paragraphs of Mr. Anderson's memorandum describe a meeting with Mr. Anderson, D.H. and D.H.'s attorney. The meeting took place at 2:30 p.m. on July 15, 1982. The attorney (after conferring with D.H.) advised that D.H. had only one complaint, regarding a "personality conflict" between D.H. and Bernie Holland. Anderson also wrote that the attorney said the conflict was that Bernie Holland called D.H. a "shitbag" and "worthless" while other children were present. When the attorney was asked about D.H.'s allegation that Bernie Holland had hit D.H. with a stick, the attorney stated (after conferring with D.H.), "that D.H. said he had never been hit or otherwise assaulted. Further, D.H. declined to give any taped statement about the 'personality conflict'."

Robert Danneker's notes of July 20, 1982, describe a meeting with D.H. At that time, D.H. agreed to give a written statement to Danneker by Thursday, July 22, 1982. A statement was provided by D.H. on July 22, 1982, which said Bernie Holland and D.H. got into a scuffle, and Bernie challenged D.H. to fight. D.H. also said:

Bernie was sitting on the couch next to M.H. (female) and I was sitting at the table when Bernie and M.H. started wrestling sort of and Bernie was grabbing M.H. around the waste [sic] and her leg's [sic] and it looked more like Bernie was trying to get a cheap feel off her he does this all the time and he has this stick that is about two and a half feet long that he smack's [sic] us with and it hurt's [sic] several times' [sic] I asked him not to smack me but he still does.

D.H.'s assertion is deserving of independent verification. A psychological evaluation (a copy of which is in the DFYS files) prepared by Carol C. Greenough, Ph.D., and dated June 23 and June 25, 1982, cautions:

. . .

D.H. admits to being very good at lying and convincing himself as well as others of his lies.

. . .

D.H. is very manipulative, using people and situations to create gratification for himself.

. . .

D.H.'s probation officer, Norm Anderson, told this office, on January 3, 1983, that D.H. thought Bernie Holland was mad at him, thus causing D.H. to be sent to the Johnson Human Services Center for detention purposes on July 14, 1982. D.H. became very upset at the prospect of detention, and that he was going to get back at Bernie Holland. On July 15, 1982, Anderson said, he believed that D.H. was lying.

Since D.H.'s credibility is called into question, corroboration of his statements by the two foster children he named, is important. There was no written statement by M.H. (male). However, Mr. Anderson's memorandum indicates that M.H. can only verify that Bernie Holland used foul language on occasion. Notes prepared by Marlyn Olson say that on July 14, 1982, M.H. (female) a foster child at the Holland home, volunteered information to Mr. Olson. A synopsis of Mr. Olson's notes includes the following incidents, as described by M.H. (female):

- Bernie Holland told her to get out of bed, using vulgar language,
- Mary Holland has called her names,
- M.H. was preparing guacamole, and to quiet J.H., M.H. squirted lemon juice into J.H.'s mouth. Mary Holland cursed at M.H. for this,
- Mary Holland cursed at M.H. for being late when called to the main floor of the house, from the basement, and
- Bernie Holland used coarse language upon M.H.'s return to the Holland home, after having run away from the Holland home.

Mr. Olson's notes for July 15, 1982, include the following:

We [Sonja Brandman, Counselor, and Mr. Olson] discussed M.H.'s (female) behavior over the past three weeks, the fact that it has been very difficult for her having violated curfew, run, caught in several lies, and being on restriction much of the time. Sonja and I agreed that it was difficult to tell when M.H. is being truthful or not.

Shortly thereafter, M.H. (female) provided a handwritten statement of her allegations against the Hollands. M.H.'s statement includes descriptions of the following episodes:

- When M.H. was moving to another room, Mary Holland cursed at her,
- During a family meeting, Mary Holland described M.H.'s performance as a dishwasher, in vulgar terms,
- Mary Holland cursed at M.H. during an incident involving a television,
- Mary Holland, in vulgar terms, told M.H. to be quiet, when M.H. was slow in coming to the main floor of the house from her bedroom,

- When M.H. was making guacamole, one of the Holland children was irritating M.H., so M.H. squirted lemon juice into the child's mouth, and the child started screaming. Mary Holland then cursed at M.H.,

- When M.H. was slow in getting out of bed one morning, Bernie Holland cursed at her to get up,

- Bernie Holland hits D.H. with a stick during family trials and meetings, and

- "When I have my but [sic] up in the air reaching for something and I [have] been hit for no reason twice with [a] stick once with [a] hand and last night befor [sic] he hit me with his hand I caught him first a[nd] said don't hit me what's the reason. he [sic] said boy you [are] lucky I couldn't resist."

Mr. Olson said in his notes of July 15, 1982:

. . .

I reviewed her statement and found that several of the things she told me yesterday were not addressed and that some of the incidents she wrote about that we talked about yesterday were or somewhat watered down.

. . .

Most of what she put in writing seemed to be directed towards conflicts that she was having with Mary instances in which she says Mary directed foul [sic] language towards her, telling her to shut up, calling her asshole, etc.

Mr. Olson also reported that M.H.'s (female) mother said M.H. seemed to be using vulgar language, and that the Holland home "...was the best placement for her."

The next day (July 15, 1982) a meeting was held with Mr. Olson, M.H. (female) and her father, Bernie Holland and Ms. Brandman. During this meeting, they reviewed the allegations M.H. had made regarding the Hollands. Mr. Olson noted that M.H. lied when discussing what she did one Sunday. Mr. Olson also wrote:

. . .

We note that the conflicts she brought up involved she [M.H.] and Mary. I think we have to recognize the fact that there could be a great deal of transference going on here, meaning that a lot of the hostility, the anger, the hurt M.H. feels in her relationship with her mother are under difficult circumstances transferred to Mary, her foster mother.

. . .

Before we closed the meeting and while M.H. was still meeting with us we questioned her in several different ways about whether or not the problems she told us about at the Hollands were so serious that they couldn't be worked out, that perhaps this difficult time will soon pass and once again, things will level out for her. Her response was that things could probably be worked out.

. . .

M.H. (female), during a deposition taken on December 30, 1982, told me that she felt that her problems with Mary and Bernie Holland were resolved during the above described meeting.

From records retained by DFYS, staff then gathered statements from the following people:

- D.H. gave a statement on July 22, 1982, and signed it on August 2. D.H. later retracted this statement, in a written statement dated December 1, 1982.

- M.H.(female) gave a statement on July 22, 1982, and signed it on July 29, 1982. An unsigned statement given on July 23, 1982, was also given by M.H.

- K.S. signed a statement on July 29, 1982, which was originally given on July 20, 1982.

- A.J. gave a statement on July 22, 1982, and signed it July, 29, 1982.

- A.M. gave a statement on July 22, 1982, which was later signed on July 29, 1982.

- M.F. gave a statement on July 23, 1982, which was not signed.

- Gil Lucero gave a signed statement on July 28, 1982.

Allegations against the Hollands:

Based upon the statements that division personnel had received as of July 23, 1982, DFYS prepared a NOTIFICATION OF COMPLAINT. The notification included a description of 13 allegations against the Hollands. Each of the 13 allegations was reviewed by me to determine if there was adequate factual basis for the allegation, and adequate basis to begin and continue investigation of the allegation.

Since an administrative hearing regarding modification of the Holland foster license is being scheduled in the near future, the truthfulness of the allegations is not a matter within the jurisdiction of this office.

Summarized, the allegations provide as follows:

1. This allegation was that the Hollands "yell and direct vulgar and abusive language towards foster children." DFYS officials cited 7 AAC50.450(2).

Information provided by some of the foster children as of July 23, 1982, indicates this allegation had an adequate factual basis and was properly the subject of investigation.

2. This allegation was "that Bernie Holland frequently hits foster children with a stick, ruler, yardstick and his hands," and was presented with a cite to 7 AAC 50.450(1) and 7 AAC 50.450(5).

Information provided by some of the foster children, as of July 23, 1982, indicates this allegation had an adequate factual basis and was properly the subject of an investigation.

3. It was alleged that "Bernie Holland squirted lemon juice into a resident's mouth, as punishment, and in the process of the resident resisting, used force to open the resident's mouth by holding the jaw and applying pressure." The notification referenced 7 AAC 50.450(1).

Information provided by one foster child, as of July 23, 1982, provided sufficient basis for the allegation, and the matter was properly the subject of an investigation.

4. "Allegation that Bernie and Mary Holland are providing Day Care in their home for from 2-5 children," accompanied by reference to 7 AAC 50.430(b) and 7 AAC 50.430(d). As of July 23, 1982, six different sources reported that day care services were being provided for as many as four children.

The two regulations cited by DFYS provide:

7 AAC 50.430. NUMBER OF FOSTER CHILDREN PERMITTED
IN THE HOME.

. . .

(b) No more than eight children in all are
permitted in any one home.

. . .

(d) No more than five children of any age who are
unrelated to the foster parents are permitted.

Read together, these two regulations do not appear to have any direct relationship to the issue of day care services. Rather, the regulations seem to describe the maximum number of foster children and other unrelated children a foster home may have (five), and the total number of children, including foster and natural children that may live in a foster home (eight).

Since the allegation mentions day care as well as number of children, DFYS may have been relying on 7 AAC 50.440(a):

(a) Day care of children and commercial care of the aged, or maternity, or convalescent patients may not be combined with foster care of children without prior approval of the division representative.

As of July 23, 1982, there was not sufficient basis for the allegation that the Hollands were providing day care services for up to and including five children. Pat Monroe, Licensing Coordinator, told me that DFYS always requires foster homes to secure a day care license, when day care services are going to be provided, in addition to divisional approval. Since it appears that a day care license is required only if day care services are provided in the home to more than four children, it does not appear that the Hollands would be required by law to secure a day care license. AS 47.35.020(2). In addition, providing day care services in a foster home, per se, does not appear to violate the foster care regulations cited by DFYS.

There is confusion concerning day care licensing obligations within a licensed foster home, and it is not at all clear that, in citing 7 AAC 50.430, the division made the point it had intended. Taking the cite provided as the basis of my review, it does not appear that the allegation has a sufficient basis. The Hollands might have admitted the truth of the allegation but it is far from certain that the admission or the finding will support revocation of the license.

5. The fifth allegation held that there was not sufficient space for foster childrens' personal possessions. As of July 23, 1982, there appeared to be sufficient basis for the allegation, and there appeared to be an adequate amount of information to warrant the investigation of the allegation.

6. Allegation 6 stated that "the Holland children have played with, destroyed, broken or lost the foster childrens['] personal possessions." The notification in which the allegation was contained included a reference to 7 AAC 50.420(e), a provision which states:

(e) The foster parents shall allow the child to bring personal possessions into the foster family home, and allow him to acquire possessions of his or her own, within reason with regard to space and comfort, and safety.

The above cited regulation only directs that personal possessions of foster children may be brought into the home, with certain limitations. That the regulation supports an investigation of the allegation is at best arguable.

7. It was alleged that children of Mr. and Mrs. Holland annoy the foster children, that, when a dispute arises, the foster children are always wrong and the natural children right, and that the foster children are verbally abused. The allegation referred to 7 AAC 50.450(2) and 7 AAC 50.450(5).

The "verbal abuse" portion of this allegation is identical to the one included in allegation number 1 above. The applicable regulation for it appears to be found in 7 AAC 50.450(2).

The other regulation, 7 AAC 50.450(5), states:

7 AAC 50.450. DISCIPLINE.

(5) disciplined by shaking or by delivering a forceful blow with a hand or a weapon, however, controlled hand spankings of one to three slaps on the buttocks are allowed when appropriate;

Allegation 7 appears to be partially redundant with the first allegation. In addition, the second regulation cited, 7 AAC 50.450(5), bears no direct relationship to any part of allegation 7. Accordingly, it is not possible to conclude that the allegation is supported by any part of the regulations cited, and I question whether it ought to have been the basis for subsequent investigation and finding.

8. Citing 7 AAC 50.420, it was alleged that "adult boarders are living in the Holland foster home and that they are sharing sleeping quarters with foster children." The applicable portion of this regulation is part (a):

7 AAC 50.420 RESPONSIBILITIES OF FOSTER PARENTS

(a) The foster parents shall report to the division representative any significant changes in the household such as employment, housing, or serious illness, that would affect the ability to care for foster children.

There was sufficient evidence from foster children that, in addition to Mary and Bernie Holland, other adults may have been living at the home. Although the allegation refers to these adults as "boarders," the regulations cited do not appear to prohibit boarders, and the use of the term is of no impact on the allegation.

The main point of the allegation is that the Hollands failed to notify the DFYS that additional adults were staying at their home. DFYS apparently believes that the addition of the residents is a significant change impairing the ability of the Hollands to properly care for foster children. As the regulation is written, it is not clear who is to determine, for purposes of reporting, what constitutes "a significant change." In this instance, DFYS should have identified the impairment resulting from the additional adults. The failure to provide this in the allegation suggests that the allegation is flawed, and should not have been investigated.

9. This allegation was that "adult boarders participate in the family meetings and trials and are allowed to vote on foster childrens [sic] punishment." 7 AAC 50.410(a) was cited.

Although there appears to be sufficient evidence for this allegation to be included and investigated, the cited regulation does not clearly indicate such activity is improper. The cited regulation, a provision that describes the qualities of a good foster parent, says:

7 AAC 50.410. QUALIFICATIONS OF FOSTER PARENTS AND OTHERS IN THE HOUSEHOLD.

(a) The foster parents must show evidence of being responsible, mature individuals of reputable character who exercise sound judgement and display the capacity to provide good care for children.

If DFYS is concerned about discipline aspects in the Holland home, the applicable regulation seems to be 7 AAC 50.450, which describes standards for discipline.

10. It was alleged that "three foster children and one adult boarder sleep in a bedroom with no windows," citing 7 AAC 50.560(e)(3). This regulation states that each bedroom used by foster children must have a large window exit for emergency use. It does not mention boarders.

Based upon statements from two foster children, there appeared to be sufficient basis for the allegation that foster children were sleeping in a bedroom without a window large enough for emergency use. In addition, there appeared to be enough evidence to warrant investigation of this allegation. The allegation, as prepared by DFYS is poorly stated.

11. It was alleged that family meetings were conducted until late in the evening, and because of the late meetings, foster children were not able to get sufficient sleep, citing 7 AAC 50.410 as authority.

Statements from two foster children indicate there was sufficient basis for this allegation, and that it should have been investigated.

12. The next to the last allegation was that "Bernie Holland has belittled and used cruel and derogatory remarks when describing a foster child to other foster children, and to other persons who have entered the foster home." Reference followed in the notification to 7 AAC 50.450(2), which states:

7 AAC 50.450. DISCIPLINE.

The foster parents must be able to show evidence of ability to work with children without recourse to physical punishment or psychological abuse and must be positive in their approach to discipline. Any discipline or control must be appropriate to the child's age and developmental level, but in no event may a child in care be:

(2) subjected to verbal abuse, derogatory remarks about himself or members of his family, or threats to expel the child from the foster home;

Four foster children gave information which provided the basis for this allegation and the need to investigate it. One of these four foster children indicated the remarks by Mr. Holland were not intentional.

13. The last allegation was "that Bernie Holland patted a female resident on the bottom, grabbed a female resident around the waist and while 'wrestling, grabbed her legs to get a cheap feel.'" The allegation was supported in the notification by reference to 7 AAC 50.410. (Presumably, the agency meant to cite subsection 410(a) in support of this allegation.)

The applicable portion of D.H.'s July 22 written statement, on which this allegation is based, states:

Bernie was sitting on the couch next to M.H.(female) and I was sitting at the table when Bernie and M.H. started wrestling sort of and Bernie was grabbing M.H. around the waste [sic] and her leg's [sic] and it looked more like Bernie was trying to get a cheap feel off her he does this all the time . . .

In the course of my investigation, Robert Danneker told me the quoted portion of this allegation came from D.H. He acknowledged, however, that he had provided the phrase regarding sexual contact to D.H. On July 22, 1982, D.H. provided a second written statement, signed on August 2, 1982, which says in part:

Danneker: Read a quote from written statement regarding Bernie wrestling with M.H.(female)

D.H.: Said that Bernie grabs her from behind under the arms. Stated that he didn't think Bernie should do this. M.H. got up to go somewhere and was bending over to pull down her pants (said she wears tight pants and had to pull them down when she got up). This was when Bernie swatted her (hit her on the bottom).

Danneker: Have you seen him do this with any other girl in the house?

D.H.: No.

Danneker: What was M.H.'s reaction?

D.H.: Walked away. It appeared to be done in fun but....

In addition to the obvious inconsistencies in the two statements provided by D.H., the incorrect quotation provided by Mr. Danneker, and the phrase regarding sexual contact which had been provided by Mr. Danneker, there is the July 15, 1982 written statement of M.H. (female), which says in part:

When I have my but [sic] up in the air reaching for something and I have been hit for no reason twice with [a] stick once with [a] hand and last night before he hit me with his hand I caught him first a[nd] said don't hit me what's the reason. he [sic] said boy you are lucky I couldn't resist.

Read together, the three statements do not seem to accurately describe the same or similar incidents. In addition, M.H. (female) is reported to have had the following conversation with Robert Danneker on July 23, 1982:

Danneker: Have you ever wrestled with Bernie?

M.H.: He likes to tickle us and stuff like this.

Danneker: When he hugs you is it from behind or from the front?

M.H.: Front. It's mostly when I'm feeling down.

Danneker: Is he sexual towards you?

M.H.: No. He told us he'd never do anything like that. If he wanted to bad enough he has a wife.

When asked if the incident she described in her July 15, 1982 statement included any sexual connotation, M.H. (female) told me on December 30, 1982, "not even, Bernie's not that way." Marlyn Olson, told me on January 4, 1983, that when he took the first written statement from M.H. (female) that although there appeared to be physical contact between M.H. and Bernie Holland, it was probably not of a sexual nature. Finally, Robert Danneker told me on January 10, 1983, that, "There's no sexual connotation in there. I am just saying it's inappropriate behavior." Mr. Danneker also said this allegation did not concern any illegal activities.

From the information provided by D.H., M.H. (female), Marlyn Olson, and Robert Danneker, investigation of allegation 13 should have been terminated after preliminary inquiries by DFYS.

Presentation of the allegations to the Hollands:

The NOTIFICATION OF COMPLAINT was given to the Hollands on July 23, 1982, during a home visit by Robert Danneker, and Carolyn Tuovinen, a Community Care Licensing Supervisor. Both Bernie and Mary Holland have

stated to me that Mr. Danneker and Ms. Tuovinen were pushy and rude during the meeting. As an example of this, Mary Holland recalled that "they pushed themselves through the front door." Another example given by the Hollands, was that Mr. Danneker told Bernie Holland, "hey asshole, just answer the allegations." In addition, the Hollands stated that Mr. Danneker and Ms. Tuovinen threatened to remove the foster children if the Hollands refused to answer the allegations.

Both Mr. Danneker and Ms. Tuovinen denied; that they were pushy, that Mr. Danneker used the language described above, and that they threatened to remove the children if the allegations were not answered. However, Ms. Tuovinen did admit there may have been a discussion about removing foster children, but this was not a threat.

Before leaving the Holland home, Ms. Tuovinen and Mr. Danneker examined the sleeping quarters for the foster children. He told the Hollands that children could not sleep in the basement bedroom if it did not have had an adequate fire escape. As reported in DFYS notes, Ms. Tuovinen and Mr. Danneker also told the Hollands DFYS would be in touch. Ms. Tuovinen told me that DFYS hoped to be in touch the same day as the visit (July 23, 1982).

Later that night, at approximately 10:30 p.m. a call was placed by DFYS to the Hollands to tell them that DFYS would be in touch the next day (July 24, 1982) regarding the allegations, and to inquire if the foster children sleeping in the basement bedroom had been moved to an bedroom with an adequate fire escape. Bernie Holland believes this telephone call was a form of harassment, especially considering the time the call was placed.

The following morning (July 24, 1982), Mr. Danneker visited the Holland home to deliver a letter (detailing three of the thirteen allegations, and having the NOTIFICATION OF COMPLAINT and foster care administrative regulations attached) signed by Ms. Tuovinen and Mr. Danneker and dated July 23, 1982. Mr. Holland claims that Mr. Danneker told him, "I've got my ass covered, so I'm not sweating it." Danneker admitted to me on January 10, 1983, that during this visit of July 24, 1982, he did say that to Bernie Holland.

Refusal to respond to the allegations:

In a letter dated July 24, 1982, Mr. Holland advised Mr. Danneker that the foster children formerly in the basement bedroom, had been assigned to an upstairs bedroom. Mr. Holland refused to answer the allegations, and encouraged DFYS to investigate the allegations. Mr. Danneker responded to the above correspondence by stating in a letter dated July 27, 1982:

...

By not responding you have interfered with the Division's authority to supervise and enforce standards allowed by Alaska Statutes 47.35.010, (1) (2) (3) in regard to facilities. Also, by not replying, the Division may be forced to make a

determination of the allegations based solely [sic] on the information gathered by the Division without having your input. If this becomes necessary, it will be done.

I am again requesting that a reply to the allegations be submitted. You and your wife, and/or your legal counsel, are requested to reply within ten (10) days of the date of this letter. I look forward to hearing from you.

A person violating any of the statutes or regulations regarding foster care "is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$200". AS 47.35.070. In light of the criminal penalty, the reluctance of the Hollands to further discuss the 13 allegations appears understandable. Although DFYS presented the 13 allegations as a licensing issue, any information gathered by DFYS through discussions with foster children and or the Hollands could nevertheless provide the basis for a criminal prosecution.

I briefly reviewed the legal basis for a person suspected of violating a licensing law, to refuse to answer questions during the investigation for fear of self-incrimination. A discussion of this issue is found in State of Alaska, Department of Revenue v. Oliver, 636 P.2d 1156(1981), and several other cases. This review leads me to believe there is no clear answer to the question of when a person may invoke the right against self-incrimination during an investigation, particularly when the investigation initially appears to be non-criminal in nature. As to DFYS saying that refusing to answer allegations is interference of an investigation -- such a belief does not appear to be well founded.

Investigation of allegations completed:

On August 17, 1982, Danneker completed his report on the investigation of the 13 allegations. Danneker found that allegations 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, and 13, are valid. He also found that allegation 3 was not substantiated by the evidence and allegation 10 was valid upon inspection, but had since been resolved.

The report included three problems noted during a standard-by-standard inspection of the Holland home during August, 1982. In closing his report Danneker states:

EVALUATION AND RECOMMENDATION

All of the above allegations are of a serious nature. Since they were found valid through investigation of the available information, they require immediate correction for the foster home to remain in operation. A serious matter is the Holland's refusal to respond to the allegations. Refusal to respond, either from the Hollands or their legal counsel, has not only interfered with the Division's

authority to supervise and enforce standards for foster care allowed by statute, but also has demonstrated a lack of responsibility on the part of the Hollands and placed those children entrusted to their care at an unacceptable risk level.

The Hollands have repeatedly violated the foster home regulations and have made no attempt to correct some of the violations, or if they have corrected them have failed to inform the Division. Foster parents who are seriously concerned about the welfare of children would normally be willing to cooperate with the Division to resolve any problems of [sic] misunderstandings that may arise. The Hollands have demonstrated a total lack of cooperation with the Division in dealing with the allegations.

It is therefore recommended that the foster home license for Bernie and Mary Holland be revoked.

Though the report determined that "The Hollands have repeatedly violated the foster home regulations...", identification or explanation of these previous violations was not given in the report.

In a letter dated September 27, 1982, Lew Reece, Regional Administrator, DFYS, told the Hollands that the investigation of the 13 allegations had been completed, and, with the exception to allegation 10, the Hollands had failed to respond to the allegations. The letter notes allegations 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, and 13 are valid. Mr. Reece also said that allegation 3 was not supported by the evidence, and that allegation 10 although true at the time of inspection (July 23, 1982), is now not valid since the foster children have been moved. Mr. Reece closes the letter by telling the Hollands:

Given the pattern of violations, and your refusal to respond or to formulate a corrective action plan, the Division is referring your case to the Department of Law for consideration of license modification, license suspension, or revocation. You will be informed of the Department of Law's recommendation to this Department.

Related incident:

Mr. Holland also alleges that the DFYS was harassing him by asking the Troopers to investigate an incident involving him and another foster parent. Mr. Holland believes he was the focus of this investigation, and that the investigation centered on Mr. Holland's alleged obstruction of an investigation conducted by DFYS. The relevant facts on this matter are that Mr. Reece, via a memorandum dated December 10, 1982 to 1st Sgt. John Murphy, requested the Troopers investigate how information (concerning another DFYS investigation) from Reece's office was transmitted to Bernie Holland. Mr. Reece was concerned that a state employee was illegally leaking confidential information.

On December 28, 1982, the Troopers concluded that, "...investigation indicated the information regarding the investigation was passed from #6, M.H. (female), to #4, Holland, who called C. and advised him he was being investigated."

M.H. (female) was the source of the information DFYS was investigating in the other matter. Therefore, one person not a state employee (M.H.) gave the information to another person who was not a state employee (Bernie Holland). Because of this, the final report indicates there was no "leak" from the offices of DFYS. Also, the focus of the investigation was not Holland, rather, it was to determine if there was a state employee leaking confidential information. This has been confirmed by 1st Sgt. Murphy.

FINDING:

As to the allegations that the Division of Family and Youth Services failed to conduct an investigation properly, and is harassing the Hollands, the following problems are noted:

1. The referenced regulations in allegation 4 (7 AAC 50.430(b),(d)) do not appear to directly relate to the issue of providing day care services in a home licensed for foster care. Therefore this allegation lacks sufficient legal basis and should not have been investigated;

2. Allegation 6 indicates that 7 AAC 50.420 is the applicable regulation regarding destroyed, lost or broken personal possessions of foster children. However, the regulation only addresses the ability of the foster child to bring possessions into the home, not what happens to these possessions after arrival in the foster home. The allegation does not appear to have sufficient legal basis;

3. At best allegation 7 appears to restate the essence of allegation 1 and therefore is redundant, and the second regulation cited, 7 AAC 50.450(5) bears no known relationship to any portion of the allegation;

4. The Division used the word "boarders" in allegation 8, yet the cited regulation does not prevent boarders from living in a home that is licensed for foster care. Rather, the Division seems to be concerned that the Hollands failed to report "any significant changes in the household". The DFYS should have identified any impairment in the care of foster children resulting from additional adults at the Holland home. This allegation lacks sufficient specificity, and should not have been investigated;

5. Regulation 7 AAC 50.410(a), as cited in allegation 9 (that "adult boarders participate in the family meetings and trials and are allowed to vote on foster childrens [sic] punishment") is not directly related to the allegation. The regulation regarding discipline, 7 AAC

50.450, describes the applicable discipline standards, which should have been used to measure conduct against;

6. The Division used the word "boarder" in allegation 10, yet the regulation only talks about fire safety, and does not mention boarders. Therefore, one has to question the reason for using the word, and the allegation is poorly stated;

7. Based upon the information available to the Division as of July 23, 1982, investigation of allegation 13 should have been terminated after preliminary inquiries and the Hollands so notified in the letter given them on July 24, 1982;

8. Robert Danneker used vulgar language when transmitting a letter to Bernie Holland on July 24, 1982.

Of the above noted problems, numbers 1, 2, 3, 4, 5, and 7, appear to constitute harassment of the Hollands.

The secondary allegation, relating to the later investigation undertaken by the Alaska State Troopers initiated by Lew Reece is not supported.

J82-1136

Bernie Holland filed a complaint with this office on November 18, 1982, alleging that an official of the DFYS improperly ordered employees not to place children in the Holland home for foster care purposes. In a letter from Lew Reece, Regional Administrator, to Mr. Holland dated December 1, 1982, Reece said:

. . .

On August 25, a certified letter of license non-compliance was sent to you and again you failed to contact us. On September 27, 1982, the investigation was concluded and a copy of the findings was sent to you and the Attorney General's office for further action.

It was only after the investigation was concluded and you had been given approximately 2 months to respond to the Division that I instructed the Juneau District Office to suspend juvenile placements until the alleged licensing violations in your foster home had been resolved.

I would be more than happy to meet with you at your convenience, with our licensing specialist, to assist you in developing a corrective action plan for your foster home. Without this meeting I cannot recird [sic] the instructions I have given the Juneau District Office not to place children in your foster home. [Emphasis added]

At the time of this letter, Holland held a valid foster care license which had not been suspended, modified, denied or revoked.

There is no known regulation which permits the state to "suspend juvenile placements" when "alleged licensing violations" in a foster home holding a valid foster license (which has not been suspended, modified, denied or revoked) have not been resolved to the satisfaction of the Division of Family and Youth Services. State law provides that a foster license may be revoked or modified "if it [the Division] determines that a facility is not in compliance with AS 47.35.010 - 47.35.080 or the regulations adopted under AS 47.35.010 - 47.35.080." AS 47.-35.040(b).

On September 27, 1982, the Hollands were told in a letter from Mr. Reece that several of the allegations were found to be true, yet their license was not modified or revoked at that time. The agency determined the Hollands failed to meet several of the regulations found in 7 AAC 50.310 - 7 AAC 50.620, and because of this the Holland license should have been revoked at that time (see 7 AAC 50.390(a)).

7 AAC 50.390. DENIAL OR REVOCATION.

(a) If the division finds that a foster home does not comply with the provisions of 7 AAC 50.310 - 7 AAC 50.620, or the specific terms of a license which has been issued, it shall deny or revoke the license. [Emphasis added]

In addition to 7 AAC 50.390(a), a statutory provision states the following:

AS 47.35.040. LICENSING.

(e) The department shall give written notice of revocation or modification under (b) of this section 30 days before the effective date of the action. However, if the health or well-being of children or dependent adults is in jeopardy, the revocation or modification action is effective immediately upon the issuance of written notice by the department.

This complaint presents the unusual situation in which the agency has determined the Hollands do not comply with the regulations for foster homes, then their foster home license should have been revoked (per 7 AAC 50.390(a)) and they should have been given 30 days notice of the effective date of the revocation of their license (per AS 47.-35.040(e)). None of this was done. If the Holland's license had been revoked, the agency would not have been able to place children there (See AS 47.35.020).

On this subject, Mr. Reece in a letter to this office, dated January 10, 1983, notes the following regulation:

7 AAC 50.360. SCOPE OF LICENSING.

The licensing of a foster home by the division does not create an obligation for the state or any child placement agency to support the foster home financially, nor obligate the state or any child placement agency to place or maintain any child in the home. The issuance of a license means only that the home, the family, the physical environment, and services have been evaluated and determined to meet required standards.

Mr. Reece said in the letter:

Respondents, Bernie and Mary Holland, refused, on numerous occasions [sic], to respond to the allegations against them, made it difficult, if not impossible, for the development of ongoing professional relationships between the Division and the licensed home, a prerequisite to determine compliance with State law.

FINDING:

Based upon the available evidence, the Division of Family and Youth Services acted without the benefit of clear legal authority when it suspended placement of foster children in the Holland home. For reasons discussed in the report of a later complaint, the agency apparently should have acted to revoke the Holland license, a procedure that would have prevented placement of foster children in the Holland home.

Still, the regulation cited above entails no obligation on the part of the Division to place foster children in an approved home. Placement is discretionary with division personnel. Though the division appears to have been in error in basing its decision on the events preceding Mr. Reece's September 27 letter, the decision to direct no further placements in the Holland home until licensing violations were corrected was one that the division could properly make.

J82-1188

A complaint was filed with this office on December 12, 1982, alleging that the Division of Family and Youth Services erred in either determining the Holland foster home was not safe, or in leaving foster children in their unsafe home. This complaint concerns the Hollands' foster home license.

Since the DFYS did not immediately revoke or modify the foster home license as provided by AS 47.35.040(e), when the health or well-being of the children is in jeopardy, division personnel apparently concluded that the violations found during its investigation were not serious. The notice to the Hollands that they were not in compliance was given on September 27, 1982. The Hollands had 14 days to correct the compliance problems (7 AAC 50.370(2)). If at the end of the period corrective

action had not been taken, any foster child would be removed from the foster home.

As of October 28, 1982, the Hollands had not corrected problems identified in the letter to them dated September 27, 1982. In the case at hand, K.S., a foster child, remained at the Holland home until October 28, 1982, which is approximately two weeks beyond the time allowed for either satisfactory corrective action(s), or removal from the home.

FINDING:

Based upon the available evidence, the Division of Family and Youth Services incorrectly left K.S. in the Holland foster home more than 14 days after the agency determined the home failed to meet the applicable standards.

J82-0728

Ombudsman Complaint J82-0728 was filed with this office on August 11, 1982. The complainant, Jan Still, alleged that DFYS wrongfully took a statement from his 14-year-old daughter concerning allegations involving the foster home where she was living. Mr. Still also alleged that his daughter was not able to have an attorney, nor her parents present, during the interview by the DFYS and that the agency refused to give a copy of the statement to him.

The child at the center of this complaint provided a statement during the later part of July, 1982, to the DFYS concerning the investigation of the Holland foster home license by the DFYS. At that time she was under the custody of the DFYS. The child admitted to this office the statement was given voluntarily to the DFYS, and that she was not coerced. She also said that at the time of the interview she did not request either her parents or an attorney be present. Since the subject of the interview was the foster home where she lived and not possible illegal activities on her part, there was no apparent reason for her to have an attorney or her parents present while being interviewed.

Based upon conversations with Linda Scoccia, Assistant Attorney General, Department of Law, and staff at the DFYS, it appears that the child was initially refused access to the written statement given to DFYS. Only after a subsequent consultation with Ms. Scoccia was the statement released. The child refused to give her parents access to the statement at the time she received it from DFYS. Ms. Scoccia also advised that the statement should not be released to Mr. Still because the statement is considered confidential in nature. When I asked Ms. Scoccia if the statement could be released at the time the parents regained full custody of the child, she said no.

The child in this complaint was considered a "child in need of aid" at the time of the request for the statement. The rights of the parents of a child in need of aid are stated under AS 47.10.084(c):

When there has been a transfer of legal custody or appointment of a guardian and parental rights have not been terminated by court decree, the parents shall have residual rights and responsibilities. These residual rights and responsibilities of the parent include, but are not limited to, the right and responsibility of reasonable visitation, consent to adoption, consent to marriage, consent to military enlistment, consent to major medical treatment except in cases of emergency or cases falling under AS 09.65.100, and the responsibility for support, except if by court order any residual right and responsibility has been delegated to a guardian under (b) of this section.

From this statute, it seems the parents may not have had the legal right to examine statements provided by a child when the child is in state custody. I checked with Lt. Roger McCoy, Alaska State Troopers, and inquired as to their procedures in this type of case. Lt. McCoy told me that the Troopers will give a child a copy of a statement taken by the Troopers, as well as to the legal custodian of the child. Also, if the parents of a child do not have custody of the child, a copy of the statement will not be given the parents until they regain legal custody.

The anxiety of the father in not being able to examine the statement provided by his daughter is described in his letter to this office, dated October 4, 1982:

On about August 10th (9-11) I questioned Mr. Danniker [sic] (social worker) who stated that he had obtained the statement from [Still's daughter] and that I could have a copy. I arrived at Mr. Danniker's [sic] office about 10 minutes after talking to him on the phone and was ushered into an office by Mr. Danniker [sic] and Mr. Reese [sic], his supervisor. Mr. Danniker [sic], who seemed excited, then informed me that he had signed statements from 6 children concerning mental, physical and sexual abuse and that he had told [Still's daughter] that she could move out of the Holland foster home anytime she wanted to. Mr. Danniker [sic] also mentioned an after hours meeting at H&SS with [Still's daughter]. He reported that she was visibly shaking as the result of questioning and pressure from Mr. Holland.

FINDING:

Based upon the available evidence, the Division of Family and Youth Services did not wrongfully take a statement from a child while investigating allegations of violations of foster home laws. The child in question did not request to have either an attorney or her parents present when giving the statement, and the investigation was not directed at any possible illegal activities of the child. The agency did refuse to give a copy of the statement to Jan Still, and apparently did so properly. (However, the agency could have handled the request in a more sensitive manner, and if the allegations were in fact serious, the child should have been removed from the foster home immediately, and or the license should have been revoked or modified. (See 7 AAC 50.370 and AS 47.35.040(e)). Also, based upon the procedures of the Troopers, the agency could have given a copy of the statement to Still when legal custody of the child was regained.)

RECOMMENDATIONS:

By way of immediate personal remedy to the complainants in J82-0689, I recommend:

Recommendation 1. The Division of Family and Youth Services should prepare and send a written apology to the Hollands concerning the harassment aspects to these complaints, and the foul language used by Mr. Danneker.

The following recommendations should be made to the Division of Family and Youth Services to prevent recurrence of the problems found during the investigation of these complaints:

Recommendation 2. The Division should state as clearly as possible any allegation regarding a foster home. The allegation should have sufficient basis to be stated, and be directly related to a standard established by statute and/or regulation.

Recommendation 3. The Division should refrain from demanding that a foster home secure a day care license unless and until it is clear that the law so requires.

Recommendation 4. The Division should notify the subject of an investigation, at the earliest opportunity, when investigation of an allegation has terminated because the allegation lacks sufficient legal basis or proof, or is shown to be false.

Recommendation 5. In its revision of its office manual, the Division should examine, with the Department of Law, the issue of self-incrimination by a licensee in the course of a licensing investigation, and prepare and include discussion of this issue in the policy and procedures manual.

Recommendation 6. The Division, with the assistance of the Department of Law, should revise the applicable portions of the policy manual and Alaska Administrative Code to guarantee to persons providing statements to the DFYS a copy of that statement upon request.

Recommendation 7. The Division, with the assistance of the Department of Law, ought to examine the legal basis for denying information retained in DFYS files to the parents and legal custodians of children receiving services from the DFYS. A definitive policy on this matter appears to be in order. The policy adopted ought to be included in the policy manual and Alaska Administrative Code.

Recommendation 8. Division personnel should strive to handle matters as identified in Ombudsman Complaint J82-0728 in a sensitive manner. The Division may wish to consider sending a letter of apology to Mr. Still.

Recommendation 9. The Division should review current policy regarding employee discipline and should, if warranted, consider appropriate disciplinary measures for the employee(s) involved with the harassment matters and the use of vulgar language by one employee.

BA:mm
Attachment

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF FAMILY AND YOUTH SERVICES

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In the Matter of the)	
Application for Licensure)	
as a Residential Child Care)	
Facility by)	
B.G. HOLLAND)	License No. 235005 (Denied)
Respondent.)	

RECOMMENDED DECISION

This proceeding involves the issue of whether the Department of Health and Social Services, Division of Family and Youth Services (DHSS) acted properly in denying respondent Bernie G. Holland's application for a license to operate a residential child care facility in Juneau. The proceeding was initiated by the filing of a statement of issues by DHSS on June 15, 1982. On June 25, 1982, respondent submitted his notice of defense, and on August 9, 1982, DHSS filed an amended statement of issues. The hearing briefs were filed and evidence was taken during a hearing held between October 4th and October 7, 1982. At the conclusion of the hearing, respondent presented an oral closing argument and DHSS, by its attorney, and with the approval of the hearing officer and respondent, submitted a written closing argument.

I. FACTS

While there is disagreement among the parties as to the inferences to be drawn from the facts, there appears to be little disagreement as to most of the primary facts. In September of 1981, Mr. Holland submitted an application for a license for a "foster family group home," to be known as "Holland House." Document 66. On November 19, 1981, respondent was notified by Alinio Lobo, licensing specialist at the Southeast Regional Office (SERO) in Juneau, that the office was looking forward to respondent's submission of an "improved final version of the proposal." Document 16.

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1 On January 12, 1982, respondent submitted to the SERO Office of DHSS at
2 least two copies of a document entitled "Family Group Home Proposal."
3 Document 403. That document was intended by respondent to be the
4 expanded program description requested by SERO in the letter of November
5 19, 1981. For some inadequately explained reason, SERO had numerous
6 problems handling the document. The testimony indicated that some of the
7 recipients of the document at SERO thought it was merely a proposal for a
8 program being considered by respondent that was unrelated to the September
9 30, 1981 application for a license. Consequently, at least one of the copies
10 of the proposal was passed on to the Central Office for informational
11 purposes only. At least one other copy of the proposal was retained in
12 respondent's license application file at SERO. At some time between its
13 submission on January 12, 1982 and June 8, 1982, the proposal disappeared
14 from respondent's application file. Testimony indicated that this
15 disappearance was merely an accident in that the document fell out of
16 respondent's file and into the back of a drawer in a desk at SERO.

17 In April of 1982, Alinio Lobo, the licensing specialist responsible for
18 reviewing respondent's license application, began a series of on-site visits to
19 the proposed facility. These visits were in furtherance of the completion of
20 a standard by standard evaluation of the proposed facility, the satisfactory
21 completion of which was necessary prior to issuance of a license by DHSS.

22 On May 20, 1982, new regulations for residential child care facilities in
23 Alaska became effective. This was prior to completion of the standard by
24 standard evaluation by Mr. Lobo. On June 4, 1982, Ms. Kay Smith,
25 supervisor of the Southeast Regional Office, reviewed the Facility Information
26 Summary (CWS 80) presented to her by Mr. Lobo. Document 22. That CWS
27 80 recommended that respondent be issued a provisional license for the
28 facility applied for, with the license to run from June 15, 1982 to December
29 15, 1982. On the same date that she reviewed it, Ms. Smith signed off on
30 the document. According to the language next to her signature block, her
31 signature confirmed that she had reviewed the study and that she concurred
32 that "the facility meets specified requirements." According to the testimony

1 of Ms. Smith and Ms. Connie Hansen of the SERO Office, Ms. Smith left
2 town that same day and instructed Ms. Hansen to sign the program
3 evaluation and licensing recommendation for her as soon as the document was
4 typed. On June 8, 1982, Ms. Hansen in fact did sign the typed version of
5 the program evaluation and licensing recommendation. Document 41. In that
6 document, Mr. Lobo recommended that the application submitted by
7 respondent in September of 1981 be approved and a license issued. By the
8 signature of the Acting Regional Manager, Ms. Hansen, SERO concurred with
9 Mr. Lobo's recommended approval. However, Ms. Smith testified that she
10 actually never read any of the back-up documents supporting the licensing
11 recommendation. Further, Ms. Hansen testified that she also did not read
12 any of the back-up documentation and merely signed the document
13 recommending licensure because Ms. Smith had instructed her to do so.

14 According to the testimony of Mr. Pugh, the licensing for Holland
15 House came to his attention on June 8, 1982 when Ms. Yvonne Walker
16 informed him that she had received a monthly report from Ms. Smith which
17 indicated, among other things, that SERO was in the process of finalizing

18 license. According to Mr. Pugh, because he wished to be involved in
19 the licensing of any new facilities, he met on the afternoon of June 8th with
20 Yvonne Walker, Pat Monroe, Alinio Lobo and Connie Hansen to discuss
21 licensing of Holland House. Also according to Mr. Pugh, the licensing file
22 and proposal of Mr. Holland were brought to him prior to that meeting at his
23 request. (There appears to be some confusion as to when Mr. Holland's file
24 actually was brought to Central Office for Ms. Hansen testified the file was
25 brought to Central Office on June 9th.) On that same day, at Mr. Pugh's
26 request, Ms. Monroe and Ms. Walker searched for and located the license
27 which was about to be issued for Holland House, and that license was
28 thereafter held in abeyance pending a complete review of the licensing file
29 by Central Office.

30 At the June 8th meeting it was discovered that the file did not contain
31 a completed standard by standard evaluation. Mr. Pugh therefore asked Ms.
32 Monroe to review the file and determine whether the facility complied with

1 the new regulations for residential child care facilities which became effective
2 on May 20, 1982. Ms. Monroe completed her review and reported back to
3 Mr. Pugh on June 9th. Her conclusion, concurred in by Mr. Pugh, was
4 that the proposed facility was not in compliance with the new regulations and
5 that the license should not be issued until the facility was brought into
6 compliance.

7 Mr. Holland was called into the Central Office for a meeting on the
8 morning of June 10th, at which time Mr. Pugh and Ms. Monroe informed Mr.
9 Holland that they could not issue a license for Holland House at that point
10 because it was not in compliance with the new regulations. That same day
11 Ms. Monroe informed him that she would be willing to work with him and
12 assist in bringing his facility and application into compliance with the
13 regulations. After a meeting with Ms. Monroe at which she began to explain
14 what Mr. Holland would have to do before DHSS could issue Holland House a
15 license, Mr. Holland indicated he would have to think about it. A few days
16 later he called Ms. Monroe and requested that DHSS grant or deny his
17 application. Central Office complied with that request and the license
18 application for Holland House was denied. By letter of June 15, 1982, Mr.
19 Holland was informed of the denial and presented with a statement of issues
20 setting forth the reasons for the denial.

21 At some time after Alinio Lobo's return to Juneau on June 14, 1982,
22 there appeared a completed standard by standard evaluation for the Holland
23 House facility. Testimony as to when this document had been completed was
24 contradictory. It was the testimony of Ms. Monroe and Mr. Pugh that the
25 document was not in the file as of June 9, 1982 and that the only standard
26 by standard evaluation in the file at that time was far from complete. They
27 also testified that Mr. Lobo had stated on June 8th that he was still working
28 on the standard by standard evaluation. Mr. Lobo, however, testified that
29 he had completed the standard by standard evaluation and placed it in the
30 file on or before June 8, 1982.

31 In August of 1982, Mr. Holland and Mr. Botelho met with me to discuss
32 procedures to be followed in bringing this case to a hearing. At that time

1 Mr. Botelho indicated that it was the position of DHSS that no complete
2 standard by standard evaluation assessing the facility's compliance with the
3 new residential child care facility regulations had been done for the facility,
4 and that that in itself was sufficient to justify denial of the license
5 application. It having been my view that it made little sense to go through
6 a long and costly hearing in this case only to reach the conclusion that the
7 license could be denied because a standard by standard evaluation had not
8 been done, I recommended to Mr. Holland that he allow DHSS to conduct a
9 new standard by standard evaluation of his facility. Mr. Holland agreed.
10 At Mr. Holland's request, Ms. Laurie Vaughn of the Fairbanks Regional
11 Office of DISS performed the standard by standard evaluation. Her
12 conclusion was that the facility was not in compliance with the May 20, 1982
13 residential child care facility regulations and that the license should not be
14 issued. Document 183.

15 At some time in August, the "proposal" submitted to SERO by Mr.
16 Holland on January 12, 1982, which, inexplicably, had not found its way to
17 Mr. Holland's licensing file, was brought to the attention of DISS.
18 According to the testimony of Ms. Hansen, she had seen the document
19 sometime prior to May of 1982, but for some unknown reason, had not
20 considered it part of Mr. Holland's application. She became aware sometime
21 during the summer of 1982 that the document was not in Mr. Holland's
22 licensing file, and she ultimately obtained a copy of it by driving out to Mr.
23 Lobo's home. Evidently, the copy so obtained was an extra copy Mr. Lobo
24 had for his personal use for he testified that there were two other copies
25 which he had placed in Mr. Holland's licensing file. Mr. Lobo was certain
26 that he had placed those two copies in the file, clipping one of them into the
27 file and placing the other one loosely in the file. According to the
28 testimony, a couple of days after obtaining the document from Mr. Lobo at
29 his home, another copy was found in the back of a drawer in Ms. Hansen's
30 desk at SERO. The explanation given by Ms. Smith for this occurrence was
31 that Ms. Hansen has a very messy desk and that the document had plastic
32 covers and must have slipped out of the file and into the back of Ms.

1 Hansen's desk drawer. According to Ms. Hansen, she had discussed this
2 document with Ms. Smith sometime prior to May of 1982.

3 Upon discovery of the group home proposal of January 12, 1982, a copy
4 of the document was sent to Ms. Vaughn for her assessment to determine
5 whether the document changed the conclusion she had reached in her
6 standard by standard evaluation. She then assessed the Holland House
7 application in view of the new document. Her conclusion, however, remained
8 that the Holland House did not satisfactorily meet the new residential child
9 care facility regulations and that the license should be denied.

11 CONCLUSIONS OF LAW

12 Each of the parties argues that the other bears the burden of proof in
13 this proceeding. Mr. Holland has cited no support for his assertion. The
14 State has cited Fields v. Kodiak City Counsel, 628 P.2d 927 (Alaska 1981);
15 Thornton v. Commissioner of Department of Labor and Industry, 621 P.2d
16 062 (Montana 1980), and Country Club Home, Inc. v. Harder, 620 P.2d 1140
17 (Kansas 1980). None of these cases is instructive on the point. In Fields,
18 the court applied the standard rule that one seeking a variance to zoning
19 requirements has the burden of proof, and the ordinance at issue specifically
20 set forth what one seeking a variance was required to show to be
21 successful. In Thornton and Country Club Home, Inc., the courts were
22 reviewing a final order emanating from an administrative hearing, and in
23 each case the court concluded that the order was presumed to be correct
24 and the burden was on the one challenging the order. In the case at bar,
25 we are not dealing with a final order of an agency following a hearing.
26 Instead, we are trying to derive that order.

27 A case which Mr. Holland might have cited in support of his position is
28 that of Alaska Alcoholic Beverage Control Board v. Malcolm, Inc., 391 P.2d
29 441 (Alaska 1964). There, the court concluded that since under the
30 Administrative Procedure Act the party filing a statement of Issues is the
31 moving party and the party seeking the issuance or re-newal of a license is
32 the respondent, the party filing the statement of issues bears the burden of

1 proof on the issues raised therein.

2 In my view, none of the above authorities are very helpful. It is my
3 conclusion that in this case, DHSS has the burden of presenting a prima
4 facie case in support of the claims set forth in the statement of issues.
5 Once it has done so, the burden of proof falls upon Mr. Holland to prove by
6 a preponderance of the evidence that the requested license should be issued.
7 See Mezines, Stein & Gruff, 4 Administrative Law, § 24.02 (1982). This
8 approach seems to me to give proper recognition to both the fact that DHSS
9 cannot arbitrarily refuse to issue a license on the one hand, while on the
10 other hand, given the importance of DHSS' licensing function in protecting
11 society, a presumption of some magnitude in favor of the State's licensing
12 decision should apply.

13 The arguments of Mr. Holland in support of his case appeared to be as
14 follows. First, because of an incident at his home and his subsequent
15 complaint to the Ombudsman, as well as a number of rumors at the SERO
16 Office concerning occurrences at Mr. Holland's facility, DHSS intended to
17 deny Mr. Holland's application regardless of whether his proposed facility
18 complied with applicable regulations. In support of this part of his
19 argument, Ms. Borkowski testified that Ms. Smith had stated, upon
20 reviewing the January 12, 1982 proposal, that Mr. Holland would be licensed
21 over her dead body. Furthermore, Ms. Borkowski testified that Ms. Smith
22 had indicated that she was dissatisfied because of Mr. Holland's complaint to
23 the Ombudsman and that he was essentially a troublemaker.

24 With the foregoing premise established, Mr. Holland proceeded to argue
25 that someone in DHSS had removed the completed standard by standard
26 evaluation performed by Mr. Lobo and the January 12, 1982 Group Home
27 Proposal from his licensing file for the purpose of assuring that the
28 application would be denied. In response to the fact that DHSS' denial of
29 the license was maintained even after review of those two documents, Mr.
30 Holland argued that the deficiencies which remained in his application were
31 rather minor, DHSS had the authority to waive adherence to those provisions
32 with which Mr. Holland had not complied, and DHSS had exercised that

1 discretion in approving the applications of certain other facilities. In Mr.
2 Holland's view, DHSS should have issued him a provisional license for his
3 new facility allowing him a reasonable amount of time within which to bring
4 his facility into compliance with those portions of the new residential child
5 care facility regulations with which he had not yet complied.

6 The position of DHSS was that, notwithstanding all that occurred prior
7 to August of 1982, once all of the proper documents were in Mr. Holland's
8 file and a standard by standard evaluation was performed, his facility was
9 found not to be in compliance with the new residential child care facility
10 regulations, and therefore the denial of the license application was proper.
11 While provisional licenses have been issued in the past, DHSS' position is
12 that given recent amendments to AS 47.35.055, a provisional license is only
13 appropriate for on-going facilities, not for new facilities, the difference
14 being that denial of a license to an existing facility would cause great
15 hardship for the residents of that facility because it would require closing
16 the facility, while any delay in starting a new facility would not have such
17 an affect. According to DHSS, a waiver of regulation requirements could
18 only be given in certain cases, and then only if an applicant applied in
19 writing for a waiver. In those cases in which field workers addressing
20 other facilities exercised discretion and did not require that certain
21 documents called for in the regulations be submitted with a facility's
22 application, the field workers were not complying with the policies of DHSS.
23 I find the argument of DHSS to be persuasive.

24 No person may operate a residential facility without first obtaining a
25 license to do so from DHSS. AS 47.35.020; 7 AAC 50.007. To obtain a
26 license for a new residential child care facility, an applicant must satisfy the
27 requirements of 7 AAC 50.001 - 7 AAC 50.073. AS 47.35.040. A facility in
28 operation at the time new regulations are passed may continue in operation
29 despite not being in compliance with some of the new regulations if it
30 submits an acceptable plan of correction for those items of the regulations
31 with which it is not in compliance. A new facility may not begin operation
32 until it has satisfied all of the applicable regulations. 7 AAC 50.05(a)(2).

1 DHSS is required to issue a provisional license to a new facility "if the
2 facility submits to the Department an acceptable plan for operation that is in
3 conformity with" applicable statutes and regulations. AS 47.35.055(a); 7
4 AAC 50.013. Under that statute and regulation, a new facility which does
5 not meet all of the regulatory requirements is not entitled to a provisional
6 license. While under 7 AAC 50.023 DHSS possesses the authority to waive
7 certain of the regulatory requirements under certain conditions, an applicant
8 desiring a waiver must make application therefor to DHSS in writing.

9 The facility for which Mr. Holland is seeking a license is a new facility,
10 and he is therefore required to satisfy all of the regulations applicable to
11 residential child care facilities. He is not entitled to a provisional license
12 while he is bringing his facility into compliance with the regulations. He is
13 also not entitled to a waiver of any of the regulations for he did not apply
14 to DHSS in writing for any such waivers.

15 A number of witnesses testified that one reason for denying Mr.
16 Holland's license application was that DHSS did not recognize a category of
17 provider called a foster family group home. This reason for denial,
18 however, was not included in the amended statement of issues in support of
19 denial of the license. Furthermore, it appears that DHSS construed the
20 application of Mr. Holland to be for a residential child care facility and
21 evaluated the facility using residential child care facility regulations. For
22 these reasons, this recommended decision will not address the question of
23 whether the absence of a category of care provider specifically matching the
24 title set forth in Mr. Holland's application would, in itself, justify denial of
25 his application.

26 Turning to the reasons for denial set forth in the first amended
27 statement of issues, DHSS has met its burden of making a prima facie
28 showing that the inadequacies set forth therein did in fact exist. Mr.
29 Holland put on no evidence to the contrary. He also failed to present
30 evidence showing that a provisional license had been provided for any other
31 new residential child care facility in Alaska which had failed to satisfy those
32 regulations set forth in the first amended statement of issues. Furthermore,

1 he failed to put on any evidence tending to show that any other new
2 residential child care facility in Alaska had obtained a waiver of any
3 regulatory requirements without submitting a written waiver request.
4 Consequently, Mr. Holland failed to prove that the denial of his license was
5 arbitrary or capricious, or that he was treated differently than other
6 applicants in a similar situation.

7 While Mr. Holland may consider some or all of the deficiencies in his
8 application identified by DISS to be of minor significance, I do not intend to
9 pass judgment on either the wisdom or importance of the regulations he
10 failed to satisfy. DHSS is clearly authorized by law to set forth by
11 regulation standards with which care providers in this state must comply and
12 Mr. Holland has not challenged that authority. Mr. Holland having failed to
13 satisfy those standards, I recommend that the denial of his application be
14 upheld. DISS, at least as of June 10, 1982, appeared willing to assist Mr.
15 Holland in bringing his facility into compliance with the regulations. Mr.
16 Holland chose not to follow this route, and instead demanded that DHSS take
17 action on his license, notwithstanding that it certainly should have been
18 clear to Mr. Holland that the only action DISS could take at the time was to
19 deny his license.

20 Though I recommend that the license denial be upheld, something must
21 be said of DISS' very poor handling of Mr. Holland's application. Were the
22 results not so costly to the State in time and money, and to Mr. Holland
23 both in time and emotional distress, one could refer to the handling of his
24 application as a comedy of errors. The application was submitted by Mr.
25 Holland in September of 1981 and yet no decision was made on the license
26 until June of 1982. Furthermore, the amended version of his group home
27 proposal which SERO had specifically requested in November of 1981, upon
28 receipt by SERO, was not even recognized as being related to his
29 application, notwithstanding the fact that the document bore the exact same
30 title and appearance as did the plan attached to his original application.
31 SERO then evidently lost the document. When SERO finally got around to
32 considering Mr. Holland's application, the Regional Director recommended

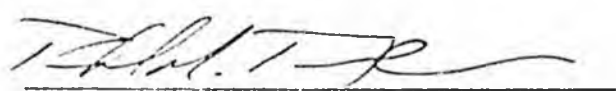
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that it be approved, without even reviewing any of the documentation in support of the license. The Acting Regional Director then signed the approval recommendation, also without reviewing any back-up documentation. As it turns out, the kind of facility for which Mr. Holland was applying, and for which SERO recommended licensure, did not even exist in DHSS regulations.

Mr. Holland assigns sinister purposes to all of these events and interprets them in some manner to be a conspiracy against issuance of his license. I do not agree with that conclusion. While Mr. Holland argued that SERO was dead set against issuing him a license, it was in fact SERO which recommended issuance of the license. It appears that all of the events to which Mr. Holland pointed as evidence of a sinister conspiracy were evidence of nothing more than a very poor performance by the employees at SERO. Had the license application been properly handled, it is doubtful this matter would have ever gone to a hearing, and a care provider who has provided high quality services for the State in the past would not be so disillusioned with continuing to serve the State in the future. It would seem to be most beneficial for the State to make every reasonable effort to assist quality care providers in continuing to provide services on behalf of the State. Sadly, no such effort appears to have been made in this case until it was too late.

DATED this 3rd day of December, 1982.


Richard M. Burnham
Hearing Officer

CHAPTER 75

INVESTIGATIONS BY LEGISLATIVE BODIES

Sec. 795. Right of a Legislative Body to Make Investigations

1. The right of a legislative body to make investigations in order to assist it in the preparation of wise and timely laws must exist as an indispensable incident and auxiliary to the proper exercise of legislative power. This has been recognized from the earliest times in the history of American legislation, both federal and state, and from even earlier epochs in the development of British jurisprudence.

2. The legislature has the power to investigate any subject regarding which it may desire information in connection with the proper discharge of its function to enact, amend or repeal statutes or to perform any other act delegated to it by the constitution.

Section 795—

Paragraph 1—

Marshall v. Gordon (1917), 243 U.S. 521, Ann. Cas. 1918B, 371 L. R. A. 1917F, 279, 61 L. Ed. 881, 37 Sup. Ct. Rep. 448; *Burnham v. Morrissey* (1859), 14 Gray (Mass.) 226, 74 Am. Dec. 676; *Wilckens v. Willet* (1878), 40 N. Y. (1 Keyes) 521, 4 Abb. Dec. 596; *Briggs v. MacKellar* (1855), 2 Abb. Pr. (N. Y.) 30; *Robertson v. Peeples* (1919), 120 N. C. 176, 115 S.E. 300; *Anderson v. Dunn*, 6 Whet. (U.S.) 204, 5 L. Ed. 242; *Federal Trade Com. v. American Tobacco Co.* (1924), 264 U.S. 298, 32 A. L. R. 786, 68 L. Ed. 696, 44 Sup. Ct. Rep. 336; *Harriman v. Interstate Commerce Com.* (1903), 211 U.S. 407, 53 L. Ed. 253, 29 Sup. Ct. Rep. 115; *In re Chapman* (1897), 166 U.S. 661, 41 L. Ed. 1154, 17 Sup. Ct. Rep. 677; *Kilbourn v. Thompson* (1880), 103 U.S. 168, 26 L. Ed. 377; *In re Battelle* (1929), 207 Cal. 227, 277 Pac. 725; *Goldman v. Olson* (Wis. 1968) 268 F. Supp. 35; *Murphy v. Collins* (1974), 20 Ill. App. 3d 181, 312 N. E. 2d 772.

Paragraph 2—

Ex parte McCarthy (1866), 29 Cal. 395; *Greenfield v. Hessel* (1920), 292 Ill. 392, 129 N.E. 102; *Attorney General v. Brissenden* (1930), 271 Mass. 172, 171 N.E. 82; *Briggs v. MacKellar* (1855), 2 Abb. Pr. (N.Y.) 30; *People v. Keeler* (1845), 99 N.Y. 463, 2 N.E. 615; *Simpson v. Hill* (1927), 128 Okla. 269, 263 Pac. 635; *Commonwealth v. Costello* (1912), 21 Pa. Dist. 232; *State v. Frear* (1909), 138 Wis. 173, 119 N.W. 894.

3. The power and duty reposed in the legislature and in each and every member of both houses thereof is that of preparing and proceeding to enact wise and well-formed and needful laws, and in the preparation of such laws, the necessity of investigation of some sort must exist as an indispensable incident.

4. Legislatures in enacting laws, like courts in interpreting such laws when enacted, must have in mind the former law, if any, the wrong or defect requiring remedial action, and the nature and extent of the needed and appropriate remedy; and in the application of this principle, the power of these coordinate branches of government.

5. The inherent and auxiliary power reposed in legislative bodies to conduct investigations in aid of prospective legislation carries with it the power in proper cases to compel the attendance of witnesses and the production of books and papers by means of legal process, and to institute, and carry to the extent of punishment, contempt proceedings in order to compel the attendance of such witnesses and the production of such documentary evidence as may be legally called for in the course of such proceedings, whether conducted by the legislative body or a branch thereof, directly or through its properly constituted committees.

6. The legislature has power to investigate any subject where there is a legitimate use that the legislature can make of the information sought, and an ulterior purpose in the investigation or an improper use of the

Section 795—Continued

Paragraph 3—

In re Battelle (1929), 207 Cal. 227, 277 Pac. 725; *Briggs v. MacKellar* (1855), 2 Abb. Pr. (N.Y.) 30.

Paragraph 4—

In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.

Paragraph 5—

In re Battelle (1929), 207 Cal. 227, 277 Pac. 725; *Petition of Special Assembly Interim Committee* (1939), 13 Cal. 2d 497, 90 Pac. 2d 304.

information cannot be imputed.

7. The legislature or a committee cannot be enjoined from investigating a matter which is under litigation in the courts.

8. The ascertainment of pertinent facts as a basis for legislation is within the power of a legislative body.

9. A legislature in conducting whatever inquisitions the proper exercise of its proper functions require, must be as broad as the subject to which the inquiry properly entered upon has relation.

10. An investigation into the management of the various institutions of the state and the departments of the state government is at all times a legitimate function of the legislature.

11. The right to investigate any lawful matter is a right separate and distinct in each house and may be exercised through a committee.

12. A local legislative body has the power to make investigations having a relation to the performance of its functions the same as a state legislature. The investigation can be conducted by the body itself or through a committee.

Section 795—Continued

Paragraph 6—

Robertson v. Peeples (1919), 120 S. C. 176, 115 S.E. 300.

Paragraph 7—

Robertson v. Peeples (1919), 120 S. C. 176, 115 S.E. 300.

Paragraph 8—

Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82.

Paragraph 9—

In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.

Paragraph 10—

Dickinson v. Johnson (1915), 117 Ark. 582, 176 S.W. 116.

Paragraph 11—

Ex parte Hague (1929), 105 N. J. Eq. 131, 147 Atl. 220; *Simpson v. Hill* (1927), 128 Okla. 269, 263 Pac. 635; *Robertson v. Peeples* (1919), 120 N. C. 115 S.E. 300.

Paragraph 12—

State v. Milwaukee (1914), 157 Wis. 505, 147 N.W. 50; *Hendricks v. Carter* (1918), 21 Ga. App. 527, 94 S.E. 807.

13. Authority to obtain information for its determination concerning the exercise of power to make laws may be conferred on nonlegislative bodies.

14. In the exercise of its power to make investigations, a legislature may incur reasonable necessary expenses payable out of the public funds.

15. The legislature and each house thereof has the inherent and implied power to appoint investigation committees and conduct investigations to obtain information concerning proposed or future legislation and to report back its findings to the body that appointed it.

Sec. 796. Investigations Respecting Members

See also Sec. 564, Investigation of Charges Against Members.

1. The legislature or either house has power to investigate and institute an inquiry into the truth of an alleged bribery of any of its members or the members of a previous legislature connected with its legislative functions, and, in the exercise of such power, it must necessarily have the same power to compel the attendance of witnesses before it or before a committee and compel them to testify as in any other investigation.

2. A legislative body has the right in an election contest concerning one of its members to conduct an investigation, before the body or one of its committees and

Section 795—Continued

Paragraph 13—

Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82.

Paragraph 14—

State v. Frear (1909), 138 Wis. 173, 119 N.W. 894; *Goldman v. Olson* (1969), 268 F. Supp. 35.

Paragraph 15—

Petition of Special Assembly Interim Committee (1939), 13 Cal 2d 497, 90 Pac. 2d 304; *Masset Bldg. Co. v. Bennett* (1950), 4 N. J. 53, 71 Atl. 2d 327.

Section 796—

Paragraph 1—

In re Falvey (1856), 7 Wis. 528; *Briggs v. MacKellar* (1835), 2 Abb. Pr. (N.Y.) 30.

to compel the attendance of witnesses and take testimony.

3. Knowledge or information acquired by a witness, though at the instance of and in connection with and under the direction of a prosecuting attorney to use in the trial of indictment against members of the legislature for bribery, is not privileged and furnishes a witness lawfully summoned no legal ground for refusing to respond to legitimate questions by a legislative committee appointed to investigate the matter.

4. When a house is investigating the conduct of its members upon a public charge that some of them whose names are not given have taken bribes and have called as witnesses the editor and reporter of the paper which published the charge, it is a contempt of the authority of the house for the witnesses to refuse to give the names of those from whom they have received information concerning the charge of bribery and of the nature of that information.

5. When a committee is charged with an inquiry, if a member prove to be involved, the committee cannot proceed against him, but must make a special report to the house; whereupon the member is heard in his place, or at the bar, or a special authority is given to the committee to inquire concerning him.

Sec. 797. Limitations on Right of a Legislative Body to Investigate

1. It is a general rule that the legislature has no power through itself or any committee or any agency to make

Section 796—Continued

Paragraph 2—

In re Gunn (1893), 50 Kan. 155, 32 Pac. 470.

Paragraph 3—

Sullivan v. Hill (1913), 73 W. Va. 49, 79 S.E. 670.

Paragraph 4—

Ex parte Lawrence (1897), 116 Cal. 298, 48 Pac. 124.

Paragraph 5—

Jefferson, Sec. XI.

inquiry into the private affairs of a citizen except to accomplish some authorized end.

2. The legislature has no right to conduct an investigation for the purpose of laying a foundation for the institution of criminal proceedings, for the aid and benefit of grand juries in planning indictments, or for the purpose of intentionally injuring such persons or for any ulterior purpose.

3. A state legislature in conducting any investigation must observe the constitutional provisions relating to the enjoyment of life, liberty and property.

4. An investigation instituted for political purposes and not connected with intended legislation or with any of the matters upon which a house should act, is not a proper legislative proceeding and is beyond the authority of the house, or legislature.

5. When a committee is appointed by resolution to make an investigation and the object of the investigation, as shown by the resolution, is not a proper legislative object but is to establish an extraordinary tribunal for the trial of judicial and other officers, the duties imposed on the commission being strictly judicial and not ancillary to legislation, the committee has no legal status.

Section 797—Continued

Paragraph 1—

Greenfield v. Russel (1920), 292 Ill. 392, 127 N.E. 102; *Attorney General v. Brissenden* (1930), 271 Mass. 172, 171 N.E. 82; *Ex parte Hague* (1929), 105 N.J. Eq. 134, 147 Atl. 220; *In re Barnes* (1912), 204 N. Y. 108, 97 N.E. 508.

Paragraph 2—

Kilbourn v. Thompson (1840), 103 U. S. 168, 26 L. Ed. 377; *Greenfield v. Russel* (1920), 292 Ill. 392, 127 N.E. 102; *Ex parte Hague* (1929), 105 N. J. Eq. 134, 147 Atl. 220; *Attorney General v. Brissenden* (1930), 271 Mass. 172, 171 N.E. 82.

Paragraph 3—

Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82.

Paragraph 4—

Keeler v. McDonald (1885), 99 N. Y. 463, 2 N.E. 615.

Paragraph 5—

Commonwealth v. Costello (1912), 21 Pa. Dist. 232.

6. A governmental "fishing expedition" into the papers of a private corporation on the possibility that they may disclose evidence of crime is contrary to the first principles of justice and an intention to grant the power must be expressed in most explicit language.

7. The investigatory power of a legislative body is limited to obtaining information of matters which fall within its proper field of legislative action.

Sec. 798. Method of Investigation by a Legislative Body

1. The legislative arm of government is not to be restricted in the exercise of the power of inquiry by the fact that methods and processes, judicial or quasi-judicial in character, are employed in the course of the inquiry; and it is immaterial whether the power of inquiry is to be exercised by a state or a federal legislative body, or whether in the exercise of that power the legislative arm of the government is acting under or by virtue of granted or reserved authority, or what the particular constitutional limitations may be which separate legislative from judicial functions of government and which forbid the trespass of the one on the domain of the other.

2. Legislative bodies, by the mere employment of methods of procedure which resemble those employed or required in judicial proceedings, are not to be held to be engaged in the exercise of a judicial function and

Section 797—Continued

Paragraph 6—

Federal Trade Commission v. American Tobacco Company (1924), 264 U. S. 298.

Paragraph 7—

U. S. v. Owlett (1936), 15 F. Supp. 736.

Section 798—

Paragraph 1—

In re Battelle (1929), 207 Cal. 227, 277 Pac. 725; Briggs v. MacKellar (1855), 2 Abb. Pr. (N. Y.) 30; Kilbourn v. Thompson (1890), 103 U. S. 168, 26 L. Ed. 377.

to be thereby trenching upon the area exclusively assigned to the judicial department of the state government.

3. By uniform custom, more or less rigidly adhered to, every official inquisition has from the earliest times made use of procedural methods which resemble those obtaining in judicial tribunals. This is because, in the nature of things, as exemplified by human experience, such methods have been found to furnish the surest means of arriving at the truth of the particular matter involved in the inquiry. It does not follow, however, that legislative bodies or administrative agencies or municipal organizations or executive officials, by the mere employment of methods of procedure which resemble those employed or required in judicial tribunals, must be held to be engaged in the exercise of a judicial function.

4. Where the legislature has constitutional power to institute an investigation the manner of conducting such investigation rests on the sound discretion of the legislature.

5. Hearings of a board of trustees of a village are not circumscribed by the evidentiary rules against hearsay.

Sec. 799. Legislative Investigating Committees

See also Sec. 564, Investigation of Charges Against Members

1. In American legislatures, the investigation of public matters before committees, preliminary to legislation or with the view of advising the house which

Section 798—Continued

Paragraph 2—

In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.

Paragraph 3—

In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.

Paragraph 4—

In re Falvey (1836), 7 Wis. 528.

Paragraph 5—

Dubato v. Board of Trustees of Incorporated Village of Bayville (1937), 166 N. Y. S. 2d 971.

appointed the committee, is a parliamentary usage as well established as it is in England, and the right of either house to compel witnesses to appear and testify before its committees and to punish for disobedience has been frequently enforced.

2. The legislature may proceed to make any investigations within its authority, by authorized committees of one or both houses. The houses can act jointly in appointing a committee or either house can act alone.

3. It is a common procedure for committees of local legislative bodies to be appointed to make investigations, take evidence, and report to the body concerning pending and contemplated legislation, and for other purposes relating to the functions of the body.

4. The legislative power of a state being vested in the two houses of the legislature, such bodies may create committees or even commissions by concurrent resolutions as well as by act and may confer upon them such power as they are not prohibited by express provision of the constitution from conferring.

5. Powers delegated by the legislature or either house to a committee by a simple resolution cease with the adjournment sine die of the legislature. But a legis-

Section 799—Continued

Paragraph 1—

Briggs v. MacKellar (1855), 2 Abb. Pr. (N. Y.) 30.

Paragraph 2—

Ex parte Bunkers (1905), 1 Cal. App. 61, 81 Pac. 748; *Dickinson v. Johnson* (1915), 117 Ark., 582, 176 S.W. 116; *Attorney General v. Brissenden* (1930), 271 Mass. 172, 171 N.E. 82; *People v. Keeler* (1883), 99 N. Y. 463, 2 N.E. 615; *Ex parte Dalton* (1886), 44 Ohio St. 142, 5 N.E. 136; *Robertson v. Peeples* (1919), 120 S. C. 176, 115 S.E. 300; *Terrell v. King* (1929), 118 Tex. 237, 14 S.W. 2d 786; *State v. Frear* (1909), 138 Wis. 173, 119 N.W. 89.

Paragraph 3—

State v. Milwaukee (1914), 157 Wis. 305, 147 N.W. 56; *Hendricks v. Carter* (1918), 21 Ga. App. 127, 94 S.E. 807.

Paragraph 4—

People v. Buckner (1920), 185 N. Y. Supp. 459; *Terrell v. King* (1929), 118 Tex. 237, 14 S.W. 2d, 786; *People v. Milliken* (1906), 185 N. Y. 35, 77 N.E. 872.

lature may invest its committees with power to function after the adjournment of the session; and where each house can act separately, the joint act of both houses is not required to set up a committee which can continue to function after adjournment.

6. A legislative investigating committee may not delegate its powers of investigation to one of its members without authority granted in the resolution appointing the committee.

7. Testimony before a committee should be taken down for the information of the house.

8. A legislator's service on an interim committee appointed pursuant to a statute duly passed for the purpose of investigating and reporting to the next legislature, would not be violative of a constitutional prohibition against occupation by legislators of any other office, trust or employment.

Sec. 800. Witnesses in Legislative Investigations

See also Sec. 797, Limitations on Right of a Legislative Body to Investigate.

1. By the common parliamentary law, a legislative body may compel the attendance of all persons as witnesses in regard to any subject on which it has power to act, and into which it has instituted an investigation.

Section 800—Continued

Paragraph 5—

Fergus v. Russel (1915), 270 Ill. 304, 110 N.E. 130; *People ex rel. Hastings v. Hofstadter* (1932), 358 N. Y. 425, 180 N.E. 106; *In re Impeachment* (1913), 22 Pa. Dist. 833; *see also Ex parte Caldwell* (1906), 61 W. Va. 49, 55 S.E. 910, 10 L. R. A. (N. S.) 172.

Paragraph 6—

In re Leach (1922), 232 N. Y. 600, 19 N. Y. Supp. 135, 134 N.E. 588.

Paragraph 7—

Jefferson, Sec. XIII.

Paragraph 8—

Petition of Special Assembly Interim Committee etc., (1939), 43 Cal. 2d 497, 90 Pac. 2d 304.

Section 800—

Paragraph 1—

Ex parte D. O. McCarthy (1866), 29 Cal. 395; *Ex parte Bunkers* (1905), 1 Cal. App. 61, 81 Pac. 748; *Hendricks v. Carter* (1918), 21 Ga. App. 527.

2. The power of a state legislative body to compel witnesses to testify in aid of investigations is an attribute of the power to legislate and follows as an essential implication.

3. When witnesses are brought before either branch of the legislature, they may be compelled to testify by process of contempt, when without legal cause they refuse to do so.

4. Witnesses before a legislative body or its committee need not be sworn, unless there is some provision of law or of the constitution authorizing it, but give their testimony under the penalty of being adjudged guilty of contempt, and punished, if they testify falsely.

5. When any person is examined before a committee, or at the bar of the house, any member wishing to ask the person a question must address it to the presiding officer, who puts the question to the person. If the propriety of the question be objected to, the presiding officer should direct the witness, counsel, and parties to withdraw, for no question can be moved or put or debated while they are there. Sometimes the questions are previously settled in writing before the witness enters.

Section 800—Continued

94 S.E. 807; *In re Gunn* (1893), 50 Kan. 155, 32 Pac. 470; *Attorney General v. Brissenden* (1930), 271 Mass. 172, 171 N.E. 82; *State v. Brewster* (1916), 89 N. J. L. 654, 99 Atl. 338; *Briggs v. MacKellar* (1855), 2 Abb. Pr. (N. Y.) 30; *Ex parte Dalton* (1886), 44 Ohio St. 142, 5 N.E. 136; *Sullivan v. Hill* (1913), 73 W. Va. 49, 79 S.E. 670.

Paragraph 2—

Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82.

Paragraph 3—

Ex parte D. O. McCarthy (1866), 29 Cal. 395; *Attorney General v. Brissenden* (1930), 271 Mass. 172, 171 N.E. 82; *Briggs v. MacKellar* (1855), 2 Abb. Pr. (N. Y.) 30; *In re Gunn* (1893), 50 Kan. 155, 32 Pac. 470; *Ex parte Dalton* (1886), 44 Ohio St. 142, 5 N.E. 136; *Sullivan v. Hill* (1913), 73 W. Va. 49, 79 S.E. 670.

Paragraph 4—

Ex parte D. O. McCarthy (1866), 29 Cal. 395.

Paragraph 5—

Jefferson, Sec. XIII.

6. A member, in his place, may give information to the house of what he knows of any matter under hearing at the bar.

7. Either house may request, but not command, the attendance of a member of the other. In case a member refuses to attend or testify, the house desiring his testimony may make the request by message to the other house, expressing clearly the purpose of the attendance.

8. If either house have occasion for the presence of a person in custody of the other, they may ask the other house for the custody of the person.

Sec. 801. Compelling Witnesses to Attend and Testify.
Power to Punish for Contempt

1. Each house of the legislature may punish breaches of its authority when they are committed in its presence, and may equally punish a witness for contempt of the house for his refusal to appear or testify before a properly empowered committee or to produce books and papers.

2. The power of a house of a state legislature to punish a person for contempt can only be exercised in strict conformity with the rules of procedure which the laws

Section 801—Continued

Paragraph 6—

Jefferson, Sec. XIII.

Paragraph 7—

Jefferson, Sec. XIII.

Paragraph 8—

Jefferson, Sec. XIII.

Section 801—

Paragraph 1—

Ex parte McCarthy (1866), 29 Cal. 395; *In re Gunn* (1893), 50 Kan. 155, 32 Pac. 470; *Burnham v. Morrissey* (1859), 14 Gray (Mass.) 226; *Lowe v. Summers* (1897), 69 Mo. App. 637; *In re Barnes* (1912), 204 N. Y. 108, 97 N.E. 508; *Keeler v. McDonald* (1855), 99 N. Y. 463, 2 N.E. 615; *Ex parte Dalton* (1886), 44 Ohio St. 142, 5 N.E. 136; *In re Impeachment* (1913), 22 Pa. Dis. 833; *In re Falvey* (1856), 7 Wis. 528; *In re Battelle* (1929), 207 Cal. 227, 277 Pac. 725.

of the state provide as a prerequisite to the validity of an adjudication of contempt.

3. A statute empowering either house to imprison a contumacious witness is not in excess of legislative power. Where a witness refuses to answer proper questions propounded by an investigating committee, it has been held to be criminal contempt.

4. Witnesses cannot be punished for contempt before a legislature unless the matters inquired into are within the jurisdiction of the legislature. A witness before a court or any other inquisitorial body who is otherwise orderly and respectful cannot be adjudged guilty of contempt committed in the presence of such tribunal for his failure or refusal to answer any question or to produce any record, book or paper, unless the order so adjudging him guilty of contempt contains an express recital of the facts affirmatively showing not only the precise question which he has declined to answer, or the precisely specified books or papers which he has refused to produce, but also affirmatively setting forth the facts which show the materiality and pertinency of each of these forms of evidence to the issue before the court or tribunal.

5. In order to authorize a conviction under a statute making it a misdemeanor for a witness in an investigation before a legislative committee to refuse to produce documents in his possession, it must appear that the documents demanded are material to the inquiry.

Section 801—Continued

Paragraph 2—

In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.

Paragraph 3—

People v. Keeler (1895), 99 N. Y. 463, 2 N. E. 615; *Ex parte Wolters* (1912), 64 Tex. Cr. 238, 144 S. W. 531.

Paragraph 4—

Ex parte Hague (1930), 105 N. J. Eq. 134, 150 Atl. 322; *In re Battelle* (1929), 207 Cal. 227, 277 Pac. 725.

Paragraph 5—

People v. Foster (1923), 236 N. Y. 610, 142 N. E. 304; *In re Battelle* (1929), 207 Cal. 227, 277 Pac. 725; *Federal Trade Commission v. American Tobacco Co.* (1924), 264 U. S. 298.

6. The right to compel a witness to produce books and papers before a legislative committee is determined by whether their production is necessary to the inquiry which it is conducting, and the production of papers material to an inquiry cannot be refused merely because they are private.

7. An examination of the history of the English Parliament and the decisions of the English courts show that the power of the House of Commons, under the law and customs of Parliament, to punish for contempt rests upon principles peculiar to it and not upon any general rule applicable to all legislative bodies.

8. No expressed power to punish for contempt was granted to the houses of Congress except the power to deal with contempt submitted by its own members (Const. Art. I, Sec. 5). The houses have implied power to deal directly with contempt so far as necessary to preserve and exercise legislative authority especially granted, it being, however, a power of self preservation. It is a power to prevent acts which inherently prevent or obstruct the discharge of legislative duty.

9. The powers of a local legislative body to punish for contempt must be expressed clearly by constitution or statute. Such powers cannot be implied or inferred.

10. A legislative house may refuse to a party, summoned before it as a witness, the aid of counsel when

Section 801—Continued

Paragraph 6—

In re Barnes (1912), 204 N. Y. 108, 97 N. E. 508; *Burnham v. Morrissey* (1859), 14 Gray (Mass.) 226; *People v. Foster* (1923), 236 N. Y. 610, 142 N. E. 304.

Paragraph 7—

Kilbourn v. Thompson (1880), 103 U. S. 168, 26 L. Ed. 377; *Lowe v. Summers* (1897), 69 Mo. App. 637; *Marshall v. Gordon* (1917), 243 U. S. 521.

Paragraph 8—

Marshall v. Gordon (1917), 243 U. S. 521.

Paragraph 9—

State v. Fitzgerald (1915), 131 Minn. 116, 154 N. W. 750.

charged with contempt in not answering questions.

Sec. 802. Summons, Subpoenas and Warrants

1. A legislative body or a committee, when acting within the scope of its authority to conduct an investigation, may summon and examine witnesses, require the production of and examine books, records and papers.

2. The law may make it a penal offense for a person to fail to appear before a legislative committee on process, regular on its face, issued by the chairman of the committee under general authority conferred upon him by the committee, either expressly or by parliamentary usage, either with or without specific authority in the particular case.

3. Where a committee is authorized to subpoena witnesses, the chairman of the committee in conjunction with its counsel may select the names and number of witnesses for attendance at each session, and the chairman may sign the summons for each witness. Subpoenas should not be issued in blank.

4. A summons by the committee ordering a witness to appear before a joint committee of the two houses, may be signed by the chairman of the committee.

5. A subpoena for attendance of a witness is not vitiated as to the necessity of the attendance of a witness

Section 801—Continued

Paragraph 10—

Ex parte D. O. McCarthy (1866), 29 Cal. 395.

Section 802—

Paragraph 1—

Ex parte Bunkers (1903), 1 Cal. App. 61, 81 Pac. 748; *Ex parte Dalton* (1886), 44 Ohio St. 142, 5 N.E. 136.

Paragraph 2—

State v. Brewster (1916), 89 N. J. L. 653, 99 Atl. 338; *People v. Foster* (1923), 236 N. Y. 610, 142 N.E. 304; *Sullivan v. Hill* (1913), 73 W. Va. 49, 79 S.E. 670; *In re Chapman* (1897), 166 U. S. 661, 41 L. Ed. 1154.

Paragraph 3—

State v. Scott (1916), 89 N. J. Eq. 726, 99 Atl. 342; *Jefferson*, Sec. XIII.

Paragraph 4—

Sullivan v. Hill (1913), 73 W. Va. 49, 79 S.E. 670.

by the inclusion of illegal requirements for the production of documents.

6. When a subpoena duces tecum has been issued under statutory authority showing that the purpose of the examination was within the scope of the inquiry authorized, the court cannot cancel the subpoena nor enjoin the issuance of any further subpoena.

7. When a witness lawfully summoned refuses to appear, a warrant may be issued to compel his attendance.

8. No affidavit charging contempt need be filed before a house to authorize it to issue its warrant to arrest a contumacious person who refuses to testify before one of its committees. The written report of the committee is sufficient authority for the issuance of the warrant.

9. When a prisoner of the State of New York was taken by the sergeant-at-arms of the House of Representatives under a warrant issued by said house, it is not an escape and the state officer was not liable for his release.

10. A person disobeying a subpoena of a legislative committee may be apprehended and brought before the committee by a sheriff under a warrant issued to him, and either prosecuted for a misdemeanor under a statute for failure to obey the subpoena or punished for contempt by the legislature, but he cannot be punished

Section 802—Continued

Paragraph 5—

Ex parte Hague (1929), 104 N. J. Eq. 31, 145 Atl. 618.

Paragraph 6—

In re Martens (1919), 180 N. Y. Supp. 171.

Paragraph 7—

Ex parte Hague (1929), 105 N. J. Eq. 134, 147 Atl. 220; *Wilkins v. Willet* (1878), 40 N. Y. (1 Keyes) 521, 4 Abb. Dec. 596; *Ex parte Caldwell* (1906), 61 W. Va. 49, 55 S.E. 910.

Paragraph 8—

Lowe v. Summers (1897), 69 Mo. App. 637.

Paragraph 9—

Wilkins v. Willet (1879), 40 N. Y. (1 Keyes) 521, 4 Abb. Dec. 596.

by the judiciary for contempt.

11. A writ of prohibition cannot be used to prevent an administrative or legislative body from proceeding with an investigation.

12. Service of a subpoena or the execution of a warrant requiring attendance before a legislative committee is not "an arrest" within statute exempting members of the legislature from arrest.

13. Warrants, subpoenas, etc., issued during recess of Congress are signed only by authority specially given. The speaker also certifies cases of contumacious witnesses for action by the court.

14. Witnesses summoned to appear before a city council are entitled to definite notice of the time and place of the meeting.

Sec. 803. Right of Investigating Committees to Sit Between Sessions.

See also Section 622, Committees Functioning During Recess or After Adjournment.

1. A legislative committee may be created by statute, authorized to sit during the interim between sessions for any proper purpose, empowered to take testimony, compel attendance of witnesses and punish for contempt and report its findings to the next session.

2. A committee for the purpose of obtaining informa-

Section 802—Continued

Paragraph 10—

People ex rel. Hastings v. Hofstadter (1932), 258 N. Y. 425, 160 N.E. 106.

Paragraph 11—

People v. Milliken (1906), 185 N. Y. 35, 77 N.E. 872.

Paragraph 12—

People v. Hofstadter (1932), 258 N. Y. 425, 160 N.E. 106.

Paragraph 13—

U. S. House Rule 1, 80th Congress, note 626.

Paragraph 14—

Headricks v. Carter (1918), 21 Ga. App. 527, 94 S.E. 807.

Section 803—

Paragraph 1—

State v. Yelle (1947), 29 Wash. 2d 68, 185 Pac. 2d 723.

tion concerning proposed legislation and reporting back its findings, with the power to sit during a session or during a constitutional recess between parts of the session may be authorized by a single house resolution or by concurrent resolution.

3. Unless authorized by the constitution, neither house of the legislature can lawfully appoint by single house resolution a committee with power to sit after adjournment sine die.

4. A fact-finding committee which was appointed by a single house resolution during a regular session of the legislature, has no legal authority to sit after the adjournment of the legislature sine die.

5. A legislature cannot by concurrent resolution lawfully create a committee with power to sit after adjournment.

6. The fact that interim committees had been appointed by single house resolutions and had theretofore carried on without objection, was not determinative of whether the legislature by single house resolution might lawfully create an investigating fact-finding committee with power to function after adjournment sine die.

Section 803—Continued

Paragraph 2—

Petition of Special Assembly Interim Committee, etc. (1939), 13 Cal. 2d 497, 90 Pac. 2d 304.

Paragraph 3—

Petition of Special Assembly Interim Committee, etc. (1939), 13 Cal. 2d 497, 90 Pac. 2d 304.

Paragraph 4—

Petition of Special Assembly Interim Committee, etc. (1939), 13 Cal. 2d 497, 90 Pac. 2d 304.

Paragraph 5—

Petition of Special Assembly Interim Committee, etc. (1939), 13 Cal. 2d 497, 90 Pac. 2d 304.

Paragraph 6—

Petition of Special Assembly Interim Committee, etc. (1939), 13 Cal. 2d 497, 90 Pac. 2d 304.

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AS24.25.010 DOCUMENT= 1 OF 8
CITATION Sec. 24.25.010.
CATCH LINE

ISSUANCE AND FORM OF SUBPOENA.

TEXT

(a) A subpoena requiring the attendance of a witness before either house of the legislature may be issued by the president or the speaker.

(b) A subpoena requiring the attendance of a witness before a standing or special committee of the legislature may be issued by the chairman of a committee when authorized to do so by a majority of the membership of the committee and with the concurrence of the president or the speaker, or with the concurrence of the house or the senate.

(c) A subpoena requiring the attendance of a witness before an interim committee established by either house of the legislature, or by both, may be issued by the chairman of a committee when authorized to do so by a majority of the membership of the committee and with the concurrence of the president or the speaker.

(d) The subpoena is sufficient if

(1) it states before whom the proceeding is held;

(2) it is addressed to the witness;

(3) it requires the attendance of the witness at a time and place certain;

(4) it is signed

(A) by the president or the speaker under (a) of this section, or

(B) by the committee chairman with the concurrence of the president or the speaker under (b) and (c) of this section.

(e) This section does not apply to the Legislative Council nor to the Legislative Budget and Audit Committee.

AS24.25.020 DOCUMENT= 2 OF 8
CITATION Sec. 24.25.020.
CATCH LINE

SERVICE OF SUBPOENA.

TEXT

A person over the age of 19 years who is competent as a witness in the state courts may serve the subpoena. His affidavit that he delivered a copy to the witness is evidence of service.

AS24.25.030 DOCUMENT= 3 OF 8
CITATION Sec. 24.25.030.
CATCH LINE

DISOBEYING SUBPOENA OR REFUSING TO TESTIFY.

TEXT

If a witness neglects or refuses to obey a subpoena, or neglects or refuses to testify or to produce upon reasonable notice any material and proper books, papers or documents in his possession or under his control, the senate or house of representatives may by resolution entered on its journal commit him for contempt. If contempt is committed before a committee, the committee shall report the contempt to the senate or house of representatives, as the case may be, for such action as may be considered necessary.

AS24.25.040 DOCUMENT= 4 OF 8
CITATION Sec. 24.25.040.

CATCH LINE

ARREST FOR DISOBEDIENCE TO SUBPOENA.

TEXT

A witness who neglects or refuses to attend in obedience to subpoena may be arrested by the sergeant-at-arms and brought before the senate or house of representatives, as the case may be. The only warrant or authority necessary authorizing arrest is a copy of a resolution of the senate or house of representatives signed by the president of the senate or speaker of the house of representatives, as the case may be, and countersigned by the secretary of the senate or the clerk of the house of representatives, as the case may be.

AS24.25.050 DOCUMENT= 5 OF 8
CITATION Sec. 24.25.050.

CATCH LINE

WITNESS FEES AND MILEAGE.

TEXT

A person appearing before either house, or both, or a legislative committee in response to a subpoena is entitled to \$20 for each day's attendance, and for the time necessary in coming and returning to his place of residence and mileage at the rate of 15 cents a mile for the distance traveled in going to and returning from the place of attendance. The witness fee and mileage fee shall be paid out of the state treasury upon presentation of a certificate of attendance and mileage due, signed by the presiding officer of the house which authorized issuance of subpoena.

AS24.25.060 DOCUMENT= 6 OF 8
CITATION Sec. 24.25.060.

CATCH LINE

OATH AND PENALTY FOR VIOLATION OF OATH.

TEXT

The president of the senate and speaker of the house of representatives and the chairman of every committee of either body may administer an oath to a witness appearing before the respective bodies. A person who wilfully swears or affirms falsely concerning any matter material to the subject under investigation or inquiry is guilty of perjury and upon conviction is punishable by imprisonment for not less than one year nor more than five years.

AS24.25.070 DOCUMENT= 7 OF 8
CITATION Sec. 24.25.070.

CATCH LINE

GRANT OF IMMUNITY ON CLAIM OF PRIVILEGE OF SELF-INCRIMINATION.

TEXT

(a) A person called as a witness before the senate, house of representatives, or a committee of either or both, who refuses to answer any question or to produce any book, paper or document relating to the matter under inquiry, on the ground that the answer or the production may tend to incriminate him, may be granted immunity from punishment for the offense to which the question or evidence relates by resolution of the house which is conducting the inquiry. The resolution shall be entered upon its journal, and the witness may then be compelled to answer the question or produce the evidence.

(b) If a witness is granted immunity and compelled to testify or produce evidence after claiming the privilege of self-incrimination, he may not thereafter be prosecuted in any court for the offense to which the question or evidence relates.

AS24.25.080 DOCUMENT= 8 OF 8

CITATION Sec. 24.25.080.

CATCH LINE

PUNISHMENT FOR DISOBEDIENCE TO SUBPOENA OR REFUSAL TO TESTIFY.

TEXT

A person subpoenaed as provided in this chapter who fails, neglects or refuses to attend at the time and place where his presence is required, or fails, neglects or refuses to produce the books, papers, or instruments or other evidence designated in the subpoena, or who having attended in response to the subpoena, or having appeared voluntarily, refuses to testify as to any material and proper matter within the power of the senate, house of representatives, or a committee to investigate, upon conviction, is punishable by a fine of not less than \$100 nor more than \$500, or by imprisonment for not less than 30 days nor more than six months.

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

27 March, 1984

Representative Mae Tischer
Chairman, HESS Committee
House of Representatives
118 Capitol
Juneau, Alaska 99811

Dear Representative Tischer:

At the recent House Judiciary Committee hearings on House Bill No. 588, you may recall that Mr. Bernie Holland appeared and presented a brief, capsulized testimony depicting wantonly unjust, callous, and irresponsible practices in the administrative proceedings within the Department of Health and Social Services.

Mr. Holland's testimony, as well as that of the other witnesses who appeared before the Committee on that occasion, would indicate that further investigations are certainly warranted to attempt to alleviate any malpractices in the proceedings of that department. I feel that it would be a grave disservice to Mr. Holland and the others not to pursue this matter further.

I would urge you to instigate these hearings in your committee as soon as is practicable. I am,

Sincerely yours,

A handwritten signature in dark ink, appearing to be "Charlie Bussell", written over the typed name.

Representative Charlie Bussell
Chairman, House Committee on Judiciary

/cl

cc: Representative Mike Davis
Representative Peter Goll
Representative Niilo Koponen
Representative Terry Martin
Representative Sam Pestinger
Representative Rick Uehling

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

Follow-Up Information
HESS Hearing March 19, 1984

This is to provide information regarding some issues which were raised in the hearing on the Division of Family & Youth Services on March 19, 1984, in Juneau. Chairperson Tischer indicated that she would call for a statewide investigation of the issues raised in the hearing. The Division of Family and Youth Services wants to assure the Committee members that we would welcome an opportunity to respond to such an investigation.

We wish to clarify that while the hearings in Anchorage, Soldotna and Fairbanks focussed on the topic of foster care, some of the witnesses at the March 19 hearing in Juneau were testifying to investigations of child abuse and neglect, including sexual abuse of children. We feel it is important to consider the issues of investigations of child abuse separately from the foster care issues.

In regards to the issue of investigations of child abuse and neglect, the Division has a mandated responsibility to carry out investigations as required under AS 47.17, whenever the Division receives a report of suspected child abuse or neglect. Removal of children from their homes is a last resort when the child's safety or welfare cannot be adequately safeguarded without removal. There are a number of safeguards against capricious action on the part of Division employees, including clear direction under Alaska statutes, Division policies and procedures, and, of course, judicial review of all actions taken to remove children from their homes. In addition, the Committee should be aware that when the alleged abuse is criminal in nature, as in the case of sexual abuse, the Division must involve law enforcement authorities to carry out their part of the investigation, and a coordinated investigation is usually the result. While one witness referred to the "wholesale destruction of families", we must point out that the issue of investigations of sexual abuse allegations is a very complex one which involves societal attitudes toward punishing sexual offenders, including required jail terms under AS 11.41.

We would also suggest that when witnesses are being so specific in their charges, it would be advisable to request that they sign releases of information to the Committee, so that we may provide additional facts demonstrating the total situation. As it is, we are unable to provide information which we feel would give the Committee a more balanced picture of what truly occurred. We recognize that to be involved in an investigation is a very painful, agonizing process. If the District Attorney decides to file criminal charges against a parent or parents we proceed from the assumption that parents are innocent until proven guilty; however, we must provide protection to a child until we can assure the child's safety in the home. Furthermore, in those situations in which criminal charges are not being filed, ensuring the child's safety is also paramount.

One witness testified to the inadequacy of foster care rates. He was aware that the Division is holding foster care rate hearings this week

across the State; but in conversation following the hearing, he stated he would not be in town on the date of the hearing. Therefore, he was requested to provide his information to the Division staff present and did so following the HESS hearing.

Two witnesses referred to a program being conducted in the schools in which their children felt they were being given the message that hugging is not acceptable. We are aware of the curriculum and know that the program makes a strong point that hugging between family members and children is fine. The program distinguishes between that and what is not acceptable, i.e., touching the child's private parts. However, since at least two witnesses referred to children having received the wrong impression, we will contact the School District and advise them of this problem.

We wish to clarify some facts regarding Mr. Holland's testimony about the complaint investigation of allegations of mistreatment of children in his foster home and subsequent hearing. He has asked for and the Committee is considering a special appropriation of \$13,000 owing to Mr. Holland's attorney. Following is a summary of significant facts in the Holland case:

Two youths in the Holland home complained about mistreatment. The Division investigated the allegations by interviewing a number of other youths currently or previously in care. The allegations of those youths were then presented to the Hollands for response and discussion. As the hearing officer pointed out on page 9 of the decision, "I believe there was sufficient information to justify meeting with the Hollands to discuss the allegations...They were nothing more than complaints made against the Hollands to which DFYS felt Hollands, in their own interest, should be provided an opportunity to respond. The Department did not represent to the Hollands that DFYS agreed with the allegations." Usually an investigation is resolved at this point; however, this is the first case where a foster parent has refused to discuss allegations. Mr. Holland insisted that the Department prove the allegations.

Because the Hollands had operated a foster home that had demonstrated prior substantial success in dealing with difficult foster children, the Department attempted to negotiate a settlement with the Hollands rather than to take the matter to hearings. The settlement broke down when the State refused to honor Mr. Holland's request to change the personnel evaluation of a licensing worker, who was Mr. Holland's friend. Eventually the case was brought to a hearing for resolution.

At the hearing the State asked the hearing officer to rule on license issuance or revocation based on the evidence presented at the hearing. A three week hearing was held, one of the longest administrative hearings in State history. The proposed ruling of the hearing officer was adopted. The hearing officer ruled that none of the 13 allegations could be substantiated because the State had based its findings on the interviews, written statements, and memoranda submitted in the case

rather than having each child called as witness and being subjected to cross examination. In the hearing, Mr. Holland attempted to prove that the Department had a conspiracy against him. On page 7 of the decision, the hearing officer wrote, "Mr. Holland attempted to show that because of that complaint, and others to the Ombudsman, there was a conspiracy within DHSS to revoke his foster home license or to drive him out of the program. I was not persuaded by Mr. Holland's conspiracy theory in the prior proceeding, and I am no more impressed with it in this proceeding." And on page 9, "Mr. Holland's position at the hearing was that DFYS had intentionally prepared false allegations against him...There is no meaningful evidence to support this theory." The hearing officer also stated on page 13, "While it certainly would have been in Mr. Holland's best interest to have discussed the allegations in detail, and thereby possibly have disposed of all of them without the time and expense of a hearing, the regulations and statutes did not require that he do so." Finally, the hearing officer concluded that Department concerns could be remedied through 7 AAC 50.360 which states, "The licensing of a foster home by the Division does not...obligate the State or any child placement agency to place or maintain any child in the home." The time taken by the State to present its case was three days. The remainder of the three week period for the hearing was taken by Mr. Holland and his attorney. The Department believes that these facts are significant and should be considered by the Committee when considering a special appropriation for Mr. Holland.

At the Fairbanks foster care hearing Michael L. Price, Director of the Division of Family and Youth Services, provided Committee members with a copy of all relevant documents on the Holland hearing including the State's closing arguments, Holland's closing arguments, the hearing officer's recommended decision and the Department's decision and order. Additional copies of those documents are available upon request.

Mr. Holland also claimed that the Department had taken no actions regarding the manner in which complaint investigations against a licensed foster home are handled. The Department is currently in the process of reviewing complaint investigation procedures through reviewing procedures in states that have exemplary programs, through two task forces composed of Division representatives and foster parents, one on licensing procedures and one on foster home licensing, and through arrangements with the Alaska Foster Parents Association to examine the Utah approach. Pending the outcome of these efforts, no definitive change is being instituted in licensing investigation procedures. Staff training was accomplished last May utilizing an expert trainer from Texas and additional staff training is planned this year.

Michael L. Price, Director
Division of Family and Youth Services

1 STATE OF ALASKA
2 DEPARTMENT OF HEALTH AND SOCIAL SERVICES
3 DIVISION OF FAMILY AND YOUTH SERVICES

3 In the matter of)
4 BERNIE AND MARY HOLLAND,)
5 a licensed foster home,)
6 respondents.) License No. 4190

7 TELEPHONE DEPOSITION OF
8 DANNY JOE HARRISON

9
10 APPEARANCES:

11 GREG COOK, Attorney for respondents
12 BRUCE BOTELHO, Assistant Attorney General, State of
13 Alaska

14 Date: May 3, 1983
15 Time: 1 p.m.

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JUDY JONES
586-6846

PROCEEDINGS

1
2 MR. COOK:

3 This is going to be the tape to be transcribed for a
4 telephone conference call. Today is Tuesday, May 3; the time
5 is 1 p.m. This call is being made pursuant to stipulation
6 between Bruce Botelho, Assistant Attorney General, State of
7 Alaska, and Greg Cook, counsel for Bernie Holland. We
8 will be taking a statement from Danny Harrison, who will be
9 calling from California. Mr. Botelho will participate via
10 teleconference from Anchorage, and will have an opportunity
11 to cross examine the witness. This is Greg Cook speaking,
12 operator.

13 OPERATOR:

14 Okay, and Mr. Botelho? Mr. Botelho? Just a moment,
15 sir. Mr. Harrison? Okay. Mr. Botelho?

16 MR. BOTELHO:

17 Yes.

18 OPERATOR:

19 Okay, and Mr. Harrison?

20 MR. HARRISON:

21 Hello.

22 OPERATOR:

23 Mr. Harrison, can you hear us?

24 MR. HARRISON:

25 Yes.

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OPERATOR:

Okay, fine. Okay, go ahead, everyone's on.

MR. COOK:

Danny, I can only read you very faintly, so I'm going to need you to speak loudly, please, and the same goes for Bruce. I read both of you, but very, very faintly. What I would like to do here is to swear you in as a witness, Danny, and then ask you some questions; and then it will be Bruce Botelho's turn to ask you some questions. Is that all right?

MR. HARRISON:

Yeah.

MR. COOK:

Okay, Danny, first, could you state for the record your name and address?

MR. HARRISON:

My name's Danny Joe Harrison, and my address is unknown.

MR. COOK:

Could you spell your last name, please?

MR. HARRISON:

H-A-R-R-I-S-O-N.

MR. COOK:

Thank you. And, Danny, Mr. Harrison, do you swear that the testimony you are about to give is the truth, the whole

1 truth, and nothing but the truth, so help you God?

2 MR. HARRISON:

3 Yes.

4 MR. COOK:

5 All right, then, we will proceed. Bruce, do you think
6 this meets with the procedural requirements that you will
7 demand?

8 MR. BOTELHO:

9 Well, first of all, is this conversation being
10 recorded?

11 MR. COOK:

12 Yes, it is. I have a tape recorder right next to the
13 phone, and that's another reason why I am asking each of you
14 to speak up; although, if you want to make an individual tape
15 recording of the conversation, as we discussed earlier, then
16 I would certainly have no objection to that.

17 MR. BOTELHO:

18 Let me also clarify: Is there a court reporter
19 present?

20 MR. COOK:

21 There is not a court reporter present, but that is how
22 we will have the tape transcribed, if you desire.

23 MR. BOTELHO:

24 And let me ask Mr. Harrison: He does not know his
25 address?

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MR. HARRISON:

Yeah, I don't know my address.

MR. BOTELHO:

Would you identify, essentially, what community you are located in right now?

MR. HARRISON:

Lake Isabella area.

MR. BOTELHO:

California?

MR. HARRISON:

Yes, sir.

MR. BOTELHO:

Okay.

MR. COOK:

Would you have any other questions, then, Bruce?

MR. BOTELHO:

Not at this point.

MR. COOK:

All right, then, fine. What I'd like to do, then, is proceed with a direct examination of Danny.

DIRECT EXAMINATION BY GREG COOK:

Q. Danny, were you ever a resident at the home of Bernie and Mary Holland?

A. Yes, I was.

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Q. And could you describe for me whether you were a visitor in that home, or were you placed there by the State?

A. I was placed there by the State.

Q. Were you a foster child?

A. Yes, sir.

Q. And how long did you reside with the Hollands, Danny?

A. I think it was just about a year, I think. Maybe a little longer than that.

Q. All right. I'd like to ask you some specific questions about the time that you spent in the Hollands' household. Can you tell me, please, whether or not either Bernie or Mary Holland yelled at you?

A. The only time that they ever yelled at me was -- well, they never really yelled at me; it was more like -- there was never really any yelling going around in the house. It was mostly just, you know, like Bernie would say something, and, like, if I didn't do it, then he, you know, he might say it again, you know, a little bit more -- you know, with a little bit more seriousness in his voice. But he's never yelled at me.

Q. I see. Did he ever direct vulgar and abusive language towards you?

A. No, he didn't.

Q. Did you ever hear him direct vulgar or abusive language

1 to any of the other foster children in the home?

2 A. No, he didn't.

3 Q. How would you describe Mr. Holland's relations with the

4 foster children who were placed at their home?

5 A. Well, I think -- my personal opinion is, is that Bernie

6 was more of a father to me than, you know, my own own dad

7 is, you know. Him and Mary, they treated me really

8 super good, and they helped me out, really, quite a

9 bit.

10 Q. Danny, did Bernie ever hit you with a stick, or a

11 ruler, or a yardstick, or his hands?

12 A. No, he didn't.

13 Q. Did Mary Holland ever hit you with a stick of any kind,

14 or with her hands?

15 A. No, she didn't.

16 Q. Danny, do you know if either Bernie or Mary hit any of

17 the other foster children with a stick or with their

18 hands?

19 A. No, he didn't.

20 Q. And does this apply to all of the time that you were

21 present in the Hollands' home?

22 A. Yes, sir.

23 Q. Danny, there was a statement that you once made, I

24 believe it was for Robert Danneker of the Division of

25

1 Family and Youth Service. And in that statement, it's
2 alleged that Bernie did hit you and other children with
3 a stick. Could you tell me a little bit about that
4 statement that you made?

5 A. The reason I made that statement was because I had had
6 myself thrown in jail, but I was unaware that I was the
7 one that did it. I thought that Bernie had just put me
8 back in jail for some other strange reason that I
9 didn't know of. But I had broken some rules that the
10 court had given me, and he had placed me back in jail.
11 And I got mad at Bernie, so that was the reason for
12 these statements that I had made, and they're all lies.

13 Q. Did you retract the written statement that you made,
14 shortly after you made it?

15 A. Yes, sir. I made a verbal retraction. I said -- I
16 went down to Bob Danneker, and I asked him, I said, I
17 want to retract my statements, because they're all
18 lies. And he said, no, you cannot do that. And so I
19 went back later on and wrote one up myself and dropped
20 it off there and had it signed by their secretary; and
21 I have copies of it.

22 Q. Danny, did you also make out an affidavit for Fred
23 Baxter that describes the original statement you made
24 as being untrue?

25 A. Which statement's that?

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1 Q. I have an affidavit here that's on stationery from
2 Bernie's other attorney, a fellow by the name of Fred
3 Baxter. And in that you also state, just as you've
4 stated here this morning, that your original charges
5 that Bernie hits kids were not true. Do you recall
6 making that affidavit?

7 A. Yes, I did.

8 Q. And do you recall going to see this Fred Baxter?

9 A. Yes, I do.

10 Q. And what did you tell Mr. Baxter at that time, Danny?

11 A. I just told him the same thing that I'm telling you
12 right now, that I revoked my statements, and that I was
13 told that I cannot, so I went down and had it redone
14 again; and I told them about me being put in jail, and
15 that I made up a bunch of lies, a bunch of accusations
16 against Bernie which are untrue. I just told him that.

17 Q. And could you tell me once again, please, what the
18 reason was that you made those statements in the first
19 place?

20 A. Well, it was because I had broken the law, according to
21 some checks that I had -- they're checks that you get,
22 unemployment checks. And I had -- I wasn't supposed to
23 do any kind of -- on my release -- I was released from
24 the juvenile jail out there, and when I was released,

25

1 the judge had my probation officer write up a whole
2 bunch of - about ten - rules that I was to follow,
3 completely; and I hadn't followed them. So I was
4 placed back into the -- detention.

5 Q. Thank you, Danny. I'd like to ask another series of
6 questions, please. While you were living at the
7 Hollands' home, did you have what you felt to be enough
8 space for your own personal belongings?

9 A. Completely.

10 Q. Could you provide me with a few facts that would help
11 me understand why you say that?

12 A. Well, because we got the whole basement, the attic --
13 enough rooms in there. I had plenty of room inside
14 that house.

15 Q. I see. Thank you, Danny. Is there any part of the
16 house that was off limits to you?

17 A. Yes. The middle floor, which Bernie and his wife live
18 on.

19 Q. Did you ever go into the Hollands' bedroom?

20 A. No, I didn't.

21 Q. Was that room accessible to you?

22 A. It was, but I never went in there, because it was a
23 rule of the house.

24 Q. Was that room generally kept locked, Danny?

25 A. Quite a bit of the time, yes, it was.

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1 Q. I see. Danny, were there some people living at the
2 Hollands' home, while you were there, who were not
3 foster children?

4 A. Yes, there was. There was one girl that was living
5 there who was -- who, I guess, had before been a foster
6 child, and she had been having problems, and so she
7 asked Bernie for some help, and Bernie, you know, was
8 helping her out.

9 Q. I see. Did this in any way interfere with Bernie or
10 Mary's ability to look after you?

11 A. No, it did not.

12 Q. Do you know whether or not it interfered with Bernie or
13 Mary Holland's ability to look after the other foster
14 children in the home?

15 A. No, not at all.

16 Q. Danny, some of these people - I think Lilly Maignok
17 (ph) was one and Gil Lucero was another who lived at
18 the Hollands' home - did any of these people share
19 sleeping quarters with you or the other foster kids?

20 A. Well, could -- like, what do you mean by sleeping
21 quarters?

22 Q. Same bedroom.

23 A. At one point, yes, yeah.

24 Q. Do you feel that this interfered in any way with the
25

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JUDY JONES
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Hollands' ability to provide good care?

1
2 A. No, not at all.

3 Q. And did these people participate in any of the family
4 meetings?

5 A. No, not really.

6 Q. Danny, did any of them participate in any of the trials
7 while you were there?

8 A. That's kind of hard to remember. It was mostly -- the
9 trials that we had and stuff were mostly for the kids
10 that were foster parents [sic] there.

11 Q. I see. Could you tell me, please, in your own words,
12 Danny, what are the trials?

13 A. You mean, what do they do?

14 Q. Yeah, that's right. What happens?

15 A. Well, like, if someone stays out after curfew, then,
16 instead of Bernie, you know, picking out a particular
17 punishment for them, like, say, you know, you're on
18 restriction, he'd let the kids decide what kind of
19 punishment they should have. And then, you know, we'd
20 all just, you know, decide on what, you know, they
21 should -- what should happen, like, should they be on
22 restriction for a month? Should they be on restriction
23 for a week? And we'd all take a vote, and then -- and
24 that's what happened.

25 Q. I see. And who had the authority to make the final

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decision, Danny?

A. Bernie did. Because sometimes it gets to the point where, like, a couple of people -- the sentence would be too light or be too strong, and then Bernie would have to say, you know, that's not right, because you guys -- you know, I mean, if someone stayed out, you know, twenty minutes past curfew and we gave them, you know, a year restriction, I mean, he'd have to say something about that.

Q. That makes good sense, Danny. What time did family meetings usually take place, please?

A. Between -- after dinner, which was around -- about seven-thirty, until about nine, at the most; and then sometimes we'd, stay up talking, you know, pretty late.

Q. One of the things the State has charged, Danny, is they have alleged that family meetings are held late at night, often lasting from eleven p.m. to two a.m. Could you tell me, please, whether in your experience, that is correct or not?

A. I can particularly remember that we've never had a meeting anywhere past nine o'clock, I'm almost sure of it. All the time that we -- we'd have a meeting, and then after the meeting's over, you know, maybe one or two people would go to bed because they have to get up

1 for work, and the rest of us'd just sit around and
2 talk, you know, and talk about things that happened and
3 everything, and joke around. And there was nobody that
4 had to stay awake, and everybody knew that, too. So
5

6 Q. Let me be sure that I understand you on this, Danny.
7 Did you say that there were no meetings called after
8 eleven o'clock?

9 A. No, no way.

10 Q. Did you ever call any family meetings late at night,
11 once, or at any other time?

12 MR. BOTELHO: (Indisc.)

13 elaborate on his testimony.

14 MR. COOK: Say it again,
15 please, Bruce?

16 MR. BOTELHO: I understand
17 that Mr. Harrison had not
18 completed his testimony when
19 you began to interrupt him
20 with another question.

21 Q. I apologize. Go ahead, Danny, and start up again, at
22 the beginning, please.

23 A. Of what -- of what you just asked me? Those (indisc.
24 -- simultaneous speech) ...

25 MR. BOTELHO: (Simultaneous

1 speech with Mr. Harrison) Mr.
2 Harrison, I understand that
3 you're about ready to state --
4 to elaborate on this testimony
5 about (indisc.).

6 A. ... at one time, there was a -- we did have a meeting,
7 and that was because at the time -- well, that was me
8 and one of the other kids, Mike Frawley (ph) that lived
9 there, were late one night, and we came home and it was
10 -- it wasn't a meeting, all it was was that we got up
11 and Bernie sat down and said, I want to know why.
12 Because everybody else was already awake. It was on a
13 Friday night or a Saturday night, and everybody was
14 already awake. And we all sat around and, you know, he
15 said, you know, why did you guys stay out that late?
16 And what happened was my car had broken down at the
17 time.

18 Q. I see. Danny, this may sound foolish, but when you
19 started out that sentence, Bruce and you were talking
20 at the same time, so I'm afraid that will come out as a
21 little garbled on the tape. Could you just start over
22 with that story again, and tell it from the top, so
23 that we've got a clean version of it for the tape,
24 please?
25

1 A. Yeah. What happened was, me and Mike Frawley had
2 stayed out late one night -- or not late, but you know,
3 were out in the valley of Juneau. And when we were
4 coming back, my car had broken down. And it was a
5 Friday or Saturday night - I don't remember - but
6 everybody was already awake, and when we got home, we
7 were late, past curfew, and Bernie, you know, got us
8 all to the table, since we were all already awake and
9 everything; and he asked us why we had -- you know, we
10 were late. And I told him that my car had broken down,
11 and that was the whole thing. That was the only
12 meeting that I can recall that was that late.

13 Q. I see. And Mike Frawley, was he another foster child
14 living in the Hollands' house?

15 A. Yes, sir, he was.

16 Q. I see, thank you. Danny, I'd also like to ask you
17 whether or not another charge is true. This charge
18 that the State has made reads as follows: It says that
19 Bernie Holland has belittled and used cruel and
20 derogatory remarks when describing a foster child to
21 other foster children, and to other persons who have
22 entered the foster home. I'd like to ask you in
23 particular, Danny, to your personal knowledge, has Mr.
24 Holland or Mrs. Holland ever belittled you?

25 A. I don't really understand what you mean by that.

- 1 Q. Have they ever called you names or been verbally
2 abusive with you?
- 3 A. Mary Holland's never called me any names at all. But
4 me and Bernie, like, joke around and stuff, but none of
5 it's serious.
- 6 Q. I see. Did you ever take offense at any of the things
7 Bernie said to you?
- 8 A. No, I don't.
- 9 Q. Did he ever use cruel and derogatory remarks towards
10 you?
- 11 A. The word, scam, which is just a joking word for me, I
12 guess.
- 13 Q. Did Bernie Holland call you Dan the Scam?
- 14 A. Yeah, he did.
- 15 Q. And could you explain to me what that term means to
16 you?
- 17 A. It just means that, like, I play games with people
18 quite a bit, you know, and I'm always trying to, you
19 know, scam things for myself and everything. It's just
20 -- it's just a joking name for me.
- 21 Q. I see. And do you ever use that name when you refer to
22 yourself; do you ever call yourself Dan the Scam?
- 23 A. Well, I have before, yes.
- 24 Q. I see. And do you think it's a cruel or derogatory
25

1 remark when you say it?

2 A. No, not at all.

3 Q. To your knowledge, did the other foster children think
4 it was cruel to use the word, Scam, referring to you?

5 A. No, none of the other kids really used that. It was
6 more of a -- like an inside, private joke between me
7 and Bernie, basically.

8 MR. BOTELHO: Object to the
9 form of the question.

10 MR. COOK: Could you elaborate
11 on that, please, Bruce?

12 MR. BOTELHO: Calls for a
13 hearsay answer.

14 Mr. COOK: Say again, please?
15 You're coming through real
16 faint.

17 MR. BOTELHO: It calls for a
18 hearsay answer.

19 MR. COOK: Thank you.

20 Q. Danny, Bruce has objected to that question, in that it
21 calls for a hearsay answer, and we have to note that
22 objection. In administrative proceedings, of course,
23 hearsay can be allowed by the hearing officer. So I'm
24 going to ask you to answer the question anyway, and
25 we'll let the hearing officer decide whether or not he

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wants to allow your answer to go on the record. Can you tell me then, please, Danny, whether or not the other kids in the home felt or seemed to feel that Scam was cruel or derogatory?

A. Like what do you mean? Like, did I think that the -- did they think that it was a real bad word, or something? Or did they know what it mean, or what?

Q. That's right, Danny. Was it your impression that when the other kids heard Bernie use the word, Scam, with you, was it your impression that the other kids thought that was a bad name?

A. No, not really.

Q. Thank you, Danny. I'm going to ask you some other questions that have appeared in the State's pleadings, that may surprise you. And please don't take offense at my use of these words. Did Bernie or Mary ever call you a shitbag?

A. No, they didn't.

Q. Did they ever call you worthless?

A. No, not really.

Q. Did they ever say anything that was like that to you?

A. No.

Q. Did they ever call any of the other kids filthy names?

A. No, he didn't.

1 Q. Did Mary ever do that?

2 A. No. Me and Bernie were pretty close to each other, you
3 know, and so, like, when you hear, like, that we'd
4 say stuff like that to each other - it wasn't even like
5 that - but, you know, say, (indisc.) joking around,
6 (indisc.) knows, unless someone else might have picked
7 it up as something bad, but to me and Bernie, we were
8 just joking around with each other.

9 Q. Thank you, Danny. Danny, are you aware that there were
10 firearms in the Hollands' home?

11 A. Not really. I know that Bernie had some when he had
12 the gun shop, you know, and the coin collections and
13 stuff, but other than that, no.

14 Q. I see. If I told you that Bernie had a gun in the
15 closet of his bedroom, would you know whether that was
16 a true statement or a false statement?

17 A. Could you repeat that again?

18 Q. Do you know, of your own personal knowledge, whether or
19 not Bernie Holland had a gun in the closet of his
20 bedroom, while you were a foster child in his home?

21 A. Did I know whether he had one?

22 Q. Yes.

23 A. I'm sure that he did, but I never really -- I don't
24 know for a fact or nothing.

25 Q. I see. Thank you. So just to clarify this, then, you

1 don't have any personal knowledge of whether he had
2 guns in his bedroom?

3 A. Right.

4 Q. Did you have access to the closet in Bernie's bedroom?

5 A. No, I did not.

6 Q. Okay. Thank you, Danny. I'd like to ask you some
7 questions now about Twiggy, Mickey Horchover. There
8 were some allegations made for a period of close to a
9 year that Bernie had misbehaved towards Twiggy, and had
10 grabbed her on the behind in order to get a cheap feel.
11 Do you know what the events in question are that gave
12 rise to that accusation?

13 A. It was mostly because when -- the way they got that
14 story about that was because when I was speaking to Bob
15 Danneker and I was really mad at Bernie, he'd say --
16 he'd say, well, has Bernie done any sexual things, you
17 know, and he was placing -- basically, he was making
18 suggestions into which I'd turn into -- like, he'd say
19 -- he'd say, well, has Bernie ever done this and this?
20 And I'd say, yeah, yeah, yeah, and I was agreeing to
21 anything, you know. And that's the way you guys came
22 up with that whole accusation, I guess.

23 Q. I see, Danny. So if I understand you correctly, then,
24 did Mr. Danneker suggest that there was some sexual
25

1 misbehavior going on, or did you suggest that?

2 A. He suggested it.

3 Q. Say again, please?

4 A. He suggested it.

5 Q. Thank you. And are those suggestions true at all?

6 A. No, not at all.

7 Q. Did Bernie ever behave in a sexually aggressive manner

8 towards any of the girls, including Mickey?

9 A. No.

10 Q. To the best of your knowledge, is there any truth to

11 the allegation that Bernie grabbed Mickey in order to

12 get a cheap feel?

13 A. Not at all. No way.

14 Q. Now, you stated earlier to me, Danny, that you thought

15 Mr. Danneker was making these suggestions to you.

16 Could you describe for me, please, why you said that?

17 A. Well, because -- okay, when we were sitting inside his

18 office, like, I was telling him what was going on and

19 everything in the house, right? Making up all these

20 lies and everything, you know? And I was -- you've got

21 to put yourself in the position that I was really super

22 mad at Bernie because I was in jail, all right? And so

23 I was on the point of where I'd say just about

24 anything, all right? And Bob Danneker was sitting

25

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1 there and he'd sit there and he'd say, well, you know,
2 did Bernie ever touch Mickey? And I'd say, you know,
3 oh, yeah, you know; but not -- I wasn't saying it in
4 the way that he was touching her, the way he was
5 suggesting it. Then he'd say, well, do you think he
6 was trying to get a cheap feel? And you know, and at
7 the time that I was mad, I was saying, yeah, yeah. But
8 it was untrue, totally.

9 Q. So if I understand you correctly, these phrases were *see 23*
10 fed to you by Mr. Danneker?

11 MR. BOTELHO: (Indiscernible -
12 end of first side of tape).

13 (OFF RECORD)

14 (ON RECORD)

15 MR. COOK: Thank you, Bruce.
16 I just had to switch tapes, so
17 if you'd be kind enough to
18 restate your objection, Bruce,
19 and then we'll see about an
20 answer. So, Bruce Botelho,
21 could you restate your
22 objection, please.

23 MR. BOTELHO: Are we on tape?

24 MR. COOK: Roger that.

25 MR. BOTELHO: One of the

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problems I have here: I try to make objections and I can't tell whether anybody's hearing them or not. I have a hunch this conference phone situation is not picking them up. I have to repeat it five or six times. My objection at the time was that it's an unfair leading of the witness, and to the form of the question.

MR. COOK: So you've objected that it's an unfair leading of the witness, and that's your objection to the form of the question, Bruce?

MR. BOTELHO: Right.

DIRECT EXAMINATION BY MR. COOK (continued):

Q. Danny, I'll rephrase that question, then, and ask it in this manner, and see if it is acceptable to Bruce this time. The statements or any allegations, rather, that Bernie engaged in sexual misconduct with girls at the Holland home, were those statements that originated

with you?

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A. You mean did they start with me?

2

Q. Yes.

3

A. No, they did not.

4

Q. Who suggested those statements, please, Danny?

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A. Bob Danneker.

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Q. And when did he suggest those to you, Danny?

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A. At the time that he was taking down the other stuff that I was saying to him.

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Q. Do you have any idea why he would make those suggestions, Danny?

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A. Because at the time -- I have no -- I don't know if he's got -- I don't know anything about, you know, Bob Danneker or Bernie liking each other or anything - I don't know nothing about that. But as far as I know, that -- when I was making the statements, he was just -- he would say that stuff and then I'd -- you know, at the time I was mad, so I don't know if he knew it or what, but I would say just about anything, and I'd agree with anything. If someone told me that he shoots people, I probably would have said that, too.

Q. Okay, thank you, Danny. Just a few final questions here, then, to close up. Did you ever play a game called slaps with Bernie?

A. Slaps?

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Q. Yeah. With your hands?

A. No, not that I remember.

Q. If you hold both hands in front of you, and then the other person tries to slap the hands, would that help jar your memory?

A. Let's see. I don't really recall doing that.

Q. Okay. That's fine, Danny.

MR. COOK: I have no further questions at this time. Bruce, if you'd like to ask your questions, I think I'll turn the witness over to you. And how does this sound for a procedure: Why don't you ask the question, and then before Danny answers, I will restate the question, using your words, so that we are certain that the tape recorder does pick it up.

MR. BOTELHO: No. Not acceptable.

MR. COOK: Okay, then go ahead on her, Bruce.

CROSS EXAMINATION BY MR. BOTELHO:

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Q. Mr. Harrison, how old are you?

A. Eighteen years old.

Q. When's your birthday?

A. 8/23/64.

Q. You understand you're under oath?

A. Yes, sir, I do.

Q. And do you know what the crime is when you fail to tell the truth?

A. Yes, sir, I do.

Q. What is it?

A. It's that -- well, it's lying. It's like perjury, I guess.

Q. That's right. And you know that's a felony in Alaska?

A. What's that?

Q. You know that's a felony in Alaska?

A. Yes, sir, I do.

Q. Okay. Now, to start out with, you've indicated that you were so mad that you were willing to tell the State anything to get back at Bernie. Is that right?

A. Yes, sir, I was at the time.

Q. Do you want to tell us why we should believe you today?

A. What's that?

Q. You want to tell us why we should believe you today?

A. You'd have no reason to. You got -- you have a choice:

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You either take my word for it or you don't. I'm not mad at Bernie now and I'd have no reason to make up lies about him like that, because I found out that I had gotten myself into trouble myself, and it wasn't Bernie after all.

Q. Where are you right now?

A. In California.

Q. Where specifically?

A. In Lake Isabella.

Q. And where in Lake Isabella?

A. I don't know my address down here.

MR. COOK: I'll object to the question as irrelevant there, please.

MR. BOTELHO: Your objection is not well taken. You can only object to the form of the question. All other objections are reserved.

Q. Where are you located?

A. In Lake Isabella.

Q. Where in Lake Isabella?

A. I don't know my address down here.

Q. Describe the building.

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A. It's a two-story house.

Q. Are you a fugitive at the moment?

A. What's that?

Q. Are you a fugitive?

A. Not that I know of.

Q. Where can we reach you next week?

A. I'd have to call you guys.

Q. Why?

A. Because the phone here that I use, I'm not allowed to receive any phone calls on it.

Q. What's the telephone number?

A. I can't give that out.

Q. You're under an oath, and I'm asking right now: Give us the telephone number.

MR. COOK: I'll object to the form of the question, and Mr. Harrison has answered the question, so this is asked and answered. You can't compel the witness to answer a question, Bruce.

MR. BOTELHO: I'll suspend the deposition on my own at this point, and will protest its use in the hearing. I find it

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unsatisfactory in any case,
but if I'm not going to get
the cooperation that I was
assured I'd get, I'll conclude
it at this point.

MR. COOK: Danny, if you want
to answer that question, you
may.

MR. HARRISON: What question
is he referring to?

Q. What is the telephone number you are calling from?

A. Sir, I cannot give the phone number out.

Q. Because you can't see it?

A. It's not that I can't see it. I am told that I'm not
supposed to give the phone number out.

Q. Why are you refusing to give it out?

A. It's not because of me; it's because of my parents.
That's the same reason I didn't give Bernie the phone
number, and I didn't give Greg Cook the phone number,
either. You know, because they could have easily
called me at one o'clock instead of me calling them at
one o'clock. The same thing on Friday.

Q. Why are you being elusive?

A. What do you mean ...

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MR. COOK: I'll object to the form of the question. I think you're badgering the witness. If you have anything to ask regarding the merits of the case, it would seem more productive to confine your questions to that, rather than his parents' orders regarding their private telephone line, Bruce.

MR. BOTELHO: I'm trying to find out, right now, the conditions -- why Mr. Harrison on the one hand refused to disclose where he's located -- I'm trying to get some idea, and I'm leading towards it, why he isn't available to testify in Juneau, Alaska, next week at the hearing.

MR. HARRISON: Mr. Cook?

MR. COOK: Yes, Danny?

MR. HARRISON: It's fine. He can go ahead and ask the

question.

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Q. What is the answer?

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A. There's no problem there. It's just I can only answer to a certain extent on each, you know, question.

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Q. My question, again, to you: Why are you -- let me start off by this: Why can't you be in Juneau, Alaska, next week?

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A. Next week?

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Q. Yes.

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A. Because I have a warrant for my arrest up there; I don't have the money to get up there; and I don't have the money to get back. And I have no place to stay.

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Q. You have a warrant for your arrest. On what charge?

14

A. For -- I have a fine up there that I cannot pay ...

15

Q. For what?

16

A. ... because I didn't -- that I don't have the money to pay.

17

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Q. What's the charge?

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A. It was when I was a juvenile, I had done some breaking and entering up there; and I was released under the condition that I pay the fine back -- pay the ...

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Q. Did you voluntarily leave the state?

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A. What's that?

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Q. Did you leave Alaska?

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A. Yes, sir, I did.

Q. Knowing that a warrant was out for your arrest?

A. What's that?

Q. Knowing that there was a warrant out for your arrest?

A. I did not know at the time, but, see, when I was talking to my probation officer, he was telling me that they were going to put me back in jail unless I paid it; and at the time, I didn't even have a place to live or any food to eat, so I can't understand how I was supposed to pay a fine back that I -- that there was no way I could possibly pay back. I still have intentions of paying the fine back, but until I do, I can't go back there.

Q. Why were you in a foster -- why were you placed on probation in the first case?

A. Why was I placed on probation?

Q. Yeah. What ...

A. I broke the law.

Q. ... was the -- was this the same crime?

A. Yes, sir.

Q. Okay. And you indicated that you were in the Holland home for about a year. From when to when?

A. I'm not sure of the dates.

Q. Approximately.

A. They -- various -- from time to time. Sometimes I was

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there, sometimes I wasn't.

Q. Okay, you didn't stay there steadily for a full year?

A. No. It was probably more than a year, but sometimes -- like I went to -- I went into the service after I had my -- after I got my GED, you know, and then after that, when I got back out, I was still under eighteen years old, so I was placed back under custody again.

Q. Do you recall meeting with Norm Anderson (ph) on or about July 14, 1982?

A. On what?

Q. Simply to meet you, to take you out for a urine analysis?

A. Yes, I do.

Q. And do you recall telling him that Holland physically abused you?

A. If I did, it was a lie.

Q. Well, do you recall whether you told him that, whether or not it was a lie?

A. No, I don't recall telling him that.

Q. If he were to testify that you did tell him that, would you have any basis to contradict it?

A. I couldn't hear you. What was that?

Q. I said: If he were to testify that you told him that you were being physically abused, would you have any

basis to indicate that he was lying under oath?

1 A. That Norm Anderson was lying?

2 Q. That's right.

3 A. Well, he'd have to show better proof than just his
4 statement.

5 Q. Well, that's up to the court to decide. The question
6 to you is: Do you have any basis, in fact, to deny the
7 truth of his allegation, which is that you told him
8 that Bernie Holland physically abused you?

9 A. Could you hold on for a second? Hold on for just a
10 second.

11
12 MR. COOK: At this time, I'll
13 interject an objection to the
14 form of the question. You're
15 calling for a hypothetical
16 situation that doesn't really
17 exist, and I think the witness
18 has provided one answer to
19 your question already.

20 MR. BOTELHO: I think --
21 pardon me, can we hold on for
22 a moment.

23 A. Now, could you -- go ahead and repeat that again. What
24 was that?

25 Q. Yeah. If Mr. Anderson were to testify that you told

1 him on July 14, 1982, that Bernie Holland physically
2 abused you, would you deny that you told him that?

3 A. Of course.

4 Q. Why?

5 A. Because Bernie's never physically abused me.

6 Q. So that Norm Anderson would be lying, is that your
7 testimony under oath right now? If he were to testify
8 that you told him that Bernie Holland had hit you?

9 A. I guess he'd be lying. Well, he's probably going on
10 what I said, and at the time, if I did say it, I lied
11 to him.

12 Q. That's my question to you: Did you ever tell him I
13 don't care whether it's the truth or not, that is, the
14 truth of the statement itself - did you ever tell him
15 that Bernie Holland physically abused you?

16 A. I do not recall doing that -- saying that.

17 Q. If he testified that you did, would you have a basis to
18 contradict him?

19 MR. COOK: Asked and answered.

20 A. Well, if he -- if he ...

21 Q. Go ahead and answer the question.

22 A. If he says it -- if he went to court and said that,
23 then it'd be up to him; but if I did say it, I lied,
24 and if I didn't, you know, then he's lying.

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Q. Do you recall ever telling Norm Anderson that Holland hit you in the arm with a stick on several occasions?

A. No, I don't.

Q. Do you recall you ever telling him about an incident involving your pushing Holland into a table after Holland struck you?

A. I don't remember.

Q. Could you have told him?

A. Could I have?

MR. COOK: Calls for speculation on the part of the witness.

Q. Go ahead and answer the question.

A. I don't really have no answer for that.

Q. Could you have told him?

A. Well, I guess it's possible I could have said anything. Any time I was -- at the time, I was considered by a shrink that I was some kind of a - I don't know what they call it, neurotic or something, liar. I was constantly lying about quite a bit of things.

Q. Do you still do that today?

A. Not really. See, any of these statements that I'm being asked right now, I'm not lying.

Q. Are you under any treatment right now?

A. No, I'm not.

1 Q. Are you on any drugs right now?
2 A. No, I'm not.
3 Q. Have you used any drugs in the last week?
4 A. I haven't used any drugs in about five weeks.
5 Q. Do you recall ever telling Norm Anderson that Holland
6 called you a shitbag?
7 A. No, I don't recall ever saying that.
8 Q. Might you have said that?
9 MR. COOK: Objection. Calls
10 for speculation.
11 Q. (Indisc.) answer.
12 A. As I said before, I could have said anything. I don't
13 recall saying anything like that, at all. And right
14 now -- and I'll tell you right now that Bernie has
15 never said that to me.
16 Q. Do you recall meeting with Margaret Pugh at the Johnson
17 Human Services Center on or about July 14, 1982?
18 A. Do I recall it?
19 Q. Yeah.
20 A. I'm not sure of the date, but I remember talking to her
21 (indisc. - simultaneous speech).
22 Q. Do you remember telling her that Bernie popped you on
23 the arm real hard?
24 A. Like I said, if I said that, it was a lie.
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Q. So anything I would ask you right now about statements you made to other people, you would indicate was a lie?

A. Depending on the statement.

Q. Well, let's go through it, then. Do you recall telling Margaret Pugh that Bernie knocked you around some?

A. That's a lie, if I said it to her.

Q. Do you recall telling Candace Camfield (ph), that is, Candy Camfield, that Bernie hit other people in the foster home, too?

A. Like I said, at the time -- if you're talking about the people out at the Johnson Human Services Center, at the time, when I was in jail, when I was talking to them, and it's the same thing as asking me about what I said to Danneker. I was mad at the time, so anything that I said, in -- accusation-wise to Bernie - against Bernie - was all lies, because I was mad at him at the time.

Q. How long you mad?

A. For the length of time I was in jail.

Q. How long was that?

A. I don't recall.

Q. Say, approximately. Was it one day, two days?

A. I don't remember.

Q. Could it have been a month?

A. It could have been longer. I can't remember.

Q. What do you remember?

1 A. Just the things that I've said already. I don't
2 remember dates of anything that happened. I don't
3 remember any lengths of time that I was in jail,
4 because, you know, I don't really ...

5 Q. Where were you when you gave Bob Danneker your written
6 statement about being hit around?

7 A. I can't hear you that well.

8 Q. Where were you when you gave Bob Danneker your written
9 statement?

10 A. I was in his office.

11 Q. Were you transported there from the Johnson Human
12 Services Center, do you remember?

13 A. The Johnson Human Services Center? Is that what you
14 said?

15 Q. Yes.

16 A. Yeah, that's -- I was transported from there.

17 Q. Okay. So you were still in custody, then?

18 A. Yes, I was.

19 Q. Okay.

20 A. Oh, hey, I remember when it happened. I was going to
21 court -- it wasn't a court, I think it was a hearing or
22 something like that. And then right after the hearing,
23 Norm Anderson brought me down to his office to talk to
24 him.
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Q. Okay. Do you recall being interviewed by Bob Danneker and Carolyn Kubenin (ph)?

A. Yes, I do.

Q. Do you recall answering the following questions: ...

A. What's that?

Q. Do you recall any of the following questions - you were asked: Where did Bernie keep the stick? And you answered: On top of the couch. Do you remember making that statement?

A. Yes, I do.

Q. Did Bernie have a stick?

A. Yes, he did.

Q. Did Bernie ever use it?

A. No, he didn't.

Q. How did you know it a stick?

A. How did I know it was a stick?

Q. What's he use it for?

A. Well, it looked like a stick.

Q. What's he use it for?

A. Like, when -- when his son, Jason, starts yelling and pulling hair on people and stuff like that, he'll slam it against the couch to make a loud noise; and, you know, he'll say, stop that.

Q. Did he ever hit you in the hand with a stick?

A. No, he never has.

1 Q. Did he ever hit you with his own hand?

2 A. No

3 Q. Do you recall making this statement: Question - did
4 Bobby Hughes (ph) ever get hit with a stick? And your
5 response is, yes. How much? Quite a bit. Why would
6 Bobby get hit? Sometimes for joking. More than once?
7 Yes. Twice? Yes. Three times? Yes, maybe five
8 times. Where? The back of the legs. Did anyone else
9 get hit that bad? Yeah, me. What did Bobby do? Tried
10 to get out of the way. When did this happen? Sitting
11 at meetings. You'd say something, and out of the blue,
12 wham. I always got hit on my fingers. Do you recall
13 making those statements?

14 A. I recall making the statements, but they're -- they're
15 also lies, and I'd also like to say that I don't see
16 how it'd be possible to get hit in the back of the legs
17 sitting at that bench, when Bernie's sitting on one
18 side of it, and me and Bobby were sitting on the other
19 side. I don't see how he could possibly reach around
20 it, completely all the way around that whole table, all
21 the way around behind it, and slap us in the back of
22 the legs; it's impossible, so, there's my proof it's a
23 lie.

24 Q. Now, I would presume that anybody else -- you would
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1 take the position -- that confirms your testimony here,
2 would also be lying. Is that right?

3 A. Say that again?

4 Q. Anybody else who would testify to the same thing that
5 you've indicated here would also be lying, is that
6 right?

7 A. Anybody else that says that that was true?

8 Q. Yes.

9 A. Yes, they'd be lying.

10 Q. Now, you indicated that none of the trials convened
11 after nine o'clock in the evening, is that right?

12 A. I couldn't hear you.

13 Q. None of the trials convened after nine o'clock in the
14 evening?

15 A. No, they were not. I'm not sure exactly of the time.
16 I can't say exactly nine o'clock, but they weren't as
17 late as Mr. Cook was saying.

18 Q. Was there ever a trial that was held late-night?

19 A. Not that I recall.

20 Q. Well, you don't seem to recall a lot. Is it possible
21 that one could have been held late at night?

22 A. Yes, but I doubt it.

23 Q. How often did these trials happen?

24 A. Whenever somebody had broken house rules.

25 Q. Well, would it happen once a month?

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A. I couldn't really tell you, depending on the kids in the house. If they got in trouble, you know, at a certain time or something like that, then, you know, I mean, I can't really tell you how often everybody got in trouble.

Q. Well, could you tell me whether the meetings happened once every two months, on an average?

A. I don't know, they could have -- sometimes they'd get three in one day, sometimes we wouldn't get any for a couple of months.

Q. Okay. Well, why don't you describe one of these trials for me.

A. Describe one?

Q. Just describe one, yeah. How did they (indisc. -- simultaneous speech).

A. Okay.

Q. How did you hear about them?

A. Does it have to be a real one, or ...?

Q. Sure.

A. Okay, let's see. One time I didn't -- most of them -- most of them were on staying out late and stuff like that, and I was on trial for staying out late one night, and ...

Q. Who would bring the charge?

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A. Bernie.

Q. And would this be written?

A. What's that?

Q. Would it be a written charge?

A. No, it'd be verbal.

Q. And would it be done at the dinner table, or where?

A. Yes. With everybody present.

Q. Okay. And would it be right after supper, is that what you were saying?

A. No, not necessarily. Most of the time, though.

Q. (Pause) Are you still there?

A. Yeah.

Q. Well, okay. Everybody would be told to show up for the trial. How did that work?

A. He'd just say -- tell the kids downstairs or wherever they were at that there was going to be a meeting, a trial.

Q. Okay. And then what happened?

A. Then we'd all sit at the table, and then Bernie would say, what happened? You know, say, Dan stayed out late and he broke the house curfew; and so, he'd give -- he'd say, let everybody ask me questions why and everything. And then after that, then, we'd all take a piece of paper and just, you know, find out whether I was guilty or not guilty. And if I was -- you know, if

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I was guilty, then everybody just took a piece of paper and wrote down the punishment they think I should have had, and then gave them to Bernie and Bernie figured them all out, you know. Like, if one person said four days' restriction, another person said two, and another person said four, you know, he'd vary it out, you know.

Q. Would you get to write your own?

A. What's that?

Q. Would you participate, too? That is, could you write down on a slip of paper whether you were guilty or not?

A. No, because I was the person that was being charged.

Q. Okay. Did he always read off the verdict?

A. Oh, yeah. He'd tell everybody, you know.

Q. What if somebody said you were innocent?

A. Then we'd all sit around and argue the point.

Q. Okay. And would he read off the punishment, as well?

A. You asked if he read off the punishment?

Q. Yes. Say, you write down on a slip of paper that Joe Blow should be restricted for a week.

A. No, he didn't read out what the kids wrote to me.

Like, say, Mickey wrote "three weeks" on there, right? He wouldn't take that piece of paper and actually say, oh, Mickey, you know, said three weeks. He wouldn't do that. He'd -- all of them would be kept, you know, to

1 where nobody else knew what was being read. No one
2 else would be -- know what was being written down by
3 each person, and so there was -- there'd be no way of,
4 you know -- that way, I couldn't say, you know, hey, I
5 can't believe you said that about me, or, you know, so
6 on and so on. You know, that way there'd be no
7 arguments, so nobody actually knew what was going on.

8 Q. What if anybody wised off (indisc.)?

9 A. What's that?

10 Q. What if somebody wised off at the meetings?

11 A. At Bernie?

12 Q. Yeah.

13 A. Most people in the house had more respect than just to
14 wise off to him. Most of the time it was just joking,
15 and Bernie would say, oh, you're pretty funny, or
16 something. You know, he'd retract with something, you
17 know, but it wouldn't be as bad as what Mr. Cook was
18 saying.

19 MR. COOK: Excuse me, could I
20 interrupt here briefly,
21 please, Bruce? We need to
22 change tapes.

23 MR. BOTELHO: Fine.

24 (OFF RECORD)

25 (ON RECORD)

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MR. COOK: Okay, we're back on tape, here, now.

MR. HARRISON: Did you hear me?

MR. COOK: Negative. Say again, please.

MR. HARRISON: I was just wondering if Bernie was present for this?

MR. COOK: Yes, he is, Danny; he's sitting in the room with me at this time.

MR. HARRISON: Okay, I was just checking.

MR. BOTELHO: Was there a reason you wanted to know that?

MR. HARRISON: No, I was just curious.

CROSS EXAMINATION BY MR. BOTELHO (continued):

Q. Mr. Harrison, can you recall how long Gil Lucero was in the home?

A. I don't really remember at the time. He ...

Q. Was it a week?

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A. As far as I recall, it was just a couple days, I think.

Q. Did he ever participate in any trial?

A. No, he didn't. He (indisc.--simultaneous speech).

Q. If he testifies that he did, would that be a lie?

A. What's that?

Q. If he testifies that he did, would that be a lie?

A. No, not necessarily, because maybe I wasn't there for one of the trials, or maybe I wasn't even there at all - at the house - because at the time I left, if I remember right, he was still there, I guess, at the time that I was sent somewhere, I don't remember where, though. So he might have been at one of those trials, but I probably wasn't there. But I don't recall him being -- I remember him sitting in one of the meetings -- or sitting in, I mean, just to listen, to hear how it goes and everything, but, other than that, he's never really participated.

Q. Do you recall Gil Lucero ever telling you that you shouldn't have to take all the abuse you get?

A. What's that?

Q. Do you recall Gil Lucero ever telling you that you shouldn't have to take all the abuse you take?

A. I don't remember him saying that.

Q. Would he have said that to you?

A. I don't remember him saying that.

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Q. If he did?

A. If he did, then what?

Q. Is it possible that he could have told you and you just don't remember?

A. I guess so. I mean, I guess it's possible that he could have.

Q. You indicated that you knew that Bernie had firearms. How did you know that?

A. Well, I kind of assumed, because Bernie had a store that was right next to his house that -- in which he had firearms in there and coins which were for sale, and when he closed it, I -- you know, as far as I remember, that he hadn't sold all his weapons. So I'm sure that he didn't, you know, throw them away or anything like that. So, I assumed. I never actually seen any of the weapons inside the house at all.

Q. When was the last time you talked to Bernie?

A. Let's see, quite awhile ago, actually, other than Friday, but I really didn't talk to him because I was, you know, being talked to about the meeting here. But other -- I didn't really get to talk to him at all. I haven't talked to him in quite a while.

Q. When was the last time, besides Friday - about?

A. God, I don't remember; it was quite awhile ago, though.

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Q. Would it have been two weeks ago?

A. I think it was longer than that.

Q. Maybe a month ago?

A. Yeah, maybe.

Q. How about Mr. Cook - when was the last time you spoke with him?

A. On Friday.

Q. And before that?

A. That was the first time I ever talked to him, I think.

Q. And what did you talk about?

A. What?

Q. What did you talk about?

A. Just that I was going to be recorded over the phone and that I'd have to swear to an oath, and that just to make sure that I call at one o'clock today.

Q. Have you talked with Bernie or with Mr. Cook about any of the allegations ...

A. No, we did not.

Q. ... we've discussed today?

A. It was mostly just about, you know, that the phone was going to be recorded and that I'd have to be called down from Anchorage and all these other places, and that I was going to be questioned about, you know, the accusations that I had made. But we never talked in any kind of detail at all.

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Q. This is Friday you're talking about?

A. Um-hum.

Q. Okay, before Friday, did you discuss this case with Bernie Holland?

A. No, not really, 'cause I really don't understand what's going on all that well. I just know that, for some reason, everybody thinks that those accusations I made were true when they weren't.

Q. According to Bob Danneker, you said that Bob Danneker suggested that Bernie was involved in sexual misconduct. I want you to describe in detail why you say that Danneker suggested sexual misconduct.

A. You have to speak up, 'cause it's real hard to hear you.

Q. I'll repeat the question: You testified earlier that Bob Danneker suggested to you that Bernie Holland had acted improperly sexually with Mickey. What I'd like you to do is describe how he suggested the topic.

A. Oh. Well, like -- okay, I was sitting there telling Bob Danneker about, you know, all the stuff I was making up, like: Oh, Bernie hits me; oh, Bernie does this; and, oh, Bernie does that. Right? And during the time that I was making those accusations, you know, like, you know, saying, oh, you know, he hits Mickey,

1 he hits me, he hits Bobby, he hits everybody; that's --
2 you know, at the time that I was saying that? Well,
3 see, at the time when I was doing that, he was saying:
4 Well, does he ever, you know, grab Mickey? And I say:
5 Yeah, he grabs Mickey like this. And he says: Well,
6 do you think that he's trying to grab her for, you
7 know, a cheap feel? And I say, yeah. But, see, when
8 he said it -- see, he was just saying those things, and
9 as soon as he'd say 'em, then I'd go, you know -- like,
10 he'd say: Well, did he grab her? And I'd say: Yeah.
11 You know. And then he'd say, you know: Well, do you
12 think he was trying to get a cheap feel? And I'd go:
13 Yeah, yeah, yeah. To anything he said. So he was
14 basically -- see, otherwise, I wouldn't even have said
15 that.

16 Q. Okay. Are you calling from your family home right now?

17 A. Yeah, I am.

18 Q. This is the one you don't know the address to?

19 A. Right.

20 Q. Okay.

21 MR. BOTELHO: I'm going to go
22 off here for second. I may be
23 about done with my
24 questioning, Greg. But it's
25 going to sound like I'm

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cutting off for a moment. I want to go through my notes. MR. COOK: Okay, then, I'm going to go off the record, here, briefly, and just tell me, please, when you're ready to go on. We'll all be standing by, waiting for you to come back on line, there, Bruce.

(OFF RECORD)

MR. COOK: We're back on the record, now, Bruce. Are you ready to go ahead?

MR. BOTELHO: I have no further questions.

MR. COOK: Okay, Danny, I just have a few cleanup questions, here, then.

REDIRECT EXAMINATION BY MR. COOK:

Q. When Bruce Botelho was asking you questions a few moments ago, he asked questions regarding your present testimony, which is under oath, and some statements you made earlier to Mr. Danneker and to Mr. Anderson. I'd

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like to direct these questions to that subject. When you gave a statement to Mr. Danneker, were you under oath?

A. I don't remember.

Q. When you gave a statement to Mr. Anderson, do you know if you were under oath at that time?

A. Nah, he's never put me under oath.

Q. So your answer is, no, you were not under oath to Mr. Anderson?

A. No, I wasn't.

Q. Do you recall whether or not, when you were talking to Mr. Danneker, whether you raised your right hand and swore to tell the truth, the whole truth, and nothing but the truth, so help you God; do you recall doing that with Mr. Danneker?

A. I might have, but I don't remember doing it.

Q. Do you know whether or not Mr. Danneker is authorized by law to give oaths?

A. Not -- I don't know.

Q. Okay, thank you. Danny, I'd like to ask you, again, whether or not you're telling me the truth here today?

A. Everything I've said is the truth so far.

Q. And why are you making this call, Danny?

A. Just because -- because of the fact that I lied and I've brought a lot of bad things to happen onto Bernie,

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which I'm really super sorry for, but I have, you know -- I can't do anything about it now, except for, you know, tell them that I've, you know -- I'm trying to tell the truth now. Because, you know, I started a pretty bad thing here, but ain't much I can do now, you know.

Q. Thank you, Danny. And could you describe, again, the reason that you made false statements to Danneker when you were in jail.

A. It was because I was mad at Bernie, because I had I thought Bernie had put me in jail when Bernie hadn't put me in jail; I'd put myself in jail. But I was under the impression that Bernie put me in jail, so I was trying to get back at him.

Q. I see. A couple other odd questions yet, Danny. Referring to the matter of the trials back at the house, did anybody ever get good-time off; for example, after a restriction, did they have some of their penalty lifted for good behavior?

A. Yeah.

Q. Thank you, Danny. Regarding Gil Lucero, did you know Gil very well?

A. Not really, kind of. Just, you know, I knew him, you know, as a friend of Bernie's.

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Q. When you saw him at the house and around in Juneau, did you ever have the opportunity to observe Mr. Lucero when he was drinking alcohol?

A. No, I never did.

Q. Do you have any personal knowledge as to whether Mr. Lucero abused alcohol?

A. I know that he used to, but at the time, I was under the impression that he didn't drink or anything at the time.

Q. Do you have any knowledge of why Mr. Lucero was staying at the Holland's home?

A. I think it was because him and his wife were having problems and he was under quite a bit of pressure.

Q. I see. Do you know whether or not Mr. Lucero was paying room and board while he was there?

A. I have no idea.

Q. I see. And could you tell me once again, please, Danny, whether or not everything you have said today is the truth?

A. Everything I've said is the truth.

MR. COOK: I thank you very much, Dan. I appreciate you ...

MR. BOTELHO: I have a follow-up question based on some of

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your redirect. Are you still there?

MR. COOK: Roger that. You're still on. Go ahead on her, Bruce.

RECROSS EXAMINATION BY MR. BOTELHO:

Q. Danny, is it possible that you might have lied under oath to Bob Danneker?

A. Say that again?

Q. Is it possible that you might have lied under oath to Bob Danneker?

A. You mean, when I was talking to him?

Q. Yes.

A. Yeah, like I said before, I've told you through this whole phone call that all I was doing was lying to him.

MR. BOTELHO: I have no further questions.

MR. COOK: Okay, then, Danny, that really concludes our little exercise here today. Thank you very much for calling in and we'll look forward to hearing from you again sometime when you get

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the opportunity to call me or to call Bernie. Thank you very much. Bruce, is it correct that you have no further questions?

MR. BOTELHO: I just think it's important that, if you could perhaps request, Greg, that Mr. Harrison check in on a daily basis after the commencement of your case next week, your portion of the case. There may be occasion to have him examined directly by the hearing officer.

MR. COOK: That sounds fair, Bruce. I'm just a little curious as far as the actual mechanism that we'll use to make contact if I'm up at Rich Burnham's office. So, Danny, if you'd be kind enough, could you please call in to this office sometime Thursday morning this week and I'll try

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and work out a telephone
schedule for you. Is that
possible?

MR. HARRISON: Yeah, no
problem. Greg, before you all
hang up and everything, I need
to speak at you, just between
me and you, if it's possible.

MR. BOTELHO: I will cut off
the line right now.

MR. COOK: Okay, thank you
very much, Bruce.

(END OF PROCEEDINGS)

(Signature waived)
DANNY JOE HARRISON

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FIRST JUDICIAL DISTRICT)

I, JUDITH R. JONES, a Notary Public duly commissioned and qualified in and for the State of Alaska, do hereby certify that the foregoing transcript of the telephone deposition of DANNY JOE HARRISON was recorded by a person or persons unknown to me and thereafter transcribed by me or someone under my direction.

I further certify that the transcript consisting of pages 1-59, both inclusive, is a full, true, and correct transcript of the proceedings, considering the quality of the tape and the information furnished to me.

I further certify that I am not a relative or employee of any of the attorneys or of any of the parties, nor financially interested in the action.

I further certify that the original of this transcript was given to Richard Burnham, hearing officer, pursuant to their instructions.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 6th day of May 1983.

Judith R. Jones

Notary Public, State of Alaska
My commission expires: 11/30/84