ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672
1724 SJ HB 194 - HB 210

life of crime. And very often the recidivism commences within weeks after release, he added.

"What job opportunities are there for unskilled illiterates with criminal records? What business enterprise could conceivably continue with the rate of 'recall' of its 'products' that we see with respect to the 'products' of our prisons?" he asked.

The best programs in the world will not cure all of this "dismal problem," a problem that the human race has struggled with almost since the beginning of organized societies, Burger said. But improvements in our prison system can be made, he added, and, in his opinion, the improvements will cost less in the long run than the failure to make them.

Burger told his audience that today almost $1 billion of new prison facilities are under construction. More than 20 states have authorized construction programs approaching another billion dollars. Proposals of yet another billion and a half dollars in 33 states are beind debated.

Citing the Criminal Justice Construction Reform Act (S. 186) introduced by Sen. Robert Dole (R-Kan.), Burger said Dole "has recognized the dimensions of this problem." The legislation would provide grants of six and a half billion dollars to the states for improved prison facilities over the next seven years.

"If Federal grant legislation is enacted it is important that the new standards include: (a) conversion of prisons into places of education and training and into factories and shops for production; (b) a repeal of statutes which limit prison industry production; (c) an affirmative limitation against any form of discrimination agains' prison products; and (d) a change in attitudes of organized labor and in the leaders of business toward the use of prison inmates to produce goods or parts," Burger said.

"These new standards are crucial and they should be developed with the participation of representatives of the state and Federal prison administrators who deal face-to-face and day-to-day with the problems and understand the needs," he added. "Representatives of labor and management should also take part. In the closing decades of the twentieth century I am confident the enlightened leaders of labor and business will no longer support reactionary restraints on production of goods in prisons and the movement of such products in commerce."

But he admitted that prison production programs will compete to some extent with the private sector.

"However, this is not a real problem because, with optimum progress, it will be three to five years before programs of this kind have a market impact, even then a small impact," he said. "I cannot believe that this great country of ours – the most voracious consumer society in the world – could not absorb the production of even as many as 100,000 prisoners – hardly a 'drop in the bucket' in terms of the Gross National Product."

The displacement of workers in the private sector would be "insignificant" in the whole scheme of things, Burger said.

"But the benefit to the inmates – and to society – would be incalculable in the long run."

Some Are Beyond Reach

Most prison inmates, by definition, are maladjusted people, Burger said.

"From whatever cause – whether too little discipline or too much, too little security or too much, broken homes, or whatever – they lack self-esteem, they are insecure, they are at war with themselves as well as with society," he explained. "They do not share the work ethic concepts that made this country great; they were not taught at home – or in the schools – the moral values that lead people to have respect and concern for the rights of others.

"But place that person in a factory, whether it makes ball-point pens, hosiery, cases for watches, parts of automobiles, lawn mowers, computers or parts of other machinery; then pay that person some reasonable compensation, and charge something for room and board and keep, and we will have a better chance to release from prison a person able to secure gainful employment," he said. "Added to that it will be a person whose self-esteem will at least have been improved to a level where there is a better chance of living a normal life."

Burger admitted that there are exceptions, such as the "destructive arrogance" of the psychopath who has no concern for the rights of other people; he may well be beyond reach of any programs that prisons or treatment can provide.

"Our prison programs must aim chiefly at the others," Burger said.

The Chief Justice said "there is nothing really new" in his concept, citing programs in Minnesota and Kansas as examples.

It is not necessary that prisons be self-contained factories capable of producing complete finished products, Burger explained. In terms of production equipment and the probable skills of most prison inmates, it "makes more sense" and involves far less capital investment to have prisoners produce simple machine parts rather than completed products. This can be done under contracts with private industry, he added.

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National Criminal Justice Association
SUITE 305 • 444 NORTH CAPITOL STREET, N.W.
WASHINGTON, D.C. 20001
(202) 347-4900

MEMORANDUM

TO: All CJC Directors

FROM: Richard B. Geltman, Director, Division of Policy and Governmental Relations

DATE: February 19, 1981

SUBJECT: Proposed LEAA Guideline on Prison Industries Certification

Attached for your review and comment is a draft LEAA guideline published in the Federal Register of February 13, 1981 entitled "Prison Industries Enhancement Certification Program". The purpose of the proposed guideline is to provide an exemption to two federal laws which restrict the ability of state prison industry programs to market their goods.

Please send your comments directly to Tom Tubbs, Corrections Program Manager at LEAA by March 13, 1981, and a copy to the National Association at the same time.

RBG:plr

Attachment

National Criminal Justice Association
SUITE 305 • 444 NORTH CAPITOL STREET, N.W.
WASHINGTON, D. C. 20001
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Attachment

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

compensation not be deprived to inmates solely on the basis of their status as offenders, and, by requiring the voluntary participation of inmates as employes within the prison industry program certified; and, (4) to provide inmates an opportunity to learn and practice marketable job skills.

C. *Eligible Applicants.* Applicants for certification are limited to State Departments of Corrections who are legally, administratively, and programmatically in substantial compliance with the requirements for certification. Substantial compliance must include the presence of State law or regulation enabling the payment of wages to inmates, payment of Workmen's Compensation to inmates, involvement of private industry in prison industry operations, sale and marketing of prisoner made goods in intrastate or interstate commerce and the withholding of deductions from inmate wages.

D. *Available Funding.* No funds are available to support achievement or enhancement of prison industries participating in this program.

E. *The Application Process.*

1. *Availability of Application Forms.* All State Departments of Corrections State Planning Agencies and Governors have been contacted to solicit interest in participating in this program. Upon receipt of an expression of interest from the State, an application kit will be provided to the applicant.

2. *Application Submission.* One signed original and two copies of the application for certification, including all cover letters and attachments must be submitted to the Corrections Division, Office of Criminal Justice Programs, Law Enforcement Assistance Administration, 633 Indiana Avenue, NW, Washington, D.C. 20531.

3. *Application Consideration.*

a. *Application Process.* In order to be considered for certification, all applications must be submitted on the forms and in the manner required by LEAA as described in this program announcement. The application shall be executed by an individual authorized to act for the applicant agency and to assume the obligations imposed by the terms and conditions of the certification. The Administrator, LEAA, determines the final action to be taken with respect to each application for this program. Applications which do not conform to this announcement or are not complete will not be accepted and applicants will be notified accordingly. All applications shall be subjected to a review and evaluation conducted by LEAA. This evaluation may include onsite verification of the policies, procedures and practices set forth in the application. The results of this review will supplement and assist the administrator's consideration of applications. After the Administrator has reached a decision to certify or to not certify a project, the applicant will be notified in writing of that decision.

b. *Certification.* The Administrator, LEAA, shall grant certification consistent with the purpose of this program announcement. No more than seven (7) projects may be certified as specified by the Justice System Improvement Act of 1979, Section 827(c). The official certification document is the Notice of Certification. Successful applicants shall be notified through the issuance of a Notice of Certification which sets forth in writing to the certified Department of Corrections the purpose of the certification, the terms and conditions of the certification, the effective date of the certification and the total period for which the certification shall be effective.

c. *Criteria for Review and Evaluation of Applications for Certification.* Applications for certification will be reviewed and evaluated against the following criteria:

(1) The description of statutory and administrative legal authority present which is required to support achievement of the program goals and objectives. (11 points)

(2) The method, type, and scope of involvement of private sector industry in the described prison industry program. (21 points)

(3) The capability and qualifications of the proposed prison industry operation and the adequacy of the facilities and resources of the applicant organization. (22 points)

(4) The ability of the applicant to provide payment of wages and benefits commensurate with wages and benefits paid for work of a similar nature in the locality in which the work is performed. (20 points)

(5) The adequacy of the policies, procedures, and practices which support the voluntary participation of inmates in the prison industry program. (5 points)

(6) The quality of assurances, including the presentation of data and information, that the expanded prison industry program does not adversely impact upon private sector jobs by displacing employed workers or impairing existing contracts. (5 points)

(7) The method, type and scope of consultation with representatives of local labor union central bodies or similar union organizations potentially affected by the work proposed in the application. (6 points)

(8) The scope, i.e. number of states, of the available market for the goods to be manufactured. (5 points)

(9) The adequacy of ability to collect and report data describing achievement of program objectives. (5 points)

e. *Closing Date for Receipt of Applications.* The closing date for receipt of formal applications is July 1, 1981. Applications received after the closing date will be considered ineligible, and will not be reviewed or evaluated.

[FR Doc. 81-xxxx Filed 7-x-81; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Weekly Seasonal Adjustment Factors To Be Used In Computation of 1981 Seasonally Adjusted Insured Unemployment Under Regular State Unemployment Programs

The Bureau of Labor Statistics announces the 1981 weekly seasonal adjustment factors that will be applied to the unadjusted levels of claims for unemployment insurance benefits, under regular State programs, to derive seasonally adjusted levels. The seasonally adjusted level of insured unemployment under regular State programs is a major component in the calculation of the seasonally adjusted national insured unemployment rate, which triggers Federal-State extended unemployment compensation payments. The rate of insured unemployment for purposes of the national extended benefits trigger is computed and announced by U.S. Department of Labor's Employment and Training Administration, Unemployment Insurance Services.

Week ending date	Seasonal factors
January 3	127.3
January 10	128.7
January 17	127.1
January 24	120.0
January 31	120.4
February 7	128.7
February 14	121.3
February 21	121.7
February 28	127.3
March 7	121.0
March 14	120.0
March 21	115.4
March 28	110.8
April 4	107.7
April 11	104.9
April 18	102.8
April 25	100.6
May 2	96.8
May 9	94.8
May 16	92.6
May 23	90.4

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSHB 194 (HESS)
Title An Act Relating to prisoner employment and correctional industries
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Health & Social Services
Program Category Affected Offender Confinement, Reformation & Supervision
BRU, Program, Or Subprogram(s) Affected Adult Confinement, Prison Industries
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		39.8	127.3	334.8	364.9	397.7
200 TRAVEL		21.8	23.8	19.7	21.5	23.4
300 CONTRACTUAL		10.9	11.9	13.0	14.1	15.5
400 COMMODITIES		100.0	150.0	163.5	178.2	194.3
500 EQUIPMENT		150.0	200.0	100.0	25.0	25.0
600 LAND & STRUCTURES		-	-	-	-	-
700 GRANTS, CLAIMS, ETC.		33.0	67.5	97.5	105.0	114.4
TOTAL	-0-	355.5	580.5	728.5	708.7	770.3

FUNDING (Thousands of Dollars)

GENERAL FUND		*	*	*	*	*
FEDERAL FUNDS						
OTHER (Specify Source)						

* See Analysis, Paragraph I

POSITIONS

FULL TIME		1	2	4	-0-	-0-
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Assumptions:

A. Staff

1. It is anticipated that seven additional shop supervisors will be needed to fully implement the Prison Industries Program. The seven shop supervisors would be hired during the next three fiscal years, on the following schedule:

Insert this into any appropriate receipts

Roger C. Lange

IV. DATE February 4 1982 PREPARED BY Roger C. Lange
AGENCY Division of Adult Corrections
PHONE 465-3376

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

Joanne C. Clark, Acting Director
Division of Management & Budget

DATE	LOCATION	# OF POSITIONS
July, 1982	Palmer	1
July, 1983	Juneau	2
Oct., 1984	Eagle River	2
Oct., 1984	Fairbanks	2

A. The positions will all be Range 16 - Shop Supervisors; FY 1983 cost is computed as follows:

Monthly Salary $2556

Annual Salary	$30,672
Variable Benefits	5,101
Supplemental Benefits	1,880
Health Benefits	2,196
Total	$39,849

B. Travel

1. Board travel consists of 4 board meetings to be held at institutions with industries programs. It is assumed an average of 6 board members will attend each meeting, with 4 requiring air travel. It is assumed each meeting will be of a three day duration. $10,560

2. Public Hearings will be conducted at @ Board meeting whenever possible. However two meetings a year in addition may be needed in FY 83 and FY 84 for start up of industries. $5,280

3. Staff travel of $6,000 is included for supervision of the program.

C. Contractual funds are included for specialized services not available from state agencies plus long distance telephone and postage costs. It is assumed that the cost for additional heat and electricity will be absorbed by the institutions conducting the industries programs.

D. Commodities funds are to purchase raw materials needed in the manufacturing of products.

E. Funds to purchase equipment will be needed in significant amounts for the first three years for the new product/service lines, as they are developed.

F. Funds requested in Grants and Claims is for the payment to inmates of wages earned. The following table represents the estimates of persons in the program, average wages, etc.

FISCAL YEAR	FULL TIME INMATES	DAYS PER YEAR WORKED	HOURS PER DAY WORKED	AVE. HOURLY WAGE	TOTAL WAGES
1983	40	250	7.5	$.44	$33,000
1984	75	250	7.5	.48	67,500
1985	100	250	7.5	.52	97,500
1986	100	250	7.5	.56	105,000
1987	100	250	7.5	.61	114,375

G. Capital expenditures are addressed in the Governor's Capital budget, as follows:

FY 1983	Juneau Prison Industries Building	$1,248,500
FY 1983	Eagle River Prison Industries	1,306,200
FY 1983	Fairbanks Prison Industries	1,542,000
FY 1985	Palmer Prison Industries Remodel	200,000

The above costs are, therefore, not included in the fiscal note.

H. Inflation

It is assumed that there will be a uniform 8% inflation rate through FY 1986.

I. Funding identification has not been made as the proposed legislation is not specific as to the manner program receipts are to be handled. Funding could be identified as all general funds or a combination of general funds and program receipts.

Without knowing what specific industries are to be developed or the time frame in which goods or services are available to the specified consumers, no estimate of program receipts can be made at this time. It is assumed, however, that all program receipts will either be identified as part of the funding or deposited directly into the state treasury.

MEMORANDUM State of Alaska

TO: Charles Campbell
Director
Division of Adult Corrections
Department of Health & Social Services

DATE: March 27, 1981

FILE NO: J-77-02^-81

TELEPHONE NO: 465-3686

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: HB 194 (correctional industries)

By:
Arthur H. Peterson
Assistant Attorney General

Following up on my conversation with Bob Lawson yesterday, you will find attached a draft of some language which could be added to this bill to establish a correctional industries fund.

It should be understood that the Department of Law is not recommending this provision. In addition, I do not really see how it will help your operation of the correctional industries program. However, we believe that it is valid and will not violate the "dedicated fund" prohibition of art. IX, sec. 7 of the Alaska Constitution. (Be sure to distinguish between "revolving funds" and "dedicated funds.")

AHP:bjl

Attachment

02-001A(Rev.10/79)

DRAFT

POSSIBLE ADDITIONAL SECTION FOR HB 194 (CORRECTIONAL INDUSTRIES):

Sec. __.__.___. CORRECTIONAL INDUSTRIES FUND. (a) There is established in the department a fund to be known as the correctional industries fund. All expenses of the correctional industries program, except salaries and benefits of state employees, are to be financed from the correctional industries fund and budgeted in accordance with the Executive Budget Act (AS 37.07). The commissioner shall report annually to the legislature all activities and balances of the fund.

(b) The legislature may appropriate to the correctional industries fund any amounts necessary to implement AS 33.30.400 -- 33.30.490, which may equal or exceed the amounts received by the state for services rendered or products sold by the correctional industries program.

(c) Unless otherwise expressly provided, money appropriated to the correctional industries fund is not a one-year appropriation under AS 37.25.010. Any amount which is appropriated but which is not required for the purposes of the fund in that fiscal year remains available for spending in succeeding fiscal years.

Fwd HB194

CHARLIE PARR

ALASKA LEGISLATURE

S.R. Box 50599
Fairbanks, Alaska 99701
(907) 456-5029

Pouch V
Juneau, Alaska 99811
(907) 465-4907

MEMORANDUM

TO: Senator Rodey - Chairman - Judiciary Committee

FROM: Charles H. Parr CP

SUBJECT: CSHB 194 (HESS)

This bill has just been referred to the Judiciary Committee. I wish to raise a concern which the Committee should address when considering the bill.

There has been some suggestion that the prison industries should produce road signs for DOT. Two private firms (one in Anchorage, one in Fairbanks) are now doing this in some cases. I do not believe we should permit prison labor competition with our own private sector, and hope we can amend the bill to preclude any such competition.

cc: Barricades and Safety Equipment Inc. Attn: Bill Eagle

CHP:sr

Any suggestions

Page 2, line 23 When Employment workers are to be paid for by persons other than the State,

Agree Necessary to conform with Federal Law

HB

206

COMMITTEE REPORT

SENATE

2/5/82 Senate

FURTHER:

Date: Jan 21, 1982

Mr. President:

The Committee on JUDICIARY has had SJR 206 (Jud)

termination of rental agreements of mobile home park dwellers and tenants

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 19, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

HB 206 - "An Act relating to the termination of rental agreements of mobile home park dwellers and tenants."

SB 863 - "An Act providing for the award of costs and attorney fees incurred by defendants acquitted of offenses and by individuals who prevail in certain state administrative proceedings; changing Rules 79 and 82, Rules of Civil Procedure; and providing for an effective date."

HB 194 - "An Act relating to prisoner employment and correctional industries; and providing for an effective date."

SJR 61 - Proposing amendments to the Constitution of the State of Alaska relating to appropriations and the retention, investment and expenditure of certain state revenues; and superseding the amendments proposed by Legislative Resolve No. 1, First Special Session of the Twelfth Legislature (FSS FCCS SJR 4).

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:35 P.M. Committee members present were: Senators Rodey, Parr, and Ray. Senators Anderson and Bennett were absent.

003 - Call to order.

008 - Chairman Rodey brought HB 206 before the committee.

027 - Rep. Mitch Abood, prime sponsor of HB 206, testified, addressing the need of trailer park owners to be able to evict trailer space renters that don't abide by court rules.

065 - Senator Ray asked for the bill in subcommittee, and promised to report back with the bill in several days.

084 - Ben Marsh, representing himself, testified in favor of the bill and gave the legislative history of legislation dealing with evicting trailer space renters.

268 - Ira Walker, representing himself, testified in favor of HB 206, stating that it is difficult to keep a cleanly court under current law. If there is junk present, AHFC will not finance trailers in junk courts.

334 - Paul Fry, representing himself, testified in favor of the bill also. He expressed his concern of having the word "reasonable" in the present language.

363 - Kathy Cruichshank, representing herself, testified in favor of the bill, stating that unsanitary conditions under current law are not controllable by park owners which brings the value of the parks down.

405 - Anita Thompson, representing herself, expressed the problems she was having collecting her rent. She was in favor of HB 206.

445 - Chairman Rodey directed that the bill be put in a subcommittee of one with Senator Ray.

454 - Chairman Rodey next brought HB 194 before the committee.

460 - Mr. Bruce explains the changes in committee substitute.

520 - Senator Parr moved the committee substitute to be adopted. There was no objection.

526 - Senator Anderson moved to pass CSHB 194 with individual recommendations. There was no objection.

535 - Chairman Rodey next brought SJR 61 before the committee.

537 - Lt. Governor, Terry Miller, testified in favor of SJR 61, expressing his support for this bill in place of SJR 4 which was passed last year. He stated three areas which should be addressed by the committee:

1.) Phasing in amendment.
2.) Issue of liquidity.
3.) Catastrophic drop in revenues.

620 - Senator Ray questions need for Section 26. He felt it cluttered up the Constitution.

635 - Lt. Gov. Miller stated that maybe it should be a transitional clause.

856 - Senator Dankworth, prime sponsor of the bill, testified in favor of the resolution, stating that it is far superior to SJR 4. He had no feeling on the Governor's amendment and left it up to the committee.

268 - Rep. Hugh Malone testified, agreeing with Senator Dankworth that SJR 4 is a bad idea. He addressed the questions of having "money" or "the balance" on Line 4, Page 2. He also asked what role the Legislature would play in determining the market rate.

286 - Rep. Malone stated that the Legislature should develop projections on liquidity of fund. re: 20% of fund may be appropriated.

534 - Ron Lear, Budget and Audit, answered questions from the committee members.

575 - Senator Ray asked what "capital projects" are, stating that this language is fairly restrictive. Suggested possibly using "capital improvements".

596 - SJR 61 returned to file until Wednesday's meeting.

713 - Chairman Rodey brought SB 863 before the committee.

715 - Senator Ray moved SB 863 be passed with individual recommendations. There was no objection.

719 - The meeting was adjourned at 2:55 P.M.

April 21, 1982

Honorable Pat Rodey, Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Rodey:

The Alaska Trailer Court Association is worried about the outcome of House Bill 206 which was heard by the Judiciary Committee on Monday, April 19th. The bill was referred to Senator Ray who promised to return it within three (3) days.

We would urge you to follow up on this matter and make sure the bill is returned and reported out by the Committee. We would also like to be advised of the status of the bill and informed as to whether there are any changes.

We are mostly concerned that adjournment is now so close, and there is a possibility that the bill could die.

Sincerely,

Bernard L. Marsh
Executive Secretary, ATCA

BLM:ls

P.S.

Enclosed is a letter from a court manager to an owner that will be of interest to you.

Denali Towers North • 2550 Denali Street • Suite 1600 • Anchorage, Alaska 99503 • (907) 278-3615

Ms. Tena Pellack
702 West 42nd Avenue
Anchorage, Alaska 99503

April 12, 1982

A. H. Bennett
Idle Wheels Court
1577 C Street, Suite 214
Anchorage, Alaska 99501

Dear Mr. Bennett:

This letter is in regards to the present situation of collection of rent and enforcement of rules and regulations f Idle Wheels Trailer Court, 4300 Arctic Blvd., Anchorage, Alaska 99503.

I have found that in the past few months there are certain individuals that have fallen behind in payment of space rent at the court. It seems there is one individual in particular that is 12 months behind in his space rent (approximately $2200.00) and refuses to pay. When I approached him about this matter he became rude and unruley. It seems I have no recourse, the laws being such that eviction is almost an impossibility. This tenant has set a precident and some of the other tenants seem to be following suit.

At this point I am at a loss as how I am to be an effective Manager when I have no backing as far as the laws governing rights of landlords in this type of situation.

I would appreciate any ideas that you would have on sloving this problem. You see, I have been a Manager of Idle Wheels Trailer Court for 15 years now and the situation seems to be getting worse and worse.

Sincerely,

Tena Pellack

Ms. Tena Pellack
Court Manager
Idle Wheels Trailer Court

Copy + File HB206

TO ALL LEGISLATORS:

Alaska Housing Finance Corporation's Memo 82-40 (copy attached), dated 7 April 1982, and addressed to the sellers and servicers of loans for mobile homes drastically affects all mobile home parks. This memo denies approval of mobile home courts by Alaska Housing Finance Corporation if we do not submit our financial statement, if we do not submit a budget, and if we do not agree to carry the mobile home in our park even if it is repossessed. It speaks nothing to any back rent that might be owed on the unit or any other problems that the court owner might have encountered with the unit. It does not give the court owner latitude in upgrading his park.

It must be remembered that AHFC is financing mobile homes, not mobile home parks; that the financial condition of the mobile home court is none of the AHFC's business and shouldn't be involved in the consideration for approval of loan to the buyer of the unit unless there is reason for the AHFC to believe that the court is on the verge of bankruptcy. Over the many years that mobile home courts have existed in the Anchorage area, we know of no mobile home court that has gone bankrupt or failed due to the lack of adequate financing.

We view that the AHFC's new stringent approval process is unnecessary and inappropriate and will put more new undue stress on the already insufficient number of spaces that now exist for mobile homes.

Ira E. Walker

Ira E. Walker, President
Alaska Mobile Home Court Association

Alaska HOUSING FINANCE CORPORATION

R.O. Box 1020, Anchorage, Alaska 99510

TO: All Seller/Servicers

DATE: April 7, 1982
(Memo #82-40)

FROM: LeRoy Rothe
Mortgage Operations Director

Re: Mobile Home Park Approvals

Alaska Housing Finance Corporation will begin to institute a more stringent approval process for mobile home parks. This new approval process is to be effective immediately for all new applications submitted for approval. Mobile home parks that are currently approved through our office must submit an application, in compliance with the new approval process, no later than June 1, 1982. If a new park approval has not been granted by that date AHFC will not purchase existing homes or homes to be placed in a non-approved park.

The AHFC approval for acceptable mobile home parks will be issued on a case-by-case basis for a period of one year. At the end of the approval term a new application with all pertinent information (as shown below) is to be provided for renewal of approval.

The following information is to be provided with an application request to receive and/or maintain an approval status:

1.) Copy of park rules and/or a copy of the rental agreement being utilized by the park owner.
2.) Certification all park streets are maintained, i.e., snow removal done in a timely manner, pot holes repaired, spring/summer/fall grading maintenance.
3.) Certification that garbage disposal facilities are adequate and properly maintained.
4.) Abandoned vehicles towed away.
5.) A description of the number of units in the park, the number of units occupied and description of the exterior condition of the units.
6.) Acceptable health approvals, if applicable.
7.) Completed budget (see attached)
8.) Park owner to sign blanket agreement assuring right to leave a mobile home in the park, as long as the space rent is paid, if said unit is in a foreclosure status. (see attached)
9.) Photos of park.

Thank you for your cooperation with our office.

LR/la

Attachments

STATEMENT OF ANNUAL PARK INCOME & EXPENSES

FOR THE YEAR 19___

GROSS ANNUAL INCOME:

Rents:	$_____
Other:	_____
TOTAL INCOME:	$_____

EXPENSES:

Office & Supplies	_____
Telephone	_____
Salaries/Fees	_____
Legal & Audit	_____
Utilities	_____
Trash & Garbage	_____
Snow Removal	_____
Street Maintenance	_____
Repairs	_____
Real Estate Taxes	_____
Other Taxes/Assessments	_____
Insurance	_____
TOTAL EXPENSES:	$_____
NET	$_____

AGREEMENT

I/WE, _____ OWNER/MANAGER

OF _____ MOBILE HOME PARK,

AGREE THAT ANY MOBILE HOME LOCATED IN THE ABOVE STATED PARK, FINANCED BY ALASKA HOUSING FINANCE CORPORATION, MAY REMAIN IF THE UNIT IS IN A FORECLOSURE STATUS WITH ALASKA HOUSING FINANCE CORPORATION AS LONG AS ALL SPACE RENTS ARE KEPT IN A CURRENT STATUS.

BY: _____

TITLE. _____

April 1, 1982

Honorable Pat Rodey
Chairman, Senate Judiciary Committee
Alaska State Legislature
State Capitol, Room 125
Juneau, Alaska 99801

Dear Senator Rodey:

This is to request an early hearing on House Bill 206, a bill dealing with mobile home court eviction restrictions. House Bill 206 has passed the House and been assigned to your committee where it has been for several weeks.

The Alaska Trailer Court Association will have witnesses in Juneau to testify when your committee hears the bill, and we have exhibits to demonstrate the harmful effect that has been caused by the unusual restrictions imposed on mobile home courts by the Landlord-Tenant Act. We consider this bill to be beneficial to tenants, because the current situation is detrimental to their living environment. Most of our witnesses will be tenants who strongly favor passage of the bill.

Please advise me a few days in advance of any hearing on the bill so I can arrange for our witnesses to get to Juneau.

Sincerely,

Bernard L. Marsh
Executive Secretary, ATCA

BLM:ls

called 4/12/82

274-3717

278-3615

[272-7077

Alaska Trailer Court Associates
Denali Towers North
2550 Denali Street
Suite No. 1600
Anchorage, Alaska 99503

April 1, 1982

Honorable Pat Rodey
Chairman, Senate Judiciary Committee
Alaska State Legislature
State Capitol, Room 125
Juneau, Alaska 99801

Dear Senator Rodey:

The Mobile Home Court Association has for a number of years strived to change the Landlord-Tenant Act covering evictions from Mobile Home Courts. Twice the change has passed the Senate in the past. This time we took a different tact and had it introduced in the House by Mitch Abood. House Bill 206 now rests in your committee.

It was our understanding during the last election when we supported your candidacy that you favor the enactment of such legislation. We now request that you expedite House Bill 206 through your committee so it may pass the Senate during this session.

Sincerely,

Ira Walker
President
Alaska Trailer Court Association

IW:ls

determining whether a forfeiture should be ...ered is the financial loss suffered by the parties. Hendrickson v. Freericks, Sup. Ct. Op. No. 2226 (File Nos. 4292, 4565, 4605), 620 P.2d 205 (1980).

Strict compliance not previously required. — It is a well-settled principle of law that where a landlord has led the tenant to believe that strict performance of a covenant will not be required, the landlord cannot thereafter demand forfeiture of the lease without first giving the tenant notice that strict compliance with the terms of the lease will be demanded in the future. Hendrickson v. Freericks, Sup. Ct. Op. No. 2226 (File Nos. 4292, 4565, 4605), 620 P.2d 205 (1980).

A purchaser of a building had standing to enforce compliance with a preexisting lease when the seller had not reserved leasehold rights. Hendrickson v. Freericks, Sup. Ct. Op. No. 2226 (File Nos. 4292, 4565, 4605), 620 P.2d 205 (1980).

Sec. 34.03.225. Limitations on mobile home park operator's right to terminate. A mobile home park operator may evict a mobile home or a mobile home park dweller or tenant only for one of the following reasons:

(1) the mobile home dweller or tenant has defaulted in the payment of rent owed;

(2) the mobile home dweller or tenant has been convicted of violating a federal or state law or local ordinance, and that violation is continuing and is detrimental to the health, safety or welfare of other dwellers or tenants in the mobile home park;

(3) the mobile home dweller or tenant has violated a reasonable rule or regulation properly established by the operator; and

(4) a change in the use of the land comprising the mobile home park, or the portion of it on which the mobile home to be evicted is located; however, all dwellers or tenants so affected by a change in land use shall be given at least 90 days notice, or longer if a longer notice period is provided in a valid lease. (§ 5 ch 138 SLA 1976)

Legislative history reports. — For report on ch. 138, SLA 1976 (SCS CSHB 829 am S [re-engrossed]), see 1976 Senate Journal, p. 1368.

NOTES TO DECISIONS

Evictions should be limited. — Because mobile home owners are thought to need more protection than do ordinary renters due to the fact that the general shortage of mobile home spaces places them in an unequal bargaining position which can lead to abuses by the landlord, and because eviction entails the expense of moving a mobile home which could result in a loss of equity in the mobile home, evictions permitted by paragraph (3) of this section should be limited to situations involving a substantial violation, inuring to the harm of other tenants, of a properly established and reasonable park rule or regulation. Osness v. Dimond Estates, Inc., Sup. Ct. Op. No. 2150 (File Nos. 4192, 4193), 615 P.2d 605 (1980).

Paragraph (3) of this section expressly requires material noncompliance. Osness v. Dimond Estates, Inc., Sup. Ct. Op. No. 2150 (File Nos. 4192, 4193), 615 P.2d 605 (1980).

Scope of reasonable park rules. — Where no contrary, special meaning for a term had ever been included in any park rules, nor communicated in any way to the tenants, such special meaning could not be regarded as a part of a "properly established" rule under paragraph (3) of this section. Osness v. Dimond Estate, Inc., Sup. Ct. Op. No. 2150 (File Nos. 4192, 4193), 615 P.2d 605 (1980).

HB 206

SENATOR
PATRICK M. RODEY
3271 MONTCLAIRE COURT
ANCHORAGE, AK 99503

SENATE MAJORITY LEADER
CHAIRMAN
SENATE JUDICIARY COMMITTEE
CHAIRMAN
SENATE SPECIAL COMMITTEE
ON BANKING

ALASKA STATE LEGISLATURE
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

April 6, 1982

Mr. Ira Walker
President
Alaska Trailer Court Association
Denali Towers North
2550 Denali Street
Suite No. 1600
Anchorage, AK 99503

Dear Mr. Walker:

Thank you for your letter of April 21, regarding HB 206, "An Act relating to the termination of rental agreements of mobile home park dwellers and tenants."

I am happy to inform you that HB 206 was passed from the Judiciary Committee on Friday, April 23. Currently this legislation is in Senate Rules Committee, chaired by Senator Kelly. I do expect the Senate to approve this measure before adjournment and assure you that I will vote for its passage when it is before the full Senate.

Your comments are appreciated.

Kindest regards,

Pat

Patrick M. Rodey
Senator

PMR/ds

WALDEC ENTERPRISES, INC.
6208 Staedem Drive
Anchorage, Alaska 99504
(907) 333-6025

MAYFLOWER CIRCLE PARK
MARSWALK AUTOMOTIVE SERVICE CENTER
SCHOWENWALD CONSTRUCTION
RENTALS

21 April 1982

Senator Pat Rodey
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey,

To say the least, I was disappointed in the testimony given before your committee on House Bill 206. I think all of our testimony fell flat, especially that of the tenants.

The major concern of the park owners is that the lifestyle of the tenants is deteriorating because a few tenants refuse to clean up in order to make the park look other than a junk yard. As you well know, the word "reasonable" in the condition of eviction contained in the signed rental agreements makes it impossible for us to prevail very often in court.

It is our tenants for which we have the greatest concern and we certainly want to continue improvement and upgrading of our parks so that our tenants, who happen to be our bread and butter, will have a better place in which to live.

It is our hope that Senator Ray doesn't find a need to make changes; that he will return the bill to your committee so that it can be moved forward for floor action without amendement and that our years of effort will bear fruit this session.

Kindest regards.

Sincerely yours,

Ira E. Walker

Ira E. Walker
President
Mobile Home Court Owners' Association

IT'S MY AIDE TOLD YOU ~~THE BILL~~ HB 206 WAS MOVED FROM COMMITTEE ON FRIDAY, April 23rd.
I EXPECT THE SENATE TO APPROVE THE MEASURE BEFORE WE ADJOURN.

SENATOR
PATRICK M. RODEY
3271 MONTCLAIRE COURT
ANCHORAGE, AK 99503

SENATE MAJORITY LEADER
CHAIRMAN
SENATE JUDICIARY COMMITTEE
CHAIRMAN
SENATE SPECIAL COMMITTEE
ON BANKING

ALASKA STATE LEGISLATURE
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

March 2, 1982

Mr. Thomas E. Carey
President
Carey Homes, Inc.
3317 Mountain View Drive
Anchorage, AK 99503

Dear Mr. Carey:

I appreciate your contacting me with your concerns regarding HB 206, relating to the termination of rental agreements of mobile home park dwellers and tenants.

The Judiciary Committee is currently in the process of hearing testimony on Senate bills which are before the Committee. As I am aware of the importance of HB 206, you may rest assured that I will schedule this legislation to be heard by the Committee as expeditiously as possible.

Again, thank you for informing me of your views.

Kindest regards,

Pat

Patrick M. Rodey
Senator

PMR/ds

HB 206

TELEGRAM

ALASCOM INC.
PHONE: 586-6442
JUNEAU, AK 99802

Jud Comm files

#

02013 POM ANCHORAGE ALASKA 15 02-23 0950A AST

PMS SEN PAT RODEY

JUNEAU

PLEASE GET HB206 OUT OF YOUR COMMITTEE.

TIM AND DIANE HAMPTON ARTESIAN TRAILER PARK

SRA BOX 34R

ANCHORAGE AK 99507

#

TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

In Judiciary
HB206

#

02264 NL ANCHORAGE ALASKA 50 02-24 1540P AST

PMS SEN PAT RODEY

JUNEAU 2121

WE WANT TO HAVE HB206 MOVED OUT OF THE COMMITTEE. WE NEED HELP TO CLEAN UP OUR COURTS.

THOMAS E CAREY PRESIDENT

CAREY HOMES INC

HB 206

Jud Comm files

TELEGRAM

ALASCOM INC.
PHONE: [illegible]442
JUNEAU, AK 99802

02015 POM ANCHORAGE ALASKA 15 02-23 1025A AST

PMS SEN PAT RODEY

JUNEAU

DIMOND ESTATES MOBILE HOME PARK OWNERS WOULD APPRECIATE YOUR ATTENTION TO HB206 THROUGH COMMITTEE

DIMOND ESTATES TRAILER PARK

1200 WEST DIMOND BLVD

ANCHORAGE ALASKA 99502

SENATOR
PATRICK M. RODEY
3271 MONTCLAIRE COURT
ANCHORAGE, AK 99503

SENATE MAJORITY LEADER
CHAIRMAN
SENATE JUDICIARY COMMITTEE
CHAIRMAN
SENATE SPECIAL COMMITTEE
ON BANKING

ALASKA STATE LEGISLATURE
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

March 2, 1982

Mr. Gene Roselius
1616 Medfra Street
Anchorage, AK 99501

Dear Mr. Roselius:

I appreciate your contacting me with your concerns regarding HB 206, relating to the termination of rental agreements of mobile home park dwellers and tenants.

The Judiciary Committee is currently in the process of hearing testimony on Senate bills which are before the Committee. As I am aware of the importance of HB 206, you may rest assured that I will schedule this legislation to be heard by the Committee as expeditiously as possible.

Again, thank you for informing me of your views.

Kindest regards,

Pat

Patrick M. Rodey
Senator

PMR/ds

FAR NORTH TRAILER PARKS
Gene Roselius (owner)
1616 Medfra
Anchorage, Alaska
99501

Anchorage Alaska
Feb 23, 1982

Senator Pat Rodey
Juneau Alaska

Dear Senator Rodey:

I am a 30 year resident of Anchorage and have been in the Mobilehome Park Business for 26 yrs. It is becoming more difficult to stay in business each year, even though I do operate a good clean Park.

Would certainly appreciate any help you can give us to get H.B. 206. "Out of Committee"

Sincerely,

Gene Roselius
1616 Medfra St
Anchorage AK 99501

HB 206

SENATOR
PATRICK M. RODEY
3271 MONTCLAIRE COURT
ANCHORAGE, AK 99503

SENATE MAJORITY LEADER
CHAIRMAN
SENATE JUDICIARY COMMITTEE
CHAIRMAN
SENATE SPECIAL COMMITTEE
ON BANKING

ALASKA STATE LEGISLATURE
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

March 2, 1982

Mr. Robert Slater
Glencaren Mobile Home Park
2221 Muldoon Road
Anchorage, AK 99504

Dear Mr. Slater:

I appreciate your contacting me with your concerns regarding HB 206, relating to the termination of rental agreements of mobile home park dwellers and tenants.

The Judiciary Committee is currently in the process of hearing testimony on Senate bills which are before the Committee. As I am aware of the importance of HB 206, you may rest assured that I will schedule this legislation to be heard by the Committee as expeditiously as possible.

Again, thank you for informing me of your views.

Kindest regards,

Pat

Patrick M. Rodey
Senator

PMR/ds

In January

HB206

TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

#

02265 NL ANCHORAGE ALASKA 50 02-24 1540P AST

PMS SEN PAT RODEY

JUNEAU 2122

WE WANT TO HAVE HB206 MOVED OUT OF THE COMMITTEE. WE NEED HELP

TO CLEAN UP OUR COURTS.

ROBERT SLATER

GLENCAREN MOBILE HOME PARK

SENATOR
PATRICK M. RODEY
3271 MONTCLAIRE COURT
ANCHORAGE, AK 99503

SENATE MAJORITY LEADER
CHAIRMAN
SENATE JUDICIARY COMMITTEE
CHAIRMAN
SENATE SPECIAL COMMITTEE
ON BANKING

ALASKA STATE LEGISLATURE
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

April 7, 1982

Mr. Bernard L. Marsh
Executive Secretary
Alaska Trailer Court Association
Denali Towers
2550 Denali Street
Suite No. 1600
Anchorage, AK 99503

Ben

Dear Mr. Marsh:

Thank you for your letter regarding HB 206, "An Act relating to the termination of rental agreements of mobile home park dwellers and tenants."

I do support this legislation which would change subsection 3 of Sec. 34.03.225 to allow evictions from Mobile Home Parks if there were to be a violation of a provision in the rental agreement or lease signed by both parties and not prohibited by law.

As the Judiciary Committee is currently in the process of addressing Senate legislation of high priority, I have been unable to schedule HB 206 for hearing. I do, however, plan to schedule this bill within the next two weeks.

I appreciate your contacting me with your concerns and can assure you that I will vote for passage of this legislation when it is before my committee.

Kindest regards,

Pat

Patrick M. Rodey
Senator

PMR/ds

April 1, 1982

Honorable Pat Rodey
Chairman, Senate Judiciary Committee
Alaska State Legislature
State Capitol, Room 125
Juneau, Alaska 99801

Dear Senator Rodey:

This is to request an early hearing on House Bill 206, a bill dealing with mobile home court eviction restrictions. House Bill 206 has passed the House and been assigned to your committee where it has been for several weeks.

The Alaska Trailer Court Association will have witnesses in Juneau to testify when your committee hears the bill, and we have exhibits to demonstrate the harmful effect that has been caused by the unusual restrictions imposed on mobile home courts by the Landlord-Tenant Act. We consider this bill to be beneficial to tenants, because the current situation is detrimental to their living environment. Most of our witnesses will be tenants who strongly favor passage of the bill.

Please advise me a few days in advance of any hearing on the bill so I can arrange for our witnesses to get to Juneau.

Sincerely,

Ben

Bernard L. Marsh
Executive Secretary, ATCA

BLM:ls

called 4/12/82

274-3717

278-3615

272-7077

Denali Towers North • 2550 Denali Street • Suite 1600 • Anchorage, Alaska 99503 • (907) 278-3615

SENATOR
PATRICK M. RODEY
3271 MONTCLAIRE COURT
ANCHORAGE, AK 99503

SENATE MAJORITY LEADER
CHAIRMAN
SENATE JUDICIARY COMMITTEE
CHAIRMAN
SENATE SPECIAL COMMITTEE
ON BANKING

ALASKA STATE LEGISLATURE
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

April 6, 1982

Ms. Ira Walker
President
Alaska Trailer Court Association
Denali Towers North
2550 Denali Street
Suite No. 1600
Anchorage, AK 99503

Dear Ms. Walker:

Thank you for your letter of April 1, regarding HB 206, "An Act relating to the termination of rental agreements of mobile home park dwellers and tenants."

It is true that I do favor this legislation which would change subsection 3 of Sec. 34.03.225 to allow evictions from Mobile Home Parks if there were to be a violation of a provision in the rental agreement or lease signed by both parties and not prohibited by law.

As the Judiciary Committee is currently in the process of addressing Senate legislation of high priority, I have been unable to schedule HB 206 for hearing. I do, however, plan to schedule this bill within the next two weeks.

I appreciate your contacting me with your concerns and can assure you that I will vote for passage of this legislation when it is before my committee.

Kindest regards,

Pat

Patrick M. Rodey
Senator

PMR/ds

Alaska Trailer Court Associates

Denali Towers North
2550 Denali Street
Suite No. 1600
Anchorage, Alaska 99503

April 1, 1972

Honorable Pat Rodey
Chairman, Senate Judiciary Committee
Alaska State Legislature
State Capitol, Room 125
Juneau, Alaska 99801

Dear Senator Rodey:

The Mobile Home Court Association has for a number of years strived to change the Landlord-Tenant Act covering evictions from Mobile Home Courts. Twice the change has passed the Senate in the past. This time we took a different tact and had it introduced in the House by Mitch Abood. House Bill 206 now rests in your committee.

It was our understanding during the last election when we supported your candidacy that you favor the enactment of such legislation. We now request that you expedite House Bill 206 through your committee so it may pass the Senate during this session.

Sincerely,

Ira E. Walker

Ira Walker
President
Alaska Trailer Court Association

IW:ls

HB 206

SENATOR
PATRICK M. RODEY
MONTCLAIRE COURT
ANCHORAGE, AK 99503

SENATE MAJORITY LEADER
CHAIRMAN
SENATE JUDICIARY COMMITTEE
CHAIRMAN
SENATE SPECIAL COMMITTEE
ON BANKING

ALASKA STATE LEGISLATURE
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

April 23, 1982

Leigh Brooks
1105 E 17th Ave
Anchorage, AK 99501

Dear Leigh:

I appreciate your contacting me with your concern regarding HB 206, relating to the termination of rental agreements of mobile home park dwellers and tenants.

HB 206 is currently in a Judiciary sub-committee, chaired by Senator Ray. Senator Ray is expected to report the bill back to the committee within the next few days. I do support this legislation and will vote for its passage when it is before the committee and when it reaches the Senate floor.

Again, thank you for informing me of your views.

Kindest regards,

Pat

Patrick M. Rodey
Senator

PMR/ds

TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

#

02090 POM ANCHORAGE AK 15 04-22 0800A AST

PMS SEN PAT RODEY

JUNEAU

SUPPORT HB206 AS WRITTEN.

LEIGH BROOKS

1105 E 17TH AVE

ANCHORAGE 99501

SENATOR
PATRICK M. RODEY
271 MONTCLAIRE COURT
ANCHORAGE, AK 99503

SENATE MAJORITY LEADER
CHAIRMAN
SENATE JUDICIARY COMMITTEE
CHAIRMAN
SENATE SPECIAL COMMITTEE
ON BANKING

ALASKA STATE LEGISLATURE
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

April 23, 1982

Laverne Brooks
4751 Kent Street
Anchorage, AK 99503

Dear Laverne:

I appreciate your contacting me with your concerns regarding HB 206, relating to the termination of rental agreements of mobile home park dwellers and tenants.

HB 206 is currently in a Judiciary sub-committee, chaired by Senator Ray. Senator Ray is expected to report the bill back to the committee within the next few days. I do support this legislation and will vote for its passage when it is before the committee and when it reaches the Senate floor.

Again, thank you for informing me of your views.

Kindest regards,

Pat

Patrick M. Rodey
Senator

PMR/ds

TELEGRAM

ALASCOM, INC.
PHONE: 586 6442
JUNEAU, AK 99802

#

Generation of rental agreements

02077 POM ANCHORAGE AK 15 04-22 0800A AS:

PMS SEN PAT RODEY

JUNEAU

SUPPORT HB206 AS WRITTEN.

LAVERNE BROOKS

4751 KENT ST

ANCHORAGE 99503

S. TELEGRAM

2/4

HB 206

SENATOR
PATRICK M. RODEY
271 MONTCLAIRE COURT
ANCHORAGE, AK 99503

SENATE MAJORITY LEADER
CHAIRMAN
SENATE JUDICIARY COMMITTEE
CHAIRMAN
SENATE SPECIAL COMMITTEE
ON BANKING

ALASKA STATE LEGISLATURE
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

April 23, 1982

Robin Miller
4300 E 4th Ave.
Anchorage, AK 99501

Dear Robin:

I appreciate your contacting me with your concerns regarding HB 206, relating to the termination of rental agreements of mobile home park dwellers and tenants.

HB 206 is currently in a Judiciary sub-committee, chaired by Senator Ray. Senator Ray is expected to report the bill back to the committee within the next few days. I do support this legislation and will vote for its passage when it is before the committee and when it reaches the Senate floor.

Again, thank you for informing me of your views.

Kindest regards,

Pat

Patrick M. Rodey
Senator

PMR/ds

TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

02089 POM ANCHORAGE AK 15 04-22 0800A AST

P.S SEN PAT RODEY

JUNEAU

SUPPORT HB206 AS WRITTEN.

ROBIN MILLER

4300 E 4TH AVE

ANCHORAGE 99501

HB

210

COMMITTEE REPORT

SENATE

4/19/82

FURTHER: None

Date: April 8, 1982

Mr. President:

The Committee on JUDICIARY has had CSHB 210(Rls) am child custody

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 210 [X] same title [ ] new title

and recommends the minority recommendations

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Ellis, Rue

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Welch, Ackerman, Walker

CHAIRMAN

S 60 (Rev. 12/78)

COMMITTEE REPORT

SENATE

5/5/82

FURTHER: None

Date: [illegible]

Mr. President:

The Committee on JUDICIARY has had CSHB 210(Rlc) am child custody

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for [illegible] [ ] same title [ ] new title

and recommends [illegible]

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[illegible]

CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM May 8, 1982

SUBJECT: 2d SCS CSHB 210 (Judiciary)

TO: Senator Patrick M. Rodey
Chairman, Senate Judiciary Committee

FROM: Tamara Brandt Cook
Legislative Counsel TBC

You have asked for an explanation of section 2 of this bill amending AS 09.55.205(c) in view of the fact that AS 09.55.-205 as it appears in the printed statutes is not divided into subsections. On March 26, 1982, SCS HB 532 (Rules) am S was approved by the Governor. That Act divided AS 09.-55.205 into subsections, although it made no changes to that portion designated as (c). The actual effective date of that Act is June 24, 1982. Since this bill does not have an effective date that would allow it to take effect before June 24, 1982, section 2 is drafted to coincide with SCS HB 532 (Rules) am S making changes only to the new sub-section (c). A copy of SCS HB 532 (Rules) am S is attached for your information.

TBC:ljb

Attachment

Original sponsors: Rogers and Gardiner

Offered: 4/15/82
For Calendar, Friday
4/16/82

IN THE HOUSE BY THE RULES COMMITTEE

CS FOR HOUSE BILL NO. 210 (Rules) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to child custody."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1 LEGISLATIVE INTENT. (a) The legislature finds that it is generally desirable to assure a minor child frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing. While actual physical custody may not be practical or appropriate in all cases, it is the intent of the legislature that both parents have the opportunity to guide and nurture their child and to meet the needs of the child on an equal footing beyond the considerations of support or actual custody.

(b) The legislature also finds that it is in the best interests of a child to encourage parents to implement their own child care agreements outside of the court setting.

* Sec. 2. AS 09.55.205(c) is amended to read:

(c) The court shall determine custody in accordance with the best interests of the child <u>under AS 25.20.060 - 25.20.150</u> [NEITHER PARENT IS ENTITLED TO PREFERENCE AS A MATTER OF RIGHT IN AWARDING CUSTODY OF THE CHILD]. In determining the best interests of the child the court shall consider [ALL RELEVANT FACTORS INCLUDING:]

(1) the physical, emotional, mental, religious, and social needs of the child;

(2) the capability and desire of each parent to meet these needs;

(3) the child's preference if the child is of sufficient age and capacity to form a preference;

(4) the love and affection existing between the child and each parent;

(5) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;

(6) the desire and ability of each parent to allow an open and loving frequent relationship between the child and his other parent;

* Sec. 3. AS 09.55.205 is amended by adding a new subsection to read:

(d) In awarding custody the court may not consider the conduct, marital status, income, social or cultural environment, or life style of either parent unless the court determines that the factor affects the well-being of the child.

* Sec. 4. AS 25.20.060 is amended to read:

Sec. 25.20.060. CUSTODY OF THE CHILD. (a) If there is a dispute over child custody, either parent may petition the superior court for resolution of the matter under AS 25.20.060 - 25.20.150 [THIS SECTION UNLESS AN ACTION BETWEEN THE PARENTS IS PENDING UNDER AS 09.55]. The court shall award custody on the basis of the best interests of the child. In determining the best interests of the child, the court shall consider all relevant factors including those factors enumerated in AS 09.55.205(c) [AS 09.55.205].

(b) Neither parent, regardless of the question of the child's legitimacy, is entitled to preference in the awarding of custody.

(c) The court may award shared custody if shared custody is determined by the court to be in the best interests of the child.

* Sec. 5. AS 25.20 is amended by adding new sections to read:

Sec. 25.20.070. TEMPORARY CUSTODY. Unless it is shown to be detrimental to the welfare of the child, the child shall have, to the

greatest degree practical, equal access to both parents during the time that the court considers an award of custody under AS 25.20.060 - 25.20.-150.

Sec. 25.20.080. MEDIATION OF CUSTODY MATTER. (a) At any time within 30 days after a petition for child custody is filed under AS 25.-20.060 the court shall order the parties to submit to mediation. Each party shall have the right to challenge peremptorily one mediator appointed.

(b) Mediation shall be conducted informally as a conference, or by telephone, or series of conferences. The parties to the action and a court-appointed representative of the minor children shall attend.

(c) After the first conference either party may withdraw, or the mediator may terminate mediation if he determines that mediation efforts are unsuccessful. Upon withdrawal by either party or termination by the mediator, the mediator shall notify the court that mediation efforts have failed, and the custody proceeding shall proceed in the usual manner.

(d) Upon submission of the parties to mediation under this section, a pending child custody proceeding shall be stayed for a period of 30 days or until the court is notified that mediation efforts have failed. All court orders made during the pending custody proceeding remain in effect during the period of mediation.

(e) Costs of mediation shall be paid by one party or both parties as ordered by the court.

Sec. 25.20.090. FACTORS FOR CONSIDERATION IN AWARDING SHARED CUSTODY. In determining whether to award shared custody of a child the court shall consider

(1) the child's preference if the child is of sufficient age and capacity to form a preference;

(2) the needs of the child;

(3) the stability of the home environment likely to be offered by each parent;

(4) the education of the child;

(5) the advantages of keeping the child in the community where the child presently resides;

(6) the optimal time for the child to spend with each parent considering

(A) the actual time spent with each parent;

(B) the proximity of each parent to the other and to the school in which the child is enrolled;

(C) the feasibility of travel between the parents;

(D) special needs unique to the child that may be better met by one parent than the other;

(E) which parent is more likely to encourage frequent and continuing contact with the other parent;

(8) the findings and recommendations of a neutral mediator if mediation is ordered by the court;

(9) other factors the court considers pertinent.

Sec. 25.20.100. DENIAL OF SHARED CUSTODY. If a parent or the guardian ad litem requests shared custody of a child and the court denies the request, the reasons for the denial shall be stated on the record.

Sec. 25.20.110. AWARD OF CUSTODY TO NONPARENT. The court may award custody to a person who is not a parent of a child if

(1) the parents of the child consent in writing to the award; or

(2) the court makes a written finding that an award of custody to a parent would be detrimental to the child and the award to the

person who is not a parent of the child is necessary to serve the best interests of the child.

Sec. 25.20.120. MODIFICATION OF CUSTODY OR VISITATION. An award of custody of a child or visitation with the child may be modified if the court determines that the best interests of the child require the modification of the award. If a parent opposes the modification of the award of custody or visitation with the child and the modification is granted, the court shall enter on the record its reason for the modification.

Sec. 25.20.130. CONFIDENTIALITY. At any stage of a proceeding involving custody of a child the court may, if it is in the best interests of the child, close the proceeding to the public or order the court records closed to the public temporarily or permanently. The court may modify or vacate an order under this section at any time.

Sec. 25.20.140. ACCESS TO RECORDS OF THE CHILD. A parent who is not granted custody under AS 25.20.060 - 25.20.150 may have access to the medical, dental, school, and other records of the child notwithstanding any other provision of law.

Sec. 25.20.150. DEFINITION. In AS 25.20.060 - 25.20.150, "shared custody" means an award of custody of the child to both parents that assures the child of frequent and continuing contact with each parent.

E.D.

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: File

FROM: Kevin Bruce

I talked to Karla Forsythe, Court System General Council, today regarding HB 210. She expressed several reservations with the bill, including the mandatory mediation provision and the lack of language relating to service to indigents. She reported that mediation generally takes an average of 12 hours - at approximately $75 - $100 per hour.

Her estimate for costs to the State for indigent persons, should the bill go forward, with the mandatory language to be approximately $450,000.

She also questioned the incentive for parties to pay mediators if it is mandatory. (She reported a problem with attorney's collecting fees in similar circumstances).

Karla suggested I review the language in SB 723 for possible improvements.

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON
P.O. BOX 143
SITKA, ALASKA 99835

POUCH V
JUNEAU, ALASKA 99811

COMMITTEES
FINANCE
RESOURCES
STATE AFFAIRS

M E M O R A N D U M

To: Senator Pat Rodey, Chairm
Senate Judiciary Committee

From: Senator Dick Eliason

Subject: HB 210 and CSSB 741

This week the Senate unanimously passed CSSB 741 (Finance), the child support enforcement bill. The bill has now gone on to the House but due to the House's decision to hear only bills which are on the priority list it appears that this bill could die there. It would be a shame for this excellent piece of legislation, which the whole Senate endorsed, not to have a chance at final passage.

Your Senate Judiciary committee heard and passed SB 741 earlier in the session. I would like to ask you to consider attaching the final Senate version of it (CSSB 741 (Finance) to HB 210 which is presently before you. The bills deal with related subjects and statutes and their combination would be appropriate. I hope you will include the language from SB 741 in the version of HB 210 which is returned to the House for concurrence.

SENATE AMENDMENT

By Ferguson, Anderson and Sackett

To: _____ SENATE BILL No. _____

To: _____ HOUSE BILL No. 210 (Judiciary)

PAGE: 2 LINE: 13

after "child" insert:

: however, the court shall comply with the provisions of the Indian Child Welfare Act (P.L.(25 U.S.C. 1901-1963)

S 70

The United States LAW WEEK
A NATIONAL SURVEY OF CURRENT LAW
March 30, 1982 • THE BUREAU OF NATIONAL AFFAIRS, INC., WASHINGTON, D.C. • Volume 50, No. 37

SUMMARY AND ANALYSIS

Clear, Convincing Evidence Needed For Termination Of Parental Rights

The standard of proof states must meet in seeking to terminate parental rights is now a matter of federal constitutional law. The U.S. Supreme Court, 5-4, strikes down a New York child neglect statute that permits termination of parental rights upon proof by a "fair preponderance of the evidence" that a child is permanently neglected. Due process, the Court declares, requires at a minimum that the state prove its case by "clear and convincing" evidence. (Santosky v. Kramer, 3/24/82)

Last year, in Lassiter v. Department of Social Services, 452 U.S. 18, 49 LW 4586 (1981), the Court held that the Due Process Clause does not require the appointment of counsel for indigent parents in every parental rights termination proceeding. In Lassiter, Justice Blackmun explains in the majority opinion, eight Justices agreed that the nature of the process due in such proceedings turns on a balancing of the private interests affected, the risk of error created by the state scheme, and the countervailing governmental interest supporting use of the challenged procedure.

Employing this analysis, Justice Blackmun finds the private interest "commanding," the risk of error "substantial," and the state's interest in the fair preponderance standard "comparatively slight." He then concludes that the "clear and convincing" evidence standard, used by a majority of the states, "strikes a fair balance between the rights of the natural parents and the state's legitimate concerns."

Justice Rehnquist, joined in dissent by the Chief Justice and Justices White and O'Connor, fears that the majority is taking a step in the direction of regulating the entire society by a single source of law. "Fixing the standard of proof as a matter of federal constitutional law will only lead to further federal-court intervention in state schemes." (Page 4333)

Railway Labor Act Applicable To New York State Railroad Workers

New York's effort to prevent its railroad workers from striking is derailed by a unanimous U.S. Supreme Court ruling that the federal Railway Labor Act, which allows railroad workers to strike, applies to state-owned railroads. New York was on the wrong track, according to the Court, when it thought a state law prohibiting strikes by public employees could be applied to its railroad workers. (United Transportation Union v. Long Island Rail Road Co., 3/24/82)

Chief Justice Burger, writing for the Court, explains that application to a state-owned railroad of Congress' acknowledged authority to regulate labor relations in the railroad industry does not impair a state's ability to carry out its sovereign function. In National League of Cities v. Usery, 426 U.S. 833 (1976), the Court said that a federal law that directly impairs a state's ability to "structure integral operations in areas of traditional governmental functions" violates the Tenth Amendment. Operation of a railroad engaged in interstate commerce is clearly not, in the Court's opinion, an integral part of traditional state activities generally immune from federal regulation.

The Court concludes that to allow individual states, by acquiring railroads, to circumvent federal regulation of railroads would destroy the longstanding and comprehensive uniform scheme thought essential by Congress and would endanger the efficient operation of the interstate rail system. The Court points out that a state acquiring a railroad does so knowing that the railroad is subject to such a scheme of federal regulation. Here, the Court says, New York knew of and accepted federal regulation and, in fact, had operated under it for 13 years without claiming any impairment of its traditional sovereignty. (Page 4315)

Forged Security Need Not Be Forged Before State Line Crossing

In prosecutions under 18 USC 2314 for transporting forged securities in interstate commerce, the government need not prove that the security was forged before it ever crossed state lines, the U.S. Supreme Court holds, 8-1. The phrase "interstate commerce" has a much broader meaning than merely crossing state lines, the majority says in an opinion written by Justice O'Connor. "[I]nterstate commerce begins well before state lines are crossed, and ends only when movement of the items in question has ceased in the destination

AEC contractors to be shielded by constitutional immunity principles "as interpreted by the courts." S. Rep. No. 694, at 3. But it is worth remarking that DOE is asking us to establish as a constitutional rule something that it was unable to obtain statutorily from Congress. For the reasons set out above, we conclude that the contractors here are not protected by the Constitution's guarantee of federal supremacy. If political or economic considerations suggest that a broader immunity rule is appropriate, "[s]uch complex problems are ones which Congress is best qualified to resolve." *United States v. City of Detroit*, 355 U. S., at 474.

Accordingly, the judgment of the Court of Appeals is

Affirmed

GEORGE W. JONES, Assistant to the Solicitor General, Justice Department, Washington, D.C. (WADE H. McCREE, JR., Solicitor General, M. CARR FERGUSON, Assistant Attorney General, STUART A. SMITH, Assistant to the Solicitor General, JONATHAN S. COHEN and JOHN J. McCARTHY, Justice Department attorneys, with him on the brief) for petitioner; DANIEL H. FRIEDMAN, Assistant Attorney General, Santa Fe, N.M. (JEFF BINGAMAN, Attorney General, and RICHARD M. KOPEL, Assistant Attorney General, with him on the brief) for respondents.

No. 80–5889

JOHN SANTOSKY II AND ANNIE SANTOSKY, PETITIONERS *v.* BERNHARDT S. KRAMER, COMMISSIONER, ULSTER COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL.

ON WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF NEW YORK, THIRD JUD. DEPT.

Syllabus

No. 80–5889. Argued November 10, 1981—Decided March 24, 1982

Under New York law, the State may terminate, over parental objection, the rights of parents in their natural child upon a finding that the child is "permanently neglected." The New York Family Court Act (§ 622) requires that only a "fair preponderance of the evidence" support that finding. Neglect proceedings were brought in Family Court to terminate petitioners' rights as natural parents in their three children. Rejecting petitioners' challenge to the constitutionality of § 622's "fair preponderance of the evidence" standard, the Family Court weighed the evidence under that standard and found permanent neglect. After a subsequent dispositional hearing, the Family Court ruled that the best interests of the children required permanent termination of petitioners' custody. The Appellate Division of the New York Supreme Court affirmed, and the New York Court of Appeals dismissed petitioners' appeal to that court.

Held:

1. Process is constitutionally due a natural parent at a state-initiated parental rights termination proceeding.

(a) The fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. A parental rights termination proceeding interferes with that fundamental liberty interest. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.

(b) The nature of the process due in parental rights termination proceedings turns on a balancing of three factors: the private interests affected by the proceedings; the risk of error created by the State's chosen procedure; and the countervailing governmental interest supporting use of the challenged procedure. *Mathews v. Eldridge*, 424 U. S. 319, 335. In any given proceeding, the minimum standard of proof tolerated by the due process requirement reflects not only the weight of the public and private interests affected, but also a societal judgment about how the risk of error should be distributed between the litigants. The minimum standard is a question of federal law which this Court may resolve. Retrospective case-by-case review cannot preserve fundamental fairness when a class of proceedings is governed by a constitutionally defective evidentiary standard.

2. The "fair preponderance of the evidence" standard prescribed by § 622 violates the Due Process Clause of the Fourteenth Amendment.

(a) The balance of private interests affected weighs heavily against use of such a standard in parental rights termination proceedings, since the private interest affected is commanding and the threatened loss is permanent. Once affirmed on appeal, a New York decision terminating parental rights is *final* and irrevocable.

(b) A preponderance standard does not fairly allocate the risk of an erroneous factfinding between the State and the natural parents. In parental rights termination proceedings, which bear many of the indicia of a criminal trial, numerous factors combine to magnify the risk of erroneous factfinding. Coupled with the preponderance standard, these factors create a significant prospect of erroneous termination of parental rights. A standard of proof that allocates the risk of error nearly equally between an erroneous failure to terminate, which leaves the child in an uneasy status quo, and an erroneous termination, which unnecessarily destroys the natural family, does not reflect properly the relative severity of these two outcomes.

(c) A standard of proof more strict than preponderance of the evidence is consistent with the two state interests at stake in parental rights termination proceedings—a *parens patriae* interest in preserving and promoting the child's welfare and a fiscal and administrative interest in reducing the cost and burden of such proceedings.

3. Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence. A "clear and convincing evidence" standard adequately conveys to the factfinder the level of subjective certainty about his factual conclusions necessary to satisfy due process. Determination of the precise burden equal to or greater than that standard is a matter of state law properly left to state legislatures and state courts.

75 App. Div. 2d 910, 427 N. Y. S. 2d 319, vacated and remanded.

BLACKMUN, J., delivered the opinion of the Court, in which BRENNAN, MARSHALL, POWELL, and STEVENS, JJ., joined. REHNQUIST, J., filed a dissenting opinion, in which BURGER, C. J., and WHITE and O'CONNOR, JJ., *joined*.

JUSTICE BLACKMUN delivered the opinion of the Court.

Under New York law, the State may terminate, over parental objection, the rights of parents in their natural child upon a finding that the child is "permanently neglected." N.Y. Soc. Serv. Law §§ 384–b.4.(d), 384–b.7.(a) (McKinney Supp. 1981–1982) (Soc. Serv. Law). The New York Family Court Act § 622 (McKinney 1975 & Supp. 1981–1982) (Fam. Ct. Act) requires that only a "fair preponderance of the evidence" support that finding. Thus, in New York, the factual certainty required to extinguish the parent-child relationship is no greater than that necessary to award money damages in an ordinary civil action.

Today we hold that the Due Process Clause of the Fourteenth Amendment demands more than this. Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence.

I

A

New York authorizes its officials to remove a child temporarily from his or her home if the child appears "neglected," within the meaning of Art. 10 of the Family Court Act. See §§ 1012(f), 1021–1029. Once removed, a child under the age of 18 customarily is placed "in the care of an authorized agency," Soc. Serv. Law § 384–b.7.(a), usually a state institution or a foster home. At that point, "the state's first obligation is to help the family with services to . . . reunite it. . . ." § 384–b.1.(a)(iii). But if convinced that "positive, nurturing parent-child relationships no longer exist," § 384–b.1.(b), the State may initiate "permanent neglect" proceedings to free the child for adoption.

The State bifurcates its permanent neglect proceeding into "fact-finding" and "dispositional" hearings. Fam. Ct. Act §§ 622, 623. At the factfinding stage, the State must prove that the child has been "permanently neglected," as defined by Fam. Ct. Act §§ 614.1.(a)–(d) and Soc. Serv. Law § 384–b.7.(a). See Fam. Ct. Act § 622. The Family Court judge then determines at a subsequent dispositional hearing what placement would serve the child's best interests. §§ 623, 631.

At the factfinding hearing, the State must establish, among other things, that for more than a year after the child entered state custody, the agency "made diligent efforts to encourage and strengthen the parental relationship." Fam. Ct. Act §§ 614.1.(c), 611. The State must further prove that during that same period, the child's natural parents failed "substantially and continuously or repeatedly to maintain contact with or plan for the future of the child although physically and financially able to do so." § 614.1.(d). Should the State support its allegations by "a fair preponderance of the evidence," § 622, the child may be declared permanently neglected. § 611. That declaration empowers the Family Court judge to terminate permanently the natural parents' rights in the child. §§ 631(c), 634. Termination denies the natural parents physical custody, as well as the rights ever to visit, communicate with, or regain custody of the child.[1]

New York's permanent neglect statute provides natural parents with certain procedural protections.[2] But New York permits its officials to establish "permanent neglect" with less proof than most States require. Thirty-three States, the District of Columbia, and the Virgin Islands currently specify a higher standard of proof, in parental rights termination proceedings, than a "fair preponderance of the evidence."[3] The only analogous federal statute of which we are aware permits termination of parental rights solely upon "evidence beyond a reasonable doubt." Indian Child Welfare Act of 1978, Pub. L. 95–608, § 102(f), 92 Stat. 3072, 25 U. S. C. § 1912(f) (1976 ed., Supp. III). The question here is whether New York's "fair preponderance of the evidence" standard is constitutionally sufficient.

B

Petitioners John Santosky II and Annie Santosky are the natural parents of Tina and John III. In November 1973, after incidents reflecting parental neglect, respondent Kramer, Commissioner of the Ulster County Department of Social Services, initiated a neglect proceeding under Fam. Ct. Act § 1022 and removed Tina from her natural home. About 10 months later, he removed John III and placed him with foster parents. On the day John was taken, Annie Santosky gave birth to a third child, Jed. When Jed was only three days old, respondent transferred him to a foster home on the ground that immediate removal was necessary to avoid imminent danger to his life or health.

In October 1973, respondent petitioned the Ulster County Family Court to terminate petitioners' parental rights in the three children.[4] Petitioners challenged the constitutionality of the "fair preponderance of the evidence" standard specified in Fam. Ct. Act § 622. The Family Court judge rejected this constitutional challenge, App. 29–30, and weighed the evidence under the statutory standard. While acknowledging that the Santoskys had maintained contact with their children, the judge found those visits "at best superficial and devoid of any real emotional content." *Id.*, at 21. After deciding that the agency had made "'diligent efforts' to encourage and strengthen the parental relationship," *id.*, at 30, he concluded that the Santoskys were incapable, even with public assistance, of planning for the future of their children. *Id.*, at 33–37. The judge later held a dispositional hearing and ruled that the best interests of the three children required permanent termination of the Santoskys' custody.[5] *Id.*, at 39.

Petitioners appealed, again contesting the constitutionality of § 622's standard of proof.[6] The New York Supreme

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[1] At oral argument, counsel for petitioners asserted that, in New York, natural parents have no means of restoring terminated parental rights. Tr. of Oral Arg. 9. Counsel for respondent, citing Fam. Ct. Act § 1061, answered that parents may petition the Family Court to vacate or set aside an earlier order on narrow grounds, such as newly discovered evidence or fraud. Tr. of Oral Arg. 26. Counsel for respondent conceded, however, that this statutory provision has never been invoked to set aside a permanent neglect finding. *Id.*, at 27.

[2] Most notably, natural parents have a statutory right to the assistance of counsel and of court-appointed counsel if they are indigent. Fam. Ct. Act § 262(a)(iii).

[3] Fourteen States, by statute, have required "clear and convincing evidence" or its equivalent. See Alaska Stat. Ann. § 47.10.080(c)(3) (1980); Cal. Civ. Code Ann. § 232(a)(7) (West Supp. 1982); Ga. Code §§ 24A–2201(c), 24A–3201 (1981); Iowa Code § 600A.8 (Supp. 1981) ("clear and convincing proof"); Me. Rev. Stat. Ann., Tit. 22, § 4055.1.B.(2) (Supp. 1981–1982); Mich. Comp. Laws § 722.25 (Supp. 1981–1982); Mo. Rev. Stat. § 211.447.2(2) (Supp. 1982) ("clear, cogent and convincing evidence"); N.M. Stat. Ann. § 40–7–4.J. (Supp. 1981); N.C. Gen. Stat. § 7A–289.30(e) (Supp. 1979) ("clear, cogent, and convincing evidence"); R.I. Gen. Laws § 15–7–7(d) (Supp. 1980); Tenn. Code Ann. § 37–246(d) (Supp. 1981); Va. Code § 16.1–283.B. (Supp. 1981); W. Va. Code § 49–6–2(c) (1980) ("clear and convincing proof"); Wis. Stat. § 48.31(1) (Supp. 1981–1982).

Sixteen States, the District of Columbia, and the Virgin Islands, by court decision, have required "clear and convincing evidence" or its equivalent. See *Dale County Dept. of Pensions & Security* v. *Robles*, 368 So. 2d 39, 42 (Ala. App. 1979); *Harper* v. *Caskin*, 265 Ark. 558, 560–561, 580 S.W. 2d 176, 178 (1979); *In re J. S. R.*, 374 A. 2d 860, 864 (D.C. 1977); *Torres* v. *Van Eepoel*, 98 So. 2d 735, 737 (Fla. 1957); *Blakey* v. *Blakey*, 72 Ill. App. 3d 946, 947, 391 N.E. 2d 222, 223 (1979); *In re Kerns*, 225 Kan. 746, 753, 594 P. 2d 187, 193 (1979); *In re Rosenbloom*, 266 N.W. 2d 888, 889 (Minn. 1978) ("clear and convincing proof"); *In re J. L. B.*, —— Mont. ——, ——, 594 P. 2d 1127, 1136 (1979); *In re Souza*, 204 Neb. 503, 510, 283 N.W. 2d 48, 52 (1979); *J. and E.* v. *M. and F.*, 157 N.J. Super. 478, 489, 385 A. 2d 240, 246 (App. Div. 1978); *In re J.A.*, 283 N.W. 2d 83, 92 (N.D. 1979); *In re Darren Todd H.*, 615 P. 2d 287, 289 (Okla. 1980); *In re William L.*, 477 Pa. 322, 332, 383 A. 2d 1228, 1233, cert. denied *sub nom. Lehman* v. *Lycoming County Children's Services*, 439 U. S. 880 (1978); *In re G. M.*, 596 S.W. 2d 846, 847 (Tex. 1980); *In re Potts*, 535 P. 2d 1244, 1248 (Utah 1975); *In re Maria*, 15 V.I. 368, 384 (1978); *In re Sego*, 82 Wash. 736, 739, 513 P. 2d 831, 833 (1973) ("clear, cogent, and convincing evidence"); *In re X.*, 607 P. 2d 911, 919 (Wyo. 1980) ("clear and unequivocal").

South Dakota's Supreme Court has required a "clear preponderance" of the evidence in a dependency proceeding. See *In re B.E.*, 287 N.W. 2d 91, 96 (1979). Two States, New Hampshire and Louisiana, have barred parental rights terminations unless the key allegations have been proved beyond a reasonable doubt. See *State* v. *Robert H.*, 118 N.H. 713, 716, 393 A. 2d 1387, 1389 (1978); La. Rev. Stat. Ann. § 13:1603.A (West Supp. 1982).

So far as we are aware, only two federal courts have addressed the issue. Each has held that allegations supporting parental rights termination must be proved by clear and convincing evidence. *Sims* v. *State Dept. of Public Welfare*, 438 F. Supp. 1179, 1194 (SD Tex. 1977), rev'd on other grounds *sub nom. Moore* v. *Sims*, 442 U. S. 415 (1979); *Alsager* v. *District Court of Polk Cty.*, 406 F. Supp. 10, 25 (SD Iowa 1975), aff'd on other grounds, 545 F. 2d 1137 (CA8 1976).

[4] Respondent had made an earlier and unsuccessful termination effort in September 1976. After a factfinding hearing, the Family Court judge dismissed respondent's petition for failure to prove an essential element of Fam. Ct. Act § 614.1.(d). See *In re Santosky*, 89 Misc. 2d 730, 393 N.Y.S. 2d 486 (1977). The New York Supreme Court, Appellate Division, affirmed, finding that "the record as a whole" revealed that petitioners had "substantially planned for the future of the children." *In re John W.*, 63 App. Div. 2d 750, 751, 404 N.Y.S. 2d 717, 719 (1978).

[5] Since respondent took custody of Tina, John III, and Jed, the Santoskys have had two other children, James and Jeremy. The State has taken no action to remove these younger children. At oral argument, counsel for respondent replied affirmatively when asked whether he was asserting that petitioners were "unfit to handle the three older ones but not unfit to handle the two younger ones." Tr. of Oral Arg. 24.

[6] Petitioners initially had sought review in the [illegible]

Court, Appellate Division, affirmed, holding application of the preponderance of the evidence standard "proper and constitutional." *In re John AA*, 75 App. Div. 2d 919, 427 N.Y.S. 2d 319, 320 (1980). That standard, the court reasoned, "recognizes and seeks to balance rights possessed by the child . . . with those of the natural parents. . . ." *Ibid.*

The New York Court of Appeals then dismissed petitioners' appeal to that court "upon the ground that no substantial constitutional question is directly involved." App. 55. We granted certiorari to consider petitioners' constitutional claim. 450 U. S. 993 (1981).

II

Last Term, in *Lassiter* v. *Department of Social Services*, 452 U. S. 18 (1981), this Court, by a 5–4 vote, held that the Fourteenth Amendment's Due Process Clause does not require the appointment of counsel for indigent parents in every parental status termination proceeding. The case casts light, however, on the two central questions here—whether process is constitutionally due a natural parent at a State's parental rights termination proceeding, and, if so, what process is due.

In *Lassiter*, it was "not disputed that state intervention to terminate the relationship between [a parent] and [the] child must be accomplished by procedures meeting the requisites of the Due Process Clause." 452 U. S., at 37 (dissenting opinion); see *id.*, at 24–32 (opinion for the Court); *id.*, at 59–60 (STEVENS, J., dissenting). See also *Little* v. *Streater*, 452 U. S. 1, 13 (1981). The absence of dispute reflected this Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment. *Quilloin* v. *Walcott*, 434 U. S. 246, 255 (1978); *Smith* v. *Organization of Foster Families*, 431 U. S. 816, 845 (1977); *Moore* v. *East Cleveland*, 431 U. S. 494, 499 (1977) (plurality opinion); *Cleveland Board of Education* v. *LaFleur*, 414 U. S. 632, 639–640 (1974); *Stanley* v. *Illinois*, 405 U. S. 645, 651–652 (1972); *Prince* v. *Massachusetts*, 321 U. S. 158, 166 (1944); *Pierce* v. *Society of Sisters*, 268 U. S. 510, 534–535 (1925); *Meyer* v. *Nebraska*, 262 U. S. 390, 399 (1923).

The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.[7]

In *Lassiter*, the Court and three dissenters agreed that the nature of the process due in parental rights termination proceedings turns on a balancing of the "three distinct factors" specified in *Mathews* v. *Eldridge*, 424 U. S. 319, 335 (1976): the private interests affected by the proceeding; the risk of error created by the State's chosen procedure; and the countervailing governmental interest supporting use of the challenged procedure. See 452 U. S., at 27–31; *id.*, at 37–48 (dissenting opinion). But see *id.*, at 59–60 (STEVENS, J., dissenting). While the respective *Lassiter* opinions disputed whether those factors should be weighed against a presumption disfavoring appointed counsel for one not threatened with loss of physical liberty, compare 452 U. S., at 31–32, with *id.*, at 41 and n. 8 (dissenting opinion), that concern is irrelevant here. Unlike the Court's right-to-counsel rulings, its decisions concerning constitutional burdens of proof have not turned on any presumption favoring any particular standard. To the contrary, the Court has engaged in a straightforward consideration of the factors identified in *Eldridge* to determine whether a particular standard of proof in a particular proceeding satisfies due process.

In *Addington* v. *Texas*, 441 U. S. 418 (1979), the Court, by a unanimous vote of the participating Justices, declared: "The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to 'instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.'" *Id.*, at 423, quoting *In re Winship*, 397 U. S. 358, 370 (1970) (Harlan, J., concurring). *Addington* teaches that, in any given proceeding, the minimum standard of proof tolerated by the due process requirement reflects not only the weight of the private and public interests affected, but also a societal judgment about how the risk of error should be distributed between the litigants.

Thus, while private parties may be interested intensely in a civil dispute over money damages, application of a "preponderance of the evidence" standard indicates both society's "minimal concern with the outcome," and a conclusion that the litigants should "share the risk of error in roughly equal fashion." 441 U. S., at 423. When the State brings a criminal action to deny a defendant liberty or life, however, "the interests of the defendant are of such magnitude that historically and without any explicit constitutional requirement they have been protected by standards of proof designed to exclude as nearly as possible the likelihood of an erroneous judgment." *Ibid.* The stringency of the "beyond a reasonable doubt" standard bespeaks the "weight and gravity" of the private interest affected, *id.*, at 427, society's interest in avoiding erroneous convictions, and a judgment that those interests together require that "society impos[e] almost the entire risk of error upon itself." *Id.*, at 424. See also *In re Winship*, 397 U. S., at 372 (Harlan, J., concurring).

The "minimum requirements [of procedural due process] being a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action." *Vitek* v. *Jones*, 445 U. S. 480, 491 (1980). See also *Logan* v. *Zimmerman Brush Co.*, —— U. S. ——, —— (1982) (slip op. 9). Moreover, the degree of proof required in a particular type of proceeding "is the kind of question which has traditionally been left to the judiciary to resolve." *Woodby* v. *INS*, 385 U. S. 276, 284 (1966).[8]

peals. That court *sua sponte* transferred the appeal to the Appellate Division, Third Department, stating that a direct appeal did not lie because "questions other than the constitutional validity of a statutory provision are involved." App. 50.

[7] We therefore reject respondent's claim that a parental rights termination proceeding does not interfere with a fundamental liberty interest. See Brief for Respondent 11–16; Tr. of Oral Arg. 38. The fact that important liberty interests of the child and its foster parents may also be affected by a permanent neglect proceeding does not justify denying the *natural parents* constitutionally adequate procedures. Nor can the State refuse to provide natural parents adequate procedural safeguards on the ground that the family unit already has broken down: that is the very issue the permanent neglect proceeding is meant to decide.

[8] The dissent charges, *post*, at 3, n. 2, that "this Court simply has no role in establishing the standards of proof that states must follow in the various judicial proceedings they afford to their citizens." As the dissent properly concedes, however, the Court must examine a State's chosen standard to determine whether it satisfies "the constitutional minimum of 'fundamental fairness.'" *Ibid.* See, *e. g.*, *Addington* v. *Texas*, 441 U. S. 418, 427, 433 (1979) (unanimous decision of participating Justices) (Fourteenth Amendment requires at least clear and convincing evidence in a civil proceeding brought under state law to commit an individual involuntarily for mental

"In cases involving individual rights, whether criminal or civil, '[t]he standard of proof [at a minimum] reflects the value society places on individual liberty.'" *Addington* v. *Texas*, 441 U. S., at 425, quoting *Tippett* v. *Maryland*, 436 F. 2d 1153, 1166 (CA4 1971) (opinion concurring in part and dissenting in part), cert. dismissed *sub nom. Murel* v. *Baltimore City Criminal Court*, 407 U. S. 355 (1972).

This Court has mandated an intermediate standard of proof—"clear and convincing evidence"—when the individual interests at stake in a state proceeding are both "particularly important" and "more substantial than mere loss of money." *Addington* v. *Texas*, 441 U. S., at 424. Notwithstanding "the state's 'civil labels and good intentions,'" *id.*, at 427, quoting *In re Winship*, 397 U.S, at 365–366, the Court has deemed this level of certainty necessary to preserve fundamental fairness in a variety of government-initiated proceedings that threaten the individual involved with "a significant deprivation of liberty" or "stigma." 441 U. S., at 425, 426. See, *e. g.*, *Addington* v. *Texas*, *supra*, (civil commitment); *Woodby* v. *INS*, 385 U. S., at 285 (deportation); *Chaunt* v. *United States*, 364 U. S. 350, 353 (1960) (denaturalization); *Schneiderman* v. *United States*, 320 U. S. 118, 125, 159 (1943) (denaturalization).

In *Lassiter*, to be sure, the Court held that fundamental fairness may be maintained in parental rights termination proceedings even when some procedures are mandated only on a case-by-case basis, rather than through rules of general application. 452 U. S., at 31–32 (natural parent's right to court-appointed counsel should be determined by the trial court, subject to appellate review). But this Court never has approved case-by-case determination of the proper *standard of proof* for a given proceeding. Standards of proof, like other "procedural due process rules[,] are shaped by the risk of error inherent in the truth-finding process as applied to the *generality of cases*, not the rare exceptions." *Mathews* v. *Eldridge*, 424 U. S., at 344 (emphasis added). Since the litigants and the factfinder must know at the outset of a given proceeding how the risk of error will be allocated, the standard of proof necessarily must be calibrated in advance. Retrospective case-by-case review cannot preserve fundamental fairness when a class of proceedings is governed by a constitutionally defective evidentiary standard.[9]

III

In parental rights termination proceedings, the private interest affected is commanding; the risk of error from using a preponderance standard is substantial; and the countervailing governmental interest favoring that standard is comparatively slight. Evaluation of the three *Eldridge* factors compels the conclusion that use of a "fair preponderance of the evidence" standard in such proceedings is inconsistent with due process.

A

"The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.'" *Goldberg* v. *Kelly*, 397 U. S. 254, 262–263 (1970), quoting *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 168 (1951) (Frankfurter, J., concurring). Whether the loss threatened by a particular type of proceeding is sufficiently grave to warrant more than average certainty on the part of the factfinder turns on both the nature of the private interest threatened and the permanency of the threatened loss.

Lassiter declared it "plain beyond the need for multiple citation" that a natural parent's "desire for and right to 'the companionship, care, custody, and management of his or her children'" is an interest far more precious than any property right. 452 U. S., at 27, quoting *Stanley* v. *Illinois*, 405 U. S., at 651. When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it. "If the State prevails, it will have worked a unique kind of deprivation. . . . A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one." 452 U. S., at 27.

In government-initiated proceedings to determine juvenile delinquency, *In re Winship*, *supra*; civil commitment, *Addington* v. *Texas*, *supra*; deportation, *Woodby* v. *INS*, *supra*; and denaturalization, *Chaunt* v. *United States*, *supra*, and *Schneiderman* v. *United States*, *supra*, this Court has identified losses of individual liberty sufficiently serious to warrant imposition of an elevated burden of proof. Yet juvenile delinquency adjudications, civil commitment, deportation, and denaturalization, at least to a degree, are all *reversible* official actions. Once affirmed on appeal, a New York decision terminating parental rights is *final* and irrevocable. See n. 1, *supra*. Few forms of state action are both so severe and so irreversible.

Thus, the first *Eldridge* factor—the private interest affected—weighs heavily against use of the preponderance standard at a State-initiated permanent neglect proceeding. We do not deny that the child and his foster parents are also deeply interested in the outcome of that contest. But at the factfinding stage of the New York proceeding, the focus emphatically is not on them.

The factfinding does not purport—and is not intended—to balance the child's interest in a normal family home against the parents' interest in raising the child. Nor does it purport to determine whether the natural parents or the foster parents would provide the better home. Rather, the factfinding hearing pits the State directly against the parents. The State alleges that the natural parents are at fault. Fam. Ct. Act § 614.1.(d). The questions disputed and decided are what the State did—"made diligent efforts,"

nite period to a state mental hospital); *In re Winship*, 397 U. S. 358, 364 (1970) (Due Process Clause of the Fourteenth Amendment protects the accused in state proceeding against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged).

[9] For this reason, we reject the suggestions of respondent and the dissent that the constitutionality of New York's statutory procedures must be evaluated as a "package." See Tr. of Oral Arg. 25, 36, 38. Indeed, we would rewrite our precedents were we to excuse a constitutionally defective standard of proof based on an amorphous assessment of the "cumulative effect" of state procedures. In the criminal context, for example, the Court has never assumed that "strict substantive standards or special procedures compensate for a lower burden of proof. . . ." *Post*, at 4. See *In re Winship*, 397 U. S. 358, 368 (1970). Nor has the Court treated appellate review as a curative for an inadequate burden of proof. See *Woodby* v. *INS*, 385 U. S. 276, 282 (1966) ("judicial review is generally limited to ascertaining whether the evidence relied upon by the trier of fact was of sufficient quality and substantiality to support the rationality of the judgment").

As the dissent points out, "the standard of proof is a crucial component of legal process, the primary function of which is 'to minimize the risk of erroneous decisions.'" *Post*, at 16–17, quoting *Greenholtz* v. *Nebraska Penal Inmates*, 442 U. S. 1, 13 (1979). Notice, summons, right to counsel, rules of evidence, and evidentiary hearings are all procedures to place information *before* the factfinder. But only the standard of proof "instruct[s] the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions" he draws from that information. *In re Winship*, 397 U. S., at 370 (Harlan, J., concurring). The statutory provision of right to counsel and multiple hearings before termination cannot suffice to protect a natural parent's fundamental liberty interests if the State is willing to tolerate undue uncertainty in the determination of the dispositive facts.

§ 614.1.(c)—and what the natural parents did not do—"maintain contact with or plan for the future of the child." § 614.1.(d). The State marshals an array of public resources to prove its case and disprove the parents' case. Victory by the State not only makes termination of parental rights possible; it entails a judicial determination that the parents are unfit to raise their own children.[10]

At the factfinding, the State cannot presume that a child and his parents are adversaries. After the State has established parental unfitness at that initial proceeding, the court may assume at the *dispositional* stage that the interests of the child and the natural parents do diverge. See Fam. Ct. Act. § 631 (judge shall make his order "solely on the basis of the best interests of the child," and thus has no obligation to consider the natural parents' rights in selecting dispositional alternatives). But until the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship.[11] Thus, at the factfinding, the interests of the child and his natural parents coincide to favor use of error-reducing procedures.

However substantial the foster parents' interests may be, cf. *Smith* v. *Organization of Foster Families*, 431 U. S., at 845–847, they are not implicated directly in the factfinding stage of a State-initiated permanent neglect proceeding against the natural parents. If authorized, the foster parents may pit their interests directly against those of the natural parents by initiating their own permanent neglect proceeding. Fam. Ct. Act §§ 615, 1055(d); Soc. Serv. Law § 392.7 (c). Alternatively, the foster parents can make their case for custody at the dispositional stage of a State-initiated proceeding, where the judge already has decided the issue of permanent neglect and is focusing on the placement that would serve the child's best interests. Fam. Ct. Act. §§ 623, 631. For the foster parents, the State's failure to prove permanent neglect may prolong the delay and uncertainty until their foster child is freed for adoption. But for the natural parents, a finding of permanent neglect can cut off forever their rights in their child. Given this disparity of consequence, we have no difficulty finding that the balance of private interests strongly favors heightened procedural protections.

B

Under *Mathews* v. *Eldridge*, we next must consider both the risk of erroneous deprivation of private interests resulting from use of a "fair preponderance" standard and the likelihood that a higher evidentiary standard would reduce that risk. See 424 U. S., at 335. Since the factfinding phase of a permanent neglect proceeding is an adversary contest between the State and the natural parents, the relevant question is whether a preponderance standard fairly allocates the risk of an erroneous factfinding between these two parties.

In New York, the factfinding stage of a State-initiated permanent neglect proceeding bears many of the indicia of a criminal trial. Cf. *Lassiter* v. *Department of Social Services*, 52 U. S., at 42–44 (dissenting opinion); *Meltzer* v. *C. Buck LeCraw & Co.*, 402 U. S. 954, 959 (1971) (Black, J., dissenting from denial of certiorari). See also dissenting opinion, *post*, at 8–10 (describing procedures employed at factfinding proceeding). The Commissioner of Social Services charges the parents with permanent neglect. They are served by summons. Fam. Ct. Act §§ 614, 616, 617. The factfinding hearing is conducted pursuant to formal rules of evidence. § 624. The State, the parents, and the child are all represented by counsel. §§ 249, 262. The State seeks to establish a series of historical facts about the intensity of its agency's efforts to reunite the family, the infrequency and insubstantiality of the parents' contacts with their child, and the parents' inability or unwillingness to formulate a plan for the child's future. The attorneys submit documentary evidence, and call witnesses who are subject to cross-examination. Based on all the evidence, the judge then determines whether the State has proved the statutory elements of permanent neglect by a fair preponderance of the evidence. § 622.

At such a proceeding, numerous factors combine to magnify the risk of erroneous factfinding. Permanent neglect proceedings employ imprecise substantive standards that leave determinations unusually open to the subjective values of the judge. See *Smith* v. *Organization of Foster Families*, 431 U. S., at 835, n. 36. In appraising the nature and quality of a complex series of encounters among the agency, the parents, and the child, the court possesses unusual discretion to underweigh probative facts that might favor the parent.[12] Because parents subject to termination proceedings are often poor, uneducated, or members of minority groups, *id.*, at 833–835, such proceedings are often vulnerable to judgments based on cultural or class bias.

The State's ability to assemble its case almost inevitably dwarfs the parents' ability to mount a defense. No predetermined limits restrict the sums an agency may spend in prosecuting a given termination proceeding. The State's attorney usually will be expert on the issues contested and the procedures employed at the factfinding hearing, and enjoys full access to all public records concerning the family. The State may call on experts in family relations, psychology, and medicine to bolster its case. Furthermore, the primary witnesses at the hearing will be the agency's own professional caseworkers whom the State has empowered both to investigate the family situation and to testify against the parents. Indeed, because the child is already in agency custody, the State even has the power to shape the historical events that form the basis for termination.[13]

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[10] The Family Court Judge in the present case expressly refused to terminate petitioners' parental rights on a "non-statutory, no-fault basis." App. 22–29. Nor is it clear that the State constitutionally could terminate a parent's rights *without* showing parental unfitness. See *Quilloin* v. *Walcott*, 434 U. S. 246, 255 (1978) ("We have little doubt that the Due Process Clause would be offended '[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest.'" quoting *Smith* v. *Organization of Foster Families*, 431 U. S. 816, 862–863 (1977) (Stewart, J., concurring in the judgment)).

[11] For a child, the consequences of termination of his natural parents' rights may well be far-reaching. In Colorado, for example, it has been noted: "The child loses the right of support and maintenance, for which he may thereafter be dependent upon society; the right to inherit; and all other rights inherent in the legal parent-child relationship, not just for [a limited] period . . . , but forever." *In re K.S.*, 33 Colo. App. 72, 76, 515 P. 2d 130, 133 (1973).

Some losses cannot be measured. In this case, for example, Jed Santosky was removed from his natural parents' custody when he was only three days old; the judge's finding of permanent neglect effectively foreclosed the possibility that Jed could ever know his natural parents.

[12] For example, a New York court appraising an agency's "diligent efforts" to provide the parents with social services can excuse efforts not made on the grounds that they would have been "detrimental to the moral and temporal welfare of the child." Fam. Ct. Act § 614.1.(c). In determining whether the parent "substantially and continuously or repeatedly" failed to "maintain contact with . . . the child," § 614.1.(d), the judge can discount actual visits or communications on the grounds that they were insubstantial or "overtly demonstrat[ed] a lack of affectionate and concerned parenthood." Soc. Serv. Law § 384–b.7.(b). When determining whether the parent planned for the child's future, the judge can reject as unrealistic plans based on overly optimistic estimates of physical or financial ability. § 384–b.7.(c). See also dissenting opinion, *post* at 10, notes 8 and 9.

[13] In this case, for example, the parents claim that the State sought [illegible] during them the right to visit their

The disparity between the adversaries' litigation resources is matched by a striking asymmetry in their litigation options. Unlike criminal defendants, natural parents have no "double jeopardy" defense against repeated state termination efforts. If the State initially fails to win termination, as New York did here, see n. 4, *supra*, it always can try once again to cut off the parents' rights after gathering more or better evidence. Yet even when the parents have attained the level of fitness required by the State, they have no similar means by which they can forestall future termination efforts.

Coupled with a "preponderance of the evidence" standard, these factors create a significant prospect of erroneous termination. A standard of proof that by its very terms demands consideration of the quantity, rather than the quality, of the evidence may misdirect the factfinder in the marginal case. See *In re Winship*, 397 U. S., at 371, n. 3 (Harlan, J., concurring). Given the weight of the private interests at stake, the social cost of even occasional error is sizable.

Raising the standard of proof would have both practical and symbolic consequences. Cf. *Addington* v. *Texas*, 441 U. S., at 426. The Court has long considered the heightened standard of proof used in criminal prosecutions to be "a prime instrument for reducing the risk of convictions resting on factual error." *In re Winship*, 397 U. S., at 363. An elevated standard of proof in a parental rights termination proceeding would alleviate "the possible risk that a factfinder might decide to [deprive] an individual based solely on a few isolated instances of unusual conduct [or] . . . idiosyncratic behavior." *Addington* v. *Texas*, 441 U. S., at 427. "Increasing the burden of proof is one way to impress the factfinder with the importance of the decision and thereby perhaps to reduce the chances that inappropriate" terminations will be ordered. *Ibid.*

The Appellate Division approved New York's preponderance standard on the ground that it properly "balanced rights possessed by the child . . . with those of the natural parents. . . ." 75 App. Div. 2d, at 910, 427 N.Y.S. 2d, at 320. By so saying, the court suggested that a preponderance standard properly allocates the risk of error *between* the parents and the child.[11] That view is fundamentally mistaken. The court's theory assumes that termination of the natural parents' rights invariably will benefit the child.[12] Yet we have noted above that the parents and the child share an interest in avoiding erroneous termination. Even accepting the court's assumption, we cannot agree with its conclusion that a preponderance standard fairly distributes the risk of error between parent and child. Use of that standard reflects the judgment that society is nearly neutral between erroneous termination of parental rights and erroneous failure to terminate those rights. Cf. *In re Winship*, 397 U. S., at 371 (Harlan, J., concurring). For the child, the likely consequence of an erroneous failure to terminate is preservation of an uneasy status quo.[13] For the natural parents, however, the consequence of an erroneous termination is the unnecessary destruction of their natural family. A standard that allocates the risk of error nearly equally between those two outcomes does not reflect properly their relative severity.

C

Two state interests are at stake in parental rights termination proceedings—a *parens patriae* interest in preserving and promoting the welfare of the child and a fiscal and administrative interest in reducing the cost and burden of such proceedings. A standard of proof more strict than preponderance of the evidence is consistent with both interests.

"Since the State has an urgent interest in the welfare of the child, it shares the parent's interest in an accurate and just decision" at the *factfinding* proceeding. *Lassiter* v. *Department of Social Services*, 452 U. S., at 27. As *parens patriae*, the State's goal is to provide the child with a permanent home. See Soc. Serv. Law § 384–b.1.(a)(i) (statement of legislative findings and intent). Yet while there is still reason to believe that positive, nurturing parent-child relationships exist, the *parens patriae* interest favors preservation, not severance, of natural familial bonds." § 384–b.1.(a)(ii). "[T]he State registers no gain towards its declared goals when it separates children from the custody of fit parents." *Stanley* v. *Illinois*, 405 U. S., at 652.

The State's interest in finding the child an alternative permanent home arises only "when it is *clear* that the natural parent cannot or will not provide a normal family home for the child." Soc. Serv. Law § 384–b.1.(a)(iv) (emphasis added). At the factfinding, that goal is served by procedures that promote an accurate determination of whether the natural parents can and will provide a normal home.

Unlike a constitutional requirement of hearings, see, *e. g.*, *Mathews* v. *Eldridge*, 424 U. S., at 347, or court-appointed counsel, a stricter standard of proof would reduce factual error without imposing substantial fiscal burdens upon the State. As we have observed, 33 States already have adopted a higher standard by statute or court decision with-

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prevented them from maintaining the contact required by Fam. Ct. Act § 614.1.(d). See Brief for Petitioners 9. The parents further claim that the State cited their rejection of social services they found offensive or superfluous as proof of the agency's "diligent efforts" and their own "failure to plan" for the children's future. *Id.*, at 10–11.

We need not accept these statements as true to recognize that the State's unusual ability to structure the evidence increases the risk of an erroneous factfinding. Of course, the disparity between the litigants' resources will be vastly greater in States where there is no statutory right to court-appointed counsel. See *Lassiter* v. *Department of Social Services*, 452 U. S., at 34 (only 33 States and the District of Columbia provide that right by statute).

[11] The dissent makes a similar claim. See dissenting opinion, *post*, at 17–22.

[12] This is a hazardous assumption at best. Even when a child's natural home is imperfect, permanent removal from that home will not necessarily improve his welfare. See, *e. g.*, Wald, State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards, 27 Stan. L. Rev. 985, 993 (1975) ("In fact, under current practice, coercive intervention frequently results in placing a child in a more detrimental situation than he would be in without intervention.").

Nor does termination of parental rights necessarily ensure adoption. See Brief for Community Action for Legal Services, Inc., *et al.*, as *Amicus Curiae* 22–23 (in 1979, only 12% of the adoptable children in foster care in New York City were actually adopted, although some had been waiting for years, citing Redirecting Foster Care, A Report to the Mayor of the City of New York 69, 43 (1980)). Even when a child eventually finds an adoptive family, he may spend years moving between state institutions and "temporary" foster placements after his ties to his natural parents have been severed. See *Smith* v. *Organization of Foster Families*, 431 U. S., at 833–838 (describing the "limbo" of the New York foster care system).

[13] When the termination proceeding occurs, the child is not living at his natural home. A child cannot be adjudicated "permanently neglected" until, "for a period of more than a year," he has been in "the care of an authorized agency." Soc. Serv. Law § 384–b.7.(a); Fam. Ct. Act § 614.1.(d). See also dissenting opinion, at 20–21.

Under New York law, a judge has ample discretion to ensure that, once removed from his natural parents on grounds of neglect, a child will not return to a hostile environment. In this case, when the State's initial termination effort failed for lack of proof, see n. 4, *supra*, the court simply issued orders under Fam. Ct. Act § 1055(b) extending the period of the child's foster home placement. See App. 19–20. See also Fam. Ct. Act § 632(b) (when State's permanent neglect petition is dismissed for insufficient evidence, judge retains jurisdiction to reconsider underlying orders of placement); § 633 (judge may suspend judgment at dispositional hearing for an additional year).

[14] Any *parens patriae* interest in terminating the natural parents' rights arises only at the dispositional phase, after the parents' unfit

out apparent effect on the speed, form, or cost of their factfinding proceedings. See n. 3, *supra*.

Nor would an elevated standard of proof create any real administrative burdens for the State's factfinders. New York Family Court judges already are familiar with a higher evidentiary standard in other parental rights termination proceedings not involving permanent neglect. See Soc. Serv. Law §§ 384–b.3.(g), 384–b.4.(c), and 384–b.4.(e) (requiring "clear and convincing proof" before parental rights may be terminated for reasons of mental illness and mental retardation or severe and repeated child abuse). New York also demands at least clear and convincing evidence in proceedings of far less moment than parental rights termination proceedings. See, *e. g.*, N.Y. Veh. & Traf. Law § 227 1 (McKinney Supp. 1981) (requiring the State to prove traffic infractions by "clear and convincing evidence") and *In re Rosenthal* v. *Hartnett*, 36 N.Y. 2d 269, 326 N.E. 2d 811 (1975); see also *Ross* v. *Food Specialties, Inc.*, 6 N.Y. 2d 336, 341, 160 N.E. 2d 618, 620 (1959) (requiring "clear, positive and convincing evidence" for contract reformation). We cannot believe that it would burden the State unduly to require that its factfinders have the same factual certainty when terminating the parent-child relationship as they must have to suspend a driver's license.

IV

The logical conclusion of this balancing process is that the "fair preponderance of the evidence" standard prescribed by Fam. Ct. Act § 622 violates the Due Process Clause of the Fourteenth Amendment.[11] The Court noted in *Addington*: "The individual should not be asked to share equally with society the risk of error when the possible injury to the individual is significantly greater than any possible harm to the state." 441 U. S., at 427. Thus, at a parental rights termination proceeding, a near-equal allocation of risk between the parents and the State is constitutionally intolerable. The next question, then, is whether a "beyond a reasonable doubt" or a "clear and convincing" standard is constitutionally mandated.

In *Addington*, the Court concluded that application of a reasonable-doubt standard is inappropriate in civil commitment proceedings for two reasons—because of our hesitation to apply that unique standard "too broadly or casually in noncriminal cases," *id.*, at 428, and because the psychiatric evidence ordinarily adduced at commitment proceedings is rarely susceptible to proof beyond a reasonable doubt. *Id.*, at 429–430, 432–433. To be sure, as has been noted above, in the Indian Child Welfare Act of 1978, Pub. L. 95–608, § 102(f), 92 Stat. 3072, 25 U. S. C. § 1912(f) (1976 ed., Supp. III), Congress requires "evidence beyond a reasonable doubt" for termination of Indian parental rights, reasoning that "the removal of a child from the parents is a penalty as great, if not greater, than a criminal penalty. . . ." H.R. Rep. No. 95–1386, p. 22 (1978). Congress did not consider, however, the evidentiary problems that would arise if proof beyond a reasonable doubt were required in all State-initiated parental rights termination hearings.

Like civil commitment hearings, termination proceedings often require the factfinder to evaluate medical and psychiatric testimony, and to decide issues difficult to prove to a level of absolute certainty, such as lack of parental motive, absence of affection between parent and child, and failure of parental foresight and progress. Cf. *Lassiter* v. *Department of Social Services*, 452 U. S., at 30; *id.*, at 44–46 (dissenting opinion) (describing issues raised in state termination proceedings). The substantive standards applied vary from State to State. Although Congress found a "beyond a reasonable doubt" standard proper in one type of parental rights termination case, another legislative body might well conclude that a reasonable-doubt standard would erect an unreasonable barrier to state efforts to free permanently neglected children for adoption.

A majority of the States have concluded that a "clear and convincing evidence" standard of proof strikes a fair balance between the rights of the natural parents and the State's legitimate concerns. See n. 3, *supra*. We hold that such a standard adequately conveys to the factfinder the level of subjective certainty about his factual conclusions necessary to satisfy due process. We further hold that determination of the precise burden equal to or greater than that standard is a matter of state law properly left to state legislatures and state courts. Cf. *Addington* v. *Texas*, 441 U. S., at 433.

We, of course, express no view on the merits of petitioners' claims.[12] At a hearing conducted under a constitutionally proper standard, they may or may not prevail. Without deciding the outcome under any of the standards we have approved, we vacate the judgment of the Appellate Division and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE, JUSTICE WHITE, and JUSTICE O'CONNOR join, dissenting.

I believe that few of us would care to live in a society where every aspect of life was regulated by a single source of law, whether that source be this Court or some other organ of our complex body politic. But today's decision certainly moves us in that direction. By parsing the New York scheme and holding one narrow provision unconstitutional, the majority invites further federal court intrusion into every facet of state family law. If ever there were an area in which federal courts should heed the admonition of Justice Holmes that "a page of history is worth a volume of logic,"[1] it is in the area of domestic relations. This area has been left to the States from time immemorial, and not without good reason.

Equally as troubling is the majority's due process analysis. The Fourteenth Amendment guarantees that a State will treat individuals with "fundamental fairness" whenever its actions infringe their protected liberty or property interests. By adoption of the procedures relevant to this case, New York has created an exhaustive program to assist parents in regaining the custody of their children and to protect parents from the unfair deprivation of their parental rights. And yet the majority's myopic scrutiny of the standard of proof blinds it to the very considerations and procedures which make the New York scheme "fundamentally fair."

I

State intervention in domestic relations has always been an unhappy but necessary feature of life in our organized society. For all of our experience in this area, we have found no

[11] The dissent's claim that today's decision "will inevitably lead to the federalization of family law," *post*, at 4, is, of course, vastly overstated. As the dissent properly notes, the Court's duty to "refrain[n] from interfering with state answers to domestic relations questions" has never required "that the Court should blink at clear constitutional violations in state stat-

[12] Unlike the dissent, we carefully refrain from accepting as the "facts of this case" findings that are not part of the record and that [illegible] only to be more likely true than not.

fully satisfactory solutions to the painful problem of child abuse and neglect. We have found, however, that leaving the States free to experiment with various remedies has produced novel approaches and promising progress.

Throughout this experience the Court has scrupulously refrained from interfering with state answers to domestic relations questions. "Both theory and the precedents of this Court teach us solicitude for state interests, particularly in the field of family and family-property arrangements." *United States* v. *Yazell*, 382 U. S. 341, 352 (1966). This is not to say that the Court should blink at clear constitutional violations in state statutes, but rather that in this area, of all areas, "substantial weight must be given to the good faith judgments of the individuals [administering a program] . . . that the procedures they have adopted assure fair consideration of the . . . claims of individuals." *Mathews* v. *Eldridge*, 424 U. S. 319, 349 (1976).

This case presents a classic occasion for such solicitude. As will be seen more fully in the next part, New York has enacted a comprehensive plan to *aid* marginal parents in regaining the custody of their child. The central purpose of the New York plan is to reunite divided families. Adoption of the preponderance of the evidence standard represents New York's good faith effort to balance the interest of parents against the legitimate interests of the child and the State. These earnest efforts by state officials should be given weight in the Court's application of due process principles. "Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." *Missouri, Kansas and Texas Railway Co.* v. *May*, 194 U. S. 267, 270 (1904).[1]

The majority may believe that it is adopting a relatively unobtrusive means of ensuring that termination proceedings provide "due process of law." In fact, however, fixing the standard of proof as a matter of federal constitutional law will only lead to further federal-court intervention in state schemes. By holding that due process requires proof by clear and convincing evidence the majority surely cannot mean that any state scheme passes constitutional muster so long as it applies that standard of proof. A state law permitting termination of parental rights upon a showing of neglect by clear and convincing evidence certainly would not be acceptable to the majority if it provided no procedures other than one thirty-minute hearing. Similarly, the majority probably would balk at a state scheme that permitted termination of parental rights on a clear and convincing showing merely that such action would be in the best interests of the child. See *Smith* v. *Organization of Foster Families for Equality & Reform*, 431 U. S. 816, 862–863 (1977) (Stewart, J., concurring).

After fixing the standard of proof, therefore, the majority will be forced to evaluate other aspects of termination proceedings with reference to that point. Having in this case abandoned evaluation of the overall effect of a scheme, and with it the possibility of finding that strict substantive standards or special procedures compensate for a lower burden of proof, the majority's approach will inevitably lead to the federalization of family law. Such a trend will only thwart state searches for better solutions in an area where this Court should encourage state experimentation. "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment." *New State Ice Co.* v. *Liebmann*, 285 U. S. 262, 311 (1932) (Brandeis, J., dissenting). It should not do so in the absence of a clear constitutional violation. As will be seen in the next part, no clear constitutional violation has occurred in this case.

II

As the majority opinion notes, petitioners are the parents of five children, three of whom were removed from petitioners' care on or before August 22, 1974. During the next four and one-half years, those three children were in the custody of the State and in the care of foster homes or institutions, and the State was diligently engaged in efforts to prepare petitioners for the childrens' return. Those efforts were unsuccessful, however, and on April 10, 1979 the New York Family Court for Ulster County terminated petitioners' parental rights as to the three children removed in 1974 or earlier. This termination was preceded by a judicial finding that petitioners had failed to plan for the return and future of their children, a statutory category of permanent neglect. Petitioners now contend, and the Court today holds, that they were denied due process of law, not because of a general inadequacy of procedural protections, but simply because the finding of permanent neglect was made on the basis of a preponderance of the evidence adduced at the termination hearing.

It is well settled that "[t]he requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Board of Regents* v. *Roth*, 408 U. S. 564, 569 (1972). In determining whether such liberty or property interests are implicated by a particular government action, "we must look not to the 'weight' but to the *nature* of the interest at stake." *Id.*, at 571 (emphasis in original). I do not disagree with the majority's conclusion that the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment. See *Smith* v. *Organization of Foster Families*, 431 U. S., 862–863 (Stewart, J., concurring). "Once it is determined that due process applies, [however,] the question remains what process is due." *Morrissey* v. *Brewer*, 408 U. S. 471, 481 (1972). It is the majority's answer to this question with which I disagree.

A

Due process of law is a flexible constitutional principle. The requirements which it imposes upon governmental actions vary with the situations to which it applies. As the Court previously has recognized, "not all situations calling for procedural safeguards call for the same kind of procedure." *Morrissey* v. *Brewer*, *supra*, at 481. See also *Greenholtz* v.

[1] The majority asserts that "the degree of proof required in a particular type of proceeding 'is the kind of question which has traditionally been left to the judiciary to determine.' *Woodby* v. *INS*, 385 U. S. 276, 284 (1966)." *Ante*, at 9. To the extent that the majority seeks, by this statement, to place upon the federal judiciary the primary responsibility for deciding the appropriate standard of proof in state matters, it arrogates to itself a responsibility wholly at odds with the allocation of authority in our federalist system and wholly unsupported by the prior decisions of this Court. In *Woodby*, the Court determined the proper standard of proof to be applied under a *federal* statute, and did so only after concluding that "Congress ha[d] not addressed itself to the question of what degree of proof [was] required in deportation proceedings." 385 U. S., at 284. Beyond an examination for the constitutional minimum of "fundamental fairness"—which clearly is satisfied by the New York procedures at issue in this case—this Court simply has no role in establishing the standards of proof that states must follow in the various judicial proceedings they afford to their citizens.

Nebraska Penal Inmates, 442 U. S. 1, 12 (1979); *Mathews* v. *Eldridge*, 424 U. S., at 334; *Cafeteria Workers* v. *McElroy*, 367 U. S. 886, 895 (1961). The adequacy of a scheme of procedural protections cannot, therefore, be determined merely by the application of general principles unrelated to the peculiarities of the case at hand.

Given this flexibility, it is obvious that a proper due process inquiry cannot be made by focusing upon one narrow provision of the challenged statutory scheme. Such a focus threatens to overlook factors which may introduce constitutionally adequate protections into a particular government action. Courts must examine *all* procedural protections offered by the State, and must assess the *cumulative* effect of such safeguards. As we have stated before, courts must consider "the fairness and reliability of the existing . . . procedures" before holding that the Constitution requires more. *Mathews* v. *Eldridge*, *supra*, at 343. Only through such a broad inquiry may courts determine whether a challenged governmental action satisfies the due process requirement of "fundamental fairness."[3] In some instances, the Court has even looked to non-procedural restraints on official action in determining whether the deprivation of a protected interest was effected without due process of law. *E. g.*, *Ingraham* v. *Wright*, 430 U. S. 651 (1977). In this case, it is just such a broad look at the New York scheme which reveals its fundamental fairness.[4]

The termination of parental rights on the basis of permanent neglect can occur under New York law only by order of the Family Court. Social Services Law (SSL) § 384–b(3)(d). Before a petition for permanent termination can be filed in that court, however, several other events must first occur.

The Family Court has jurisdiction only over those children who are in the care of an authorized agency. Family Court Act (FCA) § 614(1)(b). Therefore, the children who are the subject of a termination petition must previously have been removed from their parents' home on a temporary basis. Temporary removal of a child can occur in one of two ways. The parents may consent to the removal, FCA § 1021, or, as occurred in this case, the Family Court can order the removal pursuant to a finding that the child is abused or neglected.[5] FCA §§ 1051, 1052.

Court proceedings to order the temporary removal of a child are initiated by a petition alleging abuse or neglect, filed by a state-authorized child protection agency or by a person designated by the court. FCA §§ 1031, 1032. Unless the court finds that exigent circumstances require removal of the child before a petition may be filed and a hearing held, see FCA § 1022, the order of temporary removal results from a "dispositional hearing" conducted to determine the appropriate form of alternative care. FCA § 1045. See also FCA § 1055. This "dispositional hearing" can be held only after the court, at a separate "fact-finding hearing," has found the child to be abused or neglected within the specific statutory definition of those terms. FCA §§ 1012, 1044, 1051.

Parents subjected to temporary removal proceedings are provided extensive procedural protections. A summons and copy of the temporary removal petition must be served upon the parents within two days of issuance by the court, FCA §§ 1035, 1036, and the parents may, at their own request, delay the commencement of the fact-finding hearing for three days after service of the summons. FCA § 1048.[6] The fact-finding hearing may not commence without a determination by the court that the parents are present at the hearing and have been served with the petition. FCA § 1041. At the hearing itself, "only competent, material and relevant evidence may be admitted," with some enumerated exceptions for particularly probative evidence. FCA § 1046(b)(ii) In addition, indigent parents are provided with an attorney to represent them at both the fact-finding and dispositional hearings, as well as at all other proceedings related to temporary removal of their child. FCA § 262(a)(i).

An order of temporary removal must be reviewed every 18 months by the Family Court. SSL § 392(2). Such review is conducted by hearing before the same judge who ordered the temporary removal, and a notice of the hearing, including a statement of the dispositional alternatives, must be given to the parents at least 20 days before the hearing is held. SSL § 392(4). As in the initial removal action, the parents must be parties to the proceedings, *id.*, and are entitled to court-appointed counsel if indigent. FCA § 262(a).

One or more years after a child has been removed temporarily from the parents' home, permanent termination proceedings may be commenced by the filing of a petition in the court which ordered the temporary removal. The petition must be filed by a state agency or by a foster parent authorized by the court, SSL 384–b(3)(b), and must allege that the child has been permanently neglected by the parents. SSL § 384–b(3)(d).[7] Notice of the petition and the dispositional proceedings must be served upon the parents at least 20 days before the commencement of the hearing, SSL § 384(3)(e), must inform them of the potential consequences of the hearing, *id.*, and must inform them "of their right to the assistance of counsel, including [their] right . . . to have counsel

[1] Although, as the majority states, we have held that the minimum requirements of procedural due process are a question of federal law, such a holding does not mean that the procedural protections afforded by a State will be inadequate under the Fourteenth Amendment. It means simply that the adequacy of the state-provided process is to be judged by constitutional standards—standards which the majority itself equates to "fundamental fairness." *Ante*, at 7. I differ, therefore, not with the majority's statement that the requirements of due process present a federal question, but with its apparent assumption that the presence of "fundamental fairness" can be ascertained by an examination which completely disregards the plethora of protective procedures accorded parents by New York law.

[2] The majority refuses to consider New York's procedure as a whole, stating that "[t]he statutory provision of right to counsel and multiple hearings before termination cannot suffice to protect a natural parent's fundamental liberty interests if the State is willing to tolerate undue uncertainty in the determination of the dispositive facts." *Ante*, at 11, n. 9. Implicit in this statement is the conclusion that the risk of error may be reduced to constitutionally tolerable levels only by raising the standard of proof—that other procedures can never eliminate "undue uncertainty" so long as the standard of proof remains too low. Aside from begging the question of whether the risks of error tolerated by the State in this case are "undue," see *infra*, at 16–22, this conclusion denies the flexibility that we have long recognized in the principle of due process; understates the error-reducing power of procedural protections such as the right to counsel, evidentiary hearings, rules of evidence, and appellate review; and establishes the standard of proof as the *sine qua non* of procedural due process.

[3] An abused child is one who has been subjected to intentional physical injury "which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ." FCA § 1012(e). Sexual offenses against a child are also covered by this category. A neglected child is one "whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent . . . to exercise a minimum degree of care in supplying the child with adequate food, clothing, shelter or education." FCA § 1012(f).

[4] The relatively short time between notice and commencement of hearing provided by § 1048 undoubtedly reflects the State's desire to protect the child. These proceedings are designed to permit prompt action by the court when the child is threatened with imminent and serious physical, mental, or emotional harm.

[5] Permanent custody also may be awarded by the Family Court if both parents are deceased, the parents abandoned the child at least six months prior to the termination proceedings, or the parents are unable to provide proper and adequate care by reason of mental illness or mental retardation. SSL § 384–b(4).

assigned by the court [if] they are financially unable to obtain counsel." *Ibid.* See also FCA §262.

As in the initial removal proceedings, two hearings are held in consideration of the permanent termination petition. SSL §384–b(3)(f). At the fact-finding hearing, the court must determine, by a fair preponderance of the evidence, whether the child has been permanently neglected. SSL §384–b(3)(g). "Only competent, material and relevant evidence may be admitted in a fact-finding hearing." FCA §624. The court may find permanent neglect if the child is in the care of an authorized agency or foster home and the parents have "failed for a period of more than one year . . . substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so." SSL 384–b(7)(a).[8] In addition, because the State considers its "first obligation" to be the reuniting of the child with its natural parents, SSL §384–b(1)(iii), the court must also find that the supervising state agency has, without success, made "*diligent* efforts to encourage and strengthen the parental relationship." SSL 384–b(7)(a) (emphasis added).[9]

Following the fact-finding hearing, a separate, dispositional hearing is held to determine what course of action would be in "the best interests of the child." FCA §631. A finding of permanent neglect at the fact-finding hearing, although necessary to a termination of parental rights, does not control the court's order at the dispositional hearing. The court may dismiss the petition, suspend judgment on the petition and retain jurisdiction for a period of one year in order to provide further opportunity for a reuniting of the family, or terminate the parents' right to the custody and care of the child. FCA §§631–634. The court must base its decision solely upon the record of "material and relevant evidence" introduced at the dispositional hearing, FCA §624; *In re "Female" M.*, 70 A.D. 2d 812, 417 N.Y.S. 2d 482 (1979), and may not entertain any presumption that the best interests of the child "will be promoted by any particular disposition." FCA §631.

As petitioners did in this case, parents may appeal any unfavorable decision to the Appellate Division of the New York Supreme Court. Thereafter, review may be sought in the New York Court of Appeals and, ultimately, in this Court if a federal question is properly presented.

As this description of New York's termination procedures demonstrates, the State seeks not only to protect the interests of parents in rearing their own children, but also to assist and encourage parents who have lost custody of their children to reassume their rightful role. Fully understood, the New York system is a comprehensive program to *aid* parents such as petitioners. Only as a last resort, when "diligent efforts" to reunite the family have failed, does New York authorize the termination of parental rights. The procedures for termination of those relationships which cannot be aided and which threaten permanent injury to the child, administered by a judge who has supervised the case from the first temporary removal through the final termination, cannot be viewed as fundamentally unfair. The facts of this case demonstrate the fairness of the system.

The three children to which this case relates were removed from petitioners' custody in 1973 and 1974, before petitioners' other two children were born. The removals were made pursuant to the procedures detailed above and in response to what can only be described as shockingly abusive treatment.[10] At the temporary removal hearing held before the Family Court on September 30, 1974, petitioners were represented by counsel, and allowed the Ulster County Department of Social Services ("Department") to take custody of the three children.

Temporary removal of the children was continued at an evidentiary hearing held before the Family Court in December 1975, after which the court issued a written opinion concluding that petitioners were unable to resume their parental responsibilities due to personality disorders. Unsatisfied with the progress petitioners were making, the court also directed the Department to reduce to writing the plan which it had designed to solve the problems at petitioners' home and reunite the family.

A plan for providing petitioners with extensive counseling and training services was submitted to the court and approved in February 1976. Under the plan, petitioners received training by a mother's aide, a nutritional aide, and a public health nurse, and counseling at a family planning clinic. In addition, the plan provided psychiatric treatment and vocational training for the father, and counseling at a family service center for the mother. Respondent's Brief 1–7. Between early 1976 and the final termination decision in April 1979, the State spent more than $15,000 in these efforts to rehabilitate petitioners as parents. App. 34.

Petitioners' response to the State's effort was marginal at best. They wholly disregarded some of the available services and participated only sporadically in the others. As a result, and out of growing concern over the length of the childrens' stay in foster care, the Department petitioned in September 1976 for permanent termination of petitioners' parental rights so that the children could be adopted by other families. Although the Family Court recognized that petitioners' reaction to the State's efforts was generally "non-re-

[8] As to maintaining contact with the child, New York law provides that "evidence of insubstantial or infrequent contacts by a parent with his or her child shall not, of itself, be sufficient as a matter of law to preclude a determination that such child is a permanently neglected child. A visit or communication by a parent with the child which is of such a character as to overtly demonstrate a lack of affectionate and concerned parenthood shall not be deemed a substantial contact." SSL §384–b(7)(b).

Failure to plan for the future of the child means failure "to take such steps as may be necessary to provide an adequate, stable home and parental care for the child within a period of time which is reasonable under the financial circumstances available to the parent. The plan must be realistic and feasible, and good faith effort shall not, of itself, be determinative. In determining whether a parent has planned for the future of the child, the court may consider the failure of the parent to utilize medical, psychiatric, psychological and other social and rehabilitative services and material resources made available to such parent." SSL §384–b(7)(c).

[9] "Diligent efforts" are defined under New York law to "mean reasonable attempts by an authorized agency to assist, develop and encourage a meaningful relationship between the parent and child, including but not limited to:

"(1) consultation and cooperation with the parents in developing a plan for appropriate services to the child and his family;

"(2) making suitable arrangements for the parents to visit the child;

"(3) provision of services and other assistance to the parents so that problems preventing the discharge of the child from care may be resolved or ameliorated; and

"(4) informing the parents at appropriate intervals of the child's progress, development and health." SSL §384–b(7)(f).

[10] Tina Apel, the oldest of petitioners' five children, was removed from their custody by court order in November 1973 when she was two years old. Removal proceedings were commenced in response to complaints by neighbors and reports from a local hospital that Tina had suffered injuries in petitioners' home including a fractured left femur, treated with a homemade splint; bruises on the upper arms, forehead, flank, and spine; and abrasions of the upper leg. The following summer John Santosky III, petitioners' second oldest child, was also removed from petitioners custody. John, who was less than one year old at the time, was admitted to the hospital suffering malnutrition, bruises on the eye and forhead, cuts on the foot, blisters on the hand, and multiple pin pricks on the back. Exhibit to Respondent's Brief 1–5. Jed Santosky, the third oldest of petitioners' children, was removed from his parents' custody when only three days old as a result of the abusive treatment of the two older children.

sponsive, even resentful," the fact that they were "at least superficially cooperative" led it to conclude that there was yet hope of further improvement and an eventual reuniting of the family. Exhibit to Respondent's Brief 618. Accordingly, the petition for permanent termination was dismissed.

Whatever progress petitioners were making prior to the 1978 termination hearing, they made little or no progress thereafter. In October 1978, the Department again filed a termination petition alleging that petitioners had completely failed to plan for the childrens' future despite the considerable efforts rendered in their behalf. This time, the Family Court agreed. The court found that petitioners had "failed in any meaningful way to take advantage of the many social and rehabilitative services that have not only been made available to them but have been diligently urged upon them." App. 35. In addition, the court found that the "infrequent" visits "between the parents and their children were at best superficial and devoid of any real emotional content." App. 21. The court thus found "nothing in the situation which holds out any hope that [petitioners] may ever become financially self sufficient or emotionally mature enough to be independent of the services of social agencies. More than a reasonable amount of time has passed and still, in the words of the case workers, there has been no discernible forward movement. At some point in time, it must be said, 'enough is enough.'" App. 36.

In accordance with the statutory requirements set forth above, the court found that petitioners' failure to plan for the future of their children, who were then seven, five, and four years old and had been out of petitioners' custody for at least four years, rose to the level of permanent neglect. At a subsequent dispositional hearing, the court terminated petitioners' parental rights, thereby freeing the three children for adoption.

As this account demonstrates, the State's extraordinary four-year effort to reunite petitioners' family was not just unsuccessful, it was altogether rebuffed by parents unwilling to improve their circumstances sufficiently to permit a return of their children. At every step of this protracted process petitioners were accorded those procedures and protections which traditionally have been required by due process of law. Moreover, from the beginning to the end of this sad story all judicial determinations were made by one family court judge. After four and one-half years of involvement with petitioners, more than seven complete hearings, and additional periodic supervision of the State's rehabilitative efforts, the judge no doubt was intimately familiar with this case and the prospects for petitioners' rehabilitation.

It is inconceivable to me that these procedures were "fundamentally unfair" to petitioners. Only by its obsessive focus on the standard of proof and its almost complete disregard of the facts of this case does the majority find otherwise.[11] As the discussion above indicates, however, such a focus does not comport with the flexible standard of fundamental fairness embodied in the Due Process Clause of the Fourteenth Amendment.

B

In addition to the basic fairness of the process afforded petitioners, the standard of proof chosen by New York clearly reflects a constitutionally permissible balance of the interests at stake in this case. The standard of proof "represents an attempt to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." *In re Winship*, 397 U. S. 358, 370 (1970) (Harlan, J. concurring); *Addington* v. *Texas*, 441 U. S. 418, 423 (1979). In this respect, the standard of proof is a crucial component of legal process, the primary function of which is "to minimize the risk of erroneous decisions."[12] *Greenholtz* v. *Nebraska Penal Inmates*, *supra*, at 13. See also *Addington* v. *Texas*, *supra*, at 425; *Mathews* v. *Eldridge*, 424 U. S., at 344.

In determining the propriety of a particular standard of proof in a given case, however, it is not enough simply to say that we are trying to minimize the risk of error. Because errors in factfinding affect more than one interest, we try to

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[11] The majority finds, without any reference to the facts of this case, that "numerous factors [in New York termination proceedings] combine to magnify the risk of erroneous factfinding." *Ante*, at 15. Among the factors identified by the majority are the "unusual discretion" of the family court judge "to underweigh probative facts that might favor the parent", the often uneducated, minority status of the parents and their consequent "vulnerab[ility] to judgments based on cultural or class bias"; the "State's ability to assemble its case," which "dwarfs the parents' ability to mount a defense" by including an unlimited budget, expert attorneys, and "full access to all public records concerning the family"; and the fact that "natural parents have no 'double jeopardy' defense against repeated state" efforts, "with more or better evidence," to terminate parental rights "even when the parents have attained the level of fitness required by the State." *Id.*, at 15–16. In short, the majority characterizes the State as a wealthy and powerful bully bent on taking children away from defenseless parents. See *ante*, at 15–17. Such characterization finds no support in the record.

The intent of New York has been stated with eminent clarity: "the [S]tate's *first obligation* is to *help* the family with services to *prevent* its break-up or to *reunite* it if the child has already left home." SSL § 384–b(1)(a)(iii) (emphasis added). There is simply no basis in fact for believing, as the majority does, that the State does not mean what it says; indeed, the facts of this case demonstrate that New York has gone the extra mile in seeking to effectuate its declared purpose. See *supra*, at 12–15. More importantly, there should be no room in the jurisprudence of this Court for decisions based on unsupported, inaccurate assumptions.

A brief examination of the "factors" relied upon by the majority demonstrates its error. The "unusual" discretion of the family court judge to consider the "affectio[n] and concer[n]" displayed by parents during visits with their children, *ante*, at 15, n. 11, is nothing more than discretion to consider reality: there is not one shred of evidence in this case suggesting that the determination of the family court was "based on cultural or class bias"; if parents lack the "ability to mount a defense," the State provides them with the full services of an attorney, FCA § 262, and they, like the State, have "full access to all *public* records concerning the family" (emphasis added); and the absence of "double jeopardy" protection simply recognizes the fact that family problems are often ongoing and may in the future warrant action that currently is unnecessary. In this case the family court dismissed the first termination petition because it desired to give petitioners "the benefit of the doubt," Exhibit to Respondents' Brief 620, and a second opportunity to raise themselves to "an acceptable minimal level of competency as parents." *Id.*, at 624. It was their complete failure to do so that prompted the second, successful termination petition. See *supra*, at 12–16.

[12] It is worth noting that the significance of the standard of proof in New York parental termination proceedings differs from the significance of the standard in other forms of litigation. In the usual adjudicatory setting, the factfinder has had little or no prior exposure to the facts of the case. His only knowledge of those facts comes from the evidence adduced at trial, and he renders his findings solely upon the basis of that evidence. Thus, normally, the standard of proof is a crucial factor in the final outcome of the case, for it is the scale upon which the factfinder weighs his knowledge and makes his decision.

Although the standard serves the same function in New York parental termination proceedings, additional assurances of accuracy are present in its application. As was adduced at oral argument, the practice in New York is to assign one judge to supervise a case from the initial temporary removal of the child to the final termination of parental rights. Therefore, as discussed above, the factfinder is intimately familiar with the case before the termination proceedings ever begin. Indeed, as in this case, he often will have been closely involved in protracted efforts to rehabilitate the parents. Even if a change in judges occurs, the Family Court retains jurisdiction of the case and the newly assigned judge may take judicial notice of all prior proceedings. Given this familiarity with the case, and the necessarily lengthy efforts which must precede a termination action in New York, decisions in termination cases are made by judges steeped in the background of the case and peculiarly able to judge the accuracy of evidence placed before them. This does not mean that the standard of proof in these cases can escape due process scrutiny, only that additional assurances of accuracy attend the application of the standard in New York termination proceedings.

minimize error as to those interests which we consider to be most important. As Justice Harlan explained in his well-known concurrence to *In re Winship*:

> "In a lawsuit between two parties, a factual error can make a difference in one of two ways. First, it can result in a judgment in favor of the plaintiff when the true facts warrant a judgment for the defendant. The analogue in a criminal case would be the conviction of an innocent man. On the other hand, an erroneous factual determination can result in a judgment for the defendant when the true facts justify a judgment in plaintiff's favor. The criminal analogue would be the acquittal of a guilty man.
>
> The standard of proof influences the relative frequency of these two types of erroneous outcomes. If, for example, the standard of proof for a criminal trial were a preponderance of the evidence rather than proof beyond a reasonable doubt, there would be a smaller risk of factual errors that result in freeing guilty persons, but a far greater risk of factual errors that result in convicting the innocent. Because the standard of proof affects the comparative frequency of these two types of erroneous outcomes, the choice of the standard to be applied in a particular kind of litigation should, in a rational world, reflect an assessment of the comparative social disutility of each." 397 U. S., at 370–372.

When the standard of proof is understood as reflecting such an assessment, an examination of the interests at stake in a particular case becomes essential to determining the propriety of the specified standard of proof. Because proof by a preponderance of the evidence requires that "[t]he litigants . . . share the risk of error in a roughly equal fashion," *Addington* v. *Texas*, *supra*, 441 U. S., at 423, it rationally should be applied only when the interests at stake are of roughly equal societal importance. The interests at stake in this case demonstrate that New York has selected a constitutionally permissible standard of proof.

On one side is the interest of parents in a continuation of the family unit and the raising of their own children. The importance of this interest cannot easily be overstated. Few consequences of judicial action are so grave as the severance of natural family ties. Even the convict committed to prison and thereby deprived of his physical liberty often retains the love and support of family members. "This Court's decisions have by now made plain beyond the need for multiple citation that a parent's desire for and right to 'the companionship, care, custody and management of his or her children' is an important interest that 'undeniably warrants deference and, absent a powerful countervailing interest, protection.' *Stanley* v. *Illinois*, 405 U. S. 645, 651." *Lassiter* v. *Department of Social Services*, 452 U. S. ——, —— (1981). In creating the scheme at issue in this case, the New York legislature was expressly aware of this right of parents "to bring up their own children." SSL §384–b(1)(a)(ii).

On the other side of the termination proceeding are the often countervailing interests of the child.[1] A stable, loving homelife is essential to a child's physical, emotional, and spiritual well-being. It requires no citation of authority to assert that children who are abused in their youth generally face extraordinary problems developing into responsible, productive citizens. The same can be said of children who, though not physically or emotionally abused, are passed from one foster home to another with no constancy of love, trust, or discipline. If the Family Court makes an incorrect factual determination resulting in a failure to terminate a parent-child relationship which rightfully should be ended, the child involved must return either to an abusive home[2] or to the often unstable world of foster care.[3] The reality of these risks is magnified by the fact that the only families faced with termination actions are those which have voluntarily surrendered custody of their child to the State, or, as in this case, those from which the child has been removed by judicial ac-

---

[1] "The majority dismisses the child's interest in the accuracy of determinations made at the factfinding hearing because "[t]he factfinding does not purport . . . to balance the child's interest in a normal family life against the parents' interest in raising the child," but instead "pits the State directly against the parents." *Ante*, at 12. Only "[a]fter the State has established parental unfitness," the majority reasons, may the court "assume . . . that the interests of the child and the natural parents do diverge." *Id.*, at 13.

This reasoning misses the mark. The child has an interest in the outcome of the factfinding hearing independent of that of the parent. To be sure, "the child and his parents share a vital interest in preventing *erroneous* termination of their natural relationship." *Ante*, at 13 (emphasis added). But the child's interest in a continuation of the family unit exists only to the extent that such a continuation would not be harmful to him. An error *in the factfinding hearing* that results in a failure to terminate a parent-child relationship which rightfully should be terminated may well detrimentally affect the child. See notes 14, 15, *infra*.

The preponderance of the evidence standard, which allocates the risk of error more or less evenly, is employed when the social disutility of error *in either direction* is roughly equal—that is, when an incorrect finding of fault would produce consequences as undesirable as the consequences that would be produced by an incorrect finding of *no* fault. Only when the disutility of error in one direction discernibly outweighs the disutility of error in the other direction do we choose, by means of the standard of proof, to reduce the liklihood of the more onerous outcome. See *In re Winship*, 397 U. S. 358, 370–372 (1970) (Harlan, J., concurring).

New York's adoption of the preponderance of the evidence standard reflects its conclusion that the undesirable consequence of an erroneous finding of parental unfitness—the unwarranted termination of the family relationship—is roughly equal to the undesirable consequence of an erroneous finding of parental fitness—the risk of permanent injury to the child either by return of the child to an abusive home or by the child's continued lack of a permanent home. See notes 14, 15, *infra*. Such a conclusion is well within the province of state legislatures. It cannot be said that the New York procedures are unconstitutional simply because a majority of the members of this Court disagree with the New York legislature's weighing of the interests of the parents and the child in an error-free factfinding hearing.

[2] "The record in this case illustrates the problems that may arise when a child is returned to an abusive home. Eighteen months after Tina, petitioners' oldest child, was first removed from petitioners' home, she was returned to the home on a trial basis. Katherine Weiss, a supervisor in the Child Protective Unit of the Ulster County Child Welfare Department, later testified in Family Court that "[t]he attempt to return Tina to her home just totally blew up." Exhibit to Respondent's Brief 135. When asked to explain what happened, Mrs. Weiss testified that "there were instances on the record in this court of Mr. Santosky's abuse of his wife, alleged abuse of the children and proven neglect of the children". *Ibid.* Tina again was removed from the home, this time along with John and Jed.

[3] "The New York legislature recognized the potential harm to children of extended, non-permanent foster care. It found "that many children who have been placed in foster care experience unnecessarily protracted stays in such care without being adopted or returned to their parents or other custodians. Such unnecessary stays may deprive these children of positive, nurturing family relationships and have deleterious effects on their development into responsible, productive citizens." SSL §384-b(1)(b). Subsequent studies have proved this finding correct. One commentator recently wrote of "the lamentable conditions of many foster care placements" under the New York system even today. He noted that "[o]ver forty percent of the children in foster care have been in this 'temporary' status for more than two years; over thirty percent for more than five years. During this time many children are placed in a sequence of ill-suited foster homes denying them the consistent support and nurturing that they so desperately need." Besharov, State Intervention To Protect Children: New York's Definition of "Child Abuse" and "Child Neglect," 26 N. Y. L. Sch. L. Rev. 723, 770–771 (1981) (footnotes omitted). In this case, petitioners' three children have been in foster care for more than four years, one child since he was only three days old. Failure to terminate petitioners' parental rights will only mean a continuation of this unsatisfactory situation.

tion because of threatened irreparable injury through abuse or neglect. Permanent neglect findings also occur only in families where the child has been in foster care for at least one year.

In addition to the child's interest in a normal homelife, "the State has an urgent interest in the welfare of the child." *Lassiter* v. *Department of Social Services*, *supra*, at ——.[6] Few could doubt that the most valuable resource of a self-governing society is its population of children who will one day become adults and themselves assume the responsibility of self-governance. "A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies." *Prince* v. *Massachusetts*, 321 U. S. 158, 168 (1944). Thus, "the whole community" has an interest "that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed . . . citizens." *Id.*, at 165. See also *Ginsberg* v. *New York*, 390 U. S. 629, 640–641 (1968).

When, in the context of a permanent neglect termination proceeding, the interests of the child and the State in a stable, nurturing homelife are balanced against the interests of the parents in the rearing of their child, it cannot be said that either set of interests is so clearly paramount as to require that the risk of error be allocated to one side or the other. Accordingly, a State constitutionally may conclude that the risk of error should be borne in roughly equal fashion by use of the preponderance of the evidence standard of proof. See *Addington* v. *Texas*, 441 U. S., at 423. This is precisely the balance which has been struck by the New York legislature: "It is the intent of the legislature in enacting this section to provide procedures not only assuring that the rights of the natural parent are protected, but also, where positive, nurturing parent-child relationships no longer exist, furthering the best interests, needs, and rights of the child by terminating the parental rights and freeing the child for adoption." SSL § 384–b(1)(b).

III

For the reasons heretofore stated, I believe that the Court today errs in concluding that the New York standard of proof in parental-rights termination proceedings violates due process of law. The decision disregards New York's earnest efforts to *aid* parents in regaining the custody of their children and a host of procedural protections placed around parental rights and interests. The Court finds a constitutional violation only by a tunnel-vision application of due process principles that altogether loses sight of the unmistakable fairness of the New York procedure.

Even more worrisome, today's decision cavalierly rejects the considered judgment of the New York legislature in an area traditionally entrusted to state care. The Court thereby begins, I fear, a trend of federal intervention in state family law matters which surely will stifle creative responses to vexing problems. Accordingly, I dissent.

[6] The majority's conclusion that a state interest in the child's well-being arises only after a determination of parental unfitness suffers from the same error as its assertion that the child has no interest, separate from that of its parents, in the accuracy of the factfinding hearing. See note 13, *supra*.

MARTIN GUGGENHEIM, New York, N.Y. (ALAN N. SUSSMAN and RICKEN, GOLDMAN, SUSSMAN & BLYTHE, with him on the brief) for petitioners; STEPHEN DOMENIC SCAVUZZO, Washington, D.C. (HUDSON, CREYKE, KOEHLER, TACKE & BIXLER, H. RANDALL BIXLER, ROBERT A. DeBERARDINIS, JR. and EDWARD E. STROHSAHL, with him on the brief) for respondents.

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 27, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

HB 210 - "An Act relating relating to child custody."

HB 184 - "An Act authorizing convening special sessions of the legislature at any location in the state."

HB 339 - "An Act relating to the judicial review of administrative regulations."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 5:10 P.M. Committee members present were: Senators Parr, Anderson, and Rodey. Senators Bennett and Ray were absent.

003 - Call to order.

007 - Chairman Rodey brought HB 210 before the committee.

024 - Ninna Kinney, representing Department of HESS, testified in support of HB 210.

348 - Mr. Bruce relayed concerns expressed by telephone calls.

406 - Senator Parr suggested the following amendment: Page 3, Line 12, delete [After the first conference either party may withdraw, or], and on Page 3, Line 14, delete [Upon withdrawal by either party or]. There was no objection.

510 - Senator Parr moved to pass CSHB 210 from committee with individual recommendations. There was no objection.

528 - Chairman Rodey brought HB 339 before the committee.

535 - Mr. Bruce explains the changes made by the committee substitute.

561 - Diane Colvin, Legal Services, testified giving explanation of committee substitute.

766 - Senator Rodey asks Mr. Bruce to work with Diane Colvin to prepare better language which would require regulations to derive from specific sections of statutes rather than general chapter provisions.

827 - Chairman Rodey laid HB 339 on the table.

831 - Chairman Rodey brought HB 184 before the committee.

SIDE TWO

967 - Chairman Rodey requested Mr. Bruce to get information on special sessions being convened in other areas of the state if the majority so wishes.

985 - The meeting was adjourned at 6:10 P.M.

Official Business

Alaska State Legislature

House of Representatives

Committee on

Health, Education & Social Services

Pouch V
State Capitol
Juneau, Alaska 99811

SECTIONAL ANALYSIS

HOUSE BILL 210: An Act relating to child custody.

Section 1 PURPOSE

Bill seeks to assure children "frequent and continuing contact with both parents after the parents have separated..." . Amends child custody laws in A.S. 9.55.205 and 25.20.060. Intent is to grant to both parents equal opportunity to guide and nurture the children of the marriage. In addition, out-of-court child care agreements are encouraged.

Section 2 Amends present section of A.S. 9.55.205 specifying that the court shall determine custody in accordance with the best interest of the child under A.S. 25.20.060-25.20.130 (new sections added by the bill-to follow below). Adds that the court shall consider the child's preference if the child is of sufficient capacity to form a preference. The court shall consider the "desirability of offering the child a variety of life experience". Also, the court may not consider lifestyle, income, marital status, social or cultural environment of either parent unless detriment of such factor towards the child can be shown.

Section 3 Custody of the Child. Bill expands on existing section relating to child custody (AS 25.20.060) by adding several new sections to AS 25.20 relating to custody disputes and awards. New sections added are set out in the following section.

Section 4

--Sec. 25.20.070 "Shared Custody". When a question involving custody is before the court, there is a rebuttable presumption that shared custody is in the best interest of the child.

--Sec. 25.20.080 "Mediation". Allows court considering child custody case to request the parties to participate in pre-trial mediation.

--Sec. 25.20.100 "Award of Custody". Outlines conditions for award of shared custody (by application and agreement). Also provides that court shall enter reason for denying shared custody when it declines such.

--Sec. 25.20.100 "Modification or Termination of Custody" Court may modify or terminate custody award if in child's best interest.

Alaska State Legislature

House of Representatives

Committee on

Health, Education & Social Services

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

SECTIONAL ANALYSIS (cont'd)
HB 210

--Sec. 25.20.110 "Preference of the Child" If the child is of sufficient age and capacity to form an intelligent preference, such preference shall be considered by the court.

--Sec. 25.20.120 "Factors for Consideration by the Court". Outlines factors to be considered by the court in an award of shared custody.

--Sec. 25.20.130 "Preferences on Award". Sets forth the order of preference by which custody should be awarded "according to the best interests of the child".

--Sec. 25.20.140 "Temporary Custody". Unless harm is shown, child shall have equal access to both parents while custody is determined.

--Sec. 25.20.150 "Award of Custody to Nonparent". No custody shall be awarded to a nonparent unless it is demonstrated that award of custody to a parent is detrimental to the best interests of the child.

--Sec. 25.20.160 "Pleadings" An allegation that custody award to the parent would be detrimental may only appear in the pleadings by a general allegation to that effect.

--Sec. 25.20.170 "Access to Records of the Child" A parent not granted custody may have access to medical, school, and other records of the child.

--Sec. 25.20.180 "Definition" Shared Custody is defined as "an award of custody of the child to both parents and includes an award of physical custody which assures the child of frequent and continuing contact with each parent".

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

(907) 465-3603

March 26, 1981

Donald E. Clocksin, Chairman
House HESS Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: House Bill 210

Dear Mr. Clocksin:

You have asked us to comment on HB 210, "an Act relating to child custody." Although this bill has no direct impact on our department, we do have some concerns over the policy expressed in the bill.

The intent of the bill is laudable. It addresses concerns that have been surfacing with increasing regularity around the country. The bill, in promoting shared custody, embodies the notion that it is in the child's interest to perpetuate his or her relationship with both parents. Shared custody also appears to be, in some cases, more equitable with regard to the parents, giving legal recognition to the rights of both parents to participate in decisions which significantly affect the child's life. Although judges probably have inherent power to make shared custody awards in appropriate cases, statutory recognition and authority for such awards may ensure that shared custody is given serious consideration as an alternative in custody disputes. Additionally, statutory authority for a shared custody award may help in surmounting the sexual stereotypes that often operate in custody disputes.

However, conferring upon the notion that shared custody is in the best interests of the child the status of a rebuttable presumption, and requiring that first preference in making an award be given to shared custody, regardless of whether, in either case, the parents actually agree on shared custody, may be going overboard.

cc-CSLH

By its nature, shared custody requires extensive cooperation between the parents. Without question, there are many instances in which such an arrangement is simply not feasible due to the existence of extreme antagonism between the parents, or perhaps due to other factors (this is implicitly recognized by the listing of the factors to be considered in making an award, § 25.20.120). Many states have recently authorized shared or joint custody awards, and several have accorded it the presumption that it is in the best interests of the child where the parents can agree on an arrangement, but we are aware of none which give shared custody the blanket presumption provided by this bill.

We would suggest the requirement that parents agree on a shared custody award, at least before the presumption and first preference come into operation. Additionally, it may be advisable to require the parents to submit to the court a proposal setting out guidelines for resolution of disputes, and a workable plan if shared physical custody is contemplated, rather than to leave it in the court's discretion.

Section 2, amending AS 09.55.205, is also problematic. Subsection (d) of that statute would prohibit consideration of several factors in making an award of custody -- the conduct, marital status, income, social and cultural environment, and life style of either parent, unless those factors are shown to have caused or to potentially cause emotional or physical injury to the child. While the intent here may be to dispose of many of the conventional but perhaps unfounded presumptions regarding what is and is not a proper and suitable environment for children, this section seems to leave little that can be considered. We wonder, for example, how an assessment of each parent's capability to meet the physical, emotional, mental, religious, and social needs of the child, as required by subsection (c)(2), can be made if there is an exclusion of all reference to the parent's social and cultural environment and life style unless it is shown to be detrimental. We believe that this section is overly broad.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: Linda Scoccia
Linda Scoccia
Assistant Attorney General

cc: Art Peterson

LS:ml

THE JOINT CUSTODY ASSOCIATION

[redacted] Wilkins Avenue
L[redacted]ngeles, California 90024
(213) 475-5352
James A. Cook
President

A Nonprofit Association concerned with the joint custody of children [redacted] related issues of divorce, including research, informa[redacted]ssemination and legal and counseling practices.

HB 210

April 24, 1982

Senator Pat Rodey
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

Re: HB 210, Tuesday, April 27, 1982. Senate

On Tuesday, April 27th. I particularly urge you to encourage the Alaskan Senate in passing HB 210 (relating to child custody.)

However, we also urge that you incorporate certain improvement/ amendments that will bring HB210 more nearly into concert with that which is statute and case precedent in other states. (19 other states have provisions for joint custody, 7 have provisions for a presumption or a preference for joint custody.)

1. Joint custody (or shared parenting as you describe it) entails the equitable physical access by a child with both parents. HB 210 needs a recognition that physical custody and physical access is encompassed by HB 210.

2. Most states are now evaluating whether joint custody (or shared parenting) should be a presumption of the law, or first preference in the custody decisions a court can make, or a combination of presumption and preference. No longer is there debate about sanctioning the availability of joint custody; that appears now to be a foregone conclusion.

   Hence, improve HB 210 by making shared parenting a presumption and first among preferences in custody alternatives.

3. Alaska is to be commended for encouraging mediation (in HB 210), but I think that the threat of mediation termination after the first conference gives an overwhelmingly disproportionate amount of procedural weight to the most antagonistic and uncooperative parent. Alaska is the only example of which I am aware wherein the evolving, on-going process of mediation (which ordinarily requires time for 'ventilation') can be terminated with the first appointment.

   Subparagraph (c) of Sec 25.20.080 (HB 210) could easily be dropped, to the advantage of the bill.

Finally, I encourage your consideration of an important U.S. Supreme Court decision within the past few days (Santosky). It stresses the need for a higher burden of proof ("beyond a reasonable doubt" & "clear and convincing evidence") to sever a parent from a child/parent

relationship. This is a principle that is relevant in joint custody (shared parenting) to assure retention of familial ties, albeit 'Santosky' initially addresses parental termination cases.

Thus, we urge, also, that you assure HB 210 requires a higher burden of proof to isolate a child from one parent through sole parent exclusive custody.

Sincerely,

James A. Cook

Enclosures.

U S SUPREME COURT SPEAKS OUT ON CHILD CUSTODY DEPRIVATION

10606 Wilkins Avenue
Los Angeles, California 90024

James A. Cook
President

THE JOINT CUSTODY ASSOCIATION

Apr 20, 198

SUPREME COURT REASSERTS IMPORTANCE OF CHILD/PARENT RELATIONS

Decree addresses parental termination cases.

But contains quotable opinions that imply questioning of arbitrary sole custody divorce decrees.

Stressing retention of child/parent relationship could imply endorsement of "presumption" for joint custody until sole custody seeker produces a higher standard of proof in keeping with "Santosky" below.

(If the justifying legal standard for sole custody requires higher proof, the obvious judicial recourse is a presumption for the equality of joint custody unless and until the judicial standard for sole custody is demonstrated to the court.)

Child/parent relationship so vital that court decrees severing the relationship must increase the burden of proof to "beyond a reasonable doubt" & "clear & convincing" evidence rather than merely "preponderance of evidence."

(Many individuals with terminated parental rights & decreed unfit nevertheless have visitation rights & schedules as frequent or more so than the non-custodian in conventional sole custody divorce decrees. Convicted criminals have child visitation and are not denied participation in child-rearing decisions. Unless the standards of the Supreme Court cited below are applied, the conventionally-divorced non-custodial parent...in practice...could have less access and rights than an "unfit" terminated parent or a criminal.)

Quotations below from Santosky v Bernhardt S. Kramer, Commissioner; U.S. Supreme Court, No 80-5869, March 24, 1982. Headlines & subheads below are our editorial elaborations.

Clear & convincing evidence needed; outweighs a fair preponderance of evidence

Ease of extinguishing parent/child relationship

"...in New York, the factual certainty required to extinguish the parent-child relationship is no greater than that necessary to award money damages in an ordinary civil action." (In New York, a "fair preponderance of the evidence" (will) "support that finding.")

"Today we hold that the Due Process Clause of the Fourteenth Amendment demands more than this." ". .due process requires that the State support its allegations by at least clear and convincing evidence."

Cultivating contact; failing to maintain contact

"...the State must establish...that...the agency "made diligent efforts to encourage and strengthen the parental relationship. The State must further prove that during that same period, the child's natural parents failed "substantually and continuously or repeatedly to maintain contact with or plan for the future of the child although physically and financially able to do so."

Standards required to terminate: is "fair preponderance of evidence" sufficient?

"Thirty-three states, the District of Columbia and the Virgin Islands currently specify a higher standard of proof, in parental rights termination proceedings, than a "fair preponderance of the evidence." "The question here is whether New York's "fair preponderance of the evidence" standard is constitutionally sufficient."

Constitutional guarantees to parent/child relationship

"The case casts light, however, on the two central questions here -- whether process is constitutionally due a natural parent at a State's parental rights termination proceeding, and, if so, what process is due."

Establishing standards that minimize possible error

".. this Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment."

"The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting State intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures."

Federal due process standards are not diminished by state standards

"Addington (Addington v Texas, 441 U.S. 418 (1979)) teaches that, in any given proceeding, the minimum standard of proof tolerated by the due process requirement reflects not only the weight of the private and public interests affected, but also a societal judgment about how the risk of error should be distributed between the litigants."

" "...while private parties may be interested intensely in a civil dispute over money damages, application of a "preponderance of the evidence" standard indicates both society's "minimal concern with the outcome" and a conclusion that the litigants "share the risk of error in roughly equal fashion." "When the State brings a criminal action to deny a defendant liberty or life, however, "the interests of the defendant are of such magnitude that historically and without any explicit constitutional requirement they have been protected by standards of proof designed to exclude as nearly as possible the likelihood of an erroneous judgment."

State mandates intermediate standards of proof that threaten parents' liberty

"The "minimum requirements (of procedural due process) being a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse political action."

"The Court has mandated an intermediate standard of proof -- "clear and convincing evidence" -- when the individual interests at stake in a state proceeding are both "particularly important" and "more substantial than mere loss of money."

"...the Court has deemed this level of certainty necessary to preserve fundamental fairness in a variety of government-initiated proceedings that threaten the individual involved with "a significant deprivation of liberty" or "stigma."

"In parental rights termination proceedings, the private interest affected is commanding; the risk of error from using a preponderance standard is substantial; and the countervailing governmental interest favoring that standard is comparatively slight."

Parent's relationship with child more precious than property rights

"Lassiter (Lassiter v. Department of Social Services, 452 U.S. 18 (1981)) declared it "plain beyond the need for multiple citation" that a natural parent's "desire for and right to 'the companionship, care, custody, and management of his or her children' " is an interest far more precious than any property right."

A parent's interest in accuracy and justice is commanding

"When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it. "If the State prevails, it will have worked a unique kind of deprivation...A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one."

Child's interests coincide with parents' in use of error-reducing procedures

"The State marshals an array of public resources to prove its case and disprove the parents' case. Victory by the State not only makes termination of parental rights possible; it entails a judicial determination that the parents are unfit to raise their own children."

"But until the State proves parental unfitness, the child and parents share a vital interest in preventing erroneous termination of their natural relationship. Thus, at the factfinding, the interests of the child and his natural parents coincide to favor use of error-reducing procedures."

"Since the factfinding phase of a permanent neglect proceeding is an adversary contest between the State and the natural parents, the relevant question is whether a preponderance standard fairly allocates the risk of an erroneous fact-finding between these two parties."

Risk of subjective values, cultural or class bias

"Permanent neglect proceedings employ imprecise substantive standards that leave determinations unusually open to the subjective values of the judge."

"Because parents subject to termination proceedings are often poor, uneducated or members of minority groups,...such proceedings are often vulnerable to judgments basedon cultural or class bias."

"The State's ability to assemble its case almost inevitably dwarfs the parents ability to mount a defense."

"Unlike criminal defendants, natural parents have no "double jeopardy" defense against repeated state termination efforts. ...even when the parents have attained the level of fitness required by the State, they have no similar means by which they can forestall future termination efforts."

Standards based on quantity rather than quality jeopardize marginal cases

"Coupled with a "preponderance of the evidence" standard, these factors create a significant prospect of erroneous termination. A standard of proof that by its very terms demands consideration of the quantity, rather than the quality, of the evidence may misdirect the factfinder in the marginal case."

"Given the weight of the private interests at stake, the social cost of even occasional error is sizable."

Increase the burden of proof

"Raising the standard of proof would have both practical and symbolic consequenses. ...The Court has long considered the heightened standard of proof used in criminal prosecutions to be "a prime instrument for reducing the risk of convictions resting on factual error." ... "am elevated standard of proof in a parental rights termination proceeding would alleviate "the possible risk that a factfinder might decide to (deprive) an individual based solely on a few isolated instances of unusual conduct (or)...idiosyncratic behavior."

"Increasing the burden of proof is one way to impress the factfinder with the importance of the decision and thereby perhaps to reduce the chances that inappropriate terminations will be ordered."