2215 HHESS DFYS INVEST.

2215

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

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

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

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

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

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

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

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

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

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

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

#12

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

000239

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

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

Phone: 586-1724

Date complaint received: July 15, 1982

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

1. Allegation that Bernie and Mary Holland yell and direct vulgar and abusive language towards foster children. [7AAC 50.450,(2)]

2. Allegation that Bernie Holland frequently hits foster children with a stick, ruler, yardstick and his hands. [7AAC.50.450,(1)(5)]

3. Allegation that Bernie Holland squirted lemon juice into a resident's mouth, as punishment, and in the process of the resident resisting, used force to open the resident's mouth by holding the jaw and applying pressure. [7AAC 50.450,(1)]

4. Allegation that Bernie and Mary Holland are providing Day Care in their home for from 2-5 children. [7AAC 50.430(b)(d)]

5. Allegation that there is not sufficient space for each foster child to have specific place to keep his/her own personal possessions. [7AAC 50.540(c)]

6. Allegation that the Holland children have played with, destroyed, broken or lost the foster childrens personal possessions. [7AAC 50.420(e)]

7. Allegation that the Holland children are allowed to annoy and "bug" the foster children. When a conflict arises over this issue, that the foster children are verbally abused, and that "the foster children are always wrong, and the Holland children are always right". [7AAC 50.450,(2)(5)]

8. Allegation that adult boarders are living in the Holland foster home and that they are sharing sleeping quarters with foster children. [7AAC 50.420]

NOTIFICATION OF COMPLAINT

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

000249

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

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

Phone: 586-1724

Date complaint received: July 15, 1982

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

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

10. Allegation that three foster children and one adult boarder sleep in a bedroom with no windows. [7AAC 50.560(e)(3)]

11. Allegation that family meetings are held late at night and often last from 11:00 p.m. to 2:00 a.m., and that foster children do not get enough sleep because of this and that one foster child fell asleep at a meeting and was punished for it. [7AAC 50.410]

12. Allegation that Bernie Holland has belittled and used cruel and derogatory remarks when describing a foster child to other foster children, and to other persons who have entered the foster home. [7AAC 50.450(2)]

13. Allegation that Bernie Holland patted a female resident on the bottom, grabbed a female resident around the waist and while "wrestling, grabbed her legs to get a cheap feel." [7AAC 50.410]

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

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

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

September 27, 1982

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

Dear Mr. and Mrs. Holland:

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

INVESTIGATION FINDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EVALUATION AND RECOMMENDATION

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

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

Sincerely,

Lew Reece

Lew Reece
Regional Administrator
SERO - Juneau

Enclosure

LR:JRP:PM:pvk

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

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

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

December 1, 1982

Bernie and Mary Holland
Box 67
Juneau, Alaska 99802

Dear Mr. and Mrs. Holland

RE: Holland Foster Home

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

Notice of Defense and Request for a Hearing

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

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

Sincerely,

Lew Reece
Regional Administrator

Enclosures

Accusation
Notice of Defense
Envelope (postage prepaid)

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LEW:IRP:PM:ksw

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

STATE OF ALASKA

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

In the matter of Bernie and Mary Holland, a Licensed Child Foster Home, Respondent.	Facility No. 4190

ACCUSATION
(AS 47.35.040, AS 44.62.360)

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

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

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

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

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

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

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

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

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

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

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

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

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ACCORDINGLY, Accuser requests that

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

a. licensees will notify the department of all non-related adults living in the home for more than 21 days;

b. licensees will seek department approval of all day care services provided in the home;

c. licensees will provide the department a written description of their behavior management and discipline techniques (including any planned use of corporal punishment or family trials) within 30 days of issuance of the license with conditions; and

d. licensees will cooperate with all department requests for information related to the operation of their child foster home, license 4190.

DATE: 12/1/82

Lew Reece

Lew Reece

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

In the Matter of:

Bernie and Mary Holland
Child Foster Home

Respondent

Facility No. 4190

NOTICE OF DEFENSE

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

_____

_____

_____

_____

_____

_____

_____

_____

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

DATE: _____

_____
Respondent

Mailing Address: _____

_____

_____

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

Gen. 179, 06-3383, Rev. 11/82

Ombudsman

John B. Chenoweth

State of Alaska

Reply to:

☐ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☐ Pouch WO
Juneau, Alaska 99811
(907) 465-4970

P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

MEMORANDUM

TO: John B. Chenoweth, Ombudsman

THRU: Duncan C. Fowler, Ombudsman Regional Representative

FROM: Bruce Aronson, Ombudsman Assistant

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

DATE: January 28, 1983

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

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

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

J82-0689

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

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

A copy of the notification is attached to this memorandum.

Background:

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

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

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

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

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

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

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

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

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

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

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

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

> . . .
>
> D.H. admits to being very good at lying and convincing himself as well as others of his lies.
>
> . . .
>
> D.H. is very manipulative, using people and situations to create gratification for himself.
>
> . . .

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

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

- Bernie Holland told her to get out of bed, using vulgar language,

- Mary Holland has called her names,

- M.H. was preparing guacamole, and to quiet J.H., M.H. squirted lemon juice into J.H.'s mouth. Mary Holland cursed at M.H. for this,

- Mary Holland cursed at M.H. for being late when called to the main floor of the house, from the basement, and

- Bernie Holland used coarse language upon M.H.'s return to the Holland home, after having run away from the Holland home.

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

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

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

- When M.H. was moving to another room, Mary Holland cursed at her,

- During a family meeting, Mary Holland described M.H.'s performance as a dishwasher, in vulgar terms,

- Mary Holland cursed at M.H. during an incident involving a television,

- Mary Holland, in vulgar terms, told M.H. to be quiet, when M.H. was slow in coming to the main floor of the house from her bedroom,

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

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

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

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

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

. . .

> I reviewed her statement and found that several of the things she told me yesterday were not addressed and that some of the incidents she wrote about that we talked about yesterday were or somewhat watered down. . . .
>
> Most of what she put in writing seemed to be directed towards conflicts that she was having with Mary instances in which she says Mary directed fould [sic] language towards her, telling her to shut up, calling her asshole, etc.

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

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

. . .

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

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

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

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

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

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

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

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

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

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

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

Allegations against the Hollands:

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

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

Summarized, the allegations provide as follows:

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

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

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

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

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

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

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

The two regulations cited by DFYS provide:

> 7 AAC 50.430. NUMBER OF FOSTER CHILDREN PERMITTED IN THE HOME.
>
> . . .
>
> (b) No more than eight children in all are permitted in any one home.
>
> . . .
>
> (d) No more than five children of any age who are unrelated to the foster parents are permitted.

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

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

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

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

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

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

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

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

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

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

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

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

> 7 AAC 50.450. DISCIPLINE.
>
> (5) disciplined by shaking or by delivering a forceful blow with a hand or a weapon, however, controlled hand spankings of one to three slaps on the buttocks are allowed when appropriate;

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

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

> 7 AAC 50.420 RESPONSIBILITIES OF FOSTER PARENTS
>
> (a) The foster parents shall report to the division representative any significant changes in the household such as employment, housing, or serious illness, that would affect the ability to care for foster children.

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

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

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

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

> 7 AAC 50.410. QUALIFICATIONS OF FOSTER PARENTS AND OTHERS IN THE HOUSEHOLD.
>
> (a) The foster parents must show evidence of being responsible, mature individuals of reputable character who exercise sound judgement and display the capacity to provide good care for children.

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

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

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

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

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

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

> 7 AAC 50.450. DISCIPLINE.
>
> The foster parents must be able to show evidence of ability to work with children without recourse to physical punishment or psychological abuse and must be positive in their approach to discipline. Any discipline or control must be appropriate to the child's age and developmental level, but in no event may a child in care be:

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

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

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

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

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

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

> Danneker: Read a quote from written statement regarding Bernie wrestling with M.H.(female)
>
> D.H.: Said that Bernie grabs her from behind under the arms. Stated that he didn't think Bernie should do this. M.H. got up to go somewhere and was bending over to pull down her pants (said she wears tight pants and had to pull them down when she got up). This was when Bernie swatted her (hit her on the bottom).
>
> Danneker: Have you seen him do this with any other girl in the house?
>
> D.H.: No.
>
> Danneker: What was M.H.'s reaction?
>
> D.H.: Walked away. It appeared to be done in fun but....

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

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

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

Danneker: Have you ever wrestled with Bernie?

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

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

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

Danneker: Is he sexual towards you?

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

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

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

Presentation of the allegations to the Hollands:

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

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

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

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

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

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

Refusal to respond to the allegations:

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

. . .

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

> determination of the allegations based soley [sic] on the information gathered by the Division without having your input. If this becomes necessary, it will be done.
>
> I am again requesting that a reply to the allegations be submitted. You and your wife, and/or your legal counsel, are requested to reply within ten (10) days of the date of this letter. I look forward to hearing from you.

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

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

Investigation of allegations completed:

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

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

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

> authority to supervise and enforce standards for foster care allowed by statute, but also has demonstrated a lack of responsibility on the part of the Hollands and placed those children entrusted to their care at an unacceptable risk level.
>
> The Hollands have repeatedly violated the foster home regulations and have made no attempt to correct some of the violations, or if they have corrected them have failed to inform the Division. Foster parents who are seriously concerned about the welfare of children would normally be willing to cooperate with the Division to resolve any problems of [sic] misunderstandings that may arise. The Hollands have demonstrated a total lack of co-operation with the Division in dealing with the allegations.
>
> It is therefore recommended that the foster home license for Bernie and Mary Holland be revoked.

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

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

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

Related incident:

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

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

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

FINDING:

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

1. The referenced regulations in allegation 4 (7 AAC 50.-430(b),(d)) do not appear to directly relate to the issue of providing day care services in a home licensed for foster care. Therefore this allegation lacks sufficient legal basis and should not have been investigated;

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

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

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

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

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

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

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

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

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

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

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

. . .

> On August 25, a certified letter of license non-compliance was sent to you and again you failed to contact us. On September 27, 1982, the investigation was concluded and a copy of the findings was sent to you and the Attorney General's office for further action.
>
> It was only after the investigation was concluded and you had been given approximately 2 months to respond to the Division that I instructed the Juneau District Office to suspend juvenile placements until the alleged licensing violations in your foster home had been resolved.
>
> I would be more than happy to meet with you at your convenience, with our licensing specialist, to assist you in developing a corrective action plan for your foster home. Without this meeting I cannot recind [sic] the instructions I have given the Juneau District Office not to place children in your foster home. [Emphasis added]

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

There is no known regulation which permits the state to "suspend juvenile placements" when "alleged licensing violations" in a foster home holding a valid foster license (which has not been suspended, modified, denied or revoked) have not been resolved to the satisfaction of the Division of Family and Youth Services. State law provides that a foster license may be revoked or modified "if it [the Division] determines that a facility is not in compliance with AS 47.35.010 - 47.35.080 or the regulations adopted under AS 47.35.010 - 47.35.080." AS 47.35.040(b).

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

> 7 AAC 50.390. DENIAL OR REVOCATION.
>
> (a) If the division finds that a foster home does not comply with the provisions of 7 AAC 50.310 - 7 AAC 50.620, or the specific terms of a license which has been issued, it shall deny or revoke the license. [Emphasis added]

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

> AS 47.35.040. LICENSING.
>
> (e) The department shall give written notice of revocation or modification under (b) of this section 30 days before the effective date of the action. However, if the health or well-being of children or dependent adults is in jeopardy, the revocation or modification action is effective immediately upon the issuance of written notice by the department.

This complaint presents the unusual situation in which the agency has determined the Hollands do not comply with the regulations for foster homes, then their foster home license should have been revoked (per 7 AAC 50.390(a)) and they should have been given 30 days notice of the effective date of the revocation of their license (per AS 47.35.040(e)). None of this was done. If the Holland's license had been revoked, the agency would not have been able to place children there (See AS 47.35.020).

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

7 AAC 50.360. SCOPE OF LICENSING.

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

Mr. Reece said in the letter:

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

FINDING:

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

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

J82-1188

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

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

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

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

FINDING:

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

J82-0728

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

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

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

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

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

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

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

. . .

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

. . .

FINDING:

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

RECOMMENDATIONS:

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

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

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

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

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

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

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

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

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

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

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

BA:mm
Attachment

STATE OF ALASKA

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

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

RECOMMENDED DECISION

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

I. FACTS

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

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

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

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

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

According to the testimony of Mr. Pugh, the licensing for Holland House came to his attention on June 8, 1982 when Ms. Yvonne Walker informed him that she had received a monthly report from Ms. Smith which indicated, among other things, that SERO was in the process of finalizing license. According to Mr. Pugh, because he wished to be involved in the licensing of any new facilities, he met on the afternoon of June 8th with Yvonne Walker, Pat Monroe, Alinio Lobo and Connie Hansen to discuss licensing of Holland House. Also according to Mr. Pugh, the licensing file and proposal of Mr. Holland were brought to him prior to that meeting at his request. (There appears to be some confusion as to when Mr. Holland's file actually was brought to Central Office for Ms. Hansen testified the file was brought to Central Office on June 9th.) On that same day, at Mr. Pugh's request, Ms. Monroe and Ms. Walker searched for and located the license which was about to be issued for Holland House, and that license was thereafter held in abeyance pending a complete review of the licensing file by Central Office.

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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proof on the issues raised therein.

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

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

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

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

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

No person may operate a residential facility without first obtaining a license to do so from DHSS. AS 47.35.020; 7 AAC 50.003. To obtain a license for a new residential child care facility, an applicant must satisfy the requirements of 7 AAC 50.001 - 7 AAC 50.073. AS 47.35.040. A facility in operation at the time new regulations are passed may continue in operation despite not being in compliance with some of the new regulations if it submits an acceptable plan of correction for those items of the regulations with which it is not in compliance. A new facility may not begin operation until it has satisfied all of the applicable regulations. 7 AAC 50.05(a)(2).

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

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

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

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

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

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

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

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

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

DATED this 3rd day of December, 1982.

Richard M. Burnham
Hearing Officer

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CHAPTER 75

INVESTIGATIONS BY LEGISLATIVE BODIES

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

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

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

Section 795—
Paragraph 1—
Marshall v. Gordon (1917), 243 U.S. 521, Ann. Cas. 1918B, 371 L. R. A. 1917F, 279, 61 L. Ed. 881, 37 Sup. Ct. Rep. 448; Burnham v. Morrissey (1859), 14 Gray (Mass.) 226, 74 Am. Dec. 676; Wilkens v. Willet (1878), 40 N. Y. (1 Keyes) 521, 4 Abb. Dec. 596; Briggs v. MacKellar (1855), 2 Abb. Pr. (N. Y.) 30; Robertson v. Peeples (1919), 120 N. C. 176, 118 S.E. 300; Anderson v. Dunn, 6 Whet. (U.S.) 204, 5 L. Ed. 242; Federal Trade Com. v. American Tobacco Co. (1924), 264 U. S. 298, 32 A. L. R. 786, 68 L. Ed. 696, 44 Sup. Ct. Rep. 336; Harriman v. Interstate Commerce Com. (1903), 211 U. S. 407, 53 L. Ed. 253, 29 Sup. Ct. Rep. 115; In re Chapman (1897), 166 U. S. 661, 41 L. Ed. 1154, 17 Sup. Ct. Rep. 677; Kilbourn v. Thompson (1880), 103 U. S. 168, 26 L. Ed. 377; In re Battelle (1929), 207 Cal. 227, 277 Pac. 725; Goldman v. Olson (Wis. 1968) 268 F. Supp. 35. Murphy v. Collins (1974), 20 Ill. App. 3d 181, 312 N. E. 2d 772.
Paragraph 2—
Ex parte McCarthy (1866), 29 Cal. 395; Greenfield v. Russel (1920), 292 Ill. 392, 129 N.E. 102; Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82; Briggs v. MacKellar (1855), 2 Abb. Pr. (N.Y.) 30; People v. Keeler (1885), 99 N.Y. 463, 2 N.E. 615; Simpson v. Hill (1927), 128 Okla. 269, 263 Pac. 635; Commonwealth v. Costello (1912), 21 Pa. Dist. 232; State v. Frear (1909), 138 Wis. 173, 119 N.W. 894.

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

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

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

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

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Section 795—Continued
Paragraph 3—
In re Battelle (1929), 207 Cal. 227, 277 Pac. 725; Briggs v. MacKellar (1855), 2 Abb. Pr. (N.Y.) 30.
Paragraph 4—
In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.
Paragraph 5—
In re Battelle (1929), 207 Cal. 227, 277 Pac. 725; Petition of Special Assembly Interim Committee (1939), 13 Cal. 2d 497, 90 Pac. 2d 304.

information cannot be imputed.

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

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

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

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

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

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

Section 795—Continued

Paragraph 6—
Robertson v. Peeples (1919), 120 S. C. 176, 115 S.E. 300.
Paragraph 7—
Robertson v. Peeples (1919), 120 S. C. 176, 115 S.E. 300.
Paragraph 8—
Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82.
Paragraph 9—
In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.
Paragraph 10—
Dickinson v. Johnson (1915), 117 Ark. 582, 176 S.W. 116.
Paragraph 11—
Ex parte Hague (1929), 105 N. J. Eq. 134, 147 Atl. 220; Simpson v. Hill (1927), 128 Okla. 269, 263 Pac. 635; Robertson v. Peeples (1919), 120 N. C. 176, 115 S.E. 300.
Paragraph 12—
State v. Milwaukee (1914), 157 Wis. 505, 147 N.W. 50; Hendricks v. Carter (1918), 21 Ga. App. 527, 94 S.E. 807.

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

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

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

Sec. 796. Investigations Respecting Members

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

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

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

Section 795—Continued
Paragraph 13—
Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82.
Paragraph 14—
State v. Frear (1909), 138 Wis. 173, 119 N.W. 894; Goldman v. Olson (1968), 268 F. Supp. 35.
Paragraph 15—
Petition of Special Assembly Interim Committee (1939), 13 Cal 2d 497, 90 Pac. 2d 304; Massett Bldg. Co. v. Bennett (1950), 4 N. J. 53, 71 Atl. 2d 327.
Section 796—
Paragraph 1—
In re Falvey (1856), 7 Wis. 528; Briggs v. MacKellar (1855), 2 Abb. Pr. (N.Y.) 30.

to compel the attendance of witnesses and take testimony.

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

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

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

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

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

Section 796—Continued
Paragraph 2—
In re Gunn (1893), 50 Kan. 155, 32 Pac. 470.
Paragraph 3—
Sullivan v. Hill (1913), 73 W. Va. 49, 79 S.E. 670
Paragraph 4—
Ex parte Lawrence (1897), 116 Cal. 298, 48 Pac. 124
Paragraph 5—
Jefferson, Sec. XI.

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

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

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

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

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

Section 797—Continued
Paragraph 1—
Greenfield v. Russel (1920), 292 Ill. 392, 127 N.E. 102; Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82; Ex parte Hague (1929), 105 N.J. Eq. 134, 147 Atl. 220; In re Barnes (1912), 204 N. Y. 108, 97 N.E. 508.
Paragraph 2—
Kilbourn v. Thompson (1880), 103 U. S. 168, 26 L. Ed. 377; Greenfield v. Russel (1920), 292 Ill. 392, 127 N.E. 102; Ex parte Hague (1929), 105 N. J. Eq. 134, 147 Atl. 220; Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82.
Paragraph 3—
Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82
Paragraph 4—
Keeler v. McDonald (1885), 99 N. Y. 463, 2 N.E. 615.
Paragraph 5—
Commonwealth v. Costello (1912), 21 Pa. Dist. 232.

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

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

Sec. 798. Method of Investigation by a Legislative Body

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

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

Section 797—Continued
Paragraph 6—
Federal Trade Commission v. American Tobacco Company (1924), 264 U. S. 298.
Paragraph 7—
U. S. v. Owlett (1936), 15 F. Supp. 736.
Section 798—
Paragraph 1—
In re Battelle (1929), 207 Cal. 227, 277 Pac. 725; Briggs v. MacKellar (1855), 2 Abb. Pr. (N. Y.) 30; Kilbourn v. Thompson (1880), 103 U. S. 168, 26 L. Ed. 377.

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

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

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

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

Sec. 799. Legislative Investigating Committees

See also Sec. 564, Investigation of Charges Against Members

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

Section 798—Continued
Paragraph 2—
In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.
Paragraph 3—
In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.
Paragraph 4—
In re Falvey (1856), 7 Wis. 328.
Paragraph 5—
Dubato v. Board of Trustees of Incorporated Village of Bayville (1957), 166 N. Y. S. 2d 971.

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

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

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

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

5. Powers delegated by the legislature or either house to a committee by a simple resolution cease with the adjournment sine die of the legislature. But a legislature may invest its committees with power to function after the adjournment of the session; and where each house can act separately, the joint act of both houses is not required to set up a committee which can continue to function after adjournment.

Section 799—Continued
Paragraph 1—
Briggs v. MacKellar (1855), 2 Abb. Pr. (N. Y.) 30.
Paragraph 2—
Ex parte Bunkers (1905), 1 Cal. App. 61, 81 Pac. 748; Dickinson v. Johnson (1915), 117 Ark., 582, 176 S.W. 116; Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82; People v. Keeler (1885), 99 N. Y. 463, 2 N.E. 615; Ex parte Dalton (1886), 44 Ohio St. 142, 5 N.E. 136; Robertson v. Peeples (1919), 120 S. C. 176, 115 S.E. 300; Terrell v. King (1929), 118 Tex. 237, 14 S.W. 2d 786; State v. Frear (1909), 138 Wis. 173, 119 N.W. 89.
Paragraph 3—
State v. Milwaukee (1914), 157 Wis. 505, 147 N.W. 50. Hendricks v. Carter (1918), 21 Ga. App. 527, 94 S.E. 807.
Paragraph 4—
People v. Bucker (1920), 185 N. Y. Supp. 459; Terrell v. King (1929), 118 Tex. 237, 14 S.W. 2d, 786; People v. Milliken (1906), 185 N. Y. 35, 77 N.E. 872.

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

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

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

Sec. 800. Witnesses in Legislative Investigations

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

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

Section 799—Continued
Paragraph 5—
Fergus v. Russel (1915), 270 Ill. 304, 110 N.E. 130, People ex rel. Hastings v. Hofstadter (1932), 358 N. Y. 425, 180 N.E. 106; In re Impeachment (1913), 22 Pa. Dist. 833; see also Ex parte Caldwell (1906), 61 W. Va. 49, 55 S.E. 910, 10 L. R. A. (N. S.) 172.
Paragraph 6—
In re Leach (1922), 232 N. Y. 600, 19 N. Y. Supp. 135, 134 N.E. 588.
Paragraph 7—
Jefferson, Sec. XIII.
Paragraph 8—
Petition of Special Assembly Interim Committee etc., (1939), 13 Cal. 2d 497, 90 Pac. 2d 304.
Section 800—
Paragraph 1—
Ex parte D. O. McCarthy (1866), 29 Cal. 395; Ex parte Bunkers (1905), 1 Cal. App. 61, 81 Pac. 748; Hendricks v. Carter (1918), 21 Ga. App. 527.

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

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

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

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

Section 800—Continued
94 S.E. 807; In re Gunn (1893), 50 Kan. 155, 32 Pac. 470; Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82; State v. Brewster (1916), 89 N. J. L. 658, 99 Atl. 338; Briggs v. MacKellar (1855), 2 Abb. Pr. (N. Y.) 30; Ex parte Dalton (1886), 44 Ohio St. 142, 5 N.E. 136; Sullivan v. Hill (1913), 73 W. Va. 49, 79 S.E. 670.
Paragraph 2—
Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82.
Paragraph 3—
Ex parte D. O. McCarthy (1866), 29 Cal. 395; Attorney General v. Brissenden (1930), 271 Mass. 172, 171 N.E. 82; Briggs v. MacKellar (1855), 2 Abb. Pr. (N.Y.) 30; In re Gunn (1893), 50 Kan. 155, 32 Pac. 470; Ex parte Dalton (1886), 44 Ohio St. 142, 5 N.E. 136; Sullivan v. Hill (1913), 73 W. Va. 49, 79 S.E. 670.
Paragraph 4—
Ex parte D. O. McCarthy (1866), 29 Cal. 395.
Paragraph 5—
Jefferson, Sec. XIII.

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

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

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

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

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

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

Section 800—Continued
Paragraph 6—
Jefferson, Sec. XIII.
Paragraph 7—
Jefferson, Sec. XIII.
Paragraph 8—
Jefferson, Sec. XIII.
Section 801—
Paragraph 1—
Ex parte McCarthy (1866), 29 Cal. 395; In re Gunn (1893), 50 Kan. 155, 32 Pac. 470; Burnham v. Morrissey (1859), 14 Gray (Mass.) 226; Lowe v. Summers (1897), 69 Mo. App. 637; In re Barnes (1912), 204 N. Y. 108, 97 N.E. 508; Keeler v. McDonald (1895), 99 N. Y. 463, 2 N.E. 615; Ex parte Dalton (1886), 44 Ohio St. 142, 5 N.E. 136; In re Impeachment (1913), 22 Pa. Dist. 833; In re Falvey (1856), 7 Wis. 528; In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.

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

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

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

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

Section 801—Continued
Paragraph 2—
In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.
Paragraph 3—
People v. Keeler (1885), 99 N. Y. 463, 2 N.E. 615; Ex parte Wolters (1912), 64 Tex. Cr. 238, 144 S.W. 531.
Paragraph 4—
Ex parte Hague (1930), 105 N. J. Eq. 134, 150 Atl. 322; In re Battelle (1929), 207 Cal. 227, 277 Pac. 725.
Paragraph 5—
People v. Foster (1923), 236 N. Y. 610, 142 N.E. 304; In re Battelle (1929), 207 Cal. 227, 277 Pac. 725; Federal Trade Commission v. American Tobacco Co. (1924), 264 U. S. 298.

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

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

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

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

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

Section 801—Continued
Paragraph 6—
In re Barnes (1912), 204 N. Y. 108, 97 N.E. 508; Burnham v. Morrissey (1859), 14 Gray (Mass.) 226; People v. Foster (1923), 236 N. Y. 610, 142 N.E. 304
Paragraph 7—
Kilbourn v. Thompson (1880), 103 U. S. 168; 26 L. Ed. 377; Lowe v. Summers (1897), 69 Mo. App. 637; Marshall v. Gordon (1917), 243 U. S. 521.
Paragraph 8—
Marshall v. Gordon (1917), 243 U. S. 521.
Paragraph 9—
State v. Fitzgerald (1915), 131 Minn. 116, 154 N.W. 750.

charged with contempt in not answering questions.

Sec. 802. Summons, Subpoenas and Warrants

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

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

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

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

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

Section 801—Continued
Paragraph 10—
Ex parte D. O. McCarthy (1866), 29 Cal. 395.
Section 802—
Paragraph 1—
Ex parte Bunkers (1905), 1 Cal. App. 61, 81 Pac. 748; Ex parte Dalton (1886), 44 Ohio St. 142, 5 N.E. 136.
Paragraph 2—
State v. Brewster (1916), 89 N. J. L. 653, 99 Atl. 338; People v. Foster (1923), 236 N. Y. 610, 142 N.E. 304; Sullivan v. Hill (1913), 73 W. Va. 49, 79 S.E. 670; In re Chapman (1897), 166 U. S. 661, 41 L. Ed. 1154.
Paragraph 3—
State v. Scott (1916), 89 N. J. Eq. 726, 99 Atl. 342; Jefferson, Sec. XIII.
Paragraph 4—
Sullivan v. Hill (1913), 73 W. Va. 49, 79 S.E. 670.

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

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

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

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

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

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

Section 802—Continued
Paragraph 5—
Ex parte Hague (1929), 104 N. J. Eq. 31, 145 Atl. 618.
Paragraph 6—
In re Martens (1919), 180 N. Y. Supp. 171.
Paragraph 7—
Ex parte Hague (1929), 105 N. J. Eq. 134, 147 Atl. 220; Wilckens v. Willet (1878), 40 N. Y. (1 Keyes) 521, 4 Abb. Dec. 596; Ex parte Caldwell (1906), 61 W. Va. 49, 55 S.E. 910.
Paragraph 8—
Lowe v. Summers (1897), 69 Mo. App. 637.
Paragraph 9—
Wilckens v. Willet (1878), 40 N. Y. (1 Keyes) 521, 4 Abb. Dec. 596.

by the judiciary for contempt.

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

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

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

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

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

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

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

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

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

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

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

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

Section 802—Continued

Paragraph 10—
People ex rel. Hastings v. Hofstadter (1932), 258 N. Y. 425, 180 N.E. 106.
Paragraph 11—
People v. Milliken (1906), 185 N. Y. 35, 77 N.E. 872.
Paragraph 12—
People v. Hofstadter (1932), 258 N. Y. 425, 180 N.E. 106.
Paragraph 13—
U. S. House Rule 1, 80th Congress, note 626.
Paragraph 14—
Hendricks v. Carter (1918), 21 Ga. App. 527, 94 S.E. 807.

Section 803—
Paragraph 1—
State v. Yelle (1947), 29 Wash. 2d 68, 185 Pac. 2d 723.

Section 803—Continued

Paragraph 2—
Petition of Special Assembly Interim Committee, etc. (1939), 13 Cal. 2d 497, 90 Pac. 2d 304.
Paragraph 3—
Petition of Special Assembly Interim Committee, etc. (1939), 13 Cal. 2d 497, 90 Pac. 2d 304.
Paragraph 4—
Petition of Special Assembly Interim Committee, etc. (1939), 13 Cal. 2d 497, 90 Pac. 2d 304.
Paragraph 5—
Petition of Special Assembly Interim Committee, etc. (1939), 13 Cal. 2d 497, 90 Pac. 2d 304.
Paragraph 6—
Petition of Special Assembly Interim Committee, etc. (1939), 13 Cal. 2d 497, 90 Pac. 2d 304.

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SELECT - QUERY
00002 1 CHAPTER EQ 24.25

AS24.25.010 DOCUMENT= 1 OF 8
CITATION Sec. 24.25.010.
CATCH LINE
ISSUANCE AND FORM OF SUBPOENA.
TEXT (a) A subpoena requiring the attendance of a witness before either house of the legislature may be issued by the president or the speaker.

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

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

(d) The subpoena is sufficient if

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

(2) it is addressed to the witness;

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

(4) it is signed

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

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

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

AS24.25.020 DOCUMENT= 2 OF 8
CITATION Sec. 24.25.020.
CATCH LINE
SERVICE OF SUBPOENA.
TEXT A person over the age of 19 years who is competent as a witness in the state courts may serve the subpoena. His affidavit that he delivered a copy to the witness is evidence of service.

AS24.25.030 DOCUMENT= 3 OF 8
CITATION Sec. 24.25.030.
CATCH LINE
DISOBEYING SUBPOENA OR REFUSING TO TESTIFY.
TEXT If a witness neglects or refuses to obey a subpoena, or neglects or refuses to testify or to produce upon reasonable notice any material and proper books, papers or documents in his possession or under his control, the senate or house of representatives may by resolution entered on its journal commit him for contempt. If contempt is committed before a committee, the committee shall report the contempt to the senate or house of representatives, as the case may be, for such action as may be considered necessary.

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

CATCH LINE
ARREST FOR DISOBEDIENCE TO SUBPOENA.
TEXT A witness who neglects or refuses to attend in obedience to subpoena may be arrested by the sergeant-at-arms and brought before the senate or house of representatives, as the case may be. The only warrant or authority necessary authorizing arrest is a copy of a resolution of the senate or house of representatives signed by the president of the senate or speaker of the house of representatives, as the case may be, and countersigned by the secretary of the senate or the clerk of the house of representatives, as the case may be.
AS24.25.050 DOCUMENT= 5 OF 8
CITATION Sec. 24.25.050.
CATCH LINE
WITNESS FEES AND MILEAGE.
TEXT A person appearing before either house, or both, or a legislative committee in response to a subpoena is entitled to $20 for each day's attendance, and for the time necessary in coming and returning to his place of residence and mileage at the rate of 15 cents a mile for the distance traveled in going to and returning from the place of attendance. The witness fee and mileage fee shall be paid out of the state treasury upon presentation of a certificate of attendance and mileage due, signed by the presiding officer of the house which authorized issuance of subpoena.
AS24.25.060 DOCUMENT= 6 OF 8
CITATION Sec. 24.25.060.
CATCH LINE
OATH AND PENALTY FOR VIOLATION OF OATH.
TEXT The president of the senate and speaker of the house of representatives and the chairman of every committee of either body may administer an oath to a witness appearing before the respective bodies. A person who wilfully swears or affirms falsely concerning any matter material to the subject under investigation or inquiry is guilty of perjury and upon conviction is punishable by imprisonment for not less than one year nor more than five years.
AS24.25.070 DOCUMENT= 7 OF 8
CITATION Sec. 24.25.070.
CATCH LINE
GRANT OF IMMUNITY ON CLAIM OF PRIVILEGE OF SELF-INCRIMINATION.
TEXT (a) A person called as a witness before the senate, house of representatives, or a committee of either or both, who refuses to answer any question or to produce any book, paper or document relating to the matter under inquiry, on the ground that the answer or the production may tend to incriminate him, may be granted immunity from punishment for the offense to which the question or evidence relates by resolution of the house which is conducting the inquiry. The resolution shall be entered upon its journal, and the witness may then be compelled to answer the question or produce the evidence.

(b) If a witness is granted immunity and compelled to testify or produce evidence after claiming the privilege of self-incrimination, he may not thereafter be prosecuted in any court for the offense to which the question or evidence relates.
AS24.25.080 DOCUMENT= 8 OF 8

CITATION Sec. 24.25.080.
CATCH LINE

PUNISHMENT FOR DISOBEDIENCE TO SUBPOENA OR REFUSAL TO TESTIFY.

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

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

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

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

27 March, 1984

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

Dear Representative Tischer:

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

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

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

Sincerely yours,

Representative Charlie Bussell
Chairman, House Committee on Judiciary

/cl

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

Follow-Up Information
HESS Hearing March 19, 1984

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TELEPHONE DEPOSITION OF

DANNY JOE HARRISON

APPEARANCES:

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

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

P R O C E E D I N G S

MR. COOK:

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

OPERATOR:

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

MR. BOTELHO:

Yes.

OPERATOR:

Okay, and Mr. Harrison?

MR. HARRISON:

Hello.

OPERATOR:

Mr. Harrison, can you hear us?

MR. HARRISON:

Yes.

OPERATOR:

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

MR. COOK:

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

MR. HARRISON:

Yeah.

MR. COOK:

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

MR. HARRISON:

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

MR. COOK:

Could you spell your last name, please?

MR. HARRISON:

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

MR. COOK:

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

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

MR. HARRISON:

Yes.

MR. COOK:

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

MR. BOTELHO:

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

MR. COOK:

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

MR. BOTELHO:

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

MR. COOK:

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

MR. BOTELHO:

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

MR. HARRISON:

Yeah, I don't know my address.

MR. BOTELHO:

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

MR. HARRISON:

Lake Isabella area.

MR. BOTELHO:

California?

MR. HARRISON:

Yes, sir.

MR. BOTELHO:

Okay.

MR. COOK:

Would you have any other questions, then, Bruce?

MR. BOTELHO:

Not at this point.

MR. COOK:

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

DIRECT EXAMINATION BY GREG COOK:

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

A. Yes, I was.

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

A. I was placed there by the State.

Q. Were you a foster child?

A. Yes, sir.

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

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

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

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

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

A. No, he didn't.

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

to any of the other foster children in the home?

A. No, he didn't.

Q. How would you describe Mr. Holland's relations with the foster children who were placed at their home?

A. Well, I think -- my personal opinion is, is that Bernie was more of a father to me than, you know, my own own dad is, you know. Him and Mary, they treated me really super good, and they helped me out, really, quite a bit.

Q. Danny, did Bernie ever hit you with a stick, or a ruler, or a yardstick, or his hands?

A. No, he didn't.

Q. Did Mary Holland ever hit you with a stick of any kind, or with her hands?

A. No, she didn't.

Q. Danny, do you know if either Bernie or Mary hit any of the other foster children with a stick or with their hands?

A. No, he didn't.

Q. And does this apply to all of the time that you were present in the Hollands' home?

A. Yes, sir.

Q. Danny, there was a statement that you once made, I believe it was for Robert Danneker of the Division of

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

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

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

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

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

A. Which statement's that?

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

A. Yes, I did.

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

A. Yes, I do.

Q. And what did you tell Mr. Baxter at that time, Danny?

A. I just told him the same thing that I'm telling you right now, that I revoked my statements, and that I was told that I cannot, so I went down and had it redone again; and I told them about me being put in jail, and that I made up a bunch of lies, a bunch of accusations against Bernie which are untrue. I just told him that.

Q. And could you tell me once again, please, what the reason was that you made those statements in the first place?

A. Well, it was because I had broken the law, according to some checks that I had -- they're checks that you get, unemployment checks. And I had -- I wasn't supposed to do any kind of -- on my release -- I was released from the juvenile jail out there, and when I was released,

the judge had my probation officer write up a whole bunch of - about ten - rules that I was to follow, completely; and I hadn't followed them. So I was placed back into the -- detention.

Q. Thank you, Danny. I'd like to ask another series of questions, please. While you were living at the Hollands' home, did you have what you felt to be enough space for your own personal belongings?

A. Completely.

Q. Could you provide me with a few facts that would help me understand why you say that?

A. Well, because we got the whole basement, the attic -- enough rooms in there. I had plenty of room inside that house.

Q. I see. Thank you, Danny. Is there any part of the house that was off limits to you?

A. Yes. The middle floor, which Bernie and his wife live on.

Q. Did you ever go into the Hollands' bedroom?

A. No, I didn't.

Q. Was that room accessible to you?

A. It was, but I never went in there, because it was a rule of the house.

Q. Was that room generally kept locked, Danny?

A. Quite a bit of the time, yes, it was.

Q. I see. Danny, were there some people living at the Hollands' home, while you were there, who were not foster children?

A. Yes, there was. There was one girl that was living there who was -- who, I guess, had before been a foster child, and she had been having problems, and so she asked Bernie for some help, and Bernie, you know, was helping her out.

Q. I see. Did this in any way interfere with Bernie or Mary's ability to look after you?

A. No, it did not.

Q. Do you know whether or not it interfered with Bernie or Mary Holland's ability to look after the other foster children in the home?

A. No, not at all.

Q. Danny, some of these people - I think Lilly Manignok (ph) was one and Gil Lucero was another who lived at the Hollands' home - did any of these people share sleeping quarters with you or the other foster kids?

A. Well, could -- like, what do you mean by sleeping quarters?

Q. Same bedroom.

A. At one point, yes, yeah.

Q. Do you feel that this interfered in any way with the

Hollands' ability to provide good care?

A. No, not at all.

Q. And did these people participate in any of the family meetings?

A. No, not really.

Q. Danny, did any of them participate in any of the trials while you were there?

A. That's kind of hard to remember. It was mostly -- the trials that we had and stuff were mostly for the kids that were foster parents [sic] there.

Q. I see. Could you tell me, please, in your own words, Danny, what are the trials?

A. You mean, what do they do?

Q. Yeah, that's right. What happens?

A. Well, like, if someone stays out after curfew, then, instead of Bernie, you know, picking out a particular punishment for them, like, say, you know, you're on restriction, he'd let the kids decide what kind of punishment they should have. And then, you know, we'd all just, you know, decide on what, you know, they should -- what should happen, like, should they be on restriction for a month? Should they be on restriction for a week? And we'd all take a vote, and then -- and that's what happened.

Q. I see. And who had the authority to make the final

decision, Danny?

A. Bernie did. Because sometimes it gets to the point where, like, a couple of people -- the sentence would be too light or be too strong, and then Bernie would have to say, you know, that's not right, because you guys -- you know, I mean, if someone stayed out, you know, twenty minutes past curfew and we gave them, you know, a year restriction, I mean, he'd have to say something about that.

Q. That makes good sense, Danny. What time did family meetings usually take place, please?

A. Between -- after dinner, which was around -- about seven-thirty, until about nine, at the most; and then sometimes we'd, stay up talking, you know, pretty late.

Q. One of the things the State has charged, Danny, is they have alleged that family meetings are held late at night, often lasting from eleven p.m. to two a.m. Could you tell me, please, whether in your experience, that is correct or not?

A. I can particularly remember that we've never had a meeting anywhere past nine o'clock, I'm almost sure of it. All the time that we -- we'd have a meeting, and then after the meeting's over, you know, maybe one or two people would go to bed because they have to get up

for work, and the rest of us'd just sit around and talk, you know, and talk about things that happened and everything, and joke around. And there was nobody that had to stay awake, and everybody knew that, too. So ... .

Q. Let me be sure that I understand you on this, Danny. Did you say that there were no meetings called after eleven o'clock?

A. No, no way.

Q. Did you ever call any family meetings late at night, once, or at any other time?

MR. BOTELHO: (Indisc.) elaborate on his testimony.

MR. COOK: Say it again, please, Bruce?

MR. BOTELHO: I understand that Mr. Harrison had not completed his testimony when you began to interrupt him with another question.

Q. I apologize. Go ahead, Danny, and start up again, at the beginning, please.

A. Of what -- of what you just asked me? Those (indisc. -- simultaneous speech) ...

MR. BOTELHO: (Simultaneous

speech with Mr. Harrison) Mr. Harrison, I understand that you're about ready to state -- to elaborate on this testimony about (indisc.).

A. ... at one time, there was a -- we did have a meeting, and that was because at the time -- well, that was me and one of the other kids, Mike Frawley (ph) that lived there, were late one night, and we came home and it was -- it wasn't a meeting, all it was was that we got up and Bernie sat down and said, I want to know why. Because everybody else was already awake. It was on a Friday night or a Saturday night, and everybody was already awake. And we all sat around and, you know, he said, you know, why did you guys stay out that late? And what happened was my car had broken down at the time.

Q. I see. Danny, this may sound foolish, but when you started out that sentence, Bruce and you were talking at the same time, so I'm afraid that will come out as a little garbled on the tape. Could you just start over with that story again, and tell it from the top, so that we've got a clean version of it for the tape, please?

A. Yeah. What happened was, me and Mike Frawley had stayed out late one night -- or not late, but you know, were out in the valley of Juneau. And when we were coming back, my car had broken down. And it was a Friday or Saturday night - I don't remember - but everybody was already awake, and when we got home, we were late, past curfew, and Bernie, you know, got us all to the table, since we were all already awake and everything; and he asked us why we had -- you know, we were late. And I told him that my car had broken down, and that was the whole thing. That was the only meeting that I can recall that was that late.

Q. I see. And Mike Frawley, was he another foster child living in the Hollands' house?

A. Yes, sir, he was.

Q. I see, thank you. Danny, I'd also like to ask you whether or not another charge is true. This charge that the State has made reads as follows: It says that Bernie Holland has belittled and used cruel and derogatory remarks when describing a foster child to other foster children, and to other persons who have entered the foster home. I'd like to ask you in particular, Danny, to your personal knowledge, has Mr. Holland or Mrs. Holland ever belittled you?

A. I don't really understand what you mean by that.