INVESTIGATIVE REPORT

******PUBLIC SUMMARY******

In this public summary of the investigative report, names of the complainants, their relatives and friends have been changed to protect their privacy. Some place names also have been changed for the same reason.

Ombudsman Complaints A097-0982, A097-2162, A097-2187, A098-0245

May 19, 1999

SUMMARY OF THE COMPLAINT

This investigation concerns two allegations that the Department of Health and Social Services, Division of Family and Youth Services (DFYS) failed to identify the fathers of children in state care, and a separate allegation that DFYS violated the civil rights of a mentally incapacitated parent.

In the first case, DFYS failed to establish paternity for 16 months after the child, Oliver Gold, was taken into state custody. From the beginning, DFYS knew the possible father's name but took no action to confirm it. Later, Oliver's paternal grandmother complained that DFYS would not place the boy in foster care with her. State law at the time required placement of a child in state custody with a blood relative absent a showing the child would be harmed by the placement. Instead, Oliver lived with a non-relative foster parent. By the time DFYS determined paternity, Oliver was psychologically bonded with his foster family, and a doctor recommended against moving him to his biological family. Oliver's foster parent later adopted him.

The second case involved Annie Pine, a schizophrenic jailed for prostitution and transferred to the Alaska Psychiatric Institute (API). While in custody, she gave birth to Andrew and identified a jailed man, Sam Oak, as the father. The man acknowledged paternity and asked that the child be placed with his mother, Sarah Oak, until his release from prison. He agreed to a two-day voluntary placement

with DFYS until Ms. Oak could come to Anchorage to get the newborn. Neither Andrew's mother nor her sister and guardian, Carol Ash, were told of this arrangement or permitted a voice in the decision, even though they told DFYS Sam Oak could not be the father. Months later, after more questions were raised about the child's paternity, DFYS arranged genetic testing. The results showed the child was not related to Mr. Oak. DFYS removed the child from Ms. Oak's home. Ms. Oak, originally thought to be Andrew's grandmother, complained that DFYS refused to reimburse her for the foster care she provided while she had the child.

The two allegations under investigation were:

> ***Allegation 1: The Department of Health and Social Services, Division of Family and Youth Services performed inefficiently by failing to establish paternity for children whose care it had assumed.***
>
> ***Allegation 2: The Department of Health and Social Services, Division of Family and Youth Services unfairly refused to reimburse a caretaker for foster care services provided.***

During the course of investigation, the ombudsman added a third allegation:

Allegation 3: The Department of Health and Social Services, Division of Family and Youth Services violated the civil rights of a mentally incapacitated parent.

Assistant Ombudsman Joan F. Connors investigated the allegations.

BACKGROUND

Alaska Statute 47.10 gives the Department of Health and Social Services (department) overall responsibility for child protection in Alaska. Within the department, DFYS handles cases involving abused or neglected children.

DFYS investigation of a substantiated report of abuse or neglect may lead a social worker to file in court a petition for emergency or temporary custody. In some cases, the department will enter a voluntary placement agreement with a child's parent or guardian, without seeking custody of the child in court. Voluntary placement agreements can extend for up to six months.

This investigation examined department action that occurred under former AS 47.10, which was amended by SCS CSHB 375 (JUD), ch.99 SLA 1998. Former AS 47.10.010(a), now AS 47.10.011, lists the conditions that create court jurisdiction over a child in need of aid (CINA) case. Among them are:

- the child has no guardian or relative willing to provide care; …
- the child has suffered or is at risk of suffering substantial physical harm; …
- the child has suffered substantial physical abuse or neglect as a result of conditions created by the parent.

When a petition for custody is filed in court, the parents get notice of the filing and have a right to participate in the CINA proceeding. If the court finds probable cause to believe the child is in need of aid and the child's welfare requires the state to take custody, the court gives the department temporary custody.

The department has the discretion to decide where to place a child in its custody. Typically, children are placed in out-of-home care, either with a relative or foster family. Under former AS 47.14.100(e), blood relatives had priority over non-relatives as foster parents. SCS CSHB 375 (JUD), ch. 99 SLA 1998 amended AS 47.14.100(e) to broaden the placement preference to relatives by blood or marriage. DFYS must show clearly and convincingly that placement with a relative who requests the child would result in physical or emotional damage to the child. Only then may the agency place the child with a non-relative foster parent. Relatives have no preference in the adoptive placement of children in state custody.

DFYS must make reasonable efforts to work with both parents toward the goal of family reunification. If reunification is not possible, and the parents do not relinquish parental rights, the termination of parental rights is necessary before the child can find permanency with an adoptive family.

The federal and state law applicable to CINA cases, the functions of the state agencies involved, and the agencies' interrelationships are explained in depth in the Alaska Judicial Council's October 1996 report, "Improving the Court Process for Alaska's Children in Need of Aid." Since that report was authored, SCS CSHB 375 (JUD), ch. 99 SLA 1998 changed Alaska child protection law significantly. Among other things, the new law broadens court jurisdiction over

children in need of aid, shortens timeframes for moving children into permanent homes, and lists the circumstances under which the department may cease reasonable efforts with the parents of a child in need of aid.

INVESTIGATION

THE OLIVER GOLD - CHARLES STEELE COMPLAINT

Mariah Silver complained to the ombudsman on July 28, 1997, that DFYS would not place her grandson, Oliver Gold, in foster care with her in Kansas. She said she had been asking DFYS for one year to place Oliver in foster care with her. Three days later her son, Charles Steele, contacted the ombudsman's office to complain that DFYS refused to place his son, Oliver, in Ms. Silver's home. He said he had asked DFYS for over a year to do so. Mr. Steele wrote from the correctional facility where he was serving a lengthy felony sentence

Chronology of Oliver Gold's CINA case and CSED efforts to establish paternity

Oliver Gold was born in late 1994, outside Alaska. In early 1995 his mother, Charlotte Gold, returned with Oliver to Anchorage. Ms. Gold's older son was living in Anchorage in state custody. Ms. Gold is Alaska Native.

Shortly after Ms. Gold and Oliver returned to Anchorage, Ms. Gold met with social worker Memoree Cushing at the DFYS office. Ms. Gold told Ms. Cushing that Charles Steele was Oliver's father and that she had applied for public assistance for herself and Oliver. Ms. Cushing convinced Ms. Gold to attend a DFYS drug and alcohol treatment program and outlined what Ms. Gold needed to do to provide a safe home for Oliver. Ms. Gold attended only one session of the treatment program and failed to comply with other parts of the plan. Soon thereafter she tested positive for marijuana use.

Mother tells Division of Public Assistance Charles Steele is Oliver's father - January 1995

Ms. Gold applied for Aid to Families with Dependent Children (AFDC) in February 1995. She named Charles Steele as Oliver's father on the Division of Public Assistance's (DPA) locate sheet. DPA in turn referred the case to the Child Support Enforcement Division (CSED) to collect child support from Mr. Steele to reimburse the state for public assistance monies paid for Oliver.

CSED asked DPA for more information, including a copy of Oliver's birth certificate. A CSED case officer tried to call Ms. Gold, but her phone was disconnected.

DFYS petition for custody of Oliver names two putative fathers: Charles Steele and Gilbert Bronze; court appoints an attorney for Gilbert Bronze - March 1995

DFYS filed a non-emergency petition for custody of Oliver. Paragraph 3 of the petition named two putative fathers and gave their addresses. One was Charles Steele whose address was given as Department of Corrections, Alaska. The other was Gilbert Bronze, who lived with Ms. Gold.

A hearing was held in children's court before Master Lucinda McBurney to determine whether Oliver should be ordered into state custody. Ms. Gold and Gilbert Bronze were present. Assistant Attorney General (AAG) Dianne Olsen told the court that the petition named two putative fathers but that before the hearing Ms. Gold and Mr. Bronze had said Mr. Bronze was the father, and both had agreed to sign an affidavit of paternity. Ms. Olsen said that she had told Mr. Bronze it would be necessary to determine if he was the father in order for him to participate in the CINA case and have an attorney appointed for him. Ms. Olsen told the court that DFYS could arrange for paternity testing. Meanwhile, Oliver remained with his mother.

Mother tells CSED Gilbert Bronze is Oliver's father

On March 15, 1995, CSED sent a non-cooperation notice to DPA saying that Ms. Gold had not given CSED a paternity affidavit. CSED mailed to Ms. Gold a second request for Oliver's birth certificate on March 29. Ms. Gold brought her paternity affidavit to CSED on March 29. In it, she named Gilbert Bronze as Oliver's father.

Oliver in emergency state custody - April 1995

DFYS filed a petition to take emergency custody of Oliver in early April 1995. The petition recited Ms. Gold's troubled history with DFYS, her failed attempt at drug and alcohol treatment, the history of domestic violence between Ms. Gold and Mr. Bronze, and Ms. Gold's failure to get medical care for Oliver's serious medical conditions. The petition again named two putative fathers for Oliver: Charles Steele and Gilbert Bronze. Judge Peter Michalski ordered Oliver into state custody that day. DFYS placed Oliver in out-of-

home care with a non-relative foster parent.

Judge John Reese presided over the mid-April hearing at which the parents stipulated, without admitting to the facts alleged in the petition, that the state had probable cause to find Oliver in need of aid. According to AAG Parkes, the parents agreed to paternity testing of Mr. Bronze.

CSED files a paternity complaint against Charles Steele – late spring 1995

CSED filed a court action against Mr. Steele in late spring 1995, asking that the court establish him as Oliver's father. CSED served Mr. Steele with the complaint that same day. With the filing of the paternity complaint, a standing court order for paternity testing came into effect. On July 10, Mr. Steele's denied paternity.

A fifth hearing on Oliver's CINA case was held in June 1995, with Master Hitchcock presiding. The court learned that paternity tests still had not been performed. In his closing remarks, Master Hitchcock said,

> In view of the age of the child, it is of utmost importance for paternity testing to go forward as well as the drug and alcohol assessment and psychological evaluation. It is critical to being able to plan intelligently in this case. We will expect that these steps will be followed soon.

Again, none of the parties requested a paternity testing order, and none was entered.

Charles Steele has paternity test; mother and Oliver no show for their tests - July 1995

CSED was unaware that Oliver was in state custody when it sent Ms. Gold a letter in June 1995, confirming an upcoming appointment for her and Oliver's blood draw at a local clinic for a paternity test in the case CSED had filed. Meanwhile, CSED had DNA samples taken from Mr. Steele at the correctional facility where he was incarcerated. CSED learned two days later that Ms. Gold and Oliver had missed their appointment for DNA testing. A CSED case officer sent Ms. Gold a reminder in early August. CSED was unaware that Ms. Gold's public assistance case was closed at the end of March when she did not submit the form to reapply for the next month's benefits.

At the next CINA hearing, in early September 1995, adjudication was postponed because the social worker was on medical leave. Ms. Parkes told the court the department intended to file termination petitions for Oliver and his elder brother. She said neither Ms. Gold nor Mr. Bronze had visited either child in seven weeks or done any work on the case plan. Neither had been in contact with their attorneys and "no one really knows where they are."

According to Ms. Parkes, the department planned to look for an adoptive home for Oliver, since the mother has told others that she did not want him. Ms. Parkes also informed the court that Mr. Bronze had not taken the paternity test, but that the department might test Mr. Steele. The department did not request, and the court did not enter, paternity testing orders for either of Oliver's putative fathers.

Oliver assigned a new social worker - November 1995

On November 2, 1995, a new DFYS social worker was assigned to the case, Brunhilde Eska. Ms. Eska worked in DFYS's adoption unit. The goal of adoption workers is to place children in a permanent home following termination or relinquishment of parental rights. Ms. Eska told the investigator that it fell to workers in the ongoing unit to exhaust all options in reunifying parents and their children. When parents are not interested or capable of doing so, the permanent plan becomes adoption or guardianship, and the case is transferred to the adoption unit. Ms. Eska said the previous social worker, Ms. Cushing, told her the parents were not interested in regaining custody of Oliver. Cases were "transferred by the ton," Ms. Eska said, and she did not have time to review the file carefully. She was unaware that paternity was an issue in the case. Ms. Cushing testified that she did not remember talking with Ms. Eska about Oliver's case. If the two workers talked about the case, neither documented the discussion in Oliver's file.

CSED sent Ms. Gold another blood testing reminder via certified mail in early November 1995. Later that month, CSED sent DPA another non-cooperation notice. That day, a CSED case officer requested the file for action on a motion for sanctions against Ms. Gold but no motion for sanctions was ever filed. An undated, typed note in the DFYS file summarizes Oliver's progress. Recent information about the boy revealed that his medical problems were more serious than previously thought and which required daily physical therapy to treat. A note hand-written by Ms. Eska and dated December 8, 1995, evidences Ms. Eska's first awareness that paternity was an issue in Oliver's case. Ms. Eska's note says she needs a termination petition for Oliver and Bradley as soon as

possible and paternity tests for Charles Steele and Gilbert Bronze.

Gilbert Bronze disappears; court allows his attorney to withdraw from case - December 1995

AAG Parkes told Master McBurney at an early December 1995, hearing that nothing had changed since the September 1995 hearing. Oliver and his brother remained in out-of-home placements, neither Ms. Gold nor Mr. Bronze was present in court, neither had contacted their attorneys and neither had visited Oliver in seven weeks. She reiterated the department's intent to move for termination in both cases and said a termination petition would be filed soon. GAL June Haisten told Master McBurney she agreed with the department's plan, and said it was in the children's best interests to seek permanent placements. She added that Oliver's foster parent was interested in adopting him and said she had asked the social worker to check with the tribe to see if the tribe had any objection to that. Mr. Bronze' s attorney said he had had no contact with his client since June, even though he had left messages at Mr. Bronze's workplace and knew that Mr. Bronze had been at work. Master McBurney continued the previous orders until the next hearing, then scheduled for late February 1996. She noted that she could not set a trial date until the department filed its termination petition.

Master McBurney later recommended that Mr. Bronze's attorney be allowed to withdraw as counsel. An order permitting withdrawal of counsel was signed in January 1996.

Court hears that Oliver's paternity is still unresolved - February 1996

Master McBurney reviewed Oliver's and Bradley's cases at a late February 1996 court hearing. Ms. Parkes told the court that the department had had no recent contact with "either parent" since before the last review hearing and none since. She said the department had prepared a termination petition and needed only to finish it. The parties had set a conference for March to schedule the termination trial. The GAL told the court she agreed with the department's plan because she wanted to see Oliver and his brother placed in permanent homes. However, she expressed concern that paternity was not established for Oliver, and asked what the department was doing about that. Ms. Parkes responded that the current social worker would talk with the former social worker to find out if Ms. Cushing to see if he would acknowledge paternity. She concluded that

> We will get it resolved either by terminating on both fathers, serving both fathers, or contacting them to see if they'll deny paternity. We realize it's an issue and we do plan to take care of it

Master McBurney looked at the original petition and noted that she had deleted Mr. Steele's name from it. In explanation, Ms. Parkes said that Mr. Bronze had been allowed to participate in the case because he said he was the father. She acknowledged doubt that Mr. Bronze was the father, and that the question of who was the father had to be resolved or the state would need to terminate both men's parental rights.

At the conclusion of the February 23 review hearing, Master McBurney continued orders keeping Oliver and his brother in custody. There was no further discussion of paternity or orders entered for testing.

CSED discovers that Oliver is in state custody and calls social worker - May 1996

CSED transferred the Charles Steele paternity case from one team to another on January 1, 1996. No further action took place at CSED on the case until mid-April 1996, when a CSED case officer made a note in the computer record that Oliver had been on Medicaid through DFYS since May 1995. The case officer sent a message asking the supervisor what step to take next. That day, a case officer added another note that read: "Need to do blood testing. Can we find him?"

On May 2, a CSED case officer added a note in the case management history that DFYS was Oliver's custodian. The case officer left a message at DFYS asking for Oliver's placement history. The court file in Oliver's case shows that Oliver's social worker, Brunhilde Eska, did not attend the mid-May 1996, court hearing to review Oliver's case. Ms. Parkes told Master Hitchcock that a termination trial was set for August, but no termination petition had been filed yet. She acknowledged that Oliver's paternity was still an issue.

Later in the hearing, Master Hitchcock asked Ms. Parkes what the department was going to do to establish paternity. She answered that she thought the department ought to contact Mr. Steele to see if he would acknowledge paternity. Ms. Haisten, the GAL, expressed concern about the progress of Oliver's case. She told the court:

> Oliver has been in the custody of the state for over a year and paternity has not been determined. I don't know that Ms. Eska has called Mr. Steele to ask him if

> he is the father or to pursue that in any way. I had concerns about paternity at the last hearing and I had hoped it would be resolved by today. We have a trial . . .in August. Oliver and [his brother] have been in the custody of the state for quite some time and it is clearly in their best interests to establish a permanent placement for them. They're languishing in foster care and they're both in placements where people are willing to adopt them. This paternity issue is very important.

Ultimately, Ms. Eska never contacted Mr. Steele to ask if he would acknowledge paternity of Oliver. She told the investigator she did not because the case was in litigation and all persons connected to it, including putative fathers, should communicate through attorneys. In any event, she said, it would have made more sense for her to search out Mr. Bronze because he was the "father of record."

Court orders social worker to report on critical issues, including paternity - May 1996

At the conclusion of the May hearing, Master Hitchcock ordered Ms. Eska to provide a report to the court on critical issues in the case, particularly the question of paternity. Master Hitchcock also ordered the department to file its termination petition by May 31, 1996.

Oliver's DFYS file contains no notes to indicate that Ms. Eska ever spoke with Ms. Cushing to ask what Ms. Cushing had done to contact Mr. Steele. Ms. Eska told the investigator she never contacted Mr. Steele herself.

Ms. Eska's May 23, 1996, report to Master Hitchcock explains that she did not attend the previous day's hearing because she had put an incorrect hearing time in her calendar. In response to Master Hitchcock's inquiry about efforts to establish paternity, Ms. Eska reported that a CSED case officer had told her Ms. Gold had named Mr. Steele as the father. She also told the court that Oliver's foster parent had spoken with Mr. Bronze. Reportedly, Mr. Bronze was saying he was not Oliver's father but he refused to sign a denial and relinquishment of parental rights in court. Ms. Eska wrote that she thought Mr. Bronze's attorney could talk with him about signing a denial, or that Mr. Bronze would sign a denial when CSED presented him with a bill for child support arrears.

CSED talks with foster parent to arrange for Oliver's genetic testing - May 1996

A May 1996, note in CSED's case management history says that Oliver should be scheduled for blood testing. Another note the same day states that CSED will proceed with its paternity action against Mr. Steele and that, if he proved not to be the father, they would proceed against Mr. Bronze. In late May, a CSED case officer called Ms. Eska to ask who was Oliver's custodian. The same day, a CSED case officer called Oliver's foster parent and explained the need for genetic testing of Oliver. They arranged for Oliver to be tested two days later. As planned, the foster parent brought Oliver to an Anchorage lab where a bloodless buccal swab specimen was taken. CSED asked the lab to run a "motherless" test of the genetic samples Mr. Steele and Oliver had given.

DFYS filed a termination of parental rights petition with the court in May 1996. The petition named Charles Steele and Gilbert Bronze as fathers.

Notes from a June 1996 DFYS placement panel review of Oliver's case show that the father was notified of the review, but it is unclear which putative father received the notice. In any event, neither of the putative fathers nor Ms. Gold participated. Notes from the review say a petition for termination of parental rights had been filed, and trial was set for August 1996. Comments on the review sheet say the plan is for a subsidized adoption with the foster parent.

An early June 1996 case plan for Oliver, prepared by Ms. Eska, lists the parents as Ms. Gold, Mr. Bronze and, in parentheses, Mr. Steele. The plan states that a petition to terminate parental rights has been filed: "Parent not interested in working a treatment plan." In the plan, Ms. Eska identifies DFYS's goal as adoption with a non-relative. The plan notes that "minor's parents have a long history of substance abuse which resulted in their neglect of his needs, especially his fragile physical condition." A tribal representative, the foster parent, the DFYS regional administrator, Ms. Eska and her supervisor all signed the plan.

Genetic test results show Charles Steele is Oliver's father; Mr. Steele asks for placement with his mother - July 1996

CSED received the genetic test results on June 27, 1996. They showed a 99.74 percent probability that Mr. Steele was the father. CSED sent the test results that day to Mr. Steele and DFYS. Mr. Steele filed an affidavit with the court in July 1996. In it he said he was incarcerated and unable to afford an attorney. He also told the court that he was "willing to allow" his mother, Mariah Silver, to

have custody of Oliver.

The Department of Law filed a motion for summary judgment on CSED's behalf establishing paternity with Mr. Steele, along with the duty of support and reimbursement of paternity testing costs and attorney fees. Judgment was entered against Mr. Steele, adjudicating him the natural father of Oliver and giving CSED a judgment for $160 in testing fees and $82.60 in court costs. CSED subsequently established a support order against Mr. Steele for the minimum $50 a month.

After he received the genetic test results on July 1, 1996, Mr. Steele's attorney called Ms. Eska saying that Mr. Steele wanted Oliver placed with his mother. Ms. Eska wrote Ms. Silver in mid-August 1996, telling her about Oliver, his medical condition, and asking whether Ms. Silver was interested in providing a home for her grandson.

Grandmother tells social worker she wants Oliver - August 1996

Ms. Silver wrote back to Ms. Eska that she wanted the baby. Her August 26, 1996, letter said:

> I am responding to the information regarding Oliver Gold. Yes I am very interested in providing my grandson Oliver with a permanent home.
>
> I don't have much money, but I do have Jesus, and a lot of love to share with him.
>
> We have already adopted three children. One of them has a similar handicap. We provided a home for him at the age of 9 months, he weighed 6 lbs. He had limited use of his right side, from [his] head to his feet. Now at the age of 8 years and in the second grade in school, he has progressed a lot through therapy, and the love of Christ and family members.
>
> I wouldn't be able to live peaceful with myself if I turned away from Oliver because he has a handicap.

DFYS asks Kansas for a home study on grandmother - October 1996

Because Ms. Silver was a blood relative who asked for custody of Oliver, Ms. Eska began the process of evaluating her for a possible placement. On October 31, 1996, DFYS requested the State of

Kansas to complete a home study on Mariah Silver. This request was made under the Interstate Compact on the Placement of Children (ICPC). When Kansas failed to respond, DFYS sent a status request on December 12, 1996, asking that the home study be completed at the earliest opportunity.

First professional assessment of Oliver's well-being recommends that he remain in foster home - November 1996

A psychiatrist conducted a bonding assessment of Oliver and his foster family in fall 1996. The psychiatrist's opinion was that Oliver would suffer if he were to leave his foster family.

Ms. Eska told the investigator she received a call in January 1997 from the Kansas social worker doing Ms. Silver's home study. According to Ms. Eska, the social worker told her his preliminary assessment of the family was positive and he would soon be sending her the completed home study.

Kansas recommends placement with grandmother - April 1997

The Kansas Division of Family and Children's Services sent DFYS a letter dated April 14, 1997, informing the agency that the ICPC home evaluation was complete. The home-study by the Pike County Department of Human Services Family and Children's Services recommended placing Oliver with Mariah Silver and her husband. The worker who prepared the home study noted that Mr. and Mrs. Silver had experience raising a child with special needs and, from all appearances, were doing well with the eight-year-old special needs child who lived with them. The worker concluded, "It is believed that Oliver should do well in this home." Ms. Silver said she began calling Ms. Eska, but Ms. Eska would not talk to her or respond to her voice mail messages. Ms. Eska told the investigator she never got any voice mail messages from Ms. Silver.

Also in April 1997, DFYS received the results of a mid-winter consultation by an Anchorage psychologist. The psychologist evaluated Oliver and his foster mother at the GAL's request. The GAL had asked for an opinion on the impact of moving Oliver to Ms. Steele's home in Kansas and recommendations on how to make the move with the least disruption to Oliver. The psychologist recommended against moving Oliver out of the foster home, saying the move was not in his best interests. However, she opined that if he were moved, a transition plan was essential.

Oliver assigned a new social worker - June 1997

Following Ms. Eska's retirement, a new social worker, Deborah Allen, was assigned to Oliver's case on June 12, 1997. Like her predecessor, Ms. Allen also worked in DFYS's adoption unit.

DFYS plans to move Oliver to grandmother's; GAL asks court for review of placement plan - July 1997

On July 15, 1997, DFYS held a permanency planning staffing in Oliver's case. The new plan was to terminate parental rights and place Oliver for adoption with Ms. Silver. GAL June Haisten attended the meeting and reported in a July 25 affidavit to the court that she advocated for a transition plan. Ms. Haisten testified that she was told the department could not afford to provide a gradual transition.

Also according to Ms. Haisten's affidavit, she attended a July 18 meeting with DFYS social workers Deborah Allen and Wilhelmina Simpson with Ms. Silver participating by phone. At that meeting, Ms. Simpson and Ms. Allen said that Oliver would be transported July 31 to Mississippi and asked whether Ms. Silver would pick him up at the airport.

A July 21, 1997, note in the DFYS file documents Deborah Allen's phone call to the foster mother to say that Ms. Simpson would be transporting Oliver to his grandmother's home on July 31. According to the notes, the foster mother asked about the transition plan. Ms. Allen's note said:

> This worker agreed that that would be great to do however the state could not afford the luxury of such an extended transition plan due to limitation of funds.

On July 29, 1997, Deputy Public Advocate Barbara Malchick, the attorney for Oliver's GAL, filed a motion for placement review, motion for permanency planning hearing and motion for order preventing placement. Prompted by the GAL's motions, DFYS held a top-level meeting to discuss the case. AAG Lisa Nelson told the court on August 4 that the department had reviewed its plan to place Oliver with his grandmother and decided to gather more information. Specifically, the department planned to do in-depth home studies of both the grandmother and the foster home and observe Oliver's reaction when he met his grandmother in August in Anchorage.

Judge Reese held a status hearing in the case on November 12, 1997. A termination trial date was set for the following month. At the status

hearing, the parties assumed that the termination trial would be followed by a contested adoption proceeding between Ms. Silver and the foster mother.

Court terminates mother's and Charles Steele's parental rights; Oliver adopted by foster parent - December 1997

The trial to terminate both parents' rights took place December 15, 16 and 17 before Judge Reese. At the trial's conclusion, Judge Reese found that Oliver was a child in need of aid and that it was in his best interests to terminate both Ms. Gold's and Mr. Steele's parental rights, thus clearing the way for Oliver to be adopted.

Only the foster mother filed a petition to adopt Oliver. Ms. Silver told the ombudsman investigator her attorney advised that the foster mother had a stronger legal position and would likely win in a contested adoption. She said she did not have the money to fight the adoption but that, in the end, the likelihood of losing was the main reason she did not contest Oliver's adoption by his foster mother. Ultimately, the department negotiated an open adoption with the foster mother that gave Ms. Silver visitation rights.

SARAH OAK AND ANNIE PINE

In March 1997, Sarah Oak complained to the ombudsman that she had not been paid for four-and-one-half months of foster care she provided for DFYS during the last half of 1996. While investigating Ms. Oak's complaint, the ombudsman initiated an investigation into possible violations of Ms. Pine's civil rights. Their stories follow.

Winter to summer, 1996

Annie Pine was a homeless schizophrenic who prostituted to feed her cocaine habit. In the early winter of 1996 her case manager deduced that she was pregnant. He called Ms. Pine's sister, Carol Ash, to talk about what to do. Ms. Ash told the investigator she was her sister's only sibling and the two were close, despite Ms. Pine's serious mental illness. Ms. Ash was a single parent. She said she was alarmed about the pregnancy in part because she was afraid it would fall to her to take care of her sister's child and she did not feel prepared to parent an infant.

She said the case manager told her Ms. Pine needed a guardian. She agreed to be the guardian. The case manager prepared and filed a petition to give Ms. Ash temporary and limited guardianship of Ms. Pine. The court found good cause to enter a guardianship order and,

on April 30, 1996, appointed Ms. Ash as guardian for Ms. Pine. The Letters of Guardianship and Acceptance state that Ms. Ash's duties would be those provided in the guardianship plan. The plan gave Ms. Ash authority to (1) make necessary medical and mental health treatment decisions; (2) have access to medical and mental health documents; (3) contact DFYS regarding the welfare of Ms. Pine's unborn child; and (4) attempt to consult with Ms. Pine on all decisions and consider her responses before making any decision. Because Ms. Pine did not believe she was pregnant and refused to get prenatal care, Ms. Ash saw it as her role to make sure her sister got proper medical care during her pregnancy.

When Ms. Ash found out her sister was pregnant, she quickly called Anchorage DFYS. Because her sister was addicted to street drugs, she feared for the baby's health and wanted to know DFYS's standard procedure in similar situations. According to the notes she made at the time, Ms. Ash talked with an intake worker named Jesse Allen. She explained Ms. Pine's situation to Mr. Allen and asked what DFYS could do to help, especially in determining who was the father. For a number of reasons, including the facts that Ms. Pine was living with an African-American man and had paid sex with men she did not know, Ms. Ash thought it was likely the child would be mixed race and, specifically African-American, unlike his Caucasian mother. Mr. Allen told her DFYS would not get involved in a case before a child was born because, until that point, there were no child protection issues. He told her DFYS needed some grounds to test for paternity so unless the baby was Caucasian, DFYS would be unlikely to do a paternity test.

Ms. Ash said Mr. Allen explained the CINA process to her. DFYS would try to determine the mother's ability to care for the baby in deciding whether to take custody and, if the agency took custody, would set up visits between the mother and child in a continuing process of assessing her ability to parent. Ms. Ash felt the intake worker gave her solid answers.

Shortly after Ms. Ash became her guardian, Ms. Pine was arrested in Anchorage for prostitution and transferred from jail to API for a court-ordered competency evaluation. She was found incompetent to stand trial and remained at API throughout her pregnancy. Ms. Ash was concerned that her sister have help in preparing for the birth and making decisions about the baby's care. Ms. Pine's rights to an older child had been terminated in another state, and it was clear to Ms. Ash that Ms. Pine was unable to parent. Ms. Pine's API social worker told Ms. Ash that Ms. Pine was unresponsive to discussions about the birth. According to Ms. Ash, her sister denied the pregnancy until the

birth.

While Ms. Pine was at API, Ms. Ash became frustrated with what she perceived as the unwillingness of Ms. Pine's doctors to plan for the inevitable fact that Ms. Pine could not parent a child. She tried to persuade the professionals working with her sister at API to work on a plan that would allow the baby to leave the hospital with a prospective adoptive family. Ms. Ash was critical of the mental health system and she said she did not want the baby to get caught in a system that had not worked for her sister. But her doctors said Ms. Pine had a right to be a parent and they treated Ms. Ash as a "cold-blooded monster" for wanting to deny Ms. Pine that right.

On July 12, Ms. Ash spoke again with Jesse Allen of DFYS intake. She said she called Mr. Allen to ask him what authority guardianship of her sister gave her over the baby. Also, could she as the guardian represent her sister's wishes regarding the baby's care? Mr. Allen told her she could take the baby home from the hospital. If she did that, though, the state would not intervene and the question of paternity and her sister's parental rights would remain unanswered. Ms. Ash felt that she had no choice but to let the state intervene when the baby was born so these issues could be resolved.

July 15, 1996

The DFYS Anchorage office received a report of harm July 15, 1996, from a social worker at an Anchorage hospital. The report was that Annie Pine, a schizophrenic transferred from API, was in labor and would likely deliver that night. The patient's sister was at the hospital and reportedly refused to care for the child out of fear of harm from the child's father. She said the child's father lived with the mother and was a drug user.

Ms. Pine gave birth to a boy, Andrew.

Ms. Ash was emotional when she talked about the birth. She said she arrived at the hospital to find her sister shackled hand and foot to the bed. A prison guard outside the door refused to let Ms. Ash enter the room because Ms. Pine was a prisoner. A visit would take 72 hours to approve. Ms. Ash felt her sister was treated as a prisoner when it was convenient for state officials and treated as a mental patient when that was convenient. After the birth, Ms. Pine was not allowed to receive a phone call from her mother, again because she was a prisoner. Ms. Ash was critical: "They want to talk about her rights as a mental patient to be a parent but she wasn't allowed to have us there when

she needed us."

Nurses let Ms. Ash hold Andrew briefly before he was hurried away for a medical check.

Social worker Stephanie Pinsly visited the hospital after Andrew's birth that day. Ms. Pinsly's notes from her conversation with the mother's attending physician report the physician as saying the mother was:

> clearly very mentally ill, very wild, she is the wildest thing I have seen in 20 years, clearly very ill, has schizophrenic as well as extremely antisocial tendencies, hallucinates constantly, is not capable of handling herself much less a child.

Ms. Pinsly did not see the father and wrote that the mother appeared not to know who the father was.

July 16, 1996

When Ms. Ash arrived at the hospital to see her sister, a nurse told her that her sister was talking privately with a social worker.

Ms. Pinsly's report of contact (ROC) documents her conversation with Ms. Pine on July 16. The ROC records Ms. Pinsly's impression that Ms. Pine "appeared to be sedated and very sleepy." The mother identified the father as Sam Oak and said that he was incarcerated at a halfway house. Ms. Pinsly noted that the mother's "conversation does not appear to follow a logical flow, nor is the content consistent or logical." Ms. Pine told Ms. Pinsly she was arrested for prostitution and did not know when she would be released from jail or API. She gave Ms. Pinsly her mother and sister's phone numbers, and told Ms. Pinsly where her father lived. She said her sister did not want the baby. Ms. Pine also told Ms. Pinsly she had another son who lived with his father somewhere in Texas.

Ms. Pinsly could not have known at the time that Ms. Pine had an older daughter, not a son, and that her daughter lived in Colorado, not Texas. Ms. Pine's parental rights to her daughter were terminated some years earlier after Ms. Pine abused the girl.

Ms. Pinsly's ROC documents marked inconsistency in Ms. Pine's comments. Initially, Ms. Pine told the social worker she was happy the worker had come to get the baby. Later, Ms. Pine clearly stated her desire to keep the baby and unwillingness to place him for adoption. Later still, Ms. Pinsly told Ms. Pine that DFYS would take

custody of the child and put him in foster care. She said a hearing would be held within 48 hours and that Ms. Pine was entitled to legal representation. Ms. Pine said she did not want to go to a hearing and did not want a lawyer. About her baby being put in foster care, the social worker's notes report Ms. Pine as saying, "Good. You take good care of him."

Ms. Pinsly and Ms. Ash then spoke privately. Ms. Ash told the investigator Ms. Pinsly said DFYS took custody of Andrew during the night and Ms. Ash was forbidden to see him. Ms. Ash asked what would happen now that the state had custody, but Ms. Pinsly refused to tell her because she was not a party to the case. According to Ms. Ash, the social worker tried to get her to take Andrew without letting her see him or giving her any information or answers about his case. Ms. Ash told the investigator she had her own child to think about and could not bring a baby home without any planning.

Ms. Pinsly's ROC documents her conversation with Ms. Ash. They say Ms. Ash initially refused to take custody of the child because she feared the father, who she said was a drug abuser. However, as Ms. Pinsly explained her plan to notify Mr. Oak, Ms. Ash said the child should not go with him, and she would take custody of the child. Ms. Pinsly explained that she had an obligation to notify the father and see if he would acknowledge paternity. The ROC documents Ms. Pinsly's assurance to Ms. Ash that she would contact Ms. Ash if the father did not acknowledge paternity. Ms. Pinsly terminated their conversation when, according to her notes, Ms. Ash "stopped communicating."

Ms. Ash told the investigator she kept telling Ms. Pinsly that Andrew did not appear to be mixed race, so DFYS should give Mr. Oak a paternity test to be certain he was the father. But Ms. Pinsly said paternity could be conclusively established by having Mr. Oak sign a paternity affidavit. Whether Mr. Oak really was or was not the father wasn't anybody's business. Ms. Ash said she wanted DFYS to give Mr. Oak a test right away to rule him in or out as the father. He was a jailed crack addict and, she felt, incapable of parenting. She feared Mr. Oak might use Andrew to claim public assistance and spend the money on crack cocaine.

Ms. Ash said she "came very close to losing it in the hospital." She had worked hard to make arrangements for Andrew's care and now the social worker would not tell her anything. She was a family member and her sister's guardian. What did it take to get answers, she asked.

When she left the hospital, Ms. Ash contacted an attorney. The attorney advised her she had a right to information about the case because she was her sister's guardian.

After talking with Ms. Ash, Ms. Pinsly observed Andrew in the nursery. She wrote that nurses told her they thought he might be African-American "as he appears to have some of those characteristics but not all."

Later on July 16, Ms. Pinsly spoke with Sam Oak at the halfway house. Her ROC said that he acknowledged he was Andrew's father and wanted to visit the baby. He was unemployed at the time and needed to get a job. His release date was set for later that year. According to the ROC, Mr. Oak told Ms. Pinsly that he would like the child to go to his mother, Sarah Oak, in Fairbanks. Ms. Pinsly asked that Mr. Oak go to the hospital to "make a plan with them for care of the baby" and fill out the paternity affidavit. Mr. Oak said he would like to do this but would need the permission of his caseworker.

A separate ROC dated July 16 documents Ms. Pinsly's call to Mr. Oak's caseworker. The caseworker assured Ms. Pinsly he would make sure Mr. Oak carried out the plan. Ms. Pinsly also notified workers at the hospital maternity center to expect the father who would be signing a paternity statement and filling out the birth certificate.

Another July 16 ROC documents Ms. Pinsly's first contact with Mr. Oak's mother, Sarah Oak. According to the ROC, Ms. Oak was unaware she had another grandchild by her son but was excited about the grandchild and said she was willing to have him with her although she lived on a limited Social Security income. Ms. Pinsly told Ms. Oak that she would seek travel reimbursement "if Sam cannot pull money together." Her ROC notes say she concluded the call by giving Ms. Oak her son's phone number and securing Ms. Oak's agreement to call Ms. Pinsly back with a plan.

Ms. Oak recounted her initial conversation with Ms. Pinsly very differently. In a March 17, 1997, conversation with the ombudsman investigator, she said Ms. Pinsly called her "to pick up a baby. I told her she had the wrong number."

Ms. Oak wrote a letter to the ombudsman investigator on October 13, 1997, recounting the initial conversation as well. She wrote that Ms. Pinsly called her on

July 16:

> ...demanding me to come to Anchorage to pick up a baby child. My son called me after Ms. Pinsly called to say he had a child by the woman he had been living with for 3 years. The woman had a baby boy. I was commanded to fly to Anchorage and pick this child up by Ms. Pinsly. I paid my airfare, which was $78.00. Other expenses incurred were as follows:
>
> Food $50.00
> Cab fare $20.00 to agency to get the baby
> Room rent $50.00

Later on July 16, Ms. Pinsly contacted the Office of Public Advocacy to express concern that Ms. Ash was not representing the best interests of Ms. Pine and her child. Ms. Pinsly said Ms. Ash appeared to be involved only because she did not want the baby to go to the father, appeared hysterical and angered easily when she did not get her way. Ms. Pinsly was told that the Office of Public Advocacy was appointed Ms. Pine's conservator, to oversee her financial affairs, not her guardian.

July 17, 1996

Ms. Pinsly received a call from the hospital that Andrew's discharge order was good only until the early afternoon and the hospital wanted him out of the nursery.

Ms. Ash went to the DFYS office to see Ms. Pinsly. Ms. Ash said she tried to convince Ms. Pinsly of the severity of her sister's mental illness. She told Ms. Pinsly that her sister's rights to an older child were terminated in Colorado, but Ms. Pinsly said that made no difference in this case. Ms. Ash asked her to set up the visits Intake Social Worker Jesse Allen had referred to, but Ms. Pinsly said reasonable efforts would take too long. Ms. Ash said the social worker told her she didn't care where Andrew went to live.

Ms. Pinsly's notes from the same conversation say Ms. Ash was very angry and wanted to speak with a supervisor. Ms. Pinsly informed her DFYS could have the police remove her from the office. Ms. Ash insisted that the child could not be placed with the father. Ms. Pinsly told her the mother had identified the father and Mr. Oak had acknowledged paternity. The father agreed to make a plan for the baby, and DFYS had no right to interfere when there were not child protection issues "simply because other family members want their children." Ms. Pinsly referred Ms. Ash to a private attorney.

Maternal grandmother Catherine Ash called Ms. Pinsly from California to say she did not think Mr. Oak was the father and asked what Ms. Pinsly was going to do about it. Ms. Pinsly's notes say she told Catherine Ash that Mr. Oak had acknowledged paternity and DFYS would not interfere in parental rights without cause. Ms. Pinsly referred Catherine Ash to a private attorney for advice on her rights.

Mr. Oak called Ms. Pinsly to say that neither he nor his mother could pick up Andrew that day.

Ms. Pinsly discussed the case with Investigation Supervisor John Lovering. Ms. Pinsly's notes say that Mr. Lovering advised her to enter into a voluntary placement agreement between Mr. Oak and DFYS. Ms. Pinsly requested funds for Ms. Oak's flight and Mr. Lovering agreed to seek emergency approval for the travel funds.

Mr. Lovering later told the investigator he vaguely remembered the case but could not specifically recall his conversation with Ms. Pinsly, which he did not document. He believes that at the time he wanted to keep Andrew out of foster care unless it was essential to take custody, and thought a voluntary placement would give DFYS a few days to explore other options for the baby.

Mr. Lovering said he believes he would have asked Ms. Pinsly if DFYS was sure Mr. Oak was the father. He described himself as extremely cautious to release information to confirmed relatives only. In this case, he believes he would have been similarly cautious because he and Ms. Pinsly were discussing actual release of the child to a person who could not demonstrate that he was the father. He said the mother's mental incapacity was a signal that the mother could not be trusted to name the right man as the father. In retrospect, he would have had CSED do paternity testing or request DFYS funds to do the test. He may have done that in this case but could not remember.

Mr. Lovering said DFYS "frowns on voluntary placements." Knowing that, he is "almost sure" he got approval for the placement from the Anchorage staff manager, even if he did not get the required approval from the regional administrator. Mr. Lovering acknowledged that he should have documented his discussion with the staff manager and his subsequent discussion with Ms. Pinsly regarding approval of the voluntary placement. He noted that DFYS has at least two different voluntary placement forms neither of which has a line for the regional administrator's signature.

After discussing the case with Mr. Lovering, Ms. Pinsly met with Mr.

Oak at the halfway house. Mr. Oak signed a voluntary agreement in which he agreed to certain conditions "in requesting the Department of Health and Social Services to provide care for" Andrew. He consented to the department's supervision of Andrew, and agreed "to share with the agency responsibilities in planning for the care of the child." In addition, Mr. Oak agreed that when he was unable to do so, DFYS should "carry out plans best suited in its judgment to the needs of the child." The agreement was in effect for two days, from July 17 to July 19, 1996.

The agreement had two lines for parents' signatures, but only Mr. Oak signed. There is no indication in the file that Ms. Pinsly told Ms. Pine about the voluntary agreement or attempted to get her signature on the form. Likewise, there is no evidence that she told Ms. Ash about the voluntary placement so Ms. Ash could discuss it with Ms. Pine.

Mr. Oak said his mother would pick up the baby from the Intermission Crisis Nursery on July 19, when the agreement was to expire. A DFYS worker transported baby Andrew to the nursery.

Ms. Ash said she did not see Andrew again after Ms. Pinsly refused her access to the baby in the hospital. Ms. Pinsly would not tell her where he was. Ms. Pinsly told her Mr. Oak would take custody of Andrew when he got out of jail. Ms. Ash described her feelings: "I was sick. She told me I would never hear from him again and I had to walk out of there and every day wonder what would happen to him."

July 18, 1996

Ms. Pinsly phoned Ms. Oak on July 18. Ms. Pinsly's ROC states that Ms. Oak was unaware of any plan; her son had not contacted her. Ms. Pinsly explained the plan and suggested Ms. Oak contact her son at the halfway house. Ms. Pinsly's notes say she told Ms. Oak that Andrew would need to be picked up by the following day.

Ms. Pinsly then called Mr. Oak's halfway house counselor. Her notes say she stressed the need for Mr. Oak to follow through with his plan to avoid the state taking custody of the child. She said Ms. Oak had not spoken with her son about the plan. The counselor assured Ms. Pinsly he would "sit on" Mr. Oak until the plan was carried out.

Later, Ms. Pinsly spoke with Ms. Oak by phone. Ms. Oak agreed to pick up Andrew at Intermission Crisis Nursery, then go to the DFYS office, meet Ms. Pinsly and pick up a parental rights delegation for

her son to sign.

July 19, 1996

Ms. Pinsly's notes say Ms. Oak did not pick up the parental rights delegation for her son to sign.

July 24, 1996

The Fairbanks DFYS office received a report of harm concerning Andrew. The reporter was concerned that Ms. Oak appeared to have memory problems. She did not know the baby's name and had told someone he was "supposed to be" her son's. Ms. Oak had none of the paperwork she needed to get a birth certificate and had no authority from the father to get medical care for Andrew. The screener in the Fairbanks office called Ms. Pinsly and learned that Anchorage DFYS did a voluntary placement then arranged the placement with Mr. Oak's family. Ms. Pinsly told the screener the maternal family was "upset" about not getting the baby and then, according to Ms. Pinsly, the same family members did not mind not getting the baby because he was African-American.

Ms. Pinsly told the screener Ms. Oak never came to the DFYS office to pick up the parental rights delegation form. The screener asked Ms. Pinsly to fax the delegation to Mr. Oak at the halfway house, which she did.

The screener referred Ms. Oak to the Division of Public Health and gave her the telephone number for the Division of Vital Statistics to get the birth certificate.

July 25, 1996

The Fairbanks screener received a call from the reporter telling her the baby was fine but needed to see a pediatrician. The reporter was concerned that Ms. Oak did not know the baby's name and seemed to have difficulty remembering things. The reporter also said that in her opinion the baby did not appear to have any African-American features.

The screener contacted Ms. Pinsly again. Ms. Pinsly told the screener that she faxed Mr. Oak a delegation of parental authority form the day before. She also said the nurse she spoke with at the birth hospital said the baby was part African-American.

Mr. Oak filled out the delegation of parental rights form in his own

and Ms. Pine's names. The delegation gave Ms. Oak rights to care for Andrew and consent to medical care for him. He left blank the space on the form in which he could have written the amount of his financial contribution to Andrew's care. He faxed the delegation back to Ms. Pinsly.

Mr. Oak was the only parent to sign the delegation. There is no indication in the file that Ms. Pinsly told Ms. Pine about the delegation or sought her signature on it. Likewise, there is no evidence that Ms. Pinsly told Ms. Ash about the delegation so Ms. Ash could talk to Ms. Pine about it. By this time, Ms. Pine had been released from API and was back on the streets.

Ms. Oak told the investigator she never received a copy of the delegation of parental rights. She had no birth certificate or other document giving her authority to care for Andrew.

August 19, 1996

The Fairbanks DFYS office received a second report of harm on August 19. Ms. Oak had not been able to obtain AFDC benefits or Medicaid for Andrew because she had no birth certificate for him. Also, she had nothing to show legal guardianship of Andrew. The reporter said the grandchildren living with Ms. Oak were doing much of the parenting and wondered what would happen when the children returned to school. Additionally, the reporter wanted to know what would happen when either parent was released from jail and wanted to take the baby. The case was assigned to intake worker Brenda Winther for follow up.

August 29, 1996

On August 29, Ms. Winther visited Ms. Oak's home. Her ROC states Ms. Oak needs a birth certificate to get AFDC and Medicaid for the baby. Later that day, Ms. Winther attempted to locate Andrew's birth certificate without success.

August 30, 1996

Ms. Winther ended her employment at DFYS and the case was transferred to social worker Lynn Hoffman to locate the birth certificate.

Ms. Hoffman made numerous attempts to locate the birth certificate before learning from the Division of Vital Statistics in Juneau that Andrew had no birth certificate. She spoke with the hospital social

worker who confirmed that Mr. Oak had signed the affidavit of paternity. Ms. Hoffman noted that Mr. Oak and the baby's mother apparently signed at the hospital the paperwork required for a birth certificate, but it was never processed.

After Ms. Hoffman reviewed the file and visited the baby, she suggested to Ms. Oak that a paternity test be done. Ms. Oak agreed because she wanted to know if the baby was really her grandson. Ms. Hoffman arranged the test, first contacting Mr. Oak's probation officer to get a signed release from Mr. Oak. She requested funds to pay for the test. Later Ms. Hoffman told the ombudsman investigator she was surprised how easy it was to have a paternity test done.

November 13, 1996

The paternity test showed that Mr. Oak could not be the father. Ms. Hoffman and her supervisor decided to ask Anchorage DFYS to file an emergency petition because the baby needed to be placed in proximity to the mother to make reunification efforts easier. Ms. Hoffman contacted Ms. Pinsly and Karen Mason, Ms. Pinsly's supervisor, with this request. Ms. Mason said she would file a petition.

Ms. Hoffman visited Ms. Oak to give her the news that Andrew was not her grandson. She "reacted much better than I expected," Ms. Hoffman said. "She had some idea. She was disappointed but not too surprised."

November 15, 1996

Ms. Mason contacted Ms. Hoffman to say she filed her petition but that one of their assistant attorneys general said the case did not constitute an emergency because the baby was placed with Ms. Oak with the mother's approval via her guardian, Carol Ash. The attorney apparently was unaware that neither the mother nor her guardian were consulted about the placement with Ms. Oak.

Ms. Hoffman discussed the case with the assistant attorneys general in Fairbanks who decided to file a petition for emergency custody.

Ms. Pinsly left a message on Ms. Ash's machine. Ms. Ash said she got a call from Ms. Pinsly saying "you need to come and get your nephew." This was the first she had heard about Andrew since he was two days old and Ms. Pinsly told her she would never hear from him again. She said she was not ready for the baby and was enormously

stressed at the thought of taking a baby into her home.

November 20, 1996

Ms. Hoffman conducted an emergency foster care licensing visit at Ms. Oak's home. She left a message for Ms. Pinsly and then asked the social worker at API to tell the mother about the change in custody. By this time, Ms. Pine was again in API custody for a competency evaluation following her arrest for assaulting an Anchorage police officer.

November 21, 1996

Ms. Hoffman faxed a copy of the emergency petition to Ms. Pine at API.

The Fairbanks superior court granted the department emergency custody of Andrew for 90 days.

November 22, 1996

Ms. Hoffman made numerous calls to Ms. Ash and Ms. Oak to make arrangements for Ms. Ash to take Andrew. She requested funding for Ms. Ash to fly from Anchorage to Fairbanks.

December 1996

Ms. Ash flew to Fairbanks where she spent a few days with Ms. Oak and Andrew before taking him back to Anchorage.

Ms. Ash said she had an instant feeling of belonging when she saw Andrew. But the relief of being reunited with him was tempered by Ms. Oak's pain. Ms. Oak and her close circle of friends, among them Andrew's godparents, were devastated at losing him. As late as November 1997, Ms. Oak said she still cried when she thought about Andrew.

Ms. Hoffman was at Ms. Oak's home when Ms. Ash arrived. Ms. Oak had asked her to take photos of herself handing Andrew to Ms. Ash, but Ms. Oak was crying too hard to let go of him. Instead, Andrew's godfather gave Ms. Ash the baby, and Ms. Hoffman took photos.

For a month after Andrew left Ms. Oak's home, Ms. Ash said, he cried constantly and would not sleep.

Shortly after DFYS placed Andrew in her home, Ms. Ash got a call from Ms. Pine's mental health case manager asking if she wanted to reinstate her guardianship over her sister. Ms. Ash most emphatically did not. As she explained to the investigator, it was an "incredible conflict of interest" for her to be responsible for asserting her sister's wishes while also trying to look out for Andrew's best interests. She asked the case manager to have the Office of Public Advocacy appointed her sister's guardian.

Because Andrew and his mother were both in Anchorage, the Fairbanks DFYS office transferred its case to the Anchorage DFYS office. Ms. Pinsly was reassigned to the case. Later in the month, a court notice was issued changing venue of Andrew's CINA case to superior court in Anchorage.

On December 23, Ms. Ash met Ms. Pinsly to get a blank delegation of parental rights form for Ms. Pine to sign. Ms. Ash could not get AFDC for Andrew because he still had no birth certificate and she had no delegation from Ms. Pine.

Ms. Oak had several conversations with Ms. Hoffman about DFYS paying for her travel to Anchorage to visit Andrew. Ms. Hoffman asked her supervisor for the funds and the request was denied. Ms. Hoffman said she thought the case demanded special consideration given the way it had been, in her opinion, mishandled from the start. She forwarded the travel request to a higher level of management within the Fairbanks DFYS office but it was again denied.

During this time, Ms. Oak began trying to get reimbursement from DFYS for four and one-half months of foster care she provided for Andrew. She said she contacted the Fairbanks DFYS office and was referred to the Anchorage office. Each office referred her back and forth numerous times until, after three months of trying to get the reimbursement, she gave up in frustration. None of Ms. Oak's contacts with the Anchorage or Fairbanks DFYS offices are documented in Andrew's files in either office.

January through March 1997

Ms. Ash, Ms. Pinsly and AAG Parkes had a teleconference about legal issues. They agreed the department should dismiss custody of Andrew so Ms. Ash could seek guardianship of him. However, before the dismissal, Ms. Ash wanted DFYS to fix the problems with Andrew's birth certificate. Ms. Pinsly told Ms. Ash that would be no problem.

Sometime after the teleconference, Ms. Ash said she called Acting Southcentral Regional Administrator Steve McComb to complain about Ms. Pinsly and ask that DFYS correct the birth certificate before dismissing custody. Mr. McComb told her he would look into the problem. Within 10 minutes of talking to Mr. McComb, she said, she received a threatening call from Ms. Pinsly. Ms. Pinsly ordered her to talk to no one but her and threatened to take Andrew away if she did. Ms. Ash said she felt as if Ms. Pinsly were "continuously hurting and hurting" her. Ms. Pinsly was dangerous, she said, and she felt she had to get guardianship of Andrew and leave the state: "I felt like I was running for his life."

The department dismissed Andrew's CINA case sometime in early 1997. The absence of a dismissal order in the court's CINA file or copy of the order in the DFYS file make it impossible to say what date the case was dismissed.

Ms. Ash was awarded guardianship of Andrew in March 1997. She spent $1500 of her own money to pay for the related legal work. She took Andrew to see his mother a number of times between December and March. Ms. Ash said she wanted Ms. Pine to see Andrew in hopes that she would feel something for him. She told Ms. Pine Andrew was her baby and they needed to think about what was best for him. Ms. Pine said she wanted Ms. Ash to take care of him. That was crushing for Ms. Ash because Andrew represented to her the loss of her sister to mental illness.

The parties today

Ms. Ash left Alaska for another state shortly after becoming Andrew's guardian. She said she knew she could not keep Andrew because he looks exactly like his mother and represents such loss to her. Ms. Ash knows how much her sister wants to have a normal life, and the impossibility of that. In late 1997, Ms. Ash asked a long-time family friend to take care of Andrew. The friend now hopes to adopt him. Ms. Ash is Andrew's babysitter in his new home, and Andrew remains in close contact with his maternal family. Because Mr. Pine's parental rights were never terminated an adoption case would be legally complicated and expensive for the prospective adoptive family, however discussions are underway with an attorney about how to arrange for an adoption.

Ms. Pine lives in a structured therapeutic setting. Her previous public guardian describes Ms. Pine as extremely mentally ill and said Ms. Pine is incapable of having visitation with a child, much less parenting. Bonnie Kelly, Ms. Pine's current public guardian, said Ms.

Pine is one of a growing number of mentally incapacitated persons giving birth each year.

Ms. Pinsly resigned her position at DFYS during the summer of 1997. She was arrested by Anchorage police on July 31, 1997, and charged with two counts of contributing to the delinquency of a minor and one count of sexual abuse of a minor in the second degree, aiding and abetting. Ms. Pinsly was brought before a grand jury but not indicted. She reportedly moved to California where she works for a child welfare agency.

DFYS interviews

The ombudsman investigator made repeated attempts to contact Ms. Pinsly in April 1997. Ms. Pinsly did not return the investigator's calls. When she did, she originally denied any memory of the case and referred the investigator to DFYS's Fairbanks office. Eventually, Ms. Pinsly recalled the case, but denied having placed the baby with Ms. Oak. Ms. Pinsly said Anchorage DFYS refused to pay Ms. Oak for her travel expenses because the travel was part of an arrangement between her and her son. Any foster care reimbursement, Ms. Pinsly said, should have been made from Fairbanks. Ms. Pinsly added that the state does not pay foster care unless the state has custody; Ms. Oak would have become eligible for foster care payments only after the state took custody of Andrew in November.

The investigator relayed Ms. Pinsly's comments to Ms. Oak and asked her recollection of the exchange between herself and Ms. Pinsly. "Stephanie (Ms. Pinsly) was the one that asked me to come down and get him," Ms. Oak said. "I did as she asked."

Ms. Pinsly's supervisor, Ms. Mason, told the investigator Ms. Oak was considered a relative placement. Because Ms. Oak agreed to care for the baby on the assumption that he was her grandson, she should not receive foster payments. Ms. Mason said social workers are supposed to give relatives a form that explains what relative placement is and that they can get public assistance for the child or become licensed foster parents. The DFYS file in this case, however, contains no such form.

Voluntary placement agreements

AS 47.14.100(c) gives the department authority to "make appropriate placement of minors accepted for care" but not taken into state custody using an "individual voluntary written agreement" between the child's parent or other person having custody of the child. The

agreement must provide for payment of child support through CSED in contribution for the child's "care and treatment." The agreement may not prohibit the parent or custodian from regaining custody at any time.

DFYS policy 3.11 on voluntary placements, adopted in 1989, allows the division to place minors for up to six months using an individual voluntary written agreement between the department and the parents, legal guardian or other custodian. "Serious or long-term abuse and neglect issues" make a case inappropriate for voluntary placement, according to the policy, and voluntary placement should never be used as an alternative to CINA proceedings. The policy states:

> Supervisors must ensure that voluntary placements are based on sound case planning designed to address problems of a short-term crisis nature not involving serious or chronic neglect or abuse.

The regional supervisor or designee must approve the voluntary placement in advance.

A voluntary placement agreement is a "tool that enables the division to provide assistance to families experiencing problems of a short-term crisis, such as hospitalizations of the caretaker. . . . while the parent (s) take steps to alleviate the crisis."

Policy 3.11 stresses the importance of careful planning: "Voluntary placement agreements, while a very useful tool in certain situations, must be used very carefully and with a great deal of planning." The case plan must state the "exact steps to alleviate the crisis as well as criteria for evaluating progress" and set a date for "joint evaluation by the parents and the worker." The parent and worker sign the voluntary placement agreement and the parent completes a Child Support Enforcement packet before the placement.

Legal rights of mentally incapacitated parents

AS 13.26.090 states that an incapacitated person for whom a guardian has been appointed retains all legal and civil rights except as expressly limited by court order or specifically granted by the court to the guardian. Accordingly, an incapacitated person who has a court-appointed guardian retains all parental rights, unless parental rights are expressly limited by a court order. James Parker, a former Disability Law Center attorney, said guardianship is not a way to accomplish limitations on parenting; that is done through a custody or CINA order, or through an express delegation in the guardianship order. Mr. Parker is a former public defender with experience representing parents in CINA proceedings. He is now employed by

the Office of Public Advocacy as a GAL.

Alaska's public guardian, Dorcas Jackson, agreed with this interpretation of the law. She and Mr. Parker both observed that AS 13.26.150 prohibits a guardian from consenting on behalf of the ward to termination of the ward's parental rights. Similarly, AS 13.26.150 and AS 13.26.090, when read together, make it clear that an incapacitated person's guardian cannot consent to changes in custody for the ward's child or delegation of the ward's parental rights.

A guardian's duties are to encourage the ward to participate to the greatest extent possible in decisions affecting the ward and to protect the ward's rights. It follows that discussions concerning the well being of the ward's child should involve the guardian. Dorcas Jackson said it is important to distinguish between the guardian's proper role as a facilitator for expressing the ward's wishes and the improper exercise of parental rights on the ward's behalf.

Public guardians are mandatory reporters under state child protection statutes. The public guardians interviewed for this investigation said they typically make written reports of harm to DFYS before wards give birth. The goal of early reporting is to start planning for the child's care. They described a range of responses from DFYS to reports of an incapacitated parent's impending birth. In some cases, DFYS's response has been exemplary; in others it has been very poor. One public guardian said the Pine case was the worst she knew of in terms of DFYS response.

Mr. Parker observed that the CINA court process gives all parties due process protections. For that reason, DFYS should err on the side on caution by filing a CINA case when there are questions about a parent's competency.

DFYS policy and practice in dealing with incapacitated parents

Anchorage Staff Manager Clifford Rosenbohm reported that DFYS has no written policies or procedures to guide social workers in their dealings with incapacitated parents. He said a parent's mental incapacity is not a per se indicator of harm or risk to a child. When responding to a report of harm concerning an incapacitated parent's child, the social worker's first task is to assess the risk of harm to the child. If the child is well cared for, DFYS will not intervene. DFYS may make referrals for services either for the parent or child if they are needed, Mr. Rosenbohm said. A child who has suffered harm or is at risk of being harmed may need protection through the CINA

process.

Mr. Rosenbohm felt confident that agency supervisors are aware that incapacitated persons retain their parental rights, and aware of the agency's obligation to respect parents' due process rights. He said the large number of new social workers may require training on dealing with incapacitated parents.

However, an interview with John Lovering, supervisor of an Anchorage DFYS investigation unit, revealed an approach that could be at odds with the law. Mr. Lovering echoed Mr. Rosenbohm in saying that DFYS will not necessarily intervene in a case unless the child has been harmed or is at risk of harm. Typically, he said, DFYS will ask the guardian to develop a plan of care for the child. Assuming DFYS determines that a voluntary placement agreement is appropriate to a given case, DFYS would expect a parent or incapacitated parent's guardian to sign a voluntary placement agreement. Mr. Lovering said that each case is different and is handled on a case-by-case basis.

Children with unknown parents - The scope of the problem

Those working with CINA cases in Anchorage agreed that many cases involve children whose fathers are unknown.

William Hitchcock is the children's master for Anchorage children's court. He and Standing Master Lucinda McBurney share responsibility for hearing all CINA and juvenile delinquency cases filed in children's court. He has been the children's master since 1979. Master Hitchcock is responsible for the administration of the children's court.

According to the court system's 1997 annual report, children's court had 1,192 open cases in Fiscal Year (FY) 97. Master Hitchcock said the open cases comprised 492 CINA, 495 delinquency and 316 petitions for termination of parental rights.

Without hard numbers, it is difficult to say precisely how often paternity is in question in CINA cases filed in Anchorage children's court. Master Hitchcock estimated that one-quarter to one-third of CINA cases involve unknown or undetermined parents. June Haisten estimated paternity is in question in 50 to 60 percent of cases. She said that cases may develop paternity problems even when it appears that paternity is clear, for example where the mother and father are married and the father's name is on the birth certificate, especially if

the husband is in jail and the mother has another relationship.

DFYS social worker Deborah Allen estimated that paternity testing is needed in roughly half the cases in which the department takes custody.

Why establish paternity?

Good social work, legal case planning and attention to the parties' rights require early establishment of paternity, according to experts interviewed by the investigator.

Mark Hardin, director of child welfare at the American Bar Association (ABA) Center on Children and the Law, said the father should be identified early for several important reasons. Prompt identification of case parties helps avoid battles between relatives and foster parents for the children. Mr. Hardin believes children should not be placed with relatives simply because they are relatives, especially when children have become part of a good foster family. A determination of paternity may also lead to collection of money for child support, he said, which helps preserve families by providing a financial underpinning. Determination of paternity can also bring a family back together.

Mr. Hardin stressed the concurrent responsibility of DFYS, CSED and the court in identifying putative parents. The court should refer the case to CSED at the very beginning of the case, Mr. Hardin said. Nonpayment of child support is not a basis for terminating parental rights, he added, but payment of reasonable support orders is indicative of parental interest in a child in state custody.

Mr. Hardin argued that quick determinations of paternity are critical in CINA cases. The sooner the finding is made, he said, the sooner the correct parties can be involved, and the less likely the father will be saddled with a crushing child support debt that can interfere with reunification.

According to Howard Davidson, director of the ABA Center on Children and the Law, identifying fathers is a common problem around the country. As a practical matter, he said, fathers should be identified, given notice of their financial responsibility, and involved in their child's life when the initial child protection action is filed. He said that failure to do this can complicate cases later on and keep children in foster care longer than otherwise.

Mr. Davidson said children should have a right to a permanent home,

and a right to state action that gets them to permanency as quickly as possible. Mr. Davidson cited a law passed by Congress in 1997, the Adoption and Safe Families Act, which creates for children an implied right to permanency. However, he doubted that the Adoption and Safe Families Act adequately addresses notification of putative fathers within the context of moving toward permanency. "Clearly the intent of the act is to move children into permanent homes as quickly as possible," he said. "It cuts the time the court has to make a permanent placement decision from 18 months to 12 months."

In Alaska, the Legislature has amended the child protection statutes. Legislative findings at AS 47.05.065 declare it is in the best interests of a child removed from the home for the state to follow a planning process to lead to the child's permanent placement. Like the federal Adoption and Safe Families Act, state law now requires the court overseeing a CINA case to hold a permanency planning hearing within 12 months from the date the child enters foster care.

Locally, Ms. Haisten emphasized the benefits to the children involved if paternity is established early. She said knowing a parent's identity affords more placement options for the child. Ms. Haisten said it is in children's best interests to be with family. Noting the chronic shortage of foster homes, she said extended family placements are more stable. In her professional experience that is because:

> …family members are more willing to hang in with their nieces and nephews or grandkids. Foster families have life changes. They get transferred, things change in their lives and they have to stop being foster parents.

The increased stability means children are moved less than they might be otherwise. Another benefit to placing children with relatives is that parent-child visitation is often easier. In a recent case, the family told the parents they could visit the children in their home when they were clean and sober. "So visitation isn't going to be just one day a week at the DFYS office."

Ms. Allen pointed out that DFYS is required to look for relative placements, especially in ICWA cases like Oliver's. Ms. Haisten observed that family placements are often less expensive for the state. Family members can get a foster license, but often they simply get public assistance for the child, which includes medical coverage under Medicaid. This is less expensive for the state than paying the regular foster care rate.

Anchorage District Attorney Susan Parkes, formerly chief of the Attorney General's Human Services section representing the department, stressed the importance of early establishment of paternity. "It's a terrible thing to say, but we need to approach any case as though it's one in which we will have to terminate parental rights," she said. It is only when the paternity question is answered, she said, that social workers know who they need to involve in a case plan, which families are placement options and whose parental rights, ultimately, they may need to terminate.

The current chief of the AG's Human Services section, Lisa Nelson, echoed Ms. Parkes' comments, saying it is important to rule all potential fathers in or out of a case.

Concerns that all parties to a CINA case be properly identified are not just academic. Ms. Eska said the lack of a properly identified father caused major legal problems in a number of cases she handled. In one instance, DFYS terminated the parental rights of a man who was not the child's legal father. Discovery of this fact required the department to go back to court to terminate against the legal father, and further delayed the child's adoption.

The paternity establishment process

Gudrun Bergvall, social worker IV in DFYS's state office, confirmed that Alaska has no statute, regulation, policy or procedure governing the establishment of paternity for children in state custody. Anchorage Staff Manager Cliff Rosenbohm said his workers follow an informal process in deciding when to seek paternity testing. Typically, he said, social workers check to see who claims to be the parent, "logically ruling out some people." Generally, though, "the worker takes mom's word, unless it's challenged. Even if mom changes her mind six weeks later, we'll take mom's word." By "challenged" he meant if "somebody brings [something] to the worker's attention then we need to look into that."

Social worker Cory Bryant, who supervised one of DFYS Anchorage's ongoing sections at the time of this investigation, said she told her workers to contact CSED to see if paternity testing has already been done. DFYS workers make informal contacts with CSED case officers for this information. If CSED has not done testing, CSED sets up the testing locally or makes arrangements for out-of-state testing. Mr. Rosenbohm said the social worker asks for funds to pay for the test and makes arrangements with the clients to get the testing done.

In a hypothetical situation in which the mother names two men as possible fathers, Ms. Bryant said any action to establish paternity would depend on the child's situation. If the child remains in the mother's home, DFYS likely would not try to establish paternity, she said. But if the child is in an out-of-home placement, she would recommend establishment of paternity by DFYS. Ms. Bryant observed that once a child has been in state custody 30 days, the parties hold an out-of-court initial case conference. The case conference form asks whether paternity has been established. She said the case conference process was a good reminder of the need to establish paternity.

Where the agency is setting up a voluntary placement and the children are not in state care, DFYS workers have even less guidance on how the paternity question should be handled. Mr. Rosenbohm said, "In an ideal world, the worker can take mom's word, talk with the dad and placement can be made." Even if the man is not really the father, Rosenbohm said, "It might not be a bad placement early on." However, he added, "paternity establishment, identifying the father should be part of a worker's plan from the beginning."

Mr. Rosenbohm said the division relies on CSED to complete the testing process and deliver test results. In Ms. Haisten's experience with CINA cases, it takes a minimum of six weeks to get test results, even when the department agrees that testing should be done and makes the arrangements. More usually, though, it takes two or three months to test parents and the child and get the results.

Mary King, supervisor of the CSED team that establishes paternity, said she fields calls from social workers all over Alaska who are uncertain what to do to establish paternity. Ms. King thought there were "too many hands in the pot" at DFYS; "nobody knows what's going on" when it comes to the mechanics of testing and establishing. Ms. King said CSED has a volume discount for paternity testing through its contract with the Laboratory Corporation of America (LabCorp) that permits CSED to test three parties to a case for $207. By contrast, DFYS pays $240 for testing three parties in its separate account with LabCorp. DFYS funds for paternity testing are lumped together with all special funds requests and are not listed in a separate budget category.

Ms. King said CSED has the option to establish paternity through judicial or administrative proceedings. CSED policy is to proceed administratively in all but a few case categories: where the alleged father is a minor, incompetent or in the military. The requirement that CSED serve all parties to the proceeding and the absence of sanctions

are drawbacks to the administrative process and can slow paternity establishment. In a judicially filed paternity case, CSED need only serve the alleged father. If a party does not cooperate with an administrative testing order, CSED must cease the administrative proceeding and file the case judicially so sanctions can be entered against the uncooperative party. Ms. King said the judicial process is the quickest way to establish paternity in time-sensitive CINA cases.

Barriers to paternity establishment

Identifying putative fathers, scheduling paternity tests, and persuading possible fathers to submit to testing is a process fraught with complications.

Ms. Haisten noted the extreme problems parents and putative fathers have in CINA cases. Often they do not have transportation and much of their energy is spent "just surviving." She applauds the department for making it possible for parents to have substance abuse assessments at the local Anchorage DFYS office. This saves the social worker from having to call a local non-profit agency to arrange for an assessment and eliminates the waiting time for an appointment.

AAG Nelson commented that social workers have a difficult job getting the paternity testing done: "They have to find the guy, make the appointments. These are not the kind of guys who show up for appointments. It's not easy. We advise [social workers] to pursue it diligently without making it their life's work."

In some instances, the particular facts of a case may divert the parties' attention away from the paternity question. AAG Nelson observed that Oliver Gold's case presented such a situation. She said testing for paternity wasn't a priority because Mr. Bronze signed an affidavit of paternity. She thought Mr. Bronze's involvement in the case induced complacency in the parties and the court so that no paternity testing order was entered. In general, paternity establishment needs to be a higher priority in all cases.

Eliminating barriers to paternity establishment

Persons interviewed in connection with the investigation had many ideas about how to eliminate barriers to paternity establishment. Some are common sense and others are innovative but promising.

Mr. Rosenbohm thought it wise to run a paternity test on all putative fathers to be certain of paternity. He said the division probably

should adopt a policy to that effect.

Ms. Haisten said everyone working in the CINA system needs clear, written guidelines on establishment of paternity. Right now, no written guidance exists.

In Ms. Allen's opinion, the division needs to be more accountable for paternity testing and the courts need to pursue paternity with greater vigor. She thought the GALs and assistant attorneys general were adequately aware of the need to establish paternity and advocated for this on a regular basis. "There needs to be some kind of tracking system," she said. "If paternity is not established by the second hearing, [the court] ought to have some kind of internal alert. I think the court is responsible. . . . It's not a minor detail."

In-house paternity testing

Ms. Allen stressed the need to test putative fathers immediately without going through other agencies such as CSED. She favors the idea of having a representative of a private testing company at the courthouse so testing can be done after the first court hearing. She said the men especially fail to show for their testing appointments.

Ms. Nelson was enthusiastic about the idea of a private testing company conducting tests at the courthouse: "Wouldn't that be amazing! It's not out of the question. It would be new or different." Ms. Nelson added that the tester should go straight to the courtroom. "Anytime these guys show up at a hearing [if they have not been tested] they should have their cheeks swabbed," she said. "Those guys get lost if you give them a place to go just a block away. It's not getting lost; it's just not one of their priorities," she said.

Ms. Parkes also supported paternity testing at the courthouse and perhaps at the Anchorage DFYS office as well. She observed that swab testing can be done easily nearly anywhere. Ms. Parkes envisioned making compliance with a court testing order part of the case plan. "If it's their responsibility maybe we'd get better compliance," she said.

Master Hitchcock was at first reluctant to support testing in the courthouse, but he observed that a testing site could be viewed as an aid to the court not only in CINA cases but also in the many paternity cases the court handles each year. He cautioned that the courthouse at 303 K Street, Anchorage, where Children's Court is located, is already overcrowded. Consequently, only "paying customers" were

likely to get space.

A "paternity kit"

Master Hitchcock proposed developing a kit to guide social workers in establishing paternity. The kit would contain best-practice protocols, special funds request forms, and a step-by-step checklist to guide the worker. It would be similar to the termination of parental rights kit discussed by the Adoption 2002 project.

From his observation, a kit would address two prevalent problems within DFYS: training and turnover. "There's a real serious deficit in training and they have so much turnover. They basically drop [social workers] on the ground running and [the workers] don't know where they're running." New employees and those as yet untrained in paternity issues could avoid mistakes by using the material in the kit, he suggested. Ms. Nelson, too, endorsed the use of a paternity kit as a training tool for DFYS's many new social workers.

In-court paternity testing: The Massachusetts experience

The Massachusetts Department of Revenue has since 1991 done in-court genetic testing to determine paternity in child support cases. Massachusetts began in-court testing as a way to combat lengthy delays in establishing paternity caused by parties' failure to show up for testing. In-court testing has cut by more than one-third the average time to establish paternity, said regional counsel and contract manager Patrick Finn.

Like Alaska, Massachusetts now tests using the buccal swab method. This is the preferred method for in-court testing because, unlike blood testing, it is non-invasive and produces no biomedical wastes. LabCorp was the vendor when Massachusetts began in-court testing. According to Mr. Finn, the vendor's regional representative helped a great deal in working out logistics during the transition to in-court testing.

The Massachusetts Department of Revenue does in-court genetic testing in all Massachusetts foster care cases. Because foster care cases are filed in a separate court building from child support cases, the genetic testing in foster care cases is done by special arrangement.

The Massachusetts Department of Revenue originally offered genetic testing only in welfare offices. That service was discontinued because so many putative fathers "got lost" between the court and welfare

buildings, and the high volume of those who did appear for testing disrupted normal welfare office business. Mr. Finn said confining testing to court locations gives the Department of Revenue more control over the testing process. Two testers are assigned a small room in the courthouse, set up a camera and have consent forms available. At the end of the day, they fax a record of the tests done to the local coordinator for follow up the next day.

ANALYSIS, PROPOSED FINDINGS, AGENCY AND SOCIAL WORKER RESPONSES TO THE FINDINGS

Allegation 1: The Department of Health and Social Services, Division of Family and Youth Services performed inefficiently when it failed to establish paternity for children whose care it had assumed.

The Office of the Ombudsman's Policy and Procedures Manual at 4040(14)(b) defines performed inefficiently as agency delay or ineffectual performance that exceeds

> a limit or balance established by custom, good judgment, sound administrative practice, or decent regard for the rights or interests of the person complaining or of the general public.

The allegation is that DFYS was inefficient when it failed to establish paternity for the two children profiled in this report, Oliver and Andrew, whose care the state had assumed. Worded differently, the question is: Were DFYS delays in establishing paternity for children in state care consistent with good judgment, sound administrative practice or decent regard for the rights or interests of the person complaining or of the general public?

Children in state care

Oliver was in state care; he was committed formally to the department's legal custody. But was Andrew in state care? When Andrew was born, DFYS supervisors decided that he was not a child in need of aid because, although neither of his parents was able to care for him, he had a "relative," Ms. Oak, who was willing to provide care. However, Ms. Oak lived in Fairbanks and was unable to assume care immediately. Until she arrived to pick up Andrew, DFYS entered into a two-day voluntary placement agreement with her son, Mr. Oak. Under the terms of the agreement, Mr. Oak agreed to certain conditions "in requesting the department to provide care for" Andrew. Among those conditions were that he accept the

department's supervision of Andrew. He also agreed to plan for Andrew's care with DFYS. The terms of the agreement leave no question that DFYS assumed care of Andrew.

Obviously, the duration of DFYS care over Andrew was a great deal shorter than it was for Oliver. But the duration of care does not change this: the agency assumed a responsibility to plan for Andrew's care and carry out those plans if the putative father was unable to carry them out himself. In other words, DFYS assumed and retained the discretion to veto or modify a parent's plans in the child's best interests. The agency's policy on voluntary placements cautions supervisors to "ensure that [they] are based on sound case planning."

Good judgment and sound administrative practice

In Oliver's case, DFYS had warnings that Oliver's paternity could be in question. The agency missed critical opportunities to test for paternity when Oliver was in his first months of state custody.

Oliver's mother told DFYS social worker Memoree Cushing in January 1995 that Charles Steele was Oliver's father and that she had applied for AFDC. Ms. Cushing drew up a case plan for Ms. Gold directing her to apply for Medicaid as well. Oliver was 10 weeks old at the time. His older half-brother had been in state custody for one year by then and the brother's paternity was unknown. DFYS had not filed for custody on Oliver, so there was little reason for Ms. Cushing to establish paternity at this point. However, the older brother's unknown paternity should have been a warning that Oliver's paternity could likewise be clouded.

Ms. Cushing's petition for custody of Oliver named Charles Steele and Gilbert Bronze as possible fathers. The children's court magistrate struck Mr. Steele's name from the petition when Mr. Bronze appeared and claimed he was the father. But two weeks later, Ms. Cushing filed an emergency petition on Oliver, again naming Mr. Steele and Mr. Bronze as possible fathers. This time the court let stand Mr. Steele's name in the petition. DFYS placed Oliver in out-of-home foster care.

The DFYS Child Protection Manual advises social workers that DFYS, the Division of Public Assistance, the Department of Law and CSED are parties to a joint agreement designed to ensure the collection of child support for children in out-of-home care. DFYS policy is to have its workers initiate the child support establishment process. Social workers provide parents with appropriate documents

to complete and forward to CSED, track the documents to make sure they are received by CSED, and ensure that child support issues are addressed by the court whenever a child is placed in out-of-home care.

The absent parent locator form is one of the forms DFYS workers are supposed to give the custodial parent of a child in out-of-home care. This is the form a mother uses to name the child's father.

There is no indication in Oliver's file that DFYS provided Ms. Gold with the appropriate documents for CSED or that Ms. Cushing checked with CSED to see whether the paternity and child support order establishment process was underway at CSED. Ms. Cushing testified that she did not remember contacting CSED to find out the status of paternity testing in his case, but that she may have. Her file notes refer only to contacts about Oliver's older brother. CSED records likewise document contact from Ms. Cushing only about the older brother.

Ms. Cushing knew, however, that Ms. Gold had applied for public assistance before the state took custody of Oliver. When a single parent applies for public assistance, the parent agrees to cooperate with CSED in establishing paternity for the absent parent. Cooperation includes naming the absent parent using the absent parent locator form. Accordingly, Ms. Gold was required to name Oliver's father before she could receive benefits.

Ms. Cushing testified that after nearly 10 years as a DFYS social worker, she was only vaguely aware of CSED's role in establishing paternity for children who are receiving public assistance benefits. Because she was uncertain how the paternity establishment process worked, she was unaware that CSED could be a critical source of information for DFYS when she found herself trying to establish paternity for Oliver.

At the March 14 hearing on Oliver's case, Mr. Bronze agreed to sign an affidavit of paternity and file it with the Division of Vital Statistics to have his name put on Oliver's birth certificate. He agreed to take a paternity test as well. But by the April 12 hearing, Mr. Bronze still had not signed the paternity affidavit or taken the paternity test. The parties told the court they expected to have paternity test results back before the June 12 hearing. They weren't. The assistant attorney general told the court she thought the test results would be back by the next hearing on September 11. Again, they weren't. Worse, Mr. Bronze and Ms. Gold disappeared sometime that summer, making it

impossible to take genetic samples from either one.

At that point, good judgment and sound administrative practice would have suggested that DFYS test the other possible father in the case, Mr. Steele. The department's new plan was to terminate parental rights in both Oliver's and his brother's cases. Common sense would suggest the agency find out if it needed to terminate parental rights against Mr. Steele, or whether Mr. Steele had relatives who might offer Oliver a permanent home.

By then, Ms. Cushing was on a lengthy medical leave. Oliver's case was transferred to a new unit on November 2, 1995, without a case transfer summary and against Ms. Cushing's recommendation. The new social worker, Brunhilde Eska, was apparently too overwhelmed by other demands to review the new file in depth and consequently was unaware that paternity remained an issue. Ms. Eska learned in December 1995 that Oliver's paternity was still in question. She did not contact Mr. Steele to ask if he would acknowledge paternity, seek a test for him, or contact CSED to see if testing was underway on him or Mr. Bronze.

Meanwhile, CSED had already filed a paternity complaint against Mr. Steele and Mr. Steele had submitted to a paternity test. CSED had tried unsuccessfully to contact Ms. Gold so she and Oliver could be tested, too. But the absence of any liaison between CSED and DFYS meant neither agency knew what the other was doing. CSED was unaware that DFYS had Oliver in foster care and needed paternity established; DFYS was unaware that CSED had filed a paternity complaint, had tested Mr. Steele, and was searching for the mother and child so they could be tested, too.

When CSED filed its paternity action against Mr. Steele, the complaint was filed in superior court in the same building where children's court was housed. The paternity and CINA cases were assigned to different judicial personnel. The lack of any cross referencing between the cases or unique identifiers for the parties deprived court personnel in the CINA case of critical information that could have sped resolution of the paternity issue and fundamentally changed the case.

If DFYS and CSED had communicated about Oliver's case, even as late as September 1995, genetic test results could have been available by October 1995. DFYS's and CSED's first communication about the case was on May 23, 1996. Within one month, Oliver was tested and the results showed Mr. Steele was his father. If DFYS had known in October 1995 that Mr. Steele was the father, DFYS could have

searched immediately for a relative placement.

Even assuming delays in the ICPC process, DFYS would have had the information it needed by spring 1996 to decide whether to move Oliver out of his foster home. By that point, he would have been in state care one year and been 17 months old. It is possible that a decision to move him then would not have had serious long-term effects. Instead, the delay in establishing paternity followed by the ICPC request to Kansas meant DFYS lacked this information until Oliver had been with his foster family two years and was nearly two-and-one-half years old. With a child that age, the decision to move him was much more serious.

DFYS could argue that many parties contributed to the delays in establishing paternity for Oliver. This may be true, but it begs the question of responsibility. The court gives the department custody of a child in need of aid. DFYS manages each child's case by identifying the child's parents, creating a case plan with the parents, monitoring the parents' progress with the plan, deciding what placement is best for the child, supervising the placement, deciding when to seek termination of parental rights, and finding a permanent placement for the child. Oliver was a child in need of aid given to the department's custody. A critical first step in managing his case was to find out who his father was. In this, the department failed.

Likewise in Andrew's case, the facts first known to the social worker suggested that DFYS should determine the child's paternity for certain.

Andrew's mother was jailed on a prostitution charge, then sent to API for a competency evaluation and transferred from there to a hospital for the baby's birth. Her doctor described her to Ms. Pinsly as the "wildest thing I have seen in 20 years." While Ms. Pines was sedated and unable to converse logically or coherently, she told the social worker the father was a man she had lived with and who was now incarcerated. The mother also told the social worker she had been arrested for prostitution. Ms. Pine's sister, also her guardian, and Ms. Pine's mother told the social worker they did not believe the man the mother identified as the father was indeed the father. Hospital nurses said the child appeared to have "some but not all" African-American features.

The social worker told Mr. Oak the mother named him as the father. Mr. Oak said he was the father and agreed to sign an affidavit of paternity to have his name put on the birth certificate. He also told the social worker he wanted the child placed with his mother in

Fairbanks. Mr. Oak apparently followed through with his promise to sign the affidavit, but somehow a birth certificate was never issued.

After Ms. Oak took the child to Fairbanks, more questions were raised about whether her son was the father. A DFYS worker in Fairbanks arranged for paternity testing and the results showed he was not.

It is easy to understand a social worker's relief if an unmarried woman says a man is her child's father and the man not only agrees, but takes steps to affirm his paternity legally and makes a plan to care for the child. In a case with no other complications, the worker may be justified in making the placement and closing the case.

But in cases like Andrew's with such compelling warning signs, good judgment demands the worker do more than take the mother's and alleged father's word on fatherhood. The social worker knew the mother was psychotic and had a recent criminal history of prostitution. She also knew Ms. Pine's guardian and mother questioned the father's identity. In the absence of any written rule or policy that DFYS establish paternity in questionable cases, the social worker did nothing.

Rights or interests

The question here is whether DFYS's delays in establishing paternity for Oliver and Andrew were so untimely as to have disregarded their rights or interests, the rights or interests of the person complaining, or of the general public. In addition to the children, the complainants in this investigation are a parent, a grandparent and a putative relative.

In Alaska, parents and blood relatives of children in state custody have certain legal rights. Parents have a right to notice of a proceeding involving their children, a right to participate in the proceeding as a party, and the right to appointed counsel to represent them if they cannot afford counsel themselves.

Blood relatives have the right to a placement preference over non-relative foster parents. If the relative requests placement of the child, DFYS must place the child in the relative's home unless the agency, supported by clear and convincing evidence, finds that damage would result. DFYS's decision not to place with the blood relative may be appealed to superior court.

Respecting the parent's right to be involved in the CINA case from the beginning, DFYS should take all possible steps to determine the

child’s paternity.

Likewise, the preference for placement with blood relatives should prompt DFYS to determine paternity as soon as the child enters custody. In this case, the parent and grandmother who wanted Oliver put in foster care with his grandmother were denied that opportunity. DFYS has no policy or procedure to guide social workers in making the determination that a relative placement would result in damage. In this case, the agency never actually made a decision that placement in Ms. Steele’s home would damage Oliver. Ms. Steele had no decision to appeal from. DFYS's failure to make a clear decision not to place him with his grandmother effectively deprived her of her statutory right to appeal the decision. She could not appeal a non-decision.

Children had no express rights to speedy paternity determinations under Alaska child protection laws in effect at the time Oliver and Andrew entered custody, nor do they now. However, the intent of the new child protection scheme in effect since September 1998 is to achieve permanency quickly for children in foster care. To that end, it is the legislature’s express finding that the state should follow a planning process that leads to a child’s permanent placement.

Even in the absence of an express right to speedy paternity determinations, the best interests of children in state care demand that the state identify the child’s parents quickly. Witnesses in this investigation gave numerous reasons why early paternity establishment is in the best interests of a child in state care. Early identification of the father enables social workers to locate relative foster placements for a child and helps avoid battles over placement between relatives and foster parents. It facilitates child support collection and sometimes leads to family reunification. Relative placements tend to be more enduring, thereby minimizing a child’s moves from foster home to foster home. Parent-child visitation is often easier and more frequent when relatives care for a child. Overall time in foster care is reduced when social worker, attorney and court time are devoted to terminating the parental rights of a single, accurately identified father.

The record here is clear that Oliver stayed in foster care at least a year longer than he might have if paternity had been established earlier. The impact on Andrew was great as well. DFYS's failure to test for Andrew’s paternity and the agency’s voluntary placement agreement with a man who lacked any verifiable relationship to him, resulted in Andrew’s forced move from the only home he knew for the first four and one-half months of his life. His move to a strange

environment with a strange caretaker created great stress for him. He cried constantly and could not sleep during the first month in his new home. Andrew's suffering was not in his best interests.

Children should be able to expect that the state will do everything in its power to move them quickly into safe, permanent homes, particularly when the state assumes their care or custody because of abuse or neglect. Anything less is contrary to their best interests.

It is also in the state's fiscal interest to make early paternity determinations for children in state care. Earlier closure of Oliver's case, for instance, would have saved money in all parts of the state's CINA system. His would have been one less case vying for the attention of the professionals in the state's employ: the social workers, public defender, conflict counsel for Charles Steele, guardian ad litem, assistant attorney general, judicial and other court personnel. Those savings multiplied many times for cases like Oliver's could run into the tens of thousands every year.

In light of the foregoing, I propose to find the allegation that DFYS performed inefficiently when it failed to establish paternity ***justified***.

I have no position on whether DFYS should have moved Oliver to his grandmother's home. In fact, the record is heavy with evidence that the move would have caused him emotional damage. DFYS could have relied on that evidence to deny Ms. Steele her request and she, in turn, could have appealed the denial. My focus is rather on seeing that an agency has procedures that give citizens the means to exercise their rights. Here, DFYS did not. The lack of policies regarding identification of fathers of children in state care was contrary to the children's best interests and deprived their blood relatives of the right to a placement preference with the children.

Allegation 2: The Department of Health and Social Services, Division of Family and Youth Services unfairly refused to reimburse a caretaker for foster care services provided.

The Office of the Ombudsman's Policy and Procedures Manual at 4040(3) defines unfair as an administrative act that violates some principle of justice, including the failure to give the complainant adequate and reasonable notice of the matter. Analysis of a complaint of unfair agency action considers both the process by which the action was taken and the equitableness of that decision, that is, the balance between the agency and the complainant in the decision-making process.

Andrew Pine had one known parent and set of blood relatives when he was born. His mother was incapable of caring for him by reason of her mental illness and psychiatric commitment. Andrew needed the care of a responsible adult to keep him safe from harm. The mother identified a man as Andrew's father and the man agreed he was the father. He said he wanted his mother, Andrew's putative grandmother, to care for the baby.

DFYS secured a voluntary placement agreement from the man without informing Andrew's mother or her guardian. The agreement gave the department custody of Andrew. At the same time, DFYS acted as an intermediary between the man and the putative grandmother in arranging to have Ms. Oak travel to Anchorage to get Andrew. DFYS transported Andrew to a crisis nursery where Ms. Oak picked him up.

Ms. Oak said the social worker commanded her to get the baby and she felt powerless to refuse. She told the social worker she lived on Social Security and could not pay for the travel or Andrew's care. Ms. Pinsly assured her DFYS would pay her travel costs if her son could not. There is no record Ms. Pinsly's travel funds request was approved; DFYS records show no travel funds paid in this case.

Mr. Oak filled out none of the financial paperwork DFYS policy says must be completed; if he did, none is in the file. Ms. Pinsly's notes say nothing about further financial discussions with Ms. Oak, although Ms. Pinsly's supervisor said social workers should always discuss the relative's option to get foster care licensing or public assistance for the child.

DFYS did not take custody of Andrew when he was born. The placement with Ms. Oak was an informal one under an agreement that gave Mr. Oak the right to regain custody of Andrew at any time. Ms. Pinsly rejected Ms. Ash as a possible placement, despite her repeated requests to have Andrew placed with her. If it were not for Ms. Oak's compliance with Ms. Pinsly's command, DFYS would have been forced to take custody of Andrew.

As it happened, Andrew's was not a relative placement after all. When DFYS discovered this, Andrew's status as a child in need of aid became apparent. The department filed for and was given custody. A Fairbanks DFYS social worker inspected Ms. Oak's home to get her licensed as a foster parent, but Ms. Oak never received payment.

Sadly, DFYS failed to give Ms. Oak the information she needed

about how to provide for Andrew financially. The agency also neglected to make sure she had the documents necessary to get medical care and public assistance for the baby. The agency's failure resulted in Ms. Oak's spending her own money to comply with what she interpreted as a DFYS command to take the baby. She had little money to buy him food and clothing. Consequently, Andrew missed early health screening and immunizations.

Anyone who has taken care of a newborn knows that infant care is a round-the-clock commitment. Because she was under order from a DFYS social worker, Ms. Oak assumed the commitment despite some misgivings that Andrew was her grandson. Under the facts, it is questionable whether DFYS should have made the placement. DFYS should have paid her for her service when it realized its mistake.

Therefore, I propose to find the allegation that DFYS unfairly refused to reimburse a caretaker for foster care services ***justified***.

Allegation 3: The Department of Health and Social Services, Division of Family and Youth Services violated the civil rights of a mentally incapacitated parent.

An allegation that an agency acted contrary to law is defined at the Office of the Ombudsman's Policy and Procedures Manual at 4040(1) as a failure to follow statute.

DFYS is alleged to have violated Ms. Pine's civil rights through its violation of AS 13.26.090. That statute reads as follows:

> Guardianship for an incapacitated person shall be used only as is necessary to promote and protect the well-being of the person, shall be designed to encourage the development of maximum self-reliance and independence of the person, and shall be ordered only to the extent necessitated by the person's actual mental and physical limitations. An incapacitated person for whom a guardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those which have been expressly limited by court order or have been specifically granted to the guardian by the court. (Emphasis added.)

The guardianship order Ms. Ash held for Ms. Pine did not limit Ms. Pine's parental rights. Accordingly, Ms. Pine retained full parental rights over Andrew during the period covered by this investigation.

The record shows repeated violations of Ms. Pine's rights. On July 16, 1996, when Andrew was one day old, Ms. Pinsly told Ms. Pine in the hospital that DFYS would take custody of Andrew, put him in foster care and a court hearing would be held at which Ms. Pine would be represented by an attorney. In fact, the state did not take custody of Andrew. Ms. Pinsly refused to give Ms. Pine's guardian any information about Andrew's whereabouts. Ms. Pine said Ms. Pinsly told her DFYS took custody of Andrew during the night, which was not true.

DFYS approved a voluntary placement agreement with Mr. Oak on July 17, 1996. Mr. Oak was a man with no verifiable relationship to the child. There is no evidence that DFYS informed Ms. Pine about the voluntary placement so she could discuss it with Ms. Pine or that DFYS sought Ms. Pine's consent to the voluntary placement.

On July 25, 1996, DFYS accepted a delegation of parental rights purportedly from Mr. Oak and Ms. Pine. The delegation was signed only by Mr. Oak and was invalid because he in fact had no rights to delegate. There is no evidence that DFYS told Ms. Ash that Andrew's caretaker needed a delegation of parental rights. DFYS thus deprived Ms. Pine of the opportunity to discuss the delegation with her guardian. Likewise, there is no evidence that DFYS sought Ms. Pine's consent to the delegation.

The evidence is overwhelming and uncontroverted that DFYS violated Ms. Pine's civil rights by its repeated violation of AS 13.26.090. Based on the foregoing, I propose to find this allegation ***justified***.

I am aware that Ms. Pinsly left her employment at DFYS under unfavorable circumstances. It would be easy for DFYS to blame Ms. Pinsly for personal misconduct and say that absolves DFYS of responsibility in this case. However, this investigation revealed systemic flaws that could lead to a repeat of the same civil rights violations in other cases. DFYS lacks any written policy or procedure to guide social workers in their dealings with incapacitated parents. An experienced supervisor approved the voluntary placement in violation of Ms. Pine's rights and, though this is not documented, got approval for the placement from his supervisor. This suggests a lack of awareness at two supervisory levels of the rights held by mentally incapacitated parents.

On April 10, 1998, DFYS Acting Director Russ Webb wrote that DFYS did not dispute the ombudsman's findings in this

investigation. Accordingly, the finding of justified in each of the three allegations will be the final findings.

Under AS 24.55.180, the ombudsman is obligated to give a person against whom it proposes to make a critical finding an opportunity to review and comment upon the finding. Because social workers Memoree Cushing and Brunhilde Eska are criticized in the report, they were offered opportunity to comment. Ms. Cushing declined. Ms. Eska suggested corrections to the record that are incorporated in the final report. Ms. Pinsly's whereabouts were unknown. Therefore she was not given a chance to comment on the preliminary finding.

OMBUDSMAN RECOMMENDATIONS AND AGENCY RESPONSE

Every CINA case has unique facts that reflect the unique situations of the families involved. Even so, the similarities in Oliver and Andrew's cases are striking. All of the key adults in the two cases had serious life problems. Oliver's mother was a long-time drug and alcohol abuser. One of her older children was in state custody and her parental rights to that child were eventually terminated. The man who claimed to be Oliver's father had a history of domestic violence with the mother, a criminal history, and a marginal employment record. Oliver's father had a lengthy criminal history; he remains incarcerated on a 99-year sentence. Andrew's mother was mentally ill and had a court-appointed guardian. She was a drug addict and had a criminal history that included prostitution and assault charges. The man originally thought to be Andrew's father was incarcerated on a drug charge. Poverty, disability, drug and alcohol abuse, and criminal behavior are common features of CINA cases that policy makers need to consider in designing new systems to improve outcomes for children in state care.

Members of the Governor's Task Force on Child Abuse recommended changes to state law, policy and procedure that rely on co-location of resources and the free exchange of information to aid troubled families. I have adopted the same approach in proposing many of the following recommendations. I understand that the solution to some of these problems depends not just on DFYS action but will require the joint effort of other agencies, notably the Alaska court system and CSED.

As a result of this investigation, I proposed recommendations to DFYS. DFYS commented on the recommendations and the investigation was concluded. I prepared a public summary of the

report and sent copies to DFYS, the complainants, the Alaska court system and other state CINA agencies on March 31, 1999. After reading the report, the court's administration expressed concerns about the wording of certain recommendations that urged DFYS to advocate changes in court practice. The administration asked that the investigator interview court personnel about the impact of the recommendations, and either revise the recommendations or add explanatory text, as appropriate. The ombudsman's overriding interest in this instance is to foster an environment for positive, productive discussion between DFYS, the court and other CINA agencies. For that reason, the ombudsman agreed to the court's request.

Recommendation (1): DFYS should adopt a policy on paternity establishment for children in state care.

Agency response: DFYS agrees. The most recent revision of the Child Protection Manual is currently being field tested, and the division will distribute an interim policy that provides clear directions for early determination of paternity regarding all putative fathers. That policy, with any revision for clarity identified during the filed testing, will be incorporated into the final version of the manual.

Proposed Recommendation (2): DFYS should work with the court system, the Department of Law and CSED to create a system that ensures the prompt identification of fathers in CINA cases.

Agency response: DFYS agrees, and that work is already in progress. That effort includes coordination with the Bureau of Vital Statistics to expand to all DFYS offices the division's access to the Bureau's electronic birth records systems. Discussions are underway with the court system, Law, and CSED to improve the process for identifying and testing potential fathers when none is named in vital records or when that information may not be accurate.

Ombudsman comment 5/19/99: As it considers what is needed to create a system that speeds identification of fathers in CINA cases, DFYS should consult with the other CINA agencies. These agencies can play critical roles in ensuring quick paternity determinations. It is possible that the consultation process will reveal different agencies' willingness to assume responsibility for parts of the system. It is possible, for example, that consultation will show that DFYS attorneys are in the best position to seek court orders for paternity testing or, perhaps, that the court thinks it advisable to enter testing orders as a matter of course at the initial CINA hearing when paternity is in question. Additionally, DFYS may find that the

guardians ad litem are committed to seeking testing orders when an oversight occurs and none is requested by any another party and no order entered by the court. Because CINA cases play out in a context where many other parties are involved, DFYS consultation with the CINA agencies is critical to the creation of the best possible system to ensure speedy paternity determinations.

In recognition of the need to consult with CINA agencies other than the court, Law and CSED, I am modifying proposed recommendation two as follows:

Final Recommendation (2): DFYS should work to create a system that ensures the prompt identification of fathers in CINA cases where paternity is in question.

Proposed Recommendation (3): In working with the courts and the Department of Law in creating the above system, DFYS should advocate for the court's entry of a paternity testing order at the initial CINA hearing. The order should require all parties to cooperate with testing. DFYS should also advocate for an order that requires testing of all putative fathers named in the petition.

Agency response: DFYS agrees. Discussions have already begun with the court system and Law regarding the development of either a standing order to apply to all cases or the inclusion in each initial CINA order language which will require cooperation establishing child support orders. Such orders should also include the cooperation of all parties named for purposes of establishing paternity.

Ombudsman comment 5/19/99: After discussion with the court system administration, I am withdrawing proposed recommendation three. I believe that DFYS commitment to developing a system that results in the prompt identification of fathers in CINA cases, (see Recommendation two, above) and its consultation with the other CINA agencies in that process, will result in its devising a system that works. Precisely what elements the system should include is within the unique ability of the CINA agencies to know. It is my hope, however, that the possibility of court entry of a paternity testing order at the initial CINA hearing, when paternity is in question, will be a point of discussion between DFYS and the court system.

Proposed Recommendation (4): In working with CSED in creating the above system, DFYS should advocate for CSED to provide court-based paternity testing.

Court-based testing would have fundamentally changed the Oliver

Gold case. If the court had entered a testing order at the first CINA hearing, both Mr. Bronze and Ms. Gold could have been tested on the spot. CSED could have sent a test kit to the correctional facility where Mr. Steele was incarcerated so he could be tested, too. Oliver could have been tested in court or, if his mother did not bring him to court, at a local lab when he entered state custody the week of April 7. Test results would have been available in early May 1995.

Under this scenario, Mr. Bronze would have been out of the case, attention focused within DFYS and the court on Mr. Steele's participation in the case, and possible relative placements explored when DFYS decided to move for termination of his parental rights.

Court-based testing might well be tried as a one-year pilot project in Anchorage children's court. Because of the large number of CINA cases handled by children's court, the limited number of courtrooms involved, and court's practice of hearing CINA cases at set times of day, Anchorage would be the easiest place to attempt court-based paternity testing.

Agency response: DFYS agrees that paternity testing should be made as readily available and accessible as possible. We are willing to discuss with the court system and CSED the feasibility of making testing available in close proximity to the Anchorage court and to explore with CSED the possibilities for better access in other communities. However, we note that the Anchorage court hears approximately 48% of the state's CINA cases, and many cases are heard in communities with no resident CSED staff. Still, DFYS will work with CSED and the courts to develop more accessible systems for other communities.

Ombudsman comment: DFYS said in later discussions with the ombudsman that it thought the number of Anchorage CINA cases was too small to justify the expense and logistical challenges of a court-based testing program. Instead, DFYS decided to refer putative fathers to a local lab for testing.

This plan is no different from the failed practice the agency followed in Oliver's case. The strategy did not work then and will not work in other CINA cases where addiction, poverty and disability conspire against a possible parent's following through with a testing order. Certainly, overall CINA case numbers, even in Anchorage, are relatively low compared with other types of cases. Still, Anchorage accounts for the largest percentage of CINA cases statewide. Too often, CINA cases get lip service for their importance because of the children involved, but the systems for addressing critical CINA

issues at the beginning of a case are inadequate.

I want to stress the desirability of a short-term pilot paternity testing program, perhaps under the auspices of the Court Improvement Project, to test the effectiveness of paternity testing that follows immediately on the entry of a court order for testing. I recognize that space is at a premium in the Anchorage children's court. Practically, though, a court-based testing program needs minimal space: a small room where a contract employee can administer the DNA swab test, have consent forms signed and take a photo of the test subject. It is worth evaluating a court-based program for the incalculable benefits it could offer to the children, their families and the state agencies with CINA responsibilities.

Ombudsman comment 5/19/99: I recognize that the prospect of court-based paternity testing raises practical and policy concerns that will need further discussion. Court space in the Boney building in Anchorage is at a premium and should be used for primary court functions. The court system can assist DFYS in determining the current response rate to court-ordered paternity testing. If the response rate is poor, a court-based testing program could lead to earlier paternity determinations in this critical aspect of CINA cases. Some might object on policy grounds that the courthouse is an inappropriate testing site because this use might jeopardize the court as a neutral location in all parties' eyes. Indeed, some might argue that court-based paternity testing is so fundamentally at odds with court independence and neutrality as to be an absolute bar to court-based testing. If these concerns lead DFYS, the court and other CINA agencies ultimately to reject court-based testing, DFYS should seek ways to make paternity testing easier for putative fathers. DFYS might do this by offering testing on a walk-in basis in its new Anchorage location or another location convenient to the courthouse.

I am modifying recommendation four to reflect the fact that DFYS will need to explore the feasibility of court-based testing and only then, if the program appears feasible, to advocate for it. In addition to CSED, DFYS will need to work with other CINA agencies before court-based paternity testing can begin. Obviously, court support is especially critical .

Final Recommendation (4): DFYS should explore the feasibility of court-based paternity testing and, if it appears feasible, advocate for a court-based paternity testing program.

Recommendation (5): DFYS should create a paternity kit as an aid to social workers confronted with cases in which paternity is in

question. The kit should contain best practice protocols, special funds request forms and a step-by-step checklist to guide workers in identifying unknown parents to CINA cases.

A paternity kit would be an aid to workers assigned cases like Andrew's in which the state has not filed for custody, as well as those in which the state has custody.

Agency response: The division has developed kits for some purposes. For example, emergency placement packets have been developed for workers to carry which contain foster parent applications, emergency licensing checklists, placement agreements, and other items necessary for activities that must be conducted when a worker is away from the office. It is difficult to see how paternity establishment falls into this category. DFYS does agree that clear policy and local protocols must be developed and that workers must receive adequate training in establishing paternity. We reference our response to recommendation #1 and will refer this issue to the staff responsible for the Child Protection Manual.

Ombudsman comment: During a discussion with Kathy Tibbles, DFYS program administrator, about the agency response, the investigator clarified the intent behind this recommendation. A kit would guide social workers through each step of the paternity establishment process, so workers facing difficult or confused cases such as Oliver's can successfully identify a child's father. The kit could guide workers in making the "reasonably diligent search" required by AS 47.10.086(4) so reasonable efforts at family support are not required of DFYS.

Recommendation (6): DFYS should seek an amendment to AS 47.10.093 to allow disclosure of information about existing CINA cases to CSED without a court order.

Under current law, attorneys for CSED and the department cannot exchange information about CINA cases. A change in the law will enable communication about specific cases between attorneys working on cases involving the same child.

Agency response: DFYS does not agree that such an amendment is necessary. While AS 47.10.093 does not specifically reference disclosure to CSED, it does provide for sharing information to obtain services for a child. Determination and collection of support for the child certainly qualifies. In addition, both state and federal laws provide for cooperation between DFYS and CSED in that they require financial support from a parent for a child in custody. DFYS

is already sharing information with CSED about existing CINA cases.

Ombudsman comment: Present and former department attorneys have expressed the view that AS 47.10.093 as written does not give department and CSED attorneys the ability to discuss cases. Before deciding against seeking an amendment to the law to clearly authorize such communications, DFYS would do well to clarify with its attorneys statewide that the law as currently written allows agency and CSED attorneys to exchange information. Assuming it does, all attorneys should be trained in the same protocol so that different interpretations by Law attorneys do not lead to different practices in different areas of the state.

Proposed Recommendation (7): DFYS should advocate for the creation of a court system case numbering system that assigns case parties a universal identifier.

The Oliver Gold case dramatizes a problem long known to professionals working in the state's CINA system, that of multiple court cases being decided about a family without any cross-referencing between the cases. The investigation showed that at roughly the same time, the department and CSED filed separate actions concerning Oliver. The cases were assigned to different judges without any cross-referencing. No one at DFYS, CSED or the court was aware of both cases and the implications for Oliver and his family. In recognition of the need for judicial personnel to have access to all relevant information about CINA cases, DFYS should advocate for some type of cross-referencing between court cases involving CINA families.

Agency response: DFYS agrees that it would be helpful if the court system were able to cross reference parties involved in different kinds of cases, but we also recognize the difficulty in developing such a system. A child may be the subject of a wide variety of court cases, i.e., a divorce case, a subsequent probate case if a parent dies, a resulting adoption by a step-parent in yet another probate case, a subsequent divorce of those parents, a CINA case involving that child and other siblings and half or step-siblings, etc. We will gladly encourage the development of a cross-referencing system, and we would be happy to participate in any such effort if the court feels we can be of assistance. However, we must remain mindful of the separation of powers between our branches of government.

Ombudsman comment: Both DFYS and the ombudsman are aware that a court case numbering system with unique identifiers is a long

way off. But this investigation should help make the record that such a system is needed so judges can make good, informed decisions about family matters.

Ombudsman comment 5/19/99: Court system deputy administrator Steve Bouch said that the court is seeking funding for a case management system that assigns unique identifiers to criminal defendants. Civil litigants and persons associated with a civil case, including CINA cases, will be identified in the case management system but not given unique identifiers because of privacy concerns. This list of names will assist judicial personnel in cross referencing cases with common participants. According to Mr. Bouch, judges have asked for a case management system of this type so they can identify all case participants.

I realize that the prospect of an integrated case management system raises possible ethical issues. May a judge use the system's cross referencing capacity to obtain information not presented through the adversary process? According to Marla Greenstein, executive director of the Judicial Conduct Commission, there is no clear answer to this question. However, it is clear that judges may sit on related cases. By virtue of their training, judges are deemed to be able to separate the legal issues belonging to different cases and apply them in the appropriate case. Ms. Greenstein noted that judges in single court locations do this as a matter of course.

Judge Elaine Andrews, presiding judge in the Third Judicial District echoed Ms. Greenstein's comments, adding that Alaska case law clearly prohibits the judge in a criminal proceeding from reviewing psychological reports prepared during a juvenile delinquency case involving the same defendant. Judge Andrews added that a judge may obtain additional information from another court file, as long as she tells the parties she is doing so and gives them a chance to object. She said an easy way to avoid ethical violations is to devise policies and procedures to guide judges in using the case management system.

I do not mean to suggest that the court should be obliged to cross reference each case file just because it has a new tool to do the job. In fact, it is questionable whether this would be appropriate in our adversary system of justice. However, the parties to a CINA action should be able to cross reference cases to enable them to present the court with relevant information about a particular family. That way judges will be better informed when they are called on to make decisions in a child's best interests. How the case management system's cross referencing function will be used by court and judicial

personnel in the CINA context is for the court to determine after discussion of any ethical issues.

Because the court system is actively seeking funding for a case management system that will use unique identifiers in some cases and otherwise permit cross referencing, I am revising recommendation seven as follows:

Final Recommendation (7): DFYS should collaborate with and support the court system in obtaining a state of the art case management system for Alaska.

Recommendation (8): DFYS should create a liaison position between it and CSED and encourage CSED to do the same.

Agency liaisons can handle routine communications about mutual cases and strategize solutions to unusual cases.

Agency response: DFYS has, for years, designated a liaison with statewide policy development responsibility who works with counterparts at CSED and Law on such issues as exchange of information, establishment of support orders, and, more recently, establishment of paternity. That program administrator is also the liaison with the Court Improvement Project, Vital Statistics and Law. In addition, DFYS has designated state office program staff as liaisons to coordinate with CSED to resolve issues concerning specific cases.

Ombudsman comment: In later conversation with the investigator, Ms. Tibbles and DFYS Acting Director Russ Webb said DFYS had decided to centralize the day-to-day liaison and troubleshooting function in its state office rather than designate staff in local offices to this task. In part, the aim of centralizing the function is to make troubleshooting more effective by allowing a single DFYS staff to develop expertise in CSED matters. However, if centralized troubleshooting is to work as hoped, division management should emphasize workers' need to contact central office to make contact with CSED. Staff in all offices should be clear that this is the new procedure for communicating with CSED. Regarding the policy-level liaison, the ombudsman appreciates the importance of establishing consistent policy objectives between the two agencies.

Recommendation (9): DFYS should adopt a policy on handling the request of a relative for custody of a child committed to the department's care. The policy should state how the department makes a determination that custody of the child by the relative will

result in physical or emotional damage. The policy should provide for notice to the relative of the right to appeal if custody is denied.

Agency response: DFYS agrees to review its policy on placement with relatives, although the division's policy leans heavily toward such placements. In reality, state and federal law are stronger determining factors where relative placements are concerned than is any division policy, with AS 47.14.100(e) requiring placement with a relative, if a relative requests placement, with evidence to the contrary incumbent on the department. The right to appeal is through judicial channels rather than through any departmental appeals process, but DFYS agrees to explore with the Department of Law the development of an appropriate procedure for notice while also reviewing the relative placement policies.

Mr. Webb and Ms. Tibbles later said the division is consulting with Law about what notice relatives should get under AS 47.14.100(e) and other provisions of HB 375.

Ombudsman comment: During the 1998 legislative session, the Legislature amended AS 47.14.100(e) to broaden the placement preference to "a relative by blood or marriage." I agree with the division that state law creates a clear preference for placement with relatives, whether by blood or marriage. But as a practical matter, relatives are unaware of their rights to placement or to appeal the decision to place with a nonrelative. This investigation showed that workers are not directed to consider the placement preference, to make placement decisions that meet the statute's clear and convincing evidentiary standard, or to make timely, appealable decisions. The lack of any policy or procedure that implements AS 47.14.100(e) makes it too easy for children to remain in foster care when relatives are eager to care for them. Relative care will be inappropriate for some children. When it is, it will be in the child's best interests for workers to create a clear record supporting the decision to place the child in foster care.

Recommendation (10): DFYS should pay Sarah Oak for the care she provided to Andrew Pine before the agency discovered that she was not his grandmother.

Agency response: DFYS agrees. Since Ms. Oak was unable to receive financial assistance through AFDC to care for this child because she was unable to show the necessary degree of relatedness because such relatedness did not, in fact, exist, DFYS will immediately arrange appropriate compensation.

Ombudsman comment: DFYS has since fully reimbursed Ms. Oak.

Recommendation (11): DFYS should design a new form for voluntary placement agreements with a signature line clearly designated for the regional administrator's signature.

Agency response: DFYS agrees to clarify any procedures that may be ambiguous regarding the limited use of voluntary placements, the level of authorization required for such placements, and will review and revise the voluntary placement agreement form to ensure compliance with those procedures.

Ombudsman comment: Please see the ombudsman comment to Recommendation 12 below.

Recommendation (12): DFYS should consult with its attorneys and advocates for persons with disabilities to adopt a policy on dealing with incapacitated parents and add the policy to the Child Protection Manual. Social workers should be trained in issues concerning incapacitated parents.

Agency response: DFYS agrees and will begin those discussions in late May with a goal of adopting a policy by June 30, 1998.

In November 1998, Mr. Webb and Ms. Tibbles said DFYS had decided not to create a policy specific to mentally incapacitated parents. However, they recognized the division's need to make changes in existing policy. The division will rewrite the voluntary placement agreement policy to make it clear that incapacitated parents should not be asked to sign the agreement. The policy will state that workers are not qualified to determine a parent's competency. Workers on cases with possibly incapacitated parents will be instructed to consult with Law and, whenever there is doubt about a parent's competency, take the case to court for a judge to decide. The revised policy will point out the risk to incapacitated parents' rights and the division's need to protect those rights.

Mr. Webb and Ms. Tibbles said worker training in this area is needed. Plans are for the new social worker training academy at the University of Alaska Anchorage to include training on working with mentally incapacitated parents.

FINDING OF RECORD AND CLOSURE

The agency's response to the ombudsman's recommendations

indicates overall support for the recommendations and some degree of commitment to a plan to implement them.

This investigation examined the actions of one agency, DFYS, in isolation from the other agencies involved in the CINA system such as the court, Law, OPA, Public Defender Agency and CSED. The accompanying recommendations encourage DFYS to suggest changes in operation to those agencies. Recommendations three and four, for example, go to the heart of the investigation against DFYS. They impact as well other agencies, such as CSED, Law and the court, by proposing that paternity determination in CINA cases be elevated in importance and that new approaches be tried to support the effective, early identification of fathers. Systematic entry of a paternity testing order in every CINA case, and court-based paternity testing are simple, cost-effective ways of doing just this.

I recognize, however, that DFYS is not in a position to make CSED, Law and the court change basic elements of their operations. Copies of this public report have been sent to other CINA agencies affected by my recommendations. I hope this encourages a full discussion of the recommendations leading to improved outcomes for children in state custody.

On the basis of DFYS's response to the ombudsman's findings and recommendations, this complaint will be closed as ***justified*** and ***rectified***.