Adoption Agencies in California: Lack of Adequate Control?

I. INTRODUCTION

There are two main areas of regulation of adoptions in California. One is the licensing of public and private adoption agencies which is performed by the State Department of Social Welfare. The other area involves the extent of control of adoptions by those licensed agencies and the degree to which that control is regulated or limited by the courts.

A brief summary of the processes involved in an agency and in an independent adoption may clarify the discussions that follow.[1] In an agency adoption the prospective adoptive couple is first interviewed by the agency. A study follows which covers medical and financial conditions, and marital history. Some agencies inquire into factors such as race, religion, and social position in an attempt to match parents and children.[2] There are no specific requirements; the adoption worker has nearly complete discretion. Common reasons for agency refusal to accept adoptive parents are ill health, advanced age, unstable marital history, neglect of natural children, and recent conviction of a serious crime.[3] If the couple is approved, they then meet the child, or children, before actual placement in their home. Various post-

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[1] See generally, CAL. CIV. CODE § § 221-231 (West 1954); see also CAL. WELF. & INST. CODE § § 16000, 16002, 16013, 16015 and 16130 (West 1966).

[2] S. KATZ, WHEN PARENTS FAIL 123 (1971).

[3] Waller, *Contested Adoptions in Los Angeles County* 36 L.A. BAR. BULL. 47, 48 (1960) (herinafter cited as Waller).

placement studies are made and after the child has been in the home for about six months the adoption petition is filed.[4] The prospective parents and the agency join in this petition.[5] The adoption hearings are private.[6] If the court decides that the adoption is in the best interests of the child the petition is granted.[7] The records are not public,[8] and the child's birth certificate is altered so that the legal change of parentage is complete.[9] There is a fee charged by the adoption agency when the petition is filed. The fee paid to a public adoption agency is $500.00.[10]

In agency adoptions the child is relinquished to the agency so that the prospective parents never have contact with the natural parents. Relinquishment involves the signing of a document by the natural parents and the acceptance of that document by the State Department of Social Welfare.[11]

Independent adoption begins with the mother's choice of new parents. Later a consent is signed by the parent in the presence of a representative of the State Department of Social Welfare.[12] The prospective parents whom the mother has chosen usually file an adoption petition immediately; there is no waiting period. The State Department of Social Welfare or a public adoption agency then conducts an investigation which must be completed within one hundred-eighty days of the filing of the petition.[13] A recommendation of denial will usually be based upon the same criteria that are applied in agency adoptions, but inadequacy of consent is also a factor in independent adoptions. The maker of the report and his supervisor are present at the hearing for purposes of testimony or cross-examination.[14] If the study is positive the decree of adoption will usually follow, but the court does have the power to reject the petition in all cases.

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[4]STATE DEPARTMENT OF SOCIAL WELFARE, ADOPTIONS IN CALIFORNIA 4.
[5]CAL. CIV. CODE § 224n (West Supp. 1971).
[6]CAL. CIV. CODE § 226m (West 1954).
[7]CAL. CIV. CODE § 224n (West Supp. 1971).
[8]CAL. CIV. CODE § 227 (West Supp. 1971).
[9]CAL. CIV. CODE § 230.5 (West Supp. 1971).
[10]CAL. CIV. CODE § 225p (West Supp. 1971).
[11]CAL. CIV. CODE § 224m (West 1954).
[12]CAL. CIV. CODE § 226.1 (West Supp. 1971).
[13]CAL. CIV. CODE § 226.4 (West Supp. 1971).
[14]Waller, *supra* note 3, at 50.

Most states allow both independent and agency adoptions but at least three states, Connecticutt, Delaware and Rhode Island, allow only agency adoptions.[15] There are advantages and disadvantages to both types. Independent adoptions are said to be less time consuming and less expensive than agency adoptions. The natural parent also has the psychological advantage of knowing where the child is to be placed. This can be a disadvantage because of the tendency of some natural parents to interfere in the child's new home. In independent adoptions the mother can also take back the child up to the time of formal consent and after that with court approval.[16]

The State has much greater control over families in agency adoptions. In independent adoptions control is limited to a post-placement investigation which can be conducted by a county adoption agency. In agency adoptions investigations both precede and follow the adoptive placement[17] which can be helpful the child. Other advantages attributed to agency adoptions include a greater pool of possible parents from which to select, the alleged impartiality of the selection process, and the avoidance of natural parent interference.[18]

Another advantage is the expertise of the adoption workers. The doctors and lawyers who often assist the mother in an independent adoption are not qualified to choose adoptive parents. It has been suggested that a pre-placement investigation by the county adoption agency would lessen the likelihood of the unsuitability of the adoptive parent in an independent adoption.[19] According to section 224 and the Civil Code anyone, except a licensed agency, who acts as a mother's agent in child placement is subject to criminal liability. The purpose of this legislation is to prevent irregular adoptions but it also leaves the mother who chooses independent adoption not only without the help of the

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[15]H. CLARK, LAW OF DOMESTIC RELATIONS 640 (1968) (hereinafter cited as CLARK).

[16]CAL. CIV. CODE § 226a (West Supp. 1971).

[17]STATE DEPARTMENT OF SOCIAL WELFARE, ADOPTIONS IN CALIFORNIA 4.

[18]Beral & Beral, *The Case for Agency Adoptions*, 41 L.A. BAR BULL. 452, 455 (1966).

[19]Comment, *Suggested Changes in California Adoption Procedures*, 3 SANTA CLARA LAWYER 74 (1962).

adoption worker, but without the aid of any professional person [20]

The most recent developments involving adoption agency functions have been in the "hard-to-place child-- programs. A pilot program was initiated in 1968[21] which makes it possible for children of various ethnic backgrounds and older children to be adopted by low-income families through state aid and the elimination of agency fees. The program also includes an authorization for intercounty adoptions on a regular basis because of the need for a great pool of prospective parents. This means a county may attempt to place their children with prospective adoptive parents throughout the state. The pilot program was raised to permanent status by the 1971 legislature.[22] Another development which has led to the geographic expansion of adoption planning is the decline in the number of adoptable children. The result has been a program promoting interstate and even intercountry adoptions.[23] The central planning which is necessitated demands greater state agency control. These programs will not be treated here. Rather this article will focus on governmental regulation through licensing of adoption agencies and then on the problem of adoption agency versus judicial control of adoptions.

II. THE LICENSING OF ADOPTION AGENCIES

A. HISTORY

Statutory adoption law had been known in California since 1870, but it began merely as a contractual arrangement between

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[20]OPS. CAL. ATTY. GEN. 35 (1953). The following is an example of an irregular adoption:

> An expectant mother tells her obstetrician that she does not want to keep her baby. The obstetrician informs an attorney who contancts the expectant mother. The attorney tells her he has a client who wants to adopt the child and who will pay all the expenses of confinement and adoption. The expectant mother agrees to the plan. She does not select the people to adopt the child nor does she see them or know their identity. Upon the birth of the child the attorney, through an intermediary, obtains physical custody of the child and has the child delivered to his clients. *Id.* at 37.

[21]Ch. 1322, § 1 [1968] Cal. Stats. 2498.

[22]Ch. 123, § § 1-10 [1971] Cal. Stats. 154; Ch. 1724 § § 1-11 [1971] Cal. Stats. 4020.

[23]STATE DEPARTMENT OF SOCIAL WELFARE, INTERCOUNTRY ADOPTION PROGRAM 2.

the natural and adoptive parents or other concerned parties.[24] In 1905, adoption became subject to the supervision of the Superior Court.[25] The need for licensing was obvious because the trafficking in children which had led to the original adoption law was still going on. So in 1911 the licensing of adoption agencies in California began.[26] The licensing was carried out by the State Board of Charities and Corrections, the predecessor of the present Department of Social Welfare. The full licensing functions of the department began in 1947.[27] For the most part those statutes authorizing licensing still remain in force.

B. DELEGATION OF LEGISLATIVE AUTHORITY

The present licensing provisions rlevant to adoptions are contained in section 224q of the Civil Code[28] and section 16000 of the Welfare and Institutions Code. The relevant portions of section 16000 are as follows:

> No person, association, or corporation shall, without first having obtained a written license or permit therefore from the department or from an inspection service approved or accredited by the department: (a) Maintain or conduct any institution, boarding home, day nursery, or other place for the reception or care of children under 16 years of age, or place any such child in any home or other place either for temporary or permanent care or for adoption.

In regards to adoptions, the purpose of section 16000 is to forbid persons who are not licensed by the state from engaging in the business of adoptions. There is a question whether the granting of licensing and regulatory power without any express guidance of administrative discretion is an invalid delegation of legislative power.

A 1949 law review article[29] treated the relation of the older version of section 16000 to the licensing of schools. The author con-

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[24]Ch. CCXXXVII, § § 1-4 .1870] Cal. Stats. 338.
[25]Ch. CDXV, § § 1-2 [1905] Cal. Stats. 55.
[26]Ch. 569, § § 1-6 .1911] Cal. Stats. 338.
[27]Ch. 1363, § 1 [1947] Cal. Stats. 2913.
[28]CAL. CIV. CODE § 224q (West 1954).
29Note, *State, Church, and Child, Statutory Provisions for School Permits*, 1 STAN. L. REV. 316 (1949) (hereinafter cited as *State, Church and Child*).

cluded that the statute contained an invalid delegation of legislative authority and denied the equal protection of law to certain schools.

The current section 16000 was amended to exclude the phrases that were offensive to the equal protection clause, but the problem of over-delegation of legislative power remains.

The major area of concern in the delegation of legislative power is the possibility that administrators can act arbitrarily if they have complete discretion in the formulation of regulations and in the granting of licenses. There must be an adequate standard according to which the administrative agency can make regulations which will limit the discretion of its personnel. If the legislature completely delegates its law-making function, the administrative agency is bound only by its own rules which it can alter at will.

There are two methods by which courts have sought to avoid this difficulty. The first is a judicial presumption that administrative officials will not act unreasonably or unfairly.[30] The second method is to imply a standard according to which the agency must adhere. In *Ex Parte McManus*[31] the courts went so far as to imply a standard of proficiency for the licensing of architects. There is a judicial feeling that it may be too impractical for the legislature to be specific about standards for licensure considering the varied areas where licensing is employed.[32]

If the present statutes are challenged the courts could rely on the presumption of administrative fairness, or as in the case of architects' licenses the courts could imply a standard. In this case the implied standard would be that the licensing of adoption agencies must be carried out in a manner that will result in the futherance of the welfare of children. There is only vague language in the statutes which follow section 16000 that leads to this implied standard. Section 16003 does include a minimal standard according to which the Department of Social Welfare must make regulations governing licensure:

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[30]Ex Parte McManus, 151 Cal. 331, 336, 90 P. 702, 704 (1907).

[31]*Id.*

[31]Ex Parte Gerino, 143 Cal. 412, 77 P. 166 (1904).

> The department shall make *such reasonably necessary* rules and regulations as it deems best for the government of any institution or the performance of any service specified in Section 16000 of the code. The department may, by any duly authorized representative inspect and examine any such institution, home or place, or the performance of any such service.[33] (Emphasis added)

Similar standars have been upheld as not being overly vague.[34] The California legislature has not delegated its responsibility of defining criminal conduct in the area of adoptions. The courts have clearly held that this task may not be delegated.[35] Section 16013 defines the crime and the penalty:

> Any person, association, or corporation that maintains, conducts, or, as manager or officer or in any other administrative capacity assists in maintaining or conducting any institution, boarding home, or other place or the performance of any service specified in Section 16000 of this code without first having secured a license or permit therefor, in writing, or refuses to permit or interferes with the inspection authorized in Section 16003 of this code, is guilty of a misdemeanor.[36]

Section 224q of the Civil Code provides the same penalty:

> Any person other than a parent or any organization, association, or corporation that, without holding a valid and unrevoked license or permit to place children for adoption issued by the State Department of Social Welfare, places any child for adoption is guilty of a misdemeanor.[37]

Thus, as regards the imposition of criminal liabilities for failure to obtain a license, the legislature has not delegated its law making function. Whether it has delegated this function invalidly as far as enacting standards for the licensing of adoption agencies is concerned has not been decided. By analogy to other licensed areas the legislature has acted properly, but I would

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[33]CAL. WELF. & INST. CODE § 16003 (West 1966).
[34]*State Church and Child, supra* note 29, at 318.
[35]In Re McLain, 190 Cal. 376, 212 P. 620 (1923).
[36]CAL. WELF. & INST. CODE § 16013 (West 1966).
[37]CAL. CIV. CODE § 224q (West 1954).

argue that in the area of protection of homeless children clearer legislative standards are needed.

The rules and regulations of the Department of Social Welfare regarding the licensing of adoption agencies as authorized by Welfare and Institutions Code section 16003 were formerly contained in the *Manual of Policy and Procedure, Adoptions.* The major sections were revised and are now to be found in Title 22 of the California Administrative Code. However, the various forms and guidance standards used in day to day adoption work were not included in Title 22. These should be included so that they are accessible to the public.

C. THE APPLICATION FOR A LICENSE.

The standards for licensing are not set out in the statutes but are published in the Administrative Code according to Welfare Department determination. Section 36001 provides the basic requirements for a private agency application:

> ... the agency must be able to provide or there must be resources in the community to provde for financial assistance including medical and hospital expenses for mothers who need it, for support of children accepted for study, for medical and psychiatric service for children under study or awaiting adoption placement.[38]

The section also provides that the present adoption service in the community must be inadequate[39] and the agency must be non-profit.[40]

The application of a county agency must contain a designation by the board of supervisors of the county that the agency is to be the single public adoption agency in the county. There may be several private adoption agencies in the county.

The applications of both public and private agencies must include a plan of operation describing the administrative organization, a description of the need for service in the community and the geographic area to be served. A private agency must include a copy of its bylaws and constitution, a list of membership of the

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[38] CAL. ADM. CODE tit 22, § 36001 (1969).

[39] *Id.*

[40] *Id.*

board and criteria for board selection, intended assistance to the natural mother and a budget. A public agency must describe its maternity care plan, a plan for utilizing public services and a budget.[41] The remainder of the regulations set out exactly what the agency's consitution must state,[42] how the board must operate, what the standards for adoption workers are, what adequate finances consist of,[43] the requirements for an adoptive study[44] and the duties of agency officers.[45] Thus, in the administrative regulations there are specific standards upon which a license will be granted or denied.

D. THE GRANTING OF A LICENSE

The statutes do not state who shall make the determination as to the granting of a license, and at the present time the regulations do not contain this information. Formerly the regulations stated, "The appropriate area officer will study and issue the license,"[46] but this section was deleted from Title 22. The actual licensing involves a series of conferences held with members of the governing boards of the agency and department officials. The final decision is made at a meeting of high level department personnel.[47] There has been no licensing since the summer of 1970 due to the decline in the number of adoptable children. The department has replaced the procedure temporarily with an expansion of the geographical boundaries of the presently existing county agencies so that neglected areas could be served.[48]

Another substitute for licensing has been the authorization of the Department of Social Welfare to function as an adoption agency in those counties which do not have a public adoption agency. So far this has been initiated in Sonoma County.

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[41] CAL. ADM. CODE tit 22, § 36005 (1969).
[42] CAL. ADM. CODE tit 22, § 36043 (1969).
[43] CAL. ADM. CODE tit 22, § § 36057, 36059 (1969).
[44] CAL. ADM. CODE tit 22, § § 36141-36281 (1969).
[45] CAL. ADM. CODE tit 22, § § 36071-36075 (1969).
[46] STATE DEPARTMENT OF SOCIAL WELFARE, MANUAL OF POLICY AND PROCEDURE, ADOPTIONS, § A.D. 114.3 (1956).
[47] Interview with Social Service Consultant, Bureau of Adoptions, Department of Social Welfare, November 23, 1971 (hereinafter cited as S.D.S.W. Interview).
[48] *Id.*

At the present time there are nine private adoption agencies in California. One of these, the Children's Home Society of California has twenty-two district offices. Two others have three district offices bringing the total number of private agency offices to thirty-seven. There are twenty-seven county or public agencies in California. These are divisions of the County Welfare Departments. The largest, County of Los Angeles, Department of Adoptions has six district offices. There is one state operated agency brining the total number of functioning public agencies to thirty-four.[49] Thus public and private agencies are available in relatively equal numbers.

E. THE DENIAL, FAILURE TO RENEW, OR REVOCATION OF A LICENSE

In the area of denial of a license due process may require that whenever the application for a license is denied, the applicant is entitled to have a formal hearing before the ultimate authority of the agency.[50] Two major purposes for such a hearing are set out by Frank E. Cooper: (1) The hearing provides a check on an arbitrary refusal by a clerical employee which can be corrected by the agency instead of a court, and (2) a record for judicial review is maintained. The hearing process thus avoids the difficulty of an original mandamus proceeding.[51]

In California there is no right to a hearing when the issue is the granting of a license. Cooper in his treatise of licensing states:

> A trend is emerging that requires notice and hearing, except in cases where the application is purely ministerial (as in the case of automobile license) or where the grant or denial of the license rests wholly upon the discretion of the licensing agency

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[49]STATE DEPARTMENT OF SOCIAL WELFARE, ADOPTIONS IN CALIFORNIA 13. Most adoptions in California are agency adoptions and public agencies handle the majority of these.

This table is published in STATE OF CALIFORNIA HUMAN RELATIONS AGENCY, DEPARTMENT OF SOCIAL WELFARE, PUBLIC WELFARE IN CALIFORNIA 1969-70, AMMUAL STATISTICAL REPORT AR-12 SEE page 541, *infra.*

[50]Goldsmith v. United States Bd. of Tax Appeals, 270 U.S. 117 (1926). In *Goldsmith* an individual was denied the right of practicing before the Tax Board on the basis of unfitness without a hearing.

[51]F. COOPER, II STATE ADMINISTRATIVE LAW 485 (1965).

> (as may be the case in the instance of applications for permission to take minerals from public lands).[52]

The granting of a license to an adoption agency should be neither a totally ministerial function or a purely discretionary one, accordingly some sort of hearing process is appropriate. When dealing with a county agency there is a problem in applying all the standards and policies which concern licensing. The process appears to be a delegation of power by one governmental agency, the State Welfare Department, to another governmental agency, the County Welfare Department, rather than a licensing procedure. The term "licensing" should not be utilized when referring procedure. The term "licensing" should not be utilized when referring to this interagency delegation of function since typical licensing procedures are not followed nor are the controls of licensing exercised.

There is no express right of appeal if the renewal of a license is denied. Welfare and Institutions Code section 16003 provides:

> Application for renewal of a permit or license shall be filed 10 days prior to its expiration each year. If the application is not so filed, the license or permit is automatically canceled. *Where a hearing is held* under this section, the proceedings shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted therein.[53] (Emphasis added)

Nowhere do the statutes state that there is a right to a hearing, but the procedure for such a hearing, if held, is statutorily determined.

In the area of revocation of a license due process considerations are satisfied in California. Welfare and Institutions Code section 16009 provides as follows:

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[52]*Id.*

[53]CAL. WELF. & INST. CODE § 16008 (West 1966).

> Failure to comply with any rule or regulation promulgated under Section 16003 is cause for revocation or suspension of a permit or license by the department. Any person whose permit or license is revoked or suspended *shall have the right to appeal* to the department. The proceedings shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Governmental Code, and the department shall have all the powers granted therein.[54] (Emphasis added)

Revocation of the license is possible upon any failure to comply with administrative regulations.[55] This seems to be justified by section 16009 which calls for revocation for failure to comply with section 16003 which allows the department to make "such reasonably necessary rules and regulations as it deems best."[56]

There is no history of an actual revocation hearing, but the threat of revocation is occasionally used to bring an agency into conformity with department regulations, such as when a private agency exceeded its geographical boundaries and began operating in nineteen counties.[57]

F. POLICING AND CONTROL BY LICENSING.

Glanville Williams states:

> Some of the foregoing legislation [requiring licensure] was the result of spectacular or long-standing abuses in the activity brought under control. In many cases it enables a judicial or administrative authority to consider the general suitability of an applicant for a license, and where the license has to be renewed annually the authority is in a position to exercise pressure in

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[54]CAL. WELF. & INST. CODE § 16009 (West 1966). In other areas cf. Endler v. Schutzbank, 68 Cal. 2d 162, 436 P.2d 297, 65 Cal. Rptr. 297 (1968) for an example of the revocation of a license to participate in the finance business based on criminal accusations where no hearing was held, and Goldberg v. Kelly, 397 U.S. 254 (1969) where the court held termination of welfare rights must be preceded by a hearing.

[55]CAL. ADM. CODE tit 22, § 36015 (1969).

[56]CAL. WELF. & INST. CODE § 16003 (West 1966).

[57]SDSW Interview, *supra* note 47.

> any direction it wishes. It can therefore govern behavior more subtly than by laying down a formal code of rules.[58]

The State Department of Social Welfare polices the licensed agencies and exercises control through several informal methods. Policing functions are carried out on a regular basis by requiring the attendance of a Department employee at a board meeting of the agency once a year. The Department representative usually consults the directors about their programs and may also inspect the agency records.[59] Irregular investigations follow complaints to the Department. Formerly, the Welfare Department utilized special investigators, but due to budget cuts these positions have been eliminated.[60]

The department communicates the procedures the agencies must follow through its regulations and the distribution of legal opinions formulated by its staff. Since various records must be submitted to the Welfare Department throughout the adoption procedure there is some feedback from the agencies.

Further control of county agencies is the result of the Welfare Department's control over their budgets and as previously stated the threat of revocation or denial of renewal of a license is used to bring pressure to cause agency conformity with Department standards.

G. CONCLUSION

The general purpose of the statutes and regulations regarding licensing of adoption agencies is to insure that only responsible organizations directly accountable to a government agency will engage in child placing. This purpose seems to have been fullfilled although the procedural difficulties involved in California's licensing scheme remain. But the greater question exists whether licensing as a method of control in adoptions is enough

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[58]Williams, *Control by Licensing*, 1967 CURRENT LOGAL PROBLEMS 101.

[59]Interview with Social Worker for Children's Home Society, San Francisco, March 16, 1972.

[60]Interview with Social Service Consultant, Bureau of Adoptions, Department of Social Welfare, March 15, 1972. The Bureau of Adoptions has a very small staff at the present time consisting of five social service consultants and a chief of staff.

protection for the adoptive child. Licensing prevents only the grossest of abuses. The interests of the child and the interests of those who care about the child's welfare are often ignored in the attempt to preseve this system and the authority of the licensed adoption agencies.

III LICENSED AGENCY CONTROL OF ADOPTIONS AND THE JUDICIAL LIMITATIONS THEREON.

A. INTRODUCTION

Control of adoptions in California began with the legalization of contractural arrangements between the natural parent and concerned parties. This was followed by judicial control through the court decree of adoption. The latest trend in the control of adoptions has led to increasing administrative controls through the licensing functions of the state and the expanded functions of adoption agencies. Nevertheless the court decree has remained the final step in the adoption process since 1905. One school of thought holds that despite the fact that the courts must finally enter the adoption decree the administrative agencies have been delegated too much power. A proponent of this view, Sanford Katz, states:

> In a certain sense, the court is surrendering its jurisdiction by its reliance on the welfare agencies, and this delegation of decision making power ... In general courts unfortunately have had neither the time nore the facilities to supervise agency placement, and it is only when an individual has been rejected as a qualified custodian that courts have an opportunity to review agency practice.[61]

Katz feels that at times the courts merly rubber stamp the decisions of the adoption agencies. This of course nullifies any judicial control over adoption agencies authorized by the legislature. Katz has suggested that an independent court-supervised investigation proceed concurrently with the adoption agency

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[61]Katz, *Foster Parents versus Agenices: A Case Study in the Jucicial Application of the 'Best Interests of the Child' Doctrine*, 65 MICH. L. REV. 145 (1966). See also Katz, *Community Decision Makers and the Promotion of Values in Adoptions*, 4 J. FAM. L. 7 (1964).

investigation. The major advantage accorded to this solution would be the alleviation of the conflict of interest problem that may result when the agency charged with the responsibility of promoting the best interests of the child is also committeed to its own choice of adoptive parents.[62] It appears that the court may exercise its independent judgment when dealing with direct adoptions, but with agency adoptions it merely approves the agency recommendations. In the usual case there is no information available to the court on which to base an independent decision. The California legislature has chosen a combination of administrative and judicial functions in the control of adoptions, but in agency adoptions the judicial aspect is almost nonexistant.

The first administrative controls appeared in the 1927 amendments to the Civil Code. The State Department of Social Welfare was given the function of investigation following the filing of the adoption petition.[63] The statutes containing the general licensing functions of the department were enacted in 1947.[64] The amendments included the authorization of county agencies to accept relinquishments of children and to place them for adoption and also provided for the immediate judicial review of a recommendation of denial of the adoption petition by the department.[65] At this time it became impossible to speak of general adoption procedure because the controls on agency and independent adoptions developed differently.

B. AGENCY ADOPTIONS.

The responsibility of the State Department of Social Welfare over agency adoptions was increased in 1949 to include the formulation of a plan for the child's future following denial of a private petition for adoption.[66] But in 1951 the juridsdiction of the court was also clarified when the legislature stated that the court's jurisdiction was to continue after the denial of the adop-

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[62]Bodenheimer, *The Multiplicity of Child Custody Proceedings—Problems of California Law*, 23 STAN. L. REV. 703, 717 (hereinafter cited as Bodenheimer).

[63]Ch. 691 [1927] Cal. Stats. 1196.

[64]Ch. 1363 [1947] Cal. Stats. 2913.

[65]Ch. 531 [1947] Cal. Stats. 1523; see CAL. CIV. CODE § 224m (West Supp. 1971).

[66]Ch. 731 [1949] Cal. Stats. 1349; see CAL. CIV. CODE § 226b (West Supp. 1971).

tion petition in order to allow the court to review custodial measures pertaining to the child.[67] In 1953 the legislature decided to increase adoption agency services. The agency could terminate placement at any time prior to final adoption and if denial of the adoption petition occurred the child was not to be returned to this parents, rather the Department of Social Welfare of the licensed agency was to retain custody of the child.[68]

In 1953 the courts began to treat the issue of judicial review of adoption agency decisions. *In Re Adoption of Kitchens* held that the courts could review a State Department of Social Welfare refusal to consent to an adoption, but the decision to overrule the department determination could only be based on arbitrary or capricious action.[69] This decision was overruled in 1954 by *In Re Adoption of MacDonald.*[70] In *MacDonald* a child was relinquished to a private adoption agency. The child was placed with prospective parents who signed an agreement with an adoption agency which included a requirement that any request for the adoption of the child placed with them had to be approved by the agency. The agreement stated that the agency would approve an adoption if "fully satisfied with the care and training of the child and the character of the home." The agency reserved "the right to remove the child previous to legal adoption if at any time the circumstances made it necessary to do so." Eight months after the placement the prospective father committed suicide and the agency sought to remove the child. The adoptive mother refused and petitioned for adoption. The licensed county agency recommended the petition be denied and the child returned to the private agency. The trial court concluded that the consent of the agency was not necessary and found on substantive evidence that it was in the best interests of the child that the adoption petition be granted. The main issue on appeal was whether the court could grant a petition for adoption without the consent of the agency. The court stated:

> Any minor child may be adopted by any adult person, in the

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[67] Ch. 460 [1951] Cal. Stats. 1349; see CAL. CIV. CODE § 226b (West Supp. 1971).
[68] Ch. 1122 [1953] Cal. Stats. 2617; see CAL. CIV. CODE § 224n (West Supp. 1971).
[69] In Re Adoption of Kitchens, 116 Cal. App. 2d 254, 253 P.2d 690 (1953).
[70] In Re Adoption of MacDonald, 43 Cal. 2d 447, 274 P.2d 860 (1954) (hereinafter cited as MacDonald). See also Adoption of D.S., 107 Cal. App. 2d 211, 236 P.2d 821 (1952).

> cases and subject to the rules prescribed in this chapter [Cal. Civ. Code § 221.] The controlling rules are the rules prescribed in the chapter not the rules of any department or agency, public or private. Nowhere in this chapter can any provision be found that makes the consent of anyone other than the natural parents indispensable to the granting of an adoption.[71]

The court also analyzed California Civil Code section 226 and found that although the seventh paragraph spoke of review there was no provision for a hearing at the agency level so that the court must necessarily exercise independent judgment in the granting of the petition. The court also stated:

> There is nothing in the statutes cited [Cal. Civ. Code §§ 224p, 224g, Cal. Wel. & Inst. Code § 1629] to indicate that the home finding functions given to the licensed adoption agencies gives them and not the court the final decision as to whether or not an adoption is for the best interests of the child, but in Secion 226 of the Civil Code, the Legislature in clear and express language vested that power and responsibility in the Superior Court.[72]

The court also found that the contractual agreement between the agency and the adoptive parents was not binding. The court held that neither the "appellant, the department, the county agency, nor any private agency had the right to deprive petitioner of the rights granted her by section 226 of the Civil Code to petition the court and have the court determine whether the petition should or should not be granted."[73]

Following *Adoption of MacDonald* these sentences were added to section 224n of the Civil Code:

> No petition may be filed to adopt a child relinquished to a licensed adoption agency except by the prospective adoptive parents with whom the child has been placed for adoption by the adoption agency. If an agency refuses to consent to the adoption of a child by the person or persons with whom the

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[71] MacDonald at 452, 274 P.2d at 864.
[72] *Id.* at 461, 274 P.2d at 870.
[73] *Id.* at 463, 274 P.2d at 871.

> agency placed the child for adoption, the superior court may nevertheless decree the adoption if it finds that the refusal to consent is not in the best interests of the child.[74]

This did not alter the independent judgment test but it has been held to limit the courts jurisdiction when a child has been relinquished to an agency, since the court may not hear those petitions filed by others than the prospective parents chosen by the agency. Also, any placement for adoption or for temporary care may be terminated at the discretion of the agency at any time prior to an adoption decree.[75] Other states do not give agencies such broad powers. They do not have similar limitations on court jurisdiction and hold that agency consent may be dispensed with if refusal to consent to an adoption is unreasonable.[76]

Section 224n might exclude any petitioner with whom the child was placed on a temporary basis such as foster parents, since a foster parent, by at least Welfare Department definition, is a temporary custodian and not a prospective adoptive parent.[77] This problem was considered by the California Court of Appeals in *In Re Adoption of Runyon.*[78] The child was relinquished to a county agency and placed with foster parents. Three weeks later it was learned that the child had a heart defect but

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[74]CAL. CIV. CODE § 224n (West Supp. 1971). The first paragraph of § 224n was enacted in Ch. 1122, § 1 [1953] Cal. Stats. 2617. One writer feels that the two sentences added by Ch. 949, § 1 [1955] Cal. Stats. 1535 were the direct legislative reaction to *Adoption of MacDonald.* TenBroek, *Adoption Programs in California,* 6 HAST. L. J. 261, 332 (1955). In 1957 this sentence was added to the second paragraph:

> After the petition for adoption has been filed, the agency may remove the child from the prospective adoptive parents only with the approval of the court, upon motion by the agency after notice to the prospective adoptive parents; supported by an affidavit or affidavits stating the grounds on which removal is sought. Ch. 1237[1957] Cal. Stats. 2345.

[75]CAL. CIV. CODE 224n (West Supp. 1971).

[76]CLARK, *supra* note 15, at 644. See In Re Reinius Adoption, 55 Wash. 117, 346 P.2d 672 (1959) and Crump v. Montgomery, 220 Md. 515, 154 A.2d 802 (1959) where less weight is given to the agency decision.

[77]CAL. ADM. CODE tit 22, § 40015 (1969).

[78]In Re Adoption of Runyon, 268 Cal. App. 2d 918, 74 Cal. Rptr. 514 (1969) (hereinafter cited as Runyon).

the foster parents elected to continue caring for the child. Eight years later the child was removed from the foster home and placed with prospective adoptive parents. The court refused to hear a petition for adoption filed by the foster parents. The court based the holding on a lack of jurisdiction under section 224n. The court felt that such a holding was also in the interests of the expeditious adoption of the child.

> To allow persons not approved by the agency as prospective adoptive parents to file petitions for adoption would frustrate the purposes of the adopting agencies and subject the child to an indefinite status, keeping him from a permanent home pending litigation that could result.[79]

The court may have been justified in its jurisdictional holding under the letter of the law. But the policy of avoiding frustration of agency purposes does not seem to outweight the disruption of the homelife of the child. In *Runyon* the homelife had continued for eight years.

The court in *Runyon* also dismissed the contitutional arguments raised by the foster parents. They claimed that they were denied equal protection of the law and due process because as foster parents they are denied the right to adopt an agency child. The court felt that the classification was reasonable and in view of the presumption in favor of the validity of the statute the consitutional argument must fail.[80]

The foster parent problem is a national one. Some writers feel that foster parents should not be allowed to adopt. The reasons given are the protection of the foster parent system which provides temporary homelike conditions for adoptable children and the support of agency authority. According to this view the court must necessarily side with the agency in the name of long term goals even if it is not in the best interests of the child.[81]

On the other hand some writers feel that the misuse of matching and the bias against foster parents has for too long overridden the concern for a child's stable homelife, and the best interests of the child should prevail over the concern for the legal

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[79] *Id.* at 921, 74 Cal. Rptr. at 517.

[80] *Id.* See Bodenheimer, *supra* note 62, at 723-726.

[81] CLARK, *supra* note 15, at 597.

[81] Foster and Freed, *Children and the Law 2* FAM. LAW Q. 40 (1968).

status of the interested parties and the authority of the agency.[82]

Various solutions to these problems have been proposed. One is to remove the child from the foster home after a short time so that situations such as that found in *Runyon* do not arise.[83] Of course frequent changes of this nature cannot be beneficial to a child, especially the hard-to-place child who may remain in foster homes for many years.

Another solution is guardianship to give the foster parent a more secure legal status. The guardian is not required to consent to adoption so ideally this procedure would be for the child who is not adoptable at all or who is without present adoptive prospects. The foster parent would then become a legal substitute parent subject to the supervision of the court.[84]

The courts have not yet resolved the question of their jurisdiction in a case where prospective adoptive parents rather than foster parents have filed a petition after the agency has disapproved them. In *County of Los Angeles, Department of Adoptions v. Superior Court*,[85] the wife, after filing a suit for divorce, amended the adoption petition to adopt as a single parent. She refused a demand to return the child to the agency. The court held that it had jurisdiction to hear the petition. The case was distinguished from *Runyon* because the petitioner was chosen by the agency for purposes of adoption and the placement had not terminated when the petition was filed. According to the court this fulfilled the requirements of section 224n since the court chose to construe the statute liberally.

> The rule is that the adoption statutes are to be liberally construed with a view to effect their objects and to promote justice. The main purpose of the statutes is the promotion of the welfare of the child by the legal recognition and regulation of the child by the legal recognition and regulation of the consummation of the closest conceivable relationship of parent and child.[86]

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[83]CLARK, *supra* note 15, at 596.

[84]Taylor, *Guardianship or 'Permanent Placement' of Children* 54 CAL. L. REV. 741 (1966).

[85]County of Los Angeles, Department of Adoptions v. Superior Court of Los Angeles County, 2 Cal. App. 3d 1059, 82 Cal. Rptr. 882 (1969).

[86]*Id.* at 1064, 82 Cal. Rptr. at 886.

But the question remains whether there is any jurisdiction for court review where the petition is filed after the adoption agency has terminated its adoptive placement, whether or not the child has been removed from the home of the prospective adoptive parents.

The case of *Rodriguez v. Superior Court of Stanislaus County*[87] answers part of the question. The child had been placed with prospective adoptive parents. The agency informed the parents that the placement was being terminated. The next day while the child was still in the home the parents petitioned for adoption. The court held that it had no jurisdiction under section 224n to proceed in the adoption petition but permitted the petitioner to amend his petition to a mandamus petition to review the agency decision to terminate the placement. No reason for the termination had been given. In the absence of any other right of appeal the court felt that the order to terminate an adoptive parent-child placement was a reviewable administrative order within the scope of sections 1084 and 1085 of the California Code of Civil Procedure.[88] The court stated:

> The manifest importance of an adoption to the welfare of the child as well as the importance to the prospective parents and to the state, impel us to conclude that the administrative action of the agency in pre-adoption placement should be subject to judicial review.[89]

Rodriguez seems to say that once the agency has decided on termination there is no jurisdiction to hear the petition, but the statute speaks in terms of placement and if the child is still in the home arguably the placement has not actually terminated. Another reading of the statute leads to the conclusion that once the child has been placed with adoption in mind the court has jurisdiction to hear the petition of those adoptive parents,

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[87]Rodriguez v. Superior Court of Stanislaus County, 18 Cal. App. 3d 510, 95 Cal. Rptr. 923 (1971) (herinafter cited as Rodriguez).

[88]CAL. CODE OF CIV. PRO. §§ 1084 and 1085 (West 1955).

[89]Rodriguez at 511, 95 Cal. Rptr. at 924.

despite termination and removal from the home, but the courts have not accepted this view.[90]

At least *Rodriguez* holds that a termination of placement order is reviewable. The argument can be made by analogy that the decision to disapprove a foster parent as an adoptive parent should be reviewable.[91] In cases such as *Runyon* this would certainly be in the best interests of the child.

The legislature has continued to increase agency powers. In 1961 petitioners were required to reveal information relevant to the adoption to the agency.[92] In 1963 agencies were authorized to begin court action to permanently free a child from parental custody.[93]

A 1962 case, *Adoption of Graham*,[94] held that under section 224m of the Civil Code[95] the relinquishment of a child to an adoption agency for adoption is final and binding after a certified copy is filed with the State Department of Social Welfare. It may be rescinded only by the mutual consent of the adoption agency and the parents relinquishing the child. In *Adoption of Graham* the couple with whom the children were placed for foster care filed a petition for adoption to which the agency objected. The validity of the relinquishment became an issue since the natural father claimed his consent was necessary because of a complex legal situation which subsequent to the relinquishment made him the legitimate father. The court held that the foster parents could not petition because the children had been validly relinquished and they were not the prospective parents chosen by the agency. A relinquishment, valid when given, was held to be a vested right even though the child had not been placed in an adoptive home and even though later events altered the sta-

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[90]Runyon, 268 Cal. App. 2d 918, 74 Cal. Rptr. 514 (1969); Rodriguez, 18 Cal. App. 3d 510, 95 Cal. Rptr. 923 (1971); Mentz v. Catholic Welfare Bureau of Sacramento, #4165, Dept. 1, Superior Court of County of Sacramento, March, 1972, held that in this situation there was no right to petition for adoption under § 224n, but there was a right to a review of the termination of the adoptive placement.

[91]There is support for this view in that CAL. CIV. CODE § 224n discusses termination of both placement for temporary care and adoptive placement.

[91]CAL. CIV. CODE § 226 amended by Ch. 1074, § 1 [1961] Cal. Stats. 2804.

[93]Ch. 1893, § 1 [1963] Cal. Stats. 3883. See also CAL. CIV. CODE § 232.9 (West Supp. 1971).

[94]In Re Adoption of Graham, 58 Cal. 2d 899, 377 P.2d 275, 27 Cal. Rptr. 163 (1963).

[95]CAL. CIV. CODE § 224m (West 1954).

tus of the natural parent whose consent was not necessary at the time of relinquishment. Thus the courts recognized a powerful position of the agencies once they have accepted a relinquishment.

Another problem is whether the appointment of a guardian is permissible during the course of an adoption proceeding. Since agencies bear the responsibility for adoptive children they argued that this was an encoachment upon their power. The courts in *Guardianship of Guidry*[96] and *Guardianship of Henwood*[97] apparently shared this view to a limited extent.

In *Henwood*, the children's natural mother had died and the father had relinquished them for adoption. The natural grandmother sought to be appointed guardian. The court held:

> The Legislature has adopted a comprehensive plan for the adoption of relinquished children and has provided that a valid relinquishment is binding on the natural parents and that no person other than prospective adoptive parents selected by the agency may petition for adoption. This procedure would obviously be frustrated if at any time the court could determine in the exercise of its independent judgment and discretion that a guardian should be appointed and custody removed from the agency or prospective adoptive parents selected by it. The prohibition against the filing of a petition for adoption by a stranger could in effect be circumvented and the agency's primary responsibility to select a custodian and a prospective adoptive parent nullified. In the light of these considerations we conclude that the statutes governing the adoption of relinquished children express by clear implication a legislative determination that the appointment of a guardian is not necessary or convenient while the adoption procedure is running its proper course. Accordingly in the absence of a showing that the agency is unfit to have the temporary custody of the child or that it is improbable that the child will be adopted, the appointment of a guardian is neither necessary nor convenient.[98]

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[96]Guardianship of Guidry, 196 Cal. App. 2d 426, 16 Cal. Rptr. 579 (1961).

[97]Guardianship of Henwood, 49 Cal. 2d 639, 320 P.2d 1 (1958) (hereinafter cited as Henwood).

[98]*Id* at 645, 320 P.2d at 6. See also Armstrong, *Family Law: Order Out of Chaos*, 53 CAL. L. REV. 121, 126 (1965) for a more complete account of the facts of the case.

The existence of either unfitness on the part of the adoption agency or the improbability of adoption remains the criterion for appointment of a guardian subsequent to relinquishment.

In the normal course of an adoption guardianship is not allowed to interfere with the plan of adoption agencies as mentioned earlier. But as the court in *Henwood* stated:

> If the agency is shown to be unfit, the child's immediate welfare demands intervention, and if it is shown that adoption is improbable, continued waiting room custody by the agency can no longer be justified as promotive of adoption and the guardianship of a willing relative may well better serve the best interests of the child.[99]

Thus, when the adoption is not running its course or the agency is unfit someone, perhaps the foster parents, should be granted guardianship.

Agency adoption is by far the area most controlled by licensed agencies, but these agencies also perform functions in the area of independent adoptions.

C. INDEPENDENT ADOPTIONS

The role of the State Department of Social Welfare and county agencies is more limited in independent adoptions. The responsibility of investigation of independent adoptions was delegated to the State Department of Social Welfare. County agencies are also authorized to perform this function.[100]

The State Department of Social Welfare also has the duty of consenting to an adoption when there is no parent to consent, or when the consent of the parent is not necessary.[101] If the De-

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[99]Henwood at 645, 320 P.2d at 6.

[100]Ch. 529, §1 [1947] Cal. Stats. 1520. Although stepparent adoptions are a type of independent adoptions they are investigated by the Probation Department rather than the Welfare Department. This was a logical historical development. The State is responsible for an adoptive child only because no one else bears this responsibility toward the child. When one parent is alive someone is legally responsible for the child. Some measure of public control was needed so the Probation Department was assigned the duty of investigation into stepparent adoptions. CAL. CIV. CODE § 227a (West Supp. 1971).

[101]CAL. CIV. CODE § 226.3 (West Supp. 1971). For example, parental consent is not required when parental rights have been terminated.

partment refuses to consent or accept the consent of the natural parents the petitioners or the natural parents can appeal. The Department has ten days in which to file a report. The court may then grant the petition without the Department's consent or allow the natural parent to consent.[102]

This power was viewed in a narrow light by the court in *Adoption of Barnette.*[104] The Department's regulation stated that if a mother consented to adoption by a couple the consent was not valid as to an adoption by one of the couple as a single person if the natural mother was unwilling. The Court held that the regulation was invalid and thus the consent was legal and it could order the adoption if it was in the best interests of the child.

When the report of the Welfare Department or its licensed agency in an independent adoption recommend denial of the adoption petition either the Department or the agency is to represent the child in court.[105] This gives rise to a grave conflict of interest situation. The agency cannot be said to be impartial at this point since it is already committeed to one viewpoint. Various procedures could minimize this conflict of interest situation such as a separate investigation by the Probation Department or the courts domestic relations staff.[106]

The problem of guardianship is present in independent as well as agency adoptions. This problem was treated in *Terzian*

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[102]CAL. CIV. CODE § 226.4 (West Supp. 1971).

[103]CAL. CIV. CODE § 226.2 (West Supp. 1971).

[104] Adoption of Barnette, 54 Cal. 2d 370, 354 P.2d 18, 6 Cal. Rptr. 562 (1960).

[105]If the findings of the State Department of Social Welfare or of the county adoption agency are that the home of the petitioners is not suitable for the child or that the required consents are not available and it recommends that the petition be denied, or if the petitioners desire to withdraw the petition, and it recommends that the petition be denied, the country clerk upon receipt of the report of the State Department of Social welfare or the county adoption agency shall immediately refer it to the superior court for review.

Upon receipt of such reports the court shall set a date for a hearing of the petition and shall give reasonable notice of such hearing to the agency, the petitioners, and the natural parents by certified mail to the address of each as shown in the proceeding.

The department or county agency shall appear to represent the child. CAL. CIV. CODE § 226.8 (West Supp. 1971).

[106]Bodenheimer, *supra* note 62, at 715-718.

v. Superior Court in and for Alameda County.[107] The child had been left with a couple three days after her birth. She remained with them for five years. When the child was three years old the couple petitioned for her adoption and termination of parental rights. Investigations were conducted by both the Probation and Welfare Departments. The Probation Department found that the couple should be given custody while the Welfare Department sought to have itself declared custodian. The adoption petition was denied and the child was referred to the Welfare Department for adoptive placement. The couple then sought guardianship. The interrogatories sent to the Welfare Department were largely unanswered, but the Department revealed that the child had since been placed in several homes while pre-adoptive studies went on. The guardianship court then ordered the Department to answer all interrogations and Probation Department was to investigate the petitioner and the home in which the child was placed. The report was prepared but it was withheld pending the Welfare Department's attempt to obtain mandamus to set aside the order compelling answers to the interrogatories. The mandamus plea was based on the confidentiality sections of the California Administrative Code[108] and was granted, but the writ of prohibition to prevent the disclosure of the Probation Department report was denied. The court stated:

> The crux of the matter is not jurisdictional, but is presented by the question of reconciling the well founded public policy for confidentiality in adoption proceedings with the legitimate interest recognized in *Henwood*[109] in permitting someone interested in the welfare of the child to act to prevent abuses of the adoption proceeding.[110]

The court held that under Civil Code Section 227[111] only parties to the action for adoption could see the documents concerning adoption and it was in the proper exercise of the power of the Welfare Department to refuse to reveal this information to the

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[107]Terzian v. Superior Court in and for County of Alameda, 10 Cal. App. 3rd 290, 88 Cal. Rptr. 806 (1970) (hereinafter cited as Terzian).
[108]CAL. ADM. CODE tit 22 §§ 36105, 36421 (1969).
[109]Henwood at 645, 320 P.2d at 4.
[110]Terzian at 292, 88 Cal. Rptr. at 811.
[111]CAL. CIV. CODE § 227 (West Supp. 1971).

parties. However, the court recognized the discretionary power of the court that the information be made known in exceptional circumstances:

> Before information which public policy indicates should be kept confidential in connection with the adoption is released there must be established some preliminary basis for finding that the adoption procedure is not running its proper course.[112]

The court decided that the identities and location of the parties mentioned in the report should not be revealed since the prima facie showings of improper conduct by the agency or improbability of adoption were not found by the Probation Department, but the parties to the proceeding could have access to the remainder of the information.

The policies regarding confidentiality upheld by *Terzian* have also been supported by the legislature. Adoption hearings are to be private.[113] The former name of the child is to be deleted from the adoption petition and judicial decree.[114] Section 227 as amended in 1970 includes the "report to the court from any investigating agency" among the documents which the judge may not authorize anyone to inspect" except in circumstances and for good cause approaching the necessitous.[115] This definitely seems to uphold *Terzian.*

Following Terzian section 224n was amended so that its second paragraph began "No petition may be filed to adopt a child relinquished to a licensed adoption agency *or a child declared free from the custody and control of either or both of his parents and referred to a licensed agency for adoptive placement*, except by the prospective adoptive parents with whom the child has been placed for adoption by the adoption agency."[115] (amendment emphasized) Thus the type of child who is not relinquished to

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[112]Terzian at 296, 88 Cal. Rptr. 814.

[113]Ch. 530, § 1 [1947] Cal. Stats. 1522.

[114]CAL. CIV. CODE § 226 (West Supp. 1971).

[115]CAL. CIV. CODE § 227 (West Supp. 1971).

[116]Ch. 1091, § 1 [1970] Cal. Stats. 1935. The following is the entire text of § 224n:

The agency to which a child has been relinquished for adoption shall be responsible for the care of the child, and shall be entitled to the custody and control of the child at all times until a petition for adoption has been granted. Any placement for temporary care, or for adoption made by the agency, may be terminated

an agency by its natural parents but is referred to an agency for placement following abandonment or neglect by its parents, is also included in section 224n. This section gives licensed adoption agencies tremendous power since only their choice of adoptive parents is ever allowed to petition the court for adoption.

Yet the court can hold the adoption agencies in check in some cases. In *County of San Diego v. Superior Court of the County of San Diego*,[117] the court prevented an adoption agency from increasing its power under section 224n.[118] Under section 239

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at the discretion of the agency at any time prior to the granting of a petition for adoption. In the event of termination of any placement for temporary care or for adoption, the child shall be returned promptly to the physical custody of the agency.

> No petition may be filed to adopt a child relinquished to a licensed adoption agency or a child declared free from the custody and control of either or both of his parents and referred to a licensed adoption agency for adoptive placement, except by the prospective adoptive parents with whom the child has been placed for adoption by the adoption agency. After the petition for adoption has been filed, the agency may remove the child from the prospective adoptive parents only with the approval of the court, upon motion by the agency after notice to the prospective adoptive parents, supported by an affidavit or affidavits stating the grounds on which removal is sought. If an agency refuses to consent to the adoption of a child by the person or persons with whom the agency placed the child for adoption, the superior court may nevertheless decree the adoption if it finds that the refusal to consent is not in the best interest of the child. CAL. CIV. CODE § 224n (West Supp. 1971).

[117]County of San Diego v. Superior Court of County of San Diego, 20 Cal. App. 3d 288, 97 Cal. Rptr. 630 (1971).

[118]CAL. CIV. CODE § 224n (West Supp. 1971), *cf.* San Diego County of Public Welfare v. Superior Court of San Diego County, filed May 31, 1972, LA 29951, which allowed the filing of a petition for guardianship and adoption despite section 224n when the filing occured before the relinquishment pursuant to a later withdrawn consent to an independent adoption.

of the Civil Code,[119] when a child is declared free from the custody and control of its parents a guardian is appointed. In this case the guardian was the Welfare Dedpartment. The county felt this guardianship brought with it the rights which stem from the relinquishment and that this was a referral for adoptive placement. The court did not agree. A 1970 amendment contained in section 232.9 of the Civil Code[120] allows state agencies to initiate action to declare a child free from parental custody but the court said this did not grant them the power to refer a child for placement which would give rise to the jurisdictional limitations of section 224n. The court could therefore hear the petition for adoption despite the guardianship of the Welfare Department.

D. CONCLUSION

Thus the courts seem to be struggling to keep the adoption process from becoming a totally administrative process. At best an uneasy balance has been achieved among the Probation Department, the Welfare Department, the licensed agency and the courts, with the adoptive child and the natural and adoptive parents tottering somewhere in between. Above all there is a need to clarify the rights of the child; this is a legislative responsibility. Meanwhile in independent adoptions the courts can protect both child and parent by continually exercising their independent judgment. The decision of the agency must not always be accepted. The courts should also apply a liberal construction to those statutes which appear to limit their jurisdiction in the area of agency adoptions until such a time as the legislature makes clear a different intent.

Jane A. Restani

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[119]CAL. CIV. CODE § 239 (West Supp. 1971).
[120]CAL. CIV. CODE § 232.9 (West Supp. 1971).

Adoptions
Children Accepted for Study and Placed for Adoption by Licensed Adoption Agencies; Independent and Stepparent Petitions Received
For Fiscal Years Ending June 30, 1969, and June 30, 1970

Activity	July 1, 1969 to June 30, 1970	July 1, 1968 to June 30, 1969	Percent Change
Relinquishment adoptions*			
Children accepted for study**	12,761	14,157	-9.9
Private agencies	3,012	3,246	-7.2
Public agencies	9,749	10,911	-10.6
Children placed for adoption	7,755	8,667	-10.5
Private agencies	2,037	2,366	-13.9
Public agencies	5,718	6,301	-9.3
Independent adoptions			
Petitions received†	3,115	3,390	-8.1
SDSW	1,493	1,684	-11.3
Counties	1,622	1,706	-4.9
Stepparent adoptions			
Petitions received††	5,951	6,433	-7.5

* Includes Santa Rosa Relinquishment Adoption Unit.
** Accepted for preplacement study.
† Excludes reopened cases, appeals, petitions to withdraw consent, and revocations.
†† Investigated by county probation departments.