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THE OPEN-RECORDS DEBATE: BALANCING THE INTERESTS OF BIRTH PARENTS AND ADULT ADOPTEES

Adopted children face conflicting messages about their identity. Although most agencies encourage adoptive parents to explain adoption to their children at a young age,¹ the majority of states in this country do not allow adoptees to discover the identities of their birth parents, even after they reach adulthood and are legally presumed to be responsible, mature citizens.² Forty-four states³ currently require the adoptee to establish either that unsealing her original birth certificate would serve her best interests or that she meets the statutory "good cause" standards.⁴ As a result of these requirements, the majority of the estimated 120,000 children adopted in the United States every year do not have any means of discovering the identities of their birth parents.⁵ For adoptees, this secrecy can cause intense psychological problems, as they struggle to come to terms with their identity and their roots. It can also cause physical problems,⁶ as many states do not provide adoptees with updated medical records or histories from their files.⁷

These access restrictions on adoption records were not in place when the adoption process was first developed. On the contrary, states originally treated adoptions as completely open affairs, with the first adoption statute allowing anyone to access the records,

1. The National Adoption Information Clearinghouse, a division of the Department of Health and Human Services, reports that most adoption professionals advise teaching children about their adoption before they reach adolescence, and sometimes as early as age two. NATIONAL ADOPTION INFO. CLEARINGHOUSE, U.S. DEPT. OF HEALTH AND HUMAN SERVS., ADOPTION AND THE STAGES OF DEVELOPMENT 5 (1990), available at http://naic.acf.hhs.gov/pubs/f_stages/index.cfm (last visited Jan. 31, 2005).

2. For the purpose of access to adoption records, states' definitions of the age of adulthood range from eighteen (see, e.g., 23 PA. CONS. STAT. ANN. § 2905 (West 2001)) to twenty-five (see, e.g., NEB. REV. STAT. § 43-130 (1998)).

3. The only states currently allowing adult adoptees unfettered access to their sealed birth records are Alabama (ALA. CODE § 22-9A-12 (Michie Supp. 2004)), Alaska (ALASKA STAT. § 18.50.500 (LexisNexis 2004)), Kansas (KAN. STAT. ANN. § 59-2122 (2002)), New Hampshire (N.H. REV. STAT. ANN. § 5-C:16 (2005)), Oregon (OR. REV. STAT. ANN. § 432.240 (West 2003)), and Tennessee (TENN. CODE ANN. § 36-1-127 (LexisNexis 2001)).

4. See *infra* notes 77-90 and accompanying text.

5. In 2001, 127,407 children were adopted in the United States, with public agency and inter-country adoptions comprising the majority. NATIONAL ADOPTION INFO. CLEARINGHOUSE, U.S. DEPT. OF HEALTH AND HUMAN SERVS., HOW MANY CHILDREN WERE ADOPTED IN 2000 AND 2001? 1 (2004), available at http://naic.acf.hhs.gov/pubs/ls_adopted/index.cfm (last visited Jan. 31, 2005).

6. See Heidi Hildebrand, *Because They Want to Know: An Examination of the Legal Rights of Adoptees and Their Parents*, 24 S. ILL. U. L.J. 515, 527-30 (2002).

7. See, e.g., *id.* at 516 (noting that only a few states allow adoptees to access their records).

even disinterested third parties.⁸ State legislatures did not begin sealing adoption records or issuing replacement birth certificates until the middle of the twentieth century, spurred in large part by the pro-family sentiment of the World War II era.⁹ The subsequent "sexual revolution" of the 1960s and 1970s expanded societal definitions of the acceptable family; however, the resulting movement for open records in adoptions did not garner much acceptance until late in the century.¹⁰

The open records movement, begun in large part by the Adoptees' Liberty Movement Association (ALMA), lobbies for legislative reform and the unsealing of adoption records and original birth certificates for adult adoptees.¹¹ As more adult adoptees, adoptive parents, and birth parents join the movement, some states are responding to the pressure by allowing adult adoptees limited access to their records.¹² These efforts are ongoing, as organizations from the traditionally conservative Child Welfare League of America (CWLA)¹³ to the radical Bastard Nation¹⁴ push state and federal legislatures for reform.¹⁵

8. Massachusetts' 1851 statute is widely reported to be the first extant adoption statute; it provided no restrictions on who could access adoptees' original birth certificates or adoption records. JULIE BEREBITSKY, *LIKE OUR VERY OWN: ADOPTION AND THE CHANGING CULTURE OF MOTHERHOOD, 1851-1950* 20-21 (2000).

9. E. WAYNE CARP, *FAMILY MATTERS: SECRECY AND DISCLOSURE IN THE HISTORY OF ADOPTION* 142-44 (1998).

10. *Id.* at 143-148.

11. See THE ALMA SOCIETY, at www.almasociety.org (last visited Mar. 22, 2005). ALMA was founded in 1971 by Florence Fisher, herself an adoptee unable to gain access to her records. ALMA is the oldest adoptee rights organization in the United States. *Id.* See also CARP, *supra* note 9, at 144 (discussing the formation and tactics of ALMA).

12. For a state-by-state breakdown of adoption disclosure laws, see Bastard Nation, *Adoption Disclosure Laws in All 50 States*, at www.bastards.org/activism/access.htm (last visited Feb. 17, 2005).

13. See THE CHILD WELFARE LEAGUE OF AMERICA, at www.cwla.org (Last visited Mar. 22, 2005). The Child Welfare League of America does not actively lobby for reform of state laws but has endorsed S. 1487, a bill introduced in the Senate that would federally mandate a "mutual reunion registry" to cover all adoptees and birth parents in the United States. Despite repeated approval in the Senate, the bill has never passed a vote in the House of Representatives. See The Child Welfare League of America, *CWLA Endorses Mutual Reunion Registry*, available at http://www.cwla.org/programs/adoption/open_records2.htm (last visited Mar. 1, 2005).

14. Bastard Nation, at www.bastards.org (last visited Mar. 22, 2005). Bastard Nation is a self-described radical adoptee rights organization whose primary purpose is to lobby for complete open records for all adopted children. *Id.*

15. The open records statute known as Measure 58 passed in Oregon in 1998 and was enacted into law in 2000; it was initiated by the Oregon chapter of Bastard Nation. Adam Pertman, *Oregon Voters Could Open Door to Adoptees' Past*, BOSTON GLOBE 2 Oct. 1998, at A1.

This note begins by exploring the history of adoption in America, from the first legislative regulation of the process to the current state of adoption laws in the country. It then defines and explains the elements of the adoption triad — adoptive parents, birth parents, and adoptees — and examines the interests of each in sealing or opening birth records. Next, the note discusses the various systems employed by the states in governing adoptees' access to adoption records and identifies and compares the statutory systems of the states that currently allow adult adoptees to view their birth records. Finally, the note proposes a system of legislation that would allow adult adoptees to access their previously sealed birth certificates, as well as any other adoption records or information contained in their adoption files. Such a system would shift the presumption from secrecy to openness and allow responsible adults to discover their biological histories, while retaining protection for birth parents who do not wish to be contacted by their children.

THE HISTORY OF AMERICAN ADOPTION

The Genesis of Statutory Regulation of Adoptions in the United States

Although adoption has existed in this country since Puritan times,¹⁶ the first formal adoption statute was not passed until 1851. In that year, Massachusetts standardized the adoption procedure with the Massachusetts Adoption Act, which required judicial confirmation of the adoptive parents' fitness to raise the adoptee.¹⁷ The Act also legally recognized the familial status of the new, adoptive family unit and severed all ties between the birth parents and the child.¹⁸ This legislation followed and codified the "best interests of the child" doctrine that was then developing in the United States as the basic tenet of child welfare cases.¹⁹ The Act's adoptions were open: although the Act terminated the birth

16. CARP, *supra* note 9, at 5-6. Unlike much of Western Europe, which frowned upon adoption as a threat to the biological family unit, early Americans embraced the institution by regularly placing children in "apprenticeships" and by following the British "Poor Law" system of placing poor or out-of-wedlock children in stable homes to be raised and educated. *Id.*

17. *Id.* at 11-12.

18. *Id.*

19. *Id.* at 12. The doctrine evolved as a standard by which to evaluate child custody cases and has become "the cornerstone of modern adoption law." *Id.* Its meaningful application to the situation of modern-day adoptees is, however, questionable at best. *Id.*

parents' rights at the time of adoption, the Massachusetts statute allowed anyone to access the records of the transaction.²⁰

Origins of Confidentiality in Adoption Statutes

The first move toward confidentiality of adoption records came in 1917 when Minnesota enacted a law that sealed adoption records to the general public.²¹ The law, however, still permitted access to all interested parties, namely the adoptive parents, the birth parents, and the adoptees.²² During the Progressive Era, in which activists lobbied for the preservation of the biological family and the protection of women's virtue,²³ many more states legislated the sealing of records to protect the traditional family unit.²⁴ Adoption records remained open to all involved parties; however, due to irregularity in record-keeping before the 1930s, some adoption records were inaccurate or even missing entirely.²⁵ Legislation that required states to issue new birth certificates upon adoption compounded this problem by listing the adoptive parents' names instead of the birth parents' names.²⁶ By 1941, thirty-five states had legislated such a provision, although at that time the replacement birth certificate was not intended to entirely supplant the original:

There is no evidence that child welfare or public health officials ever intended that issuing new birth certificates to adopted children would prevent them from gaining access to their original one. On the contrary, they specifically recommended that the birth records of adopted children should "be seen

20. Claudine R. Reiss, Comment, *The Fear of Opening Pandora's Box: The Need to Restore Birth Parents' Privacy Rights in the Adoption Process*, 28 SW. U. L. REV. 133, 136 (1998).

21. Hildebrand, *supra* note 6, at 520.

22. *Id.*

23. CARP, *supra* note 9, at 15-18. Carp documents how, as the main source of adoptable children shifted from couples or widowed mothers to unmarried women, the activism during the post-war years also began to incorporate the idea that out-of-wedlock children were in danger of suffering from "feble-mindedness." *Id.* at 18.

24. By World War II, over half the states had enacted legislation that sealed the records to all but the interested parties. Elizabeth J. Samuels, *The Idea of Adoption: An Inquiry into the History of Adult Adoptee Access to Birth Records*, 53 RUTGERS L. REV. 367, 375 (2001).

25. CARP, *supra* note 9, at 56-57. The irregularity was due not only to the spotty methods of record-keeping, employed especially in rural areas, but also to the tendency of unwed mothers to give false names or addresses and laws in several states prohibiting the release of the father's name in cases of out-of-wedlock births. *Id.* at 57.

26. *Id.* at 54-55.

by no one except the adopted person when of age or upon court order."²⁷

The original goal of the amended birth certificates was to protect the best interests of children who may have been born out of wedlock and faced the "stigma of illegitimacy."²⁸ At the same time, agencies still recognized that adopted children may want access to the information contained on the original birth certificates, so they did not completely restrict adoptees' access to those records.²⁹

The Move Toward Secrecy and Closed-Records Statutes

In the years following World War II, a shift in social mores toward more traditional, conservative views of family life and the family unit inspired a movement to seal off access to adoption records entirely — a transition from confidentiality to absolute secrecy in the adoption process.³⁰ Child welfare agencies justified this movement by citing, for example, the desire to protect adoptees from the stigma of illegitimacy — suggesting that open records created a danger that the public would learn of the child's illegitimate birth.³¹ Children's rights activists also argued that sealed records could guard against the danger of birth parents interfering in the adopted child's new home life.³² Faced with pressure from groups such as the CWLA³³ and the United States Children's Bureau,³⁴ many states passed statutes to regulate the release of adoption records and birth certificates.³⁵ By 1960, thirty states had sealed-records statutes that allowed adoptees access to their original birth certificates only if they could prove "good cause" in court.³⁶

27. *Id.* at 55 (quoting Helen C. Huffman, *The Importance of Birth Records*, 1947 Proc. of the Nat'l Conf. of Soc. Work 356).

28. *Id.* at 57.

29. *Id.* at 70.

30. Hildebrand, *supra* note 6, at 520.

31. Samuels, *supra* note 24, at 387.

32. *Id.* at 385.

33. *Id.* at 390-91.

34. *Id.* at 385-88.

35. *Id.* at 390.

36. *Id.* at 378-79.

Changes in Social Opinion About Adoption

Interestingly, while more states were closing the door to adoptees looking for information about their birth parents, adoption agencies and children's advocates were lobbying strongly for adoptive parents to tell their children about the adoption process.³⁷ Thus, in the 1960s and 1970s, adoptees began to learn more about their immediate background and history but lost their ability to research their genetic roots. The sexual revolution and women's rights movements also affected the desire of adoptees to learn more about their backgrounds and history. State legislatures persisted in foreclosing adoptees' access to their birth certificates and other records of their adoption even as the stigma of illegitimacy began to lessen and as more women discovered birth control and single parenting.³⁸ By 1979, thirty states had sealed all adoption records unless access was granted by court order, and by the end of the 1980s, seven more had joined their ranks.³⁹

Conversely, the 1970s also saw the rise of the adoptee-rights movement, which begun with the formation of the Adoptees' Liberty Movement Association (ALMA) in 1971.⁴⁰ Organized by Florence Fisher, an outspoken adoptee who took her vision of open records to legislative lobbying sessions as well as consciousness-raising groups,⁴¹ ALMA marked the beginning of a movement that today encompasses groups as diverse as Concerned United Birthparents (CUB),⁴² the American Adoption Congress,⁴³ and the CWLA.⁴⁴

37. CARP, *supra* note 9, at 131-35.

38. Brett S. Silverman, *The Winds of Change in Adoption Laws: Should Adoptees Have Access to Adoption Records?*, 39 FAM. CT. REV. 85, 87 (2001).

39. Samuels, *supra* note 24, at 381-82.

40. See THE ALMA SOCIETY, *supra* note 11.

41. CARP, *supra* note 9, at 138-44. Carp notes that the first adoptee rights lobbyist, Jean Paton, began campaigning for adoptee rights and open records in 1949. She was, however, "born a generation too early," and had to wait two decades for Foster to begin an organized movement. *Id.* at 138.

42. See CONCERNED UNITED BIRTHPARENTS, at www.cubirthparents.org (last visited Mar. 22, 2005). CUB was formed in 1976 as a group of birthparents who wanted to be able to contact the children they had surrendered for adoption. Today the group lobbies for open adoptions and complete education for birthparents. *Id.*

43. See AMERICAN ADOPTION CONGRESS, at www.americanadoptioncongress.org/about-us.htm (last visited Mar. 22, 2005). The AAC was created in 1978 as an advocacy organization lobbying for openness in all aspects of the adoption process. *Id.*

44. See CHILD WELFARE LEAGUE OF AMERICA, *supra* note 13. The CWLA was formed in 1920 as a broad-based organization advocating for children's rights and welfare in all arenas, from foster care to child poverty. While advocating for closed records for many years, in 1990 the CWLA released a policy paper supporting openness in adoptions. The CWLA is not

Recent Legislative Reform

Perhaps spurred by the sharp increase in vocal support for open-records adoption, the legislatures in several states have responded by easing restrictions to access and, in six cases, by allowing unfettered access to birth records by adult adoptees. In 1995, Tennessee passed a law opening all records of adoption to the adoptee upon reaching the age of majority, making it the first state to open its adoption records to adoptees.⁴⁵ The law's only restriction is a "contact veto," which prohibits the adoptee any contact with birth parents who have registered the veto with the court.⁴⁶ Similarly, in 1998, voters in Oregon approved Measure 58, a provision that statutorily opens all adoption records for adoptees at age 21.⁴⁷ This system, like Tennessee's, allows birth parents to file a Contact Preference Form advising the court that the birth parent either desires or declines contact with the adoptee.⁴⁸ Alabama,⁴⁹ Alaska,⁵⁰ Kansas,⁵¹ and New Hampshire⁵² all have similar provisions allowing adult adoptees unrestricted access to their original birth certificates and other records contained in their adoption files, without requiring any permission or waiver from the birth parents before the release of the information.⁵³

as radical as Bastard Nation, for example, but their shift in policy represents a major step in public consciousness about the value of open records for adoptees. *Id.*

45. TENN. CODE ANN. § 36-1-127 (LexisNexis 2001).

46. *Id.* § 36-1-128 (LexisNexis 2001).

47. OR. REV. STAT. ANN. § 432.240 (West 2003).

48. *Id.* § 432.240(2) (West 2003).

49. ALA. CODE § 22-9A-12 (Michie Supp. 2004).

50. ALASKA STAT. § 18.50.500 (LexisNexis 2004).

51. KAN. STAT. ANN. § 59-2122 (1994).

52. N.H. REV. STAT. ANN. § 5-C:16 (2005). This statute, the newest provision for adult adoptees' access to their birth records, took effect on January 2, 2005.

53. At the time of publication, the New Jersey State Senate has approved S. 1093, a provision similar in some ways to that of Tennessee and Oregon. If passed by the New Jersey House of Representatives, this statute will allow persons adopted after the date of implementation to receive their original birth certificates, subject only to the birth parents' filing a contact veto. However, adoptees whose adoptions were finalized before the statute takes effect would be subject to a one year waiting period during which the birth parents could file a non-disclosure form. In that case, the adult adoptee (defined by the statute as age eighteen) would have no access to the information. See S. 1093, 211th Sess. (N.J. 2004), available at http://www.njleg.state.nj.us/2004/Bills/S1500/1093_R2.htm (last visited Mar. 22, 2005).

Current Trends In Adoption Advocacy

Advocacy groups from the radical Bastard Nation⁵⁴ to the conservative CWLA⁵⁵ now support openness in adoption and access to records for adult adoptees. While Bastard Nation was formed with the specific intent of advocating open adoption records and effecting legislative reform throughout the country, for both prospective adoptions and current adoptees who wish access to their biological history, this pro-adoptee stance is a shift from the CWLA's earlier position. Just a decade ago, the CWLA published position papers advocating sealed records as the most beneficial system for adoptees and birth parents.⁵⁶ Although most states still have a long way to go before allowing adult adoptees full access to their birth records, a clear trend of granting adoptees the right to discover their biological identity is emerging.

THE ADOPTION TRIAD: THE INTERESTS OF ADOPTIVE PARENTS,
BIRTH PARENTS, AND ADOPTES IN OPENING RECORDS OR
MAINTAINING SEALED RECORDS

Adoptive Parents

The debate over open records centers on whether adult adoptees⁵⁷ can gain access to their original birth certificates and other records of their adoptions. Consequently, the adoptive parents arguably have a much smaller stake in the debate than the other two members of the triad. Even so, some have argued that birth parents, if allowed access to the adoption records of the children they surrendered, would unreasonably interfere with the lives the

54. See Bastard Nation, *Bastard Nation Mission Statement*, at www.bastards.org/whowere/mission1.htm (last visited Mar. 22, 2005). Formed in 1996, Bastard Nation lobbies for unrestricted access to all adoption records by adult adoptees. Their mission statement asserts: "it is the right of people everywhere to have their official original birth records unaltered and free from falsification, and that the adoptive status of any person should not prohibit him or her from choosing to exercise that right." *Id.*

55. See Child Welfare League of America, *Openness in Adoption*, at http://www.cwla.org/programs/adoption/open_records4.htm (last visited Mar. 22, 2005) (summarizing the CWLA's position on openness in adoption records).

56. Carp points out how the CWLA first advocated openness in adoption proceedings in 1986 at a San Francisco meeting where members approved a resolution to that effect. CARP, *supra* note 9, at 220.

57. See *supra* note 2.

adoptive parents are trying to build with their children.⁵⁸ The rise of adoptive-parent support groups and triad advocacy groups helping the open records movement, however, tends to undermine the effect of the “interference” argument on legislatures and courts.⁵⁹ As the scope of this note encompasses only the rights of adult adoptees to their birth records, and not the rights of birth parents to such information, the arguments advanced supporting the rights of adoptive parents to closed records do not apply in this context. However, in recent years adoptive parents have become more receptive to transparency in adoption, from lobbying for access to their children’s adoption records to advocating for completely open adoptions.⁶⁰

Birth Parents

The arguments advanced by birth parents opposing the open records movement have taken a constitutional shape. In particular, birth parents argue that the Due Process Clause of the Fourteenth Amendment protects them from any release of identifying information because such a disclosure would violate their rights to familial privacy.⁶¹ However, the overwhelming majority of birth mothers support open records for adult adoptees,⁶² including the majority of birth mothers in Oregon, despite the well-publicized resistance to Measure 58⁶³ that

58. This is an old argument that has been largely discredited. See, e.g., Demosthenes A. Lorandos, *Secrecy and Genetics in Adoption Law and Practice*, 27 LOY. U. CHI. L.J. 277, 294-96 (1996).

59. See AMERICA ADOPTION CONGRESS, *supra* note 43. The American Adoption Congress is made up of members from all elements of the triad and fully supports open adoption records for adult adoptees. See also Bastard Nation, *supra* note 4 (outlining statements from individual adoptive parents supporting the movement for open records).

60. This growing support of openness and honesty in adoptions is treated more thoroughly in Deborah H. Siegel, *Open Adoption of Infants: Adoptive Parents' Feelings Seven Years Later*, 48.3 SOC. WORK 409 (2003) (chronicling a longitudinal study of adoptive parents who conducted open adoptions and unanimously reported satisfaction with the availability of information about their children and birth families). See also JUDITH S. MODELL, *A SEALED AND SECRET KINSHIP: THE CULTURE OF POLICIES AND PRACTICES IN AMERICAN ADOPTION* 170-71 (2002) (discussing the tension between adoptive parents’ need to learn about their children’s genetic heritage and their largely culturally-driven desire to pretend the adopted child is biologically their own).

61. See, e.g., *Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925); see also *Meyer v. Nebraska*, 262 U.S. 390 (1923) (holding that the right to privacy extends to the parental prerogative to raise a child in the way the parents best see fit).

62. See, e.g., Silverman, *supra* note 38, at 92 (citing multiple studies showing that almost ninety per cent of birth parents support open records).

63. For a (distinctly biased) discussion of the birth mother resistance efforts in Oregon, see I. Franklin Hunsaker, *Oregon’s Ballot Measure 58: A Grossly Unfair and State-*

culminated in *Does v. Oregon*.⁶⁴ These constitutional arguments may have been successful in the past; however, the tendency of states has shifted to overriding the courts' holdings of privacy by passing legislation that allows adult adoptees access to their records.⁶⁵ On the whole, birth parents have proven to be supportive of the efforts of their biological children to secure access to the records of their birth, notwithstanding a few visible exceptions.⁶⁶

Adoptees

Adult adoptees overwhelmingly support open records.⁶⁷ However, their arguments for open records, which are often based on the same constitutional reasoning as the birth parents', have not fared well in the courts.⁶⁸ The arguments center around equal protection as well as the right of all adults to access information about their pasts.⁶⁹ Adult adoptees also cite the right to privacy, reasoning that the privacy right extends to an awareness of personal biological history.⁷⁰ However, courts have struck down the argument that adoptees make up a suspect class for the purposes of constitutional analysis, mainly by reasoning that since adoption is a "choice" and not an immutable characteristic, the status of being adopted does not rise to the level of strict scrutiny.⁷¹

The most compelling argument made by advocates for open records is that adult adoptees have the right to learn about their backgrounds not just for psychological or medical reasons, but also because all other adults are able to access the same type of

Sanctioned Betrayal of Birth Mothers, 39 FAM. CT. REV. 75 (2001) (written by one of the attorneys for the birth mothers who were suing to prevent the statute's implementation).

64. 993 P.2d 822 (Or. 1999).

65. See *infra* notes 96-124 and accompanying text.

66. See generally Naomi Cahn & Jana Singer, *Adoption, Identity, and the Constitution: The Case for Opening Closed Records*, 2 U. PA. J. CONST. LAW 150 (1999).

67. *Id.* at 179-80.

68. So far no case brought by adult adoptees based on constitutional arguments has succeeded in court; however, some states, such as Tennessee, have ruled that open records statutes already passed by legislatures are in fact constitutional. See generally *Doe v. Sundquist*, 2 S.W.3d 919 (Tenn. 1999).

69. See, e.g., *ALMA Society v. Mellon*, 601 F.2d 1225 (2nd Cir. 1979).

70. See, e.g., *In re Annetta Louise Maples*, 563 S.W.2d 760 (Mo. 1978).

71. Audra Behne, *Balancing the Adoption Triangle: The State, the Adoptive Parents, and the Birth Parents — Where Does the Adoptee Fit In?*, 15 BUFF. JOUR. PUB. INT. LAW 49, 67 (1996-1997) (pointing out the irony in the courts' distinction between choice and immutability and noting that the adoptee had no choice in the matter).

information without restriction.⁷² Brought most forcefully in *Does v. Oregon*, the Oregon case challenging the constitutionality of Measure 58,⁷³ the argument of equal rights for adult adoptees has been used to justify and explain open records in most states that allow some form of access, either expressly or with consent from the birth parents.⁷⁴ The plaintiffs in *Does v. Oregon* unsuccessfully petitioned for the court to prohibit implementation of Measure 58, based in part on a constitutional argument of privacy based on the "penumbra" of privacy established in *Griswold v. Connecticut*.⁷⁵ In its decision, the Oregon Court of Appeals found this argument to be without merit: "We conclude that the state legitimately may choose to disseminate such data to the child whose birth is recorded on such a birth certificate without infringing on any fundamental right to privacy of the birth mother who does not desire contact with the child."⁷⁶

COMPARISON OF STATES' METHODS OF ACCESS TO RECORDS

States' laws governing access to adoption records fall into four general categories: laws that refuse access to adoptees; laws that allow access with written permission from birth parents; laws that allow access unless birth parents object; and laws that allow unrestricted access to records. These laws range from allowing no access without a compelling and specific showing of "good cause,"⁷⁷ to allowing adult adoptees unfettered access to their records, whether or not a birth or adoptive parent protests the release.⁷⁸ This section reviews the characteristics of the laws of each category, focusing not only on the provisions in the statutes but also on the assumptions and presumptions present in each class of laws. It concludes with a short discussion of the registry system, a method used in some states to allow some access to adoptees and birth parents who register with a specified agency.

72. Samuels, *supra* note 24, at 434-36.

73. *Does v. Oregon*, 993 P.2d 822 (Or. 1999). The State of Oregon in *Does* relied on a contracts argument as well as a Fourteenth Amendment due process violation; however, for the purposes of this note, the constitutional argument will be the only issue examined. In reference to the contractual claim, the court held that because the state made no specific assurances that the birth parents' identities would be kept confidential, those parents have no standing to contest the release of that information. *Id.* at 560.

74. See, e.g., TENN. CODE ANN. § 36-1-127 (LexisNexis 2001).

75. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

76. *Does v. Oregon*, 993 P.2d at 836.

77. See, e.g., N.C. GEN. STAT. § 48-9-105 (LEXIS through 2004 Reg. Sess.).

78. See, e.g., KAN. STAT. ANN. § 59-2122 (1994).

States Who Refuse Access: The "Good Cause" Debate

At present twenty states⁷⁹ and the District of Columbia⁸⁰ allow adoptees to gain access to their adoption records by court order only, subject to a showing of good cause⁸¹ or a test to determine whether disclosure would be in the best interests of the child.⁸² This burden presents problems for adult adoptees or others attempting to gain access to adoption records: because each state defines good cause differently, if defined at all, applicants have little ability to determine what arguments will best sway judges to allow disclosure of their records.⁸³

Because the good cause standard is not determined by statute but is interpreted judicially on a case-by-case basis, adoptees have no clear guidelines to follow when filing petitions or arguing their cases before a judge.⁸⁴ Moreover, in determining what facts

79. ARK. CODE ANN. § 9-9-506 (LexisNexis 2002); COLO. REV. STAT. § 19-5-402 (2004); FLA. STAT. ANN. § 63.162 (West Supp. 2005); GA. CODE ANN. § 19-8-23 (2004); IDAHO CODE § 9-342 (Michie 2004); 750 ILL. COMP. STAT. ANN. 50/18 (West 1999); IND. CODE ANN. § 31-19-24-2 (LexisNexis 2003); IOWA CODE ANN. § 600.16A (West Supp. 2004); KY. REV. STAT. ANN. § 199.570 (Michie 2004); LA. REV. STAT. ANN. § 40:73 (West 2001); ME. REV. STAT. ANN. 18-A, § 9-310 (West 1998); MD. CODE ANN., FAM. LAW § 5-329 (Michie 2004); MO. ANN. STAT. §§ 453.120 and 453.121 (West 2003); MONT. CODE ANN. § 42-6-109 (2003) (providing access to adoptees placed before 1967 without restriction, and access to adoptees placed after 1997 unless a birth parent has filed a disclosure veto); NEV. REV. STAT. ANN. § 127.140 (Michie 2004); N.J. STAT. ANN. § 9:3-52 (West 2002); N.Y. PUB. HEALTH LAW § 4138-c (Consol. Supp. 2004) (providing for a mutual-consent registry but only disclosing information through that registry if such disclosure is found to be in the "best interest" of the adoptee or birth parent); N.C. GEN. STAT. § 48-9-105 (2003); TEX. FAM. CODE ANN. § 108.003 (Vernon Supp. 2004-2005); VA. CODE ANN. § 63.2-1246 (LexisNexis 2002).

80. D.C. CODE § 16-311 (Supp. 2004) (allowing access only upon a showing that disclosure would serve the "welfare of the child"). The District of Columbia Court of Appeals has held, however, that in a case where the adult adoptee has obtained consent of both the birth parents and the adoptive parents and wishes to examine the record of her adoption, her welfare would be served by opening the records; see also *In re D.E.D.*, 672 A.2d 582, 584 (D.C. 1996). The court in that case distinguished the case from one in which the adoptee did not know beforehand the identity of her birth parents and wished to open the file for that particular reason.

81. See, e.g., TEX. FAM. CODE ANN. § 108.003 (2004).

82. See, e.g., D.C. CODE § 16-311 (2003).

83. Behne, *supra* note 71, at 71-72 (addressing the problem of a judicially-defined, as opposed to a statutorily-defined, good cause standard).

84. Florida is the only state in the nation that makes any effort to statutorily define good cause. FLA. STAT. ANN. § 63.162 (West Supp. 2005) instructs courts to consider the "reason the information is sought," any alternatives to releasing the identity of the birth parent, the wishes of each concerned party, the "age, maturity, judgment, and expressed needs of the adoptee," and any recommendation for or against disclosure made by the agency responsible for the original adoption. *Id.*

constitute good cause, courts have drawn widely divergent lines, offering adoptees no consistent judicial guidance on the issue.⁸⁵ For instance, the Court of Appeals of North Carolina in *In re Spinks* held that any conflicts in interest between the public and the child must be resolved in favor of the child.⁸⁶ However, the court in *Spinks* also held that although a psychological need for a child to find her birth parents may in some cases present good cause for disclosure of records, "the natural parent or parents must feel secure in the knowledge that their identity usually will remain confidential."⁸⁷

Similarly, the Supreme Court of Iowa has held that good cause is an extremely high burden for an adoptee to meet:

[T]he court may order the adoption record unsealed only if competent medical evidence shows such action is necessary to save the life of or prevent irreparable physical or mental harm to an adopted person or the person's offspring. Additionally, even if medical need dictates opening the records, the legislature has taken pains to insure as reasonably as possible that *identifying* information will not be revealed in the process.⁸⁸

Thus, while some courts will, at least in theory, accept an argument of psychological need as constituting good cause,⁸⁹ other courts hold even medical necessity as conditional on this point, requiring what appears to be a 'no-other-way-out' fact situation in order to grant release of records.⁹⁰ With such conflicting messages, petitioning adoptees in 'good cause' states have no way of knowing what set of facts and circumstances will succeed before any given judge. Consequently, adoptees in these twenty states face a daunting task in crafting successful arguments for the opening of their adoption records.

85. Behne, *supra* note 71, at 71-74.

86. *In re Spinks*, 232 S.E.2d 479, 482 (N.C. 1977).

87. *Id.* at 483.

88. *In re S.J.D.*, 641 N.W.2d 794, 801 (Iowa 2002).

89. *See Doe v. The Ward Law Firm*, 579 S.E.2d 303, 306 (S.C. 2003) (finding sufficient good cause when an adopted child faced serious mental health problems as well as "respiratory problems and a cyst on his brain").

90. *See, e.g., In re George*, 625 S.W.2d 151 (Mo. App. 1981) (holding that a fatal leukemia condition that could potentially be treated with a bone marrow transplant from a close blood relative was not sufficient good cause to open an adult adoptee's records).

States Allowing Access With Birth Parents' Permission

Although nineteen states currently allow adult adoptees some access to their birth records,⁹¹ most of these states employ passive-registry systems that often require the birth parent to already be registered before the adoptee can learn the parent's identity.⁹² Some states take the additional step of requiring the court or a relevant state agency to contact the birth parent upon the adoptee's petition to determine whether the birth parent will permit the records to be unsealed.⁹³ Even with the requirement that the birth parent be actively contacted, the presumption remains squarely in favor of secrecy: if the birth parent refuses to allow the records to be opened,⁹⁴ the adoptee is left to petition the court under the good cause standards discussed above.⁹⁵

States Allowing Access Unless Birth Parents Object

Five states⁹⁶ allow adoptees access to the records of their adoptions unless a birth parent objects,⁹⁷ either by registering

91. ARIZ. REV. STAT. § 8-121 (West Supp. 2004); CAL. FAM. CODE § 9203 (West 2004); CONN. GEN. STAT. § 45a-751b (West 2004); MASS. GEN. LAWS CH. 210, § 5D (West 1998); MICH. COMP. LAWS ANN. § 710.68 (West 2002) (providing, for adoptions finalized between May 28, 1945, and September 12, 1980, that adult adoptees can access identifying information from their birth records only if the birth parent has filed a written consent with the Central Adoption Registry; for adoptions finalized before May 28, 1945 and after September 12, 1980, adult adoptees may receive information as long as no written denial of consent has been filed by the birth parent); NEB. REV. STAT. § 43-131 (1998); N.H. REV. STAT. ANN. § 170-B:19 (Lexis Supp. 2004); N.M. STAT. ANN. § 32A-5-40 (West 2003); N.D. CENT. CODE § 14-15-16 (2004); OHIO REV. CODE ANN. § 3107.41 (West 2000); 23 PA. CONS. STAT. § 2905 (West 2001); R.I. GEN. LAWS § 15-7-2 (2003); S.C. CODE ANN. § 20-7-1780 (West Supp. 2003); S.D. CODIFIED LAWS § 25-6-15.3 (West 2004); UTAH CODE ANN. § 78-30-18 (2002); VT. STAT. ANN. TIT. 15-A, § 6-104 (LexisNexis 2002); WASH. REV. CODE § 26.33.343 (West 1997); W. VA. CODE ANN. § 48-23-501 (Michie 2004); WIS. STAT. § 48.433 (West 2003); WYO. STAT. ANN. § 1-22-203 (LexisNexis 2003).

92. For a more thorough discussion of the different types of registry systems employed in the states, see Cahn & Singer, *supra* note 66, at 162-67. Cahn and Singer analyze in great detail the differences between the "passive" mutual consent registry and the "active" confidential intermediary system and discuss private registry systems provided for or allowed by the states; however, such distinctions are beyond the scope of this note.

93. See, e.g., HAW. REV. STAT. § 578-15 (1993).

94. States are divided on how to handle cases in which the birth parent either has passed away or cannot be located.

95. As discussed above, the good cause standard is vague at best and arbitrary at worst; see *supra* notes 79-90 and accompanying text.

96. DEL. CODE ANN. TIT. 13, § 962 (1999); HAW. REV. STAT. § 578-15 (1993); MINN. STAT. ANN. § 259.89 (West 2003); MISS. CODE ANN. § 93-17-215 (West 1999); OKLA. STAT. ANN. TIT. 10, § 7505-6.6 (West Supp. 2005).

97. Michigan's system also allows access to information unless birth parents object, depending on when the adoption was finalized; see *supra* note 91.

a nondisclosure affidavit with the relevant agency⁹⁸ or, once the agency has contacted the birth parent pursuant to statute, by requesting that the identifying information not be revealed to the adoptee.⁹⁹ Thus, if an adoptee petitions the court or proper agency for the release of her adoption records, the court or agency is bound to comply unless an affidavit already exists on file or the birth parent refuses disclosure upon contact by the court or agency.¹⁰⁰ This system is similar to the permission system outlined above; however, this scheme affords the adult adoptee a much better chance of receiving the requested information because nondisclosure requires active involvement by the birth parent.

The disclosure veto system is an improvement over the permission system outlined above, mainly because it shifts the burden of denying access from the courts (who must find that the petitioning adoptee meets a vague good cause standard¹⁰¹) to the birth parents themselves. The result is a shift from secrecy to openness in the system: because adoptees are able to gain access to their records unless explicit action is taken to prevent it, the norm becomes access rather than concealment.¹⁰² Nonetheless, this system does not require the birth parents to show good cause for why they wish to refuse the disclosure of the adoption records; their written request is sufficient to deny the adoptee access to birth records. Consequently, while the disclosure veto offers birth parents a voice in balancing the interests at stake in opening adoption records, the balance is still swayed in favor of birth parents.

States Allowing Unrestricted Access to Records

Six states¹⁰³ currently allow adult adoptees to access their birth and adoption records without requiring any sort of permission or hearing. The statutes vary in complexity, but all six provide the

98. See, e.g., MISS. CODE ANN. § 93-17-215 (West 1999).

99. See, e.g., MINN. STAT. ANN. § 259.89 (2003) (providing for an agency search for the birth parents once an adult adoptee has initiated a request for release of adoption records; the birth parents then have thirty days to reply to the agency with a request that the information not be released).

100. As with states that follow a permission scheme, the states using a disclosure veto system are divided as to whether to release the information if a birth parent has died or cannot be found by the relevant court or agency.

101. See *supra* notes 79-90 and accompanying text.

102. See Jason Kuhns, *The Sealed Adoption Records Controversy: Breaking Down the Walls of Secrecy*, 24 GOLDEN GATE U. L. REV. 259, 285-88 (1994).

103. ALA. CODE § 22-9A-12 (Michie Supp. 2004); ALASKA STAT. § 18.50.500 (LexisNexis 2004); KAN. STAT. ANN. § 59-2122 (1994); N.H. REV. STAT. ANN. § 5-C:16 (2005); OR. REV. STAT. ANN. § 432.240 (West 2003); TENN. CODE ANN. § 36-1-127 (2003).

same unfettered access to adult adoptees. In each state, the adult adoptee may simply request a copy of her original birth certificate from the court.¹⁰⁴ As an added protection for the birth parent, Alabama,¹⁰⁵ New Hampshire,¹⁰⁶ Oregon,¹⁰⁷ and Tennessee¹⁰⁸ provide for a "contact veto" allowing the birth parent to indicate that she does not want to be contacted by the adoptee.¹⁰⁹

The contact veto differs from the disclosure veto described above in that it does not prevent courts or agencies from releasing any records to adult adoptees. Rather, it imposes civil or criminal penalties on those adoptees who violate the veto and contact their birth parents against their wishes. Importantly, the contact veto system shifts the presumption from secrecy to openness, providing adult adoptees vital information while at the same time respecting the wishes of those birth parents who want to avoid reunion or unwilling contact.¹¹⁰ Shifting the presumption thus protects the stated wishes of those birth parents who want to preclude communication with adoptees while placing primary importance on the wishes and needs of the searching adoptees.

Only two states, Tennessee¹¹¹ and Oregon,¹¹² have seen cases brought in court against the open records statutes; the open records opponents were not successful in either case.¹¹³ In Tennessee, immediately upon passage of the open records statutes, opponents of the measure brought a challenge to the law by an adoptive couple, multiple birth mothers, and a child placement agency.¹¹⁴

104. See, e.g., TENN. CODE ANN. § 36-1-127 (LexisNexis 2001).

105. ALA. CODE § 22-9A-12(d) (Michie Supp. 2004).

106. N.H. REV. STAT. ANN. § 5-C:16 (2005).

107. OR. REV. STAT. § 432.240(2) (West 2003).

108. TENN. CODE ANN. § 36-1-128 (LexisNexis 2001). Tennessee also provides a blanket prohibition on disclosing the identities of birth mothers who were victims of rape or incest; absent written permission from such birth mothers, those adoption records are kept sealed. See TENN. CODE ANN. § 36-1-127(e)(2) (LexisNexis 2001).

109. The contact veto addresses many of the constitutional privacy arguments birth parents have brought in the courts. See *supra* notes 61-66 and accompanying text.

110. See Cahn & Singer, *supra* note 66, at 193-94.

111. *Doe v. Sundquist*, 2 S.W.3d 919 (Tenn. 1999).

112. *Doe v. Oregon*, 993 P.2d 822 (Or. 1999). For a description of the 1998 referendum vote approving Measure 58, see Cheryl Wetzstein, *Oregon Adoptees May Get Records; But Ballot Victory Hasn't Settled Issue*, THE WASH. TIMES 12 NOV. 1998, at A4. For a discussion of the court's decision in *Doe v. Oregon*, including its dismissal of the state and federal constitutional claims, see *infra* notes 71-74 and accompanying text.

113. Alabama, Alaska, and Kansas have seen no serious efforts to thwart access to records. Instead, according to Naomi Cahn and Jana Singer, these states have experienced a steady rate of adoption and a high percentage of birth parents eager to register their consent and make contact with their biological children. Cahn & Singer, *supra* note 66, at 187.

114. *Doe v. Sundquist*, 106 F.3d 702 (6th Cir. 1997); *cert. denied*, 522 U.S. 810 (1997).

Plaintiffs challenged the Tennessee law on the grounds that it violated their rights to privacy and equal protection as protected under both the United States and Tennessee Constitutions.¹¹⁵ Plaintiffs also argued that the statute violated their rights to familial privacy, reproductive privacy, and freedom from the release of confidential information.¹¹⁶ The United States Court of Appeals for the Sixth Circuit found no merit in any of these arguments, holding that the Constitution does not and will not protect these rights as fundamental in the context of adoption records "unless the Constitution elevates the right to avoid disclosure of adoption records above the right to know the identity of one's parents."¹¹⁷ On the contrary, the court stated, the Tennessee legislature has made an effort to balance the contrasting rights of adoptees and birth parents, and such an effort is properly evaluated in the context of the state courts.¹¹⁸ The court dismissed all charges under the United States Constitution, finding no merit in any of Plaintiffs' arguments, and remanded to the state courts the questions under the Tennessee Constitution.¹¹⁹

On a subsequent appeal, the Tennessee Supreme Court reinstated the judgment of the trial court that had initially upheld the validity of the statute under the Tennessee Constitution.¹²⁰ Advancing the same challenges as in the Sixth Circuit appeal, the plaintiffs claimed that the statute violated constitutionally-protected privacy rights.¹²¹ The Tennessee Supreme Court held that "[t]here simply has never been an absolute guarantee or even a reasonable expectation by the birth parent or any other party that adoption records were permanently sealed," noting that earlier Tennessee adoption statutes had not required or even suggested that access to adoption records be closed to the parties involved.¹²² The constitutional right to privacy, then, does not extend to identifying information in birth records, because there was no original safeguard for the birth parents' privacy.¹²³ The

115. *Id.* at 705. An analysis of the constitutionality of the Tennessee open records statutes is outside the scope of this paper. However, for a sensitive and thorough treatment of the constitutional challenges to open records laws brought by opponents, as well as the often conflicting constitutional issues inherent in open records legislation, see Cahn & Singer, *supra* note 66.

116. *Doe v. Sundquist*, 106 F.3d at 705-06.

117. *Id.*

118. *Id.* at 707.

119. *Id.* at 708.

120. *Doe v. Sundquist*, 2 S.W.3d 919.

121. *Id.* at 921-922.

122. *Id.* at 925.

123. *Id.*

court also emphasized the statute's attempt to balance the rights of adoptees and birth parents by providing the contact veto to birth relatives who do not want to be contacted.¹²⁴

Proposal For a Standardized Open Records System

Tennessee's open records legislation provides an excellent model for states to follow in renovating their systems for granting access to adoption records. The Tennessee statutes establish two main principles that benefit both searching adoptees and birth families that do not want contact with the adoptee, resulting in a balanced system that considers the wishes of all interested parties. First, the contact veto protects the privacy of birth parents who do not want any contact with the surrendered child.¹²⁵ Second, the Tennessee model provides the advantage of not requiring a birth parent to show good cause before being allowed to opt out of the search process, thereby balancing the birth parent's considerations with those of the adoptee by establishing a presumption of openness.¹²⁶ These elements should form the basis of a new statutory system that would allow adult adoptees unrestricted access to the records of their birth.

States should adopt a contact veto system similar to Tennessee's. The contact veto allows all adult adoptees to gain access to the identifying information contained in their adoption records, while honoring the wishes of those birth parents who do not want to make any connection with the children they surrendered. This system addresses the concerns of individual birth parents while maintaining and facilitating access for the large majority of birth parents and adoptees who desire openness and contact.¹²⁷

The presumption of openness in records established by the Tennessee statutes should be echoed in all states' open records systems. The system currently in place in many states, which requires consent from the birth parent before any identifying information can be released, places a premium on secrecy and assumes that closed records are the norm. This arrangement weights the birth parents' assumed interest in privacy far above the

124. *Id.* at 926.

125. TENN. CODE ANN. §§ 36-1-127 and 36-1-128 (LexisNexis 2001).

126. Hildebrand, *supra* note 6, at 536-37.

127. *Id.* Hildebrand notes that studies from the past twenty-five years overwhelmingly show that both adult adoptees and birth parents wish for, and even dream of, contact with their biological family.

adoptees' rights to find information about their births and biological history.¹²⁸ Shifting the presumption to openness by allowing access gives adoptees a much more fairly balanced consideration while still protecting birth parents who wish to remain anonymous.

A model open records statute for the states would include the above elements of the contact veto and the presumption of openness in adoption records. However, legislatures should be careful to keep the statutes simple and easy to understand in order to facilitate their use by average adoptees and birth parents. For example, the Tennessee statutory system comprises six separate statutes which, taken together, sprawl over fifteen pages. By contrast, a similar Oregon statute includes a model Contact Preference Form and still prints out at just over a page.¹²⁹ This clarity and brevity is ideal for a statute designed to be used predominantly by people with little or no legal experience.

Revised statutes must take care to avoid another confusing problem with the Tennessee statutes: the definition of "contact."¹³⁰ By not defining what "contact" entails, the Tennessee statute runs the risk of allowing adoptees to "observe the biological parent at home, work, and play, and speak with friends, neighbors, and coworkers, without violating the contact veto."¹³¹ States can avoid this potential abuse of the system by clearly defining "contact" to include all contact with not only the birth parent but also her family members, neighbors, friends, or colleagues, to include face-to-face meetings as well as phone, mail, or electronic communication.¹³² Finally, state legislatures should preserve the disclosure exception for birth mothers who were victims of rape or incest.¹³³ Since birth mothers in these situations may face

128. Kuhns, *supra* note 102, at 282-84.

129. OR. REV. STAT. ANN. § 432.240 (West 2003). The Oregon Contact Preference Form lists three contact options for birth parents:

- (a) I would like to be contacted;
- (b) I would prefer to be contacted only through an intermediary; or
- (c) I prefer not to be contacted at this time. If I decide later that I would like to be contacted, I will register with the voluntary adoption registry. I have completed an updated medical history and have filed it with the voluntary adoption registry. Attached is a certificate from the voluntary adoption registry verifying receipt of the updated medical history.

130. Silverman, *supra* note 38, at 89 (discussing the problems inherent in omitting a definition of "contact" when creating a Contact Preference Form).

131. *Id.*

132. By defining what constitutes "contact," states will avoid possibly unpleasant situations for both birth parents and adoptees, a concern voiced by many open records opponents. See generally Reiss, *supra* note 20.

133. See, e.g., TENN. CODE ANN. § 36-1-127(e)(2) (LexisNexis 2001) (providing birth mothers who were victims of rape or incest further protection with a requirement that they

continuing difficulties or even danger as a result of the crimes committed against them, an exception must be preserved allowing contact only after the birth mothers have been contacted discreetly to confirm that communication with the adoptee is desirable and, above all, safe.

CONCLUSION

The decision to open adoption records rightly belongs with the adoptee:

stronger weight should be given to the adoptee's needs than to those of the birth parents, for the parents had a choice in the original adoption that the adoptee was not given — the option of anonymity. The birth parents freely contracted away their right to know who their child is, but the adoptee's rights were signed away for him by his adoptive parents and the state.¹³⁴

States should enact records statutes allowing adult adoptees access to their birth records, not only because public attitudes clearly support openness in the adoption process, but, more importantly, because adoptees have a right to the histories of their births and genealogies. Modeled on Tennessee's open records legislation, the ideal state statute would provide birth parents with a means to avoid contact if they wish, while still allowing adoptees the opportunity to examine their birth records without any limitations. Only with a presumption of openness and protection for the privacy of birth parents will the question be answered: "Whose rights are pre-eminent, those of adopted adults or those of birth parents?"¹³⁵ By balancing the privacy interests of birth parents against the biological and psychological needs of adult adoptees, all members of the adoption triad can finally gain dignity and equality in the eyes of the law.

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provide written consent before any identifying information is released to the adoptee).

134. Melissa Arndt, Comment, *Severed Roots: The Sealed Adoption Records Controversy*, 6 N. ILL. U. L. REV. 103, 126 (1986).

135. E. Wayne Carp, *Adoption, Blood Kinship, Stigma, and the Adoption Reform Movement: A Historical Perspective*, 36 LAW & SOC'Y REV. 433, 435 (2002).

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