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SEALED RECORDS IN ADOPTIONS: THE NEED FOR LEGISLATIVE REFORM*

Present Legislative Policies

In the United States adoption is a widespread and highly developed institution which is completely governed by statute. Although the legislation enacted by the different states varies, the underlying theme is the same: total assimilation of the adopted child into the adoptive family. To this end, adoption legislation generally gives adopted children the status and rights enjoyed by natural children. The persons who adopt a child become his legal parents and have the responsibilities and rights concerning the child that they would have had if the child had been born to them. Just as adoption creates a legal relationship between the child and the adoptive parents, it also terminates the legal relationship between the biological parents and the child. The biological parents cease to have any legal rights or obligations with respect to the adoptee.

After a child has been adopted, the records of the proceedings are

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* This article is a student work prepared by Patricia Gallagher Lupack, a member of the St. John's Law Review and the St. Thomas More Institute for Legal Research.

1 It has been estimated that there are about 5 million adoptees in the United States. See Lifton, The Search, N.Y. Times, Jan. 15, 1976, § 6 (Magazine), at 15.

2 For a discussion of how highly developed an institution adoption is in the United States, see Baran, Pannor & Sorosky, Adoptive Parents and the Sealed Record Controversy, 55 Social Casework 531 (1974) [hereinafter cited as Sealed Record Controversy].

3 The practice of adoption was not recognized at common law. See H. Clark, The Law of Domestic Relations 603 (1968).


sealed. It is generally believed that adoption records should be kept in the strictest confidence in order to protect the rights and interests of all the parties involved. Confidentiality guarantees privacy to the adoptive parents and assures that they will not be subjected to any interference from the biological parents. Since the majority of adopted children are illegitimate, adoption proceedings often involve only the biological mother. The sealing of the adoption records also protects her. She is afforded the opportunity to make a new life for herself, secure in the knowledge that no one need ever know of this phase of her life.

While adoption legislation aims to protect the rights and interests of the parents, both adoptive and natural, its primary purpose is to protect the interests of the child. Sealed records assure that the natural parents


9 A discussion of the rationale behind sealed-record statutes is found in People v. Doe, 138 N.Y.S.2d 307 (Erie County Ct. 1955):

[The Legislature] has assured the mother . . . her indiscretion will not be divulged. It further assures her that the interests of the child will be protected in that no one will ever know by means of the adoption proceeding that the child is illegitimate. It assures the foster parents that they may treat the child as their own in all respects and need not fear that the adoption records will be a means of hurting the child, which has become by this proceeding their child, or of harming themselves. It assures all persons connected with the adoption that the records will be and remain sealed and secret.


10 The need to guarantee that the biological parents will not interfere in the adoptive parents’ raising of the child is invariably given as a major reason for preserving the confidentiality of adoption records. It has been suggested, however, that the risk of interference or harassment by the biological parents is slight. H. Witmer, E. Herzog, E. Weinstein & M. Sullivan, Independent Adoptions: A Follow-up Study 110 (1963).


12 Hawaii Family Court Judge Betty Vitousek, who favors sealed adoption records, has noted:

These girls often were young . . . . They had their babies and gave them up for adoption without their families’ knowledge . . . . It is hard to imagine the shock that would come to [the biological mother’s family] today if they were suddenly confronted with an illegitimate grandchild they never knew existed. How many people are you going to hurt by making this information public?


The parent who has relinquished a child for adoption has been described as “the most vulnerable and the least prepared for the consequences” of opening adoption records. Pannor, Sorosky & Baran, Opening the Sealed Record in Adoption—The Human Need for Continuity, 51 J. Jewish Communal Service 188 (1974) [hereinafter cited as Pannor].

13 See, e.g., In re Adoption of Randolph, 66 Wis. 2d 64, 227 N.W.2d 634 (1975) (denial of grandparents’ petition to adopt upheld since no proof adoption was in best interests of child);
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will not be able to locate the child and interfere in his relationship with his adoptive parents. It is essential for the well-being of the child that a psychological parent-child relationship be formed between the child and the adoptive parents. The interference of the biological parents could have an adverse effect on the formation of this psychological relationship. Confidentiality also protects adopted children who are illegitimate from any possible stigma they might otherwise have to bear because of their birth. Although it may be argued that attitudes toward illegitimacy have changed in recent years, the protection of the child from the stigma of illegitimacy was an important consideration when sealed-record statutes were originally enacted. To further ensure protection of the child, legislation of this type typically requires the issuance of a new birth certificate containing only the names of the adoptive parents. Once replaced by an amended birth certificate, the one originally registered for the child must be sealed along with the record of the proceeding.

Because of the policy of confidentiality surrounding adoption records and original birth certificates, adopted children usually are unable to learn the identity of their biological parents. In only a few states does an adoptee, upon reaching the age of majority, have access to this information. Alabama and Kansas allow an adult adoptee to inspect his original birth certificate and thereby ascertain the identity of his biological parents.

In re Adoption of Tachick, 60 Wis. 2d 540, 210 N.W.2d 865 (1973) (best interests of child decisive factor in court’s determination that grandparents’ petition to adopt be granted). For a discussion of the importance of the formation of a psychological parent-child relationship, see J. Goldstein, A. Freud & A. Solnit, BEYOND THE BEST INTERESTS OF THE CHILD (1973) [hereinafter cited as Goldstein]. The development of a psychological parent-child relationship is based on daily interaction between parent and child. Every child has a continual need for body comfort and gratification, affection, companionship, and intimacy. A psychological parent is an adult who regularly, lovingly, and caringly attends to these needs. Id. at 18-19.

See Pannor, supra note 12, at 190. One author has suggested that the adoptive parents as well as the adopted child are adversely affected by the stigma attached to illegitimacy. See M. Pringle, ADOPTION FACTS AND FALLACIES 27 (1967) [hereinafter cited as Pringle].

Examination of the legislative history of statutes providing for the issuance of new birth certificates and the sealing of the original ones indicates that protection of the child was the primary purpose for the enactment of such legislation. See, e.g., 19 N.Y. LEGIS. Docs. 109 (1936).

Until recently Connecticut also gave an adult adoptee a statutory right to obtain a copy of his original birth certificate. Conn. Gen. Stat. Ann. § 7-53 (1973), as amended, Pub. Act No. 75-170 (May 27, 1975). The 1975 session of the General Assembly amended § 7-53, however, to provide that a written order from the judge of the probate court must be obtained before an adult adoptee may obtain his original birth certificate. The written order must state that [the judge] is of the opinion that the examination of the birth record . . . will not be detrimental to the public interest or to the welfare of the adopted person or to the welfare of the natural or adopting parent or parents.

South Dakota\textsuperscript{20} and Virginia\textsuperscript{21} an adoptee may not see his original birth certificate, but may, upon reaching adulthood, read his adoption records. Since these records usually contain either the names of his biological parents or other identifying information, the adoptee in these jurisdictions is also able to learn his biological identity.\textsuperscript{22}

Adoptees in the majority of jurisdictions do not have an unfettered right to learn the identity of their biological parents. The adoption records and original birth certificates are sealed and may be inspected only upon court order.\textsuperscript{23} The statutes typically provide that "[n]o order for disclosure or access and inspection shall be granted except on [a showing of] good cause . . . ."\textsuperscript{24} What constitutes "good cause," however, is nowhere defined by statute and therefore is largely a matter of judicial discretion.\textsuperscript{25} Research indicates that most courts in sealed-record jurisdictions are reluctant to open adoption records.\textsuperscript{26} For example, in no reported case in New York did an adult adoptee gain access to his original birth certificate. Although the statute does not explicitly require that a petitioner show "cause," it may well be so interpreted. In light of the current movement for the abrogation of sealed records in adoption, see notes 103-08 and accompanying text infra, the action of the Connecticut Legislature is surprising.


\textsuperscript{21} VA. CODE ANN. §§ 32-353.19, 63.1-236 (1973).

\textsuperscript{22} In South Dakota the records invariably contain the names of the adoptee's biological parents. Letter from Vern C. Woodard, Director, Division of Social Welfare, South Dakota, to the \textit{St. John's Law Review}, July 29, 1975, on file in the St. John's Law Review office. In Virginia, however, the records which the adoptee may inspect usually do not identify the biological parents, although they do contain the adoptee's original name. Letter from Neville B. Weeks, Adoption Specialist, Department of Welfare, Virginia, to the \textit{St. John's Law Review}, July 8, 1975, on file in the St. John's Law Review office.


\textsuperscript{24} It is extremely difficult to identify the "good cause" which must be demonstrated before a court will open sealed adoption records. It appears that most petitioners are unsuccessful in their efforts to gain access to the information contained in the sealed records. See, e.g., \textit{In re Wells}, 281 F.2d 68 (D.C. Cir. 1960) (biological mother denied access absent proof that fraud existed or that access would further child's best interests); \textit{In re Minicozzi}, 51 Misc. 2d 595, 273 N.Y.S.2d 632 (Sup. Ct. Suffolk County 1966) (inspection of adoption records not allowed even though records might contain information relevant to defense in paternity action); \textit{In re Glasser}, 198 Misc. 889, 100 N.Y.S.2d 723 (Sur. Ct. Bronx County 1950) (inspection not allowed to aid action for alienation of affections and criminal conversation).

\textsuperscript{25} See, e.g., cases cited note 25 supra. A letter of inquiry concerning the frequency with which access to adoption records is granted was sent to the department responsible for the supervision of adoptions in the various states. The replies, which are on file in the St. John's Law Review office, indicate that very few adoptees are ultimately successful in gaining access to their records. For example, Harold J. Merkow, Assistant Attorney General of Arizona, replied that he had heard of only one case within the recent past where access had been granted. Letter from Harold J. Merkow to the \textit{St. John's Law Review}, July 10, 1975, on file in the St. John's Law Review office. Marie Colpher, Social Services Consultant, Georgia Department of Human Resources, said her office was aware of only one instance in which there had been
York has the mere desire of an adopted child to learn his true identity been deemed "good cause." As one surrogate court observed in In re Ann Carol S., a case involving an adult adoptee's petition to gain access to her birth records, "[c]uriosity as to one's forebears, understandable as it may be, if it is mere curiosity, does not fall within the bounds of good cause." Nevertheless, the petitioner was able to establish that her preoccupation with obtaining information about her biological parents had an adverse effect on her social adjustment. Furthermore, the petitioner's adoptive parents were dead, and her particular records contained only sparse information which would not reveal the identity of her biological relatives. Consequently, the court determined that "[w]hile petitioner has not succeeded in establishing the strongest case of good cause, she has established that some emotional benefit may accrue to her by revealing to her what little information is available" and therefore should be allowed to inspect her records.

Inspection of adoption records was also allowed by a New York surrogate in Estate of Maxtone-Graham. The petitioner there was an adult adoptee who, through her own efforts, had located her natural mother. The natural mother appeared in court and consented to the petitioner's request to inspect the adoption records. The court allowed the records to be opened, but instructed that the names and addresses of the foster parents with whom the petitioner had resided prior to her adoption be deleted. The court determined that the petitioner had not established "good cause" with regard to learning the identity of her foster parents. Although the petitioner's psychiatrist had testified in her behalf, the court found that his testimony failed to prove that names and addresses of the foster parents

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Some courts will reveal to the adoptee nonidentifying information about that person's background. Dorothy Moss, Adoption Supervisor, Vermont Department of Social and Rehabilitation Services, indicated that information such as the medical history of the adoptee's parents and grandparents is usually provided by the Vermont courts. Letter from Dorothy Moss to the St. John's Law Review, July 8, 1975, on file in the St. John's Law Review office. In Wisconsin, according to Martha Schurch, Agency Services Supervisor, Department of Health and Social Services, courts almost always approve providing adoptees with any information from their records other than the adoptee's name and address at birth and the names and addresses of the biological parents and, if there were any, the names and addresses of former adoptive parents. Letter from Martha Schurch to the St. John's Law Review, July 18, 1975, on file in the St. John's Law Review office.

18 Id. col. 7.
19 Id.
would serve any useful purpose in the treatment of the petitioner. The court was apparently more persuaded by the testimony of an official from a child placement agency who emphasized the need for confidentiality regarding information about foster parents. Thus, the court concluded that the revelation of the foster parents' names and addresses would "serve no purpose with regard to the petitioner and might tend to disrupt the relationship between child care agencies and foster parents with the ultimate harm falling upon the many infants subjected to their care."

Although an adoptee in a sealed-record jurisdiction is usually unable to learn the identity of his biological parents, it is sometimes possible for that person to obtain some information about his genealogical background. For example, an adoptee might be able to learn the medical history of his biological family. Nevertheless, the need for information such as medical records alone usually will not justify allowing an adoptee complete access to adoption records. Instead, the courts may permit essential medical information to be revealed without the disclosure of other information in the records such as the adoptee's original name and the names of his biological parents. Thus, the ability of an adoptee in a state in which adoption records and original birth certificates are sealed to learn the identity of his biological parents is severely circumscribed. The adoptee's burden of showing "good cause" is a heavy one. As the above-mentioned cases indicate, in determining whether an adoptee who is seeking access to sealed records has demonstrated "good cause," the courts place a great deal of emphasis on the possible effect that opening the records may have on the other parties involved in the adoption. That an adoptee's mental well-being is adversely affected by a compelling desire to learn the identity of his biological parents might be "good cause" if his adoptive parents are dead, but not if they are still living. Similarly, what constitutes "good cause" in a situation in which the records contain little information about the biological parents

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21 Id.
22 Id., col. 5.
23 See note 26 supra for a discussion of the policies of the Vermont and Wisconsin courts concerning the revelation of nonidentifying background information to adoptees.
24 In Colorado, for example, although the pertinent statute stipulates that adoption records be sealed, COLO. REV. STAT. ANN. § 19-4-104 (1973), the records have sometimes been ordered opened to provide medical information. Letter from Ava Snook, Adoption Consultant, Colorado Department of Social Services, to the St. John's Law Review, July 15, 1975, on file in the St. John's Law Review office.
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might not constitute “good cause” if the records contain more extensive information.

To analyze properly the conflicting considerations which present themselves in adoption proceedings, an examination of the various interests of all of the parties involved is essential. The remainder of this article will therefore look into the interests of the adoptee, his adoptive parents, and his biological parents. In the final analysis, however, the paramount consideration in adoption must be the best interests of the adoptee. Although one would expect adoption legislation to foster these interests accordingly, a consideration of the effect of sealed-record statutes suggests that such legislation in its present form might be contrary to the very interests it seeks to protect.

THE ADOPTEE’S BEST INTERESTS

It is too often forgotten that an adopted child eventually grows up. Adoption legislation assumes that what was in an adoptee’s best interests as a child is also in his best interests as an adult. While confidentiality is probably in the best interests of the child adoptee, it is questionable whether insistence upon confidentiality remains in his best interests once he has reached adulthood.

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2a See note 13 and accompanying text supra. The “best interests” rule was formulated by Justices Cardozo and Brewer. In Chapsky v. Wood, 26 Kan. 650 (1881), Justice Brewer, while sitting on the Supreme Court of Kansas, rejected the former rule which placed the primary right to a child’s custody in his parents and formulated the “best interests of the child” test. Later, Justice Cardozo, before appointment to the United States Supreme Court, adopted the “best interests” rule in Finlay v. Finlay, 240 N.Y. 429, 148 N.E.2d 624 (1952). See Podell, Peck & First, Custody—To Which Parent?, 56 MARQ. L. REV. 51 (1972).

2b See A. McWHINNIE, ADOPTED CHILDREN AND HOW THEY GROW UP 268 (1967) [hereinafter cited as McWHINNIE]. On the basis of extensive research conducted among adult adoptees in Great Britain, Dr. McWhinnie recommended that the adoption law in England be changed to allow an adoptee who has reached the age of 17 the right of access to all of the records and information concerning his adoption. Id.

At present at least three countries allow an adoptee access to information which would enable him to trace his biological parents. Scotland allows an adoptee, once he has reached the age of 17, to obtain a copy of his original birth certificate, inter alia. Adoption of Children Act, 20 & 21 Geo. 5, c. 37, § 11, at 461-63 (1930). In Israel, an adult adoptee may obtain a copy of his original birth certificate. Adoption of Children Law of 1960, 14 Laws of Israel 93, No. 45. In Finland, an adoptee of any age may obtain identifying information about his biological parents from the country’s main adoption agency. J. TRISELIOTIS, IN SEARCH OF ORIGINS: THE EXPERIENCES OF ADOPTED PEOPLE 165-66 (1973) [hereinafter cited as TRISELIOTIS].

2c A frequent complaint of adult adoptees is that they are treated as if they were still children. Jean Paton, founder and director of Orphan Voyage, an adoptees’ group headquartered in Cedaredge, Colorado, complains that “[n]o matter how old we are, we are still spoken of as the ‘adopted child.’ We get very tired of hearing the word child.” Daily Sentinel (Grand Junction, Colo.), Feb. 21, 1975, at 1, col. 3. See generally J. PATON, THE ADOPTED BREAK SILENCE (1954) (experiences of 40 adults who had been adopted children).

2d See Lilliston, Social Workers Discuss Adoptees’ Plight, L.A. Times, Apr. 15, 1974, § 4, at
Many adopted persons are prone to emotional and psychological difficulties. An important problem which frequently confronts an adoptee is that of identity. If a person is to live and function successfully in society, it is essential that he develop a strong “feeling of self.” The establishment of this “feeling of self” is more difficult for an adoptee than for someone brought up by natural parents. Adoptees often suffer from what has been termed “genealogical bewilderment.” As a consequence, they become preoccupied with existential concerns and a feeling of isolation and alienation due to the break in the continuity of life through the generations that their adoption represents. Inasmuch as the lack of knowledge concerning one’s biological ancestry can impede identity development, it is doubtful that legislation which fosters such “bewilderment” is ultimately in the adoptee’s best interests. While confidentiality might be desirable during the adoptee’s childhood in order to insure that the child and the adoptive parents establish a psychological parent-child relationship, the need to insure the development of this relationship no longer exists when the adoptee is an adult. It is submitted that it would be in the adult adoptee’s

12, col. 1, at 13, col. 1 [hereinafter cited as Lilliston].

40 Numerous studies have been conducted concerning the nature and incidence of emotional and psychological disturbances in adoptees. See, e.g., Goodman, Silberstein & Mandell, Adopted Children Brought to Child Psychiatric Clinic, 9 ARCHIVES GEN. PSYCHIATRY 451 (1963); Schechter, Carlson, Simmons & Work, Emotional Problems in the Adoptee, 10 ARCHIVES GEN. PSYCHIATRY 109 (1964); Simon & Senturia, Adoption and Psychiatric Illness, 122 AM. J. PSYCHIATRY 858 (1966). These studies suggest that an adoptee might be more likely to suffer emotional and psychological difficulties than would a person raised by biological parents.


42 American Academy of Pediatrics, supra note 41, at 948.

11 See Triselliots, supra note 37, at 166; American Academy of Pediatrics, supra note 41, at 948.

44 See Sants, Genealogical Bewilderment in Children with Substitute Parents, 37 BRITISH J. MED. PSYCHOLOGY 133 (1964) [hereinafter cited as Sants].


44 See Sants, supra note 44.

47 The psychological parent-child relationship is briefly discussed in note 14 supra.

48 The importance of establishing a satisfactory psychological parent-child relationship lies in the fact that it enhances the child’s social and intellectual growth and helps to insure his development into a mature and emotionally stable adult. GOLDSTEIN, supra note 14, at 17-19.

The authors of Beyond the Best Interests of the Child, see note 14 supra, which is perhaps the major statement concerning the necessity of establishing a psychological parent-child relationship in an adoption, are in favor of allowing adult adoptees access to information about their biological parents. They feel, however, that the privacy of the biological parents
best interests to allow him access to the information which would enable him to resolve any identity problems that might exist.

The desire for information about their backgrounds is so prevalent among adoptees that many contend it is universal. For some, obtaining genealogical information satisfies any needs they might have regarding their identities. For others, however, general information is insufficient. Many adoptees have a deep-rooted need to learn the identity of their natural parents; some try to locate them. Those who undertake the search usually have an extremely difficult task. Adoptive parents often react with great hostility when the adoptee seeks to locate his biological parents. Adoption agencies are also averse to the adoptee's search and generally refuse to provide any information. Finally, those adoptees who seek information through legal channels are usually unable to establish "good cause" and are thus barred by sealed-record statutes from acquiring the information they seek.

Many adoptees contend that they have a right to the information should be protected and that the permission of the biological parents should be obtained before an adoptee is allowed to contact them. Letter from Joseph Goldstein to the St. John's Law Review, July 1975, on file in the St. John's Law Review office; Letter from Dr. Albert Solnit to the St. John's Law Review, July 11, 1975, on file in the St. John's Law Review office. See A. Sorosky, A. Baran & R. Pannor, The Effects of the Sealed Record in Adoption, at 6, May 6, 1975 (paper presented to the American Psychiatric Association Annual Meeting and submitted for publication in the American Journal of Psychiatry) [hereinafter cited as Baran]; Wellesch, Children Without Genealogy: A Problem of Adoption, 13 Mental Health 41 (1952). See generally H. Kirk, Shared Fate (1964) [hereinafter cited as KIRK]; McWhinnie, supra note 37; Pringle, supra note 15.

Florence Fisher, founder of the Adoptees' Liberty Movement (ALMA), a group composed mainly of adult adoptees, maintains that the need to know one's biological identity is a universal need which may even be instinctual. Address by Florence Fisher, Third North American Conference on Adoptable Children, Apr. 22, 1972, in Alma Newsletter, May 1972, at 1 (P.O. Box 154, Washington Bridge Station, New York, N.Y. 10003) [hereinafter cited as Fisher Address].

See McWhinnie, supra note 37, at 243-46.

See Triselliotis, supra note 37, at 154.

For an interesting and poignant account of an adult adoptee's 20-year search for her biological parents, see F. Fisher, The Search for Anna Fisher (1973) [hereinafter cited as Fisher]. A discussion of the factors which may prompt an adoptee to initiate a search is presented in F. Rondell & A. Murray, New Dimensions in Adoption (1974).

See, e.g., Fisher, supra note 52.

See Nemy, Adopted Children Who Wonder, "What Was Mother Like?", N.Y. Times, July 25, 1972, at 22, col. 1; Sorosky, supra note 41, at 24.

See Sealed Record Controversy, supra note 2, at 533; Sorosky, supra note 41, at 25; People, Aug. 18, 1975, at 26.

A letter requesting information regarding disclosure policies was sent to a random sample of 50 public and private adoption agencies throughout the United States. The letters of reply, which are on file in the St. John's Law Review office, indicate that most agencies refuse to divulge identifying information regarding the biological parents of an adoptee.

See notes 23-32 and accompanying text supra.
which will reveal to them their original names and the names of their biological parents. They point out that they had no part in the original agreement concerning anonymity made by their two sets of parents and the court. Since they were not a party to the agreement, they maintain that once they attain adult status they should not be bound by it. It has also been suggested that an adoptee’s right to know his biological heritage is a right guaranteed by the Constitution. Some opponents of sealed-record statutes contend that these statutes deny adoptees their fourteenth amendment right to equal protection by preventing, on the basis of their status as adoptees, their access to information concerning their biological heritage.

Yesterday’s Children, an organization of adult adoptees, maintains:

'It is a universal human need to know your own true identity and the identities of your forbears. We propose that because it is a human need, it should be recognized that it is a human right to meet that need.

Yesterday’s Children, Statement (P.O. Box 1554, Evanston, Ill. 60204), on file in the St. John’s Law Review office. See generally M. Kornitzer, Adoption and Family Life (1968).

For a discussion of the contention that an adoptee should not be bound by a contract between the natural mother, the adoptive parents, and the agency (or the person who arranged the adoption privately), see Bernstein, supra note 35, at 36, col. 1; Lilliston, supra note 39, at 12, col. 1.

Note, The Adoptee’s Right to Know His Natural Heritage, 19 N.Y.L.F. 137 (1973) [hereinafter cited as Adoptee’s Right]. See also Comment, Discovery Rights of the Adoptee—Privacy Rights of the Natural Parent: A Constitutional Dilemma, 4 San Fernando Valley L. Rev. 65 (1975).


See Adoptee’s Right, supra note 59, at 141-46. There, the authors raise the argument that sealed-record statutes deny equal protection to adoptees because they discriminate against them solely on the basis of their membership in the class consisting of adopted persons. The authors contend that adoptees are discriminated against in that they, unlike all members outside the class created by these statutes, are generally unable to inspect their original birth certificates. Id. at 144.

The authors further note that, traditionally, in the realm of social welfare and economic legislation, such “statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.” Id. at 142, quoting McGowan v. Maryland, 336 U.S. 420, 425-26 (1961). On the other hand, when the classification established by the legislation in question results in discrimination “on the basis of suspect criteria, such as race, . . . or involves a fundamental right,” then a fourteenth amendment violation will be found unless the state can demonstrate that the difference in treatment is “justified by a compelling state interest.” Adoptee’s Right, supra note 59, at 142.

The authors suggest that sealed-record statutes establish a classification which, while perhaps not subject to the compelling state interest test, should be tested against more than the traditional minimum rationality test. The authors look for support to Reed v. Reed, 404 U.S. 71 (1971), where the Supreme Court struck down a state probate law which encouraged the appointment of male, as opposed to female, administrators, and to Eisenstadt v. Baird, 405 U.S. 438 (1972), where the Supreme Court invalidated a state law which denied the availability of contraceptive devices to unmarried persons. In these cases, the authors argue,
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As yet, however, none of these arguments has been recognized in a judicial forum. If the issue is raised, courts invariably seek to avoid it. For example, in In re Ann Carol S., an adult adoptee who petitioned the court to allow her access to her adoption records argued that there was good cause, and, in the alternative, that the New York statute providing for sealed adoption records violates the equal protection clause of the fourteenth amendment. The surrogate, however, concluded that since the petitioner had established her right to statutory relief through a showing of good cause, a determination of the constitutional issue was not required.

Even if sealed-record statutes are not violative of the constitutional

the Supreme Court applied a stricter version of the minimum rationality test, which version requires that the statutory classification bear a "substantial relation to the object of the legislation." Adoptee's Right, supra note 59, at 145-46, quoting F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920). Since the purpose of adoption legislation is to further the adoptee's best interests and the denial of access to records can actually be deleterious to an adoptee's psychological well-being, the authors conclude that such legislation fails to meet the new standard and is therefore unconstitutional, Adoptee's Right, supra note 59, at 145.

The authors also suggest that the recognition in Meyer v. Nebraska, 262 U.S. 390, 403 (1923), of the right to acquire useful knowledge as one of the "penumbral rights" implicitly guaranteed by the Bill of Rights might well encompass the right to acquire knowledge of one's biological heritage. See Adoptee's Right, supra note 59, at 151-54.


Here, too, it appears that the court will avoid a confrontation with these constitutional issues if it is at all possible to do so. Plaintiff moved to convene a three-judge court pursuant to 28 U.S.C. § 2281 (1970). The court denied the motion, but in doing so avoided any comment as to whether a substantial constitutional issue was present. Yesterday's Children, Inc. v. Leahy, Civil No. 75-378 (N.D. Ill., filed June 9, 1975). The court pointed out that the statutes in question simply "empower[ed] the appropriate State court to impound adoption proceedings and related records and [were] not mandatory . . . unless requested by a party." Id. at 3. In addition, the court noted that the complaint alleged that a circuit court judge of Cook County "adopted a general order that such files be 'automatically' impounded." Id. Based on these two points, the court concluded that before there would be a necessity to decide whether or not "County and State officials should be enjoined from acting under the State statute" it must first decide whether the state circuit court "has the power and jurisdiction to enter such an order absent the statute and, if so, whether [any rights are violated thereby]." Id. Thus, the presiding district judge denied the motion in order to permit resolution by him of the "first substantive question," id., which he, sitting alone, could properly decide. The organization is now appealing the denial of its motion. Telephone interview with office of plaintiff's attorney, Jan. 27, 1976.
rights of adoptees, legislative reform in this area would be highly desirable. It does not seem to be in the best interest of adult adoptees who have a need or desire for specific information about their biological heritage to deny them this information. Allowing adoptees access to their records after they have reached adulthood, it is submitted, would improve the institution of adoption by promoting the best interest of the adoptee not just during childhood, but during his entire life.

THE INTERESTS OF OTHER PARTIES IN THE ADOPTION TRIANGLE

Although the interests of the adoptee are of primary importance in adoption, the interests of the adoptive parents and of the natural parents must also be considered. An examination of the interests of these other parties indicates that these interests would not necessarily be adversely affected by legislative changes that would enable an adult adoptee to have access to his records. In those situations where these other interests might be hurt, it is submitted that a weighing of the interests of the adoptee and the interests of the other party indicates that legislative reform is nevertheless desirable.

Adoptive Parents

An adoption proceeding makes the adoptive parents the child's legal parents. Henceforth, they have the same rights and obligations concerning the child that they would have had if the child had been born to them. Some adoptive parents prefer to ignore the fact that the child was not born to them and refuse to recognize that adopting a child is different from giving birth to a child. They look upon themselves as the child's "only parents." As far as they are concerned, the relationship between the...
natural parents and the child, a relationship viewed as a mere circumstance of biology, ceases to exist after the adoption. Such an attitude is understandable; however, it seems to ignore the fact that the child’s life began with birth, not with adoption. Adoption gives the child a new set of legal parents, but it does not eliminate the existence of his biological parents. It has been noted that in adoption there usually is "an implicit attempt to transplant the child from his natural family into his substitute family, . . . [but] such a graft can never be completely carried out: roots in the natural family can never be severed without trace." Adoptive parents must learn to accept the fact that the child has biological parents as well as adoptive parents. This is not to say that the adoptive parents are not the child’s "real" parents. Those who love and care for the child, and fulfill his day-to-day needs, are in fact "real" or what has been termed "psychological parents." In an adoption situation, however, they are not the "only parents."

Many adoptive parents see the biological parents as a constant personal threat and as a menace to their relationship with their adopted child. Some react with hostility to an adopted child's inquiries about his

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79 See Sealed Record Controversy, supra note 2, at 531.
80 Studies have shown that it is important for the adoptive parents to have a positive attitude toward the biological parents of their adopted child. The feelings of the adoptive parents concerning the biological parents are invariably communicated to the adoptee and influence his concept of self. The more negative or positive the attitude he senses, the more negative or positive will his view of himself be. See Costin, The History-Giving Interview in Adoption Procedures, 35 Social Casework 393, 399-400 (1954); Witkin, Bridging the Gap: Natural Parents and Adoptive Families, 16 Social Work 95 (1971).
81 See Fisher Address, supra note 49, at 8.
82 Sants, supra note 44, at 140.
83 Dr. R.G. Deibel, Director of the Federation for Unmarried Mothers in Holland, has indicated the importance of acknowledging the existence of two sets of parents in an adoption situation:

Do not try to obscure the status of the adoptive child, neither to the child itself, nor to the outer world. The fact is that an adoptive child has two pairs of parents: those who were unable to take care of it, and those who do have this privilege. Give the child this positive view on its status and you will give it a basis for integrating the existence of two pairs of parents into its life in a well balanced manner. Then it will be able to find its identity.

Fisher Address, supra note 49, at 8.
84 See note 14 and accompanying text supra. Concerning the respective roles of the adoptive parents and the biological parents, Dr. Arthur D. Sorosky of the Adoption Research Project, Los Angeles, California, has noted:

It is important for the adoptive parents to realize that they are the true psychological parents. The birth parent is something else—a link to the past in terms of the person’s identity.

Lilliston, supra note 39, at 13, col. 4.
85 Many adoptive parents apparently do not have a very secure image of themselves as parents. See generally Pringle, supra note 15. A recent study indicates that adoptive parents
biological parents. If an adoptee attempts to locate his biological parents, the adoptive parents often feel rejected and hurt. An adoptee's search for his natural parents should not be interpreted as a rejection of his adoptive parents or an attempt to acquire a new set of parents. In most cases, the adoptee is merely seeking "to achieve a unity and persistence of personality in spite of the break in the continuity of his life." In searching for his biological parents, then, the adoptee is trying to find a true sense of identity. If the adoptive parents were made more aware of the needs that adopted persons have regarding their identities, they would realize that the search for biological parents is not indicative of a rejection of the adoptive parents. Even if the adoptee is ultimately successful in finding his

sometimes seem to bear an indelible psychological scar from infertility. Pannor, supra note 12, at 192.

Not all adoptive parents, however, are opposed to an adult adoptee's attempts to locate his biological parents. ALMA, for example, which aids adult adoptees in locating their biological parents, has some adoptive parents among its members. Ohio State Senator Robert E. O'Shaughnessy is one of the sponsors of a bill currently being considered in the Ohio Senate as an amendment to Ohio Rev. Code Ann. § 149.43 (Page 1969), §§ 3107.14, 3705.18 (Page 1972). This amendment would permit adoptees, upon attaining majority, to examine the records of their adoptions. Ohio S. 226, 111th Sess. (1975). He reports:

The concept of the bill was brought to my attention by an adoptive mother who felt the injustice and pain of her adopted daughter in the search for her natural parents. It was apparent to me that there is a large segment of our society that is denied the right to know their own natural history.

Letter from State Senator Robert E. O'Shaughnessy to the St. John's Law Review, Aug. 25, 1975, on file in the St. John's Law Review office. Ann Coyne, Nebraska Representative, Region VII, Nebraska Foster and Adoptive Parents Club, expressed the following opinion about her daughter's attempt to find her biological relatives:

My daughter in reality has two mothers, me, the one she knows, and her original mother whom she does not know—yet. When she becomes an adult, it may be important for her to make contact with her other family—if only to give herself a complete sense of where she came from. For her to meet and even develop a relationship with her original family in no way diminishes her relationship with us; it simply expands her circle of relationships to include more people who are important to her. . . . When she becomes an adult and if she decides she needs to know more about her original parents in order to continue growing, I will gladly help her.


See Nemy, Adopted Children Who Wonder, "What Was Mother Like?", N. Y. Times, July 25, 1972, at 22, col. 1; Sorosky, supra note 41, at 24.

Adoptive parents often interpret an adoptee's interest in meeting his biological relatives as an indication of their own failure as parents. This fear of being abandoned apparently stems in many cases from unresolved feelings of loss and separation associated with infertility and childlessness. Sorosky, supra note 41, at 23. The fear that searching for their biological parents will cause their adoptive parents anguish probably deters many adoptees from the search. Id. at 24.

See generally note 74 supra.

American Academy of Pediatrics, supra note 41, at 949.

For a discussion of the need to educate adoptive parents in the reasons for an adoptee's seeking his biological parents, see Sealed Record Controversy, supra note 2, at 536.
SEALED RECORDS

biological parents, that the relationship between the adoptive parents and
the adoptee which was formed over the years will suddenly deteriorate does
not necessarily follow. In fact, it has been shown that the finding of
biological parents by an adoptee usually has no permanent effect on his
relationship with his adoptive parents. Some adoptees even report that
they have a closer relationship with their adoptive parents after having
experienced a reunion with their biological parents.

It is submitted, therefore, that legislation enabling an adult adoptee
to have access to his original birth certificate and thereby resolve any
identity problems he might have would not adversely affect the interests
of the adoptive parents. It should be remembered that adoptive parents
do not "own" the adoptee. The adoption proceeding made them the legal
parents of the adoptee, but did not give them a possessory interest in the
child they adopted. An adult adoptee, if he so wishes, should be free to seek
out his biological heritage.

Biological Parents

The biological parents, too, have certain rights which should be pro-
tected in the adoption proceedings and subsequent related actions. Their
interests, however, like those of the adoptive parents, must be weighed
against the interests of the adoptee.

Allowing adult adoptees access to their adoption records and original
birth certificates would not necessarily result in an increase in the number
of adoptees seeking out their biological parents. Research has shown that
the more information an adoptee has about his background, the less likely
it is that he will attempt to locate his biological parents. It is possible,
then, that allowing adult adoptees access to all the information contained

82 Since the adoptee is seeking to resolve problems concerning his identity rather than to
discover new parents, there is little chance that his natural parents will displace his adoptive
parents in his affections. A recent study has shown that in many cases an adoptee's reunion
with a biological parent consists of only one or two meetings at which he asks the biological
parent to tell him everything he can about his background and birth. After one or two
meetings, both resume their separate lives. Kasindorf, Who Are My Real Parents?, 101
McCall's, May 1974, at 53 [hereinafter cited as McCall's]. See also Kiester, Should We
Unlock the Adoption Files?, 52 Today's Health, Aug. 1974, at 54. Some adoptees, however,
do establish some type of parent-child relationship with their biological parents. See Fisher,
supra note 52, at 210-19.
83 See Sorosky, Baran & Pannor, The Reunion of Adoptees and Birth Relatives, 3 J. Youth
84 See, e.g., ALMA Newsletter, Apr. 1974, at 3 (P.O. Box 154, Washington Bridge Station,
New York, N.Y. 10003).
85 It has been contended that adoptees are sometimes treated like chattel. Fisher Address,
86 See note 6 and accompanying text supra.
87 See Katz, supra note 66, at 9.
88 See Triseliotis, supra note 37, at 42, 1-68; Baran, supra note 49, at 8.
in their records would result in fewer adoptees' trying to locate their biological parents than now attempt to do so. The information contained in adoption records might answer their genealogical questions and resolve any problems they have concerning their identities.\(^8\)

There is, however, the possibility that the adult adoptee who examines his records will look for and perhaps find a biological parent.\(^9\) It is generally assumed that a biological parent who relinquishes a child for adoption wants to forget the entire experience and start a new life.\(^10\) Research indicates, however, that this often is not true. Many biological mothers, for example, periodically inquire about their children's welfare at the agencies that handled the adoption.\(^11\) In a recent study of the effect of sealed-record adoptions, many biological mothers expressed a desire to share with their children current information about themselves and to receive reports concerning their children's welfare.\(^12\) The results of the study showed that many biological parents were responsive to the needs of the adoptees and would be amenable to a reunion if it would be helpful to the adoptees.\(^13\) Thus, the possibility of being located by a child who had been relinquished for adoption would not be distasteful to all biological parents.\(^14\) For some, the experience would provide the opportunity to resolve old feelings of guilt about giving up the child and to end years of questioning about the fate of the child.\(^15\)

Some biological parents, however, probably prefer to forget the entire experience connected with the child's birth and adoption.\(^16\) These parents undoubtedly want to retain their anonymity and would not welcome a reunion.\(^17\) The reappearance of a child given up for adoption years before

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\(^8\) In Scotland, Finland, and Israel, where adult adoptees are allowed access to information in their records, the majority of adoptees who have obtained their records have been satisfied with the information they discovered and have not had any need to search further. Baran, supra note 49, at 8. See generally note 37 supra.

\(^9\) Some adoptees might feel as Florence Fisher, president of ALMA, did: "I want a face to face confrontation . . . . My mother is obligated to tell me: Who is my father? What is my hereditary background? Do I have any brothers and sisters?" Lilliston, supra note 39, at 13, col. 2.

\(^10\) See, e.g., Gallagher, supra note 9, at 122-25.

\(^11\) Sorosky, supra note 41, at 25.

\(^12\) Pannor, supra note 12, at 192.

\(^13\) Id.

\(^14\) Florence Fisher, president of ALMA, reports that in the 600 cases of reunions between adoptees and their biological parents in which she has assisted, all but three biological parents indicated that they wanted to be found by the children they had given up for adoption. PEOPLE, Aug. 18, 1975, at 25.

\(^15\) Baran, supra note 49, at 7; Georgia Dep't of Human Resources, Adoption Newsletter, Nov. 1974, at 2.

\(^16\) For a discussion of why some biological mothers prefer to forget the experience of giving birth to their children, see J. Pochin, Without a Wedding-Ring: Casework with Unmarried Parents 117 (1969).

\(^17\) In a letter to syndicated columnist Ann Landers, a biological mother replied to a letter from
could be very disruptive to the lives of some biological parents.\textsuperscript{99} For example, a woman who as an unwed teenager had released her child for adoption and later, without revealing this fact, married and had other children might well be unprepared to handle the unexpected reappearance of her child. Allowing adult adoptees access to their records thus could adversely affect some biological parents. It has been suggested, however, that any discomfort experienced by biological parents upon the opening of adoption records "would in no way equal the anguish and bewilderment [their relinquished children] have suffered as a result of their unknown genealogical past . . . ."\textsuperscript{100} The adoptee had no independent voice in the adoption proceeding which provided for confidentiality.\textsuperscript{101} Yet as a result of the adoption, he is usually faced with a lifetime of uncertainty concerning his genealogical background. Although there may be instances where allowing an adult adoptee access to his records would not be in the interests of the biological parents, it is submitted that the adoptees' needs should nevertheless prevail.

\textbf{CONCLUSION}

An adoptee, upon reaching adulthood, should have an unfettered statutory right to examine the records containing information about his biological identity. Since only a few states now give an adoptee this right,\textsuperscript{102} legislative reform in this area is greatly needed. The issue of sealed records in adoption proceedings has received considerable coverage in the media.\textsuperscript{103} Much of the interest in the subject has been generated by various groups\textsuperscript{104}

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\textsuperscript{99} Adoption agencies frequently express great concern that an adoptee, if allowed access to his records, would locate his biological parents and intrude upon their lives. Anton J. Vlcek, Executive Director of the Children's Home Society of Florida, maintains: "It can be devastating to a woman or man to have an adult appear claiming them as parents when they have made new lives, with other partners or families." Letter from Anton J. Vlcek to the \textit{St. John's Law Review}, July 15, 1975, on file in the St. John's Law Review office. Research indicates, however, that adult adoptees who try to locate their biological parents are careful not to disrupt their lives. \textit{McCall's}, \textit{supra} note 82.

\textsuperscript{100} Lilliston, \textit{supra} note 39, at 12, col. 1.

\textsuperscript{101} See \textit{Katz}, \textit{supra} note 66, at 14.

\textsuperscript{102} See notes 17-22 and accompanying text \textit{supra}.


\textsuperscript{104} One such organization, Orphan Voyage, was founded by Jean Paton and is headquartered in Cedaredge, Colorado. See note 38 \textit{supra}. Another, Yesterday's Children, was organized in Evanston, Illinois in 1974. See note 64 \textit{supra}. The largest and best known group is ALMA, founded in New York in 1971. See notes 49 & 76 \textit{supra}. 
composed mainly of adults who were adopted as children. Organizations like ALMA, the Adoptees' Liberty Movement Association, are raising the consciousness of the public concerning the problems caused by sealed-record statutes. Some jurisdictions, recognizing that sealed-record statutes are not in the best interests of adult adoptees, are enacting legislation which follows that of the few more "enlightened" jurisdictions wherein adult adoptees are allowed access to information revealing their biological identities. A bill is currently being considered in Ohio which would amend the law in that jurisdiction to enable adopted persons, upon attaining majority, to examine the records of their adoptions. Similar legislation is expected to be proposed in Minnesota.

It is perhaps difficult for persons who were raised by their biological parents to understand the need many adoptees have to discover their biological identities. It is hoped, however, that as more people recognize the harm that is often caused by sealed-record statutes such statutes will be abrogated by an increasing number of states.

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105 See generally notes 49 & 76 supra.
106 See text accompanying notes 17-22 supra.
108 The Minnesota Council on Adoption, Education Committee, is reviewing the concerns of the adopted adult and is working with an organization of adult adoptees on the question of sealing the original birth certificate. They hope to reach a consensus soon and develop proposed legislation. Letter from Ruth C. Weidell, Minnesota Adoption Supervisor, to the St. John's Law Review, July 9, 1975, on file in the St. John's Law Review office.