

S B

241

House Health, Education & Social Services Committee
April 30, 1984
CS for Sponsor Substitute for SB241 (Jud)am

Analysis
Alaska Chapter, National Association of Social Workers

- Section 1 -Provides that a court order is required for inspection of adoption records and deletes the State Registrar's authority to adopt regulations with respect to such inspection. (It is currently the practice of the State Registrar to release original birth certificates by regulation although the Statutes prohibit such release.)
- Section 2 -Provides for access to adoption information and requires the State Registrar to notify biological parents by certified mail (addressee only) of a request for identifying information made by adult adoptees.
- Permits release of identifying information to adult adoptee unless State Registrar has received a written objection to the release from the biological parent.
 - Permits the release of eight items of non-identifying information to adoptive parents and/or adoptees 18 years of age or older.
 - Requires that after the effective date of the Act the State shall provide the non-identifying information on a standard form.
 - Requires the State Registrar to attach to the original birth certificate the name and address of the adoptee and or the biological parent should they so request and then enables release of the name and address of the adoptee to the biological parent and the biological parent to the adoptee.
 - Requires that anyone placing a child for adoption after the effective date provide the eight items of non-identifying information to the State Registrar.
 - Requires that the Department of Health and Social Services attempt to obtain the eight non-identifying information items upon request for adoptions occurring before January 1 1984.
 - Requires maintenance of records.
- Section 3 -Amends A.S.25.23.060 to provide that consent to adoption forms must state the person's right to withdraw the consent and also that a copy of the consent form be provided to the person.
- Section 4 -Clarifies access to adoption records under A.S.25.23.150 and provides for release of non-identifying information on request and for identifying information with consent.
- Section 5 -Clarifies language prohibiting release of identifying information on adoption.
- Section 6 -Prohibits the disclosure of the name of either an adoptee or a biological parent.

CSSSSB241 (Jud)am

Alaska Chapter, National Association of Social Workers

page 2

- Section 7
- Requires persons or agencies placing children for adoption to obtain for the State Registrar the eight items of non-identifying information and a statement that the biological parent is aware of the release of information procedures and that the State Registrar must attach current information on them and on the adoptee to the original birth certificate at any time.
 - Requires that the non-identifying information shall be attached to the original birth certificate.
 - Requires that the biological parent must be given a copy of their completed consent form.

The Alaska Chapter, National Association of Social Workers believes that CSSSSB 241 addresses the interests of both adoptees and biological parents and provides a balance between their needs. Furthermore, CSSSSB241 provides for a change in adoption record keeping for the future in order to address a fundamental injustice which has heretofore been done adoptees by denying them access to information about themselves.

Cecilia Kleinkauf, MSW, ACSW

Alaska Chapter, National Association of Social Workers

April 30, 1984

Adoption Records: Open or Closed

by

Cecilia "Pudge" Kleinkauf, MSW, ACSW
Associate Professor, Dept. of Social Work
University of Alaska-Anchorage

Should adoption records be sealed? That question has been undergoing significant debate in the legislature of virtually every state in the United States during the last five years. The secrecy with which our society has surrounded adoption in modern times is no longer blindly accepted, but has emerged from the shadows into the light of painful re-examination. Legislators, judges and attorneys, as well as adoptees, biological parents, researchers and mental health professionals, are finally considering whether such secrecy really serves the best interests of all the parties to adoption.

History

Adoption, a legal and social avenue to parenthood, is as old as recorded history. The ancient Greeks, Egyptians and Romans all had specific methods by which adults assumed parenthood for children not born to them. Most cultures also sanction arrangements of various kinds for the establishment of other than biological par-

enthood. Originally adoption served mainly to meet the needs of adults, both those who were childless and those who were unwilling or unable to raise a child, modern adoption practices, except for grey or black market adoptions, focus on meeting the needs of children.

From colonial times until the latter half of the 19th century, indenture arrangements by orphanages and various forms of foster or work-home placements served to substitute for the adoption of many children. Individual children could still be adopted, however, through the passage of a specific act of adoption by the appropriate legislative body. Following the passage of a general adoption law in Massachusetts in 1851, other states also enacted laws, which at first mainly provided for a legal record of the transfer of the child. Not until the '30's did laws begin to reflect the


requirement for the sealing of records and the issuance of a new birth certificate.¹ The intent behind such provisions were a wish to "erase" the social stigma of illegitimacy, protection of adoptive parents from intrusion by biological parents, denial of the differences between biological and adoptive parenthood and a disregard of the adoptee's interest in knowing his or her origins.

Contributing Social Forces

"Within the past twenty years, however, five trends emerged that have had a decided impact on the adoption issues we confront today. They are: a declining birth rate, changing sexual mores, increasing concern about the rights of minority groups, mounting interest in personal genealogy, and an increasing

"If you want the very best!"
Wiker Roofing
"Your personalized roofer"
248-1600
P.O. Box 4-1687
Anchorage, Alaska 99509

**K. L. WILLITS
& ASSOCIATES, INC.**
1740 Mt. Blanc Circle
Anchorage, Alaska 99504
*Kenn & Wanda solve the Mental
Health Association's programs*

AIR LOGISTICS
OF ALASKA, INC.
A DIVISION OF OFFSHORE LOGISTICS, INC.
"The Better Helicopter Co."

GEOLOGICAL &
SEISMIC EXPLORATION
PASSENGERS & CARGO
SINGLE & MULTI ENGINE
FIXED & ROTARY WING AIRCRAFT
CHARTER • CONTRACT • OFFSHORE
Anchorage 243-5289
Fairbanks 452-1197
6400 Airport Dr. Merit Point

**ANCHORAGE
AUTOMOTIVE INC.**
Your quality body shop
in Anchorage since 1956
**Foreign
& Domestic Cars**
Downtown at 6th & Barrow
135 E. 6th Avenue
Anchorage, Alaska
**Fast, Courteous,
Dependable Service**

272-2461

*ak Mental Health Assoc
(Dedication)*

General
Contractors &
Professional
Underground
Contractors

344-4581
Nigh Road

the SURVEYOR'S
EXCHANGE

DeArmon Road, Anchorage, Alaska

345-6500
Larry & Judy Wilmarth salute
the Mental Health Association

Where Alaska Spends the Night!

Convenience
courtesy
comfort

The next time you're in Anchorage for shopping,
business, or just visiting, remember where your friends
are staying — INLET INNS

For reservations, call the Downtown Inlet Inn
276-4667
539 H Street • Anchorage, Alaska 99501

**TATITLEK Corporation
& Construction Company**

Alaska's future is in our children's hands
Support your Mental Health Association in the communities.
Child abuse is an ADULT problem!

835-4844
P.O. Box 1270
Valdez, Alaska 99686

*John Allen, President, salutes the Mental Health Association
and their fight against drug and child abuse*

Concern about the rights of minority groups, mounting interest in personal genealogy, and an increased tendency to view the courts as the final arbiter of all disputes."²

While a decline in the birth rate has meant fewer children available for adoption, and the turning of many prospective adoptive parents to the black or grey market,³ it has probably also contributed (at least in part) to the increasing numbers of couples investigating alternate avenues to parenthood, such as artificial insemination, "test-tube" pregnancies, and surrogate arrangements. A reduction in the availability of adoptable infants, coupled with an increase in the availability of older or "hard to place" children, has undoubtedly encouraged both adoption agencies and adoptive parents to re-examine preferences and practices.

Sexual mores have changed, and single parenthood — with or without marriage — is an accepted fact of modern life. Increased awareness and utilization of a variety of methods of contraception, together with safe and legal abortions, have reduced the numbers of unwanted children available for adoption. Marriages which are childless by choice contribute to some reduction in the numbers of prospective adoptive couples.

The '60's and '70's have been characterized by numerous "rights" movements by varied minority groups. Adoption has been affected by efforts to ensure that Black, Chicano, and Indian children are placed with families who can ensure the transmission of racial and cultural heritage as well as by the women's movement focus on the issue of choice as it relates to child-bearing. Adoptees and biological parents have also established a variety of organizations to further their rights as minority groups.

Interest in one's "roots" is hardly limited to adoptees although their "searches" have received more publicity than those of others, except perhaps for Alex Haley.⁴ Because of the secrecy of adoption records and thus the difficulty in obtaining information, adoptees are often left with

Incomplete information about their biological heritage, blood siblings, medical and genetic history and racial background. The wish to know one's heritage, coupled with the belief that discrimination results from laws which deny only adoptees access to information about themselves have provided the greatest impetus to the open records movement.⁵

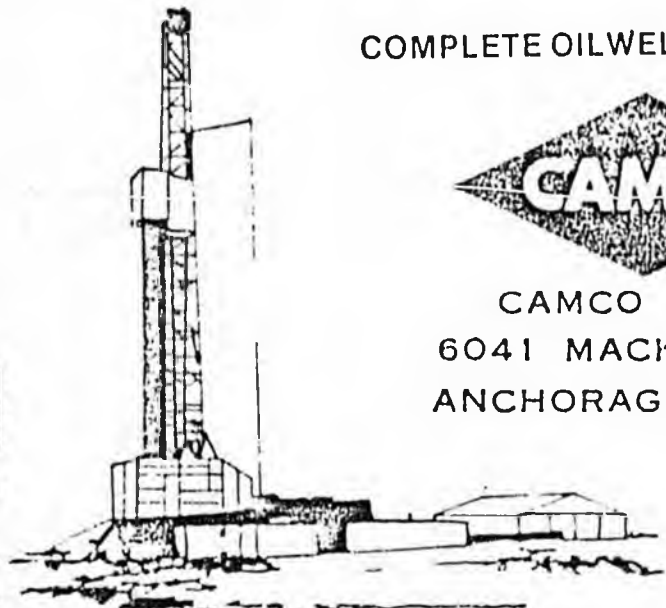
Groups and organizations comprised of adoptees, biological parents and adoptive parents have also formed to affect adoption practices as well as to advocate, and educate the parties to adoption in everything from legislative action, and judicial reform to methods and skills for "the search".

The courts, while identified in most state statutes as the avenue through which adoptees can have their records opened, have proven unresponsive to the petitions for access to information, whether the basis has been medical, emotional or financial.⁶ The fact that most statutes direct the courts to base the decision on "good cause" which is an overly vague term, has also contributed to efforts to enact legislation providing for more identifiable criteria, especially where more universal access to information is desired.


Adoption Agency Practices

The procedures of adoption agencies are beginning to change in light of the current efforts toward open adoption records. The Child Welfare League of America, recognized as the national standard-setter for adoption and other child welfare services, recommends that the adoption agencies carefully gather significant information so that it will be available in the future, inform parties to the adoption that firm guarantees of confidentiality can no longer be made because of changing laws, and assist the biological parent(s) to consider whether or not they will be willing to be contacted by the adoptee when he/she attains adulthood.⁷

The increase in adoption of older children, where maintenance of confidentiality is neither wise nor possible,⁸ has also contributed to re-examination of current adoption practice, as has a proposal for "open adoption" by Baran, Pannor and Sorosky. Open adoption is "an adoption in which the birth parents meet the adoptive parents, participates in the separation and placement process, relinquishes all legal,



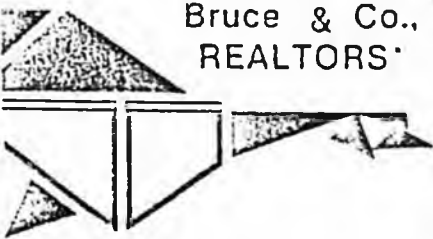
COMPLETE OILWELL SERVICES



CAMCO INC.
6041 MACKAY ST.
ANCHORAGE, ALASKA
99502

(907) 276-3525 TELEX 090.26481


**Bruce & Co.,
REALTORS'**



**BUSINESS & PERSONAL
REAL ESTATE SALES**

Fee Counseling
262-7315

Cedar Chalet - east of "Y" in Soldotna
 Box 2559
 Soldotna, Alaska 99669



*Bruce Schurmer, Broker, proudly
 supports the Mental Health Association
 and its programs in the community*

**VALDEZ
REALTY**
"The Dirt Merchant"



RESIDENTIAL
 COMMERCIAL
 INDUSTRIAL



835-2408
 Corner of Legan & Hartzel
 Teamster Building

P.O. Box 864
 Valdez, Alaska 99686

*Walt Wood, Broker
 Jillian Wood, Salesman*

4001 Turnagain Blvd. East
Anchorage, Alaska 99503

KEN BRADY
CONSTRUCTION CO., INC.

GENERAL CONTRACTORS
ANCHORAGE, ALASKA

243-4604
243-1666

*Contributing to the
economic growth and
prosperity of Alaska*

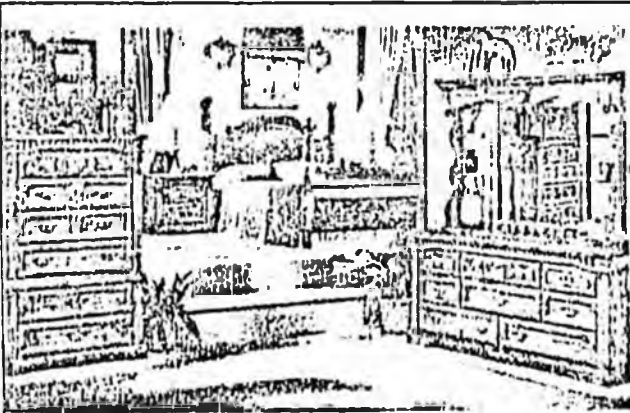
Your Home Base for Alaska Sporting Fun!

We have complete selections of equipment for: Fishing
• Hunting • Camping • Backpacking • And a complete
line of Guns • Tents • Sleeping bags • Freeze-dried
foods • Traps • Lures • Fly-tying supplies • Clothing •
Boots • Waders • Coleman products • Fishing tackle •
Books • Re-loading equipment, and much more!



Our friendly staff of sporting experts
will be happy to help you select the proper
equipment for Alaskan Sporting

Mt. View Sports Center, inc.
134 SOUTH PARK ANCHORAGE, ALASKA 99504
PHONE (907) 277-9733



WATERBED
WORLD

A Division of Alaska World Traders, Inc.

274-1274
1100 SEWARD HWY

283-4427
501 14 NORTH ROAD
FINAL STORE

CREDIT TERMS AVAILABLE

Bachner Co.
A Complete Staff For All Your Real Estate Needs
Commercial and Residential
274-1593

Real Estate is our Business
Service is our Specialty

We are proud to Salute the Mental Health Programs to make Alaska a fine Place
for all to live in.

1135 W. 8th Avenue
Anchorage, Alaska

oral, and nurturing rights to the child, but retains the right to continuing contact and to knowledge of the child's whereabouts and welfare."⁹

Psychological Issues

The dilemma of conflicting "rights" and "needs", however, provides the backdrop for all efforts to revise sealed adoption records laws. While some take the position that "needs" are not to be equated with legal rights,¹⁰ that issue will not be debated here. The adoption triangle, so well described by Sorosky, Baran and Pannor,¹¹ consists of three parties (five individuals usually) each with separate but intertwining needs—the biological or birth parent(s), the adoptee, and the adoptive parents. Meeting the need of the adoptee to know his origins, violates, in the minds of many, the need of the biological parent to maintain anonymity. It is also seen by some as violating the need of the adoptive parents to maintain distance between themselves and the biological parent. In the reverse, the need of the biological parents' need to remain anonymous violates the adoptees' need for information.

Attitudes of the parties to the adoption triangle regarding access to information are changing.¹² A survey undertaken in Alaska during 1980 by this author revealed that adoptees, biological and adoptive parents overwhelmingly believed adoptees should have access to non-identifying information. Over 80% of the adoptees and biological parents, and 65% of the adoptive parents believed identifying information (names) should be released if that person's consent had been obtained.¹³

Searching

It must be noted, that not all requests for information or "searching" are for the purpose of obtaining names and seeking reunion. The fact that Scotland (as well as England, Finland, and Israel) permits access to adoption records enabled Triseliotis in 1973 to inter-

view 70 Scottish adoptees who had requested information during 1969-70. About one-third only wanted background information.¹⁴ Weidells' study of the results of the first 13 months of Minnesota's open records law also revealed requests for information on genetic history and birth relatives.¹⁵ Court requests for access to records have also been made for everything from medical history to the establishment of inheritance.¹⁶

Adoptees who "search" in an attempt to locate biological parents do so for a variety of reasons. The completion of an identity, and the establishment of "wholeness" like everyone else seem to be the most universal motivation.¹⁷ In almost every study done, female adoptees are much more desirous than male adoptees of learning more about their birth parents and more about their biological heritage and are more anxious to make contacts with the birth parents. It is suggested that women, as child bearers, are more concerned with their genetic heri-

tage, are freer to acknowledge the complex feelings associated with adoptive status, are more likely to define themselves in terms of family, and may have more identity conflicts in our society."¹⁸ Sorosky, et. al., also provide an excellent review of other research related to the psychological and social issues in adoption as they pertain to the various developmental stages in the life as an adoptee, male or female.¹⁹

Kadushin, after having reviewed the available research related to "searching", concludes that, "when adoptees meet their biological parents, in 80 percent of the cases or better, the meeting proves to be successful and satisfying to the participants."²⁰

Federal Open Records Legislation

On the federal level, a commitment to the preservation of cultural and racial heritage and a belief that

EAGLE RIVER 76

Support your Mental Health programs in the communities



694-2251
Eagle River,
Alaska

UNION 76

You are never alone
God loves you!

J. H.

Moneymaker

CONSTRUCTION INC.

—GENERAL CONTRACTORS—

452-6025

P.O. Box 2821

Fairbanks, Alaska 99707



"Have you hugged your child today?"

If you own land, animals, have a garden,
or are doing some building,
you should be shopping at:

Mat-Su Supply, Inc.





745-4839

P.O. Box 1127

Palmer Alaska 99645

We proudly support
the Mental Health Association's
programs in the communities.

Sundeen Fuel Co. 694-9541
 Heating Oils — Gasoline — Propane
 P.O. BOX 529
 EAGLE RIVER, ALASKA 99577

JOHNSON SAND & GRAVEL, INC.

For all your excavation, sewer and water installations...also gravel fill and yard work, welding, shop and machine work, snow blowers...

234 Fidalgo Drive
 Valdez, Alaska
 835-4513




We have everything. "Brownie's headquarters"

Prescriptions • Full line of cosmetics • Cameras accessories and all films • Sporting Goods and hunting and fishing licenses • Ice Cream • Gifts for everyone • All your needs • Arts and crafts supplies • Books • Magazines • Insect repellents • Scenic post cards • Candy • Watches • Greeting cards • Stationery • Sunglasses

Located in the heart of Soldotna on the Kenai Spur Road

SOLDOTNA DRUG

Open Daily 9:00 a.m. - 9:00 p.m. Phone 263-9621 Sunday 1:00 p.m. - 4:00 p.m.



CAROUSEL CHILD CARE CENTERS

Life is fragile, Handle with care.

- Indoor-Outdoor Play
- Hot Lunches
- Ages 2 mo to 10 y's
- Creative Curriculum

CAROUSEL 133 1251 670 Delmar Avenue
 INFANT INN 274-343 845 K Street
 GINGER BREAD 274-2677 4520 Street

Indian children—even though adopted—had a right to participation in their tribe prompted passage of the Indian Child Welfare Act by Congress in 1978. This act gives Indian adoptees 18 years of age or older access to information about the tribal affiliation of their biological parents.

Federal legislative efforts have generally centered on (1) a national registry system to facilitate contact between adoptees and biological parents, (2) a system of intermediary contact to obtain consents or (3) a release of all information on request. Because of the fact that many adoptions involve the laws of more than one state, "a proposal for such a federally sponsored but not necessarily federally operated-national adoptee-birthparent registry was introduced in the U.S. Senate in April, 1980 by Senator Carl Levin (D-Mich.). The proposal (S2561) died in committee."²¹

State Open Records Legislation

During 1977, Connecticut and Minnesota became the first states to enact legislation, permitting access to identifying information with the consent of the person to be identified. North Dakota followed in 1979. Michigan passed such legislation in 1980 as did Florida and Nebraska, while Iowa amended its adoption statues to provide for the release of non-identifying a registry to facilitate reunions.²²

Modeled generally after Minnesota and Connecticut, legislation to increase access to adoption records was introduced in Alaska in the 1980 legislative session by Representative Terry Gardiner (HB 792) and in the 1981 session by Senators Rodey, Sturguiewski, and Stimpson (SB 399) but neither bill has, as yet, passed. Both bills initially provided for:

1. Establishment of an intermediary system whereby the state would attempt to make contact with a biological parent to obtain a release of the original birth certificate when the adult adoptee had requested such information.
2. Establishment of a list of items (taken from Connecticut laws) constituting non-identifying information which could be released on request of the adult adoptee.

In addition to releasing non-identifying information, the 1981 version of the bill also included provisions for gathering specific non-identifying information (i.e. medical) and the attachment of such information to the original birth certificate. Adult adoptees would be provided such non-identifying information on request. Additionally the original birth certificate would be accompanied by an affidavit signed by the biological parent(s) which either granted or denied access to the original certificate by the adoptee upon her/his attaining the age of majority. Affidavits could be changed at any time.

The 1981 version of the bill was pending in the Senate Judiciary Committee at the conclusion of the 1981 legislative session, and will be carried over into the 1982 session when it is expected to receive additional attention.

The examination of Alaska's adoption statutes, prompted by the study of these bills, revealed that while present law clearly seals adoption records and prohibits the release of original birth certificates, the Bureau of Vital Records, within the Alaska Department of Health and Social Services, had promulgated regulations for itself which permitted release of original birth certificates. When this discrepancy came to light, legislative committees became extremely concerned about a governmental unit's authority to enable itself to act counter to the statutes.

As a result of this statute versus regulation, issue, debate on the bills expanded from consideration of whether or not to provide mechanisms for adult adoptees to learn their origins, and whether this provi-

sion was a valid function of government, to how to amend the law in order to control development of regulations which contradicted it. Concerns were also raised about state liability as the result of violation of privacy laws.

As of this writing (July 1981) the present version of the CSSB 399 does not contain a requirement that the State of Alaska establish an intermediary system whereby biological parents could be located and their consent obtained (or refused) for the release of the original birth certificate. Prohibition on the release of identifying information is maintained and the court is reaffirmed as the only avenue of gaining access.

CSSB 399 if passed, would, however, require certain non-identifying information and an affidavit permitting or denying access to the birth certificate to be attached to the certificate at the time of adoption. The non-identifying information would be available to the adult adoptee on request as would the certificate if the biological parent has consented.

TONSINA LODGE

Gasoline - Propane - Rooms
Restaurant - Deluxe Trailer Space

15 miles North of Pump Station 12

822-3206

Mile 79 Richardson Hwy
Glennallen, Alaska

Bob & Margaret, your hosts

Mard's Plumbing & Heating

"Complete Plumbing & Heating Service"

- ★ Alterations
- ★ New Work

Call 344-6051
6636 Rosewood
Anchorage, Alaska



BERG

Motor Company

ZODIAC
INFLATABLE BOATS

OK USED CARS • SERVICE
Before you buy, see us!

OK USED CARS • SERVICE
Before You Buy - See Us

- OUTSIDE DELIVERIES
- TRAINED MECHANICS
- GMAC FINANCING

486-4751

122 Benson Avenue, Kodiak

KENAI INDUSTRIAL
MECHANICAL COMPANY




KIMCO INC.

283-3656

IF NO ANSWER CALL
283-4291

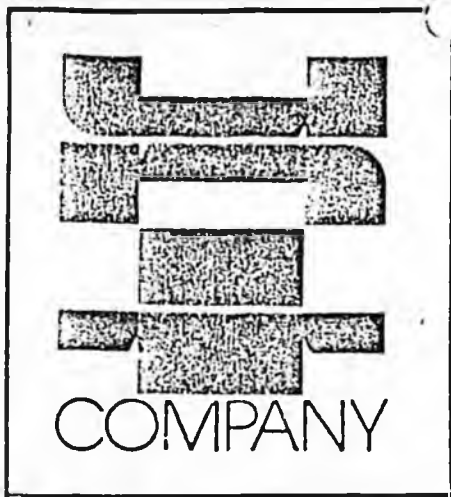
PIPE FABRICATIONS
REFINERY MAINTENANCE
GENERAL PLUMBING & HEATING
INSTALLATIONS & REPAIRS
STEEL FABRICATIONS
RESIDENTIAL - COMMERCIAL

P. O. BOX 2910
KENAI, ALASKA


MI 18.5 SPUR HWY
INDUSTRIAL PARK
SUBDIVISION - KENAI

RADIO DISPATCHED

*S. Darby Howell - gen. mgr., rotates the Mental Health Asso
light against drug & child abuse in the communities*



276-0000
COOK INLET
REALTY CO.



**Two names you
can trust.**

Alaska's most valuable resource
is our people — we salute
the Mental Health programs
in our communities!

HOME HOLIDAY
WITH A
MILLION
ASSOCIATES

THE GOOD LIFE BEGINS AT HOME



MEMBER
FSLIC

Conclusion

The fundamental issues of the adoptee's "right to know" versus the biological parents' "right to privacy" will not be resolved easily, but the debate will continue in 1982. Many believe that the creation of an adoption registry through which adult adoptees and biological parents willing to have their names released could register to locate each other may be at least part of the answer since no state intercession or mediation between the parties is required. Others contend that a mediator system is necessary in order to notify biological parents that their child wants to contact them and provide assistance to all parties.

The dilemmas in adoption will not be resolved by avoidance or by stubbornly clinging to the status quo. Only open debate and examination of the issues will further the "search" for answers. Alaska, like other states, is embarking on that journey.

References

- ¹ Kadushin, Alfred, *Child Welfare Services*, 3rd edition, MacMillan Publ. Co., New York, 1980, pp. 465-469
- ² Watson, Kenneth W., "Who is the Primary Client?", *Public Welfare*, Vol. 37, No. 3, Summer 1979, p. 13

³ Baker, Nancy C., *Baby Selling. The Scandal of Black Market Adoption*, Vanguard Press, New York, 1978; Meezan, William, et. al., *Adoptions Without Agencies: A Study of Independent Adoptions*, New York: Child Welfare League of America, 1978

⁴ Fisher, Florence, *The Search for Anna Fisher*, Arthur Fields Books, New York, 1973; Haley, Alex, *Roots*, Doubleday & Co., Garden City, N.Y., 1976; Lipton, Betty Jean, *Twice Born: Memories of An Adopted Daughter*, McGraw Hill Book Co., New York 1975

⁵ Anderson, C. Wilson, "The Sealed Record in Adoption Controversy," *Social Service Review*, 41, No. 1 March, 1977, pp. 141-145; Small, Joanne W., "Discrimination Against the Adoptee," *Public Welfare*, Vol. 37, No. 3, pp. 38-43, Summer 1979

⁶ Harrington, Joseph, D. "The Courts Content With Sealed Adoption Records," *Public Welfare*, Vol. 38, No. 2, Spring 1980, pp. 29-43

⁷ Child Welfare League of American Standards for Adoption Service, New York, 1978 N.Y.: CWLA

⁸ Chestang, Leon W., and Heymann, Irmgard, "Preparing Older Children for Adoption", *Public Welfare*, Vol. 34, No. 1, Winter 1976, pp. 34-40

⁹ Baran, A., Pannor, R., and Sorosky, A.D., "Open Adoption", *Social Work*, 21, No. 2 March 1976, p. 97

¹⁰ Zeilinger, Richard, "The Need vs. The Right to Know", *Public Welfare*, Vol. 37, No. 3, Summer 1979, pp. 44-47

¹¹ Baran, A., Pannor, R., Sorosky, A.D., *The Adoption Triangle*, Anchor

DAY & NIGHT

*"Keep the
Home Fires Burning"*

CERTIFIED MILK DELIVERY

344-4565
6401 Lake Otis Parkway

FUEL COMPANY



Kee's Kiddie Kare
Private Christian Day Care Center
CERTIFIED PRESCHOOL
& KINDERGARTEN
277-8943
240 N. Howard
Anchorage, Alaska 99501

**KACHEMAK
WHOLESALE**

Grocery • Meat • Produce
Ray Everts, Sales Manager
EUMEN PLAZA
(907) 235-7622 / 235-8618

Press, Garden City, N.J., 1978

¹²Children's Home Society of California, "Report of a Research Project," *The Changing Face of Adoption*, March 1977

¹³Kleinkauf, Cecilia, "Public Opinion Favors Opening Adoption Records", *Anchorage Daily News*, Dec. 12, 1980, p. A9

¹⁴Triseliotis, J.P., *In Search of Origins*; Routledge and Kegan Paul, London, 1973

¹⁵Weidell, Ruth C., "Unsealing Sealed Birth Certificates in Minnesota," *Child Welfare*, Vol. LIX, No. 2 Feb. 1980, p. 113-119

¹⁶Harrington *Op. Cit.* 1980

¹⁷Lifton, *Op. Cit.*, Sorosky, et. al. *Op. Cit.*, Triseliotis, *Op. Cit.* See also Andrews, Robert G. "A Clinical Appraisal of Searching," *Public Welfare*, Vol. 37, No. 3, Summer 1979, pp. 15-21.

¹⁸Kadushin, *Op. Cit.*, p. 499

¹⁹Sorosky, et. al., *Op. Cit.*

²⁰*ibid.*

²¹Harrington, Joseph D., "Legislative Update on Sealed Adoption Records," *Public Welfare*, Vol. 39, No. 2, Spring 1981, p. 28-31

²²Harrington, Joseph D., "Legislative Reform Moves Quickly," *Public Welfare*, Vol. 37, No. 3, Summer 1979, pp. 49-57

Harrington, Joseph D., "Legislative Update on Sealed Adoption Records," *Public Welfare*, Vol. 39, No. 3, Spring 1981, pp. 28-31


VILLAGE VENTURES, INC.

4856 BRYN MAWR
ANCHORAGE, ALASKA 99504
L. WARREN HINES, PRESIDENT
Telephone 907/333-9411

Turn in View

—250 Acres—

Over 20 years experience in developing quality homesites for the Anchorage Bowl.



WEL-ASKA Corporation

furnishing
student transportation
in the Valdez area



OUR CHILDREN ARE ALASKA'S FUTURE!

835-2424

P.O. Box 962
Valdez, Alaska 99686



Virginia & Del Welch, owners, proudly support the
Alaska Health Association's programs in the communities.

You should be heating your home with GAS--

HERE'S WHY

Heating a Home in Alaska takes a lot of energy, so it's important to use the MOST EFFICIENT, MOST ECONOMIC energy available for the job.

That's NATURAL GAS from ALASKA GAS!





Make your heating bill the lowest!

Varco-Pruden

the uncommon building system by...

344-4594



VP INDUSTRIAL WAREHOUSE
RETAIL INSTITUTIONAL BUILDINGS

- CLEAR SPANS TO SPECIFICATIONS
- OPEN WEB DESIGN GIVES STRENGTH TO SOLID STEEL
- RIGID FRAMES
- UNIBEAM SYSTEM VERSATILE - ATTRACTIVE - LOW COST

PREFERRED CONTRACTORS INC.

1330 East 71st Avenue - Anchorage, Alaska 99504

SECTIONAL ANALYSIS CSSSB 241 (JUDICIARY) AM

SECTION 1

Deletes the authority by regulation to disclose information concerning adoption or legitimation.

SECTION 2

Provides for access to adoption records and sets the procedure for the notifying of the biological parent. Permits the release of eight items of non-identifying information to adoptive parents and/or adoptees 18 years or older. Requires that after the effective date of the act the State shall provide the non-identifying information on a standard form. Requires that anyone placing a child for adoption after the effective date, provide the ten items on non-identifying information to the State Registrar. Requires that the Department of Health and Social Services attempt to obtain the ten non-identifying information items upon request for adoptions occurring before January 1, 1985. Requires maintenance of records.

SECTION 3

Consent to adoption forms must state the person's right to withdraw the consent and also that a copy of the consent form be provided to the person.

SECTION 4

Non-Identifying information shall be filed with the clerk of the court

SECTION 5

Clarifies language prohibiting release of identifying information on adoption

SECTION 6

Clarifies language on the release of information concerning disclosure or identity of adoptive children or adoptive parents.

SECTION 7

Adds the requirement for the inclusion of non-identifying information to the documents which must be provided to the court. Also adds the requirement of a statement that the biological parent is aware of the procedures of the release of adoption information

SECTION 8

Effective date clause

AMENDED POSITION PAPER
CSSS SB 241 (Jud) am

"An Act relating to adoption; and providing for an effective date."

CSSS Senate Bill 241 (Jud) amends the Vital Statistics Act and the adoption statute pertinent to access to adoption records and consent procedures. The Bill has the effect of denying persons adopted in Alaska prior to enactment of this Bill access to their original birth certificates, which is presently permitted by regulation. The Bill provides that, for adoption which occurred prior to January 1, 1985, the State Registrar may not release any information on the biological parent named on the certificate without that person's permission. However, it does allow for a biological parent to file a statement with the Bureau of Vital Statistics permitting access. This Bill reflects the view that the present practice does not protect the confidentiality of the biological parents since their names are made available without their consent or knowledge. While this position may have merit, persons adopted prior to the enactment of this proposed legislation would argue that since the State did not provide a mechanism for collection and retention of non-identifying information before January 1, 1985, they should not be denied access to the information which is presently on file, namely, the original birth certificate.

Even though the Bill provides a means of sending notice of the request by certified mail to the biological parents, the problem of what would happen if one parent agreed to disclosure and the other did not is not addressed.

The Division of Family and Youth Services receives numerous inquiries every year from parents who have relinquished a child and from adult adoptees wanting to locate their biological families. CSSS SB 241 (Jud), as written, would deny access to any identifying information, unless specific instructions are left on record by the biological parent. The national trend is moving more toward open adoption records. While the Division of Family and Youth Services would support the collection of non-identifying information it would recommend considering access to identifying information where available.

CSSS SB 241 (Jud) states the State registrar shall provide the adoptive parents and the adoptee who is age 18 years or older, certain non-identifying information, to wit: age of biological parent, nationality, ethnic background, race, health history, education, physical appearance, talents, existence of other children, religion and type of termination of parental rights. The Division of Family and Youth Services supports the collection of such information because it believes that such facts are necessary for an adopted person to have, as they are responsive to the human need to know "who I am".

AMENDED POSITION PAPER

CSSS SB 241 (Jud) am
PAGE 2

When the Division of Family and Youth Services is the agency involved in a placement, most of this information is collected, if available. All closed adoption files of the Division are on microfilm and total about 5,500.

CSSS SB 241 (Jud) makes it incumbent on the Commissioner of the Department of Health and Social Services to obtain this information on all other adoption placements, which include those made by private agencies and independent adoptions. The majority of the adoptions in Alaska are by private agencies or are independent. In 1983 the Division handled only one-sixth (1/6) of the total. In past years it was only one-ninth (1/9) of the total.

The Bill also amends the adoption statute to provide that a consent to adoption is not valid unless the consent form states that the person has a right to withdraw the consent and is provided with a copy of the consent. The Department would support the amendment.

RECOMMENDED BY: *Michael L. Price, Director*
for Fred M. Lerschick, Actg.
Michael L. Price, Director
Division of Family and Youth
Services

DATE: 4-23-84

RECOMMENDED BY: *Jean P. Brooks*
Jean Brooks, State Registrar
Bureau of Vital Statistics

DATE: April 23, 1984

APPROVED BY: *John R. Smith*
for Robert London Smith, Ph.D.
Commissioner
Department of Health and
Social Services

DATE: 5/1/84

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSSS SB 241 (Jud)
Title: Relating to Adoptions

Sponsor: Kerttula
Requestor: Kerttula
Date of Request: _____

FISCAL DETAIL

Agency Affected: Dept. of Health & Social Services
Program Category Affected: Social and Economic Assistance for the General Population
BRU, Program or Subprogram(s) Affected: Social Services BRU: Direct Service Delivery
Component: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		50.4	52.9			
200 TRAVEL		5.0	5.3			
300 CONTRACTUAL		15.0	15.8			
400 SUPPLIES		.8	.9			
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		71.2	74.9			
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		71.2	74.9			
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY		2.0	2.0			

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Michael L. Price, Director Phone: 465-3170
Division: Family & Youth Services Date: _____

Approved by Commissioner: Jon W. King Date: 5/1/84
Agency: Department of Health & Social Services

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Assumptions

The Division of Family and Youth Services is assuming that the research work will take only two years with one Social Worker III and a half-time Clerk Typist II. This Division is involved in only about one-sixth of the adoptions in this State. The Social Worker III will need to travel to research the remaining five-sixths of the adoption records throughout the State. Travel, Contractual Services and Commodities are estimates. An inflation factor of 5% is used for the succeeding year.

Program Summary

Positions: There will be two positions necessary to do the research work, one full-time Social Worker III and a part-time Clerk Typist II.

Other Expenditures:

Travel will be necessary for the Social Worker III to research the adoption files in each district court.

Contractual services will be necessary to cover the costs of duplication and lease of equipment.

Commodities will be necessary for clerical/office supplies.

Funding: The funding will be from general funds.

Computations

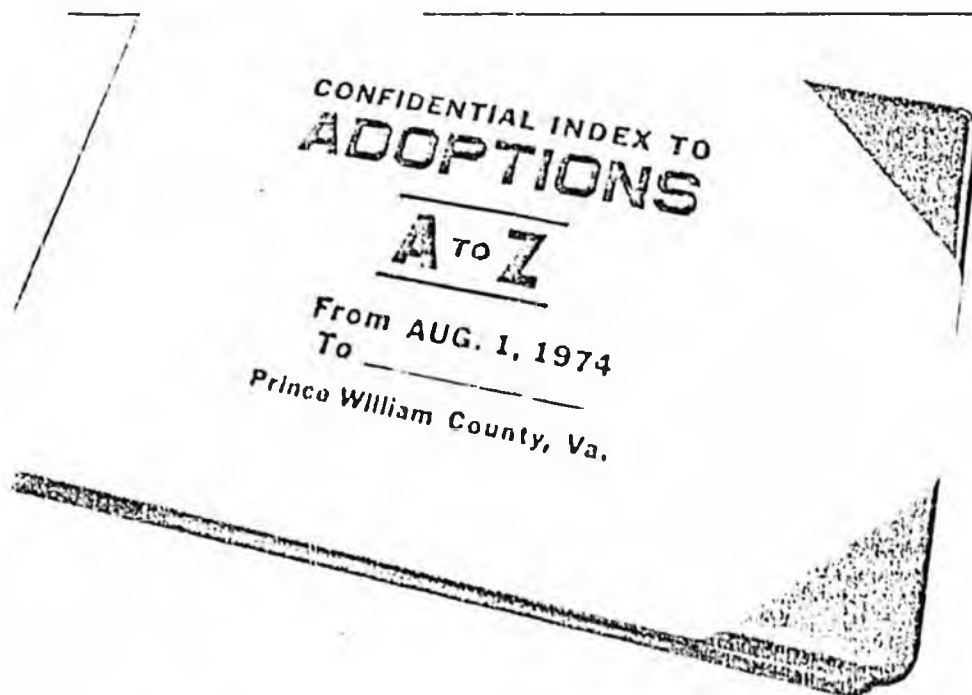
Travel is computed at an average trip cost of \$840 for six trips.

Contractual services is computed at \$7,000 for equipment rental, \$3,000 for telephone and postage, \$4,000 for printing and copying charges and \$1,000 for miscellaneous expenses.

Commodities is computed at \$400 per position.

Discrimination Against the Adoptees

BY IOANNE W. SMALL



Only adoptees are denied their genealogy by law. Likewise, only adopted citizens are issued a birth certificate that represents a legalized fraud.

Joanne W. Small, M.S.W., is a founder of Adoptees in Search (P.O. Box 41016, Bethesda, Maryland 20814), an organization that supports the opening of adoption records to adult adoptees. She is an adoptee and has been successful in finding her birth family.

©1979 3616 79/3703 0038501 00
— 1979 American Public Welfare Association

[T]here are certain rights which belong to a man independent of his position in a civil society. Since society does not bestow these rights, it cannot justifiably take them away . . . such rights are inalienable.

—Edward H. Madden, "Civil Disobedience"

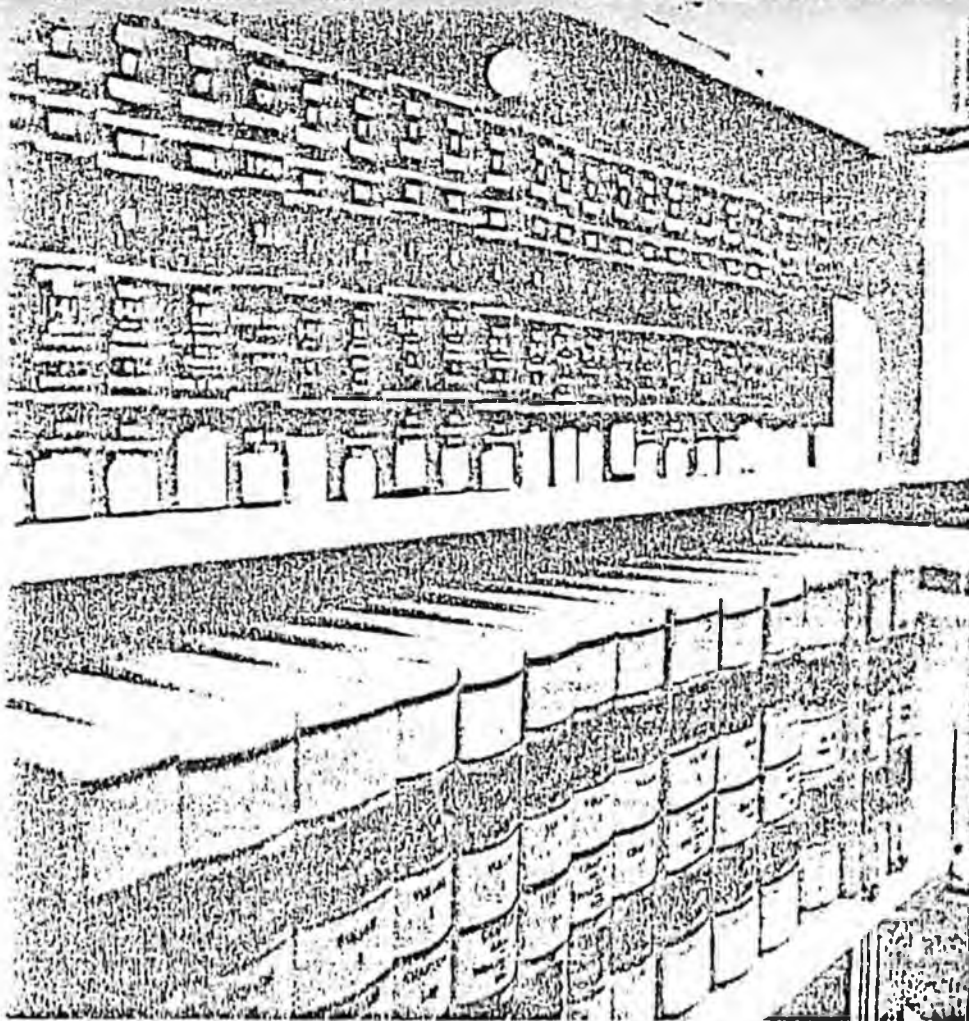
Within the next five years an estimated one half million adopted children in the United States will attain majority.¹ They will have achieved the right to vote, to marry without parental consent, and to enter into contracts. They will have attained full adult status in every respect except one. These same adult citizens will be deprived of the right to direct access to information concerning their genetic heritage, their ethnic background, their biological parentage, and their name—all in accordance with American adoption

policy which is sanctioned by law and instituted to protect them as children. The scope for this policy extends to almost every adopted person—child or adult—whether they are adopted by relative or nonrelatives, and whether they are adopted as children or as adults.

In the 1940s states began to enact legislation designed to keep an adoptee's biological origins confidential by sealing their birth and adoption records and issuing new birth certificates on which the names of the adoptive parents were substituted for the names of the biological parents. The amended certificate became the only proof of birth available for public inspection. Access to the original birth certificate could be gained only by court order and for "good cause." But such court orders are rarely granted; courts are reluctant not to follow legislatively established mandates.²

One purpose of the sealed records laws, which were made to apply retroactively, was to remove the stigma of illegitimacy from the public record.

Adult adoptees are the victims of discrimination. In all but seven states adult adopted citizens are currently denied access to their original birth record when all other citizens have that right.



A 1977 study indicates that the sealed records laws have been successful. Of those adult adoptees surveyed, a sample possessed virtually no information concerning their genetic origins.

Yet, prior to the 1940s there was no sealed records policy. Undoubtedly, most children adopted before World War II were born out of wedlock. The fact that sealed records are a relatively recent phenomenon is confirmed by the fact that adopted persons who are now in their thirties represent the first generation to have had their birth records sealed at adoption.

A 1977 study indicates that the

sealed records laws have been successful. Of those adult adoptees surveyed, a sample possessed virtually no information concerning their genetic origins. Adult adoptees reported that they knew an average of three out of twenty-two items of information concerning their national, ethnic, and religious backgrounds as well as the physical, occupational, health, educational, or personality characteristics of their genetic forebears. It was clear that the question, "Who am I?" could not be answered by adoptees in terms of their genetic identity.¹

The rationales underlying the enactment of the original sealed records legislation are increasingly being called into question. Yet, many state legislatures are refusing to pass proposed legislation that would allow adult adopted citizens direct access to their original birth records at the age of majority. When open records legislation was enacted in Minnesota in 1978, the principle of granting adult adopted citizens the right to direct ac-

cess to their original birth records at majority was compromised: the adult adoptee's biological parents were granted an ascendant right to a veto. Such a restriction is analogous to compromising a citizen's right to vote by requiring payment of a poll tax or passing a literacy test.

Discrimination is defined as making a distinction "... in favor of or against a person or thing on the basis of the group, class, or category to which the person or thing belongs, rather than according to actual merit."² Adult adoptees are the victims of such discrimination. In all but seven states adult adopted citizens are currently denied access to their original birth record, and, consequently, to knowledge of their genetic origins when all other citizens have that right. That is discrimination.

The estimated five million adoptees in the United States comprise a minority, a "social group in some way distinct from the dominant, more influential group in the society."³ It is the fact of having been adopted, or having become members of a family through a legal rather than a biological process, that distinguishes adoptees from the dominant, non-adopted population. A person does not generally choose to become a member of the adoptee minority; membership is usually attained by means of a legal process in which the person involved has had no voice.

Why Most Adoptees Choose to Remain Closeted

Adoptees are not highly visible, as are members of some minorities, e.g., blacks, Indians, hispanics. It is their status, not their color or ethnicity, that sets them apart. They are stigmatized by negative attitudes toward illegitimacy whether they were born "illegitimate" or not. The media have contributed substantially to raising public consciousness concerning matters of adoption within the last couple of years. There have been reports of court cases, legislative activities, adoptee activist groups, stories of searches for genetic roots, and dramatizations portraying the

personal concerns for identity as in *Roots* and *Superman*. The vast majority of adoptees, however, chooses to remain closeted. The following examples tell why.

A happily married father of four and editor of a national magazine had just discovered, at the age of forty-five, that he had been adopted in infancy. He reacted with feelings of shock, anger, disbelief, and disconnectedness. The news created for him an identity crisis of major proportion. Fortunately, he had read about Adoptees in Search in the *Washington Post* only a month before his discovery. Such a group that might be able to help him unravel the mystery of his origins appeared to him as nothing less than a lifesaver.

This man chose to tell only a few of his closest and dearest friends of his unhappy discovery, or, to put it another way, of his newfound status, for he had become, through a momentary slip of his elderly aunt's tongue, an adoptee. And what was the reaction of these few, longtime friends? It went something like this: "Oh, gee, John. What a surprise. Well, look, it's really ok. . . . That is . . . we mean . . . we still like you."

During an interview for a program on adoption, a Silver Spring, Maryland radio announcer confessed that when he was a child, the cruelest, the most devastating, the worst possible thing that he could think to do to get even with his sister was to tell her that she had been adopted. As a matter of fact, she was not adopted.

Standing before the Maryland legislature a year ago, an impassioned state senator, motioning toward a group of adopted adult citizens who had come to testify as proponents of open records legislation, vehemently declared that adoptees had sordid origins; that a number of these "kids" were "born as a result of incest, murder, rape, and robbery"; that the damage done by opening records could be "astronomical." In apparent agreement with his viewpoint, another senator stated that there could be no question that where babies were given up for adoption, some of the facts are very grim, that there can be no excuse for disrupting a family

Adoptees are stigmatized by negative attitudes toward illegitimacy whether they were born "illegitimate" or not.

years later by resurrecting the grim facts.

Last fall, a major District of Columbia newspaper editorialized that placing a child for adoption seldom, if ever, is a matter that does not involve grievous personal burdens, guilts, and apprehensions, and that birth mothers who have made so painful a decision ought not to have to confront this "terrible circumstance" in the future.

Even some adoptive parents seem to demean their adopted children. The president of a local private adoption foundation, an adoptive parent, said, "I am opposed to efforts . . . to open adoption records . . . without minimal safeguards, such as screening the motives of the adoptees. . . . Giving a hunting license usually portends ill for the quarry."

A few years ago, a national magazine carried an article by a child psychologist, an adoptive parent, who had written a number of United States government pamphlets advising adoptive parents on a variety of adoption subjects. She declared that adult adoptees who search appear to lack impulse control, not unlike thieves. In the same vein, a young lawyer testified that records ought not to be opened to adult adoptees: there might be an adoptee who would use that information to find and murder his biological parent.

A District of Columbia City Council member and a Maryland state senator, both adoptive parents, are credited with leading the opposition that killed open records legislation in these jurisdictions. Legislators report also that some adoptive parents have

registered their opposition to open records legislation, frequently citing the privacy of the birth parent as their basis of concern.

A colleague and fellow adoptee recently sought nonidentifying family background information from a Catholic adoption agency. She was subjected to an hour-and-a-half interview. Sensitive as to the nature of the worker's questions, she finally asked the worker, "Are you giving me a mental status exam?" "I would if I could," answered the worker.

The District of Columbia City Council has even considered raising the age of majority of its adopted citizens from eighteen to thirty-five. It was also proposed that before adult citizens born and adopted in the District of Columbia could view their original birth certificate they would first have to obtain the permission of both adoptive parents and both birth parents regardless of their age and status. It was also suggested that adult adopted citizens seeking birth records and information in the District of Columbia must be in need of psychological counseling. The messages communicated were blatantly discriminatory. One can only wonder whether society really is safe with adoptees on the loose.

The Roots of Attitudes Toward Adopted Persons

The above examples reflect the views of legislators, lawyers, mental health professionals, adoption social workers, media personnel, and the man on the street. They represent extremely negative, hostile, and punitive attitudes toward adopted people. They seem to spring from deeply held religious, sexual, economic, and social values that have their roots in sixteenth century England. Pinchbeck and Hewitt describe the transition in public attitudes:

[U]ntil the sixteenth century, bastardry had not been thought of as any great shame. Men took care of their bastards, were indeed often proud of them, and in many cases brought them home to their wives or mothers to be brought up. Children born out of wedlock were thus found to be

growing up in their father's house with their half-brothers and sisters without a hint of disgrace either to themselves or to their natural parents.⁶

The Poor Law of 1576 indicates a substantial shift in attitude:

First, concerning Bastards begotten and born out of lawfull Matrimony (an Offence against Gods law and Mans Lawe) the said bastards now lette to be kepte at the chardge of the Parishe where they bee borne, to the greate Burden of the same Parishe and in defrauding of the Reliefe of the impotent and aged true Poor of the same Parishe, and to the evil Example and Encouragement of lewde Lyet. . . .⁷

The association of adoption with illegitimacy is not without substance. Illegitimate children have been, by far, the principal source of children for adoption by adults to whom they were not biologically related. In fact, the Children's Bureau of the U.S. Department of Health, Education, and Welfare estimates that in the early 1970s illegitimate children accounted for 87 percent of all nonrelative adoptions. The circumstances of the child's origins and relinquishment, it seems, are seen as so undesirable that the information must be locked away—and for all time. The societally sanctioned sealing of birth and adoption records perpetuates discrimination against a minority. The very fact of sealing records reinforces the enduring and widespread public notions about adoptees. The prejudice and stereotypes generated and sustained by those attitudes are extremely resistant to modification or eradication.

A syndicated columnist recently wrote, "The image of the unwed father was always a seedy one. He was a man who skipped town one step ahead of the shotgun. He left behind a woman 'in trouble,' and a child who grew up a swearword."⁸ Another author wrote, "Many of the children given up for adoption are illegitimate, and many more are born to teenage mothers ill-equipped to care for them." These mothers "should have a chance to build a new life without remaining vulnerable to possible embarrassment and recrim-

In most states adults adopted as children remain forever children in terms of adoption law and practice.

ination," and "may not care to be confronted with [their] shame decades later."⁹ Continuing public association of adoption with swear-words and shame can only reinforce existing prejudice.

A major problem for adopted persons is that legislation and practice have failed to take account of the fact that children grow up. In most states adults adopted as children remain forever children in terms of adoption law and practice. As adults, adoptees ought not to be subjected to legislation enacted to protect them as children. Nor should these adopted adults continue to be referred to by the media as "adopted children."

Adoptees Are Stigmatized As Being Different, Interior

Arguments that deny an adult adopted citizen direct access to his or her original birth record—arguments attesting to need for confidentiality, protection, freedom from shame of illegitimacy and questionable origins, etc.—become rationalizations in defense of discrimination. The adoptee becomes identified with a group that is stigmatized not only as different, but interior. Paradoxically, the primary recipient of adoption services, the individual whom the adoption establishment exists to serve, finds himself or herself in an adversary role when asking for that which is granted to all nonadopted persons.

It is important to understand that the state, in accordance with the principle of *parens patriae*, is parent to all children and is obligated to protect its children through the exercise of legislative and regulatory powers em-

bodied in adoption statutes and regulations.¹⁰ Statutes providing for the issuance of new birth certificates and the sealing of the original records were based on recommendations of adoption workers. These recommendations provided the basis for the standards set by the Child Welfare League of America in 1935.¹¹ The social agencies and the courts represent the state in carrying out their protective roles through child welfare services and functions. Thus the state has founded and maintains an adoption "establishment." Social agencies, courts, and special interest subgroups represent the establishment—the "in group."

Many who make their living off the adoption industry seem to be threatened by suggestions, criticisms, and demands of those who must live within the adoption system. A number of adoption agency representatives and special interest subgroups (professionals rendering adoption-related services) argue that release of birth records to adult adoptees would increase abortions and decrease adoptions. Such arguments, unsubstantiated in open records states, appear to be directed toward maintenance of personal and/or institutional livelihood.

Arguments that deny an adult adopted citizen direct access to his or her original birth records, i.e., protection of birth and adoptive parents and confidentiality, actually seek to protect the perceived interests of the establishment at the expense of the adoptee—the primary client of adoption services. These arguments enable

Arguments that deny an adult adopted citizen direct access to his or her original birth record become rationalizations in defense of discrimination.

the
and
ords
of
ven-
the
lare
The
ve-
teir
are
ate
op-
ies,
ups
"in

the
pat-
nd
ive
m-
en-
ups
on-
of
uld
op-
ted
be
er-
l.
ult
or
ro-
nts
to
the
the
op-
ple

The societally sanctioned sealing of birth and adoption records perpetuates discrimination against a minority.

the "in group" to maintain control over the adoptee minority; to keep them "in their place," retained in a secondary position, dependent on and subject to agency authority. Yinger says that "critical to the whole idea of social discrimination is the fact that it is embedded in social structures and sustained by group practices."¹²

The adoptive status carries with it social disgrace, disapproval, and legally sanctioned discrimination that, in effect, deny first-class citizenship to adopted persons. Only adoptees are denied their genealogy by law. Likewise, only adopted citizens are issued a birth certificate that represents a legalized fraud.

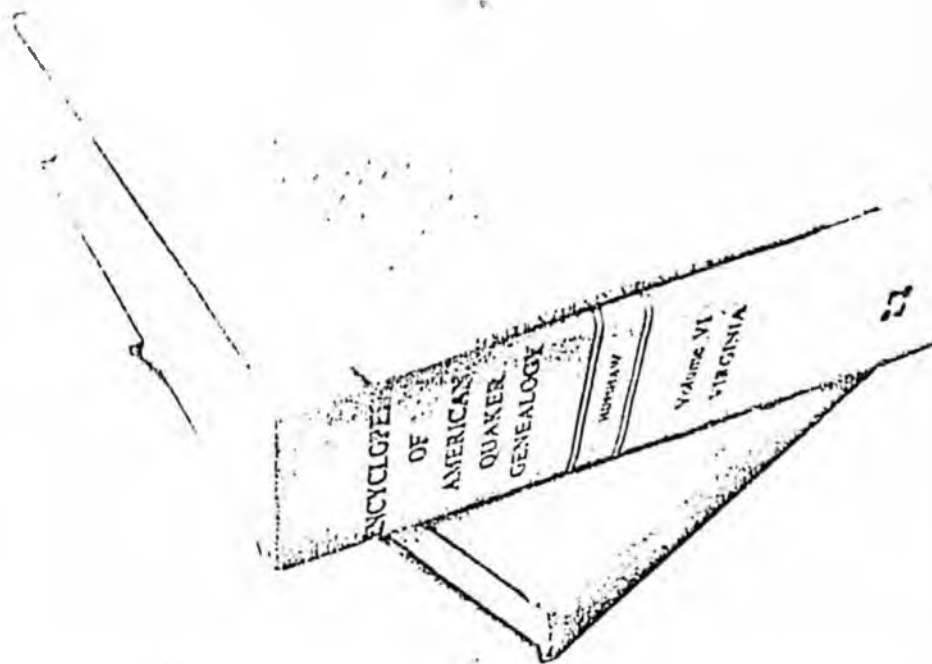
An adoptee is the product of the adoption industry which bestows special rights on adoptive and birth parents. In becoming a product, certain rights are abrogated for the adoptee: the right to one's birth name and the record of one's birth.

The denial of this basic right is not appreciated by such as the District of Columbia council member who said of open records legislation:

[It] is lopsided to the pinnacle of selfishness. The stated primary aim of the bill is to afford adult adoptees the opportunity "to determine their self-identity for purposes of self-fulfillment. . . ."

The selfishness of this is blatantly horrible. The members of the council should recognize this bill for what it is: legislation to give a small group of people with selfish interests what they want—whatever that is.¹³

These kinds of remarks illustrate the reactions elicited when adult adoptees seek to obtain what all others already possess.



At one time few people identified differential treatment of blacks as discrimination. If we were to delete the word "adoptee" from proposed open records legislation—especially where it includes provisions for veto by biological and/or adoptive parents, for psychological counseling, for waiting periods, for advanced age of majority, etc.—and insert the word "Jew," "black," "Indian," "Catholic," or "woman" in its place, more people might understand why many adult adopted citizens object so strongly to such proposals.

Arguments put forward to deny adult adopted citizens that which all other citizens have—direct access to their original birth records and the right to know their origins—are rationalizations in defense of discrimination.

PW

Notes and References

1. Ursula Gallagher and Adelle Rasock, private interview with author held at U.S. Department of Health, Education, and Welfare, Children's Bureau, Washington, D.C., March, 1975.
2. Maryland, Senate, Judicial Proceedings Committee, Hearing on Senate Bill No. 837,

position paper "Adult Adoptees Sealed Birth Records" by Joseph Harrington, Joseph Saba, and Judith Folkenberg presented by Adoptees in Search, Inc., at Annapolis, Maryland, March 6, 1970.

3. Joanne W. Small, "A Comparison of Genetic Identity Indicators Between Adopted and Non-Adopted Adults" (Masters thesis, The Catholic University of America, 1977), p. 54.

4. *Random House Dictionary of the English Language*, unabridged ed., s.v. "discrimination."

5. David Dressler, *Sociology: The Study of Human Interaction* (New York: Alfred A. Knopf, 1969), p. 516.

6. Ivey Pirchbeck and Margaret Hewitt, *Children in English Society* (London: Kegan Paul, Trench, Trubner & Co., 1969), p. 301.

7. *Ibid.*, pp. 206-220.

8. Ellen Goodman, "A New Look at Adoption," *Washington Post*, 20 February 1979, p. A15.

9. Marianne Means, *Keep Records Closed on Child Adoption*, New York, King Features Syndicate, 1978.

10. Alfred Kadushin, *Child Welfare Services* (New York: Macmillan, 1974), pp. 11-12.

11. Harrington, Saba, and Folkenberg, "Adult Adoptees Sealed Birth Records."

12. E. Milton Yinger, "Prejudice: Social Discrimination," in *International Encyclopedia of Social Sciences*, vol. 12, ed. by David E. Gill's (New York: Macmillan, 1968), p. 449.

13. Willie E. Harry, "Pinnacle of Selfishness," *Washington Post*, 24 April 1979, p. A19.

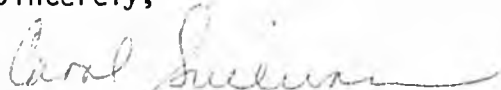
March 2, 1984

Mae Tisher
Pouch V
Juneau, Alaska 99811

Dear Ms. Tisher:

As a constituent in your district, I am hoping you will support and move CSSB 241. I feel adult adoptees deserve to have rights to their records and this bill will help balance out other legislation regarding adoptees. Please move this bill which will resolve the dilemma of adoption records once and for all. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carol Sullivan".

Carol Sullivan
3332 Iliamna Ave.
99503

February 24, 1984

Representative Mae Tischer

Pouch V

Juneau, Alaska 99811



Dear Representative Tischer,

CSSB 241 which is now before the House Health, Education and Social Services Committee addresses a crucial need on the part of adult adoptees for information about themselves. Further it provides realistic balances between the rights of adoptees and the rights of biological parents. Section 7 also corrects the problem adult adoptees find themselves in presently by establishing mechanisms for maintenance of information for adoptions which take place in the future.

CSSB 241 deserves your support. I urge you to hear the Bill as soon as possible and to move it on to the House Judiciary Committee in the very near future.

Thank you for your attention to this important legislation.

Sincerely,

Cecilia Kleinkauf
Cecilia Kleinkauf, MSW, ACSW

Associate Professor of Social Work

University of Alaska, Anchorage

3221 PROVIDENCE DR.

ANCHORAGE, ALASKA 99502

786-1725 or 786-1714

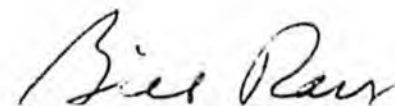
cc. Representatives Uehling, Pestinger

Martin

Senate Judiciary Committee
Letter of Intent

CSSSSB 241 (Judiciary)

It is the intent of the Judiciary Committee that the right of privacy of the biological parents of an adopted child shall be recognized as preferential when said parent or parents have consented to an adoption, as distinguished from the adopted person's "right to know." Furthermore, it is the intent of the committee, when requests for identifying information are made by an adopted person, that notice of such requests must be given each biological parent insofar as possible. However, on behalf of an adopted person who is seeking genealogical identification of his or her biological parents, this legislation provides - and this committee intends - that such information may be divulged provided that no objection to the release of the same has been filed by that biological parent.



Senator Bill Ray, Chairman
Senate Judiciary Committee

Adopted 1/25/84

603 West 12th
Juneau, Alaska 99801

May 3, 1983

Senator Bill Ray, Chairman
Members, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99801

Dear Mr. Chairman and Members of the Committee:

Because I may be unable to attend the meeting tomorrow, I have requested Jan Ivey to deliver this letter concerning SSSB 241 and I would appreciate having it read into the record.

It is obvious that much careful thinking and craftsmanship have gone into the development of this legislation. As an adoptive parent, I particularly appreciate the care that has gone into the development of Sec. 18.50.500 (c), providing for a substantial amount of information to be made available to adoptive parents and adoptees. However, I am very concerned about the provisions of Sec. 18.50.500 (a), which provide for the sealing of adoption records.

I can well understand the distress and concern on the part of biological parents which must have led to the inclusion of this section in the legislation. People who have made the very painful decision to part with a child have often done so in part because of the fear of society's rejection of them for an "error" in either morals, judgment, or caution. The fear of having this painful episode in their pasts "catch up" to them is real and is understandable. Nonetheless, they are parents; having relinquished a child does not wipe out the reality that they have borne or fathered a child. And that fact sets a chain of events in motion which may include a communication from or meeting with that child 18 years down the line. Those of us who are parents of adoptees have an absolute responsibility to teach our children the importance of respecting the rights, feelings, and confidentiality of our children's bio-parents. We owe these first parents that and must make every attempt to pass that caring on to our children. But our children have a right, if it is important to them in adulthood (and it is neither a sign of failure nor of success of the adoption if they decide to seek their bio-parents) to have access to that very significant information about their own lives. It's wonderful to provide adoptees with information about their bio-parents appearance, heritage, hobbies, etcetera. But knowing that your bio-father played the guitar or your mother was a basketball captain does not answer the question "who was he? who was she?"

I am particularly concerned about the fact that this legislation is written so that action is required on the part of bio-parents in order to allow access to information so that in fact it will take an active step by bio-parents to allow their children to have access to this information. This further weights things against the adopted child who reaches the age of majority and desires the information. If his or her bio-parents never heard of this legislation or never got around to filing a certificate, the case is closed.

I just read this bill today, so I have not had time to carefully research or document my thinking about the rights of adoptees. I believe there is a whole body of research and study on this very controversial subject, and my recollection is that most states are moving toward more openness rather than closure of records. I believe that England has for ten years or more had a procedure which allows adoptees access to their adoption records when they have reached the age of majority. I want our Alaskan adoptees to have the same right.

I will close by explaining that I am an adoptive mother. My daughter will have access to the information on her biological parents regardless of the action taken on this bill, because we have the information for her already and will provide it to her when she is older. My husband and I plan to adopt again, however, and have many friends who have adopted children or are adoptees, and for all of those people we believe it is important that there be access to original adoption records. I have also discussed this with friends who have relinquished children, and although reactions are mixed (fear, excitement, curiosity, desire to "just forget", worry about adoptee's reaction), the three people I talked with acknowledged the right of their children to this information. I hope that the members of this committee will also acknowledge that right and amend SSSB 241 accordingly.

Sincerely,


Susi L. Gregg-Fowler

Application to State Organization Act of 1959, conferred by ch 64 SLA 1959 is subject to this ch 1) ch 143 SLA 1959)

not possible to 64 SLA 1959 rule-making scattered ever, most of part 2 of this

part. — For original bill, 394-397.

the Alaska Alaska State Op. No. 793 (1972).

he adhered exclusion of ty from the ASHA is

bound to adhere to the provisions of this chapter. ASHA's separate corporate nature does not detract from this conclusion. The legislature may have had a special reason for choosing the corporate vehicle; e.g., to insulate the state from potential liabilities. Alaska State Housing Auth. v. Dixon, Sup. Ct. Op. No. 793 (File No. 1529), 496 P.2d 649 (1972).

Cited in Pan American Petroleum Corp. v. Shell Oil Co., Sup. Ct. Op. No. 553 (File No. 918), 455 P.2d 12 (1969); Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973); In re Application of Sullivan, Sup. Ct. Op. No. 1274 (File No. 2783), 551 P.2d 531 (1976).

Am. Jur. 2d reference. — 1 and 2 Am Jur. 2d, Administrative Law, § 1 et seq

authority to adopt, administer, or enforce the authority conferred upon the lieutenant — 44.62.170, AS 44.62.010 — 44.62.320 do or augment the authority of a state agency enforce a regulation. To be effective, each e within the scope of authority conferred and ards prescribed by other provisions of law. LA 1959)

ee with other is of this andards of law," ards are er than en they to. This lations by an andards bre Jet file No.

dicting ng its nment ations y to ere is regu- evron ivil.

Attorney general could not save provisions of former AS 30.25 from unconstitutionality under Alas. Const., art. IX, § 7, by directing promulgation of regulations inconsistent with statute. — See Chevron U.S.A., Inc. v. Hammond (A77-195 Civil), F. Supp. (D. Alas. 1978).

Judicial review of administrative regulation. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following manner. First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power

delegated by the legislature. Second, the supreme court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review. — This section

and AS 44.62.030 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971)

Sec. 44.62.030. Consistency between regulation and statute. If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute. (§ 5 art I (ch 1) ch 143 SLA 1959)

Statute prevails over conflicting regulation. — The statute delegating its law-making power to government agencies to make law through regulations defines the agency's authority to promulgate regulations and thus if there is a conflict between the statute and a regulation, the statute prevails. Chevron U.S.A., Inc. v. Hammond (A77-195 Civil), F. Supp. (D. Alas. 1978).

Attorney general could not save provisions of former AS 30.25 from unconstitutionality under Alas. Const., art. IX, § 7, by directing promulgation of regulations inconsistent with statute. — See Chevron U.S.A., Inc. v. Hammond (A77-195 Civil), F. Supp. (D. Alas. 1978).

Regulation accorded presumption of validity. — An administrative regulation must be accorded a presumption of validity, and the challenger of the regulation must demonstrate its invalidity. Union Oil Co. v. State, Sup. Ct. Op. No. 1563 (File No. 2650), 574 P.2d 1266 (1978).

Judicial review of administrative regulation. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the

Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following manner. First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review. — This section and AS 44.62.020 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971)

Article 2. Submission, Filing and Publication of Regulations.

Section

- 40. Submitting regulations
- 50. Style and forms
- 60. Preparation and filing
- 70. Fees
- 80. Endorsement and file
- 90. [Repealed]

Section

- 100. Presumptions from filing
- 110. Presumptions from publication
- 120. Voluntary submitting and publication
- 125. Regulations attorney

"An Act relating to adoption; and providing for an effective date."

Senate Bill No. 241 amends the Vital Statistics Act and the adoption statute pertinent to access to adoption records and consent procedures. The Bill has the effect of denying persons adopted in Alaska prior to enactment of this Bill access to their original birth certificates, which is presently permitted by regulation. The Bill provides that, for adoption which occurred prior to January 1, 1984, the State Registrar may not release any information, on the biological parent named on the certificate without that person's permission. However, it does allow for a biological parent to file a statement with the Bureau of Vital Statistics permitting access. This Bill reflects the view that the present practice does not protect the confidentiality of the biological parents since their names are made available without their consent or knowledge. While this position may have merit, persons adopted prior to the enactment of this proposed legislation would argue that since the State did not provide a mechanism for collection and retention of non-identifying information before January 1, 1984, they should not be denied access to the information which is presently on file, namely, the original birth certificate.

The Division of Family and Youth Services receives numerous inquiries every year from parents who have relinquished a child and from adult adoptees wanting to locate their biological family. Senate Bill 241, as written, would deny access to any identifying information, unless specific instructions are left on record by the biological parent. The national trend appears to be moving more toward open adoption records and for older children, the biological parent often remains active in his child's life, even after parental rights are terminated. While the Division of Family and Youth Services would support the collection of non-identifying information it would recommend considering access to identifying information where available.

For adoptions occurring after January 1, 1984, information on the biological parents including race, physical characteristics, religion, health history, and existence of another child or children will be collected, and this non-identifying information may be provided to adoptive parents and to adopted persons 18 years of age or older. The Bill also recommends that information be collected on the legal relationship, if any, between the biological parents. The Department would question whether it is necessarily in the best interests of the child to collect this information (for example, when the child is the result of an incestuous relationship) and would recommend removal of that item.

Minor changes are also recommended in three additional areas:

°Page 2, line 3: "prepared by the commissioner" be removed to make the Bill consistent with other areas of AS 18.50. the Registrar of Vital Statistics would normally be the person with the responsibility for preparing new forms.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER
SENATE BILL NO. 241 (Sponsor Substitute)

PAGE 2

Page 3, line 12: "and a person..." be changed to "or a person..." as it is necessary for only one of the sources mentioned to provide necessary information to the State Registrar.

Page 3, lines 18 and 19: omit the words "request the commissioner" to make the sentence more consistent with present procedure.

The Bill also amends the adoption statute to provide that a consent to adoption is not valid unless the consent form states that the person has a right to withdraw the consent and is provided with a copy of the consent. The Department would support the amendment.

RECOMMENDED: *John E. Price*
Michael L. Price, Director
Division of Family and
Youth Services

DATE: April 27, 1983

RECOMMENDED: *Joan Brooks*
Joan Brooks, State Registrar
Bureau of Vital Statistics

DATE: April 27, 1983

APPROVED BY: *Robert L. Smith*
Robert Landon Smith, Ph.D.
Commissioner

DATE: May 6, 1983

REQUEST
 Bill/Resolution No.: SSSB 241
 Title: Adoptions
 Sponsor: Kerttula
 Requestor: Kerttula

II. FISCAL DETAIL
 Agency Affected: HSS
 Program Category Affected:
 BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: *James E. Ledwith for Michael Paine* Phone: 465-3170
 Division: Family and Youth Services Date: 4/27/83

Approved by Commissioner: *John R. Poy* Date: 5/6/83
 Department: HSS

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

February 28, 1984

Carol Johnson, ACSW
2113 Jack Street
Fairbanks, Alaska 99701

Mae Tischer - Representative
Pouch V
Juneau, Alaska 99811

Dear Representative Tischer,

This letter is sent in support of Senate Bill 241 and House Bill 427 both of which address the issue of adoption.

Senate Bill 241 is one of the most comprehensive bills in relation to adoption which I have seen. It provides for non-identifying background information to be given to adult adoptees. All adoptees should have access to it if they wish. Bill 241 also allows for consenting adult adoptees and birth mothers to find each other by attaching their names and current addresses on the original birth certificate (in sections 18.50.500 (d) and (e)).

I am, however, confused about 18.50.500 (a) in which identifying data appears to be available to an adult adoptee "if certified mail.....is returned to the state registrar undelivered." Does this mean that if the biological parent has moved (perhaps 10 or 15 years earlier) and the registrar doesn't have the current address, that the biological parent has no choice in the matter? Or can the stipulation of the "written objection from a biological parent" be one which was written and filed with the registrar at or after the time of relinquishment? I favor granting the biological parent more latitude in filing her (or his) objection to such disclosure.

House Bill 427 provides that home studies be completed prior to the placement of a child in an adoptive home. This bill is important because of the emotional trauma which could happen to all parties if a child is placed in a home which is later found to be unsuitable, resulting in the subsequent removal of the child. The State Dept of Family & Youth Services can provide the court with a list of agencies and individuals who are well qualified to complete these studies.

Thank you for consideration of these matters.

Very Truly yours,

Carol Johnson
Carol Johnson, ACSW



4505 Dredge Lake Rd.
Juneau, Alaska 99801
April 13, 1984

The Honorable Mae Tischner
Chairwoman - House HESS
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Tischner:

I am opposed to CSSSSB 241 (Jud) am, an act relating to adoption, because it will restrict my adopted son's access to his original birth certificate which names his biological parents.

I offer you solutions to this problem and the many others this bill generates. Please see the testimony which I plan to present before your committee when you hold a public hearing.

There is no great urgency to pass this bill because the present process of adult adoptee access to the original birth certificate is legal, is working well, and the law does not need changing. Non-identifying information is already being gathered by Health and Social Services.

I urge you NOT to calender this bill unless you and all members of the HESS committee have the time and interest to study all the issues carefully. It is better for all adoptees to let this bill die in your committee than to pass it out as now written.

Thanking you,

Joyce E. Lanier
586-7701 (office)
789-0515 (home)

Encl:
Testimony
letter from Jud Lanier
letter from Attorney General
applicable statutes & regulation
CSSSSB 24] (Jud) my changes marked

PROBLEMS WITH CSSSSB 241 (Jud) am, an act relating to adoption
by Joyce Lanier 4505 Dredge Lake Rd. Juneau, Ak. 99801

1. It repeals the current statutes and regulation which now allow an adult adoptee unconditional access to his original birth certificate, which names his birth parents. The present process is legal and is working well.
2. It gives the birth parent all the power over the release of the original birth certificate, and thereby reverses the original intent of Alaska's sealed record laws. It contends that the birth parent's wish for privacy is more important than his/her responsibility to provide the adoptee the truth of his beginnings.
3. It allows all of us, birth parents, adoptive parents, the legislature, and the general public to shirk our responsibilities to the adoptee.
4. There are no provisions in this bill or the current statutes to allow an adult adoptee's descendants access to the adoptee's original birth certificate. Generations to come are adversely affected.
5. It discriminates against adoptees who are not 18 before the effective date of the bill and against adoptees as opposed to non-adoptees.
6. There are no provisions to allow birth parents to update background information or to change statements they may file with the Registrar.
7. Hobbies, special interests and occupations are not included in the list of non-identifying information.
8. Adoptive parents are not officially informed of the adoptee's rights to background information and the original birth certificate at age 18.
9. There are no provisions to allow birth parents to receive unidentifiable progress reports on the adoptee during childhood.

CSSSSB 241 (JUD.) am

JONATHAN
10.3.71

JONATHAN'S
CHILDREN

JONATHAN'S
GRAND
CHILDREN

EXPLANATION OF MAJOR PROBLEMS

PRESENT PROCESS IS WORKING WELL

Adoptees in Alaska have always had access to their original birth certificates.

The statutes (21-3-20) of 1947 which sealed original birth certificates and issued substitute birth certificates stipulated that the registrar shall open the birth certificate to the adoptee of legal age. The intent of the act was to protect the name and status of the CHILD. Nothing was said about protecting the name and status of the ADULT, whether it be the adopted person in adulthood or the birth parent. Such protection is a burden for the adult adoptee and I suspect the lawmakers of 1947 maintained access to the original birth certificate for adoptees for that reason.

In a 1951 amendment describing the substitute birth certificate the statute stated, "The intent of this section is to enable the preparation of a birth certificate for the adopted CHILD as nearly as possible like that of other CHILDREN." The adult adoptee was treated like an adult. He could still obtain a birth certificate like that of other adults - that is, one that named the biological parents.

Over the years the statutes have been amended but always the ADULT adoptee has retained the right to the original birth certificate. The present process is working well. It has withstood a test of 37 years. There have been no complaints to the State Registrar. No birth parents have testified at any of the three hearings I have attended on this legislation. I have also listened to tapes of hearings on SB 399, a similar bill in the last legislature. No birth parent or birth parent group testified in favor of restricted access to the original birth certificate.

PRESENT PROCESS IS LEGAL

Today AS 18.50.220 New Certificate of Birth, and 7 AAC 05.730 Filing of Certificate govern. The birth certificate is treated separately in the statutes, apart from adoption proceedings and court hearings. In fact, a new certificate of birth is an option of the adoptive parents and is not part of adoption proceedings; it is not issued until after the adoption becomes final.

The statutes and regulations do not conflict. To confirm that legality, I quote from an Attorney General's opinion of March 1, 1979, to the State Registrar of Vital Statistics:

"This will confirm our oral advice to you that the Bureau of Vital Statistics must provide a copy of his original birth

certificate to an adopted child who has attained the age of 18 years and requested it, if the copying cost is paid....."

"....AS 18.50.220 (b) (1) apparently sets up a separate procedure for the certificate after the adoption."

PRIVACY NOT PROMISED IN STATUTES OR REGULATIONS

The state is NOT subject to any liability in releasing original birth certificates to adoptees because privacy has not been promised in the statutes or regulation. To further support that contention, please consider this from the draft version of the Model Adoption Act:

Privacy is not promised in states that allow records to be opened by court order for good cause. Therefore, there could be no enforceable contract of secrecy between birth parents and the state. (Alaska is one of these states.)

Biological parent and child are considered co-owners of birth information, and thus, there can be no legally protected interest in keeping one's identity secret from the adoptee.

Adoption was created for the benefit of the adoptee and the states cannot sanction an agreement - namely sealed record laws which have proven NOT to be in the adoptee's best interests.

A birth parent's interest in reputation is not alone deserving of constitutional protection. Cf. Paul v. Davis 424 U.S. 693 (1976)

An adoptee's right to information regarding his origins must prevail over the birth parent's presumed interest in anonymity.

in re Adoption of Female Infant 107 Wash. L. Rep 337 (D.C. Super Ct. Jan 31, 1979) 5 Family Law Rep. 2311 BNA (Feb. 20, 1979)

The interests of adoptive & birth parents and the state in keeping records sealed are of less importance than the adoptee's interest in personal growth and identity which can result from his meeting a birth parent - a reunion made easier by the adoptee's access to the original birth certificate.

BILL GIVES BIRTH PARENTS CONTROL OVER THE ORIGINAL BIRTH CERTIFICATE

Even though over 90% of birth parents will probably give permission to release the original birth certificate to the adoptee, the fact that their consent is required is degrading to the adoptee.

I grew up in the South when Black people had to sit at the back

of the bus. They weren't allowed to sit at the front. Times have changed. Today Blacks are allowed to sit at the front of the bus. But, what if they were required today to ask permission from the driver to sit at the front? Even though 95% of the drivers would say "yes" wouldn't it be humiliating to the Black person to have to ask? Wouldn't that place all the power in the hands of the bus drivers?

Now would this legislature ever dream of passing a law requiring any minority or class of citizens to ask permission to sit in the front of the bus? No, this legislature would not. But essentially that is what this bill would be doing to adoptees- allowing them in the front of the bus only with permission, allowing them access to information about themselves only with permission,

forcing some of them to the back where they're unable to see where they're going, denying some of them information and therefore, stifling them.

OUR RESPONSIBILITIES

As mentioned previously, adoption was instituted for the benefit of the adoptee - A child who had no voice in the process. In any discussion of the balancing of rights we must remember that our responsibilities to the adoptee are more important than any one parent's rights, whether they be birth parents or adoptive parents.

All of us involved in the adoption process have a responsibility to provide the adoptee with an avenue to seek his true personal identity:

BIRTH PARENTS RESPONSIBILITIES

To provide for the CHILD - background information such as biographical sketches, physical descriptions, sibling existence, medical history - and to update them regularly.

(Health & Social Services in recent years has been collecting background information for the adoptive parents, but this was probably not done in the late 60's and early 70's. My attorney gave us information on our son's birthmother. Birth parents who don't want to be contacted should realize that the more background information they give, the less likely the adoptee may want to contact them.)

To provide for the ADULT adoptee- communication with the adoptee if he/she requests so that the adoptee may complete his picture of himself.

THE LEGISLATURE'S RESPONSIBILITIES

To maintain the laws and regulations that allow adult adoptees to learn the names of the biological parents through access to the original birth certificate.

ADOPTIVE PARENTS' RESPONSIBILITIES

To recognize the importance to the adoptee of his true heritage and to provide the background information to the child when they judge he/she is ready for it.

To provide support to the adult adoptee in his search for the biological parents.

To lobby for adoption laws that are in the adoptees best interests.

Our meeting our responsibilities will serve notice to the public that it is indeed the adoptee's RIGHT TO KNOW which takes precedence in all cases, so that the public will have empathy with the adoptee's problems, will understand the adoptee's need to search for his birth parents, will be more helpful to him in that search, and will support open adoption record laws. And so that someday there will be no controversy.

The consequences of our NOT meeting these responsibilities may indeed be grave. Studies show adolescent adoptees have more trouble in life, that they face more obstacles than normally experienced. Without a background on which to build an ego they are more apt to be dependent, fearful, slow learners, under achievers, run aways and vandals. Adoptees comprise about 13% to 16% of psychiatry patients but only about 2% of the general population.

Many adult adoptees who don't know their past history suffer "genealogical bewilderment." They are denied the opportunity that millions of people pursue who are consumed with a passion to search the past for their ancestors. Thousands of ancestor hunters join descendant societies such as the Sons & Daughters of the American Revolution. An ancestor search begins with one's self and that is the stumbling block adoptees face. The first unknown on an adoptee's family tree is himself.

ADOPTEE'S DESCENDANTS ADVERSELY AFFECTED

The descendants of the adoptee who is denied his original birth certificate will also face a stone wall in their ancestor searches. There will be no stepping stones to the past for them. So a hundred years from now the repercussions of this bill will still be felt.

DISCRIMINATION

This bill will discriminate against adoptees who are under 18 before the effective date of the bill. They cannot get a copy of their original birth certificates before the law is changed. The law at the time of their adoption did not provide a collection system for background information. Adoptees who expected to get but are denied the original birth certificate under the provisions of this bill will have nothing - no original birth

certificate and no background information.

Essentially this bill will be changing the rules in the middle of the game for them. I don't believe the members of this legislature want to do that. After all, when you raised the drinking age from 19 to 21, you inserted a clause allowing those who were already 19 to drink.

The bill also discriminates against adoptees as opposed to non-adoptees. Non-adoptees don't have to get permission from their parents to get their birth certificates.

PROPOSED AMENDMENTS

While I believe no parent has the right to deprive the adoptee to the knowledge of his true heritage and that the adoptee's need for that information takes precedence over any parent's desire for privacy, I am not completely unfeeling for those birth parents who wish to remain strangers to their off-spring. I have done a lot of research and I propose amendments which treat all sides of the adoption triangle with respect and compassion.

1. Maintain the present process of adoptee access to the original birth certificate and additionally allow an adoptee's adult descendants access. The generations to come are also adversely affected by sealed records. Strengthen the present process by writing it in the statutes.

2. Allow the biological parent to place a statement with the original birth certificate as to whether she/he would WELCOME contact with the ADULT ADOPTEE. I believe most adoptees would respect that wish. There are many adoptee groups who provide support and advice on birth parent search and contact.

(From what I read most adoptees are very discreet when they do contact a birth parent. They do not suddenly appear on the birth parent's doorstep, but most often telephone, making sure it is a good time to talk.)

(Most adoptees are not looking for a long term relationship with the birth parents. They only want their questions answered.)

I think such a system would be for the adoptee's advantage as well. They would know ahead of time just how the birth parent would feel about a reunion.

3. Allow and encourage birth parents to update background information and to change statements.

- Many inheritable problems in a birth parent's family may not occur until many years after the adoption. Newsweek magazine recently reported that there are over 3,000 genetic diseases. Adoptees who are deprived of communication with the birth family may also be deprived unnecessarily of the benefits of genetic engineering- the wave of the future in disease prevention and health care.

-Birth parents are usually very young when they relinquished the child and have not developed the interests and careers that the adoptee may be interested in knowing about. They may have other children after the adoption which would be the adoptee's siblings.

4. Insert hobbies, special interests and occupation in the list

of background information collected. This may suggest to enlightened adoptive parents the activities to attempt or to stress.

5. Inform adoptive parents of the adoptee's rights so that there will be no surprises when the adoptee wants to find his birth parents.

-This would emphasize the importance of the adoptee's very own identity. Some adoptive parents do not tell the child he is adopted and would not give him the background information. If they knew he could get it anyway when he became 18 they would be more apt to give it to him when he really needed it, and they would be more apt to support him in a search for the birthparents. For having a background on which to build an ego will help the adoptee to become a more mature and well adjusted adult.

6. Request the adoptive parents prepare a progress report on the adopted child every few years and attach to the original birth certificate or made available by other means to the birth parents.

-Birthparents usually never forget the adoptee. This would help the birthparents cope with the tragedy and perhaps guilt of having surrendered a child to some stranger.

SUMMARY:

1. The present system of releasing the original birth certificate is LEGAL and we have had no problems with it.
2. An adoptee's information on his true heritage is very important to his psychological well-being.
3. A birth parent's responsibility to provide background information and to be available to the adult adoptee is more important than the birth parent's right to privacy.
4. No adoptee should have to seek permission from anyone to obtain information about himself.
5. Background information is being collected NOW and the law does not need changing regarding access to the original birth certificate. Therefore, there is no great urgency to pass this bill the way it is written now.

SO PLEASE CONSIDER THIS BILL CAREFULLY.

Over 15,000 adoptions have already taken place in Alaska. Please continue to allow ALL adoptees unconditional access to their original birth certificates. Please, leave stepping stones to the past for our adoptees, not stone walls.

4505 Dredge Lake Rd.
Juneau, Alaska 99801
February 17, 1984

The Honorable Milo Fritz
The Honorable Mae Tischer
Co-chairmen, House HESS Committee
Alaska State Legislature
Juneau, Alaska 99811

Dear Representatives Fritz & Tischer:

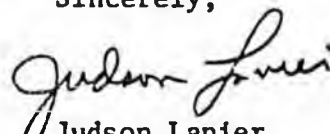
CSSSSB 241 (Jud), an act relating to adoption, seeks to amend AS 18.50.220 and thus delete the regulation 7 AAC 05.730 which now allows an adult adoptee unconditional access to his original birth certificate. The requestor of this legislation contends that privacy is promised biological parents in adoption proceedings and that is not now being honored since Vital Statistics releases the original birth certificate to the adult adoptee upon request.

After reviewing the statutes - Title 25, chapter 23 adoption and AS 18.50.210 and AS 18.50.220 New Certificate of Birth I find that:

- The statutes treat birth certificates separately from adoption proceedings. It is the adoption proceedings - court hearings and related records that are confidential as per AS 25.23.150. Birth certificates are not part of the adoption proceedings. In fact, a new certificate of birth (which names adoptive parents) is not prepared until AFTER an adoption decree becomes final. (AS.23.170)
- An adoption can take place without the issue of a substitute birth certificate because a substitute certificate is an option adoptive parents can choose. (AS 25.23.170)
- The present practice of releasing original birth certificates is legal. AS 18.50.220, New Certificate of Birth, allows regulations to be written concerning the inspection of the original birth certificate. The regulation 7 AAC 05.730 authorizes the Registrar to do so.
- The statutes and regulations also provide that records may be opened by order of the court. Thus, there exists another method by which confidentially is not assured to any party involved.

The issue of privacy is a moot point in this proposed legislation.

Sincerely,


Judson Lanier
Member, Alaska Bar Association

MEMORANDUM

MAR 07 1979

TO: Ms. Joan Brooks, State Registrar
Bureau of Vital Statistics
Department of Health and Social
Services

DATE: March 1, 1979

FILE NO:

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Copying of Original Birth
Certificate when a New
Certificate has been Issued

By: Richard L. Peter *RLP*
Assistant Attorney General

This will confirm our oral advice to you that the Bureau of Vital Statistics must provide a copy of his original birth certificate to an adopted child who has attained the age of 18 years and requested it, if the copying cost is paid. The copy should be identified however by a notice that a new certificate has been issued for the subject.

Because of some apparent inconsistencies we will recapitulate the statutes and regulations providing for inspection of records involved in an adoption.

AS 20.15.150 provides in pertinent part:

(b) All papers and records pertaining to the adoption . . . are subject to inspection only on consent of the court and all interested persons.

(c) Except as authorized in writing by the adopted child if 14 or more years of age, or by the adoptive parent . . . no person is required to disclose the name or identity of either an adoptive parent or an adopted child.

And 7 AAC 05.670 provides: "All reports of . . . adoption proceedings . . . are open to the public only under order of the Superior Court." These apparently refer to materials relating to the adoption with the exception of the original birth certificate, because while AS 20.15.080 requires that a "certified copy of the birth certificate . . . if available . . . shall be filed with the clerk" of court, AS 18.50.220(b)(1) apparently sets up a separate procedure for handling the certificate after the adoption. It provides that a new certificate shall be substituted for the original and

Thereafter the original certificate and the evidence of adoption [reported by the court] . . . are not subject to inspection except upon order of the superior court or as provided by regulation;

Ms. Joan Brooks, State Registrar
Bureau of Vital Statistics

March 1, 1979

This is implemented by 7 AAC 05.730 which provides: "The State Registrar may open all or part of such sealed file for inspection by the person whose record it is, if of legal age."

This authority refers to inspection of such records by its language, but two sections of AS 09.25 extend the access to copying them. AS 09.25.110 provides:

Unless specifically provided otherwise, The books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record.

And AS 09.25.120 provides in pertinent part:

Every public officer having custody of the records not included in the exceptions shall permit the inspection, and give on demand and on payment of the legal fees therefor a certified copy of the writing or record, and the copy shall in all cases be evidence of the original.

These sections equate copying with inspection, and impose the duty of making copies available at cost.

However, the concern you have expressed over the copying of an original birth certificate which has been -- at least temporarily -- superseded by a new certificate of birth, is reasonable, but has not been addressed by either the legislature or your department's regulations.

Therefore, we would suggest that when you copy an original birth certificate for which a new certificate has been issued, this fact should be displayed upon the face of the copy, either by typing upon the copy: "A New Certificate of Birth has Been Issued", or by duplicating such a notice by placing it on an unused portion of the document when the copy is made. This will prevent the copy being used as the only or latest evidence of birth, and keep the original clean should it be necessary to restore it to the public file on vacation of the adoption, as provided by AS 18.50.220.

Because such a procedure will affect the general public we suggest that you adopt regulations providing for it under the Alaska Administrative Code. We are prepared to assist you in drafting them so please call upon us.

RLP:vr

Church supports rights of adoptee to find roots

The U.S. Presbyterian Church's North American Board is the first American denomination to say adult adoptees should legally be able to learn the names of their natural parents.

The United Presbyterian Church, U.S.A., Wednesday called for an "open records policy" which would allow adopted persons, once adults, to gain access to their birth records, currently sealed at the time of adoption.

Their resolution says, "Permanent sealed records have created a mythology about adoption, which is that adopted persons have only one set of parents. The surrender paper in effect becomes a certificate attesting to the death of any relationship at any time between the original parent and child, thus creating for the child a pair of ghost parents who are not in their graves but who may live in the next town, or have hereditary illnesses

that do not surface until they are in the middle years and whose children, born later, may unknowingly risk incest with whom they attend college or work in the same work places with their half-sisters or half-brothers."

The Rev. Susan Andrews, pastor of Kitchell Memorial Presbyterian Church in East Hanover, N.J., and a sponsor of the resolution, said the church must debate moral issues involved in the debate.

She said she became interested in the issue when a parishioner unsuccessfully searched for her birth mother. "She had an issue of human rights as well as one of pastoral rights," said Ms. Andrews.

The issue of "open records" for adult adoptees has been a legal battle between adoptee rights groups and state governments, which currently seal the records.

CHRONICLE — Houston, TEXAS
May 28, 1981

OVERTURE 39

a resolution for open records

by The UNITED PRESBYTERIAN Church

1981

"Every great and commanding movement in the annals of the world is the triumph of enthusiasm. Nothing great was ever achieved without it." - Ralph Waldo Emerson

Once a year, 650 delegates from United Presbyterian Churches across the country meet to consider theological and social matters of importance to the church's ministry. In May, this body - the General Assembly - met in Houston, and one of the issues considered was that of supporting the rights of adult adoptees to the truth of their origins as outlined in Title V of the Model State Adoption Act.

Overture 39, the text of which follows, was channeled to the Social Justice and Rights of Persons Committee, and passed by that committee upon recommendation of a sub-committee which spent three hours discussing the issues with adoptees and adoptive parents present. When the Overture came up on the floor of the General Assembly, there was a thirty-minute debate, followed by a vote of approximately 600 - 25 in favor of the Overture. We are printing it for you in hopes that (a) you will be encouraged by it and (b) that you might consider submitting a similar document to your worshipping community for consideration and action. Judeo-Christian history has had a powerful impact on people the world over, and continues to do so. As religious bodies work for national and international peace, let us urge them to work on this area of peacemaking within and among persons on all sides of the adoption triangle.

OVERTURE ON RECOGNIZING THE RIGHT OF ADULT ADOPTEE TO KNOWLEDGE OF THEIR ORIGINS BY ALLOWING THEM ACCESS, UPON REACHING THE AGE OF MAJORITY, TO THEIR ORIGINAL BIRTH CERTIFICATES, COURT AND AGENCY RECORDS... ALSO ON RECOGNIZING THE NEED OF ORIGINAL PARENTS OF ADULT ADOPTEE TO HAVE SOME MEANS TO COMMUNICATE THEIR DESIRES FOR CONTACT WITH THEIR RELINQUISHED SON OR DAUGHTER.

Whereas God our Creator saw fit to use an adult adoptee who was well aware of the truth of his origins to deliver the Israelites from bondage to the Egyptians; and

Whereas the Psalmist acknowledged the presence of God in the creation of every individual when he said, "You created every part of me; you put me together in my mother's womb... when I was growing there in secret, you knew that I was there—you saw me before I was born"; and

Whereas Isaiah affirmed the unreliability of a mother's ability to erase the memory of a child she birthed when he said, "So the Lord answers, 'Can a woman forget her own baby and not love the child she bore?' Even if a mother should forget her child, I will never forget you"; and

Whereas Jesus said, "You will know the truth, and the truth will set you free"; and

Whereas the sealed records laws institutional in the last five decades have prevented adopted persons, ever when a contract is made in their infancy when they are helpless to participate in it, from ordinarily knowing the truth of their origins by permanently sealing original birth certificates, agency and court records pertaining to their adoption; and

Whereas any non-adopted person in the United States has the absolute right to obtain personal vital statistics for a minimal fee, an adoptee must go to court—however expensive and unsuccessful the process—to request a judge to issue a "grand cause" order to know the simple truth of who gave birth to her or him; and

Whereas because of permanently sealed records, adoptees have no medical, cultural or religious history and often experience emotional anguish; and

Whereas permanently sealed records have created a mythology about adoption, which is that adopted persons have only one set of parents; the surrender paper in effect becomes a certificate attesting to the death of any relationship at any time between the original parent and child, thus creating for the child a pair of ghost parents who are not in their graves but who may live in the next town, or have hereditary illnesses which do not surface until they are in their middle years (long after any medical history taken at the time of the child's birth); and whereas children, born later, may unknowingly risk incest when they attend college or work in the same work places with their half sisters or brothers; and

Whereas our Lord spoke often of acceptance, forgiveness and reconciliation as qualities desirable for believers to experience daily in their human and spiritual growth; and

Whereas the Department of Health and Human Services now has before it the proposed Model State Adoption Act which includes "Title V. Records," which would grant adult adoptees the right of access to their original records to learn their identity at birth and that of their natural parents, and which would grant original parents of adult adoptees the right to ask the agency which handled the adoption to contact the adult adoptee to notify her/him that the original parent desires contact; a section supported in testimony by the National Association of Social Workers, "Not all adoptees will wish to know the birth parent, nor to find her/him, but surely the option should be there as opposed to a rigid secrecy which would leave adoptees feeling that there is some conscious secret in their past."

Therefore, the Presbytery of Newton, The United Presbyterian Church in America, sitting in regular session on 3/10/81 in Madison, N. J., does hereby overture the 1978 General Assembly of the United Presbyterian Church in the U.S.A. meeting in Houston, Texas, May 19-25, 1981:

That it go on record as supporting the rights of adult adoptees to receive, upon request, copies of their original birth certificates, court and agency records pertaining to their adoption;

That it support Title V of the Model State Adoption Act and Procedures prepared under section 207 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, which would grant adult adoptees the aforementioned information, and which would grant natural parents a more limited right as explained above;

That it act through the General Assembly Mission Council... in encouraging and stimulating synods, presbyteries and local churches to take the following types of action in supporting adoptees who have reached adulthood, in their desire to know the truth of their origins;

- 1) Send letters of support of Title V of the Model State Adoption Act to congresspersons and to the President of the U.S.;
- 2) Write letters to the editors of local newspapers and national magazines expressing support of open records;
- 3) Seek to help all persons involved in the adoptive triangle—natural and adoptive parents and adoptees, who comprise 10% of our population—face the reality of their situations with honesty, openness and compassion for one another.

(b) The petitioner or his attorney shall furnish with the petition for adoption information in the possession of the petitioner necessary to prepare the adoption report. The social, welfare agency or other person concerned shall supply the court with additional information in his possession necessary to complete the report. The furnishing of the information is a prerequisite to the issuance of a final decree in the matter.

(c) Whenever an adoption decree is amended or vacated, the court shall prepare a report on a form prescribed and furnished by the bureau. The report shall include the facts necessary to identify the original adoption report and the facts amended in the adoption decree necessary to properly amend the original report, or the new certificate of birth if already established.

(d) Before the 11th day of each calendar month, the court shall forward to the bureau reports of decrees of adoption, including those vacated or amended, which were entered in the preceding month, together with the related reports the bureau requires.

(e) When the bureau receives a report of an adoption, or vacation or amendment of an adoption from a court for a person born outside the state, a copy shall be made for the bureau's files and the original shall be forwarded to the appropriate registration authority in the state of birth. (§ 17 ch 118 SLA 1960)

Am. Jur. reference. — 1 Am. Jur.,
Adoption of Children, § 49.

Sec. 18.50.220. New certificate of birth. (a) The state registrar shall establish a new certificate of birth for a person born in the state, upon proper request that the certificate be made, and upon receipt of

(1) an adoption report as provided in § 210 of this chapter, or a certified copy of the decree of adoption from a court of competent jurisdiction in another state, together with the information necessary to identify the original certificate of birth and to establish the new certificate of birth; however, a new certificate of birth may not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person if he is of legal age; or

(2) the evidence required by law and regulation proving that the person has been legitimated.

(b) When a new certificate of birth is established, the actual place and date of birth shall be shown. The new certificate shall be substituted for the original certificate of birth, and

(1) thereafter, the original certificate and the evidence of adoption or legitimation are not subject to inspection except upon order of the superior court or as provided by regulation; however, the regulation shall allow inspection by an agent of the state or federal government acting in the performance of his official duties;

(2) upon receipt of a report that an adoption has been vacated, the original certificate of birth shall be restored to its place in the files and

Highways and Ferries
Title 19

Title 20
Infants and Incapacitated

Alaska, upon adoption or legitimation and the submission of the required documents and other necessary information as required by the State Registrar; provided that such new certificate of birth shall not be established in cases of adoption if such negative request be received from the court decreeing the adoption, the person himself if of legal age, or from the adoptive parents. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.220
AS 25.20.050

7 AAC 05.710. REQUEST. Proper request for a new certificate shall be considered a written and signed request: in the case of adoption, from the adoptive parents, or from the adopted person if of legal age; and in the case of legitimation, from one of the parents, or from the legitimated person if of legal age. The form and type of request acceptable shall be determined by the State Registrar. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.220
AS 25.20.050

7 AAC 05.720. FORM OF CERTIFICATE. The new birth certificate shall be prepared upon the same type of form, and look as much like a regular birth certificate as possible. Nothing on it shall state or refer to the fact that it is a new certificate. The actual date and place of birth shall be shown, and any question of legitimacy shall be answered in the affirmative. The name on the birth certificate shall be as ordered in the decree, if so specified; otherwise as requested by the parents. The name of the attendant or other person signing the original certificate shall be copied on the new certificate. The personal particulars shall reflect as much as possible the new situation of adoption or legitimation, and these and any other items shall be completed as specified by the State Registrar. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.220
AS 25.20.050

7 AAC 05.730. FILING OF CERTIFICATE. When the new certificate of birth has been established, it shall be substituted in place of the original certificate. All references to the original certificate shall be removed or deleted from the regular indexes, and from any other source to which the public might have access. The original

certificate, any attachments thereto, and all correspondence, decrees, adjudications, or other reference to the adoption or legitimation shall be sealed away from any inspection except upon order of a superior court; provided that the State Registrar may open all or part of such sealed file for inspection by the person whose record it is, if of legal age; by an agent of the state or federal government acting in the performance of official duties; or for any necessary administrative purpose within the bureau. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.220
AS 25.20.050

7 AAC 05.740. PROCEDURE ON ADOPTION. Upon receipt of a report that an adoption has been vacated, the original certificate of birth shall be restored to its place in the files; and the new certificate together with all evidence and related material shall be sealed away from inspection except upon order of a superior court, or for administrative inspection by the State Registrar. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.220
AS 25.20.050

7 AAC 05.750. NEW ORIGINAL CERTIFICATE. If no certificate of birth is on file for the person for whom a new certificate is to be established, an original certificate must be prepared and registered in accordance with the provision of the Vital Statistics Act, these regulations, and the instructions of the State Registrar before a new certificate of birth may be established. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.220
AS 25.20.050

7 AAC 05.760. SEALING OF COPIES. When a new certificate of birth is established in the bureau, the State Registrar shall direct that any local copies of the original record in the custody of local recorders be sealed away from inspection except upon order of a superior court or demand of the State Registrar. Upon the vacation of any adoption, the State Registrar shall direct the proper disposition of any pertinent local records. The State Registrar may supply a copy of the new certificate to the same local recorder to substitute in place of the

visions of Section 9 hereof before becoming absolute. This decree so entered shall contain an order granting custody of the child to the adoptive parent or parents, and, if same has been requested, the issuance and filing of a substitute birth certificate as hereinafter provided.

SECTION 9. FINAL DECREE ABSOLUTE, WHEN.

Within six months after the entry of the final decree any parent who has not received actual notice of the adoption proceeding in time to appear or object thereto may move to vacate the decree, and for an award of the custody of the adopted child to him; providing, that such motion shall not be entertained unless accompanied by an affidavit disclosing good grounds for objection to the adoption. If it appears to the satisfaction of the Court that there are good grounds and sufficient reasons for setting aside the adoption if the allegations of the affidavit are true, the Court may order a hearing upon said motion, fix a time and place therefor, specify the parties to be notified which shall include all interested parties present at the original proceeding with ample time for their appearance, and upon such hearing the Court may deny the motion or grant the same by setting aside the adoption and make a re-determination of who shall have the custody of said child. No such motion shall be granted unless the person filing the same is a fit and proper person and otherwise entitled to the exclusive custody of such child as shown by the evidence at such hearing. Appeal may be taken as from a final decree.

SECTION 10. SUBSTITUTE BIRTH CERTIFICATE.

(a) Whenever six months has expired after a final decree of adoption and change of name has been entered in any Court of competent jurisdiction within the Territory of Alaska and no proceedings have been started to set same aside, or if the adoption is otherwise finally sustained, said Court shall, upon request by a proper party, send a certified copy of said decree to the Registrar

of Vital Statistics who shall, upon receipt thereof, prepare and issue a substitute certificate of birth of the child so adopted. This certificate shall contain all of the information required in an original certificate of birth, except that it shall show the new name of the child so adopted instead of the old, although the true date of the child's birth shall be retained, and shall give the statistical particulars of the foster parents in the place and in the stead of the natural parents and shall make no reference to the natural parents of the said child, and the statement pertaining to legitimacy shall in all such cases be shown in the affirmative. The Registrar shall strike out the words, "Attendant's Own Signature" on the substitute record and insert in their stead the words, "Territorial Registrar" and sign as such, and all dates of recording are to be left as on the original.

Form of
certificate.

(b) The Registrar of Vital Statistics immediately upon completion of such substitute certificate shall seal his original record of the birth, and file in its stead the substitute birth certificate, and thereafter said original record so sealed may be opened by the Registrar only upon demand of the child so adopted upon his having attained his majority, or upon order of any Court of competent jurisdiction. Thereupon the Registrar shall send a certified copy of the substitute birth certificate to the Commissioner and/or recorder having on file the adopted child's original certificate of birth. Such recording officer shall forthwith enter the substitute copy in his files in the place and stead of the original copy on file. Upon such filing of the substitute birth certificate, said officer shall seal the original birth certificate and it may thereafter be opened only upon the same conditions as hereinabove prescribed for the Registrar.

Sealing of
records.

(c) Upon request for issuance of a certified copy of a birth certificate after substitute certificate has been filed, the Commissioner, Recorder or Registrar, as the case may be, shall, as a matter of course, issue a certified copy of

Certified copies
issued.

Offered: 1/26/84
Referred: Rules

Original sponsors: Kerttula, Rodey,
Ray, et al

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 241 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to adoption; and providing for an
7 effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 18.50.220(b)(1) is amended to read:

10 (1) thereafter, the original certificate and the evidence
11 of adoption or legitimation are not subject to inspection except upon
12 order of the superior court; ~~however, the state registrar [OR AS PRO-~~
13 ~~OR OLDER & HIS/HER DESCENDANTS AGE 18 OR OLDER AND~~
14 ~~VIDED BY REGULATION, HOWEVER, THE REGULATION]~~ shall allow inspection
15 by an agent of the state or federal government acting in the perfor-
16 mance of the agent's [HIS] official duties;

16 * Sec. 2. AS 18.50 is amended by adding new sections to read:

17 ARTICLE 5. ACCESS TO ADOPTION INFORMATION.

18 Sec. 18.50.500. ACCESS TO ADOPTION INFORMATION. (a) Upon
19 receipt by ~~the state registrar of a request by an adopted person 18~~
20 ~~years or older for information identifying the adopted person's bio-~~
21 ~~logical parents, the state registrar shall give notice of the request~~
22 ~~to the biological parents by certified mail, deliverable to the ad-~~
23 ~~dresssee only. Information identifying a biological parent shall be~~
24 ~~disclosed to an adopted person 18 years or older if certified mail~~
25 ~~sent to a biological parent is returned to the state registrar unde-~~
26 ~~livered or if the state registrar has not received a written objection~~
27 ~~from a biological parent under this section.~~

28 (b) If a written objection by a biological parent is received by
29 the state registrar within 30 days of the notice required under (a) of

18.50.500 (a) A BIOLOGICAL PARENT NAMED ON THE
ORIGINAL BIRTH CERTIFICATE -1- MAY FILE WITH C555B 241(Jud)
THE STATE REGISTRAR A STATEMENT AS TO WHETHER
HE/SHE WOULD WELCOME CONTACT WITH THE ADOPTED
PERSON AGE 18 OR OLDER.

(b) THE STATE REGISTRAR SHALL DISCLOSE INFORMATION IDENTIFYING THE BIOLOGICAL PARENTS OF AN ADOPTED PERSON WHO IS 18 YEARS OLD OR OLDER AND THE STATEMENTS OF THE BIOLOGICAL PARENTS AS DESCRIBED IN (a) OF THIS SECTION.

1 ~~this section, the state registrar may not disclose the identifying~~
2 ~~information on that biological parent to an adopted person unless~~
3 ~~disclosure is ordered by the court under AS 25.23.150.~~

4 (c) The state registrar shall provide the adoptive parents of a
5 person adopted after January 1, 1985, and an adopted person who is 18
6 years of age or older after January 1, 1985, the following nonidenti-
7 fying information on a standard form prepared by the commissioner
8 regarding each biological parent named on the original certificate of
9 birth if the information is available:

10 (1) the age of the biological parent at the birth of the
11 adopted person but not the birth date of the biological parent;

12 (2) the heritage of the biological parent, including:

13 (A) national origin;

14 (B) ethnic background; and

15 (C) race and tribal membership;

16 (3) the health history of the biological parent and of
17 blood relatives of the biological parent;

18 (4) education, which is the number of years of school com-
19 pleted by the biological parent at the time of the birth of the adopt-
20 ed person;

21 (5) general physical appearance of the biological parent at
22 the time of the birth of the adopted person in terms of height,
23 weight, color of hair, eyes, skin, and other information of a similar
24 nature;

25 (6) the existence of another child or children of the
26 biological parent;

27 (7) whether the biological parents were alive at the time
28 of adoption;

29 (8) the religion of the biological parent;

(10) OCCUPATION

(11) HOBBIES, TALENTS, SPECIAL INTERESTS

1 (9) whether the adopted person was legitimate at the time
2 of adoption.

3 (d) The state registrar shall, on the request of an adopted
4 person over the age of 18 years, attach to the original birth certifi-
5 cate of the adopted person the current address and name of the adopted
6 person. The information provided under this subsection may be releas-
7 ed to the biological parent of the adopted person.

8 (e) The state registrar shall, on the request of a biological
9 parent, attach to the original birth certificate of the child of the
10 biological parent the current address and name of the biological
11 parent. The information provided under this subsection may be releas-
12 ed to the child of the biological parent.

13 Sec. 18.50.510. MAINTENANCE OF RECORDS. (a) The commissioner,
14 a child adoption agency, and a person authorized by law or regulation
15 to place a person for adoption shall furnish the state registrar the
16 information concerning biological parents required under AS 18.50.-
17 500(c) for all adoptions that occur after January 1, 1985. If the
18 information concerning biological parents required under AS 18.50.-
19 500(c) is requested but is not available for adoptions that occurred
20 before January 1, 1985, the state registrar shall request the commis-
21 sioner to attempt to obtain the required information from the child
22 adoption agency, records of the commissioner, or court adoption re-
23 cords, or a person authorized by law or regulation to place a person
24 for adoption.

25 (b) A child adoption agency licensed under AS 47.35.100 and a
26 person authorized by law or regulation to place a person for adoption
27 shall maintain records required under AS 18.50.500(c) and by the
28 regulations of the commissioner. If a child adoption agency or a
29 person authorized by law or regulation to place a person for adoption

1 ceases to place persons for adoption, it shall transfer its records to
2 the commissioner.

3 Sec. 18.50.520. DEFINITIONS. In AS 18.50.500 - 18.50.520

4 (1) "adoptive parent" means a parent who adopted a person
5 under AS 25.23;

6 (2) "biological parent" means a birth parent who is named
7 on the original certificate of birth of an adopted person;

8 (3) "child adoption agency" means a child adoption agency
9 licensed under AS 47.35.100;

10 (4) "commissioner" means the commissioner of health and
11 social services;

12 (5) "state registrar" means the state registrar appointed
13 under AS 18.50.030.

14 * Sec. 3. AS 25.23.060(a) is amended to read:

15 (a) The required consent to adoption shall be executed at any
16 time after the birth of the child in the presence of the court or in
17 the presence of a person authorized to take acknowledgements. The
18 consent is not valid unless

19 (1) the consent form states that the person required to
20 consent to adoption under AS 25.23.040 has the right to withdraw that
21 consent as provided in AS 25.23.070(b); and

22 (2) the person signing the consent is provided with a copy
23 of the consent.

24 * Sec. 4. AS 25.23.080(c) is amended to read:

25 (c) A certified copy of the birth certificate or verification of
26 the birth record of the person to be adopted, if available, the non-
27 identifying information specified in AS 18.50.500(c), if available,
28 and the required consents, relinquishments, and termination orders
29 shall be filed with the clerk.

1 * Sec. 5. AS 25.23.150(b) is repealed and reenacted to read:

2 (b) The papers and records relating to the adoption that are a
3 part of the permanent record of the court are subject to inspection
4 only upon consent of the court. The papers or records relating to the
5 adoption that are in a file in the department or in an agency are
6 subject to inspection only with consent of all interested persons or
7 by order of the court for good cause shown. Except as provided in
8 this section, adoption records of the Bureau of Vital Statistics
9 established under AS 18.50 are subject to inspection under the pro-
10 visions of AS 18.50.

11 * Sec. 6. AS 25.23.150(c) is amended to read:

12 (c) Except as authorized in writing by the adopted child if 14
13 or more years of age, or by the adoptive parent, or upon order of the
14 court for good cause shown [IN EXCEPTIONAL CASES], a [NO] person may
15 not [IS REQUIRED TO] disclose the name or identity of either an adop-
16 tive parent or an adopted child.

17 * Sec. 7. AS 25.23 is amended by adding a new section to read:

18 Sec. 25.23.185. RECORDS AND INFORMATION. (a) A person or
19 agency petitioning for adoption, the department, or a person placing a
20 child for adoption shall obtain from each known biological parent of
21 the adopted person for the state registrar

22 (1) the information listed in AS 18.50.500(c) on a form
23 prepared by the department;

24 (2) a statement ^{AS TO WHETHER THE BIOLOGICAL PARENT} ~~that the biological parent is aware of the~~
25 ~~procedure set out in AS 18.50.500(a) and (b);~~ ^{WISHES TO HAVE CONTACT WITH THE ADOPTED PERSON WHEN THE}
^{ADOPTEE IS AGE 18 OR}
^{OLDER.}

26 (3) a statement that indicates the biological parent has
27 been informed that the state registrar must attach the biological
28 parent's current name and address to the original birth certificate at
29 any time the biological parent wishes to have a current address

1 attached.

2 (b) The statement and the information provided by a biological
3 parent under (a) of this section shall be attached to the original
4 birth certificate of the adopted person.

5 (c) The biological parent shall be given a copy of a statement
6 provided under (a)(2) of this section.

7 * Sec. 8. This Act takes effect January 1, 1985.

(d) THE BIOLOGICAL PARENT MAY CHANGE A
STATEMENT FILED UNDER (a)(2) OF THIS SECTION
AND MAY UPDATE FACTS FILED UNDER (a)(1) OF THIS
SECTION AT ANY TIME AND THIS OPTION OF THE
BIOLOGICAL PARENT SHALL BE STATED ON THE
COPY OF THE STATEMENT PROVIDED TO THE
BIOLOGICAL PARENT UNDER (c) OF THIS SECTION.

(e) THE ADOPTIVE PARENTS SHALL BE ADVISED
IN WRITING ON A FORM PROVIDED BY THE
COMMISSIONER THAT THE ADOPTEE AT AGE 18
MAY OBTAIN A COPY OF THE ORIGINAL BIRTH
CERTIFICATE ALONG WITH THE BACKGROUND INFORMATION
DESCRIBED UNDER (a)(1) OF THIS SECTION
AND THE STATEMENTS OF THE BIOLOGICAL PARENTS
DESCRIBED IN (a)(2) OF THIS SECTION

(f) THE COMMISSIONER SHALL REQUEST ON A PERIODIC
BASIS THAT THE ADOPTIVE PARENTS PROVIDE TO THE DEPARTMENT
A PROGRESS REPORT ON THE CHILD'S HEALTH, SOCIAL & PHYSICAL
DEVELOPMENT. THE REPORT SHALL BE ATTACHED TO THE ORIGINAL BIRTH
CERTIFICATE & SHALL BE AVAILABLE TO THE BIOLOGICAL PARENTS
UPON REQUEST.

January 17, 1984

M E M O R A N D U M

TO: Senator Bill Ray, Chairman
Senate Judiciary Committee
Senator Joe Josephson
Senator Richard Eliason
Senator Fritz Pettyjohn
Senator Robert Ziegler, Sr.

FROM: Karla Forsythe *KF*
General Counsel
Alaska Court System

SUBJECT: SS for SB 241, an act relating to adoption.

The Alaska Court System appreciates this opportunity to bring to your attention court-related concerns about SS for SB 241, an act relating to adoption.

Under section six of the proposed legislation, the clerk of the superior court, the department of health and social services, or the person placing a child for adoption is required to obtain from each known biological parent a variety of nonidentifying information, as well as statements about access to identifying information. It is the position of the court system that the reference to the clerk of the superior court should be deleted.

The practical effect of including the court as one of the information-gathering agencies is to add a new and inappropriate clerical procedure to the work of the courts. The implication of this section is that if an agency or the

department is not involved in an adoption, the court should obtain the information. In almost all step-parent adoptions, an agency or the department is not involved, so the court would have to collect the information from the biological parent. These types of adoptions comprise a substantial portion of the court's adoption workload. Moreover, in these situations the biological parent is often difficult to contact. Therefore the court will spend a great deal of time obtaining this information, which will likely require additional staff in major court locations. This investigatory function is not compatible with the court's adjudicatory role.

An easier and more appropriate way to obtain this information in step-parent adoptions is for the person petitioning for adoption and not the court to furnish it to the registrar. If the phrase "person placing a child for adoption" is intended to include these petitioners, the court's concerns with section six can be remedied simply by deleting the reference to the clerk of the superior court. However, if petitioners in step-parent adoptions are not meant to be included in the phrase, they should be specifically mentioned. If this is the case, the court system suggests that lines 10-12, page five of the proposed bill, should read: "The person petitioning for the adoption, the department, or the person placing a child for adoption shall obtain from each known biological parent of the adopted person for the state registrar"

Deleting the reference to the court comports with the apparent intent of the legislation. Proposed section 18.50.510 requires the commissioner, an adoption agency, or a person placing an adoptee, and not the court, to provide information to the registrar. It is inconsistent to then require the court to obtain the information under the adoption provisions of title 25. Also, a reference to the court implies that inability or failure to obtain the information will affect the court's review of the adoption. However, it is clear from proposed section 18.50.500 that the missing information results not in denial of the adoption, but in nondisclosure.

In summary, the court system recommends deletion of the reference to the "clerk of the superior court" from section six.

cc: Senator Kerttula
Senator Rodey
Senator Sturqulewski
Senator Fahrenkamp
Senator Halford
Senator P. Fischer
Senator Moss
Paula Scavera
Arthur H. Snowden, II

Public opinion favors opening adoption records

By CECILIA KLEINKAUF

Throughout the winter and spring of 1980, the subject of "opening" adoption records in Alaska received a good deal of attention.

A public forum, sponsored by the League of Women Voters, the National Association of Social Workers and the Social Work Department at the University of Alaska generated much discussion and a series of resolutions supporting opening records for release of non-identifying information (i.e. — medical, racial data) and opening records for release of identifying information with the consent of the individual whose name is released. Legislation was also introduced in the 11th Alaska Legislature to amend the Alaska statutes to provide for open records but did not pass.

In order to determine the opinions of the general public regarding adoption issues, the Social Work Department at the University of Alaska agreed to undertake a research survey of public opinion and make the results available to the legislature and the public at large.

Both KIMO-TV, Channel 13, and the Anchorage Daily News provided assistance by actually publicizing the short questionnaire, thus assuring participation by the general public.

The survey asked the following questions:

1) Whether respondents believed that non-identifying information should be available to adult adoptees without a court order.

2) Whether respondents believed that identifying information (names) should be accessible to adult adoptees, adoptive and biological parents —

- a) Only with written consent of the person to be adopted;
- b) Only with a court order and the written consent of the person to be adopted;
- c) Only with a court order;
- d) Not at all;

3) Whether adoptions should be done by a licensed adoption agency or the state — except for relative or step-parent adoptions.

One hundred forty-two (142) individuals responded to the brief questionnaire. Of this number — 19 were adopted persons, 37 were adoptive parents, 22 were biological parents of a child released for adoption, 13 were professional and 46 were classified "other." Composite breakdowns of their responses are as follows:

1) Those believing that non-identifying information should be available to adult adoptees without a court order —

- Yes.....89 percent
- No.....6 percent
- Don't Know.....4 percent

2) Those believing that identifying information (names) should be accessible to adult adoptees, adoptive and biological parents —

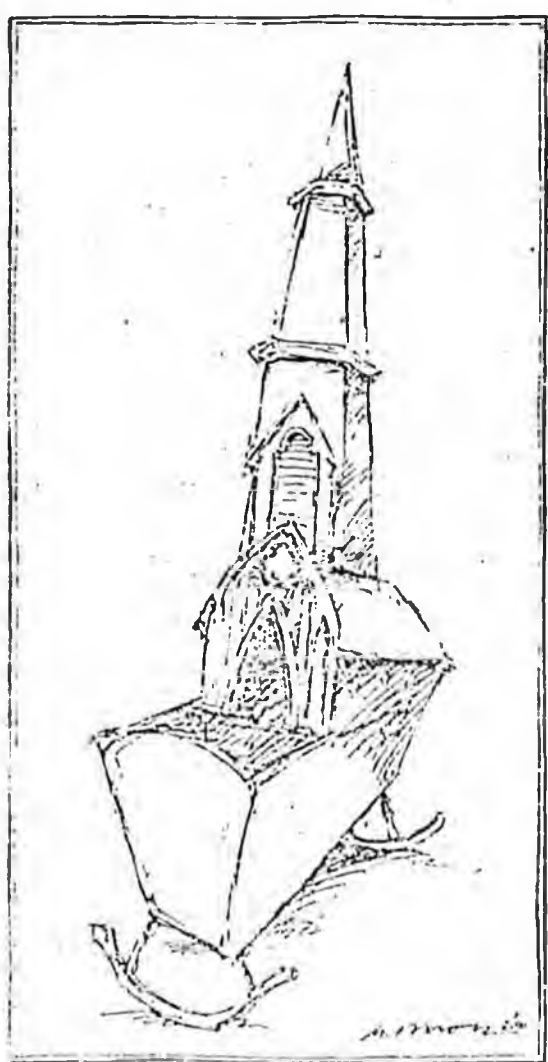
- Written consent.....77 percent
- Court order & written consent.....15 percent
- Only with court order.....2 percent
- Not at all.....4 percent
- Don't know.....1 percent

3) Those believing that adoptions should be done by a licensed adoption agency or the state — (except for relative or stepparent adoptions)

- Yes.....65 percent
- No.....17 percent
- Don't Know.....18 percent

Contrary to what might be expected, when the responses are broken down by adoptees, adoptive parents and biological parents, the support for open records remains strong within each discrete group.

Of those respondents who were ADOPTIVE PARENTS, 67 percent believed that access to identifying information should be granted with the consent of the person to be identified. Sixty-five percent believed adult adoptees should have access to non-identifying information without a court order. Fifty-one percent of



the adoptive parents believed adoptions should be done by a licensed agency or the state and 35 percent disagreed. Fourteen percent weren't sure.

Of those respondents who were the BIOLOGICAL PARENT of a child released for adoption, 82 percent believed that access to identifying information should be granted with the written consent of the person to be identified. Ninety-one percent believed adult adoptees should have access to non-identifying information without a court order. Forty-five percent of the biological parents believed adoptions should be done by a licensed agency or the state. Forty-one percent weren't sure and 14 percent disagreed.

Of the respondents who were ADOPTEES, 81 percent believed that access to identifying information should be provided with the written consent of the person to be identified. Ninety-five percent believed that access to non-identifying information should be possible without a court order, and 84 percent believed adoptions should be done by a licensed agency or the state. Eleven percent disagreed and five percent weren't sure.

Of the remaining respondents, 80 percent believed that written consent should be required for the release of identifying information, 27 percent believed that access to non-identifying information should be possible without court order and 74 percent believed a licensed agency or the state should do the adoptions.

Survey results such as these give clear indications of changing social attitudes about adoption and about "secret" adoptive records.

It is obvious that the majority of respondents in this survey believe that Alaska should "open" adoptive records. It remains to be seen whether the 12th Alaska Legislature will agree.

Cecilia "Pudje" Kleinkauf is a faculty member of the University of Alaska, Anchorage with the Department of Social Work.

Oklahoma Law Review Summary

Attacks on the sealed record laws spread nationwide in the 1970's as activists for adoptees' rights began lobbying legislators to amend laws that prevented adopted persons from finding out the circumstances of their own adoption. Challenges to the laws began to be voiced in state and federal courts with plaintiffs claiming that such laws violated constitutional rights. Among rights adoptees assert are violated by the closure statutes are a first amendment right to receive significant personal information, a ninth amendment right to personhood and privacy, and denial of equal protection of the law under the fourteenth amendment. State courts have uniformly upheld sealed record laws against all such attacks. The U.S. Supreme court has not yet decided the constitutionality of sealed record laws.

Modern adoption procedures are primarily designed to protect the welfare of the adoptee, they simultaneously safeguard the rights of the biological and adoptive parents. Like other aspects of family law, adoption is governed by state rather than federal rules. In most jurisdictions, adoption proceedings are closed and records are sealed to protect rights of the parties involved.

**** Pro sealed records:** One court reasoned that sealed record laws offer assurance to a biological mother that instead of haphazardly placing the child herself, she can allow desirous and qualified persons to adopt the infant. She will be protected in the process so that no one will ever know by means of the adoption proceedings that the child was illegitimate, if such is the case. The statutes further purport to assure the adoptive parents that the child may be treated as their own and that they need not fear the adoption records will hurt the child or their relationship with the child. Sealed record laws were enacted basically to protect the adoptee from any possible stigma of illegitimacy they might bear, to allow a parent-child relationship to form in the adoptive family without the threat of interference from the biological parents, and to afford the biological mother a chance to make a new life for herself, secure in the knowledge that this phase of her life would not be revealed. Most sealed record laws were enacted in an era when illegitimacy carried a devastating legal and social stigma.

****** The sudden appearance of the child years later could be a shocking experience. Traditionally, when a parent places a child for adoption, that parent is given a promise of anonymity. Opening adoption records might be humiliating to a mother who surrendered a child years ago, and who would not want to confront a part of her life long buried in the past.

****** Adoptive parents fear that the liberalization of sealed record laws would lead to the loss of their adopted child to the biological parent, once the child and parent locate each other.

** With a scarcity of babies available to adopt, many fear a powerful black market will emerge. Perhaps legislators and courts believe that statutes that deny confidentiality in adoption procedures would be another factor that might force biological parents covertly to surrender a child they cannot support.

** Con sealed records: With maturation, many adoptees experience identity crises, health problems that possibly have a genetic connection, and curiosity about their biological heritage. One study of the psychological status of adults revealed that only a small portion of adoptees become well-adjusted adults. Other studies show adoptees are prone to emotional and psychological problems, all traceable to a lack of identity. One psychologist notes that one's identity has to do with immediate life involvements (the adoptive family) and a larger sense of heritage. It is in the latter category that adoptees feel identity-deficient. Without this sense of heritage, psychologist reason, adoptees have no sense of continuity, wholeness, or fidelity, all of which are important to identity formation. Thus, the conspiracy of silence against the adult adoptee prevents the development of a full self-identity. While confidentiality may serve its purposes in the adoptee's young life when the parent-child relationship is forming, it is questionable whether insistence upon such a policy remains in a adoptee's best interests once adulthood is reached, the "best interests" rationale should extend into the life of the adult adoptee.

** A relationship between parent and child that has developed throughout the adoptee's young life is not easily endangered by outside persons or influences. While adoptive parents have a valid interest in keeping adoption records sealed during the adoptee's youth, that interest decreases after the parent-child relationship has blossomed. Furthermore, one commentator suggest that most adoptees experience a deeper sense of love and appreciation for the adoptive parents as a result of establishing a relationship with biological relatives. It is reasonable to believe that revealing the information sought by adoptees concerning their identity would lead to their mental health and happiness.

** States must consider the mental health of those persons for whose adoptions they are responsible. Medical studies reveal that some adoptees who are denied the opportunity to seek out biological parents or genealogical history have suffered severe psychological stress. A suggestion was made that states should establish some provision in their adoption laws to help these adoptees overcome their disorder and thus keep that person from becoming a burden on the state.

** Adoption laws are drafted to result in the best interests of the adoptee, in many cases, revealing information about the adoption process is in the best interest of the adoptee.

Among the avenues of constitutional argument open to an adoptee seeking access to birth records or adoption proceedings is the challenge that sealed record laws violate first amendment rights. One theory supporting the purpose of the first amendment is that it promotes a "marketplace of ideas" concept that allows the free exchange of information, enabling all person to participate knowledgeably in government and society. Sealed adoption laws that are the cause of psychological stress on adoptees arguably frustrate one of the basic premises of the first amendment. The Supreme Court has extended the first amendment beyond its literal terms. On numerous occasions, the Court has held that the amendment protects the right to receive information. It has been argued that this includes information about the adoption process, but courts have rebuffed that argument. Another court faced with a challenge to sealed record laws noted that no constitutional or personal rights were unconditional and absolute to the exclusion of the rights of all other. That court thought that the conditional limitation (the good cause requirement) of the challenged statute promoted a valid state policy of protecting privacy rights. Applying a balancing test, the court found that the adoptees' first amendment rights were outweighed by the countervailing rights of the other interested parties.

A plaintiff's attempt to invoke the right to receive information in this context would seem to be an overly broad extension of the right and an unprecedented interpretation of the first amendment. But a general conclusion that all biological and adoptive parents wish to keep adoption information confidential once the adoptee reaches adulthood should not be made. In those cases where all parties are amenable to releasing the information, the adoptee should have the right to view adoption records.

Although the Constitution does not explicitly mention a right to privacy, such a fundamental right has been found to exist in the penumbras of the first, third, fourth, fifth, and ninth amendments. The definition of privacy and the nature of the interests it encompasses have not clearly been set forth. The Supreme Court has deemed fundamental two types of privacy interests: those involving traditional family ties and decisions about control over one's own body. The privacy right limits governmental interference into individual decisions regarding those issues deemed fundamental. Adoptees allege that the right to know genealogical identity is similar to areas in which privacy has been held to apply. (extended to such areas as abortion, marriage, contraception, procreation, child rearing, and education) The privacy right arguably could encompass an adoptee's right to view birth records because the ability to make decisions involving fundamental rights is likely influenced by identity formation gained through those records. Preventing access to information about an adoptee's genetics may hamper the decision-making process concerning such things as procreation and contraception. Without such genealogical facts, the adoptee has no information upon which to base intelligent decisions. Thus, sealed record laws prevent adoptees from fully exercising fundamental rights by deterring dissemination of information needed to make decisions protected by the right to privacy. Such a governmental intrusion is forbidden

by the Constitution. One court has held that information regarding heritage and heredity, while it may be important to forming identity, is nevertheless not so intimately personal as to fall within the zones of privacy implicitly protected by the Bill of Rights penumbras. The penumbral rights that adoptees use to assert a right of access to files is the same right opponents assert to keep the files closed.

Establishing a fundamental privacy right to birth records would entitle adoptees to strict scrutiny of the closure laws. The state would have to show that a compelling interest is served by the statute and that less intrusive alternatives are unavailable. Although the purposes served by sealed record statutes are important, arguably even compelling, there are less intrusive means of achieving the goals such laws are aimed to meet. Procedures could be developed to contact birth parents through a liaison. If the parent refused to cooperate, privacy rights would still be protected and parents would be able to appear and meet with the adoptee if neither party wanted to remain silent.

Suggested Reforms

Under most current sealed record laws, an adoptee must make a showing of some form of good cause in order to inspect records. However, what constitutes good cause is left to the subjective discretion of the judge and is nowhere defined in most state statutes. A suggestion offered by the Superior Court of New Jersey in *Mills v. Atlantic City Department of Vital Statistics*. The court held that when an adoptee seeks access to adoption records during minority, the minor must satisfy the good cause requirement. When the adoptee reaches majority, the burden of proof shifts to the state to show an absence of good cause. If biological parents consent to disclosure, the records may be opened on demand.

A court-supervised intermediary process would offer another solution that would be consistent with the rights of all parties involved. A person appointed by the court to act as an intermediary could seek out the biological parents and inform them of the adoptee's desire to meet them.

Court and legislators should abandon the popular all or nothing approach to adoption record laws in an effort to best serve the needs of all persons involved. Courts thus far have not taken the incentive; thus it falls to the state legislatures to initiate this desirable change.

Rewriting the Adoption Story

The Old Version Was Based on More Fiction Than Fact—the Belief that Law Could Mirror Biology. Today's Adoption Procedures Are More Realistic

Who may adopt? Who may be adopted? How important is it to match religion or race? When is a birth parent's consent unnecessary to complete adoption? Under what circumstances can a birth mother revoke her consent after she has relinquished her child? These questions of the '60s were based on traditional thinking of adoption. Today's questions are not only based on changes in family patterns but on a new way of thinking about the concept of adoption.

The institution of adoption was incorporated into U.S. law in 1851, when Massachusetts enacted the first American adoption statute that provided for judicial supervision over adoptions. In other states, adoption was a private legal act, like a conveyance of real estate or a commercial contractual transaction. Before 1851, other state statutes merely authenticated and made a public record of private agreements.

For the past century, our adoption laws and practices have followed the Roman legal tradition of attempting to make law mirror biology. This tradition was based on the notion that the adopted child, by physical appearance alone, could have been the birth child of the adoptive parents. The adoptive parents were supposed to be people who, by appearance and age, could have conceived the infant. Thus, adoption laws were designed to imitate nature.

Throughout history, a birth mother has had two options: she could choose the adoptive parents and relinquish her child to them—often without going to court; or she could leave the decision to a licensed private or public social service agency that would receive the child, obtain the relinquishment, and then place the child—usually with a childless couple. Most American adoptions con-

sisted of unwed mothers, whose newborn or infant children were released directly from a hospital nursery or a special short-term foster home. For an unwed mother, adoption was a socially acceptable alternative.

But times have changed. The patterns of earlier years are now the exception, not the rule. Today, adoption is usually the end of a process that began as a child neglect or abuse proceeding. While there are still some newborns being placed for adoption, the typical profile of the adoptive child in the '80s is a three-to-five-year-old youngster who has lived with his or her birth mother, then with a series of foster parents, and has lacked a permanent home for at least a year. The birth mother usually has failed to rehabilitate herself, and the most likely candidates to adopt the child are the child's foster parents.

Foster care has become a first step toward adoption. In the past, foster parents often were excluded as candidates because of the matching physical requirements and factors such as financial eligibility. Now, foster parents often are given priority because they have formed strong emotional bonds with the child. They have become the child's "psychological parents."

Government-subsidized adoption programs, which provide the financial support for children to be adopted by their foster parents, was an idea in the '60s. It became a reality in the '70s and is being implemented in the '80s.

CHILDREN BORN OUT OF WEDLOCK

During these 20 years, there has been a great deal of litigation over the status and rights of children born out of wedlock. The U.S. Supreme Court has moved in the direction of declaring illegitimacy a suspect classification under the Equal Protection Clause of the Constitution. The legal distinction between legitimate and illegitimate

The open records issue needs rethinking

births has been blurred, and some state statutes have eliminated the distinction altogether—stating that all children are legitimate. But the highest court in the land has not gone that far.

This new attempt to give illegitimate children the same rights as legitimate children has encouraged legislative change, particularly in the area of parental consent. For years, the child born out of wedlock was considered the child of the mother. And unless an unwed father acknowledged paternity or was declared the father through judicial proceedings, he was virtually a legal nonentity. Not only did the father have no rights to the custody of his illegitimate children, but the children had no rights to the companionship of their unwed father.

Although *Stanley v. Illinois*, 405 U.S. 645 (1972), was not an adoption case but a case of neglect and dependency, it had a major effect on adoption law. *Stanley* held that an unwed father who had sired and lived with his three children and their mother intermittently for 18 years was, upon the mother's death, entitled to a hearing before his children could be removed for reasons of neglect. Under Illinois law, Mr. Stanley was not considered a "parent" and thus was not entitled to due process of law because he was not married to his children's mother. The Supreme Court stated in a footnote that its decision also affected adoption.

This case and many that followed it, such as *Rothstein v. Lutheran Social Services*, 405 U.S. 1051 (1972), where the father's rights were considered, have had an impact on all state adoption statutes. In most instances, fathers of children born out of wedlock now must be accorded the opportunity to consent to the adoption of their biological offspring. But there are practical problems in providing this opportunity. Procedures to implement *Stanley* are still being worked out by states to ensure fairness to the biological father without jeopardizing the adoption of the child.

OPEN ADOPTION

"Open adoption" is a concept of the 1980s that represents a new idea about adoption. It is the antithesis of the Roman ideal—it does not seek to imitate nature and makes no attempt to be a fiction. The essence of open adoption is to provide the child with the opportunity to maintain ties with his or her biological family.

Traditionally, adoption required the complete termination of the biological parent-child relationship, for both legal and practical reasons. Once adoption was decreed, the child was no longer considered the child of the birth parents. Ties with the biological family were severed, unless the child's adoptive parents chose to continue some contact, usually in intra-family adoptions.

Today, most adoptees are older children who have

memories of their earlier childhood and have some contact, if minimal, with their birth families. In cases where contact has been beneficial, but not so positive as to demand return to their birth parents, some courts have made allowances in the decree for visitation by certain members of the biological family. This is usually done only if the child desires it.

Open adoption is controversial because it challenges the basic goal of adoption—to accomplish a complete transplant of a child from the birth family to the adoptive family. Some opponents prefer that contact with the biological family be accomplished voluntarily, without decreeing it, or that guardianship be used rather than adoption.

With open adoption, the mystery of biological birth is eradicated. The price, however, is that it creates a different model for the parent-child relationship. The question is whether society is ready for it.

LOOKING AHEAD

During the next decade, states that forbid private adoptions are likely to reexamine that policy and the roles of professionals in the adoption process. I anticipate that our legislatures will ask whether it is fair to give agencies a monopoly in the placement of children for adoption of newborns or whether birth parents should be allowed to choose a suitable family for their child.

Other questions facing us in the '80s include: In states that do not allow private adoptions, how can adoptive applicants be assured of fair treatment? Is surrogate motherhood a socially acceptable alternative to traditional adoptive placement? Should there be state regulation of this newly adapted scientific method, or should women and physicians alone be the sole decision makers?

The open records controversy will continue. The debate over whether adoptive children have the legally protected right to inspect their adoption records should prompt states to reevaluate their legislation. The open records issue is an emotional one that needs rethinking. By changing the laws to allow free access to the records by anyone in the adoption triad, we will radically alter adoption in America.

Because adoption has existed in essentially one form for over one and one-half centuries, changes that affect underlying assumptions and strongly felt social values have been, and will continue to be, slow in coming. Those involved in adoption reform must be patient.

The Family Law Section's Adoption Committee is developing a new Model Adoption Act. The Committee is trying to propose an act that takes into account what adoption of children means in the '80s and how it can be accomplished with fairness to all the participants.

In any discussion of adoption, however, we must not lose sight of its primary goal: to provide a permanent, secure, and loving home for a child whose birth parents are unable or unwilling to meet the child's needs. Throughout the process of change, we must never cease to ask the basic question: "Is it well with the child?"

Sanford N. Katz, professor of law at Boston College Law School, is a past chairman of the Family Law Section. He is editor-in-chief of the Family Law Quarterly and president of the International Society on Family Law.

Alaska State Legislature

Advisory Council Members
Senator Kerttula, Chairman
Senator Bennett
Senator Vic Fischer
Senator Fahrenkamp



Pouch V
State Capital
Juneau, Alaska 99811
Phone: (907) 465-3114

SENATE ADVISORY COUNCIL

MEMORANDUM

TO: Senator Kerttula
FROM: Elizabeth J. Hickerson *EJH*
RE: Adoption Legislation
DATE: March 14, 1983

Last year SB 399 was introduced and passed the Senate with a committee substitute out of Judiciary. This session a very similar bill has been drafted regarding the issue of non-identifying information for adoptees and their adopted parents. Also included in the bill is a procedure whereby an adoptee or the biological parents can attach information to the original birth certificate with identifying information.

The primary intent of the adoption bill is to provide vital non-identifying information to adoptees. Basically, adult adoptees have stated that they feel a void in their lives due to the fact that information regarding their biological parents is missing. Not only is access to medical history vital, but adult adoptees have stated repeatedly that additional non-identifying information is essential to knowing oneself and past roots.

This bill would provide a means of collecting non-identifying information at the time of adoption and attaching this to the birth certificate. No identifying information as to the biological parent is included.

In addition this bill provides an optional mechanism whereby either the biological parent or the adoptee upon reaching 18 years of age can provide identifying information to the other party. The bill provides that at any time a biological parent can attach identifying information (name, address, etc.) to the child's birth certificate for release. This can be revoked at any time by the biological parent. At the same time the adult adoptee can attach similar information to his/her birth certificate. This basically provides a mechanism whereby the parties can establish direct contact with one another.

Neither of these two sections permits identification of the parties being released unless they so request. The parties must take affirmative steps for identifying information to be released. The state would merely establish a registry to assist those wishing to release identifying information.

As it is today children are born, biological parental rights are terminated and adoption takes place without the benefit of background information on the biological parent being preserved. With passage of this bill, non-identifiable information will be preserved and accessible, and a mechanism will be created to aid those wishing to identify themselves.