

Open Records for Adult Adoptees

Each year, November is designated as National Adoption Month. It is a time when extra attention is paid to those children who, being in foster care or other temporary situations, are waiting for a loving family to provide a stable environment for them to grow and flourish.

While the majority of people will focus on the 'newly adopted' aspect of this month, attention also needs to be directed to the 'forgotten adopted' of this country. These are the people who, merely through the act of being adopted, have lost all of their heritage and genealogy because of the closed adoption system in this country. Many people do not realize that adoptees are the ONLY group of people in the United States who are denied access to their original birth certificates. They are also denied access to any medical records or paperwork that was issued before their adoption took place. Even if the adoptee has a valid reason for having their records open, such as a genetic medical condition or life threatening illness, they are oftentimes refused. Adoptees in this country have died because the court system has declined to open their records for medical information, citing reasons of confidentiality. This type of mindset has its origins in the adoption laws written in the 1930's.

The first adoption statutes in the United States went into effect around the 1850's. However, it wasn't until the 1930's that social workers began asking that adoption records be legally sealed. Their rationale at the time was to protect the birthmother from the stigma of illegitimacy in a society that looked down upon pregnancy outside of marriage, and to protect the child from being labeled a 'bastard'. Other reasons were to prevent blackmail of the birthparents and to protect the child from possible disturbing events surrounding their birth, such as rape. Each party, the adoptive parents and the birthparents, were encouraged to get on with their lives as if none of it had ever happened. Birthmothers may have been told that their identities would be forever concealed. There was only one thing wrong with these concepts. No one remembered to tell the adoptee.

The adoption laws of the 30's and 40's have remained in effect to this day, with very little revision regarding the sealing of records. However, progress has been made, most notably in Oregon, Tennessee and Alabama, to open these records to adult adoptees. The word 'Adult' needs to be emphasized. No one is advocating those records be opened for minors. There are now six states that allow adoptees various accesses to their adoption records. However, most of the states in the union still look upon adult adoptees as forever children, and therefore deem them unable to deal with the information that is kept from them, supposedly for their own good. Despite the enlightened society we now live in that no longer looks down upon birthmothers and their prodigy, there are still those individuals and groups in our country who are looking to deny adult adoptees their heritage. Among these are the National Council for Adoption, and Pat Robertson, who helped found the American Center for Law and Justice, and is well known for his Christian Coalition political party. Both these parties were involved in the lawsuits in Tennessee to try to prevent adoption records from being opened. Listed below are some reasons why it is time to open adoption records, as well as rebuttals to the common arguments opponents such as these put forth against opening them for adult adoptees.

Illegitimacy and infertility are no longer looked down upon by society.

As mentioned above, a primary consideration for sealing records was the concern of social workers and child-placing agencies about the stigma of illegitimacy of children born of parents who were not married to each other. Changing or substituting birth certificates was seen as a way to remove that stigma and concealing the word "illegitimate" that might have been marked on the original birth certificate. Many social workers believed birth mothers desired anonymity and wanted a chance to start over after the stigma of an out-of-wedlock birth.

Today, the stigma of illegitimacy no longer exists. One-parent households are common. Single motherhood is championed. Infertility is no longer the shame it once was, but is now the recipient of numerous medical advances. Those who bore children and released them for adoption need no longer fear the reprisals of society, and those who adopt are no longer shunned for being unable to conceive.

Sealed records do not prevent reunions. They only drive people underground and force otherwise honest people to break the laws.

You need only watch television to see dozens of reunions taking place before the camera. For every reunion that is facilitated by a television show, there may be hundreds that are being facilitated by private investigators or individuals themselves. The internet has helped spawn reunion registries, chat rooms and mailing lists filled with those who are desperately searching. Some adoptees looking for birth parents, and vice versa, spend from hundreds to thousands of dollars to hire anyone from private detectives to state-sponsored searchers.

If you try to go through the system, the same system that arranged your adoption, you are likely to get the door slammed in your face if you mention the word 'adopted'. To be fair, these workers are only doing their job and abiding by the current laws. It is these laws that are forcing adoptees and birthparents into secrecy again, as they try to gather information about their families by relying on contacts and individuals who have learned how to go around such doors, rather than through them. Some who have hit dead ends on their own may resort to illegal methods of obtaining their information. All for pieces of paper that someone 70 years ago decided they shouldn't see. There will always be reunions. The laws are not stopping them.

Abortions will increase and Adoptions will decrease because birthmothers will lose their confidentiality.

No evidence has been brought forth to support this claim. On the contrary, there is much evidence against it. The abortion rates in both Alaska and Kansas, states which grant adult adoptees unconditional access to their original birth certificates and adoption papers, were lower than the national average as a whole: 14.6 and 18.9 abortions respectively for every 1,000 women between the ages of 15 and 44, compared to the national rate of 22.9. This research comes from the Alan Guttmacher Institute, a non-profit organization focused on sexual and reproductive health research, policy analysis and public education, located at <http://www.adoptioninstitute.org/>.

From the same institute, statistics from England and Wales, for the period of 1961 through 1987, show abortions began to increase steadily from 1961 through 1973. However, starting in 1974, when England and Wales opened records to their adult adopted citizens, abortions and the abortion rate in these countries actually decreased.

Birthmothers and Adoptive parents were promised confidentiality

Confidentiality was more often 'imposed' rather than 'offered'. If adoption was the path women chose or were forced to accept, privacy was often part of the adoption package, not an option. The adoption system assumed that confidentiality was desired and needed to protect the

adoption. Birthparents were, by signing away their parental rights, accepting a nonnegotiable condition of confidentiality.

No surrender agreements, except possibly within the last 5 years, have surfaced that included confidentiality as a legal option for the birthmother. Opponents have used these oral or assumed contracts spoken years ago to justify the continuation of 'implied' confidentiality.

Individual states have begun to strike down this implied confidentiality myth. In Oregon, the court of appeals ruled that confidentiality was never guaranteed by statute. The fact that people representing an agency offered this confidentiality did not bind the state to any agreement of such a clauseⁱ.

In denying an appeal to keep adoption records sealed, Tennessee, the 6th Circuit court of appeals ruled since a birth was recorded by the government, these records could serve a myriad of purposes, including '*furthering the interest of children in knowing the circumstances of their birth.*'ⁱⁱ

Birthparents (or Adoptees, or Adoptive parents) are against open records.

There will never be 100% agreement on this issue, and opponents can always find someone who will agree with them about keeping records sealed. But Democracy, by definition, is; 'government by the people; *especially* : rule of the majority.' The majority in this case swings toward open records.

There have been many polls taken over the years, and they show that most Americans support opening adoption records for adult adoptees. 77% of respondents in a Parenting Magazine poll taken in November 2000 agreed that adoptees should be able to access their own birth records.ⁱⁱⁱ

In a poll taken by Cornell University in 1997, 83% of adoptive mothers and 73% of adoptive fathers agreed that adult adoptees should be able to obtain a copy of their original birth certificate.^{iv}

In Oregon State, where Measure 58, (allowing adoptees access to their original birth certificates), was finally implemented in May 2000, 6,181 applications have since been filed requesting pre adoption birth certificates. Measure 58 also included an option for a birthparent to file a contact preference if desired. As of October 5, 2001, 420 such preferences were filed. 313 stated contact was welcome, 27 wanted contact through an intermediary only, and only 80 desired no contact.^v

Most states have a registry where birthparents and adoptees can register if they want to find each other.

This is a common argument that the opposition provides those who advocate open records. But registries are notoriously inefficient. For example, the New York State registry, established in 1984, had only 35 matches of adoptees with "birth" parents, as of June, 1992. While there are more matches currently being made, most are not the result of the registry itself. Rather, they are matches that were put together by mailing lists or organizations who had been helping individuals with their search. The participants were then encouraged to register with the state to confirm the match.

Most registries are run by the individual state. They are often the last concern when it comes to budget, and therefore, they are not widely advertised. Many people in that state don't even know

a registry exists. The chances are even slimmer that a birthmother or adoptee who has moved out of state will ever find out about the existence of such a registry.

Most registries also contain restrictions that limit the people who register. Again using New York State as an example, a provision was just recently added to their registry that allows the biological siblings of an adoptee to register their information. However, the registry is still unavailable to those adoptees who were born in another state and brought into New York to be adopted. Registries will never be able to take into account all the circumstances that occur during adoption.

For one group of people though, a registry will do no good at all, no matter how many provisions are added. This is the group of adoptees and birthparents who have died. Unless both parties register with the state, there will be no information released to the other party. Most registries do not differentiate between 'wanting no contact' and 'deceased'. Therefore the adoptee/birthparent will never know if their counterpart actually does not want to reunite, or if they are deceased. The only way to solve all these situations is to have an open records law.

Adoptees need to be protected from the physical and emotional abuse that was present in their biological family.

This is an important concern expressed by many adoptive parents, especially those who have adopted older children. Minor children must be allowed to grow up in a loving, supportive family where they do not feel threatened. Open records would not change this. What open records would do is allow the adoptee, once they reach adulthood, to delve into their past and make a decision that will be best for them. Ignorance of their roots will do nothing to help them deal with emotional or physical scars. Knowledge of the circumstances of their birth and adoption will allow them to move ahead with their own life and empower them in future relationships.

Other barriers to open records

Adoption is a multi-billion dollar industry in this country. No one wants to upset the machinery of the adoption system, no matter how faulty it is deemed to be. Lawsuits have been brought against various states ranging from violation of civil rights to denial of adoptees 14th amendment rights of equal protection under the law. These suits have been continually struck down, even in states where they proclaim to have the best interests of the child in mind. Finding lawyers to work on these cases is extremely difficult, both from the prospective of the enormity of fighting the adoption system, and from the lack of financial awards that law firms can usually expect in such civil cases.

Many birthmoms, especially from the era of the 1940's to the 1970's, are afraid to come forward into the spotlight. They have learned their lessons from the social workers all too well. They are to be ashamed of their past, forget about the children they gave away, and never speak of them again. How many mothers do we believe can or will forget about a child they carried for 9 months? Yet they still cower in fear, unable to express any concern about someone who was such an integral part of their lives.

Adoptees too, may internalize the supposed shame of adoption. They feel guilty about asking questions while adoptive parents are alive. Those who do feel the need to search while their adoptive parents are still living often harbor feelings of guilt about betraying the people who raised them. Some adoptive parents prey on this attitude. Those adoptive parents who do not understand the adoptees need for information may

make the adoptee feel guilty for "betraying" them or for not being grateful and loyal to the parents who raised them. For this reason, searches are often done in secret, and the adoptive parents are never made aware of a reunion. Adoptees often wait until the adoptive parents are deceased before they start a search. The adoptee is therefore forced to keep his own secret as well, for fear of alienating those who raised him. They are afraid to venture into the public eye to support that which they believe in.

What open records can achieve

With open records in place, the registries in those states can be eliminated. Medical updates can be placed directly into adoption files, as well as letters or other forms of communication the two parties involved want passed on. If an adoptee seeks to open his records, all the information will be there.

With open records in place, there will be no need for maintenance and administration of such registries. Time that previously went into protecting and updating registries, as well as separating paperwork, will be eliminated, reducing costs.

Family and Surrogate courts will be able to devote more time to their regular duties, rather than having to take the time to deal with the many petitions from adoptees/birthparents who seek to have their records opened.

Adoptive parents will be able to provide better care and preventative treatment for their adoptive children when their medical/emotional background is known. What adoptive parent would NOT want to know if there was a treatable medical condition present in their child's genetic history? Oftentimes an illness will skip a generation, and then adoptive parents find their grandchildren struggling with issues of health that might have been resolved had the adoptee had access to their own medical records at birth.

Conclusions

By continuing to refuse to open adoption records for adult adoptees, state governments are telling them that they don't trust these adoptees with their own lives. They need to stop 'infantalizing' adoptees and give them the same rights that other adults in this country have taken for granted. Society has changed. It is time for the laws to change with it. When the purpose of a law ceases to exist, so should the law.

Adoptive parents need to realize that their children are not theirs to possess. They are theirs to raise and develop and teach, so that they may go on to lead their own lives as productive members of society. Our children will always think of us as mom and dad. The definition of a parent encompasses much more than physically giving birth. We want to do what is best for our children. What can be better than letting them, as adults, seek out their origins?

Adoptees contend that they are co-owners of information about themselves, and, thus, it is unfair to deny this information to them. They themselves have never consented to the sealing of information. Most adoptees do not question confidentiality during their childhood but believe that the conditions justifying such protection are no longer needed when they reach adulthood. Not all adoptees will wish to have their original birth certificates and adoption records. Of those

who do, not all will choose to search any further. Of those who do choose reunion, they will need to respect the feelings of the birthparents.

Birthparents will have at least 18 years before their children will even be able to attempt to contact them. A lot can happen in those 18 years to change a birthparents ideas about wanting to reunite with their child. A birthmother, whether she wants confidentiality or not, always has the option to say 'no' to a reunion. If an adoptee is too persistent in their demands, there are already laws in place to deal with that issue. A woman who brings a child into the world has a responsibility to that child. Only she can give him his story and explain why the adoption took place. Only she can deliver to the child his biological and historical identity. She can always refuse contact if the adoptee ever searches her out. Society should not guard the birthparent with the protective cover of anonymity. If someone has to be favored, let it be the innocent party, the adopted adult, who maintains that his rights are being denied and his best interests not being served by yesterday's arrangements. If adoptees need to be reconnected to their origins, why should separation be judged the higher good?

The decision whether to reunite or not needs to be placed in the hands of those whom it will affect the most; the adoptee and birthparent, not a government whose sole reason for denying access to records is based on an antiquated law adopted for a society much different than we have today.

Birthmothers **do not** forget. Adoptive parents **should not** forget. Adoptees **will not** forget.

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ⁱ Jane Does 1,2,3,4,5,6,7, Appellants, v. THE STATE OF OREGON; JOHN A. KITZHABER, Governor of Oregon, and EDWARD JOHNSON, State Registrar of the Center for Health Statistics in Oregon, Respondents, and HELEN HILL, CURTIS ENDICOTT, SUSAN UPDYKE; and THE OREGON ADOPTIVE RIGHTS ASSOCIATION, IN THE COURT OF APPEALS OF THE STATE OF OREGON. Filed December 29, 1999.

ⁱⁱ PROMISE DOE; JANE ROE; KIMBERLY C. and RUSS C.; and SMALL WORLD MINISTRIES, INC., *Plaintiffs-Appellants*, vs. DONALD SUNDQUIST, Governor of the State of Tennessee, in his official capacity; CHARLES BURSON, Attorney General of the State of Tennessee, in his official capacity; and LINDA RUDOLPH, in her official capacity as the Commissioner of the Department of Human Services for the State of Tennessee, *Defendants-Appellees*. ON APPEAL from the United States District Court for the Middle District of Tennessee Decided and Filed February 11, 1997

ⁱⁱⁱ (Parenting Magazine, August poll results, November 2000, p. 30)

^{iv} <http://www.news.cornell.edu/releases/Jan97/adoptionrecord.ssl.html>.

^v Oregon State Vital Records Office, as of 10/05/01