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Oklahoma's New Adoption Code & (and) Disclosure of Identifying Information

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OKLAHOMA'S NEW ADOPTION CODE & DISCLOSURE OF IDENTIFYING INFORMATION

"In the weeks following, I anguished over what was one of the most difficult decisions I have ever had to face in my life."[1]

"Following the news of the sudden appearance of a child whom I had long ago thought dead, I went into a deep state of severe emotional distress and experienced shock, depression, guilt and despair over whether to comply with this request and permit the release of any identifying information to this individual."[2]

"Had we known at the time we adopted our most recent child that information about our identity and details of our personal lives could be discovered by Zackary's birth parents, siblings, or legal representatives, we would have reconsidered our decision to accept this."[3]

Birth parents who, have furnished this information to SMALL WORLD have done so pursuant to a signed agreement assuring them that all such details of their personal and private backgrounds will be accorded the strictest degree of confidentiality.... [R]emoving... [the] protection afforded to adopting parents ... presents a burden to prospective adopting parents ... [s]pecifically, the parents must now make a difficult choice of whether to adopt faced with the knowledge that the most private details of their personal and family backgrounds will be open for disclosure.[4]

I. INTRODUCTION

Does an adopted child's right to know his origins supersede the right of his birth parent not to tell? Plaintiffs in *Doe v. Sundquist*,[5] a controversial case currently

1. Affidavit of Promise Doe ¶ 4, Doe v. Sundquist, 943 F. Supp. 886 (M.D. Tenn. 1996) (No. 3:96-0599).

2. Affidavit of Jane Roe ¶ 11, Doe v. Sundquist, 943 F. Supp. 886 (M.D. Tenn. 1996) (No. 3:96-0599).

3. Affidavit of Kimberly C. and Russ C. ¶ 7, Doe v. Sundquist, 943 F. Supp. 886 (M.D. Tenn. 1996) (No. 3:96-0599).

4. Affidavit of Small World Ministries, Inc. ¶¶ 7, 13, Doe v. Sundquist, 943 F. Supp. 886 (M.D. Tenn. 1996) (No. 3:96-0599).

5. *See* Doe v. Sundquist, 943 F. Supp. 886 (M.D. Tenn. 1996), *aff'd*, 106 F.3d 702 (6th Cir. 1997), *cert. denied*, 118 S.Ct. 51 (1997). Plaintiffs include Promise Doe who gave up her child for adoption when she found herself a pregnant, eighteen year old college student in 1990; Jane Roe, who was told her child had died at birth, but thirty-two years later was contacted by the Tennessee Department of Human Services and told that an individual claiming to be her son desired identifying information from her; Kimberly and Russ C. who, assured at the time they adopted their two sons that any personal information they revealed would remain confidential and that their adoption records would be

making its way through our legal system, say "no." The State of Tennessee and open adoption records activists say "yes." *Sundquist* challenged the constitutionality of a recently enacted Tennessee statute[6] which substantially revises the state's adoption law and will now allow "adult adoptees, certain of their close relatives, or their representatives to access formerly sealed files."[7] Plaintiffs have two fears: violation of privacy rights, and disclosure of confidential information that could cause embarrassment and emotional injury to all involved. The other side[8] says adoption law in the United States is antiquated and adoptees should have access to their birth records to obtain information about their heritage and medical histories. Judge Nixon, Chief Judge of the Middle District of Tennessee, in weighing whether there existed a prospect of both immediate and future injury to the plaintiffs, said "[t]here are few relationships, if any, in which emotional injuries are more real than in the relationship between parents (adoptive or biological) and their children."[9] Although the United States Supreme Court denied *certiorari* in the federal action,[10] the Tennessee Court of Appeals in the companion state court case ruled on August 24, 1998, that the part of the adoption reform law allowing disclosure of previously confidential information is unconstitutional. Thus, recent events in the case show that *Sundquist* still has the potential to "set a precedent that will affect open records legislation"[11] for years to come. The human side of *Sundquist* is that it reveals the "vortex of emotional controversy"[12] which always surrounds the issue of adoption. As editorial writer James Kilpatrick said recently, "[y]ou could search all night and seldom find a court case with a more troubling mix of law and equity than *Doe v. Sundquist*."[13] Media coverage of precisely this "troubling mix of law and equity" has

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sealed, want to preserve their anonymity; and child placement agency, Small World Industries, Inc., which believes parents (either birth parents or adoptive parents) who cannot be assured that information they divulge at a time in their lives when they are most vulnerable will be kept confidential, may reconsider their decisions to give up their children or to adopt. *See* sources cited *supra* notes 1-4.

6. TENN. CODE ANN. §§ 36-1-101 to -206 (1997).

7. *Sundquist*, 943 F. Supp. at 888.

8. Defendants include Donald Sundquist, Governor of the State of Tennessee, Charles Burson, Attorney General of the State of Tennessee, and Linda Rudolph, Commissioner of the Department of Human Services for the State of Tennessee. *See id.* at 886.

9. *Sundquist*, 943 F. Supp. at 891.

10. On October 6, 1997, the U.S. Supreme Court, without comment, denied *certiorari* in *Sundquist*, effectively ending the federal case. However, plaintiffs had also filed a state action in the Tennessee state courts alleging certain provisions of Tennessee's adoption reform law to be unconstitutional. The Tennessee Court of Appeals issued (and extended) a temporary restraining order keeping adoption records sealed pending a final court decision. Arguments were heard on January 5, 1998. On August 24, 1998, the Tennessee Court of Appeals ruled in plaintiffs' favor, declaring that that part of the reform law which "allows disclosure of previously confidential adoption information to adult adoptees in violation of the Tennessee Constitution's prohibition against retroactive laws" is unconstitutional. Paula Wade, *Court Hears Appeal over Birth Records Law*, COM. APPEAL (Memphis), Jan, 1., 1998 at B2. The Tennessee Attorney General's office plans to appeal the decision to the Tennessee Supreme Court. *See* Doe v. Sundquist, 943 F. Supp. 886 (M.D. Tenn. 1996), *aff'd*, 106 F.3d 702 (6th Cir. 1997), *cert. denied*, 118 S.Ct. 51 (1997); *see also* Karin Miller, *Supreme Court Lets Adoption Law Stand*, KNOXVILLE NEWS-SENTINEL, Oct. 7, 1997, at A4; Paula Wade, *Court Reinforces Confidentiality in Pre-'96 Adoptions*, COM. APPEAL (Memphis), Aug. 25, 1998, at A1.

11. L. Anne Babb, *Equal Access Under Fire*, American Adoption Congress [hereinafter AAC] website (visited Oct. 4, 1997) <http://www.american-adoption-cong.org>.

12. ARTHUR D. SOROSKY ET AL., THE ADOPTION TRIANGLE 13 (1978) [hereinafter SOROSKY].

13. James J. Kirkpatrick, *Privacy and Pain*, TULSA WORLD, Sept. 15, 1997, at A8.

elicited a cry for adoption reform from the American public. *Sundquist* is not the first instance in which Americans have watched and waited as a court struggled to decide what was fair for all the parties involved in an adoption controversy. Televised, heartbreaking removals of first "Baby Jessica" in Iowa,[14] and then "Baby Richard" in Illinois,[15] from adoptive homes by biological parents were highly publicized and became indelibly imprinted in the public's collective memory. In addition to coverage of custody disputes, stories of birth mother-birth child reunions appear almost daily in newspapers and on television talk shows. Some are happy reunions; some are not.[16] According to Dr. Steven L. Nickman, Director of the Adoption and Custody Unit of the Child Psychiatry Service at Massachusetts General Hospital in Boston and author of THE ADOPTION EXPERIENCE, there are "powerful psychological reasons for this news coverage"[17] because there is a "universal private concern"[18] that the media exploits.[19] This concern is one we all had as children when we imagined that we were adopted or fantasized that we had been abandoned.[20] As we mature, this concern is translated into a "strong interest in the fate of any child who is at risk for losing a parent or receiving poor care."[21] Hence, stories of this nature fascinate and, at the same time, horrify the American public. As a result, the public reacts by demanding reformation of existing adoption law in the United States, and the states react, albeit gradually, by enacting appropriate legislation.[22]

On June 10, 1997, Oklahoma responded to its citizens' call for adoption reform when Governor Frank Keating signed into law House Bill 1241, thereby effecting "sweeping adoption reforms."[23] Major changes to the state's adoption law for the first time in nearly forty years went into effect on November 1, 1997.[24] While the

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14. *See In re* B.G.C., 496 N.W.2d 239 (Iowa 1992), *In re* Clausen (DeBoer v. Schmidt), 501 N.W.2d 193 (Mich. Ct App. 1993), *aff'd*, 502 N.W.2d 649 (Mich. 1993). A Michigan couple (Jan and Robby DeBoer) was ordered by a court to surrender "Baby Jessica" to her biological parents in Iowa. "Baby Jessica," now known as Anna Schmidt, had lived with her adoptive parents for two and one-half years prior to the surrender. *See id.*

15. *See In re* Doe, 638 N.E.2d 181 (Ill. 1994), *cert. denied*, 513 U.S. 994 (1994). "Baby Richard" was given up for adoption by his biological mother who falsely claimed that his biological father beat and abandoned her. She told the biological father that "Baby Richard" died at birth. The couple later married and the father, who had never waived his parental rights, sued for custody of his son. "Baby Richard," four years old when an Illinois court overturned his adoption, was returned to his biological parents. *See id.*

16. *See, e.g.*, James L. Graff, *Joni, No Longer Blue: A Touching Mother-and-Child Reunion Adds Fuel to the Debate Over Adoption-Privacy Rules*, TIME, Apr. 21, 1997, at 101 (story of singer Joni Mitchell's joyful reunion with daughter she gave up for adoption 30 years ago); Alan Cooper, *Mother Blocks Reunion: Her Protest Keeps Adopted Son From Meeting Birth Father*, RICHMOND TIMES-DISPATCH, Oct. 4, 1997, at A1 (reporting the story of a birth mother, who wanted no contact with the son she gave up for adoption 28 years ago, and thus invoked a state law veto which gives either parent the right to block release of the identity of the other parent).

17. Steven L. Nickman, *Challenges of Adoption*, HARV. MENTAL HEALTH LETTER, Jan. 1, 1996.

18. *Id.*

19. *See id.*

20. *See id.*

21. *Id.*

22. Colorado, Illinois, Louisiana, Maryland, Minnesota, Missouri, Montana, New Jersey, New York, Oregon, and Texas are currently considering open records legislation. Mana Puente, *Adoptees Seek Right to Open Birth Records*, USA TODAY, Apr. 1, 1997, at 1A.

23. *Adoption Reform Bill Signed Into Law*, OKLA. LEGIS. REP., Vol. 57, Report 96, June 11, 1997.

24. *See* Leslie Wakulich, *State Seeks to Prevent Other Baby Jessica Cases*, TULSA WORLD, Nov. 3, 1997, at A11.

newly enacted Oklahoma Adoption Code[25] addresses all aspects of the adoption process, this comment will identify and discuss only those provisions relevant to the issue of disclosure of identifying information. After providing a selective history of adoption in the United States and a brief discussion of the development of the Oklahoma Adoption Reform Committee, this comment will specifically analyze the new provisions which: (1) require judges to advise biological parents (at the time of giving written consent to adopt or permanent relinquishment) of the option to sign a nondisclosure affidavit;[26] (2) require deletion of all identifying information in medical and social histories;[27] (3) require the Oklahoma Department of Human Services to establish a mutual consent voluntary registry;[28] and (4) require the Oklahoma Department of Human Services to establish a search program utilizing the services of a confidential intermediary.[29] Last, this comment will seek to explore how successfully the new Oklahoma Adoption Code balances a broader access to identifying information while insuring confidentiality for all members of the "'adoption triangle': the birth parents, the adoptive parents, and the adoptees."[30]

II. BACKGROUND

A. *Historical Aspects of Adoption in the United States*

References to adoption, the process by which a child is given away by biological parents and placed with non-biological parents,[31] can be found in ancient law and myths.[32] For example, the Babylonian Code of Hammurabi included this admonition to those involved in adoption:

> If a man take a child in his name, adopt and rear him as a son, the grown-up son may not be demanded back. If a man adopt a child as his son, after he has taken him, he transgresses against his foster-father; that adopted son shall return to the house of his own father.[33]

In Greek mythology, the story of Oedipus,[34] adopted by King Polybus of Corinth, is

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25. *See id.* §§ 7501-1.1 to 7511-1.5 (Supp. 1997)(as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829)(West)).

26. *See id.* § 7503-2.5 (Supp. 1997).

27. *See id.* § 7504-1.2 (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).

28. *See id.* § 7508-1.2 (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).

29. *See id.* § 7508-1.3 (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).

30. SOROSKY, *supra* note 12, at 45.

31. *See History of Adoption*, AAC website, (amended from original texts authored by Rita Meiser, Esq. and Marcie Velen) (visited Oct. 4, 1997) < http://www.american-adoption-cong.org> [hereinafter *AAC History of Adoption*].

32. *See* SOROSKY, *supra* note 12, at 26.

33. *Id.* at 25.

34. Oedipus was born to Laius and Jocasta, king and queen of Thebes. Laius, warned by an oracle that he would be killed by his own son, abandoned the infant on a lonely mountain to die. Oedipus, rescued by a shepherd and raised by King Polybus of Corinth, did not know he was adopted. When an oracle pronounced that he would kill his own father, he left Corinth. In his travels, he came across and killed Laius, believing him to be a robber, and thus fulfilled

the tragic tale of one searching for his origins. "The heartfelt cry of Oedipus, 'I must pursue this trail to the end, till I have unraveled the mystery of my birth,' is repeated in many early writings."[35] Under Roman law, adoption was a "highly organized institution[]"[36] and had as its primary purpose the "[c]ontinuity of the adopter's family."[37] The Roman process of adoption included "religious rituals symbolizing the severing of old family ties and the assumption of binding new ones."[38] In fact, the United States used Roman law as a pattern for its early adoption law with one important distinction:[39] "Roman law was based upon the needs and rights of the adoptive parents; whereas American law, from the beginning, protected the welfare of the adopted children."[40]

Apprenticeship, the prototype for early adoption procedures, was first brought to the United States by the Puritans.[41] Apprenticeship existed for hundreds of years as a non-legal form of adoption in Great Britain, to be distinguished from the legal form which carried with it the "all important rights of inheritance."[42] Orphaned children were placed with relatives or apprenticed to receive both training and a surrogate home, thus guaranteeing "the best interests of the child *and* society."[43] Because apprenticeship was a familiar practice for the Puritans, it was not necessary to pass any laws regulating adoption in the New World for some time.[44]

Eventually the colonies began to create laws regulating the conduct and placement of children. In 1648, Massachusetts Bay Colony passed a law allowing an unruly child to be taken from her parents and placed in another home.[45] A law which allowed rebellious children to be put to death was enacted in Connecticut around this same time (fortunately the children were usually placed in another home by the court).[46] While apprenticeship was still largely an unregulated form of adoption, this soon changed when it became apparent that "economic needs in those times superceded any concern for the welfare of the individual child."[47]

Economic necessity, resulting from a shortage of labor in the colonies, led to a great demand for orphans from England.[48] Binding statutes were employed to send

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the prophecy. He continued on until he arrived at the city of Thebes which was being terrorized by the Sphinx, a creature with the tail of a serpent, the body of a lion, the wings of an eagle, and the head of a woman. After solving the Sphinx's riddle and freeing Thebes from the monster's control, he married Queen Jocasta. Eventually, to his horror, Oedipius discovered that he had killed his own father and married his mother. After Queen Jocasta killed herself in despair, Oedipus left Thebes and wandered blind and homeless for many years. *See* CHARLES SEGAL, OEDIPUS TYRANNUS: TRAGIC HEROISM AND THE LIMITS OF KNOWLEDGE 12-15 (1993).

35. SOROSKY, *supra* note 12, at 25.
36. *Id.* at 26
37. *Id.*
38. *Id.*
39. *See id.* at 32.
40. *Id.*
41. *See* SOROSKY, *supra* note 12, at 30.
42. *Id.* at 29.
43. *Id.* at 30 (emphasis added).
44. *See id.*
45. *See id.*
46. *See id.*
47. SOROSKY, *supra* note 12, at 30.
48. *See id.*

thousands of poor children to America for use as child labor by wealthy southern families.[49] Placement of orphans was governed by this burgeoning economic need rather than what was best for the child.[50] By the mid-nineteenth century, widespread mistreatment of orphans eventually led the colonies to pass laws which provided for "minimal standards of care"[51] and which allowed the colonies to remove children from abusive situations.[52] It was also at this time that the "term 'adoption' came into usage"[53] to refer to "general child placement with both relatives and nonrelatives."[54] These adoptions, while not legally binding, were as emotionally significant as those entered into today.[55]

B. "Best Interests of the Child Doctrine" Introduced by the United States

Although legal regulation of adoption in the United States initially came about because of the need to curb the use of orphans as labor, adoption was an accepted, successful process in America.[56] Various reasons have been given for this success including the abundance of food which enabled families to feed more children, the fact that additional children provided extra hands to help with chores, and the disregard for primogeniture in the United States.[57] Families who adopted in the United States were quick to recognize an unrelated, adopted child as an heir,[58] unlike families in Britain who placed great emphasis on blood lines.[59] Americans, if interested in a particular child, were more open to the concept of accepting that child as "their offspring and heir."[60] The British, if in dire need of an heir, preferred adopting distant or illegitimate relations to adopting strangers.[61] Moreover, Americans responded to stories of the widespread abuse of many children who were placed in uninvestigated, unhealthy situations[62] by attempting to "solve the problem of neglected, deserted, dependent, and illegitimate children."[63] "One of the most important United States contributions to the law of adoption has been the 'best interests' formula which was a consistent trend during the hundred years between the 1850s and the 1950s."[64]

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49. *See id.*
50. *See id.*
51. *Id.* at 31.
52. *See id.*
53. SOROSKY, *supra* note 12, at 31.
54. *Id.*
55. *See id.*
56. *See id.*
57. *See id.*
58. *See id.*
59. *See* SOROSKY, *supra* note 12, at 28 (stating that blood lines were so important to Britons that adoption was not accepted until the Adoption of Children Act of 1926).
60. *Id.* at 31.
61. *See id.* at 28.
62. *See id.* at 32.
63. *Id.* (stating that in the mid-nineteenth century, reform groups began to call for legislation governing the here-to-fore unrestricted use of child labor).
64. *Id.*

C. *The First Adoption Statute in the United States*

Prior to the enactment of the first adoption statute in the United States, the adoption process was informal, that is, "children were transfered [sic] to substitute parents without legal recognition of the adoption."[65] A formal process for adoption *centered around the interests of the child* was first enacted by the state of Massachusetts in 1851.[66] This statute provided the basis for our modern view of adoption as "an institution whose purpose, ideally, is 'to place a homeless child in a home as a complete and equal member of the family constellation, with all the rights, privileges, and responsibilities that accrue to parents' natural children.'"[67] By 1929, every state in the union had enacted statutes regarding adoption.[68] Shortly thereafter, regulation of adoption as a "legal process and as a child welfare service"[69] expanded to include statutory regulation of confidentiality as well.[70] As American policies and standards regarding adoption began to develop, so did the concept of sealing the birth record for reasons that are still valid today: to encourage adoption, to shield unwed mothers from their past mistakes and assure their privacy, and to protect adoptive families from interference by birth parents and other third parties.[71]

D. *History of the Sealed Record in the United States*

"The 'sealed record' is the original birth certificate, which is removed from the official file, sealed, filed separately, and replaced with a new amended version after the legal adoption."[72] Protection of the interests of the birth parents, adoptees, and adoptive parents (as dictated by the "attitudes, mores, and myths"[73] of the 1930s, 40s, and 50s) was the justification consistently offered for *secrecy* becoming and remaining the "norm in adoption procedure":[74]

> As most adoptees were born out of wedlock, they supposedly must be guarded against possible, and potentially traumatic, discovery of their illegitimacy; birth parents similarly must be given guarantees of anonymity as a buffer against any consequences that may result from what has often been described as their

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65. AAC *History of Adoption*, *supra* note 31.
66. *See* HAL AIGNER, ADOPTION IN AMERICA COMING OF AGE 7 (1992).
67. *Id.*
68. *See id.*
69. Jeanine J. Fay, Note, *The Mutual Consent Voluntary Adoption Registry: A Sound Approach to the Sealed Records Controversy*, 18 RUTGERS L. REV. 663, 666 (1987).
70. *See id.*
71. *See* Fay, *supra* note 69, at 666 n.19; Editorial, *Today's Debate: Opening Adoption Records*, USA TODAY, Apr. 4, 1997, at 12A.
72. SOROSKY, *supra* note 12, at 14.
73. AAC *History of Adoption*, *supra* note 31. *See also* David Gelman & Debra Rosenberg, *Family Secrets: From Hidden Adoptions to Hushed-Up Romances, That Which You Don't Know Still Has the Power to Hurt You*, NEWSWEEK, Feb. 24, 1997 at 24 (providing an interesting discussion of how family deception transmitted across generations can still harm).
74. AIGNER, *supra* note 66, at 9.

> 'indiscretions,' and adoptive parents are characterized as needing the strongest assurances that their growing relationships with their children will not be intruded upon in any way by the appearance of the birth parents.[75]

Other reasons given for sealing of birth records (then and now) include protection from dealing with two sets of parents and any resulting conflicts for the adoptee, protection from the stigma of raising an illegitimate child and from dealing with their own infertility for the adoptive parents, protection for all parties involved from blackmail, and protection for the adoptee from any disturbing information about the circumstances surrounding his birth (for example, rape or incest).[76] Additional policy reasons include the enhancement of stability for both the birth child and his adoptive family and the promotion of legal adoption rather than procedures such as abortion, adoption of black market babies, and child abuse.[77] Consequently, the primary rationale for sealing the birth record and replacing it with a new birth certificate was so the "adopted child was 'reborn' as the child of the new family, with a new identity and a new identification in the form of a birth certificate, exactly the same as if he/she was born to them."[78]

In 1917, the first sealed records statute was passed in Minnesota thereby legislatively infusing the element of secrecy into the adoption process and, by the 1940s, sealed records statutes had been enacted in nearly all states.[79] The previous year, New York passed a statute which prohibited illegitimacy from appearing in any court transcripts and barred all but the parties involved in the adoption from inspecting the files and records of an adoption proceeding.[80] In contrast, Minnesota's statute was the first to close the "adoption files from inspection by adult adoptees, their birth parents, and the general public."[81] Thus, the "long tradition of protecting the privacy rights of those involved in adoption"[82] commenced. If an adoptee subsequently desired to see her files or records, she had to petition for a court order.[83] There was usually a statutory requirement or judicial standard that she demonstrate "sufficient reason,"[84] "'good cause,' 'compelling reason,' or whether disclosure will be 'in the best interests of the child.'"[85] If this standard was not met, access was denied. In sum, what "all other non-adoptees access freely, their original birth certificates . . . [w]hat most United States citizens pay $12 for, is sealed away to

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75. *Id.* at 8.
76. *See* AAC *History of Adoption*, *supra* note 31.
77. *See id.*
78. SOROSKY, *supra* note 12, at 38.
79. *See* AIGNER, *supra* note 66, at 8.
80. *See* Jason Kuhns, Comment, *The Sealed Adoption Records Controversy: Breaking Down the Walls of Secrecy*, 24 GOLDEN GATE U. L. REV. 259, 261 (1994).
81. *Id.*
82. Fay, *supra* note 69, at 667.
83. *See id.*
84. *Id.*
85. *Id.* at 667-668.

adoptees"[86] with little or no legal recourse available to adoptees.[87]

Ironically, the often quoted justification for statutory sealing of birth records—protection of the interests and privacy rights of all the parties involved in adoption—fails to take into account the fact that many adoptees eventually have "questions of identity, ancestry, and genetics."[88] Taking a child from her birth parents and placing her with adoptive parents (who usually conceal her adoption from her and pretend she is their natural child) disrupts a "basic natural process."[89] Sealing records in adoption blocks the formation of a child's identity by denying her need to be "connected with [her] biological and historical past."[90] These "broken connections"[91] ultimately lead to, in many instances, an adoptee's search for identifying information about her birth parents. Thousands of words have been written by adoptees who eloquently express this need to be connected to "family, flesh, resemblance, and history."[92] Adoptees also complain that "they are never allowed to grow up" or allowed to decide what is in their best interests once they reach adulthood.[93] Unfortunately, as expressed by Annette Baran, noted California psychotherapist and co-author of THE ADOPTION TRIANGLE, "[l]egal court action does not seal feelings, only original birth certificates."[94]

In the 1970s, adult activist adoptees began to challenge sealed records laws by asserting that their constitutional rights were being violated. "Among the rights adoptees assert are violated by the closure statutes are a first amendment right to significant personal information, a ninth amendment right to personhood and privacy,

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86. J. Cameron Tew, *A Family Found*, HERALD SUN (Durham), June 22, 1997, at E1 (quoting Shea Grimm, legislative chairwoman for Bastard Nation, an adoptee activist group).

87. *See* AAC *History of Adoption*, *supra* note 31.

88. *Id.*

89. SOROSKY, *supra* note 12, at 219.

90. *Id.*

91. *Id.*

92. ERIC BLAU, STORIES OF ADOPTION 9 (1993) (from the introduction by Linda Connor) (collection of emotional reactions to reunions experienced by adoptees, birth parents, and adoptive parents):
Joy Teran, adoptee: "I look back at this time, and I see it made a great deal of difference because everyone in my parents' family . . . knew I was adopted and wasn't part of their family, and they treated me differently." *Id.* at 30. Rebecca Leveran, on finding out she was adopted at age 23: "Finding out I was adopted was like having the rug pulled out from under me, like the earth cracking. My sense of foundation was ruptured. It was a devastating experience to be told that all the things that I had formed my identity around were not true." *Id.* at 36. Jerry Stadtmiller, who waited until after his adoptive parents' deaths to spare them, found out his birth mother had died the day after he turned twelve years old: "Most people know who they are related to—I am floating. I have no beginnings. I felt envious and abandoned." *Id.* at 40. Alex Thompson, adoptee who began searching for his birth mother at age 18 and to date has not found her: "The hardest thing about being adopted is curiosity about my birthparents. I have a natural curiosity inside me . . . . It's hard not knowing. I feel like a puzzle with one piece missing." *Id.* at 68.

93. SOROSKY, *supra* note 12, at 121 (stating that this is a common complaint expressed by mature adoptees as revealed by the authors' research, for example: "In a way, I am very angry toward the law. The law still refers to me as a child when they refer to 'in the best interests of the child.' I resent that because in my opinion, I am twenty-one years old and I feel I am quite old enough, mature, and responsible enough to be making my own decisions. I don't feel as if any decision concerning my life should be left up to a judge or to anyone else."). *See also* Bonnie Miller Rubin, *Opposition Forces: Cite Moms' Privacy: State Bill Would Let Adult Adoptees Fill in Missing Parts of Their History*, CHI. TRIB., March 17, 1997, at 1. Andrea Zeimer's story of how she spent three years and hundreds of dollars to find her birth mother. *See id.* Happily reunited with her birth mother, she still cannot get a copy of her birth certificate. *See id.* "Said Zeimer: 'I was adopted as an infant, I had nothing to do with the contract written about me. Now that I'm an adult, why should I be bound by agreements that I did not participate in?'" *Id.*

94. BLAU, *supra* note 92, at 6 (from the foreword by Annette Baran, co-author of THE ADOPTION TRIANGLE).

and denial of equal protection of the law under the fourteenth amendment."[95] Because these constitutional challenges generally have been ineffective, adult adoptees have turned to alternative means of accessing adoption records such as support groups, petitioning for the creation of mutual consent registries, the use of confidential intermediaries, and endorsement of open adoptions.[96]

Today it is estimated that there are at least 6,000,000 adoptees in the United States.[97] After factoring in birth parents and adoptive parents for each adoptee, the number of persons directly affected by the adoption process grows to over 24,000,000 persons. While the institution of adoption has been severely criticized for the aura of secrecy which surrounds it, no better surrogate has been found to date.[98] Furthermore, only two states,[99] Alaska[100] and Kansas,[101] provide *unrestricted* access to an adoptee's original birth certificate. Oklahoma joins the other states[102] which have, instead, created some form of mutual consent registry and/or use of a confidential intermediary system. Oklahoma has also elected to enact the nondisclosure affidavit (a form of the contact veto whereby the birth parent is allowed to file a request/affidavit that he or she does not want any identifying information disclosed), which presumes that birth parents in Oklahoma *after* November 1, 1997, do not want to keep this information secret.[103] It remains to be seen whether Oklahoma's most recent reforms of its adoption law will add to the controversy surrounding disclosure of identifying information or provide a much needed solution.

III. ANALYSIS

A. *The New Oklahoma Adoption Code*

1. Formation of the Adoption Law Reform Committee in Oklahoma

Under normal circumstances, adoptive placement is preceded by one or both of the birth parents signing a document attesting to their relinquishment of their child, or by a court order depriving parents of any rights in their children, ostensibly for reasons of abuse, abandonment or neglect. Upon an adoption's finalization, an amended birth certificate is routinely issued for the adopted child on which the names of his or her birth parents have been replaced by the adoptive parents'

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95. Nancy Sparks, Note, *Adoption: Sealed Adoption Record Laws—Constitutional Violation or a Need for Judicial Reform?*, 35 OKLA. L. REV. 575, 577 (1982).

96. *See* Shara De Lorme, Comment, *Accessing Sealed Adoption Records: Considering Adoptees' Needs and Judicial Integrity*, 28 GONZ. L. REV. 103, 112-118 (1992).

97. *See* AAC website, (visited October 4, 1997) <http://www.american-adoption-cong.org>.

98. *See* Nickman, *supra* note 17 (pointing out that adoption has been responsible for a great deal of good).

99. *See* C. Catherine Marangos and Barbara Busharis, *Circuit Upholds Tennessee Open Adoption Files Law*, NAT'L L.J., May 5, 1997, at B8.

100. *See* ALASKA STAT. § 18.50.500 (Michie 1996).

101. *See* KAN. STAT. ANN. § 65-2423 (Supp. 1996).

102. *See* Marangos and Busharis, *supra* note 99 (stating nearly one-half of the states have enacted these provisions).

103. *See id.*

names.[104]

Little has changed over the years about the "legal fiction"[105] that is adoption—the excerpt above describes the typical process that still occurs in all states, including Oklahoma. Media coverage of recent cases[106] in which babies were returned to their biological parents after years in an adoptive home, attracted the nation's attention and led to a public outcry for national adoption reforms. In response to issues raised by the growing number of these cases, and the need to provide states with a uniform body of adoption law, the National Conference of Commissioners on Uniform State Laws approved a revised Uniform Adoption Act (UAA) in August, 1994.[107] The revised UAA, which covered "virtually every aspect of adoption policy and procedure, from securing the consent of a birth parent to preserving the confidentiality of adoption records,"[108] was approved by the American Bar Association in 1995, and sent to states for legislative approval.[109]

Upon receipt of the revised UAA in April, 1995, Oklahoma decided to delay passage and instead chose to establish the Adoption Law Reform Committee.[110] The Adoption Law Reform Committee ("ALRC") is composed of fourteen members as follows: a presiding judge having adoption law jurisdiction; a professor of law from the University of Oklahoma Law Center; a professor of law from the University of Tulsa College of Law; the Director of the Department of Human Services, or her appointee; three members to be appointed by the Speaker of the House of Representatives (one which should be a director of a public or private, not-for-profit, licensed child placement agency); three members to be appointed by the President Pro Tempore of the Senate (one which should be a director of a private, for-profit, licensed child placement agency); "a judge or a justice of the Supreme Court of the State of Oklahoma;" and three members to be practicing attorneys in the area of adoption law (as well as active members of the Family Law Section of the Oklahoma

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104. AIGNER, *supra* note 66, at 7.

105. Sparks, *supra* note 95, at 575 (describing "[w]hen a child is adopted in Oklahoma, a new certificate of birth is issued that recites the new name of the adoptee and the names of the adoptive parents" and how "[t]he original birth certificate containing the biological parents' names is placed in a confidential court file and, in most cases, may never be seen again.").

106. *See supra* notes 14-15, and accompanying text. *See also* Gerald W. Huston, Casenote, *Born to Lose: The Illinois "Baby Richard" Case–How Examining His Father's Pre-Birth Conduct Might Have Led to a Different Ending for Richard*, 16 N. ILL. U. L. REV. 543 (1996); Bernadette Weaver-Catalana, Comment, *The Battle for Baby Jessica: A Conflict of Best Interests*, 43 BUFF. L. REV. 583 (1995); Carolyn R. Seabolt, Notes and Comments, *In Re Baby Girl Clausen: Can the Baby Jessica Nightmare Happen in Georgia?*, 11 GA. ST. U. L. REV. 737 (1995); Joan Heifetz Hollinger, *Adoption and Aspiration: The Uniform Adoption Act, The DeBoer-Schmidt Case, and the American Quest for the Ideal Family*, 2 DUKE J. GENDER L. & POL'Y 15 (1995); Andrew S. Rosenman, Student Note and Comment, *Babies Jessica, Richard, and Emily: The Need for Legislative Reform of Adoption Laws*, 70 CHI.-KENT L. REV. 1851 (1995).

107. *See* Eric C. Czerwinski, Comment, *Adoption Law: Congratulations! For Now–Current Law, The Revised Uniform Adoption Act, and Final Adoptions*, 49 OKLA. L. REV. 323, 324 (1996).

108. Mark Hansen, *FEARS OF THE HEART: In Cold Legal Terms it is Often a Question of Consent and Conflict of Laws. But for Parents Left Wondering if a Child is Really Theirs, the Nation's Patchwork of Adoption Laws can Cause . . . .*, 80-NOV A.B.A. J. 58, 59 (1994).

109. *See* Czerwinski, *supra* note 107, at 324.

110. *See* OKLA. STAT. tit. 10, §§ 7511.1 to 7511-1.5 (Supp. 1997) (specifically former OKLA. STAT. tit. 10, § 60.52 (Supp. 1996)).

Bar Association).[111] Appointed members of the Committee were to serve until June 30, 1998.[112]

The purpose of the Committee was to "conduct a systematic review and study of all adoption law and adoption procedures in the Oklahoma Statutes and prepare a recommended draft to reclassify, update, reform, and recodify the statutes."[113] Thus, the Oklahoma legislature prepared to conduct a slow, deliberate scrutiny of *all* adoption law before passing any legislation which might affect the interests of *any* of the parties involved in the adoption process. House Bill 1241, the end result, was sponsored by Representative Russ Roach, Democrat-Tulsa, himself an adoptive parent who gave up an adopted child nine years ago.[114] Representative Roach, saying that "[t]his was probably the most 'pro-family' piece of legislation in recent memory . . . ," believes that all parties to adoption in Oklahoma will benefit from this law.[115]

2. Oklahoma Adoption Act Becomes the New Oklahoma Adoption Code

The most obvious change effected by HB 1241 was that the Oklahoma Adoption Act was renamed the "Oklahoma Adoption Code" ("Code").[116] The Code is now composed of eleven articles[117] and begins with a mission statement which clearly endorses adoption as an acceptable method of providing every child in Oklahoma with a home:

> The Legislature of this State believes that every child should be raised in a secure, loving home and finds that adoption is the best way to provide a permanent family for a child whose biological parents are not able or willing to provide for the child's care or whose parents believe the *child's best interest* will be best served through adoption.[118]

Article 1 was further amended to provide a ten-part purpose statement in clear and unequivocal language. The *first* enumerated purpose of the new Code is to "[e]nsure and promote the best interests of the child in adoptions and to establish an orderly and

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111. *Id.* §§ 7511.1 to 7511-1.5 (Supp. 1997) (specifically former OKLA. STAT. tit. 10, § 60.52(A) (Supp. 1996)).
112. *See id.* §§ 7511.1 to 7511-1.5 (Supp. 1997) (specifically former OKLA. STAT. tit. 10, § 60.52(B) (Supp. 1996)).
113. *Id.* §§ 7511.1 to 7511-1.5 (Supp. 1997) (specifically former OKLA. STAT. tit. 10, § 60.53(A) (Supp. 1996)).
114. *See* Brian Ford, *Tulsa Lawmaker Happy Adoption Bill Signed*, TULSA WORLD, June 12, 1997, at A9; Mick Hinton, *New Law Clarifies Adoption Process, Lawmaker Says*, DAILY OKLAHOMAN, June 12, 1997, at 4.
115. *Adoption Reform Bill Signed Into Law*, *supra* note 23.
116. *See* OKLA. STAT. tit. 10, § 7501-1.1 (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
117. *Id.* § 10, 7501-1.1 (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)) ("The Oklahoma Adoption Code shall be composed of eleven articles: Article 1. State Policy and General Definitions; Article 2. Jurisdiction, Venue and Choice of Law; Article 3. Adoption of Minors; Article 4. Medical and Social Histories; Article 5. Adoption Proceedings; Article 6. Paternity Registry; Article 7. Adult Adoptions; Article 8. Adult Adoptee Services; Article 9. General Provisions; Article 10. Subsidized Adoption Programs; Article 11. Studies and Committees.").
118. *Id.* § 7501-1.2(A) (Supp. 1997) (emphasis added).

expeditious process for the movement of adoption matters through the courts."[119] Previously, the child's best interests were not statutorily defined in Oklahoma and were only referred to in passing as one of many factors to be considered.[120] Ultimately, the child's best interests in Oklahoma were left to the judge's discretion.[121] The new Code also recognizes the right of all adopted children in Oklahoma to have access to their social and medical histories,[122] but holds as the intent of the Legislature to "balance the privacy rights of all parties to an adoption while clarifying when and to whom information may be released."[123] Additionally, the Legislature, *recognizing the right of all children in Oklahoma to have access to knowledge about their heritage*, will seek to promote voluntary reunions, establish confidential intermediaries, and collect and maintain social and medical information pertinent to the adoption.[124]

Other purposes pertinent to the issue of disclosure of identifying information include an affirmation of the parent-child relationship as being fundamental in nature and a recognition that "all adoption laws should be *fair* to the child and to each parent of the child."[125] And, finally, the necessity of promoting and strengthening the integrity and finality of adoptions by limiting the time period for withdrawal of consent or challenges to the adoption to be filed is also recognized as being essential to the child's best interests.[126]

3. Disclosure of Identifying Information

In keeping with its newly delineated purpose of being fair to all parties in adoption, while promoting the best interests of the child and recognizing the adoptee's right to information about his heritage, the new Oklahoma Adoption Code has amended or added several sections which deal with disclosure of identifying information. Recognizing that it would be unfair to birth mothers who gave up their children many years ago, the changes permit only adult persons whose adoptions are finalized after November 1, 1997, (the effective date of the Code) to obtain copies of their original birth certificates.[127] Representative Roach stated that the new Code may not please everyone but "'[i]t's one thing to change the law from this point forward . . . [b]ut to go back and change the basic ground rules' of an adoption that took place many years ago is simply not something he feels the government should do."[128] Thus, the state of Oklahoma, in keeping with its newly stated guiding

119. *Id.* § 7501-1.2(A)(1) (Supp. 1997).
120. *See* Czerwinski, *supra* note 107, at 325.
121. *See id.*
122. *See* OKLA. STAT. tit. 10, § 7501-1.2(A)(10) (Supp. 1997).
123. *Id.* § 7501-1.2(B) (Supp. 1997).
124. *See id.*
125. *Id.* § 7501-1.2(A)(2) (Supp. 1997) (emphasis added).
126. *See id.* § 7501-1.2(A)(9) (Supp. 1997).
127. *See id.* § 7505-6.6(D) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
128. Leslie Wakulich, *Changes Get Mixed Reaction*, TULSA WORLD, Nov. 3, 1997, at A11.

principle of fairness for all, refused to violate the confidentiality of adoptions finalized prior to November 1, 1997, yet made records available in the future to those who desire them.

a. Nondisclosure Affidavit

Recognizing that it is crucial to inform birth parents at every possible opportunity in the adoption process of their right to refuse to provide identifying information about themselves, the Oklahoma legislature included the option of filing an affidavit of nondisclosure pursuant to § 13[129] where needed throughout the Code. An affidavit of nondisclosure or "document filed by one party to register a refusal to be contacted and/or for the release of any information," is also sometimes called a contact veto.[130]

Section 13[131] requires a judge of a court of Oklahoma to advise a biological parent, at the time the biological parent is before the judge to acknowledge a written consent or permanent relinquishment, of several matters: (1) that an adult adoptee born in Oklahoma whose decree of adoption is finalized after November 1, 1997, may obtain a copy of his original birth certificate; (2) that any request for an original birth certificate by an adult adoptee will be refused *if* both biological parents have filed affidavits of nondisclosure (and the affidavits remain unrevoked by either biological party at the time the request is made); and (3) that, if an unrevoked affidavit of nondisclosure is on file with the State Registrar of Vital Statistics at the time of the request, any identifying information pertinent to the parent who filed the unrevoked affidavit will be deleted from the original birth certificate before it is given to the adult adoptee.[132] However, any identifying information (if it is in the file) about a parent, who does not have an unrevoked affidavit of nondisclosure on file, will be disclosed to the adult adoptee.[133]

The judge is then to ascertain whether the biological parent wants to execute such an affidavit of nondisclosure.[134] If the biological parent so desires, the judge will execute the affidavit at the same time that the consent to adoption or relinquishment is acknowledged.[135] Any affidavit of nondisclosure executed at this time is then filed in the adoption action with the consent to, or relinquishment for, adoption.[136] For those birth parents who do not appear before a judge to execute a consent or

129. *See* OKLA. STAT. tit. 10, § 7503-2.5(A) (Supp. 1997).
130. *Access to Adoption Records at a Glance: Abbreviations and Definitions*, AAC website (compiled for the American Adoption Congress by Barbara Busharis, Esq. and Jane Nast, M. Ed.) (visited October 4, 1997) < http://www.american-adoption-cong.org>.
131. *See* OKLA. STAT. tit. 10, § 7503-2.5(A)(1)-(3) (Supp. 1997).
132. *See id.* § 7503-2.5(A)(1)-(3) (Supp. 1997).
133. *See id.*
134. *See id.* § 7503-2.5(B)(1) (Supp. 1997).
135. *See id.*
136. *See id.* § 7503-2.5(B)(2) (Supp. 1997).

relinquishment, and who also wish to oppose disclosure, affidavits of nondisclosure will also be available in each district court's office and may be executed and filed by a biological parent in any court in which the adoption action is pending.[137] Affidavits of nondisclosure may also be filed *after* a final decree of adoption is entered.[138]

Realizing that biological parents may have a change of heart in later years and wish to make identifying information available, the legislature included an appropriate mechanism for revocation in the Code. Those birth parents, who executed affidavits of nondisclosure, may revoke them at any time by filing a revocation with the State Registrar of Vital Statistics.[139] Upon receiving a revocation, the State Registrar will attach the revocation to the affidavit of nondisclosure.[140] The documents will then be filed with the original certificate of birth and other records of the adoption.[141] Revocation thus serves not only the birth parent who changes his or her mind, but also the adoptee by providing an additional opportunity for her to obtain identifying information which otherwise would have been denied to her.

Thus, in Oklahoma, an original birth certificate will be made available upon request to any adult adoptee whose adoption is finalized after November 1, 1997. After this date, a biological parent can no longer assume that any identifying information on file, is, and will remain confidential, unless he or she files an affidavit of nondisclosure. In addition, § 7503-2.5(D) clearly states that failure to follow any of these provisions will not be "grounds to challenge a decree of adoption."[142] This section was included to alleviate any concerns adoptive parents might have concerning the finality of an adoption decree.

b. Disclosure in Medical and Social Histories

Section 7504-1.1 requires the Department of Human Services ("DHS") to compile a written medical and social history of a child to be adopted which contains all specified information that is "reasonably available from each biological parent"[143] or from any other person who may have had "legal or physical custody of the minor."[144] This information shall include, but is not limited to, "a current medical and psychological history of the minor,"[145] any "relevant information concerning the medical and psychological history of the minor's biological parents and relatives,"[146] and a "social history report regarding the minor to be adopted, the biological parents,

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137. *See* OKLA. STAT. tit. 10, § 7503-2.5(B)(3) (Supp. 1997).
138. *See id.* § 7503-2.5(B)(4) (Supp. 1997).
139. *See id.* § 7503-2.5(C) (Supp. 1997).
140. *See id.*
141. *See id.*
142. *See* OKLA. STAT. tit. 10, § 7503-2.5(D) (Supp. 1997).
143. *Id.* § 7504-1.1(A)(1)(b) (Supp. 1997) (stating this information also includes copies of the minor's medical, dental, and psychological records as well as his educational records).
144. *Id.* § 7504-1.1(A)(1)(a) (Supp. 1997).
145. *Id.* § 7504-1.1(B)(2)(a) (Supp. 1997).
146. *Id.*

other children of either biological parent and other biological relatives."[147] Prior to the Code, former OKLA. STAT. tit. 10, § 60.5B required any person consenting to the adoption of a child to compile this report. The Code now requires the attorney or agency handling the adoption to provide the information, thus ensuring that an accountable person will perform this critical task.[148]

However, § 7504-1.2 specifically prohibits medical and social history reports from being used to disclose identifying information.[149] Before the disclosure of any medical and social history report (as permitted by this section), all identifying information is to be *deleted* unless the "court, Department, agency, attorney, or person authorized to disclose information by this section has been informed in writing by both a biological parent and an adoptive parent or prospective adoptive parent of their mutual agreement to share identifying information."[150] When a written, mutual agreement is made, identifying information will be "released only to the extent specifically permitted by the written agreement."[151] Mandating that the medical and social report not be used to transmit identifying information ensures that all persons who submit information do so freely, and that the medical and social report of a minor being placed for adoption be as complete as possible.

c. Mutual Consent Voluntary Registry

Mutual consent registries come in two forms: passive and active. Passive registries require adoptees and birth parents to register their names—when, and if, two names match, each party is notified.[152] Active registries require staff and trained intermediaries who are certified to conduct adoption searches, make contacts, and facilitate reunions.[153] Oklahoma's new statewide, voluntary registry is, by definition, a passive registry. However, § 7508-1.3 provides for the use of confidential intermediaries to perform searches at a reasonable cost to the searcher.

Section 7508-1.2 requires the Department of Human Services to "establish and administer, directly or through a contractor, a Mutual Consent Voluntary Registry whereby eligible persons . . . may indicate their willingness to have their identity and whereabouts disclosed to each other"[154] under certain conditions. Eligible persons who may register include:

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147. *Id.* § 7504-1.1(C) (Supp. 1997).
148. *See* OKLA. STAT. tit. 10, § 7504-1.1(A)(2) (Supp. 1997).
149. *See id.* § 7504-1.2(A) (Supp. 1997).
150. *Id.*
151. *Id.*
152. *See Adoption Mutual Consent Registries,* AAC website (compiled for the American Adoption Congress by Barbara Busharis, Esq. and Jane Nast, M. Ed.) (visited October 4, 1997) < http://www.american-adoption-cong.org>.
153. *See id.*
154. OKLA. STAT. tit. 10, § 7508-1.2(A) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).

1. An adult adopted person;

2. An adult whose biological parent's parental rights have been terminated;

3. The adoptive parents or guardian of an adopted person who is under the age of eighteen (18) or who has been declared mentally incompetent;

4. If an adopted person is deceased, the legal parent or guardian of any minor child or mentally incompetent child of the adopted person;

5. If an adopted person is deceased, any adult descendants of the adopted person;

6. The legal parent or guardian of a minor or a person who has been declared mentally incompetent whose biological parent's parental rights have been terminated;

7. The legal parent or guardian of any minor or mentally incompetent child of a deceased person whose biological parent's parental rights have been terminated;

8. The adult descendants of a deceased person whose biological parent's parental rights have been terminated;

9. A parent whose parental rights were voluntarily terminated by court order subsequent to the parent's consent or relinquishment, or involuntarily terminated by court order, in an adoption, juvenile, guardianship, or domestic relations proceeding; and

10. An adult biological relative of an adopted person or a person whose biological parent's parental rights have been terminated.[155]

If a person described in § 7504-1.1(B)(10) registers, the administrator of the Mutual Consent Voluntary Registry must determine from the State Registrar of Vital Statistics whether an affidavit of nondisclosure has been filed by a biological parent.[156] If an affidavit of nondisclosure has been filed and is unrevoked, the administrator of the registry cannot "process a match with any biological relative of the parent who filed the affidavit of nondisclosure."[157] This ensures that the privacy of the biological parent is protected.

Access to the mutual consent voluntary registry is restricted to only those adult persons described above. It cannot be used by any adult adoptee who has a "minor biological sibling in the same adoptive family or in an adoptive or foster family or other placement whose location is known to the adult adopted person"[158] for the

155. *Id.* § 7508-1.2(B) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
156. *See id.* § 7508-1.2(D) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
157. *Id.*
158. *Id.* § 7508-1.2(C)(1) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).

obvious reason that the minor might obtain information before he is psychologically ready for it. In addition, for the same reason, the registry cannot be used by "[a]n adult whose biological parent's parental rights have been terminated and who has a biological sibling in the same family or in an adoptive or foster family or other placement whose location is known to that adult."[159]

Eligible persons may register with the DHS by submitting a notarized affidavit (on a form provided by DHS) which states the "registrant's current name, address, telephone number, and the registrant's willingness to be identified to some or all eligible relatives, identified by name or by relationship, who also register."[160] The registrant must provide all pertinent information he is aware of, including:

> any previous name by which the registrant was known, previous and current names, if known, of specific eligible persons the registrant wishes to find, the place and date of birth of the adopted minor or the minor whose parent's rights have been terminated, and the name and address of the adoption agency, intermediary, or other person, if any, who placed the minor for adoption or took custody of the minor after the minor's parent's rights were terminated.[161]

The affidavit must also contain a statement that the registrant does not have a "minor biological sibling in the same family or in an adoptive or foster family or other placement whose location is known to the registrant,"[162] *if* the registrant is an "adult adopted person or an adult whose biological parent's rights have been terminated."[163]

The form must also indicate how the registrant wants to be notified should a match occur, but she should be aware that DHS will not utilize methods of notification that are cost prohibitive.[164] The registrant also needs to indicate if she wishes her identifying information to be released after her death should a match occur then.[165] Lastly, the prospective registrant must provide sufficient proof of her identity before her registration will be accepted.[166]

Affidavits submitted by registrants will be processed by the administrator of the Mutual Consent Voluntary Registry to determine if there are any matches to other eligible registrants.[167] Processing will include researching agency records as well as court records if no agency records are available.[168] When and if a match occurs, *before* any identifying information is released, the administrator *must* notify the

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159. *Id.* § 7508-1.2(C)(2) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
160. OKLA. STAT. tit. 10, § 7508-1.2(E)(1) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
161. *Id.*
162. *Id.*
163. *Id.*
164. *See id.* § 7508-1.2(E)(2) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
165. *See id.*
166. *See* OKLA. STAT. tit. 10, § 7508-1.2(E)(2) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
167. *See id.* § 7508-1.2(F) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
168. *See id.*

registrant by her designated method of notification and "obtain the registrant's consent to an exchange of identifying information."[169] All affidavits will be retained for only twenty-two years[170] rather than the ninety-nine years proposed by the Adoption Law Reform Committee.

Consent for the release of identifying information *cannot be solicited* by any "state or local government department, agency, institution, or contractor, or any employee thereof"[171] *from anyone who has not registered with the Mutual Consent Voluntary Registry.*[172] "Any person who discloses information from the registry in violation of this act shall be guilty of a misdemeanor and shall be fined up to Five Thousand Dollars ($5,000.00) or imprisoned for a period of six (6) months or both."[173]

In sum, the voluntary registry provides an important way for persons, who are biologically related and have been separated by adoption or termination of parental rights, to contact each other without invading the privacy of those who do not want to be contacted. The registry is available to all eligible adult adoptees, whether or not their adoption was arranged by the DHS, and all registrants may revise their information or be removed from the registry at any time upon "verified written request."[174]

d. Search Program Utilizing the Services of a Confidential Intermediary

Oklahoma's new Adoption Code complements its Mutual Consent Voluntary Registry with a confidential intermediary search program. The "intermediary" system is also known as the "search and consent" system. It involves the use of a designated third party to conduct a search for the party being sought, and, if the intermediary finds that party, to contact the party and determine if he or she will consent to disclosure of identifying information.[175] Although an intermediary system is more costly to operate than a mutual consent registry, it fulfills a critical need. Because mutual consent registries only work perfectly when two eligible persons register, search intermediaries are essential to facilitate reunions when only one party has registered.

Section 7508-1.3 states the DHS "shall establish a search program whereby the services of a confidential intermediary who has been certified through the program may be used by eligible persons . . . to locate an adult biological relative . . . with whom contact has been lost through adoption or termination of parental rights

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169. *Id.*
170. *See id.* § 7508-1.2(G) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
171. *Id.* § 7508-1.2(F) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
172. OKLA. STAT. tit. 10, § 7508-1.2(F) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
173. *Id.* § 7508-1.2(H) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
174. *Id.* § 7508-1.2(E)(2) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
175. *See* AAC *Abbreviations and Definitions, supra* note 130.

proceedings."[176] Eligible persons who can "request a search or be the subject of a search through the confidential intermediary search program"[177] are defined in § 7508-1.3(B)(1)-(9). The list resembles those persons eligible to register for the mutual consent registry. Like the mutual consent registry, only adults, whose adoptions were finalized or whose birth parent's parental rights were terminated in Oklahoma, can register. However, to protect younger siblings from obtaining identifying information before they are ready, a search will not be performed for any adult adoptee or any adult (whose biological parent's parental rights have been terminated) who has a "minor biological sibling" in the same adoptive family or the same family, or "in an adoptive or foster family or other placement whose location is known" to that adult adoptee or adult.[178] In addition, due to the costly nature of the program, searches will not be performed for "[a]nyone who has not previously registered with the Mutual Consent Voluntary Registry at least six (6) months prior to submission of the application for services."[179] Lastly, to protect the privacy of birth parents, searches will not be conducted for "[a]nyone who has previously initiated a search for a biological parent that refused to share identifying information, communicate, or meet, and who initiates a subsequent search for a biological relative of that biological parent."[180] Section 7508-1.3(D) also requires the program administrator to check with State Registrar of Vital Statistics before initiating a search to determine if the biological parent being sought has filed an affidavit of nondisclosure.[181] If an affidavit has been filed and has not been revoked, the program administrator must decline to perform the search unless the person initiating the search provides adequate proof of the death of the biological parent.[182]

The intermediary search program is completely under the aegis of the Department of Human Services:

> The Department of Human Services shall administer, directly or through a contractor, the confidential intermediary search program. The Department of Human Services shall adopt rules and procedures necessary to implement the search program, including but not limited to the qualifications, minimum standards for training and certification, and standards of conduct for a confidential intermediary. A person shall not act as a confidential intermediary unless the person has completed the training required by the Department of Human Services, signed and filed an oath of confidentiality with the Department of Human Services, and possesses a confidential intermediary certificate issued by the Department of

176. OKLA. STAT. tit. 10, § 7508-1.3(A) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
177. *Id.* § 7508-1.3(B) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
178. *Id.* § 7508-1.3(C)(2)-(3) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
179. *Id.* § 7508-1.3(C)(1) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
180. *Id.* § 7508-1.3(C)(4) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
181. *See id.* § 7508-1.3(D) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
182. *See* OKLA. STAT. tit. 10, § 7508-1.3(D) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).

Human Services.[183]

DHS "[e]ligibility competencies and standards"[184] for persons to perform searches include requirements that the confidential intermediary be at least twenty-one years old, have completed at least two years of college at an accredited institution, and have at least two years professional (or volunteer) experience in the "legal or psychological aspects of adoption and adoption search."[185] The confidential intermediary must also pass a criminal background check[186] and participate in any required continuing education or training to ensure that he maintain his certification.[187] The intermediary must keep all information she gathers completely confidential[188] and may not "accept any fee or compensation"[189] for her services unless authorized by the administrator.[190] This requirement, and the fact that the confidential intermediary is not permitted any contact with the initiator of the search until a reunion is imminent,[191] ensures that the intermediary does not compromise her oath of confidentiality by developing feelings of loyalty to the initiator of the search.

> The confidential intermediary shall be permitted to inspect: (a) all court records relevant to the adoption or termination of parental rights proceeding, (b) the original certificate of birth, or other sealed adoption records, and other relevant records, if any, in the possession of the State Registrar of Vital Statistics, and (c) all relevant records in the possession of the Department of Human Services.[192]

Upon locating the person who is the subject of the search, the confidential intermediary will discreetly inquire (without revealing the name of the person initiating the search) whether the subject is willing to "share identifying information, meet, or communicate with the person who initiated the search."[193] If the subject is willing, the intermediary is to obtain the subject's consent in writing.[194] If the subject of the search is unwilling, the confidential intermediary will be trained to continue to try to obtain any "nonidentifying medical or social history" requested by the person

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183. *Id.* § 7508-1.3(E) (Supp. 1997).
184. Oklahoma Department of Human Services, proposed regulation 340:75-15-133(5)(E).
185. Oklahoma Department of Human Services, proposed regulation 340:75-15-133(5)(A)-(C).
186. Oklahoma Department of Human Services, proposed regulation 340:75-15-133(5)(E).
187. Oklahoma Department of Human Services, proposed regulation 340:75-15-133(5)(F).
188. *See* OKLA. STAT. tit. 10, § 7508-1.3(F)(2) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)) (stating unauthorized disclosure of confidential information by an intermediary "may subject the intermediary to a fine or imprisonment or both, to civil liability, and to loss of certification as a confidential intermediary."); *id.* § 7508-1.3(F)(6) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829 (West)).
189. *Id.* § 7508-1.3(F)(5) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
190. *See id.*
191. *See id.* § 7508-1.3(J)(1)-(3) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
192. *Id.* § 7508-1.3(G)(2) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
193. OKLA. STAT. tit. 10, § 7508-1.3(H)(1) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
194. *See id.* § 7508-1.3(H)(3) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)) (stating that the intermediary "shall obtain this consent in writing, in a document that is dated and signed by the subject of the search").

initiating the search.[195] If the person who is the object of the search is dead, the intermediary must include this information in her written report to the administrator.[196] The intermediary shall report if she cannot locate the subject,[197] and, if the "identity of the biological father was unknown or not revealed by the biological mother, the confidential intermediary shall also include this information in the written report."[198] The administrator, upon receiving the confidential intermediary's written report, will contact the person who initiated the search.[199] No "identifying information, communication, or meeting" will be transmitted to the initiator until the administrator obtains a *second*, written permission from the initiator.[200] This requirement is in deference to the fact that many searchers are often psychologically unprepared to realize their dreams and often understandably change their minds when that realization is imminent. The searcher is thus given another opportunity to change her mind. Once the administrator has the necessary written consents from both parties, she may use the "services of the confidential intermediary to facilitate the communication or meeting."[201] If the person who is the object of the search is unwilling to meet or communicate, and "[i]f the initiator . . . subsequently applies to the court for an order allowing the release of identifying information for good cause shown,"[202] the administrator "shall disclose to the court . . . the results of the search, including any information about why the subject of the search objected to disclosure or contact."[203] In this manner, the search may ultimately be advantageous to the unwilling subject by providing her with an unforseen opportunity to make her objections to disclosure known to the court.

B. Other Jurisdictions & Disclosure of Identifying Information

Treatment of the issue of disclosure of identifying information in the United States varies from tightly sealing birth records to allowing adult adoptees to obtain

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195. *Id.* § 7508-1.3(H)(4) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)). *See generally* JOAN H. HOLLINGER, 2 ADOPTION LAW AND PRACTICE § 13.01(2)(a), (Joan H. Hollinger & Dennis W. Leskski eds., 1997) [hereinafter ADOPTION LAW AND PRACTICE] (stating "[n]on-identifying information generally includes: (1) the date and place of the adoptee's birth (state and county); (2) the age of the biological parents at the time of placement and a description of their general physical appearance; (3) the race, ethnicity and religion of the biological parents; (4) the medical history of the biological parents and of the adoptee; (5) the type of termination—whether voluntary or court-ordered; (6) the facts and circumstances relating to the adoptive placement; (7) the age and sex of any other children of the biological parents at the time of adoption; (8) the educational levels of the birth parents, their occupations, interests, skills, etc.; (9) any supplemental information about the medical or social conditions of members of the biological family provided since the adoption was complete.").

196. *See* OKLA. STAT. tit. 10, § 7508-1.3(H)(5) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)) (including identity if the person who is the subject of the search is a deceased, biological parent).

197. *See id.* § 7508-1.3(I)(2) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West))

198. *Id.* § 7508-1.3(I)(3) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).

199. *See id.* § 7508-1.3(J)(1) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).

200. *Id.* § 7508-1.3(J)(2) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).

201. *Id.* § 7508-1.3(J)(3) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).

202. OKLA. STAT. tit. 10, § 7508-1.3(K) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).

203. *Id.*

copies of their original birth certificates. Approximately nineteen states utilize mutual consent registries,[204] six states release identifying information upon mutual consent without a formal registry,[205] nineteen other states have a search and consent process through confidential intermediary services,[206] and four states allow access to birth certificates upon request from the adult adoptee.[207] Adoptees (and others) seeking disclosure often find the language of adoption law complex and confusing, and adult adoptees can sometimes obtain identifying information "even where statutes contain no specific provision for its release."[208]

For example, the District of Columbia seals all records in adoption proceedings.[209] No one, including parties to the adoption, may inspect these records.[210] The purpose of sealing all records is to protect the adopted child from being stigmatized by the disclosure of adverse facts concerning her birth.[211] However, "when the court is satisfied that the welfare of the child will thereby be promoted or protected," access to information contained in confidential adoption records is customarily permitted by court order.[212]

The complexity of adoption law language is further demonstrated by the following: of the four states deemed to allow access to birth records upon request by adult adoptees, only Alaska and Kansas allow adoptees completely *unrestricted* access to an uncertified copy of their original birth certificates without a "judicial or administrative hearing."[213] An adoptee, age eighteen or older, will receive an uncertified copy of her original birth certificate upon request. Alaska's statute accommodatingly provides:

> After receiving a request by an adopted person 18 years of age or older *for the identity of a biological parent* of the person, the state registrar shall provide the person with an uncertified copy of the person's original birth certificate and *any change in the biological parent's name or address attached to the certificate.*[214]

Similarly, Kansas allows its state registrar to open the sealed documents "only upon

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204. *See* ADOPTION LAW AND PRACTICE, *supra* note 195, app. § 13-A.01 (Supp. 1997) (including Arkansas, California, Florida, Idaho, Indiana, Louisiana, Maine, Maryland, Michigan, Mississippi, New Hampshire, New York, Ohio, Oregon, South Carolina, South Dakota, Texas, Utah, and West Virginia).

205. *See id.* app. § 13-A.02 (including Delaware, Iowa, Kansas, Massachusetts, New Mexico, and Vermont).

206. *See id.* app. § 13-A.03 (including Alabama, Arizona, Colorado, Connecticut, Georgia, Hawaii, Illinois, Kentucky, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Pennsylvania, Tennessee, Washington, Wisconsin, and Wyoming).

207. *See id.* app. § 13-A.04 (including Alaska, Kansas, Tennessee, and Washington).

208. AAC *Access to Adoption Records at a Glance*, *supra* note 130.

209. *See* D.C. CODE ANN. § 16-311 (1997); *see also* D.C. CODE ANN. § 16-314 (1997) (requiring that the original birth certificate be sealed and filed and that "[t]he sealed package may be opened only by order of the Court or by the Registrar to properly administer the Vital Records Act of 1981.").

210. *See id.*

211. *See In re* D.E.D., 672 A.2d 582 (App. D.C. 1996) (stating that since statutory provisions support the use of the word "child" as referring to minors, the purpose of § 16-311 was respected where an adult adoptee sought disclosure only for herself and had the consent of both her adoptive and birth parents).

212. D.C. CODE ANN. § 16-311 (1997).

213. *See* ADOPTION LAW AND PRACTICE, *supra* note 195, § 13.01 (Supp. 1997).

214. ALASKA STAT. § 18.50.500 (Michie 1996) (emphasis added).

the demand of the adopted person if of legal age."[215] In contrast, Tennessee, which opened its birth records in 1996, allows biological parents to file a contact veto.[216] The contact veto allows disclosure of the biological parents' identities, but legally restricts the person receiving such information from contacting the birth parents if they have vetoed contact.[217] However litigation attempting to enjoin implementation of the new law in Tennessee has been successful to date.[218] In Washington, any adult adoptee whose adoption is finalized after October 1, 1993, can obtain a "noncertified copy"[219] of his original birth certificate. However, similar to Oklahoma's new adoption law, access is restricted if the birth parent has filed an "affidavit of nondisclosure."[220]

Furthermore, some states allow adoptees to access only information of a medical and nonidentifying nature. In 1995, Maryland opened medical records to adoptees, but "depending on the adoption agency and the era of the adoption, those records . . . range from a few lines about the general health of the mother to full family medical histories."[221] Like Oklahoma, Maryland also has a mutual consent registry.[222] Adoptees in Illinois have been able to access "medical and other non-identifying information about birth parents by petitioning the court and dealing with an intermediary" since 1985.[223] Adoptees can also register with Illinois' mutual consent registry, operated by the Illinois Public Health Department, or with other privately operated registries.[224] However, since these registries are not coordinated, "only 28 matches have been made via the state registry."[225] Bills have since been introduced in both Maryland and Illinois state legislatures which advocate completely opening birth records. Many other states are currently revising, or contemplating revising, their approach to release of identifying information, so disclosure law in the United States is currently in a state of flux. In sum, this brief glance at how a few other jurisdictions deal with disclosure of identifying information reveals how intricate and confusing this area of adoption law can be as states struggle to deal with this controversial issue.

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215. KAN. STAT. ANN. § 65-2423 (Supp. 1996).

216. *See* Carol Chumney, *Tennessee's New Adoption Contact Veto is Cold Comfort to Birth Parents*, 27 U. MEM. L. REV. 843, 847-853 (1997).

217. *See id.*

218. *See supra* text accompanying note 10.

219. WASH. REV. CODE ANN. § 26.33.345(3) (West 1997).

220. *See id. See also* OKLA. STAT. tit. 10, § 7505-6.6(D)(3) (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).

221. Craig Timberg, *Rights Clash Over Adoption Bill; Need for Anonymity vs. Adoptees' Past*, BALTIMORE SUN, Jan. 22, 1997, at 1A; *see also* MD. CODE. ANN., FAM. L. § 5-4A-01 to 5-4A-07 (1991 & Supp. 1997).

222. *See* MD. CODE ANN., FAM. L. §§ 5-4A-01 to 5-4A-07 (1991 & Supp. 1997).

223. Adrienne Drell, *Opening the Books on Adoption*, CHI. SUN-TIMES, Apr. 14, 1997, at 6; *see also* 750 ILL. COMP. STAT. ANN. 50/18.3-50/18.3a, 50/18.4a (West 1993) (restricted to only necessary medical records).

224. *See* 750 ILL. COMP. STAT. ANN. 50/18.1 (West 1993).

225. Drell, *supra* note 223.

C. *Oklahoma's "New Attitudes and Practices" are on Track*

> Rigidity and secrecy have created the dilemmas now faced by American adoptees, and only *new attitudes and practices* can end them. Above all, it is essential for us to realize that openness and honesty must replace the secrecy and anonymity that has prevailed in adoption practice. We hope that the controversy over sealed records, which has brought these issues to the fore, will enable us to develop sounder practices to meet both past and future needs of millions of people whose lives are touched by adoption.[226]

Overall, the new Oklahoma Adoption Code fairly balances the rights and interests of all the members of the adoption triad by embracing 'new attitudes and practices' as called for in the ADOPTION TRIANGLE in 1978.[227] Sorosky, Baran, and Pannor's first study of the attitudes and feelings of members of the adoption triad took exception to "traditional adoption practice which emphasized secrecy [and] promised anonymity."[228] Adoption experts today, acknowledging that these early adoption attitudes were the impetus for the conflicting interests of the adoption triad, now recognize the "wisdom of a policy that recognizes the legitimacy of the desire for identifying information, but stops short of access on demand."[229] Oklahoma's Adoption Law Reform Committee ("ALRC") skillfully interwove the most progressive disclosure measures available today in furtherance of this very policy.

The disclosure measures enacted by Oklahoma are often ineffectual when taken individually, but when combined, provide the only equitable and legal solution possible to the dilemma of providing identifying information without violating privacy interests. Oklahoma wisely chose to allow only those adoptees whose adoptions are finalized after November 1, 1997 to obtain a copy of their birth certificates, provided an affidavit of nondisclosure has not been filed by either birth parent.[230] Thus, Oklahoma is legally protecting those birth parents who, in the past, were promised anonymity and who may still fear disclosure of their identities today, while serving notice on all future birth parents that, after November 1, 1997, they must file affidavits of nondisclosure if they wish to remain anonymous.[231] Interests of adoptees, whose adoptions were finalized before November 1, 1997, were thus outweighed by Oklahoma's refusal to violate the confidentiality it bestowed on birth parents prior to that date. For future adult adoptees, Oklahoma is offering hope that they will be able to obtain copies of their birth records. If that hope is barred because an affidavit of nondisclosure has been filed, adoptees will at least be able to obtain

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226. SOROSKY, *supra* note 12, at 224-225 (emphasis added).
227. *See id.*
228. *Id.* at 15 (alteration in original).
229. ADOPTION LAW AND PRACTICE, *supra* note 195, § 13.01(1)(c) (Supp. 1997).
230. *See* OKLA. STAT. tit. 10, § 7503-2.5 (Supp. 1997) & OKLA. STAT. tit. 10, § 7505-6.6 (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).
231. *See* OKLA. STAT. tit. 10, § 7503-2.5 (Supp. 1997) & OKLA. STAT. tit. 10, § 7505-6.6 (Supp. 1997) (as amended by 1998 Okla. Sess. Law Serv. Ch. 415 (H.B. 2829) (West)).

more detailed medical and social histories than ever possible before, thanks to Oklahoma's newly enacted statute mandating a more comprehensive gathering of such histories.[232] Adoptive parents also benefit from these more comprehensive medical and social histories because they will be enabled to make more informed decisions throughout the adoption process.

However, all adoptees, including those whose adoptions were finalized before November 1, 1997, can benefit from Oklahoma's decision to combine a mutual voluntary consent registry with a search and consent process utilizing a confidential intermediary. For a mere twenty dollars,[233] adult adoptees (including those whose adoptions were not handled by DHS), birthparents, and siblings can register with a statewide mutual voluntary consent registry which will facilitate reunions if a match occurs. In rebuttal to often expressed criticisms that mutual consent registries do not work because both persons desiring contact must register, or that dead persons cannot register, Oklahoma now provides a search and consent process through a confidential intermediary for a fee of four hundred dollars to be paid by the searcher.[234] Results of such searches can range from communication only between located family members, to reunion, to (if communication or contact is refused) only the gathering of additional nonidentifying information. In any case, all parties have the right to refuse to have their identities revealed, if that is their wish. Therefore, Oklahomans now have a choice of affordable, confidential services from which to choose, should they decide to embark on searches for either adoptees or birth families.

D. Why Oklahoma's "New Attitudes and Practices" May be Derailed

However, as progressive as Oklahoma's newly enacted disclosure law may be, it critically needs funding to ultimately succeed. Voluntary mutual consent registries and confidential intermediary search programs are ineffective if they are understaffed, underfunded, and under-advertised. With money currently in its budget, DHS has hired a director for the intermediary search program and plans to begin training and certifying confidential search intermediaries in 1998 at the University of Oklahoma.[235] However, the 1997 Oklahoma legislature did not appropriate any additional money to fund either the voluntary mutual consent registry or the confidential search intermediary program.[236] Unless there are appropriations made in 1998, these programs are at risk of being underfunded. Additionally, DHS is dependent upon free

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232. *See* OKLA. STAT. tit. 10, § 7504-1.1 (Supp. 1997).

233. *See* Oklahoma Department of Human Services proposed regulation 340:75-15-133(11)(A) (requiring that all applications for searches by confidential intermediaries be accompanied by a "$20 fee to register on the mutual consent voluntary registry 6 months prior to application for search").

234. *See* Oklahoma Department of Human Services proposed regulation 340:75-15-133(11)(B) (requiring that all applications for searches by confidential intermediaries be accompanied by a "$400 fee for all initial searches for any one eligible person").

235. Interview with D. Marianne Blair, Professor of Law at the University of Tulsa and member the Oklahoma Adoption Law Reform Committee (Nov. 21, 1997). Professor Blair drafted the sections of the 1997 Oklahoma Adoption Code which are pertinent to this paper.

236. *See id.*

publicity derived from newspaper articles to promote public awareness of these vitally needed programs.[237] An increase in adoption fees (from seventy-two dollars to ninety-two dollars),[238] the modest fee charged by the registry,[239] and the four hundred dollar fee[240] for intermediary searches will eventually provide some funds for these disclosure programs, but it is imperative that Oklahoma appropriate sufficient funds in the interim period. Thus, while Oklahoma is making a good faith effort to institute its newly enacted disclosure programs, it has a major obstacle to overcome, that is, securing adequate funding for staff, programs, and advertising.

VI. CONCLUSION

Oklahoma's new Adoption code delicately balances the interests of all the members of the adoption triangle—adoptees, birth parents, and adoptive parents—by providing all the legal protections and equitable options available today, short of opening sealed records. Until it can be proven that opening sealed records is completely acceptable to adoptees, birth parents, and adoptive parents alike, Oklahoma has chosen the right combination of procedures: an affidavit of nondisclosure, enhanced medical and social histories, a statewide voluntary consent registry, and a confidential intermediary search program. In an area of law which is always controversial and emotionally troublesome, Oklahoma's approach to the complex issue of disclosure is as progressive and fair as it can be, in light of the varied interests and rights of the parties involved.

Mary L. Saenz Gutierrez

237. *See id.*

238. *See* OKLA. STAT. tit. 28, § 152(A)(8), (C) (Supp. 1997) (requiring court clerk to collect a $92.00 flat fee at the time of filing an adoption action, of which "the sum of Twenty Dollars ($20.00) shall be deposited to the credit of the Voluntary Registry and Confidential Intermediary program and the Mutual Consent Voluntary Registry").

239. *See supra* text accompanying note 233.

240. *See* Department of Human Services proposed regulation 340:75-15-133(11)(B)-(C) (stating that $100 of the $400 fee for all initial searches "will be used for costs to administer the search program and $300 will be the fixed rate for the actual search to be paid to the confidential intermediary" and that $50 of the $200 fee for any subsequent searches "will be for administrative costs of the search program and $150 will be the fixed rate for the subsequent search to be paid to the confidential intermediary").