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FOR THE RECORDS II:

An Examination of the History and Impact
Of Adult Adoptee Access to Original Birth Certificates

Policy & Practice Perspective

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Table of Contents

EXECUTIVE SUMMARY	3
INTRODUCTION	6
SECTION I: The History of Sealing Birth Certificates: Form Openness to Privacy to Secrecy an Back	10
The Current State of the Law	13
Who is the Focus of the Service.....	13
SECTION II: The Adoption Records Debate	15
Arguments for Maintaining the Status Quo	15
Birthparents Were Promised Lifelong Anonymity and Have a Right to It.....	15
Unsealing Records will Negatively Impact the Well Being of Birthparents	16
Unsealing Birth Records will Have Negative Social Consequences.....	17
Current Policies Protect the Integrity of the Adoptive Family.....	17
Other Means Can Meet Adoptee Needs While Protecting Birthparent Privacy	17
Arguments for Access to Birth Certificates.....	18
Adopted Adults Have a Fundamental Right to Their Own Birth Certificate	18
Secrecy is Damaging to the Well Being of Adopted Individuals	19
Alternative Solutions Do Not Adequately Meet the Needs of Adopted Adults	20
Secrecy Undermines the Integrity of Adoption and Perpetuates Shame.....	20
Birthparents Do Not Need – and Usually Do No Want – ‘Protection’.....	21
SECTION III: Knowledge and Experience that Informs the Debate	22
Legal Perspective on Rights of Birthparents and Adopted Adults	22
How Does this Issue Impact the Well-Being of All Parties to Adoption?.....	25
Adopted Individuals.....	25
Birthparents.....	28
Adoptive Parents.....	30
Do Alternative Solutions Adequately Address Access Issues?	31
Court Petitions	31
Mutual Consent Registries.....	32
Active Registries	32
What Do We Know About Consequences Where Access Has Been Granted	33
SECTION IV: Analyses and Conclusions	37
RECOMMENDATIONS	39
CONCLUSION	40
REFERENCES	41

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Executive Summary

At a time when an array of complex adoption-related concerns are being discussed from Haiti to Moscow to Beijing, within the adoption community in our country, one seemingly simple question continues to receive the most consistent, intense attention: Should adopted adults, like all other Americans, be allowed to have their original birth certificates? Indeed, for over a generation, no other adoption issue has generated more debate or caused greater division.

Today, more efforts to restore adult adoptee access to original birth certificates (OBCs) are being mounted than ever before. In the three legislative sessions that have begun since the Evan B. Donaldson Adoption Institute's November 2007 publication of "For the Records: Restoring a Legal Right for Adult Adoptees" (of which this report is an update), OBC legislation has been introduced from coast to coast. In the 2009–2010 sessions alone, lawmakers in at least 11 states considered the issue – and in at least one, Illinois – they have enacted a statute in recent weeks significantly expanding OBC access, making theirs the seventh state to do so in the last decade. During the same period, Massachusetts has implemented a narrower OBC access law, while activists in several more states, including New Jersey and Rhode Island, have been organizing, fund-raising, and taking other steps intended to result in yet more legislation.

Though support is clearly growing for the "open records" movement, as it is often called, proponents are hardly declaring that victory is on the horizon. Most of their efforts have been unsuccessful, and many of the OBC laws that have been enacted are compromises that grant access to some adoptees but not to others; these compromises open an emotional divide among advocates on whether they are championing the majority or betraying those left behind.

A major reason such compromises are offered – and why more states have not enacted access legislation – appears to be that much of the debate has been muddied by misunderstandings about the history of the issue, misconceptions about the parties involved, and mistaken concerns about the consequences of changing the status quo. It is commonly argued during the legislative process in every state, for instance, that OBCs are sealed to protect the anonymity that birthmothers were promised, and that changing the rules now would undermine their lives and be harmful in other ways (such as increasing the number of abortions). An examination of the research and other evidence, however, shows that all those assertions are flawed or incorrect.

This paper examines the most current evidence related to restoring adult adoptee access to original birth certificates, updating the Adoption Institute's 2007 *For the Records* report.

A lengthy examination and analysis of the arguments on both sides of the debate leads to these primary findings:

- **Barring adopted adults from access to their original birth certificates wrongly denies them a right enjoyed by all others in our country, and is not in their best interests for personal and medical reasons.**
- **Alternative solutions to providing adopted adults access to their OBCs, such as mutual consent registries, are ineffective and do not adequately address the needs of adopted persons.**
- **The overwhelming majority of birthmothers do not want to remain anonymous to the children they relinquished for adoption and support (or do not oppose) those children's access to their OBCs.**

- **Providing adult adoptees with access to their original birth certificates does not threaten the integrity of adoptive families or the institution of adoption; indeed, the evidence suggests that the opposite is the case.**
- **In other countries and in U.S. states that have restored adopted adults' access to OBCs, or never sealed these records at all, there is no evidence of any of the significant negative consequences critics predict.**

Based on these findings, the Adoption Institute recommends significant changes in current adoption law and policy in order to restore adopted persons' rights to information about their origins and heritage – and to achieve equality for the members of all families, regardless of how they are formed.

Recommendations

- ***Every state should restore unrestricted access to original birth certificates for all adult adoptees, retroactively and prospectively.*** The experiences of many other countries, of U.S. states where birth certificates have never been sealed from adopted persons, and of those states that have restored access, all indicate that there are few if any problems when access is granted. There is no significant legal, experiential or factual rationale for denying adopted adults the right to access their OBCs – a right that is enjoyed by all non-adopted Americans. Allowing access with the provision for contact preference forms is a practical solution that affords birthparents a greater opportunity to express their wishes – and therefore greater “protection” than they currently have with sealed records.
- ***State laws that provide access to original birth certificates to a limited number of adult adoptees should be amended to enable them all to obtain these documents and thereby be treated equally.*** Allowing some adopted citizens access while denying it to others is inequitable on its face. The evidence in states that place restrictions on who may obtain OBCs is the same as it is in states that allow universal access; i.e., none of the predicted negative consequences occur. So there is no substantive reason to prevent an expansion of their laws to include all adopted persons once they reach the age of majority.
- ***No agency, attorney, social worker or other adoption professional should promise birthparents that their identities will remain concealed from their children.*** There is no constitutional, legally enforceable “right to privacy” for birthparents from the children they created. Some states that sealed OBCs in the past have opened them and more are likely to do so in the future. Moreover, courts may open records upon petition and, finally and most pointedly, it is becoming increasingly possible for birthparents (among others) to be found via the internet, through search professionals, and with other modern resources. As a consequence of all those factors, it is clear that anonymity cannot be assured with any certainty; promises of lifelong confidentiality are therefore contrary to best adoption practices.
- ***A national adoption registry should be implemented to enable all adopted persons and their birthparents, no matter where they reside, to participate.*** Registries should not ever be viewed as an alternative to access to OBCs, and the evidence is clear that state-specific mutual consent registries are generally ineffective. A well-publicized national registry, however, would allow adoptees, birthparents and other family members to find each other across state lines, thereby mitigating some current problems and playing an important role until all states restore the right of adopted adults to access their original birth certificates.
- ***Confidential intermediary services should be available throughout all states, even after original birth certificates access is restored.*** Many if not most adopted persons, birthparents and other involved parties prefer to search and make contacts themselves – but some want or need help. Confidential intermediaries can be valuable resources to provide

guidance and support for those who are unsure about making contact to obtain information or to arrange a reunion. Ideally, these services should be either subsidized by the state or made available at a very reasonable cost to participants.

Conclusion

Some opponents of restoring access to original birth certificates cast adult adoptees' desire for this basic information about themselves as a matter of curiosity, a simple interest that can be satisfied through other means, while others express seemingly substantive concerns about the implications of altering current law. Some proponents of unsealing OBCs focus on search, reunion and medical information as the key issues, while others say the bottom line need not include any of those issues because the debate is really about equal rights and social justice.

Wherever one stands, this much is clear: The laws on the books in most states do not benefit the vast majority of the affected parties, and therefore should be changed. Modern adoption practice, with its emphasis on openness, honesty and family connections should be the operating model. It is time to end the secrecy that has not only resulted in shame and stigma for nearly everyone concerned, but also has undermined the institution itself by sending a signal from the very start – at the time a birth certificate is issued – that adoption has something to hide.

Introduction

At a time when an array of complex adoption-related concerns are being discussed from Washington to Moscow to Beijing, within the adoption community in our country, one seemingly simple question continues to receive the most consistent and intense attention: one seemingly simple question continues to hold center stage: Should adopted adults, like all other Americans, be allowed to have their original birth certificates? Indeed, for over a generation, no other adoption issue has generated more debate or caused greater division.

Today, more efforts to restore adult adoptee access to original birth certificates (OBCs) are being mounted than ever before. In the three legislative sessions that have begun since the Evan B. Donaldson Adoption Institute's November 2007 publication of "For the Records: Restoring a Legal Right for Adult Adoptees" (of which this report is an update), OBC legislation has been introduced from coast to coast. In the 2009–2010 sessions alone, lawmakers in at least 11 states considered the issue – and in at least one, Illinois – they have enacted a statute in recent weeks significantly expanding OBC access, making theirs the seventh state to do so in the last decade. During the same period, Massachusetts has implemented a narrower OBC access law, while activists in several more states, including New Jersey and Rhode Island, have been organizing, fund-raising, and taking other steps intended to result in yet more legislation.

Though support is clearly growing for the "open records" movement, as it is often called, proponents are hardly declaring that victory is on the horizon. Most of their efforts have been unsuccessful, and many of the OBC laws that have been enacted are compromises that grant access to some adoptees but not to others. These compromises open an emotional divide among advocates on whether they are championing the majority or betraying those left behind.

Adult adoptee access to OBCs is a central piece of a larger issue related to secrecy in adoption. Throughout most of American history, the birth certificates of adopted persons were treated the same way as all others; i.e., they were a matter of public record. That began to change in the 1930s through 1960s, when most states sealed these records – at first only from the public, but *not* from the parties to an adoption. The primary intent was to shield children from the stigma of illegitimacy and to prevent birthparents from intruding on adoptive families. The widespread belief today that OBCs were sealed to protect the birthparents themselves is contrary to legal and historic evidence (Samuels, 2001). As part of the move to seal these records, states began issuing new birth certificates on which the adoptive parents were listed as the birthparents; these documents, called "amended birth certificates," are now issued for every finalized adoption in every state, irrespective of whether the child was adopted as an infant, at an older age from foster care, or from another country. In many ways, the sealing of birth certificates was an initial step in an ongoing shift toward institutionalizing secrecy and anonymity in the practice of adoption (Baran & Pannor, 1990). Over time, nearly every state sealed adoptees' OBCs from everyone, and until recently that remained the case throughout contemporary America.

For most of us, a birth certificate confirms what we already know: the names of those who created us and other basic details about our origins. This information, along with family documents, records, pictures and stories, provides a context for how we understand ourselves. For many adopted persons, original birth certificates are indispensable portals to other knowledge that helps them answer two core questions, "Who am I?" and "Where do I come from?" The desire and/or need of many adopted persons to learn about their origins – whether for medical, genealogical, historical, personal or principle-related reasons – often goes far beyond gaining access to their OBCs. The documents themselves can perform important functions, such as affirming or completing issues

related to identity, and providing the sense and the reality that they have the same rights as Americans who live in the families into which they were born.

Those who seek to allow adopted persons access to their original birth certificates maintain that the denial of rudimentary facts about one's beginnings can convey harmful messages to adopted persons, underscoring their differences from others and contributing to their feeling like second-class citizens who are powerless to find out the most basic information about themselves. As rap star and adoptee Darryl McDaniels (2008; 2009) puts it, "The lies and secrets around adoption build guilt and shame. ...This [access to OBCs] is really about identity and truth of a human being's existence. We never start a book from Chapter 2; as adoptees, we live our lives from Chapter 2."

Scholars have found that as adopted individuals grow older, adoption typically remains or grows as a significant aspect of identity, and having children and grandchildren often compounds the importance of knowing their personal and medical histories. In their book, *Being Adopted: A Lifelong Search for Self*, Brodzinsky, Schechter and Henig (1992) describe the complexities of the "life review" process that is common among older adult adoptees who lack closure on many answers they have tried unsuccessfully to find. One example they recount illustrates this point:

"I truly love my children and grandchildren," says Herbert, who is now sixty-seven and tried for sixteen years to find his birth family. "It caused me great pain when I realized that I couldn't tell them anything about my own family, what nationality I was and when and where I was born. Every American citizen should have the inherent right to know these very intimate facts about his life" (p. 176).

Access to birth records by adopted adults has been legislated nationally and been a reality for decades in some other English-speaking countries – for more than 80 years in Scotland and for 35 in England (Carp, 2007). In many other nations, including the United States, Canada and Australia, adoption-related laws – including those pertaining to OBCs – are the purview of individual states or provinces, so reform can be a laborious, locality-by-locality effort. In Australia, the majority of adopted adults have unconditional access to their OBCs, because the two most-populated states have passed relevant legislation. That is not the case, however, in the majority of American states and Canadian provinces.

The trend in adoption policy and practice in the U.S. and most other nations during the last few decades has been toward less secrecy, more honesty and greater openness. Adoptive parents are routinely prepared to share the fact of their child's adoption at an early age and to make discussion of adoption part of their family's natural communication. It is rare for parents today not to tell their children they are adopted or to try to hide this reality from others – and it is considered bad practice, with negative repercussions for those involved, to do so (Brodzinsky & Pinderhughes, 2002). Confidential, or "closed," adoptions also have become much less common; indeed, in infant adoptions in our country, birthparents and adoptive parents most often meet each other, and many maintain some level of contact (Henney, McRoy, Ayers-Lopez, & Grotevant, 2003; Evan B. Donaldson Adoption Institute, 2006). Moreover, in the age of the internet, a fast-growing number of adopted adults and birthparents are able to successfully gain information about each other without access to original birth certificates.

Most adoption laws in the U.S. were enacted at times when the institution and the process were far more surreptitious, and the people involved were much more stigmatized than they are today. But many of those laws have not yet caught up to the ensuing changes in our culture, the growth in adoption knowledge and the advancement of professional practice. In the case of access to original birth certificates, most states have not updated their statutes, and the consequences have been negative for many adoptees seeking such information. For example, some adult adoptees have unsuccessfully petitioned courts for their OBCs – which is the process for them to gain access to

these records in most states – based on compelling medical need, but the requests have been denied. One example is Bob McDowell, who at age 81 asked a court in Missouri for his information in order to get his medical history because his son, age 40, was facing an aggressive and unusual form of cancer (Munshi, 2008), but the judge said “no.” Fortunately McDowell’s son is in remission, but doctors still need his medical history to plan for medical tests and possible treatment. In other instances, adopted adults want to meet and/or get information from their birthmothers or other members of their biological families, many of whom want to be found; but some adoptees have searched unsuccessfully for decades without the data on their OBCs, and the people they were looking for died before they could be reunited.

Sometimes legislators and policymakers do not recognize the importance or scope of this issue because they view the affected population in a narrow way; i.e., very few Americans (about 2.5 percent) are adopted. That small number does not capture the impact of the issue, however. The Evan B. Donaldson Adoption Institute’s first national survey on adoption in 1997 found that 6 in 10 Americans reported having a personal experience with adoption, meaning that they themselves, a family member or a close friend was adopted, adopted a child, or relinquished a child for adoption. But even that statistic doesn’t paint a complete picture. According to the latest census, 1 in 25 families with children contains at least one adopted child (Kreider, 2003), and those children have birthparents with family members, adoptive parents, siblings, uncles, aunts (or nephews and nieces), and ultimately spouses, children and grandchildren. Add up all those relatives, and the number exceeds 100 million people. And that list does not include other relatives, significant others, classmates, co-workers and others whose lives they closely affect – or who affect them. At the bottom line, it is hard to find anyone in our country who does not have a close connection with someone for whom adoption is an everyday reality.

Why then has the “seemingly simple question” about whether adopted adults should regain access to their OBCs not resulted in uniform access? The most commonly assumed answer is that restricting access to OBCs for adopted adults protects the parents who surrendered them for adoption. Opponents to restoring access remind us that, for decades, out-of-wedlock childbirth held great stigma; in particular, the women involved risked shame and censure if their pregnancies became known. As a result, some birthmothers hid their situations and never revealed this aspect of their past to their spouses when they later married, to any subsequent children born within marriage, or to friends and acquaintances. Many of these women were assured by adoption agency workers that their relinquishment of a child for adoption would remain secret, and sometimes they were told their privacy would be assured by the sealing of the original birth certificate. Opponents to access argue that to provide this information long after the adoption is to violate a promise and that, if OBCs are to be unsealed at all, individual birthparents should have a say in whether the children they surrendered should get access to their own. While there is little empirical support for this position (in part because birthmothers who wish to remain anonymous are difficult to study), it is strongly held by opponents to OBC access and has been a successful argument in legislative considerations of changing the law.

This paper updates the issues related to OBC access addressed in the Adoption Institute’s November 2007 *For the Records* report. Since its publication, Maine has implemented its statute to “unseal” birth certificates, Massachusetts has revised its law to allow access to some adoptees, Colorado has expanded adoptees’ effective access by judicial decision, and Illinois has passed legislation allowing access for most adoptees. The other states that have restored access to OBCs have had more time for the consequences to be examined, and additional scholarly investigations have occurred. *For the Records II* seeks to provide the most current information possible on this controversial issue.

Data about an adopted person’s birth and background is contained on birth certificates, court records and other documents such as agency files. The legislative efforts in our country overwhelmingly focus solely on OBCs, however, so this paper does the same. Parties other than adopted adults –

including birthparents, siblings, adoptive parents and other family members – also seek access to the information discussed in this paper but, again, the primary focus here is on adopted adults' access to their original birth certificates.

This policy brief contains four sections:

Section I provides a context for the “open records” debate – a short history of the statutes that govern access to birth certificate information and the current status of these laws.

Section II synthesizes the arguments on both sides of the debate. It describes the key assertions made in support of maintaining the status quo and those made for statutory changes to provide adopted adults with access to their OBCs.

Section III provides an assessment of the arguments on both sides, as well as the legal and social science evidence that informs this debate. It also discusses the experiences of states that have reopened their records – experiences that permit policymakers to move from assumptions about the impact of legal changes to evaluation of actual outcomes.

Section IV presents conclusions and recommendations, based on further evidence-based analyses, to support the development of sound public policy.

SECTION I:

THE HISTORY OF SEALING BIRTH CERTIFICATES: FROM OPENNESS TO PRIVACY TO SECRECY AND BACK

Sealing original birth certificates from the people whose names are on them is a relatively modern practice. For most of U.S. history, adopted individuals could gain access to their OBCs, and the information they contained, upon reaching the age of majority. Today most adopted adults must petition a court for access to these documents and must demonstrate compelling reasons for obtaining them.

While original birth certificates are sealed in most states, there is legal and social consensus that sharing “non-identifying information” is beneficial to adopted persons and adoptive parents. All the states except Idaho have statutory provisions allowing adult adoptees to access such information, typically through written requests, and every state allows such access by the adoptive parents of minors; in addition, more than half the states permit birthparents to request some non-identifying information, generally limited to the health and development of the children they placed for adoption (Child Welfare Information Gateway, 2009).

Non-identifying information differs from state to state and sometimes across category of applicants; birthparents, for instance, typically receive less information than other parties. The information given to adult adopted persons usually is the same as was provided to their adoptive parents during the early stages of their adoption, such as date and place of the child’s birth, the birthparents’ age and general description, medical history gathered prior to adoption, and reasons for relinquishment (Child Welfare Information Gateway, 2009).

It is clear that everyone concerned, from lawmakers to professionals to the affected parties, recognize that some level of information should be provided. The issue is therefore not whether adopted persons benefit from knowledge about their backgrounds but, rather, whether that knowledge should include the identities of their birthparents – information that is most easily and systematically obtainable by restoring access to their original birth certificates.

The word “restore” is used in this paper because, as noted earlier, adopted persons had access to their original birth certificates for most of our country’s history. The practice of sealing them to everyone, including the parties to an adoption, became common only in the middle of the 20th Century; indeed, some states did not do so until the 1970s and 1980s. Alabama became the last state to pass such a law in 1990 – and it reversed course to unseal OBCs in 2000. The first statute addressing confidentiality of birth and adoption information was enacted in 1917 in Minnesota, allowing access to adoption court files only by the parties to the adoption, their attorneys, and the state’s child welfare oversight board. That statute, like others that followed it, was designed to prevent the public from learning that the adopted child had been born outside of marriage (Cahn & Singer, 1999). Only those directly involved and with a “legitimate interest” – that is, adoptees, adoptive parents and birthparents – were allowed access.

It may be difficult for many contemporary readers to understand the impact of being branded as illegitimate (a word sometimes prominently stamped on birth certificates of those born out of wedlock) and the scorn, stigma and limitation of life chances that could accompany it. Recognizing the harm that came to children from this label, child welfare reformers in the post-WWI era proposed a remedy. Noting that in many jurisdictions the name of birthparents was replaced with those of the adoptive parents on legal documents upon a child’s adoption, they argued that the law should be amended:

*... as to require that when the name of the child is changed, the clerk of the court shall send an attested copy of the decree to the State Registrar of Vital Statistics. Then on receipt of such copy the State Registrar shall cause to be made a new record of the birth in the new name, and with the name or names of the adopting parent or parents. He shall then cause to be sealed and filed the original certificate of birth with the decree of the court, and **such sealed package shall only be opened upon the demand of said child, or his natural or adopting parents, or by the order of a court of record** (Howard & Hemenway, 1930, p. 646). [Emphasis added]*

Thus, it was the protection of children from public knowledge of their illegitimacy, rather than protection of the parties *from one another*, that led to the sealing of OBCs. This position endured well beyond the above-referenced call for sealing records from the public in 1930. In 1939, the U. S. Children's Bureau standardized this practice by recommending that birth records be available only to adoptive parents, adopted adults and state agencies with jurisdiction over adoption (Freundlich, 2001; Carp, 1998).

The state of Tennessee also began the same practice around 1928 without legislation, but by informal arrangement between the Vital Statistics Bureau and an adoption practitioner named Georgia Tann (now known to have been running a black market adoption ring under the auspices of a charitable organization in Memphis and who wielded great influence in the state). While Tann claimed her purpose was to avoid stigma to the children, she also needed to conceal the dubious means by which she acquired children for adoptive placement (Raymond, 2007).

By 1948, nearly all states began issuing amended birth certificates, with the new documents listing the names of the children's adoptive parents as their biological parents (Carp, 1998). The original certificates were sealed from the public – but through the late-1950s generally not from adult adoptees – again, so that an out-of-wedlock birth or unknown parentage would not stigmatize the child (Samuels, 2000-2001, Carp, 1998). By the 1940s, organizations such as the U.S. Children's Bureau were offering additional reasons for sealing records, at least until the adopted person reached the age of majority. These included the desirability of protecting adoptive families from the intrusion of the "natural parents" (Morlock, 1945). The Bureau explicitly recognized the importance of access for adult adoptees, however, noting "every person has a right to know who he is and who his people were" (Morlock, 1946, p. 168).

By 1960, a major shift in law and policy – sealing OBCs from the parties to adoption – was underway but still far from universal. Twenty states still permitted unrestricted access to adopted adults that year, and others allowed them access to their adoption court records. From 1960 to 1990, 18 of those 20 states sealed OBCs from adult adoptees (Samuels, 2000-2001).

What led to this change? Wayne Carp (1998), a scholar of the history of adoption records, concluded that an accurate answer cannot be determined because the information is not contained in the records of legislative committees that structured the laws. We do know that there was a shift in prevailing professional and societal attitudes during this period. Behavioral and social science belief in the power of nurture over nature enabled infertile couples considering adoption to have greater confidence that their children would come to them largely as "clean slates." The discipline of social work, the primary field involved in adoption practice, embraced this view and extended it to the idea that all parties benefitted from absolute separation. Such separation, along with practices such as "matching" babies with parents on the basis of similar physical characteristics and presumed intelligence, ostensibly ensured the integrity of adoptive family life by making adoptive families "just like" families formed through birth (Pertman, 2000).

According to prevailing philosophy, adoptive parents could bond more deeply with a child whose parentage was unknown to them – i.e., they could better see the child as truly their own. The birthmother, whose pregnancy was generally understood as maladjustment, could properly grieve the loss of the surrendered child as permanent and return to her pre-pregnancy life; the secret of her pregnancy could be protected, resulting in her rehabilitation. She was free to marry, have other children and go on with her life as if nothing had happened. Given the prevailing view that a single woman could not be an adequate mother, the surrender of a child to anonymous strangers came to be emphasized as the best plan for that boy or girl.

It is important to note that this “clean slate” argument for sealing birth records was focused on white, middle- and working-class young women. Out-of-wedlock births for white women rose in the post-World War II era, from 56,400 in 1945 to 175,100 in 1970, representing an increase from 2.4 percent per 100 live births to 5.7 percent (Statistical Abstract of the U.S., 2009). Rates for black women, which had always been higher, also increased dramatically (Ventura & Bachrach, 2000). But the majority of formal adoptions were of white children by white couples. African American children born outside of marriage were much more likely to be raised by relatives. Most of the children formally adopted were infants; large-scale adoption of older children, especially from foster care, did not occur in large measure until the 1980s and 1990s.

Finally, the assertion was that the adopted child (arguments were rarely made in terms of adopted *adults*) would be shielded from the confusion of having more than one set of parents. While adoptive parents were generally advised to tell the child that he or she was adopted, the emphasis was on ensuring that the adoptive parents were understood to be the “real” parents (Samuels, 2001).

Thus, it was not empirically based studies on the parties to adoption that yielded the view that birth records should be sealed from them (such research was rare in social work and psychology at the time); rather, it was a prevailing belief about how families best functioned. Concerns about forced and unwanted post-adoption intrusions into the lives of triad members – concerns that are frequently raised in contemporary defenses of confidentiality – were simply not a significant part of the argument leading to the closure of birth records. The legal scholar Elizabeth Samuels (2000-2001, pp. 400-401) concluded that “the closings of the birth records to adult adoptees reflected emerging attitudes and understandings, a social context, and not a legislative response to real or imagined problems associated with such access.” That social context “was that adoption was a perfect and complete substitute for the creation of families through childbirth.”

A counter-movement began by the early 1970s. Social shifts in American life led to increasing calls to end secrecy in adoption. Groups of adopted persons and their allies formed activist/reform organizations over several decades, including the Adoptee’s Liberty Movement of America (ALMA), the American Adoption Congress (AAC) and Bastard Nation. For example, the AAC is committed to “enacting legislation in all states that guarantees access to identifying information for all adopted persons and their birth and adoptive families through records access and preservation of open adoption agreements” (American Adoption Congress, 2010). In addition, as stated earlier, adoption practices related to secrecy have changed dramatically over the past several decades, with information about children’s birthparents now routinely shared with prospective adoptive parents, and vice-versa. Indeed, in the vast majority of domestic adoptions, expectant mothers planning an adoption – and fathers when they are in the picture – choose the adoptive parents for their babies (Evan B. Donaldson Adoption Institute, 2006).

Professional organizations and other groups advocating best practices in adoption have developed policies in support of adopted adults’ access to original birth certificates. Such groups include the National Association of Social Workers, the North American Council on Adoptable Children and the Child Welfare League of America (CWLA).

In sum, the birth certificates of adopted persons were not closed for much of U.S. history. When that practice began in the 1930s, it was meant to protect adopted children from public knowledge of their illegitimacy. They were *not* kept from the adoptee, nor were they sealed to protect birthparents. Most states sealed records from the parties to an adoption by the 1960s and '70s, but as early as the 70s, activists began to challenge the system. And adoption agency practice, which from the middle of the 20th Century had been guided by theoretical approaches that held secrecy to be beneficial to all parties, began shifting toward greater openness and more connections between a child's original and new families. Today, most domestic infant adoptions involve knowledge of, and often contact between, birth and adoptive family members (Evan B. Donaldson Adoption Institute, 2006).

I. A THE CURRENT STATE OF THE LAW

Most state laws are not consonant with these significant changes in adoption practice and public and professional support for providing access. Adopted persons' access to their original birth certificates is tied to where and often when they were born. Two states, Kansas and Alaska, have never barred adoptees from access to their OBCs. In the last 15 years, they have been joined by Alabama, Maine, New Hampshire and Oregon, which have restored adult adoptee access to those who were born within their borders. These states do not impose restrictions on access, but do use "contact preference" forms that allow birthparents to register their desire or lack of desire to be contacted (Carp, 2007). A total of six states now permit adult adoptees to get their OBCs just like any other citizen: request it, pay any applicable fee, and receive a copy.

Three additional states have restored or will soon restore access to adopted persons, but with restrictions. In Tennessee, adoption records, including original birth certificates, may not be released when the adopted person was conceived as a result of rape or incest unless the birthparent gives permission. In Delaware, and soon in Illinois, birthparents are given the opportunity to file a veto to prevent release of OBCs, but they are otherwise available.

The remaining 41 states offer a sometimes bewildering array of options, from requiring a court order for birth certificates to be released, to offering access to some but not all adopted persons (depending on the year of adoption), to requiring birthparent agreement to release birth certificates.

- Editor's note: The Adoption Institute is creating a document outlining the conditions for adult adoptee access of OBCs in all of the states that permit it. Upon completion (within weeks of publication of this paper), the document will be posted on the Institute website

I. B WHO IS THE FOCUS OF THE SERVICE?

Based mainly on the view that original birth certificates should remain sealed in order to provide birthparents with the ability to remain anonymous from the children they relinquished, a range of alternatives – short of OBC access – has been created to give adopted adults identifying information.

MUTUAL CONSENT REGISTRIES

Such registries, which exist in approximately 30 states, require the parties to an adoption to record their interest in acquiring information or making contact with each other (Child Welfare Information Gateway, 2009). For example, Maryland's adoption registry explains: "The Registry enrolls adoptees and their birth families who wish to find each other. Registry staff compares information provided by Registrants and 'matches' adoptees with their birth family members. They then confirm the information with agency and court records before the registrants are contacted by a social worker

and given the information” (Maryland Department of Human Resource, 2007). No effort is made to connect the birthparent and adopted person unless both sign up.

Similar registries exist outside of those operated by the states. For example, ALMA’s website offers a registry and publishes stories from those who are matched. The International Soundex Reunion Registry (ISRR) facilitates matches globally among birth and adoptive family members, including those adopted in the U.S.

ACTIVE REGISTRIES/CONFIDENTIAL INTERMEDIARIES

Approximately 11 states offer confidential intermediary services (Child Welfare Information Gateway, 2009). A request for information triggers efforts by an intermediary to locate the sought-after person and to determine if he/she is amenable to identifying information being exchanged. The intermediary is allowed access to birth and court records, and is trained in how to locate people and facilitate the process. The intermediary contacts the party being sought and requests consent to share identifying or sometimes non-identifying information. Some states offer this service only to adopted persons, while others offer it more broadly to all members of the adoptive and birth families. Some states permit, but do not fund, the use of confidential intermediaries to facilitate searches.

DISCLOSURE VETOES

Approximately nine states have disclosure vetoes in place for some categories of adoptees, prescribing that access may be granted unless the birthparent has filed a “disclosure veto” barring this release. In some locales, disclosure vetoes must be renewed at prescribed intervals to remain in effect (Child Welfare Information Gateway, 2009).

PERMISSION REQUIREMENTS

In five states, OBCs will not be released unless birthparent permission is on file to do so (Child Welfare Information Gateway, 2009).

CONTACT VETOES

This process allows parties, typically birthparents but also other members of birth families, to refuse contact by imposing legal sanctions for violations. Contact vetoes do not prevent the unconditional release of OBCs, but spell out a legal remedy for those birthparents who are on record as not desiring contact.

CONTACT PREFERENCE FORMS

These forms provide for parties, typically birthparents, to register their desires related to contact, but the identifying information is released unconditionally. The stated preference for contact with the adoptee has no legal effect or sanction. In some states, these forms only permit a birthparent to indicate a preference for “no contact.” In others, the forms provide more options; for example in Oregon, there are three: “I would like to be contacted,” “I would prefer to be contacted only through an intermediary” and “I prefer not to be contacted at this time.” Also in Oregon, birthparents filing a no-contact preference are required to fill out an updated medical form (Carp, 2007).

SECTION II: THE ADOPTION RECORDS DEBATE

II.A ARGUMENTS FOR MAINTAINING THE STATUS QUO

Advocacy for keeping birth certificates sealed has been strong, well-organized and most often successful for decades. The National Council for Adoption (NCFA) has been a consistent voice on this side, as have various state divisions of the Catholic Conference. Some state chapters of the American Civil Liberties Union (ACLU) have entered the debate in favor of maintaining sealed OBC, though the national ACLU has not taken a position. This section reviews the central arguments advanced by advocates of maintaining sealed birth certificates, including:

- Birthparents were promised lifelong anonymity and have a right to maintain it.
- Unsealing OBCs will negatively impact the well-being of birthparents.
- Unsealing OBCs will have negative social consequences.
- Current practice (keeping OBCs sealed) protects the integrity of the adoptive family.
- Other measures can meet adoptees' needs while protecting birthparents' privacy.

The focus in this discussion is primarily on ART, drawing from adoption's relevant lessons and with analysis of comparable issues in adoption.

II.A.1 BIRTHPARENTS WERE PROMISED LIFELONG ANONYMITY AND HAVE A RIGHT TO IT

The most common and perhaps most viscerally compelling argument for keeping OBCs under seal is that birthparents who relinquished children for adoption in the past were promised that their identities would never be disclosed to anyone. Opponents to restoring adoptee access hold that changing the law now would breach the confidentiality that may have been instrumental to birthparents' decisions to relinquish children for adoption. Further, they assert that making identifying information available to adult adoptees undermines an expectation that may have guided how birthparents have subsequently lived their lives (for instance, by not revealing the relinquishment to a spouse). The bottom-line argument is that altering the rules after the fact is unfair primarily to the women who placed children for adoption with the promise that only they would decide if and when to disclose their past actions.

In contemporary America, pregnancy and child-rearing outside of marriage are common, as are single parent families.¹ Indeed, a large number of modern adoptions are by single parents. Today it is difficult to understand the incredible stigma that used to face single women, as well as those who became pregnant by someone other than their husbands. Pregnant women considering adoption were most often in crisis. Many, particularly in middle-class families, felt compelled to hide the impending birth and later their status as birthparents to remain accepted in their communities and even within their families. Because some birthmothers expected that their relinquishments would not be disclosed, they kept the secret from others – from husbands if they later married, from children born within marriage, and from the community that would judge them negatively if the truth were known. Those advocating for continued secrecy argue that, because birth certificates and other records related to adoption were sealed in almost all states, women could have been reasonably assured of lifelong anonymity.

¹ Birth statistics indicate that 38.5 % of births in the U.S. are to unmarried mothers ([Martin, Hamilton, Sutton, Ventura, et al., 2009](#)).

This is a key argument of the National Council for Adoption (NCFA), as well as of others who want to maintain the status quo. NCFA representatives frequently provide testimony in legislative hearings and seek to influence lawmakers to vote against restoration of adoptee access to OBCs. In NCFA's view, laws that provide birth certificates without protecting birthmothers constitute "mandatory openness" and represent "a serious breach of a birthmother's right to privacy," which is described as a basic human right (NCFA website, 2010).

According to NCFA, hundreds of thousands of birthparents were promised confidentiality (Atwood, 2007). Other opponents to restoring OBCs share this view: "[T]he assurance of secrecy regarding the identity of the natural parents enables them to place their child for adoption ... with the knowledge that their actions and motivations will not become public knowledge. Assured of privacy by the State, the natural parents are free to move on and attempt to rebuild their lives after what must be a traumatic and emotionally tormenting episode in their lives" (Brannigan, 2008, p. 2).

ACLU chapters in a few states have argued that even if the promise of permanent privacy was not actually grounded in statute or case law, ongoing practice supports the expectation that such a promise should be honored (Dixon of ACLU IL, personal communication, May 13, 2010; Jacobs of ACLU NJ, 2010). In addition, some ACLU chapters have argued that OBC access laws are unfair if they allow the documents' release as long as no birthparent objections are registered. This process "shifts the burden of protecting anonymity to birth parents without any way to assure that individual birth parents learn of the change and are made aware of the need to take steps to protect themselves. This represents a radical change that undermines years of well-tested state policy in the area of adoption" (ACLU IL, p. 1).

II.A.2 UNSEALING RECORDS WILL NEGATIVELY IMPACT THE WELL-BEING OF BIRTHPARENTS

Opponents of restoring access to OBCs for adopted adults argue that doing so is wrong not only because it violates an actual or implied agreement, but also because such access has the potential for real harm to birthparents. The examples usually cited are women who have never told their husbands or other family members about their secret, occasionally because their pregnancies were caused by rape or incest.

NCFA has posted several deeply emotional letters on its website from birthparents who express concerns about adult adoptee access to OBCs. An example follows from a woman in a state where adoptees have received unrestricted access.

... I am a birth mother who placed a baby girl for adoption in the 1980s. I gave my baby all I could: a family to love her and to call her own. I was counseled by the adoption agency I used that Oregon law ensured no identifying information would ever be shared about either of us without prior consent from both of us. I felt a tremendous sense of peace knowing we both had the freedom to decide for ourselves when or if we would desire to meet each other. ... Oregon has stripped me of that.

A related concern is that some adopted persons, once they know the identity of their birthparents, will directly invade their privacy by unwelcome contact. The argument is that keeping records sealed protects birthparents from such intrusion. As a representative of the New Jersey Catholic Conference noted, "Simply put, if the right to privacy means anything, then it means that one ought to be free from the perhaps unwanted visitor whose arrival was made possible by the Legislature's *ex post facto* about-face" (Brannigan, 2008, p. 3).

II.A.3 UNSEALING BIRTH RECORDS WILL HAVE NEGATIVE SOCIAL CONSEQUENCES

Critics of OBC access hold that changing current law affects not only women who relinquished in the past, but also those who will make decisions about their unplanned pregnancies in the future. Their assertion is that some will have abortions rather than give birth and place their children for adoption if they believe their identities might one day be revealed to their children. The Illinois Federation for Right to Life argued against legislation releasing information unless a disclosure veto was on file, stating that “without that guarantee of anonymity, many parents will decide against adoption and choose abortion instead. ... In states and countries that have stripped away this guarantee of anonymity, adoption rates have plummeted. We can't let that happen here in Illinois!” (Illinois Federation for Right to Life, 2010).

II.A.4 CURRENT POLICIES PROTECT THE INTEGRITY OF THE ADOPTIVE FAMILY

Concerns are not limited to adoptions that have already occurred. While most arguments focus on protection of birthparents from unwanted disclosure and contact, others point to the impact on the adoptive family – and on adoption per se. Provision of identifying information “establishes as the legal norm and the cultural expectation that adopted persons and their birthparents will and should ‘reunite’ when the child reaches the age of majority. Such a policy not only promotes emotional and traumatic experiences in families, it sends the corrosive message that adoptive families are somehow inadequate to meet the psychological needs of their adopted members” (Atwood of NCFA, 2007, p.464).

II.A.5 OTHER MEANS CAN MEET ADOPTEE NEEDS WHILE PROTECTING BIRTHPARENT PRIVACY

Finally, opponents to restoring adoptee access to OBCs maintain that changing these laws is simply unnecessary. They hold that because a range of other methods exist or can be put into place that better balance the interests of adopted persons who want more information against the wishes of birthparents who desire anonymity. Representatives of the Catholic Conference, NCFA and ACLU chapters have raised concerns that disclosure vetoes unduly burden birthparents, both because this change forces them to take an action they currently do not have to take and because they may not even be aware of the requirement. Confidential intermediaries also are seen as problematic because, even if the birthparents say “no,” the contact by the intermediary in itself still forces them to revisit a painful issue from the past.

In the view of many advocates for denying access, mutual consent registries are the best mechanisms for sharing identifying information. NCFA, for example, promotes that approach as most effective for balancing the desire of some adoptees to know their origins and the desire of some birthparents to keep their identities secret from their children. Such registries allow those who wish to know about or contact one another to be matched through a state-run process. Only if an adopted person and a birthparent both register will identifying information be shared. Such registries better protect the privacy of those who want to remain anonymous, it is held, and most states have such registries. As the ACLU of Illinois (2010) argues, “Because existing law provides reasonable opportunities to allow adoptees to attempt to identify their biological parents, there is thus no reason to upend settled expectations of confidentiality ...” (p. 2)

II. B ARGUMENTS FOR ACCESS TO BIRTH CERTIFICATES

Adoptees, often joined by birthparents and sometimes by adoptive parents and professionals, have organized for almost 40 years to restore legal access to their original birth certificates. An adoption reform movement began in the 1950s in response to the sealing of adoption records, but did not become well-organized until 1971 with the formation of the Adoptees' Liberty Movement Association (ALMA). Carp's (2007) historical review of the adoption reform movement in several English-speaking countries describes the platforms of several U.S. organizations (ALMA, the American Adoption Congress and Bastard Nation) created primarily to restore adopted adults' access to their birth information. Carp also explores the process through which governments attempted to understand and address this issue. Most advocates seek unrestricted access to OBCs for all adopted adults, and some oppose any compromise. For example, advocates including Bastard Nation – an adoptee rights organization – and the Green Ribbon Campaign for Open Records actively lobby against legislation that contains conditions like disclosure vetoes, while others accept alternatives that restore access to a large number of adoptees as an improvement on the status quo. The primary arguments advanced for changing current law are summarized below, punctuated by statements from members of the adoption triad excerpted from Jean Strauss' 2005 documentary *Vital Records*.

II. B. 1 ADOPTED ADULTS HAVE A FUNDAMENTAL RIGHT TO THEIR OWN BIRTH CERTIFICATES

Advocates for OBC access restoration hold that adult adopted persons have a fundamental right to know core facts about themselves – facts that further their knowledge about their medical and genealogical histories, as well as about their basic identities. Further, they say it is in their ongoing best interests (for instance, as they need medical background for their own children) to have access to such information. Whether or not the state acted appropriately in sealing records to protect their best interests as children, adoptees no longer need such protection from the state as adults. Advocates argue that by keeping OBCs closed, the state is no longer acting in their best interests but, instead, is focusing primarily on the assumed interests of birthparents or adoptive parents (Cabellero, 2006; Behne, 1996-1997).

Advocates also argue that adopted adults deserve equality with their counterparts raised in biological families; that is, they should receive the same rights and privileges as other citizens, including identical access to OBCs and the information on them. They assert that denying access to their OBCs discriminates against them solely on the basis of how they entered their families.

Here is how one adoption reform organization describes this stand: "Bastard Nation advocates for the civil and human rights of adult citizens who were adopted as children. Millions of North Americans are prohibited by law from accessing personal records that pertain to their historical, genetic and legal identities. Such records are held by their governments in secret and without accountability, due solely to the fact that they were adopted" (Bastard Nation website, 2010).

Advocates also point out that adoptees had no voice in the adoption process, nor did they participate in any discussions or agreements. They maintain that the rights of adopted persons therefore should not be "signed away" or waived by others for a lifetime.

II.B.2 SECRECY IS DAMAGING TO THE WELL-BEING OF ADOPTED INDIVIDUALS

Advocates maintain that adopted individuals need their OBCs in order to gain 1) information on their origins that assists them in developing positive identities and 2) access to ongoing family medical histories to inform themselves and their descendants.

Over the course of their lives, adopted individuals face the challenge of exploring the meaning of adoption and integrating it into their own identities. Unlike most others, adopted persons must consider why they are not with their biological families and how they became a part of their new families. Virtually all adopted persons, at some level, search for answers to these basic questions and others related to being adopted. The authors of *Being Adopted* (including a psychologist and a psychiatrist specializing in adoption research) wrote:

We are often asked, "What percent of adoptees search for their birth parents?" And our answer surprises people: "One hundred percent." In our experience, all adoptees engage in a search process. It may not be a literal search, but it is a meaningful search nonetheless. It begins when the child first asks, "Why did it happen?" "Who are they?" "Where are they now?" These questions may be asked out loud, or they may constitute a more private form of searching – questions that are examined only in the solitude of self-reflection (Brodzinsky, et al., 1992, p. 79).

The type of information adoptees need and want varies across individuals and can change at various periods in their lives. Further, they vary considerably in their levels of interest and need for answers, with some displaying minimal curiosity and others experiencing persistent yearning at times. Adopted individuals who feel a strong need for information but are unable after much effort to find satisfactory answers can feel profound powerlessness and can experience emotional struggles that are detrimental to their mental health and life satisfaction (Brodzinsky, et al., 1992; Triseliotis, 1973).

Advocates for restoring access stress the importance of OBCs to obtaining medical information. Without access to birth family names, adopted persons are barred from gaining fuller knowledge of their medical histories and genetic risks in order to make the best decisions about their own health treatment and that of their children. They may have only outdated information provided at the time of adoption, so adoptees without access to their birth families may not know they should have early screenings for certain conditions manifested by their biological relatives at a later time. They also may need answers to medical questions that were not included on a checklist completed long ago, perhaps before family patterns of illness were known. Also, they are blocked from access to birth relatives who might be matches for transplantation or other treatments where outcomes are more successful when there are matches with kin. Dr. Aubrey Milunsky, Director of the Center for Human Genetics at Boston University School of Medicine described the importance of this issue:

It is really unfortunate and indeed sad that individuals who have been adopted come away frequently with no information whatsoever about their family history, their ethnicity, about anything. There is no single genetic test or even a profile of genetic tests that allow an individual to retrospectively determine what in fact their family might have been carrying. It is really important to know your family history if you are to secure your health or the health of your children or even to save your life or the lives of your children (Strauss, 2005).

In addition, advocates for restoring access assert that denying adoptees identifying information about themselves and their origins can prevent them from knowing their siblings, learning their family histories, or filling in many of the missing pieces to gain a sense of wholeness and closure in their personal identities. A woman in her 50s who searched after her adoptive mother's death and found birth relatives shared this perspective with one of this paper's authors:

It's as though my life is a jigsaw puzzle, and there are about 20 pieces missing. Whenever I looked at the puzzle, my eyes would go directly to those missing pieces. Now I have filled in most of them, and I can see the whole picture.

II.B.3 ALTERNATIVE SOLUTIONS DO NOT ADEQUATELY MEET THE NEEDS OF ADOPTED ADULTS

Proponents of unsealing OBCs to adult adoptees hold that other alternatives – such as mutual consent registries and confidential intermediary services -- are costly and generally do not work. The evidence indicates the least effective are mutual consent registries, which have very low rates of matches. These advocates also object to another option: petitioning the court for OBC access. This mechanism is criticized because it is arbitrary (according to the legal interpretations, personal biases and variable knowledge about the issues involved by individual judges) and therefore constitutes inequitable decision-making. The reasons for release of OBCs are not clearly defined but, instead, individual judges decide what constitutes a “compelling” reason. In practice, courts seldom approve access in response to adopted adults’ petitions, even when there are significant circumstances such as life threatening medical conditions.

II.B.4 SECRECY UNDERMINES THE INTEGRITY OF ADOPTION AND PERPETUATES SHAME

Secrecy is a response to events or circumstances that we do not want others to find out about; in the words of Pertman (2000), “We keep secrets about things we’re ashamed of or embarrassed about.” Adoptees sometimes feel that something about their very being caused the adoption. The secrecy surrounding confidential, or closed, adoptions reinforces this belief and intensifies consequent feelings of shame and guilt (Silverstein & Roszia, 1988).

Those who work to have OBC access restored hold that secrecy in adoption was created primarily to shield adopted persons from prejudice at a time when illegitimacy was highly stigmatized. Two well-known adoption experts, Reitz and Watson (1992), described the fallacies of this approach: that no one understood the negative impact absolute secrecy would have on the child’s development, the psychological adjustment on birthparents who could not live happily ever after without knowledge of what became of their children, or on adoptive parents who were attempting to have an exclusive claim on a child by denying the reality of the birth family.

Advocates note that volumes have been written within the adoption field on the destructive impact of secrecy and lack of access to information for adoptees (Paton, 1954; Triseliotis, 1973; Lifton, 1988; Sorosky, Baran, & Pannor, 1978; Pertman, 2000; Schooler & Norris, 2002). Schooler and Norris describe the cost of keeping secrets in these words:

Secrets within any family distort reality, undermine trust, and destroy intimacy. Secrets create exclusion, destroy authenticity, produce fantasies, evoke fear, and kindle shame. For those touched by adoption, there is a high cost to pay (p. 10).

Advocates argue that sealing birth certificates has placed adoptees in a position of inequality and powerlessness to gain basic information that all other Americans possess. Barring them from accessing facts about their origins accentuates their difference from others and perpetuates shame or a sense of “being lesser.” Adopted individuals are frequently put in the position of explaining this difference, such as when they go to a doctor’s office and are asked questions about their medical history or when their children ask questions about their nationality for a school project. On many levels, secrecy and the mystery surrounding confidential adoption create ongoing negative

messages or experiences related to being unlike the rest of the world. Two adopted adults expressed these feelings in Strauss' 2005 documentary, *Vital Records*:

Robert O'Connor: "Not having access to my OBC makes me feel second class, like there's something second class about the way I came into this world ... the way I'm recognized legally, socially."

Janet Allen, describing her experience after access was restored in New Hampshire: "On January 3 when I was able finally to get a copy of my OBC, walking down that hallway, I was extremely happy; I was excited; I was a little nervous. I can remember going up to the counter and I gave them the form and my money. And then, suddenly, just as easy as could be, they handed it to me. It was as though I stepped over a magic line and suddenly I was equal to everybody else in that room."

U.S. adoption agencies today generally embrace honesty and openness in the adoption process and advise those principles in guiding ongoing parent-child communication about adoption issues. The vast majority of agencies offer fully disclosed or "open" adoptions, in which birthparents and adoptive parents meet and exchange identifying information, as a choice for their clients, with some offering only this option or promoting it (Henney, et al., 2003; Evan B. Donaldson Adoption Institute, 2006).

Advocates for restoring access to birth records view an end to secrecy from adoptees as supporting the institution of adoption. They point out that statistics contradict opponents' contention that unsealing records can cause abortion rates to rise. And they argue that there is no basis for claiming that OBC access would decrease the number of adoptions. In fact, they suggest the opposite – that some expectant parents in unplanned pregnancies are more likely to consider adoption if there is the possibility of maintaining some knowledge of or connection to their sons or daughters.

II.B.5 BIRTHPARENTS DO NOT NEED - AND USUALLY DO NOT WANT - 'PROTECTION'

Advocates assert that there is no legal or factual foundation for contending that adoption records were sealed to protect birthparents, or that birthparents were legally guaranteed lifelong anonymity from their children. Indeed, neither state laws nor adoption relinquishment documents have ever offered such a guarantee to birthparents.

Most women who surrendered children for adoption in past generations were not offered an alternative to closed adoption and had no mechanism for expressing their willingness to have their identities disclosed to their sons or daughters when they reached adulthood. Confidentiality for most was not a choice, but an inherent part of the adoption process (Schooler & Norris, 2002). Even those who desired confidentiality at the time of the relinquishment may have changed their minds over time as their life circumstances changed, and the available evidence indicates this is in fact the case. While a small number currently may desire that their identities remain hidden from their children, both experience and available research indicate the vast majority want to know about the well-being of the children they created – and therefore support (or at least do not oppose) access to OBCs (Evan B. Donaldson Institute, 2006).

In Strauss' documentary, a birthfather reflects on his child's inability to gain access to his OBC, stating: "One thing that doesn't make sense to me is that my privacy is more important than my child's sense of history or continuity about who he or she is. That doesn't make any sense to me. My privacy *isn't more important than that*" (Strauss, 2005).

SECTION III:
KNOWLEDGE AND EXPERIENCE
THAT INFORM THE DEBATE

III.A LEGAL PERSPECTIVE ON RIGHTS OF BIRTHPARENTS AND
ADOPTED ADULTS

Both sides of this debate argue from a position of rights. Proponents suggest that access to the truth of their origins is a basic human and civil right, one that is accorded to all other Americans. Opponents maintain that birthparents have a right to privacy, which was either promised or implied. Both sides have laid out their positions in court cases over the years.

Adopted persons have tried repeatedly to assert that they have constitutional rights to their birth information. These claims have not been successful in court cases. Likewise, birthparent claims to a constitutional right to privacy have been routinely rejected by the courts.

Adopted individuals have been legally challenging the closing of their birth records since the 1970s. Their arguments have been based on several constitutional claims, in particular the Due Process clause of the Fourteenth Amendment. In a widely cited 1979 case – ALMA vs. Mellon – adoptees in New York argued that the Constitution protected their access to the information they were seeking because it was essential to their self-development. Further, they asserted that sealed records violated the Equal Protection clause by treating adopted persons differently from their non-adopted peers. The Second Circuit rejected the claim that the basic rights of “personhood” entitled adoptees to their birth records and said their claims did not fit into any established category of privacy (Cahn & Singer, 1999).

In rejecting adoptees’ claims as individuals, the decision stated that the request involved the interests of two families – the biological and the adoptive. The court held that significant interests of adoptive families could be adversely affected through the disclosure of birthparents’ names. Noting that the court must consider “the nature of relationships and choices made by those other than the adopted child,” it held that the birthmother’s decision to keep an adoption confidential was important as it likely influenced her decision to place the child for adoption (Cahn & Singer, 1999, p. 160). Though it acknowledged that the interests of the parties were not always separate and in opposition, the court accepted the state’s approach (i.e. sealing birth certificates permanently) as the best way to protect each group (Cahn & Singer, 1999).

While the courts have rejected a constitutional right to information for adopted persons, they have also rejected birthparent claims to a constitutional right to privacy from the children they relinquished. Further, the idea that birthparents were routinely assured of privacy is being questioned by some researchers and practitioners. For instance, legal scholar Elizabeth Samuels (personal communication, July 6, 2009) in her review of 50 relinquishment documents from 21 states, has found “no evidence that women were given any legal promises of confidentiality. To the contrary, when documents refer to future contact, it is to protect adoptive families from communications from the birthmother. Furthermore, the documents provide that the birthmothers were not entitled to any information about the child they relinquished.” Conversely, agencies often provided birthparent identifying information to adoptive parents, in some cases on the adoption decree.

Legal cases in states that have restored access have considered the interests of both birthparents and adoptees. Courts have held that a) there is no enforceable contractual guarantee to birthparent anonymity from adoptees, b) there is no constitutional right to privacy protecting birthparent anonymity from adoptees, and c) there is no statutory guarantee of birthparent anonymity from

adoptees. Tennessee's statute restoring access to OBCs was upheld after a series of reviews in state and federal courts, where birthparent assertions of privacy were rejected. The federal Court of Appeals of the Sixth Circuit also concluded that the public interest was not served by a stay of implementation, noting that the law was an appropriate attempt to weigh and balance the interests of children adopted at an early age to know who their birthparents were – an interest the court said was entitled to respect and sympathy – and the interest of birthparents in the protection of the integrity of a sound adoption system (*Doe v. Sundquist*, 1999).

The Tennessee Supreme Court likewise rejected the claim that access to birth records violates traditional familial privacy rights such as marrying, having children or raising children. The court asserted that the statute provided adequate protection to birthparents in that the state legislature determined access to be in the best interests of adopted persons and the public, that the law contains a contact veto, and that the risks of disclosure are minimal 21 years after the adoption (*Doe v. Sundquist*, 1999).

Oregon, which restored adult adoptee access to birth records following a voter referendum, is an important testing ground for the concept of birthparent rights to privacy from their children. In 1999, the state's Court of Appeals rejected a claimed right to privacy under the federal Constitution, finding that "Although adoption is an option that generally is available to women faced with the dilemma of an unwanted pregnancy, we conclude that it is not a fundamental right. Because a birth mother has no fundamental right to have her child adopted, she also can have no correlative fundamental right to have her child adopted under circumstances that guarantee that her identity will not be revealed to the child" (*Doe 1-7 vs. Oregon*, 1999).

If there is no privacy right for birthparents, is there at least a right to protection of a verbal or assumed promise? Opponents to restoring OBC access argue that doing so retroactively violates a promise to birthparents that their identities would be protected. There is evidence to suggest that at some points in modern adoption history, some agencies did verbally assure anonymity and/or confidentiality to both adoptive and birth parents. A study of 163 Child Welfare League of America (CWLA) member agencies found that agencies shared a great deal of information with adoptive families (although they were reluctant to disclose that a child was relinquished due to rape or mother's incarceration), that they had conducted occasional searches, and that the majority of birthparents located were agreeable to meeting adult adoptees. Most agencies, however, indicated it was their practice to inform birth and adoptive parents that identifying information would not be made available (Jones, 1976).

In 1978, in its *Standards of Excellence for Adoption Service*, the CWLA recommended that "services to natural parents should preserve confidentiality" and that adoptive and birthparents should not have information about one another (CWLA, p. 21). The League recognized, however, that the two sets of parents could not be ensured of confidentiality, and it developed procedures to follow should a court require information or if state law allows it (Kadushin & Martin, 1988).

While adoption agencies and others may have given oral assurances to birthparents of lifelong confidentiality from adoptees, it is clear in retrospect that they could not be guaranteed. States have long allowed adoptees to petition the court to gain access to original birth information; some have been granted, and the possibility of that occurring was always present. Further, the sealing of OBCs does not occur at relinquishment (giving custody to the state or an agency, which then places the child with an adoptive family), but at the time of an adoption's finalization—two events that often take place six months to a year apart. Thus, if a relinquished child was not adopted, or if the adoption was annulled, the OBC was not permanently sealed and replaced with an amended birth certificate.

Moreover, in a majority of states, the child's name is not changed if the adopting parents do not want it done. The statutes of at least 28 states and territories specifically provide that the adoptive parents

control whether the child's name shall be changed and an amended birth certificate issued, and therefore whether birthparent identity will be confidential (Greenman, personal communication, June 28, 2010.) Further, adoption practitioners could not know whether their states would at some point unseal adoption records. As noted earlier, two states never denied adopted adults access to their birth certificates. As late as 1960, 40 percent of states had not sealed OBCs from adopted adults. And it was only in 1990 that Alabama first passed a law closing its records, a decision that was reversed by statute just a decade later. While in most states it was likely that such information would not be released, there simply was no guarantee of that anywhere.

For reasons of potential legal liability, because promises of future anonymity could be incorrect or even perceived as fraudulent, at least one major adoption agency with offices in over 40 states (LDS Family Services) has for many years required all prospective birthparent clients to sign a document that includes a statement that they cannot be guaranteed anonymity from their relinquished children. It reads: "Future legislation may make it possible for children relinquished for adoption to obtain knowledge regarding their birth parents" (Jean Earhart of LDS Family Services, personal communication, June 30, 2010).

Courts in Oregon and Tennessee have found that even if a promise of confidentiality was made, it was not legally enforceable. The Oregon Court of Appeals found that private adoption practitioners were not agents of the state, thus could not make legally enforceable guarantees about confidentiality. Further, even state agents had no authority to make such a promise as the closure statutes because it was unenforceable (*Doe 1-7 v. Oregon*, 1999). The Supreme Court of Tennessee likewise found that birthmothers "could not reasonably rely on the alleged assurance of confidentiality from either a state agency or state regulation" given that records have never been absolutely and permanently sealed (*Doe v. Sundquist*, 1997).

In considering the question of promises of anonymity in adoption, it is important to remember the original intent of OBC closure. As stated earlier, when states moved from sealing records from the public to sealing records from the involved parties, one rationale was to protect the integrity of adoptive families, including from intrusion by birthparents. Both the U.S. Children's Bureau and the Child Welfare League of America in the 1940s and '50s argued in favor of sealing records as a means of protecting the adoptive family. In 1955, the U.S. Children's Bureau maintained that adoptive placements should be made so as "the natural parents do not know where the child is" (U.S. Children's Bureau, 1955, p. 13).

The CWLA counseled that adoptions were best conducted so that biological parents did not know with whom their children were placed (CWLA, 1952). Margaret Morlock of the Children's Bureau wrote that an adopted child needed protection from the "interference of his natural parents after he has been happily established in his adoptive home" (1945, p. 168). As noted earlier in this paper, Morlock also made clear that adopted adults should have access. Legal scholar Elizabeth Samuels (2001) asserts that pregnant women sought "protection from the discovery of their situations by their families, and communities, rather than protection from the discovery of their identities by the adoptive parents and thus by extension their surrendered children as adults" (p. 67). In sum, American courts have not found that adopted persons have a constitutional right to information about their origins. Nor have the courts found that birthparents have a constitutional right to privacy from their children.

III.B HOW DOES THIS ISSUE IMPACT THE WELL-BEING OF ALL PARTIES TO ADOPTION?

Restoring adult adoptees' access to their OBCs has implications for all members of the adoption triad and for others who are their kin by birth, adoption, procreation and marriage. It also alters the legal and social context of adoption practice by formalizing a cultural change that has already happened (the movement away from secrecy in adoption practice) and by putting adopted adults on a level legal playing field with other Americans. Adopted adults may or may not use the information they obtain from their OBCs to search for their birthparents. According to both research and decades of experience, adopted adults who choose to search make it clear that they are not rejecting their adoptive parents or looking for new ones. Rather, they are primarily manifesting a desire to complete their understanding of their personal histories and heritage (Sobol & Cardiff, 1983; Triseliotis, Feast, & Kyle, 2005).

III.B.1 ADOPTED INDIVIDUALS

There is evidence that most adopted individuals have psychological and/or medical needs for their birth information and, consequently other information that access to OBCs would enable them to obtain. As Brodzinsky and his colleagues recognized, all adopted individuals go through an internal search for answers to myriad questions throughout their lives. As children, they ask questions that their parents may or may not be able (or want) to answer. It also may be that whatever information parents have is not shared with their children. As discussed further below, parents' supportiveness of their children in addressing this need is a primary factor in shaping both their children's adjustment and their own family relationships.

DO MOST ADOPTED INDIVIDUALS NEED OR WANT IDENTIFYING BIRTH INFORMATION?

As early as 1971, the American Academy of Pediatrics' Committee on Adoptions (AAP) recognized: "The most helpful thing a human being can learn in life is to be conscious of himself as an individual, and to be aware of who and what he is. Determining identity is a difficult process for some brought up by his natural parents; it is more complex for the individual whose ancestry is unknown to him" (p. 948). The AAP (1971) elaborated that the "driving need for identity and independence is ... indigenous to the individual" and "[t]here is ample evidence that the adopted child retains the need for seeking his ancestry for a long time" (pp. 948-49). More recently, the AAP's guidance for pediatricians concerning adoption asserts, "As children age into adolescence and adulthood, adoptive children may wish to seek out more information about their biological families . . . it is actually a sign of healthy emotional growth in the search for identity" (Borders, p. 1440).

Adopted individuals fall along a continuum related to their interest in and involvement with adoption-related issues, and it varies in intensity at different periods of their lives. Some show minimal interest in adoption, while others struggle and eventually come to terms with issues, and still others remain unsettled (Dunbar & Grotevant, 2004). Some studies of both adopted teens and adults find the range of interest breaks down to roughly one-third with low interest or preoccupation, one-third with moderate interest, and one-third with intense preoccupation (Kohler, Grotevant, & McRoy, 2002; Powell & Afifi, 2005).

These issues ebb and flow across the lifespan and sometimes events such as having a first child, encountering medical difficulties, or experiencing the death of a family member can prompt a strong need or desire to obtain specific information from birth relatives. Some individuals just yearn to know who they look like or want more complete answers to long-standing questions about the circumstances leading to their adoptions. Seeking identifying information relating to one's birth is typically a means to an end of gaining information, closure, an authentic sense of one's own identity,

and sometimes the opportunity for a relationship with birth family members. The quotes below illustrate these motivations (Brodzinsky, et al., 1992):

To say that having this information was important to me is an understatement. It seemed to fill some kind of empty space in me that I didn't even know existed. It was like I had been walking around with holes or parts of me missing without actually realizing it. Suddenly someone hands you a piece and you realize it's part of you and it fits one of the holes. Amazing! (p. 129)

Without a past, I wondered about the future. As a pregnant mother I worried about what hereditary surprise would occur. I resented not knowing even what color eyes the child would have. (p. 134)

It's like a feeling of not being real. I'm like a fictional character in a story, the product of a writer's imagination. ... I need to feel real, to feel that I'm authentic. I want to be like every other human being who knows where he came from and where he belongs. Searching is my way of bringing some substance to who I am. (p. 143, 145)

It's one thing to be a second-class citizen oneself. It's quite another to condemn one's children to no information or heritage. (p. 134)

The Evan B. Donaldson Adoption Institute's (2009) study of identity among 468 adult adoptees – the most extensive such research to date – found that adoption is an increasingly important factor in adoptees' lives, not just as children and adolescents but throughout adulthood. For example, about three-fourths of the respondents rated their identity as an adopted person as important or very important during young adulthood. When asked to cite the experiences or services that were most helpful in achieving positive identity, U.S.-born respondents rated contact with birth relatives as most important; the vast majority (86%) had taken steps to find their birth families, and a sizable minority (45%) had contact with them. Overall, searching by adopted adults is becoming increasingly common. Early studies reported fairly low rates (around 15%) of adopted adults searching (Triseliotis, 1984); however the Institute study and an earlier review of other studies (Muller & Perry, 2001) indicate that at least half of adopted adults search for identifying information and/or to make contact, and there is evidence that the numbers are rising as a result of social networking sites and other internet tools.

The available evidence from other countries that have granted adopted adults access to OBCs suggests most adopted individuals seek this information. In the 80 years that records have been open in Scotland and during more than a quarter century in England and Wales, 55 percent of the 550,000 adults adopted in those countries have sought information from their records and/or have established contact with birth relatives, usually their mothers (Carp, 2007).

Finally, the CWLA, a national organization that sets standards for best practices in adoption, stated in its *Standards of Excellence for Adoption Services (2000)*:

The interest of adopted adults in having information about their origins have come to be recognized as having critical psychological importance as well as importance in understanding their health and genetic status. Because such information is essential to adopted adults' identity and health needs, the agency should promote policies that provide adopted adults with direct access to identifying information.

HOW IMPORTANT IS IT FOR ADOPTED ADULTS TO HAVE CURRENT MEDICAL HISTORIES?

Adoption agency collection of birthparent medical information historically has been inconsistent and incomplete, and has captured only a “snapshot” of the data provided at the time of relinquishment. That means, at best, the information is 18 years old when the adoptee reaches the age of majority. One reason many adopted adults want access to their OBCs is to learn their birthparents’ names so they can expeditiously obtain up-to-date, and ongoing, medical information; genetics experts have recognized family history is the strongest predictor of risk for many common illnesses such as heart disease and diabetes, among others (Collins & McKusick, 2001). In the absence of such information, individuals may undergo unnecessary medical tests or may fail to receive necessary screenings at prescribed ages when they have a genetic risk for certain ailments.

In 2009, the U.S. Surgeon General established a Family History Initiative, which recognized that familial medical history can be of vital importance in the diagnosis and treatment of medical conditions and illnesses that are genetically based. Similarly, the Centers for Disease Control, Office of Public Health Genomics (CDC OPHG), in 2002 established the Family History Public Health Initiative “to increase awareness of family history as an important risk factor for common chronic diseases such as cancer, heart disease, and diabetes, and to promote its use in programs aimed at reducing the burden of these diseases in the U.S. population.” OPHG noted that many Americans had not collected their information and that most adopted persons cannot.

Many federal public health agencies have acknowledged that family medical and genetic data have the potential to aid in the prevention, early detection and treatment of thousands of inherited diseases. Over 6,000 genetic and rare diseases afflict more than 25 million Americans, and approximately 30 percent of early deaths are linked to genetic causes (NIH, 2009). These medical realities underscore the importance for adopted adults to have up-to-date medical information on birth relatives’ health whenever possible.

In addition to information to inform their own and their children’s medical treatment, adopted individuals may at times need to seek biological family members to explore opportunities for transplants and other medical treatments that are most effective with donors who are closely matched kin. There also are likely to be times when the converse is true; that is, the adoptee could provide a match to assist a biological relative.

ARE ADOPTEES HARMED BY THEIR INABILITY TO GAIN INFORMATION ABOUT THEIR ORIGINS?

Research on adoption has established a link between intense emotional struggle related to adoption issues and mental health, social or emotional/behavioral problems. Children can struggle with their feelings related to being adopted, and studies have documented that emotional turmoil and difficulty related to adoption issues is associated with greater adjustment problems, including depression, lower self-worth, anxiety and behavior problems (Smith & Brodzinsky, 2002; Juffer, 2006; Smith, Howard, & Monroe, 2000). Similarly, research with adopted adolescents has linked very high levels of preoccupation with adoption with significantly higher levels of alienation and lower levels of trust for adoptive parents (Kohler, Grotevant, & McRoy, 2002).

Clinical adoption literature has highlighted the negative psychological impact on adoptees of both secrecy and a lack of information about their origins. Secrecy is associated with barriers to trust and intimacy in the parent-child relationship – and sometimes in other intimate relationships – and the lack of information is associated with confusion, uncertainty and other negative psychological effects (Brodzinsky, 1987; Hartman, 1993; Schooler & Norris, 2002). The negative impact of secrecy on adopted persons and adoptive family functioning also has been documented in research, beginning with a landmark study that was commissioned by England’s Parliament when it was considering

access legislation (Triseliotis, 1973). This study and more recent ones document the negative impact that secrecy and difficulty communicating about adoption has on adoptive family dynamics and on adoptees' identity, overall mental health and intimate relationships (Brodzinsky, 2006; Triseliotis, 1973; Triseliotis, Feast, & Kyle, 2005; Passmore, Foulstone, & Feeney, 2007).

The negative impact of lacking sufficient medical and genetic family history information is one area for potential harm to both adopted persons and their progeny that is both apparent and potentially life-threatening. Often insurance companies will only pay for genetic testing or early screenings when there is a known family medical history indicating a higher risk for specific conditions. The experience recounted below illustrates this problem for some adopted adults:

My wife was adopted in 1959. ... She has always wondered where she came from and who she looked liked. She has no idea what her roots are and an OBC would help with that. Last year she went to the doctor for a breast exam and they found something in her breast. The doctor asked her if breast cancer runs in her family and she couldn't answer that question. The doctor suggested she get the BRCA gene testing because she has 3 daughters and a granddaughter and the gene might be carried down to them, but [her insurance company] denied her that test because there was no family history. Now if she had her OBC she might be able to get her family history (NJ News, 2010).

III. B. 2 BIRTHPARENTS

There is a significant body of evidence suggesting that the proportion of birthparents who wish to remain anonymous to their relinquished offspring is extremely small. The most tangible indication of this reality is the low number of birthparents who have filed no-contact preference forms in states and countries that grant adopted adults access to their OBCs but have a provision for birthparents to register whether they want contact. Table I below reports data on no-contact preferences registered in four states where access was granted unconditionally. It also includes the number of disclosure vetoes filed in Delaware, where no OBC is provided if a disclosure veto is on file.

Table 1 Birthparent No Contact Preferences/ Disclosure Vetoes Filed

State	Access Results
Alabama	From 8/2000 – 7/09, 4,227 adopted adults obtained OBCs. 207 contact preference forms filed; less than 1 percent not wanting to be contacted ²
Delaware	1/99 – 10/06, 695 obtained OBCs 18 did not receive OBCs as a result of disclosure vetoes ³
Maine	Since 1/09, 542 obtained OBCs 8 no contact preference forms filed ⁴
New Hampshire	1/05 – 6/09, 1,224 obtained OBCs 12 no contact preference forms filed ⁵
Oregon	5/2000 – 5/09 10,189 obtained OBCs 494 birthparents have requested contact, 34 requested use of an intermediary & 85 requested no contact ⁶

² Phone conversation with Reginald Strickland, Deputy Director, Alabama Center for Health Statistics, Alabama Department of Public Health, Aug. 10, 2009.

³ American Adoption Congress, Adoption and Abortion Data from States Who Have Enacted Access, compiled April, 2009. Available at: http://www.americanadoptioncongress.org/reform_adoption_data.php

⁴ AAC (above)

⁵ See annual tables, available at: New Hampshire Pre-Adoption Birth Records, Available at: http://www.sos.nh.gov/vitalrecords/Preadoption_birth_records.html#progress

⁶ Oregon Center for Health Statistics, Measure 58 Update, Available at: <http://www.oregon.gov/DHS/ph/chs/order/58update.shtml>

The number of birthparents filing no-contact preference forms in all of the four states granting unconditional access constituted 1 percent or less of the total OBCs released. If the percentage were based on the total number of birthparents who might have filed forms, it would be even smaller, because there would be additional adopted adults who had not requested their OBCs, and many would have more than one parent listed on their OBC. Some may question whether the small number of contact vetoes or no-contact preference forms is the result of a lack of birthparent knowledge about this provision in the law, or perhaps even a lack of knowledge that the law exists. This seems unlikely to have been the case at least in Oregon, however, since the change was on the ballot and received extensive, prolonged attention in the state's media.

There is additional evidence in surveys of birthparents about their interest in ending their anonymity from their grown children. Research on birthparent attitudes is hard to conduct because the population is largely invisible, so samples are not random and those who are open about being birthparents are more likely to be represented. However, available research to date consistently shows that the overwhelming majority of those who make their views known support access. The best-designed U.S. study with data on this issue is a longitudinal study on adoption openness that explored the attitudes of 125 birthmothers about their roles in their birth children's lives over 12 years after placement. The adoptions in the study ran the gamut from confidential to open, but none of the birthmothers felt negatively about a birth child initiating a search for them (Ayers-Lopez, Henney, McRoy, Hanna, & Grotevant, 2008).

There also is evidence relating to birthparents' preferences derived from the work of task forces or other sources involved in assessing the issue for state legislatures. The Maine Department of Human Resources Task Force on Adoption (1989) found that every birthparent surveyed (130) wanted to be found by the child/adult they had relinquished for adoption. Affidavits seeking to bar access related to the Tennessee case reported more than 99 percent of Tennessee birthparents welcomed contact (Sandine & Greenman, 2001).

Contrary to the stereotypes that have been created about them, very few women choosing adoption today and a small percent of those from the past seek anonymity from their children or express a desire for no information or contact. Furthermore, many pregnant women today seek open adoptions that include written agreements for ongoing contact with the adoptive families. Indeed, Grotevant has suggested that the contemporary model of adoption "is additive: Parenting rights and responsibilities are transferred, while connections established by birth are maintained yet significantly transformed" (Grotevant, 2007, p. 125).

Research on birthparents completing adoptions during the middle of the 20th Century shows that many felt they had no choice in the process. Fessler's (2006) moving oral history drawing from over 100 interviews with women relinquishing children in this period reported that many of them felt coerced by their parents and others, including school and medical personnel, social workers, clergy and maternity home staff. The women received no encouragement to become parents, but got consistent messages about the harm that would come to their children if they selfishly insisted on raising them. Some of the women reported financial pressure as well; that is, they were told that if they didn't sign relinquishment papers, they would have to pay the maternity home for the care they received. Fessler found that most of the women were haunted by grief and shame throughout their lives, and suffered from an ongoing sense of worry about how their children were doing. More than half of these women had succeeded in finding the children they bore, a process that helped them deal with their unresolved regret and sadness.

“I have never forgotten for one minute that I have a son ‘out there.’ It has always hurt worrying about him and not knowing if he’s okay... I basically did not ‘go on with my life’ in some respects. Something in me simply stopped and never started again.”

Empirical studies consistently show a significant proportion of birthmothers have struggled with chronic, unresolved grief (De Simone, 1996; Winkler & van Keppel, 1984). For example, in the latter study of 213 women who relinquished children between four and 20 years in the past, about half reported an increasing sense of loss since placing their children. Living with the uncertainty of what became of their children is identified by birthmothers in closed adoptions as the most difficult factor they cope with, and receiving information about those children is singled out in the research and literature as the most important factor that would help to bring them peace of mind (De Simone, 1996; Wells, 1993; Grotevant & McRoy, 1998). This desire to know about their offspring appears almost universal. For example, one study of birthmothers in Britain, who ranged in age from 22 to 81, found all but nine of the 262 respondents (about 3%) wanted basic information about their children. The same small number said they wanted to preserve the secrecy of their identities from their children (Wells, 1993).

A British study comparing 394 adopted adults who had searched to 78 who had not done so interviewed the parties involved in reunions, including birthparents (Triseliotis, et al., 2005). The vast majority of birthparents involved in reunions reported personally positive results from the experience – no more guilt (79%), sadness or grief (79%), or confused feelings about their sons or daughters (69%). These healing outcomes sometimes occur even among birthmothers who have kept their pregnancies a secret from others and who fear having this exposed.

While there are undoubtedly some birthparents who have kept their secret from family members and would prefer to continue doing so, they clearly represent a small proportion in comparison to the majority who want to know what became of their children and have no desire to be protected from the possibility of contact. In reality, keeping OBCs sealed does not offer real protection to many if not most of these birthparents anyway, since their information can still be unsealed by a court, states can change their laws, the internet and other resources are making it increasingly easy to find people in every realm, and professional and amateur searchers often locate birthparents without using original birth certificates.

III.B.3 ADOPTIVE PARENTS

Some opponents of restoring access to OBCs express concern that changing current law would undermine the integrity of the adoptive family and would attack “a very foundation of adoption, that the adoptive family is the child’s true and permanent family” (Atwood, 2007, p. 464). In reality, both research and experience show that birthparents are psychologically present in most adoptees’ lives, with or without identifying information. Most adoption professionals today explain this to adoptive parents, and tell them that failing to recognize the importance of the original family to their children – or to be unsupportive of their children’s need/desire to find whatever answers they are seeking related to their backgrounds – can erect a barrier between the parent and child, which itself can undermine the adoptive family’s integrity (Brodzinsky, 2006; Brodzinsky & Pinderhughes, 2002; Reitz & Watson, 1992; Schooler & Norris, 2002).

It is a natural and understandable emotional reaction for adoptive parents to initially feel uncomfortable, or even threatened, in supporting their children’s interest in their birth families, particularly if the children have experienced maltreatment. However, as they become secure about the bond and love with their child, adoptive parents typically learn to deal with these feelings and focus on their children’s best interests. Secrecy in adoption exists on a continuum. This involves how

adoption and birth family issues are handled within the family, as well as the extent to which information about biological relatives is available to the adoptive parents and children. Research has shown that secrecy within adoptive families, attempts to deny or suppress children's interest in their birth families, and parents' difficulty in communicating freely with their children about adoption are all linked with greater distance in the parent-child relationship in childhood and adulthood – as well as with more adjustment difficulties for the children (Brodzinsky, 2006; Rueter & Koerner, 2008; Kohler, Grotevant, & McRoy, 2002; Passmore, Feeney, & Foulstone, 2007).

When adopted adults feel the need or desire to gain identifying information and, for some, to search for birth family members, adoptive parents' support is extremely important to them; indeed, withholding such support can cause distance in the parent-child relationship (Passmore, et al., 2007). The reality is that reunions and relationships with birth family members rarely undermine the adopted persons' feelings toward their parents. In the British research on adoptee searchers and non-searchers, which is the most extensive study on this subject to date, 97 percent of the searchers stated that meeting their birth relatives made no difference in their feelings for their adoptive parents (Triseliotis et al., 2005).

GROWING NUMBERS OF ADOPTIVE PARENTS SUPPORT THEIR ADOPTED CHILDREN'S HAVING ACCESS TO IDENTIFYING INFORMATION AS ADULTS

The available studies, while few, show that adoptive parents are secure in their relationships with their children and increasingly support their efforts to learn more about their birth families once they reach the age of majority.

In a survey of 1,274 adoptive parents in New York, only 10 percent disagreed with the position that state law should allow adult adoptees to obtain their OBCs, with another 7 percent being undecided (Avery, 1998); in this study, about half of the respondents had adopted from foster care. The Maine Department of Human Resources Task Force on Adoption found an even higher percentage of adoptive family support for access. In its 1989 study, the Task Force found that 98 percent of the adoptive parents supported reunions between their adopted children and birth family members (Maine Department of Human Resources, 1989).

Longitudinal research on openness in adoption, in which 177 adoptive families with varying degrees of openness participated, found that almost all respondents with some contact with birth relatives wanted the same or more contact in the future (only .7 percent of respondents wanted contact to decrease). In families who had never had contact with birth families, 92 percent of adoptive parents reported that they either desired contact in the future or wanted this left up to their child (Grotevant, Wrobel, Korff, Skinner, Newell, Friese, & McRoy, 2007).

III.C DO ALTERNATIVE SOLUTIONS ADEQUATELY ADDRESS ACCESS ISSUES?

III.C.1 COURT PETITIONS

In about half of the states and Washington, D.C., adopted persons must petition the court for release of their original birth certificates, contingent on a judicial finding of "good cause" or similar language. There is no database on the number of cases seeking access to OBCs, nor on the number of petitions granted or the reasons for approving or not approving them. Without standards defining "good cause," adopted individuals' ability to obtain their OBCs can result in arbitrary and inequitable treatment. Some courts have accepted psychological need as constituting good cause, while others have determined that even extreme medical need is not sufficient. For example, an Iowa court, in rejecting a request for access, defined good cause as "necessary to save the life or prevent

irreparable physical or mental harm to an adopted person or the person's offspring" (Adoption of S.J.D., 2002). In responding to petitions to unseal records, courts weigh the demonstrated need of the adoptee-petitioner against the presumed interests of the birthparent, who is not a party to the proceedings and whose desires are therefore unknown. Frequently, courts conclude that the birthparent's presumed interests outweigh the adopted person's stated need.

III.C.2 MUTUAL CONSENT REGISTRIES

Mutual consent registries allow adopted persons and birthparents to express their willingness to share information and/or make contact, but they have flaws that prevent them from being effective. If only one party registers, for instance, the state does not typically seek out the other to determine his or her knowledge of the registry or interest in releasing or receiving information. These registries are also usually poorly funded and understaffed (Kuhns, 1994; Lum, 1993; Strasser, 1994; Mitchell, Nast, Busharis & Hasegawa, 1999), and most people simply don't know they exist. A survey of state registries found that "Locating a staff member knowledgeable about registry operations in at least half of the 21 states surveyed required between eight and ten phone calls. ... Only 3 states had made any noticeable effort to actively promote their registries" (Mitchell, et al, 1999, p. 33).

Critics of mutual consent registries – also sometimes called "passive" registries – point out that they make few matches: reunion rates through them range from "a high of 4.4% to a median of 2.05%" (Samuels, 2000–2001, p. 432). A 1998 survey of these registries in 18 states found match rates from 0% to a high of 14% (Mitchell, Nast, Busharis, & Hasegawa, 1999). Fourteen of the states had match rates of less than 5% (Busharis, Nast, NJ Coalition for Openness in Adoption, Micheli, M & Illinois Coalition for Openness in Adoption, 1999).

Another limitation of mutual consent registries is that they are state-specific, so they cannot facilitate matches across borders, and they require adopted persons to know the dates and places of their birth (the latter of which may have been changed on their amended birth certificates). For example, in North Carolina from 1949 until rewriting of the statute in 1995, the law specified that amended birth certificates for adoptees change their birthplaces to the residences of their adoptive parents and omit the names of the attending physicians and the local registrars (General Statutes of North Carolina, Section 48-29 of Chapter 48 Adoption of Minors). Finally, matches are impossible if either the birthparent or the adopted person does not register because he/she has died, though the other may still want to find identifying information or other relatives.

In addition to state registries, there are private ones, such as the International Soundex Reunion Registry (ISRR), which facilitates matches globally among birth and adoptive family members. The ISRR director, Marri Rillera, (personal communication, July 21, 2009) reports that Soundex had almost 213,000 searching registrants (approximately 60% adoptees and adoptive parents and 40% birthparents and siblings) as of year-end 2008. Of those, more than 65,000 registered or provided updates in 2008; ISRR made 608 matches that year.

III.C.3 ACTIVE REGISTRIES

Active registries – those requiring the state or its agent to contact the other party when one party registers, are more effective; often, they utilize trained confidential intermediaries, so this is a more assertive method. In most states, however, these registries are not well publicized, are dependent on the program's resources, and make only one attempt at contact (Cahn & Singer, 1999). Because information is not shared unless the other party agrees, the seeking party in such cases is left without recourse. In addition, as Cahn and Singer (1999) observe, "The underlying problem with both the mutual consent registry and the confidential intermediary approach is the lack of control experienced by the registrants" (p. 166). Since confidential intermediary services were implemented in North Carolina in 2008, a leader in that state's adoption reform movement reports that while these

services have worked for some individuals, adoptees' requests for the service have overwhelmed the capacity to provide it, with one agency reporting a four-year waiting list. Furthermore, there has been a wide variation in agency charges, with some ranging up to \$700 (Roberta MacDonald, personal communication, May 17, 2010).

My son was born, surrendered and placed in New York State in 1970. His adoptive family moved to Texas within days of his placement. His adoption took place in Texas. When I attempted to register with the NY registry they told me they had no record of my son being adopted in NY and would not register me. Their registry is only for people both born AND adopted in NY. When I inquired as to what had happened to my son they told me it was not their job to keep track of all surrendered children and that I should contact the attorney who handled the adoption! Huh? I had no attorney; I surrendered my son to the Nassau County Department of Social Services. They also kept the fee because they said that paid for them to search the records (e-mail to the Adoption Institute, 2010).

III.D WHAT DO WE KNOW ABOUT CONSEQUENCES WHERE ACCESS HAS BEEN GRANTED?

Those who oppose restoring access to original birth certificates express concern that serious negative consequences might result. These include that birthparents will receive unwanted or disruptive contact from adult adoptees, that the number of abortions will increase and that the number of adoptions will drop. The evidence from those states that have restored access, as well as from those nations where access is automatic, is that no such negative consequences occur.

HAS THERE BEEN UNWELCOME INTRUSION?

E. Wayne Carp, in his overview of the social impact of unsealing adoption records in the U.S., Great Britain and Australia, found “a vast gap exists between the *fear* by birth parents and adopted adults that their privacy will be violated and the *reality* that few or no offenses are committed” (2007, p. 29). A review of press articles found only one case where unwanted contact was made – and the reason apparently was an error by a child welfare official. The New Jersey Division of Youth and Family Services had sent a birthmother a letter indicating the daughter she relinquished now sought identifying information. The state’s website indicates that written permission is required to release such information. The birthmother reported that her decision not to respond to the letter indicated she did not want contact. When the adoptee gained identifying information from a state official, she made contact. The birthmother, who surrendered the child for adoption after becoming pregnant by rape, is suing the state (Nark, 2009).

Contact vetoes, such as in Tennessee, provide legal remedies for those whose stated desires are violated. New South Wales, Australia, was the first jurisdiction to institute a contact veto; there, violation of a veto is punishable by imprisonment of up to six months. A commission that was set up to study the impact of the law reported that “triad members complied with provisions of the contact veto to an extraordinary degree. ... It is not easy to think of other laws which have such a high level of compliance” (Carp, 2007, p. 46). In the U.S., violation of a contact veto in Tennessee is a misdemeanor punishable by fine and/or imprisonment for up to 6 months.

Contact preference forms enable birthparents (and sometimes other parties) to state their wishes. Alabama, New Hampshire, Maine and Oregon use such forms and, when its new law is implemented, so will Illinois. Such systems notify adoptees of their birthparents' wishes, but do not contain penalties if those wishes are ignored. In Oregon, as in other contact-preference states, few

birthparents file no-contact forms. Adoptees who request their OBCs receive a copy of the contact preference form, if one has been filed, at the same time. Oregon is the state where release of OBCs has received the most attention because the change in law was the result of a voter referendum and therefore was the subject of extensive public debate and media coverage. After the referendum passed, its constitutionality was challenged, leading to even more media coverage. Over 10,000 adoptees have requested their OBCs in Oregon, and only 85 birthparents have requested no contact (79 in the first year after passage). Frank Hunsaker was a leading opponent of the Oregon referendum and served as counsel for the lawsuit attempting to block implementation. Despite his prediction that birthmothers' lives would be destroyed and their privacy lost, Hunsaker has since acknowledged that he had not heard "any so-called horror stories" (Carp, 2007, p. 37).

While few studies have been conducted of U.S. states' experiences following changes in their OBC access laws, one analysis indicates that just 1 out of every 2,000 birthmothers request no contact (AAC, 2009). Additionally, history scholars' reviews of states and countries where access was granted indicate that the adverse social impact predicted by opponents has not come to fruition. Regarding the first five years after Oregon restored access, Carp reported that "there have been no reports that the privacy of birthmothers has been violated or families broken up as a result of the long-dreaded knock on the door either from adopted adults in possession of their birth certificates as a result of Ballot Initiative 58 or in violation of a contact preference form requesting no contact" (p. 37). The state's adoption program director has concluded, "we here in Oregon have learned ... that in the crafting of public policy, the fears of a few ... cannot necessarily be generalized to all of the public that is affected" (Busharis & Hasegawa, 2005).

Triseliotis' research on the impact of birth certificate access worldwide found that "a policy of open records has been operating in Scotland since 1930 and in England from 1976 onwards, with no evidence of adopted persons misusing or abusing this facility. The experience of countries such as Finland, Israel and New Zealand, where open records operate, has been similar" (Triseliotis, 1992). With regard to New South Wales, Australia, Carp (2007) concluded: "None of the dangers people had feared – that their privacy would be invaded and their families destroyed – had materialized" (p. 48). Additional countries that provide OBC access include Germany, the United Kingdom, Belgium, Holland, Sweden, Norway, Denmark, Iceland, some Canadian provinces, Israel and Taiwan.

DOES ACCESS INCREASE ABORTION RATES?

There is no available evidence to support the prediction that allowing adult adopted persons to access their OBCs causes more women to choose abortion over adoption because the former choice is anonymous and the latter is not. Data on abortion rates for states where adult adoptees have always had access to their OBCs (Kansas and Alaska), states that have amended their laws to allow access, and states that continue to keep OBCs sealed do not demonstrate a discernible relationship between a state's policy on access to OBCs and its abortion rate.

Table 2 below provides abortion rates for the U.S. overall, for states that provide access to OBCs, and for states that border access states but do not themselves have access laws. As the data show, the abortion rates in Kansas and Alaska are lower than the national rate, and states that have reopened OBCs have lower abortion rates post-access than pre-access. This trend is similar to those in England and Wales, where adoption records have been opened (Affidavit of Frederick Greenman, 1996). When those states are compared to ones that remain closed, the abortion rates vary, which can be attributable to a host of factors, including social and cultural ones that affect decision-making, as well as state differences in accessibility to abortion services (waiting periods, parental notification requirements and restrictions on public funding of abortion).

Table 2. Abortion Rates

Jurisdiction	Resident abortions per 1,000 live births 1999 unless otherwise noted ⁷	Resident abortions per 1,000 live births 2006 ⁸
United States	256	236
<i>Always open records</i>		
Kansas	166	144
Alaska	202 (2003)	194
<i>Sealed records open as of:</i>		
Alabama (8/1/00)	193	162
Delaware (1/99)	351 (1998)	309
Oregon (5/30/00)	278	217
Tennessee (1/1/96)	246 (1995)	177
<i>Sealed birth/adoption records</i>		
Nebraska	160	98
Georgia	240	257
Pennsylvania	327	285
Washington	522	488
North Carolina	250	232

There is limited information about any relationship between the decision to have an abortion and to relinquish a child for adoption; however, in a survey of 1,209 women and in-depth interviews with 38 women about their reasons for choosing abortion, none noted the promise or lack thereof of confidential adoption (Finer, Frohwith, Dauphinee, Singh & Moore, 2005).

DOES ACCESS REDUCE ADOPTION RATES?

On July 11, nj.com published a commentary by leaders of the National Council for Adoption (NCFa) and several other organizations – the N.J. Catholic Conference, the Lutheran Office of Governmental Ministries in N.J., the ACLU of N.J., the N.J. State Bar Association; and N.J. Right to Life – saying that the Evan B. Donaldson Adoption Institute 2007 “For the Records” report had been incorrect in concluding that adoption rates had not fallen in states that unsealed their OBCs and that, “in fact, it appears just the opposite.” The commentary cited statistics from a new survey that NCFa has conducted – which is scheduled for release in 2011 – showing that “there has been a substantial decline in adoptions ... in the three states most commonly referenced by open-records advocates” – Oregon, Alabama and New Hampshire.⁹ The explicit point of the commentary was that New Jersey should reject proposed legislation that would unseal most adult adoptees’ OBCs in that state because its passage (quoting the headline of the commentary) “will mean fewer adoptions.”

The Adoption Institute requested the full study from which the three states’ statistics were drawn to check the accuracy of the conclusions and, most important, to ensure they were presented in context – especially since NCFa in the past has been accused of manipulating data in order to further its aims. NCFa refused the Adoption Institute’s requests, however, and said it would provide no further information until it releases its full report next year. As a consequence, until then, the data in the nj.com commentary will be the only information available to lawmakers or others dealing with the issue, but without context or opportunity for independent analysis.

⁷ Centers for Disease Control, Department of Health and Human Services, Morbidity and Mortality Weekly Report, Abortion Surveillance – United States, 1999, 51 (SS09), 1-28, Nov. 29, 2002 (see Table 3, residence ratio). Available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5109a1.htm>

⁸ Centers for Disease Control, Department of Health and Human Services, Morbidity and Mortality Weekly Report, Abortion Surveillance – United States 2006, 58(SS08), 1-35, Nov. 27, 2009 (see Table 3, residence ratio). Available at: http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5808a1.htm?s_cid=ss5808a1_e#tab1 (New Hampshire and Maine are not included in open states as their records were sealed until 2005 and 2009 respectively.)

⁹ Open Birth Records Will Mean Fewer Adoptions, nj.com; Available at: <http://www.nj.com/opinion/times/oped/index.ssf?base/news-1/1278827155202790.xml&coll=5>

The information in the Institute’s 2007 “For the Records” report was drawn from the most-current statistics available at the time – and they indicated there was no decline in adoptions in the states in question and, indeed, that there might have been an uptick in at least one, Oregon (Busharis & Hasegawa, 2005). If that has changed, it is not at all clear that the reason is the unsealing of OBCs, as NCFAs and its co-writers suggest; rather, the more likely explanation is a drop in the number of infant adoptions across the country – irrespective of specific states’ laws on OBC access.

Relinquishment of newborns has become rare, declining almost nine-fold since the early 1970s. According to the National Center for Health Statistics, the number of infants relinquished for adoption in their first month of life declined from 8.7 percent of births to “never-married” women before 1973 to 1 percent in 1996-2002; the estimate of infants relinquished for adoption by “never married” women in the U.S. each year is 7,000 (Jones, 2009). It is possible – or even likely – that the drop cited by NCFAs reflects this downward overall trend. Furthermore, there are many reasons that accurate statistics are difficult to achieve,¹⁰ so it is impossible to put NCFAs’ new numbers in perspective since it is providing them in a vacuum – and since there has been no other evidence to date that providing adopted persons with access to their OBCs decreases adoptions.

To illustrate the relationship between access to records and adoption rates, Table 3 below provides comparative data on rates of infant adoptions: per 1,000 abortions, per 1,000 live births and per 1,000 non-marital births. These data do not support the proposition that adult adopted persons’ access to their OBCs will result in fewer adoptions.

Table 3. Unrelated Infant Adoption 2002¹¹

Jurisdiction	Infant adoptions per 1,000 abortions	Infant adoptions per 1,000 live births	Infant adoptions per 1,000 non-marital births
United States	17.0	5.5	16.3
<i>Always open</i>			
Kansas	26.7	8.3	26.8
Alaska	142.8	23.8	70.1
<i>OBC access granted</i>			
Alabama (8/1/00)	26.7	6.3	18.0
Delaware (1/99)	5.3	2.6	6.4
Oregon (5/30/00)	23.7	8.9	28.8
Tennessee (1/1/96)	21.3	5.2	14.4
<i>No OBC access</i>			
Nebraska	34.9	5.8	20.4
Georgia	6.3	1.5	4.0
Pennsylvania	6.4	1.6	4.9
Washington	17.8	5.9	20.5
North Carolina	14.6	4.7	13.5

The rates of infant adoption per 1,000 abortions in Kansas and Alaska, where adult adopted persons always have had access to their OBCs, are much higher than the national average. Both Kansas and Alaska have higher rates of adoption per 1,000 non-marital live births than the national rate. Adoption rates vary markedly from state to state. Of those in the table above that restored access prior to 2002, two states had adoption rates higher than the national average and two had lower ones. In comparing adoption rates in five states with access (Kansas, Alabama, Delaware, Oregon and Tennessee) to bordering states without access (Nebraska, Georgia, Pennsylvania, Washington and North Carolina), those states with access had higher adoption rates.

¹⁰ Many states use court adoption data which are comprised of many types of adoptions, including readoptions of children adopted internationally. While public agencies place children who are wards of the state almost exclusively, private agencies place both voluntarily relinquished infants as well as foster children. The previous NCFAs survey reported fewer public agency adoptions than those reported in AFCARS statistics from the U.S. Children’s Bureau, and it is possible that many of these were counted as infant adoptions. While the U.S. Department of State reports data on international adoptions and the U.S. Children’s Bureau reports child welfare adoptions, accurate figures for infant adoptions are much more difficult to glean.

¹¹ Placek, P. (2007). National adoption data. In *Adoption Factbook IV* (pp. 30-31). Washington, DC: National Council for Adoption.

SECTION IV: ANALYSES AND CONCLUSIONS

Much of the debate over adult adoptees' access to their OBCs has been based on emotional arguments, assumptions about what is in individuals' best interests, and fears of negative consequences if changes are implemented. The evidentiary base to inform this debate includes research in the U.S. and other countries, as well as the history of the impact of access legislation within jurisdictions that have enacted it. It is important to consider both studies and evidence from other countries for two primary reasons: because they often have national data systems to develop representative samples of involved parties and thus, allow for more rigorous research; and because they have longer track records on which to gauge their effectiveness.

The Adoption Institute's analysis of available knowledge supports the following conclusions:

1. BARRING ADOPTED ADULTS FROM ACCESS TO THEIR ORIGINAL BIRTH CERTIFICATES DENIES THEM A RIGHT ENJOYED BY ALL OTHERS.

This right was provided consistently to all Americans, regardless of how they entered their families, until the middle of the 20th Century. The sealing of adoption records was not originally intended to deny access to adopted adults, but it eventually had that effect. The right to the truth about one's origins can be described as a human right, a moral right, or a matter of civil or equal rights. From a legal perspective, U.S. courts have denied that adopted adults have a constitutional right to information or that birthparents have a constitutional right to privacy. Essentially, both courts and proponents of the status quo have treated the two parties' interests as competing with one another; that construct is misleading, however, since it does not take into account the reality that the vast majority of birthparents do not want to remain anonymous to their biological children who have reached adulthood.

2. THE ORIGINAL INTENT OF LAWS SEALING OBCS WAS TO PROTECT ADOPTED CHILDREN FROM THE PUBLIC STIGMA OF ILLEGITIMACY AND, TO SOME EXTENT, TO PROTECT ADOPTIVE FAMILIES FROM INTRUSION BY BIRTHPARENTS.

They were not closed to protect birthparents, nor were birthparents guaranteed anonymity in state law or in the relinquishment documents they signed. The sealing of OBCs occurs not at the time of relinquishment, but only when an adoption is finalized, and courts can open records at any time upon a showing of good cause. If some adoption practitioners promised lifelong confidentiality, they did so in error since there have always been opportunities for adoptees to petition the court for access. Professionals rarely if ever make such promises today because modern technology, including search engines and social networking sites, enable parties to adoption to find each other without OBCs.

3. CONTINUING TO DENY ACCESS TO THEIR OBCS IS NOT IN THE BEST INTERESTS OF ADOPTED ADULTS.

There is evidence of both psychological and medical need for information by adopted adults, so continuing to deny access to their OBCs can have negative consequences. These needs vary in intensity across individuals and evolves over their lifespans. Not all seek to gain the identifying information contained in their OBCs, but a majority appears to want more complete answers to questions about their origins, to gather current and complete medical histories, and/or to meet birth relatives. (This is evident based on data from other countries that can identify adopted individuals from national data systems and from research on adopted adults.) Denial of access can be detrimental to the psychological well-being of adoptees, as well as having potential detrimental impact on their health and that of their descendants.

4. ALTERNATIVE SOLUTIONS TO PROVIDING ADOPTED ADULTS ACCESS TO INFORMATION DO NOT ADEQUATELY ADDRESS THEIR NEEDS.

The most inadequate approaches are court petitions, which are rarely granted and are subject to the arbitrary decisions of individual judges; and mutual consent registries, sometimes called passive registries, which have very low rates of success (less than 5%). Confidential intermediary services are costly and do not give adopted adults either the power to control the process or to continue searching if the parties being sought are not readily found.

5. THE OVERWHELMING MAJORITY OF BIRTHMOTHERS DO NOT WANT TO REMAIN ANONYMOUS TO THEIR ADOPTED CHILDREN, SO KEEPING OBCS SEALED "PROTECTS" PEOPLE WHO DON'T WANT PROTECTION.

Most birthparents have a psychological need to know what became of the children they created, and such knowledge furthers their well-being. Studies and public statements of birthparents who surrendered in the era when OBCs were originally sealed suggest no other choice was offered to them; i.e., complete separation was a condition of adoption and their wishes for any other arrangement were either not explored or rejected. The evidence is that if they were polled today, very few would choose to remain anonymous to their adult children. All available surveys of birthmothers, without exception, point to that reality – as does the low percentage of birthparents filing no-contact preference forms in the states and countries where unconditional access has been granted (1% or less of the OBCs issued; a fraction of 1% of the number of birthparents residing in these states).

6. UNSEALING OBCS TO ADOPTED ADULTS DOES NOT THREATEN THE INTEGRITY OF ADOPTIVE FAMILIES OR THE INSTITUTION OF ADOPTION.

Adoptees love their adoptive parents and are loyal to them, irrespective of whether they have information from their OBCs or choose to ever contact biological kin. Research indicates that greater openness about adoption within adoptive families leads to more positive adjustment of the children and more positive parent-child relationships. It also shows that secrecy has a negative impact. Adoption became associated with whispers, stigmas and shame during the period of its history when some parents didn't tell their own children they were adopted, birthparents lied about and hid their pasts, and adopted children were taunted by their peers. Thankfully, adoption has changed radically for the better, but the system in which OBCs remained sealed in most of the U.S. remains a relic of the past that does not serve the best interests of adoptees, birthparents or adoptive parents.

7. IN OTHER COUNTRIES AND IN U.S. STATES THAT HAVE RESTORED ADOPTED ADULTS' ACCESS TO OBCS OR NEVER SEALED THEM, THERE IS NO EVIDENCE OF THE SIGNIFICANT NEGATIVE CONSEQUENCES THAT CRITICS PREDICT.

Abortions have not increased, and the evidence to date on the extent to which contact preferences are respected indicates that adopted persons are not intruding on the lives of unwilling birthparents. In fact, opponents to access and governmental officials have expressed surprise at the lack of horror stories and the high level of compliance and sensitivity among the parties involved.

Perhaps the most important conclusion from the review of evidence informing this debate is that the needs and wishes of adopted persons and birthparents are not antithetical, and therefore do not need to be "balanced." Adoption's history reveals that secrecy is a modern and relatively short-lived practice, initiated to protect parties from the stigma of illegitimacy, not to protect them from one another. As the emphasis on openness, disclosure and honesty in modern adoption practice makes clear, if ever there were reasons for systemic secrecy and permanent disconnection of the parties to adoption, they no longer apply.

RECOMMENDATIONS

Changes in contemporary infant adoption suggest that the issue of access to information contained on OBCs will be less critical to adopted persons in the future, simply because most of the basic facts they contain are provided as a matter of course to families adopting infants in this country. Furthermore, current “best practices” promote greater disclosure of information, as well as more openness and honesty, so it is increasingly common for adoptive and birth families to know each other’s names and other identifying data – as well as to form relationships of various types. In addition, today’s birthparents are routinely informed about the limitations of privacy – especially in states that have restored adult adoptee access to OBCs – and many if not most professionals explicitly explain that they cannot expect anonymity; anecdotally, in any event, few women placing children for adoption today seek fully closed adoptions. So, for most adoptees prospectively, the question of OBC access will center on equality rather than access to information.

Retrospectively, however, for the many hundreds of thousands of adults adopted in past decades, the issue remains one of need and desire as well. The Adoption Institute believes it is in the best interests of everyone involved, and of adopted persons in particular, to make OBCs available to all of them. We respect that some birthparents were verbally assured of lifelong confidentiality by well-intentioned social workers or other professionals, even though such promises were not supported in law and, in retrospect, were misguided because there was no legal guarantee in any state that original birth certificates would never be released. Indeed, even after OBCs were sealed from adoptees, most states still allowed them to petition the court for access.

We wish there were more studies and more research on the various subjects addressed in this report, and more will indeed be conducted. But the reality is that existing evidence uniformly weighs heavily in favor of one side’s arguments: that restoring access best serves the interests of adopted adults, that a vast majority of birthmothers don’t want the anonymity that current law imposes, and that a growing number of adoptive parents view access as a positive step for their families. Restoring OBC access to adoptees has demonstrable, tangible benefits for nearly everyone concerned, especially adopted persons – while maintaining the status quo may serve the interests of a small percentage of birthparents wishing to remain anonymous, at best, but does not necessarily shield them from being found by way of court petitions, via Facebook or Google, or through the resources of search professionals.

Therefore, the Adoption Institute recommends:

EVERY STATE SHOULD RESTORE UNRESTRICTED ACCESS TO ORIGINAL BIRTH CERTIFICATES FOR ALL ADULT ADOPTEES, RETROACTIVELY AND PROSPECTIVELY.

The experiences of many other countries, of U.S. states where birth certificates have never been sealed from adopted persons, and of those states that have restored access, all indicate that there are few if any problems when access is granted. There is no significant legal, experiential or factual rationale for denying adopted adults the right to access their OBCs – a right that is enjoyed by all non-adopted Americans. Allowing access with the provision for contact preference forms is a practical solution that affords birthparents a greater opportunity to express their wishes – and therefore greater “protection” – than they currently have with sealed records.

STATE LAWS THAT PROVIDE ACCESS TO ORIGINAL BIRTH CERTIFICATES TO A LIMITED NUMBER OF ADULT ADOPTEES SHOULD BE AMENDED TO ENABLE THEM ALL TO OBTAIN THESE DOCUMENTS AND THEREBY BE TREATED EQUALLY.

Allowing some adopted citizens access while denying it to others is inequitable on its face. The evidence in states that place restrictions on who may obtain OBCs is the same as it is in states that

allow universal access; i.e., none of the predicted negative consequences occur. So there is no substantive reason to prevent an expansion of their laws to include all adopted persons once they reach the age of majority.

NO AGENCY, ATTORNEY, SOCIAL WORKER OR OTHER ADOPTION PROFESSIONAL SHOULD PROMISE BIRTHPARENTS THAT THEIR IDENTITIES WILL REMAIN CONCEALED FROM THEIR CHILDREN.

There is no constitutional, legally enforceable “right to privacy” for birthparents from the children they created. Some states that sealed original birth certificates in the past have opened them and more are likely to do so in the future. Moreover, courts may open records upon petition and, finally and most pointedly, it is becoming increasingly possible for birthparents (among others) to be found via the internet, through search professionals, and with other modern resources. As a consequence of all those factors, it is clear that anonymity cannot be assured with any certainty; promises of lifelong confidentiality are therefore contrary to best adoption practices.

A NATIONAL ADOPTION REGISTRY SHOULD BE IMPLEMENTED TO ENABLE ALL ADOPTED PERSONS AND THEIR BIRTHPARENTS, NO MATTER WHERE THEY RESIDE, TO PARTICIPATE.

Registries should not ever be viewed as an alternative to access to OBCs, and the evidence is clear that state-specific mutual consent registries are generally ineffective. A well-publicized national registry, however, would allow adoptees, birthparents and other family members to find each other across state lines, thereby mitigating some current problems and playing an important role until all states restore the right of adopted adults to access their original birth certificates.

CONFIDENTIAL INTERMEDIARY SERVICES SHOULD BE AVAILABLE THROUGHOUT ALL STATES, EVEN AFTER ORIGINAL BIRTH CERTIFICATES ACCESS IS RESTORED.

Many if not most adopted persons, birthparents and other involved parties prefer to search and make contacts themselves – but some want or need help. Confidential intermediaries can be valuable resources to provide guidance and support for those who are unsure about making contact to obtain information or to arrange a reunion. Ideally, these services should be either subsidized by the state or made available at a very reasonable cost to participants.

Conclusion

Some opponents of restoring access to original birth certificates cast adult adoptees’ desire for this basic information about themselves as a matter of curiosity, a simple interest that can be satisfied through other means, while others express seemingly substantive concerns about the implications of altering current law. Some proponents of unsealing OBCs focus on search, reunion and medical information as the key issues, while others say the bottom line need not include any of those issues because the debate is really about equal rights and social justice.

Wherever one stands, this much is clear: The laws on the books in most states do not benefit the vast majority of the affected parties, and therefore should be changed. Modern adoption practice, with its emphasis on openness, honesty and family connections should be the operating model. It is time to end the secrecy that has not only resulted in shame and stigma for nearly everyone concerned, but also has undermined the institution itself by sending a signal from the very start – at the time a birth certificate is issued – that adoption has something to hide.

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