

THE CURRENT STATUS OF THE RIGHT OF ADULT ADOPTEES TO KNOW THE IDENTITY OF THEIR NATURAL PARENTS

Adoption is an ancient practice¹ that developed to guarantee the continued existence of the family as a social and economic unit.² Today the primary concern of adoption is the welfare of the child.³ Thus, any consideration of the needs of the natural parents or adoptive parents is secondary to "the best interests of the child."⁴ To protect the interests of those involved and to encourage the continuance of adoption, the law deems all adoption proceedings, records, and papers confidential and orders them sealed once the court decrees the adoption final.⁵ The state protects the adoptee from any encroachment from the past, giving the child a new identity, severing all bonds with natural parents,⁶ and

1. Chambers, *The Adoption of Strangers*, 16 INT'L J. COMP. SOC. 118 (1975). For a thorough historical analysis, see Brosnan, *The Law of Adoption*, 22 COLUM. L. REV. 332 (1922) and Huard, *The Law of Adoption: Ancient and Modern*, 9 VAND. L. REV. 743 (1956). Chambers notes that the form of adoption practiced in the United States is quite different from practices of other cultures. Adoption among other cultures historically did not obliterate the identity of the adoptee and most often involved the adoption of adults rather than infants. Chambers, *supra*, at 119. The American pattern is also distinctive because marital pairs who already have natal children may adopt, adults almost never adopt other adults, and a family may adopt more than one child. *Id.* at 118.

The most unique aspect of the American pattern of adoption is that it focuses on the infant and in particular the unwanted infant. Many cultures, both ancient and modern, practiced infanticide rather than showing concern for the unwanted child. W. SLINGERLAND, *CHILD PLACING IN FAMILIES* 28 (1918); Presser, *The Historical Background of the American Law of Adoption*, 11 J. FAM. L. 443, 446 n.18 (1971), *citing* 1 HOWARD, *A HISTORY OF MATRIMONIAL INSTITUTIONS* 78, 79, 87 (1904). *See* N.Y. Times, Dec. 12, 1857, at 8, col. 1 for the reaction of nineteenth century American reformers to the practice of infanticide.

2. Huard, *supra* note 1, at 743. *See* H. MAINE, *ANCIENT LAW* 130 (10th ed. 1901) stating that without the practice of adoption "society would scarcely have escaped its swaddling clothes. It commanded the approval of the greatest number of archaic societies and has proven to be the most durable of all artificial relationships designed to prolong the continuity of family existence."

Chinese tradition dictated that a childless male was entitled to claim the first born male child of any of his younger brothers because "[o]ne of the gravest calamities to be apprehended by a Chinaman is to die without leaving a male posterity to care for his ashes and decorate his grave, thereby pacifying his wandering spirit in purgatory." Note, *Laws of Adoption in China*, 15 CHI. L.N. 362 (1883) *quoted in* Presser, *supra* note 1, at 445-46 n.11. *See also* Brosnan, *supra* note 1; Quarles, *The Law of Adoption—A Legal Anomaly*, 32 MARQ. L. REV. 237 (1949).

3. Huard, *supra* note 1, at 748-49; Presser, *supra* note 1, at 473-78.

4. Huard, *supra* note 1, at 749.

5. *Id.* at 752.

6. The general rule is that adoption terminates all existing rights and duties between the adoptee and the natural parents. *See, e.g.,* La Bove v. Metropolitan Life Ins. Co., 164 F. Supp. 808, 813 (D.N.J. 1958), *aff'd*, 264 F.2d 233 (3d Cir. 1959); Smelser v. Southern Ry. Co., 148 F.

closing all adoption records.

Adoptees currently are challenging this closure procedure.⁷ Many adoptees feel compelled either to seek out their natural parents or to discover information about their background.⁸ Statutory closure of adoption records of the court and of the agency placing the child makes adoptees' search for their natural parents difficult if not impossible.⁹ Adoptees argue that closure laws violate their right to know their origins.¹⁰ This demand for access presents the major controversy in the

Supp. 891, 893 (D. Tenn. 1956), *aff'd sub nom.*, Meadors v. Smelser, 244 F.2d 719 (1957); *In re Cech*, 8 Ill. App. 3d 642, 645, 291 N.E.2d 21, 24 (1972); *Jones v. Jones*, 215 Kan. 102, 112, 523 P.2d 743, 751, *cert. denied*, 419 U.S. 1032 (1974); *In re Adoption of Giambrone*, 262 So. 2d 566, 569 (La. App. 1972). Particularly interesting is the court's comparison in *In re Adoption of Bryant*, 134 Ind. App. 480, 488, 189 N.E.2d 593, 597 (1963), of an adoption to the death of a child. As one commentator has stated, "[i]t is as though the state has decided that the child was never genealogically a part of anyone." Note, *Recognizing the Needs of Adopted Persons: A Proposal To Amend the Illinois Adoption Act*, 6 LOY. U.L.J. 49, 51 n.18 (1975).

Although the goal of the adoption procedure is the severance of the adopted child from the natural parents and the integration of that child into the adoptive family, in some jurisdictions the laws of inheritance seem to counter that intent. See, e.g., Illinois Probate Act, ILL. REV. STAT. ch. 3, §§ 11, 12, 14 (1973). For a thorough analysis of this issue see Kuhlmann, *Intestate Succession By and From the Adopted Child*, 28 WASH. U.L.Q. 221 (1943); Note, *supra* note 6, at 52-54. See also Johnson, *Inheritance Rights of Children in Virginia*, 12 U. RICH. L. REV. 275 (1978).

Few courts have actually dealt with the question whether adoptees may claim a right to inherit from their natural parents. An Illinois court in *In re Tilliski*, 390 Ill. 273, 285, 61 N.E.2d 24, 29 (1945), *aff'g* 323 Ill. App. 490, 56 N.E.2d 481 (1943), held that adoption did not preclude a child from claiming a share of his natural parents' estates. More recently, *Spillman v. Parker*, 332 So. 2d 573, 576 (La. App. 1976), held that the ascertainment of an adoptee's inheritance rights was a valid reason for disclosure of the original birth certificate. See Note, *Confidentiality of Adoption Records: An Examination*, 52 TUL. L. REV. 817, 820-22 (1978); note 44 *infra* and accompanying text.

7. The reference to adoptee throughout the remainder of this note is only to adult adoptees. No commentators, sociologists, or psychologists advocate the disclosure of adoption records to minor adoptees even if an adopted child claims psychological bewilderment. For a discussion of psychological bewilderment see notes 58-76 *infra* and accompanying text.

8. J. TRISELIOTIS, IN SEARCH OF ORIGINS: THE EXPERIENCES OF ADOPTED PEOPLE 38-41 (1973); Anderson, *The Sealed Record in Adoption Controversy*, 51 SOC. SERVICE REV. 141, 142-43 (1977); Baran, Pannor & Sorosky, *Adoptive Parents and the Sealed Record Controversy*, 55 SOC. CASEWORK 531, 531-32 (1974); Note, *Discovery Rights of the Adoptee—Privacy Rights of the Natural Parent: A Constitutional Dilemma*, 4 U. SAN FERN. V.L. REV. 65, 65-66 (1975). See also F. FISHER, THE SEARCH FOR ANNA FISHER (1973); B. LIFTON, TWICE BORN, MEMOIRS OF AN ADOPTED DAUGHTER (1975).

9. J. TRISELIOTIS, *supra* note 8, at xi-xv.

10. See *Yesterday's Children v. Kennedy*, 569 F.2d 431, 431-32 (7th Cir. 1977), *cert. denied*, 437 U.S. 904 (1978); *The Alma Soc'y, Inc. v. Mellon*, 459 F. Supp. 912, 914 (S.D.N.Y. 1978), *aff'd*, 601 F.2d 1225 (2d Cir. 1979), *cert. denied*, 100 S. Ct. 531 (1980); *In re C.A.B.*, 384 A.2d 679, 679 (D.C. App. 1978); *Application of Gilbert*, 563 S.W.2d 768, 769 (Mo. 1978); *Mills v. Atlantic City*

law of adoption¹¹ and has generated considerable public and professional response. Legal commentators, focusing on the adoptee's position on the closure laws, fashioned various constitutional arguments to challenge the closure statutes.¹²

This Note presents the rationale for adoption closure laws. It also raises the arguments for opening sealed records. It examines the psychological and constitutional claims, and the reasons for their rejection by most courts. Finally, the Note analyzes the current judicial response to the question of disclosure.

I. THE DEVELOPMENT OF THE "BEST INTERESTS OF THE CHILD" RATIONALE FOR THE CLOSURE LAWS

The law of adoption in the United States¹³ is the creation of state legislatures rather than common law.¹⁴ In 1851¹⁵ the Massachusetts

Dep't of Vital Statistics, 148 N.J. Super. 302, 306, 372 A.2d 646, 648-49 (1977). See also Anderson, *supra* note 8, at 142-43; Baran, Pannor & Sorosky, *supra* note 8, at 531-32.

11. Katz, *supra* note 9, at ix.

12. See Note, *Sealed Records in Adoptions: The Need for Legislative Reform*, 21 CATH. LAW. 211, 220-21 (1975); Note, *Genealogical Information in Adoption: The Adoptee's Quest and the Law*, 11 FAM. L.Q. 185, 190-92 (1977); Note, *Recognizing the Needs of Adopted Persons: A Proposal to Amend the Illinois Adoption Act*, *supra* note 6, at 56-58; Note, *The Adoptee's Right to Know His Natural Heritage*, 19 N.Y.L.F. 137, 139 (1973); Note, *A Reasonable Approach to the Adoptee's Sealed Record Dilemma*, 2 OHIO N.L. REV. 542, 549-52 (1975); Note, *The Adult Adoptee's Constitutional Right to Know His Origins*, 48 S. CALIF. L. REV. 1196, 1197-98 (1975); Note, *supra* note 8, at 67-68.

13. For a general discussion of the history of adoption practices among the ancient civilizations, see Chambers, *supra* note 1, at 445-48. For a discussion of the English common-law view toward adoption, see Huard, *supra* note 1, at 746. See also *Hockaday v. Lynn*, 200 Mo. 456, 457, 98 S.W. 585, 586 (1906); *In re Estate of Wulf*, 184 Neb. 314, 315, 167 N.W.2d 181, 182 (1969); Kuhlmann, *supra* note 6. Recognition of adoption would have required the conferral of property rights upon the adoptee and thus would violate the English principle that only blood relatives should inherit property. Strangers were accepted into English families and treated as though they were natural children, but the relationship was not formalized and they could not gain inheritance because they were not heirs of the bloodline. Upon occasion, however, children who were illegitimate, as in the case of a child born to a married woman whose husband had been away for nearly three years, were held by the courts to be the legitimate offspring of their parents. II POLLOCK & MAITLAND, *THE HISTORY OF ENGLISH LAW* 398-99 (2d ed. 1911). Adoption finally received statutory acceptance with passage of the Adoption of Children Act in 1926, 16 & 17 Geo. 5, c.29 (1926).

14. Derdeyn and Wadlington, *The Rights of Parents Versus the Best Interests of Their Children*, 16 J. AM. ACAD. CHILD PSYCH. 238, 241 (1977).

15. Huard, *supra* note 1, at 748 notes that Mississippi did pass an adoption statute in 1846. Massachusetts' statute, however, is usually recognized as the first because it was more complete. McFarlane, *The Mississippi Law on Adoptions*, 10 MISS. L.J., 239, 240 (1938). Although the Massachusetts and the Mississippi statutes represent the earliest adoption statutes, the case law in

legislature passed the first comprehensive adoption law,¹⁶ which purported to establish "an institution to ameliorate the condition of the neglected and dependent child."¹⁷ The immigration movement in the 1850's and the industrialization of the post-Civil War era increased the number of homeless, abandoned, and parentless children, and exacerbated the plight of the unwanted child.¹⁸ Orphan asylums and almshouses were unable to accommodate all these children. Religious societies, philanthropic organizations, and local government agencies therefore urged that individual families receive them as their legal children.¹⁹ Other state legislatures followed Massachusetts' lead and enacted the statutory precursors of our modern day adoption laws.²⁰

Each state currently maintains its own comprehensive adoption law. Despite the multiplicity of these statutes, the basic tenet of adoption law is that the welfare and best interests of the child are paramount.²¹ In addition, the adoption laws seek "to promote policies and procedures socially necessary and desirable for the protection . . . [of] the

states first colonized by the French and Spanish reflects the influence of Roman law which did recognize and legalize adoption. Huard, *supra* note 1, at 747-48. See *Vidal v. Commagere*, 13 LA. ANN. 516 (1858) (adoption authorized by special act of Louisiana legislature that held word adoption derived from Roman Law); *Teal v. Sevier*, 26 Tex. 516 (1863) (adoption unsuccessful because Spanish law forbade one who already had legitimate child from adopting stranger as co-heir of the legitimate child). See generally Brosnan, *supra* note 1, at 332-33; Kuhlmann, *supra* note 6, at 222; Presser, *supra* note 1, at 447-48.

1, at 332-33; Kuhlmann, *supra* note 6, at 222; Presser, *supra* note 1, at 447-48.

Presser, *supra* note 1, at 456-64 notes that adoption frequently resulted from the common practices of apprenticeship and "putting out" in the seventeenth through nineteenth centuries, even though adoption itself was not legally recognized.

16. Huard, *supra* note 1, at 748; 1851 MASS. ACTS, c.324. See Ben-Or, *The Law of Adoption in the United States: Its Massachusetts Origins and the Statute of 1851*, 130 NEW ENG. HIST. & GENEALOGICAL REG. 259 (1976) for a more thorough analysis of the Massachusetts statute.

17. Kuhlmann, *supra* note 6, at 223. Kuhlmann comments, "It is plain, therefore, that the American institution of adoption was sustained by a current of opinion looking to individual personal needs, especially of the child, rather than to the needs of the larger family or of continuity in property units and management . . ." *Id.* at 224. But see Ben-Or, *supra* note 16, at 268 (characterizing inheritance by adopted children as the primary concern of the statute); Presser, *supra* note 1, at 465-70 (noting the "'avowed object' of the Massachusetts act . . . was that of 'securing to adopted children a proper share in the estate of adopting parents who should die intestate.'" *Id.* at 465). The question of the effect of closure of adoption records on the rights of the adoptee to inherit from the natural parents was raised in note 6, *supra*.

18. Kuhlmann, *supra* note 6, at 223; Presser, *supra* note 1, at 477-79.

19. Presser, *supra* note 1, at 475-86.

20. *Id.* at 487.

21. See, e.g., *Chapsky v. Wood*, 26 Kan. 650 (1881) in which Judge Brewer defined the best interests rule. He stated that three interests must always be considered in an adoption proceeding: the right of the natural father, the right of the adoptive parents, and the right of the adoptee, but

natural and adopting parents.”²² States have enacted confidentiality requirements to further the protection of natural parents. Originally, the adoption laws did not require confidentiality.²³ State legislatures,²⁴ however, concluded that confidentiality requirements would safeguard the welfare of the child, the natural parents, and the adoptive parents. Accordingly, legislation was enacted in the 1940’s²⁵ to seal all records of the adoption proceeding.²⁶

Although modern statutes differ in confidentiality requirements, access to files, and disclosure procedures,²⁷ the underlying rationale for

“[a]bove all . . . the paramount consideration is, what will promote the welfare of the child?” *Id.* at 654.

Judge Cardozo in *Finlay v. Finlay*, 240 N.Y. 429, 433, 148 N.E. 624, 626 (1925), followed *Chap-sky* and declared that the Chancellor “acts as *parens patriae* to do what is best for the interest of the child.”

These statutes break from the Roman pattern of adoption because they establish the welfare of the child as the primary concern of the law rather than the continuity of the family, and are considered a “uniquely American contribution to the law of adoption.” Huard, *supra* note 1, at 749.

22. *Mills v. Atlantic City Dep’t of Vital Statistics*, 148 N.J. Super. 302, 307, 372 A.2d 646, 649 (1977).

23. Baran, Pannor & Sorosky, *supra* note 8, at 532.

24. At present five states’ statutes permit adult adoptees access to their adoption records: ALA. CODE § 26-10-5(a) (1975); CONN. GEN. STAT. § 45-68(e) (1979); KAN. STAT. ANN. § 65-2423 (1972); S.D. COMP. LAWS ANN. § 25-6-15 (1976); VA. CODE § 63.1-236 (1980). Four of these states give the adopting parents access to this information: ALA. CODE § 26-10-5(a) (1975); CONN. GEN. STAT. § 45-68(e) (1979); S.D. COMP. LAWS ANN. § 25-6-15 (1976); VA. CODE § 63.1-236 (1980).

25. Baran, Pannor & Sorosky, *supra* note 8, at 532-33.

26. L. BURGESS, *THE ART OF ADOPTION* 138 (1976); C. PRENTICE, *AN ADOPTED CHILD LOOKS AT ADOPTION* 62 (1940); Baran, Pannor & Sorosky, *supra* note 8, at 532; Note, *Recognizing the Needs of Adopted Persons: A Proposal to Amend the Illinois Adoption Act*, *supra* note 6, at 63. All states protect the confidentiality of adoption information through statutes of one form or another. See, e.g., ALA. CODE § 26-10-5(a) (1975); ARK. STAT. ANN. § 56-117 (1947); MO. ANN. STAT. § 453.120 (Vernon 1977); Note, *Confidentiality of Adoption Records: An Examination*, *supra* note 6, at 819.

Three sources contain information concerning the genealogy of an adopted child: files of the agency (or private party) which received the child from the biological parent(s); records of the court that approved the final adoption; and the official local or state repository for birth certificates. Klibanoff, *Genealogical Information in Adoption: The Adoptee’s Quest and the Law*, 11 FAM. L.Q. 185, 187 (1977).

27. States differ in their treatment of various types of records. See, e.g., ALASKA STAT. § 20.15.150 (1975) (protecting only records in possession of state and private agencies); ARIZ. REV. STAT. ANN. § 8-120 (Supp. 1979-80) (protecting records in possession of any person or association); FLA. STAT. ANN. § 63.162 (West Supp. 1980) (same as Alaska); MINN. STAT. ANN. § 259.31 (West 1971) (all files and records of the adoption are confidential); NEB. REV. STAT. § 43-113 (1943) (same as Minnesota); N.D. CENT. CODE § 14-15-16 (1971) (same as Alaska).

There is regulation concerning the timing of the confidentiality requirement. See, e.g., D.C. CODE ANN. § 16-311 (1973) (restricting inspection after adoption petition filed); TENN. CODE

confidentiality remains the same—the protection of the adoptive triad.²⁸ Confidentiality assures the natural parents that adoption will occur without becoming public knowledge.²⁹ In addition, closure statutes encourage and facilitate appropriate investigative procedures required in an adoptive proceeding.³⁰ The procedures assure the natural parents that proper parties will receive the child.³¹ Confidentiality guarantees the adopting parents privacy and protects them from any interference from the natural parents.³² Such interference could prevent the adopting parents from becoming physical and psychological substitutes for the child's natural parents.³³ Confidentiality also over-

ANN. § 36-130 (1977) (regulating access to adoption information only after the final order or decree of adoption); WYO. STAT. § 1-22-104(d) (1977) (same as Tennessee).

Adoptees do enjoy a right to see files and records in some states. *See, e.g.*, ALA. CODE §§ 26-10-4, -5(a) (1975) (adoptee has absolute right to see files and records); S.D. COMP. LAWS ANN. § 25-6-15 (1976) (right of adoptee to see records not absolute until maturity reached).

Adoptees also maintain the right to inspect original birth certificates. *See, e.g.*, ALA. CODE § 26-10-4 (1975) (adoptee must reach majority before having absolute right to see original birth certificate and adoption decree); KAN. STAT. ANN. § 65-2423 (Supp. 1979) (same as Alabama); LA. REV. STAT. ANN. § 40:81(A) (West 1977) (adoptee has absolute right to see original birth certificate and adoption decree); R.I. GEN. LAWS § 23-3-23(d) (1956) (adoptee upon majority restricted to original birth certificate); TENN. CODE ANN. § 53-427 (1977) (same as Alabama).

For a statutory example of attorney's rights of inspection, see ALA. CODE § 26-10-5(a) (1975) (attorneys of interested parties permitted unlimited access after final decree); KAN. STAT. ANN. § 59-2279 (1976) (attorneys permitted access upon request); MISS. CODE ANN. § 93-17-25 (1972) (same as Kansas).

For other individuals who may have access see KAN. STAT. ANN. § 59-2279 (1976) (state department granted access to files and records of adoption proceedings); LA. REV. STAT. ANN. § 40:81(A) (West 1977) (adoptive parents may see original birth certificate and decree); VA. CODE § 63.1-236 (1980) (child-placing agencies have access to adoption reports).

28. *See In re Anonymous*, 89 Misc. 2d 132, 133-34, 390 N.Y.S.2d 779, 781 (1976).

29. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 307, 372 A.2d 646, 649 (1977); *People v. Doe*, 138 N.Y.S.2d 307 (1955). *See Note, Sealed Records in Adoptions: The Need for Legislative Reform, supra* note 12, at 212.

30. *In re Anonymous*, 89 Misc. 2d 132, 133, 390 N.Y.S.2d 779, 781 (1976). "Adoption proceedings" refer to the procedural steps that precede a final decree of adoption. These steps include the initial adoption petition, agency investigation, the actual hearing before a judge, and the interlocutory adoption decrees. H. CLARK, *THE LAW OF DOMESTIC RELATIONS* § 18.3 (1968).

31. *People v. Doe*, 138 N.Y.S.2d 307, 309 (1955).

32. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 307, 372 A.2d 646, 649 (1977); *In re Anonymous*, 89 Misc. 2d 132, 133, 390 N.Y.S.2d 779, 781 (1976); *Note, Sealed Records in Adoptions: The Need for Legislative Reform, supra* note 12, at 212; *Note, Recognizing the Needs of Adopted Persons: A Proposal to Amend the Illinois Adoption Act, supra* note 12, at 63.

33. Psychological parenthood is "the mutual interaction between adult and child described in such terms as love, attention, basic trust and confidence, considered essential for the child's successful development." *In re Adoption of Child by P*, 114 N.J. Super. 584, 594, 277 A.2d 566, 571 (1971). *See Note, Adoption: Psychological Parenthood as the Controlling Factor in Determining the Best Interests of the Child*, 26 RUTGERS L. REV. 693 (1973). The court held in *In re P* that, under

comes the adoptive parents' concern that the birth status of the illegitimate child will be revealed and used to harm them or the child.³⁴ Finally, closure promotes the best interests of the child by protecting the adoptee from the stigma of illegitimacy or abandonment³⁵ and guaranteeing that the relationship with the adoptive parents will develop fully in a loving and natural environment.³⁶

Once the adoption and birth records are sealed, the records are no longer available for public inspection.³⁷ A new birth certificate is issued to the child naming the adoptive parents as the biological parents.³⁸ Statutory provisions that permit the opening of the records exist, but vary widely from state to state.³⁹

the circumstances, the psychological parenthood that had developed on the part of the adopting parents required the court to leave the child with the adoptive parents even though such action overrode the rights of the biological parents. *Id.* at 594-95, 277 A.2d at 571-72.

For psychological parenthood to develop the adoptive parents must be free from any fear that the natural parents will reappear and interfere in the child's rearing. Thus, adoptive parents argue that the state has "an active interest in protecting and nurturing the growing family relationship it has statutorily created." *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 308, 372 A.2d 646, 649 (1977). See *People v. Doe*, 138 N.Y.S.2d 307, 309 (1955); Note, *Sealed Records in Adoptions: The Need for Legislative Reform*, *supra* note 12, at 212-13.

For further discussion of psychological parenthood, see *Smith v. Foster Families*, 431 U.S. 816 (1977); J. GOLDSTEIN, A. FREUD & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* (1973).

34. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 308, 372 A.2d 646, 649 (1977); Note, *Sealed Records in Adoptions: The Need for Legislative Reform*, *supra* note 12, at 212-13.

35. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 308, 372 A.2d 646, 649 (1977); *People v. Doe*, 138 N.Y.S.2d 307, 309 (1955); Note, *Sealed Records in Adoptions: The Need for Legislative Reform*, *supra* note 12, at 213. C. Prentice, herself an adoptee, in explaining the purpose behind the sealed records statutes commented, "The unmarried mother, the child, and the adopting parents lacked any protection at all. Reporters nosing about for news might come upon something really juicy and publish it. . . . Unscrupulous relatives could trace a child if they wished, and use their knowledge to upset a well-established relationship. . . ." C. PRENTICE, *AN ADOPTED CHILD LOOKS AT ADOPTION* 62 (1940).

36. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 308, 372 A.2d 646, 649 (1977).

37. Note, *A Reasonable Approach to the Adoptee's Sealed Records Dilemma*, *supra* note 12, at 543-44. See N.J. STAT. ANN. § 26.8-40.1 (West 1964). See also Note, *The Adult Adoptee's Constitutional Right to Know His Origins*, *supra* note 12, at 1197-98.

38. Note, *The Adult Adoptee's Constitutional Right to Know His Origins*, *supra* note 12, at 1198-99 (noting that in this manner the child is reborn). See, e.g., ALA. CODE § 26-10-4 (1975); CAL. HEALTH & SAFETY CODE § 10433 (Deering 1975); MICH. STAT. ANN. §§ 27.3178 (555.60), 27.3178 (555.67(3)) (Supp. 1980-1981); S.C. CODE § 15-45-150(c) (Supp. 1979).

39. *Katz*, *supra* note 9, at xi-xv.

All states provide for some access to the records on court order.⁴⁰ The majority of states, however, require a showing of good cause.⁴¹ Fraud in the adoption proceeding,⁴² a need for medical records or information,⁴³ knowledge of genealogical background in order to claim an inheritance,⁴⁴ a claim of emotional benefit,⁴⁵ or a grand jury investigation of private adoptions meet the good cause requirement.⁴⁶ Mere

40. See Note, *A Reasonable Approach to the Adoptee's Sealed Records Dilemma*, *supra* note 12, at 544.

41. See GA. CODE ANN. § 74-417 (Supp. 1980); MICH. STAT. ANN. § 27.3178 (555.67) (1) (Supp. 1980-1981); MONT. REV. CODES ANN. § 40-8-126 (1979); W. VA. CODE § 48-4-4 (1976). See also *Hubbard v. Superior Ct.*, 189 Cal. App. 2d 741, 11 Cal. Rptr. 700 (1961) in which the court denied a charity's request to inspect adoption records for the purpose of determining the devolution of property upon the termination of a trust. The court concluded that "the legislature has expressed a firm state policy that the statutory closure is never to be broken save in exceptional circumstances and for good cause approaching the necessitous." *Id.* at 748, 11 Cal. Rptr. at 704.

42. *In re Wells*, 281 F.2d 68 (D.C. Cir. 1960).

43. *Chattman v. Bennett*, 57 A.D.2d 618, 393 N.Y.S.2d 768 (1977). The *Chattman* court felt that any request for medical information should be freely disclosed and allowed the adoptee to inspect her adoption and medical records as well as those of her biological parents. The court, however, directed that nonpertinent information, such as the names of the biological parents, be deleted. *Id.* at 618, 393 N.Y.S.2d at 768-69. The medical information in this case was contained in a separate and distinct document. New York law does not, however, require a separate medical schedule for the biological parents. Thus, if the child's medical report contains no mention of the parents' medical history, essential information may be denied if the court adheres to its plan to delete the names of the biological parents.

The majority of states do not make the biological parents' medical information readily available. Note, *Confidentiality of Adoption Records: An Examination*, *supra* note 6, at 845. Recently, however, states have begun to require the biological parents' medical history. IOWA CODE ANN. § 600.8(1)(c) (West Supp. 1980-81).

44. *Spillman v. Parker*, 332 So. 2d 573 (La. App. 1976).

45. *In re Carol S.*, 172 N.Y.L.J. 31 (Sup. Ct.). The petitioner was able to establish that her preoccupation with obtaining information about her biological parents had an adverse affect on her social adjustment. In addition, the adoptive parents were dead and the records contained only sparse information about her natural parents. The court found that "[w]hile petitioner has not succeeded in establishing the strongest case of good cause, she has established that some emotional benefit may accrue to her by revealing to her what little information is available." *Id.* at col. 7.

But see In re Maxtone-Graham, 90 Misc. 2d 107, 393 N.Y.S.2d 835 (1975). In *Maxtone-Graham* the court permitted access after the natural mother, whom petitioner had previously located and contacted, appeared in court and gave her consent. The court, however, refused to disclose the names of foster parents who had cared for petitioner prior to adoption, despite psychiatric testimony, on the grounds that it served no useful purpose and might disrupt the relationship between the child care agencies and foster parents.

46. *Weiner v. Morgenthau*, 4 FAM. L. REP. (BNA) 2110 (1977) (confidentiality requirement need not be complied with where grand jury seeks to obtain records while investigating private adoption business). *But see People v. Doe*, 138 N.Y.S.2d 307 (1955) (grand jury's request for all adoption records too broad and failed to show good cause).

curiosity⁴⁷ or assertions that the information is required in a paternity suit⁴⁸ or an action for criminal conversation⁴⁹ do not constitute "good cause."

A minority of states merely require "cause."⁵⁰ Some allow disclosure only if it promotes the welfare of the child or the public.⁵¹ A few states have no standard and require only a court order for release of information.⁵² Other states give adoptees an absolute right to inspect either the original birth certificate or the adoption files and records.⁵³

The overall effect of these statutes is the creation of an "almost impenetrable wall of confidentiality"⁵⁴ around all records of the adoptee's birth and the adoption proceedings. In an effort to confront this barrier, adoptees and legal commentators are asserting legal challenges to the existing statutory procedures and their rationale.

II. THE ARGUMENTS FOR OPENING THE SEALED RECORDS

The arguments in support of free access to adoption information are grounded on two premises: first, that the closure statutes are destructive to the adoptee's mental and emotional development⁵⁵ and second, that the states' refusal to allow access to this information denies the adoptee constitutionally guaranteed rights.⁵⁶

A. *The Psychological Argument*⁵⁷

The legislature considers closure of birth and adoption records to be

47. *In re Carol S.*, 172 N.Y.L.J. 31 (Sup. Ct.).

48. *In re Minicozzi*, 51 Misc. 2d 595, 273 N.Y.S.2d 632 (1966).

49. *In re Glasser*, 198 Misc. 889, 100 N.Y.S.2d 723 (1950).

50. See 1 PA. CONS. STAT. ANN. § 505 (Purdon Supp. 1980-81).

51. See, e.g., D.C. CODE ENCYL. § 16-311 (West 1966) (welfare of child); N.C. GEN. STAT. § 48-26 (1976) (welfare of child or public); TENN. CODE ANN. § 36-132 (1977) (same).

52. See, e.g., FLA. STAT. ANN. § 63.162(2) (West Supp. 1980); KY. REV. STAT. ANN. § 199.570(1) (Baldwin 1975).

53. ALA. CODE § 26-10-5(a) (1975); IDAHO CODE § 16-1511 (1979); KAN. STAT. ANN. § 59-2279 (1976).

54. Note, *Recognizing the Needs of Adopted Persons: A Proposal to Amend the Illinois Adoption Act*, *supra* note 12, at 63.

55. J. TRISELIOTIS, *supra* note 8, at 160-66; Sorosky, Baran & Pannor, *The Effects of the Sealed Record in Adoption*, 133 AM. J. PSYCH. 900 (1976); Sorosky, Baran & Pannor, *Identity Conflicts in Adoptees*, 45 AM. J. ORTHOPSYCH. 18 (1975).

56. See note 12 *supra* and accompanying text.

57. The courts in the adult adoptee cases have accepted the psychological-need argument despite their frequently asserted hesitancy to accept psychological or sociological data as a basis for their decision making if the asserted need is supported by psychiatric testimony.

in the best interests of both the child and the adoptive and natural parents. Whether closure continues to be in the best interests of the child once that child reaches adulthood is the basic question raised in the "right to know" debate.⁵⁸ Open record proponents argue that closure is not in the best interests of the adult adoptee because it may be detrimental to the adoptee's mental health.⁵⁹ These theorists rely on a series of mental health studies that indicate a significant incidence of mental disturbance in adopted persons⁶⁰ and suggest that the adopted child is more susceptible to emotional and social problems than the nonadoptee.⁶¹ The studies attribute this higher incidence of disturbance among adoptees to "adoption stress,"⁶² caused by the adoptees' lack of knowledge about their origins and the confusion and uncertainty accompanying that ignorance.⁶³

This genetic identity crisis,⁶⁴ or "genealogical bewilderment,"⁶⁵ primarily affects the individual's development of self-concept.⁶⁶ Successful identity development provides a positive self-image, enabling an

58. Note, *Sealed Records in Adoptions: The Need for Legislative Reform*, *supra* note 12, at 217 n.38.

59. Sorosky, Baran & Pannor, *The Effects of the Sealed Record in Adoption*, *supra* note 55; Sorosky, Baran & Pannor, *Identity Conflicts in Adoptees*, *supra* note 55.

60. Goodman, Silberstein & Mandell, *Adopted Children Brought to Child Psychiatric Clinics*, 9 ARCH. GEN. PSYCH. 451 (1963); Humphrey & Ounsted, *Adoptive Families Referred for Psychiatric Advice Part I, The Children*, 109 BR. J. PSYCH. 559 (1963); Reece & Levin, *Psychiatric Disturbance In Adopted Children: A Descriptive Study*, 13 SOC. WORK 101 (1968); Simon & Senturia, *Adoption and Psychiatric Illness*, 122 AM. J. PSYCH. 858 (1966).

61. Committee on Adoptions, American Academy of Pediatrics, *Identity Development in Adopted Children*, 47 PEDIATRICS 948 (1971) [hereinafter cited as Committee on Adoptions]. *But see* B. JAFFE & D. FANSHEL, *HOW THEY FARED IN ADOPTION: A FOLLOW-UP STUDY* (1970); Elonen & Schwartz, *A Longitudinal Study of Emotional, Social, and Academic Functioning of Adopted Children*, 48 CHILD WELFARE 72 (1969); Kirk, Jonassohn & Fish, *Are Adopted Children Especially Vulnerable to Stress?*, 14 ARCH. GEN. PSYCH. 291 (1966); Stephenson, *The Emotional Implications of Adoption Policy*, 16 COMPREHENSIVE PSYCH. 363 (1975) (each study found that despite the added stress factors related to adoptive status, there was little or no difference in adjustments between adoptees and nonadoptees).

62. Wellisch, *Children Without Genealogy: A Problem of Adoption*, 13 MENTAL HEALTH 41 (1952).

63. Sants, *Genealogical Bewilderment in Children with Substitute Parents*, 37 BR. J. MED. PSYCH. 133 (1964).

64. Frisk, *Identity Problems and Confused Conceptions of the Genetic Ego in Adopted Children During Adolescence*, 31 ACTA PAEDO PSYCHIATRICA 6 (1964); Sants, *supra* note 63, at 133.

65. *See* Sants, *supra* note 63, at 133.

66. Committee on Adoptions commented that identity development is a major psychological goal: "The most important 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." Committee on Adoptions, *supra* note 61, at 939.

individual to function effectively and confidently in society.⁶⁷ Completion of this process occurs when the individual achieves emotional independence from the parents.⁶⁸

During the developmental period, individuals seek knowledge of their origins and the sense of identity that such information provides.⁶⁹ Because adoptees lack knowledge of their roots, they are unable to resolve the problems presented by this developmental period. Thus, the adoptee frequently experiences a sense of emptiness⁷⁰ and an increased susceptibility to feelings of isolation and alienation. This condition often manifests itself in various emotional disturbances.⁷¹ These stresses, as well as the normal tensions of adulthood, often cause pain and difficulty, thus intensifying the confusion and uncertainty adoptees feel about their identity.⁷² Numerous mental health experts,⁷³ social workers,⁷⁴ and legal commentators⁷⁵ argue on the basis of the evidence presented in these studies that the best interests doctrine mandates that

67. Sants, *supra* note 63, at 134.

68. Barinbaum, *Identity Crisis in Adolescence: The Problem of an Adopted Girl*, 9 ADOLESCENCE 547 (1974).

69. *Id.*

70. Sorosky, Baran & Pannor, *Identity Conflicts in Adoptees*, *supra* note 55, at 21.

71. J. TRISELIOTIS, *supra* note 8, at 81. He comments that:

The general picture that emerged from an examination of the adoptees' self-perception was that those who portrayed a negative, non-adjustive picture of themselves, perceived their adoptive home life as depriving, they were mostly searching for their birth-parents; and they were given no information or only negative type of information about their origins. Being placed at a year or older seemed to carry considerable risks.

Id. at 84. See also Sorosky, Baran & Pannor, *Identity Conflicts in Adoptees*, *supra* note 55, at 24.

Alternative explanations, however, of the disproportionate incidence of psychological problems among the adopted are available. For example, deprivation of a close affectionate relationship with a parental figure during a "critical period" in the first two or three years of development can cause adjustment problems. Adopted children are more likely to experience this deprivation, especially if they spent significant time during the critical period in institutions. This phenomenon might account for the greater incidence of adjustment problems among children adopted after one year of age that Triseliotis noted. See Goldfarb, *Effects of Early Institutional Care on Adolescent Personality*, 12 J. EXPERIMENTAL EDUC. 106-29 (1943). See generally I. J. BOWLBY, ATTACHMENT AND LOSS (1969); S. PROVENCE & R. LIPTON, INFANTS IN INSTITUTIONS (1962).

72. J. TRISELIOTIS, *supra* note 8, at 92-108; Sorosky, Baran & Pannor, *Identity Conflicts in Adoptees*, *supra* note 55, at 22-23.

73. J. TRISELIOTIS, *supra* note 8; Sorosky, Baran & Pannor, *The Effects of the Sealed Record in Adoption*, *supra* note 55; Sorosky, Baran & Pannor, *Identity Conflicts in Adoptees*, *supra* note 55. See note 60 *supra* and accompanying text.

74. Anderson, *The Sealed Record in Adoption Controversy*, *supra* note 8; Baran, Pannor & Sorosky, *Adoptive Parents and the Sealed Record Controversy*, *supra* note 8; Cominos, *Minimizing the Risks of Adoption Through Knowledge*, 16 SOC. WORK 73 (1971).

75. See Katz, *supra* note 9; note 12 *supra* and accompanying text.

adoptees have access to information about their origins on reaching majority.⁷⁶

B. *The Constitutional Arguments*

Adoptees, individually and through "right to know" organizations,⁷⁷ contend that open access to their birth and adoption records is both a "natural right,"⁷⁸ justified by a universal need to know one's identity and the identity of one's ancestors⁷⁹ and a fundamental right, protected by the Constitution. The adoptee's proclivity toward an identity crisis, or even more severe psychological problems, provides the underlying rationale for the "constitutional" arguments.⁸⁰ Thus, the adoptee organizations assert that this denial of genealogical information violates constitutional rights including the first amendment right to receive information, the right to privacy, and the fourteenth amendment equal protection guarantees.⁸¹

76. None of the commentators advocate revealing the biological parents' identity to the child adoptee. Most commentators do urge that the child be informed of the adoption.

77. The two major organizations are ALMA (Adoptees' Liberty Movement Association) founded by Florence Fisher, in 1971 and Orphan Voyage, founded by Jean Paton, in 1954. For a discussion of their philosophies, see Baran, Pannor & Sorosky, *Adoptive Parents and the Sealed Record Controversy*, *supra* note 8, at 531-32; Note, *A Reasonable Approach to the Adoptee's Sealed Record Dilemma*, *supra* note 12, at 542-43; Note, *Discovery Rights of the Adoptee—Privacy Rights of the Natural Parent: A Constitutional Dilemma*, *supra* note 8, at 65. Recently two more organizations have been formed for similar purposes: Yesterday's Children, whose philosophy is documented in Note, *Sealed Records in Adoptions: The Need for Legislative Reform*, *supra* note 12, at 220 n.57, and Adoptees in Search.

78. Note, *Sealed Records in Adoptions: The Need for Legislative Reform*, *supra* note 12, at 220 n.57.

79. *Id.* " [I]t is a universal human need to know your true identity and the identities of your forbearers. We propose that because it is a human need, it should be recognized that it is a human right to meet that need." *Id.*

80. See notes 58-76 *supra* and accompanying text.

81. See note 10 *supra* and accompanying text. Adoptees in *Yesterday's Children v. Kennedy*, 569 F.2d 431 (7th Cir. 1977), also asserted a thirteenth amendment claim. Plaintiffs argued that, upon adoption, they were put into a "chattel status" and the state's continued maintenance of that status into their adulthood constituted a thirteenth amendment violation. The district court did not respond to this argument because it returned the case to a more appropriate state court forum. *Id.* at 433. Most recently this thirteenth amendment claim was asserted in *Alma Soc'y, Inc. v. Mellon*, in which plaintiffs argued that the good cause requirement "is a badge or incident of slavery because it is the equivalent of the sale and separation from their parents of slave children too young to remember who their parents were." The court dismissed this argument as frivolous. *Alma Soc'y, Inc. v. Mellon*, 459 F. Supp. 912, 916, *aff'd*, 601 F.2d 1225 (2d Cir. 1979), *cert. denied*, 100 S. Ct. 531 (1980).

1. *The First Amendment Right to Receive Information*

Commentators argue that closure statutes violate an individual's right to receive information and ideas.⁸² Interference with this right undermines one's freedom to participate in and contribute to social and governmental decisionmaking processes.⁸³ Such participation requires a healthy mind, free from emotional and psychological stress. Adult adoptees cannot fully participate in the decisionmaking process⁸⁴ because the inability to learn their biological heritage has damaged their emotional and psychological development.⁸⁵ Thus, the first amendment's guarantee of the right to receive information gives adoptees the right to require access to their adoption records because the receipt of the information is essential for their self-fulfillment.⁸⁶ The commentators contend that any restriction on access to information is unconstitutional. The restrictions impede the individual's mental growth and thus deny meaningful participation in social and political decisionmaking.⁸⁷

2. *The Right to Privacy*

The right to privacy guarantees an individual both privacy in the

82. Note, *The Adult Adoptee's Constitutional Right to Know His Origins*, *supra* note 12, at 1205. See *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367 (1969); *Lamont v. Postmaster General*, 381 U.S. 301 (1965); *Martin v. Struthers*, 319 U.S. 141 (1943); *Gotkin v. Miller*, 379 F. Supp. 859 (E.D.N.Y. 1974), *aff'd*, 514 F.2d 125 (2d Cir. 1975). See also *Stanley v. Georgia*, 394 U.S. 557 (1969); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (asserted for the proposition that the first amendment protected the free flow of information from one person to another in, e.g., *Application of Maples*, 563 S.W.2d 760, 762 (Mo. 1978)).

83. Note, *The Adult Adoptee's Constitutional Right to Know His Origins*, *supra* note 12, at 1204-05.

84. *Id.* at 1205.

85. *Id.* at 1201-03. See notes 66-67 *supra* and accompanying text.

86. *Id.* (commenting that the information is important to the individual in his personal life as well as in his public life, i.e., decisionmaking). Without this information, the individual will not develop into a fully integrated, healthy person, capable of intelligent social and political participation. *Id.* One commentator characterizes this as a right to control one's body and cites the Supreme Court's comment from *Union Pac. Ry. v. Botsford*, 141 U.S. 250, 251 (1891): "[n]o right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all other restraint or interference of others, unless by clear and unquestioned authority of law." Note, *Confidentiality of Adoption Records: An Examination*, *supra* note 6, at 828.

87. Note, *The Adult Adoptee's Constitutional Right to Know His Origins*, *supra* note 12, at 1207 (citing *Stanley v. Georgia*, 394 U.S. 557 (1969), for the proposition that the Supreme Court is willing to extend first amendment protection beyond the area of societal decisionmaking to that of individual concerns).

most fundamental aspects of life⁸⁸ and the right to make choices about personal matters.⁸⁹ Commentators assert, based on the rights emanating from the fundamental guarantees of the first, fourth, fifth, and ninth amendments,⁹⁰ that the privacy right must protect the individual's identity development⁹¹ because an individual's ability to make decisions is governed by identity formation. Any restriction on an individual's emotional growth is viewed, therefore, as a denial of "the autonomous control over the development and expression of one's intellect, interests, tastes and personality."⁹² In addition, these commentators argue that closure statutes prevent dissemination of the very information that the adoptee requires to make the fundamental decisions protected by the right to privacy,⁹³ *i.e.*, marriage,⁹⁴ procreation,⁹⁵ contraception,⁹⁶ family relationships,⁹⁷ and childrearing and education.⁹⁸

These critics also challenge the state's claim that the natural parents'

88. *Roe v. Wade*, 410 U.S. 113 (1973); *Stanley v. Georgia*, 394 U.S. 557 (1969); *Griswold v. Connecticut*, 381 U.S. 479 (1965). In *Whalen v. Roe*, 429 U.S. 589, 599 n.23 (1977), the Court attempted to define the privacy right and indicated that the right encompassed something more than marriage, procreation, contraception, and childbearing. Privacy embraces both a general individual interest in avoiding disclosure of personal matters and a distinct interest in independence in making certain kinds of important decisions.

89. *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

90. *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965). See Note, *supra* note 8, at 74-75.

91. Note, *The Adult Adoptee's Constitutional Right to Know His Origins*, *supra* note 12, at 1208, noting that "[t]he core of his identity is indeed more private than his role as a parent or as a sexual partner, and any interference with its development necessarily affects his private decisions." *Id.* (footnote omitted). See also A. WESTIN, *PRIVACY AND FREEDOM* 33 (1970).

92. *Doe v. Bolton*, 410 U.S. 179, 211 (1973); Note, *The Adult Adoptee's Constitutional Right to Know His Origins*, *supra* note 12, at 1208-09.

93. Note, *The Adult Adoptee's Constitutional Right to Know His Origins*, *supra* note 12, at 1208-09. The commentator argues that privacy embodies more than secrecy: privacy means control over information. Control implies that the individual not only has knowledge of that information but also the freedom to use the information. *Id.* at 1210.

The adoptee will not always be able to assert that access to information about his origins is necessary for any particular decision, though that will often be the case where there is some question about his family's biological background. But he can assert that, without the healthy sense of self which comes from knowledge of one's origins, any fundamental decision may be difficult when he does have to confront it.

Id. at 1209.

94. *Loving v. Virginia*, 388 U.S. 1 (1967).

95. *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

96. *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

97. *Prince v. Massachusetts*, 321 U.S. 158 (1944).

98. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

right to privacy overrides the child's right to know.⁹⁹ They contend that the natural parents have deprived the adoptees of the use and ownership of this information.¹⁰⁰ These critics conclude, therefore, that tort law provides greater protection for the welfare of the natural parent than state closure statutes.¹⁰¹

3. *Fourteenth Amendment Equal Protection*

The adoptees argue that a requirement to obtain a court order to gain access to birth records violates the fourteenth amendment¹⁰² because a nonadopted person routinely has access to those records.¹⁰³ Although the equal protection clause does not require all persons to be treated equally, the clause does require legislation to be reasonable¹⁰⁴ or to bear a substantial relation to the object of the legislation.¹⁰⁵ The adoptees assert that the closure statutes do not meet these standards.¹⁰⁶ Adoptees contend, based on psychological data,¹⁰⁷ that the statutes are contrary to their best interests.¹⁰⁸ Thus the statutes embody no rational

99. Note, *Adult Adoptee's Constitutional Right to Know his Origins*, *supra* note 12, at 1215.

100. *Id.*

101. *Id.* at 1217-20.

102. Note, *The Adoptee's Right to Know His Natural Heritage*, *supra* note 12, at 144. See Application of Maples, 563 S.W.2d 760 (Mo. 1978).

103. Note, *The Adoptee's Right to Know His Natural Heritage*, *supra* note 12, at 144; Note, *Discovery Rights of the Adoptee—Privacy Rights of the Natural Parent: A Constitutional Dilemma*, *supra* note 8, at 69-70. See generally Tussman & tenBroek, *The Equal Protection of the Laws*, 37 CALIF. L. REV. 341 (1949); Note, *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969).

104. Note, *The Adoptee's Right to Know His Natural Heritage*, *supra* note 12, at 141-44; Note, *Discovery Rights of the Adoptee—Privacy Rights of the Natural Parent: A Constitutional Dilemma*, *supra* note 8, at 70. Both commentators cite to *McGowan v. Maryland*, 366 U.S. 420 (1961), in support of their discussion of the rational basis test.

105. Note, *The Adoptee's Right to Know His Natural Heritage*, *supra* note 12, at 144; Note, *Discovery Rights of the Adoptee—Privacy Rights of the Natural Parent: A Constitutional Dilemma*, *supra* note 8, at 70-71. Both commentators rely on *Reed v. Reed*, 404 U.S. 71 (1971), in its use of the *F.S. Royster Guano Co. v. Commonwealth of Virginia* holding that "the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *F.S. Royster Guano Co. v. Commonwealth of Virginia*, 253 U.S. 412, 415 (1920).

106. Note, *The Adoptee's Right to Know His Natural Heritage*, *supra* note 12, at 144. But see Note, *Discovery Rights of the Adoptee—Privacy Rights of the Natural Parent: A Constitutional Dilemma*, *supra* note 8, at 70-71. (Author believes that adoptees' chances of success under rational basis test would be very limited, but under the substantial relation test the evidence of identity crisis and psychological deprivation would render a contention of state interest illogical.)

107. See notes 58-76 *supra* and accompanying text.

108. *Id.*

basis¹⁰⁹ or substantial relation¹¹⁰ to justify their continuance.¹¹¹

The right to know proponents also claim that the adoptees are a suspect class,¹¹² and thus argue that strict scrutiny of the statutes is appropriate.¹¹³ Although the Supreme Court has not designated adoptees as a "suspect class,"¹¹⁴ several decisions suggest that status at birth may support a suspect classification.¹¹⁵ Application of strict scrutiny would uphold closure legislation only if the statute promoted some compelling state interest. Fundamental rights also trigger strict scrutiny, and commentators argue that courts should afford constitutional protection to the adoptee's right to know consonant with the protection afforded to marriage and family relationships.¹¹⁶

4. *No Compelling State Interest Argument*

Statutory closure will prevail over judicial acceptance of the adoptees' fundamental right to know or the adoptees' suspect class cat-

109. See note 104 *supra* and accompanying text.

110. See note 105 *supra* and accompanying text.

111. See note 106 *supra* and accompanying text.

112. Note, *Discovery Rights of the Adoptee—Privacy Rights of the Natural Parent: A Constitutional Dilemma*, *supra* note 8, at 72.

113. See Tussman & tenBroek, *supra* note 103; Note, *Developments in the Law—Equal Protection*, *supra* note 103.

114. The Supreme Court has clearly recognized only the following as suspect classes: race, *Loving v. Virginia*, 388 U.S. 1 (1967); *McLaughlin v. Florida*, 379 U.S. 184 (1964); alienage, *Takahashi v. Fish & Game Commission*, 334 U.S. 410 (1948); and national origin, *Oyama v. California*, 332 U.S. 633 (1948). Each case, however, involves some condition of birth from which the argument is generalized.

115. *Frontiero v. Richardson*, 411 U.S. 677, 685-87 (1973) (suspect classes are those that suffer from "an immutable characteristic determined solely by the accident of birth" and have had a history of the relegation of the class to an inferior status); *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 109 (1973) (Marshall, J., dissenting) ("[D]iscrimination on the basis of birth—particularly when it affects innocent children—warrants special judicial consideration."); *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972) ("[I]mposing disabilities on the illegitimate child is contrary to the basic concept of our legal system that burdens should bear some relationship to individual responsibility or wrongdoing."); *Levy v. Louisiana*, 391 U.S. 68, 71 (1968) ("Why should the illegitimate child be denied rights merely because of his birth out of wedlock? . . . How under our constitutional regime can he be denied correlative rights which other citizens enjoy?").

116. Note, *The Adoptee's Right to Know His Natural Heritage*, *supra* note 12, at 145-46; Note, *Discovery Rights of the Adoptee—Privacy Rights of the Natural Parent: A Constitutional Dilemma*, *supra* note 8, at 73. See *Alma Soc'y, Inc. v. Mellon*, 459 F. Supp. 912 (S.D.N.Y. 1978), *aff'd*, 601 F.2d 1225 (2d Cir. 1979), *cert. denied*, 100 S. Ct. 531 (1980), in which adoptees argued that adoptees are so politically powerless that adoptees require the protection afforded discrete and insular minorities.

egorization if the legislation promotes a compelling state interest.¹¹⁷ The state predicates its interest on the belief that closure laws are in the best interests of the child¹¹⁸ and promote the institution of adoption.¹¹⁹ Open record proponents argue that the state's interest, which may be compelling while the adoptee is a child, naturally diminishes¹²⁰ once the adopted child reaches adulthood.¹²¹ Supporters of open records reject the claim that closure laws enable parents to abandon their children with anonymity.¹²² These commentators not only find no evidence to support the state's assumption,¹²³ but also argue that several states¹²⁴ and foreign countries¹²⁵ with open record adoption statutes continue to successfully support the institution of adoption.¹²⁶

III. THE COURTS' RESPONSE

Although the "right to know" movement originated in the 1950's,¹²⁷

117. Note, *The Adult Adoptee's Constitutional Right to Know His Origins*, *supra* note 12, at 1210-11.

118. See notes 35-36 *supra* and accompanying text.

119. See notes 30-34 *supra* and accompanying text.

120. Note, *The Adult Adoptee's Constitutional Right to Know His Origins*, *supra* note 12, at 1211-12.

121. *Id.* noting that the Supreme Court in *Roe v. Wade*, 210 U.S. 113, 162-63 (1973) established the proposition that the nature of the state's interest varies over time and commenting:

Justice Blackmun explained that Texas had legitimate interests in protecting the health of the pregnant woman and the viable fetus and that these interests intensified during the course of the pregnancy until they became 'compelling.' Prior to the point when they became compelling, however, the woman was free under her right to privacy to make the decision whether or not to abort. Thus, it is conceivable that the interest underlying the confidentiality statutes may be compelling at its initial application and yet lose that status with time.

Id. at 1211. The court in *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 308-09, 372 A.2d 646, 649 (1977) accepted this argument.

122. Note, *The Adult Adoptee's Constitutional Right to Know His Origins*, *supra* note 12, at 1213.

123. *Id.*

124. See note 24 *supra* and accompanying text.

125. Scotland, Finland, Israel, and most recently England and Wales have statutes providing for access to adoption records by means of a reunion registry when the adoptee reaches majority. A Canadian governmental commission in Ontario has also recommended such legal reform. Klibanoff, *supra* note 26, at 188.

126. Note, *The Adoptee's Constitutional Right to Know His Origins*, *supra* note 12, at 1214. See *Yesterday's Children v. Kennedy*, 569 F.2d 431, 434 (7th Cir. 1977).

127. See J. PATON, *THE ADOPTED BREAK SILENCE* (1954). Paton, an adopted social worker who at the age of forty-seven located her mother, founded Orphan Voyage. Orphan Voyage assists adoptees in finding their natural parents. Paton has written and lectured regularly on the subject of adoption and advocates the concept of a reunion register. Baran, Pannor & Sorosky, *supra* note 8, at 531-32.

it did not receive attention from legal commentators until the early 1970's.¹²⁸ Presentation of the proposed constitutional arguments in a judicial forum did not begin until late 1976.¹²⁹ *Mills v. Atlantic City Department of Vital Statistics*¹³⁰ best exemplifies those arguments.

In *Mills*, four adult adoptees, seeking access to their adoption records, challenged the constitutionality of the New Jersey closure statutes¹³¹ that required the sealing of the adoptee's original birth certificate and a showing of good cause before a court would break the seal.¹³² The adoptees asserted that the statutes violated first amendment rights to receive information,¹³³ rights to privacy,¹³⁴ and rights to equal protection under the fourteenth amendment.¹³⁵ In addition, they claimed that the state could demonstrate no compelling reason to justify the legislation.¹³⁶ *Mills*, and subsequent decisions,¹³⁷ have rejected each of these propositions.¹³⁸ Moreover, adoptees in *Alma Society, Inc. v. Mellon*¹³⁹ unsuccessfully attempted a thirteenth amendment challenge to the constitutionality of the sealed record statutes.¹⁴⁰

A. *The First Amendment Right to Receive Information*

The *Mills* court recognized that adoptees have a right to receive in-

128. Baran, Pannor & Sorosky, *supra* note 8, at 532; J. TRISELIOTIS, *supra* note 8; Note, *The Adult Adoptee's Constitutional Right to Know His Origins*, *supra* note 12, at 1196 n.3.

129. See note 10 *supra* and accompanying text.

130. 148 N.J. Super. 302, 372 A.2d 646 (1977).

131. *Id.* at 306, 372 A.2d at 648.

132. *Id.* The statutes challenged were N.J. STAT. ANN. § 26:8-40.1 (West 1964) (requiring the state registrar to seal the original birth certificate of any child adopted) and N.J. STAT. ANN. § 9:3-31 (West 1976) (only a court order can break the seal of secrecy provided that good cause is shown).

133. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 312-13, 372 A.2d 646, 651-52 (1977).

134. *Id.* at 309-12, 372 A.2d at 650-51.

135. *Id.* at 315-17, 372 A.2d at 653.

136. *Id.* at 311-12, 314-16, 372 A.2d at 651-52, 653-54.

137. *Yesterday's Children v. Kennedy*, 569 F.2d 431 (7th Cir. 1977); *Application of Gilbert*, 563 S.W.2d 768 (Mo. 1978); *Application of Maples*, 563 S.W.2d 760 (Mo. 1978); *Alma Soc'y, Inc. v. Mellon*, 459 F. Supp. 912 (S.D.N.Y. 1978), *aff'd*, 601 F.2d 1225 (2d Cir. 1979), *cert. denied*, 100 S. Ct. 531 (1980).

138. See notes 134-36 *supra* and accompanying text.

139. *Alma Soc'y, Inc. v. Mellon*, 601 F.2d 1225 (2d Cir. 1979), *cert. denied*, 100 S. Ct. 531 (1980).

140. *Id.* at 1236-38. The appellants claimed that the thirteenth amendment prohibition of slavery and involuntary servitude gave them an absolute right of access to their adoption records. *Id.* at 1236. The court summarily dismissed this argument.

formation,¹⁴¹ but stated that no constitutional or personal right, even a first amendment right, is so absolute as to exclude the rights of other individuals, *i.e.*, the natural parents.¹⁴² The court found that the adoption records required protection and held the good cause requirement a reasonable method of protecting the records.¹⁴³ The assertion of a right to access, based on a constitutional right to receive information, did not, therefore, override state policy.¹⁴⁴

B. *The Right to Privacy Argument*

The *Mills* court responded to the right of privacy argument by comparing it to the first amendment right to speak and to receive information. The first amendment right is also not absolute.¹⁴⁵ An adoption statute would be valid unless it is unreasonable, arbitrary, and has no rational relationship to a permissible state objective.¹⁴⁶ The court asserted that "Constitutional and other personal rights may be limited for the protection of other individuals or the public, and where the absolute exercise of the right harms these other elements it may be restricted."¹⁴⁷ Characterizing the natural parents' right to be left alone as "the most comprehensive of rights and the right most valued by civilized men,"¹⁴⁸ the *Mills* court noted that natural parents not only have the expectation of confidentiality, but also an actual statutory assurance that they will be shielded from public disclosure.¹⁴⁹

Recently, the United States Court of Appeals for the Second Circuit in *Alma Society, Inc. v. Mellon*¹⁵⁰ viewed the adoptee's privacy argument as an assertion of a right to personhood.¹⁵¹ The court found that the New York good cause requirements simply acknowledged the rela-

141. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 312-13, 372 A.2d 646, 652 (1977).

142. *Id.*

143. See N.J. STAT. ANN. § 9:3-17 (West 1976) (New Jersey good cause statute). See notes 40-61 *supra* and 181-88 *infra* and accompanying text for a statement of the elements of good cause.

144. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 313, 372 A.2d 646, 653 (1977).

145. *Id.* at 310, 311, 372 A.2d at 650, 651.

146. *Id.*

147. *Id.*

148. *Id.* at 311-12, 372 A.2d at 651-52 (citing *Stanley v. Georgia*, 394 U.S. 557 (1969)).

149. *Id.* at 311, 372 A.2d at 651-52.

150. 601 F.2d 1225 (2d Cir. 1979), *cert. denied*, 100 S.Ct. 531 (1980).

151. The court said: "What appellants assert is a right to personhood. They rely on a series of Supreme Court cases involving familial relationships rights of family privacy, and freedom to marry and reproduce." *Id.* at 1231.

tionship of the natural and adoptive parents. The court upheld the statutes despite the claim that the sealing of the adoption records "imposed lifelong familial amnesia . . ." ¹⁵², stating that they "do not unconstitutionally infringe upon or arbitrarily remove appellants' rights of identity, privacy, or personhood." ¹⁵³

C. *The Fourteenth Amendment Equal Protection Argument*

The adoptees in *Mills* claimed that the court should apply strict scrutiny because their rights were fundamental. ¹⁵⁴ The court in *Mills* rejected that argument and declared that "while information regarding the heritage, background and physical and psychological heredity of any person is essential to that person's identity and self-image, ¹⁵⁵ nevertheless it did not fall under the protection of the Bill of Rights." ¹⁵⁶ The court found that the statutory objective of shielding natural parents from public disclosure was reasonable and that the statute bore a rational relationship to that objective. ¹⁵⁷

The court also rejected the characterization of the adoptee as a member of a suspect class by analogy to the legitimacy cases. The adoptee's status does not result from an accident of birth, but from a legal proceeding that is designed to protect the adoptee's best interest. ¹⁵⁸ Similarly, in *Application of Maples*, ¹⁵⁹ the court treated adoption as a factor not usually present at birth, ¹⁶⁰ holding the claim that adoption is a status at birth erroneous because many of the adoptees challenging the sealed records statutes were not adopted until several months after their birth. ¹⁶¹ The *Maples* court characterized the adoption process as conferring special advantages on the child, rather than relegating the child

152. *Id.*

153. *Id.* at 1233.

154. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 311, 314-15, 372 A.2d, 646, 651, 653 (1977).

155. *Id.* at 310, 372 A.2d at 650, citing Reynolds, Eismitz, Chiappise & Walsh, *Personality Factors Differentiating Searching and Nonsearching Adoptees*, paper presented to AM. PSYCH. ASS'N (Sept. 1976); Sorosky, Baran & Pannor, *The Reunion of Adoptees and Birth Relatives*, 3 J. YOUTH & ADOLESCENCE 195 (1974).

156. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 310, 372 A.2d 646, 650 (1977).

157. *Id.* at 311-12, 372 A.2d at 651-52.

158. *Id.* at 315-16, 372 A.2d at 653.

159. *Application of Maples*, 563 S.W.2d 760 (Mo. 1978).

160. *Id.* at 765.

161. *Id.*

to an inferior status.¹⁶²

In *Alma Society, Inc. v. Mellon*,¹⁶³ the court refused to apply the level of scrutiny afforded illegitimate children even though a majority of children adopted by nonrelatives are illegitimate.¹⁶⁴ The finding of a suspect classification for illegitimates is predicated on a conclusion by the court that "the state has employed a questionable trait to distinguish those whom the law should burden from those whom the law should not."¹⁶⁵ The court concluded that the strict judicial scrutiny of discrimination against illegitimate children is justified because society has imposed a stigma on an illegitimate child. This rationale is not applicable to adoptees, however, because they do not suffer the same legal and social disabilities.

D. *No Compelling State Interest Argument*

The *Mills* court addressed the compelling state interest issue even though the failure of the constitutional arguments rendered it unnecessary.¹⁶⁶ The court noted that "an adopted child . . . is not a 'normal' child."¹⁶⁷ The state's creation of a new home life for the child has inextricably involved the state in the life of that child. The state's concern for the child is compelling. Therefore, its decision to use the "statutory shield of confidentiality" to protect that child is valid.¹⁶⁸ The court thus accepted the requirement of confidentiality as an essential ingredient in the adoption process, and upheld the constitutionality of the closure statutes.¹⁶⁹

162. *Id.*

163. 601 F.2d 1225 (2d Cir. 1979), *cert. denied*, 100 S.Ct. 531 (1980).

164. *Id.* at 1234.

165. *Id.*

166. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 316, 372 A.2d 646, 653 (1977).

167. *Id.*

168. *Id.*

169. *Id.* "The State has more than a rational basis, it has a compelling interest in regulating the access sought here." The court found no abridgement of any fundamental right nor a creation of a suspect class, but rather that the placing of reasonable limitations on the adoptees' access to their birth records protected a rational state interest. *Id.*

IV. THE COURTS' SOLUTION TO THE SEALED RECORD CONTROVERSY: HOW TO PRESENT A SUCCESSFUL CHALLENGE

Despite rejection of constitutional arguments, courts uniformly recognize that the right to know issue is a valid legal question. The courts are currently developing a procedural and substantive framework to adjudicate the rights of all involved parties.¹⁷⁰ Adjudication of the right to know hinges on judicial recognition that the adoptee is entitled to an evidentiary hearing.¹⁷¹ Statutory procedure generally requires the adoptee to petition the county clerk or registrar.¹⁷² The clerk or registrar enjoys the right to reject any petition,¹⁷³ and often delivers an immediate and summary denial.¹⁷⁴ Although the adoptee may appeal, the judge¹⁷⁵ usually dismisses the petition without a hearing.¹⁷⁶

The District of Columbia Court of Appeals in *In re C.A.B.*,¹⁷⁷ held that an adoptee who seeks to inspect the adoption records must receive a full evidentiary hearing before a court can render a decision on the petition's validity.¹⁷⁸ The court stated that "the time has come for the courts of this jurisdiction to come to grips with this touching and recurring social question on the merits."¹⁷⁹ The court thus recognized the existence of social complications and risks to the adoptee and natural parents.

Courts have retained the statutory good cause requirement before

170. *In re C.A.B.*, 384 A.2d 679 (D.C. 1978); *In re Female Infant*, 5 FAM. L. REP. (BNA) 2311 (1977).

171. *In re C.A.B.*, 384 A.2d 679, 680 (D.C. 1978); *Application of Maples*, 563 S.W.2d 760, 761-62 (Mo. 1978); *In re Adoption of Spinks*, 32 N.C. App. 422, 423, 232 S.E.2d 479, 480 (1977).

172. *In re Adoption of Spinks*, 32 N.C. App. 422, 423, 232 S.E.2d 479, 480 (1977) (citing N.C. GEN. STAT. § 48-26 (1976)) which requires the filing of a motion before the clerk of superior court of the county in which petitioner is resident for access to the sealed information; see *In re C.A.B.*, 384 A.2d 679 (D.C. 1978).

173. *In re Adoption of Spinks*, 32 N.C. App. 422, 423, 232 S.E.2d 479, 480 (1977).

174. *Id.* See *In re C.A.B.*, 384 A.2d 679 (D.C. 1978); *Application of Maples*, 563 S.W.2d 760, 761-62 (Mo. 1978).

175. *Id.* at 761 (citing MO. REV. STAT. § 453.120 (1978)) which provides that the adoptee apply to the court for a hearing to obtain access to closed records because only the court has the full power to order records opened.

176. *In re C.A.B.*, 384 A.2d 679, 679 (D.C. 1978); *Application of Maples*, 563 S.W.2d 760, 761-62 (Mo. 1978). *But see In re Adoption of Spinks*, 32 N.C. App. 422, 429, 232 S.E.2d 479, 484 (1977) (vacating and remanding for a new hearing).

177. 384 A.2d 679 (D.C. 1978).

178. *In re C.A.B.*, 384 A.2d 679, 680 (D.C. 1978).

179. *Id.*

permitting the opening of records.¹⁸⁰ Courts have found good cause when: the adoptees' search is inspired by religious beliefs requiring them to trace their ancestry and perform certain religious services for blood relatives;¹⁸¹ the adoptees desire information to establish their rights to inherit from natural parents;¹⁸² and the adoptees are motivated by well documented emotional or psychological disturbances.¹⁸³

The *Mills* court, in dicta, stated that a court should routinely grant requests for information concerning medical, hereditary, or ethnic background unless the state shows a compelling reason for denial.¹⁸⁴ A recent District of Columbia case¹⁸⁵ held that a request for medical information constituted a legitimate reason to open adoption records especially if the adoptee has children. Adoptees must be free to obtain accurate information directly from natural parents because parents often possess medical histories that only they can provide.¹⁸⁶ Courts have suggested that a compelling reason can never exist for denial of access to medical histories.¹⁸⁷

180. Application of Maples, 563 S.W.2d 760, 765 (Mo. 1978) (burden remains on adoptee); *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 317, 372 A.2d 646, 654 (1977) (requirement applies only when adoptee is a minor; burden shifts to the state once adoptee reaches adulthood).

181. Application of Gilbert, 563 S.W.2d 768, 770 (Mo. 1978).

182. *Spillman v. Parker*, 332 So.2d 573, 576 (La. App. 1976).

183. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 318-21, 372 A.2d 646, 654-56 (1978). *But see In re Adoption of Spinks*, 32 N.C. App. 422, 429, 232 S.E.2d 479, 483-84 (1977). The trial judge accepted applicant's testimony of emotional disturbance without supplementation by expert witnesses. The appeals court, however, vacated and remanded the action for a full factual determination hearing on the ultimate issue whether release of the information would be in the adoptee's best interest.

184. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 318, 372 A.2d 646, 654-55 (1977). *See Yesterday's Children v. Kennedy*, 569 F.2d 431, 434 (7th Cir. 1977).

185. *In re Adoption of Female Infant*, 5 FAM. L. REP. (BNA) 2311 (1979). The District of Columbia statute requires a showing of cause before records can be opened. D.C. CODE ANN. § 16-311 (1973).

186. Numerous hereditary diseases exist which do not become evident until the third or fourth decade or even later. Perhaps the most common is the onset of adult diabetes mellitus. A British study of 1,307 diabetics and 859 nondiabetic controls showed that 21% were found to have a first degree relative with diabetes, as compared with 7.5% for nondiabetics: a frequency of diabetes in close relatives three times greater for diabetics than nondiabetics. J. STANBURY, J. WYNGAARDEN, & D. FREDRICKSON, *THE METABOLIC BASIS OF INHERITED DISEASE* 85-86 (3d ed. 1972) *citing College of General Practitioners: The Family History of Diabetes*, 1 BRIT. MED. J. 960 (1965).

187. *In re Adoption of Female Infant*, 5 FAM. L. REP. (BNA) 2311, 2312-13 (1979). *Chatman v. Bennett*, 57 A.D.2d 618, 619, 393 N.Y.S.2d 768, 768-69 (1977). In *Chatman* the court released all pertinent medical information but the name of the natural parents. *See* note 43 *supra* and accompanying text.

The burden of showing good cause usually falls on the adoptee.¹⁸⁸ The *Mills* court, however, shifted the burden of proof to the state once the adoptee attained maturity;¹⁸⁹ until that time, however, the burden remained with the adoptee.¹⁹⁰ A court should, however, approve requests routinely if the natural parents have filed a consent to identification at the time of adoption.¹⁹¹

Even though the *Mills* court eases the adoptee's task by shifting the burden of proof to the state, access to records is not immediate. The rights of natural parents also require consideration.¹⁹² The *Mills* court felt that the question required a weighing of the adoptees' needs against the natural parents' rights.¹⁹³ The *Mills* court decided that an intermediary agency must locate the natural parent to solicit consent for release of the information because natural parents are not before the court and are, therefore, unable to present their arguments.¹⁹⁴ The court concluded that this procedure effectively protected the rights of all parties¹⁹⁵ although it imposed a burden on the state. This burden is justified, however, because the state originally created the adoptive tri-

188. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 319, 372 A.2d 646, 655 (1977).

189. *Id.* at 318, 372 A.2d at 654-55.

190. *Id.* at 317, 372 A.2d at 654.

191. *Id.* at 318, 372 A.2d at 654-55.

192. *Id.* at 319-20, 372 A.2d at 655; *Application of Maples*, 563 S.W.2d 760, 763 (Mo. 1978). See also *Application of Anonymous*, 89 Misc. 2d 132, 134, 390 N.Y.S.2d 779, 782 (1976) in which the court noted:

[A] determination of what constitutes 'good cause' pursuant to the public policy purpose of section 114 of the Domestic Relations Law must include not only a determination of the rights of the adoptive child and his adoptive parents, but also necessarily must include a determination of rights conferred by this statute on the natural parents of the child, together with any common-law rights available to them.

193. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 319, 372 A.2d 646, 655 (1977). See *In re Adoption of Spinks*, 32 N.C. App. 422, 427, 232 S.E.2d 479, 482 (1977) (requiring that the best interests of the child take precedence over interests of either the natural or adoptive parents). In *Spinks*, the court held that it was unable to consider the effect of the revelation of this information on the natural parents because their identity was unknown to the court. The court revealed the records, however, to the adoptee because she had the consent of her adoptive parents and had presented evidence of mental torment resulting from her ignorance of the true identity of her biological parents. *Id.* at 480-81.

194. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 320-21, 372 A.2d 646, 655-56 (1977). See *Application of Maples*, 563 S.W.2d 760, 766 (Mo. 1978) in which the court required consent from the natural parents before granting permission to open the records. *But see Id.* at 766-67, in which Judges Bargett and Seiler recommend in their concurring opinions a less rigid process than that elaborated by the majority.

195. *Mills v. Atlantic City Dep't of Vital Statistics*, 148 N.J. Super. 302, 321, 372 A.2d 646, 656 (1977).

angle and has an overriding interest in the adoption process.¹⁹⁶

The Circuit Court of Cook County, Illinois, in *In re Daniel Doe*,¹⁹⁷ established a similar procedure for contacting natural parents.¹⁹⁸ The court required that an investigator, either an appointee or a friend of the court, contact the biological and adoptive parents, deliver notice of the pending action, and inform them that a court would release the records in the absence of evidence of "substantial harm."¹⁹⁹ The biological and adoptive parents could then intervene and demonstrate by a preponderance of evidence that "substantial harm" would occur if the court released the information.²⁰⁰ In the absence of such a showing, the court would order the adoption records opened.²⁰¹

In *Application of Anonymous*,²⁰² a New York court announced a variant of the *Mills* and *Daniel Doe* approach. The court declared the natural parents necessary parties to the litigation. The court thus required notice and an opportunity to litigate.²⁰³ Because service of process on the natural parent was impossible, the court appointed a guardian *ad litem* to protect the natural parents' interests in the litigation,²⁰⁴ and to locate the natural parents and advise them of their rights.²⁰⁵

Connecticut, by statute, requires the probate court to follow a procedure similar to that imposed by the *Mills*, *Anonymous*, and *Doe* courts.²⁰⁶ Recently, the court in *Sherry H. v. Probate Court*,²⁰⁷ not only defined the appropriate procedure to determine whether disclosure is permissible, but also indicated the form that a denial of disclosure by the genetic parents must assume to maintain closure of the files. In *Sherry H.*, the probate court had dismissed plaintiff's petition because

196. *Id.*

197. No. 76-Co. 2436 (Cir. Ct. Cook County, Nov. 22, 1977) (cited in *Yesterday's Children v. Kennedy*, 569 F.2d 431, 433 (7th Cir. 1977)).

198. *Yesterday's Children v. Kennedy*, 569 F.2d 431, 433-34 (7th Cir. 1977).

199. *Id.*

200. *Id.* at 434.

201. *Id.*

202. 89 Misc. 2d 132, 390 N.Y.S.2d 779 (1976).

203. *Id.* at 134, 390 N.Y.S.2d at 782.

204. *Id.* at 135, 390 N.Y.S.2d at 782.

205. *Id.* The New York court that issued *The Application of Anonymous* opinion noted the novelty of its approach. *Id.*

206. CONN. GEN. STAT. § 7-53 (amended by Public Acts 1975, No. 75-170) requires the Probate court or its designee "to conduct a timely investigation into what effect examination of the adopted person's birth records would have upon the welfare of the adopted person, upon the welfare of the adopting and genetic parents and upon the public interest."

207. 5 FAM. L. REP. (BNA) 2525 (1979).

an earlier contact by Family Services with the genetic mother²⁰⁸ led the probate judge to conclude that the parent would never consent to disclosure. The judge therefore denied the petition. On appeal, the court faulted the lower court's reliance on a single telephone call and held that the probate court's investigation of the effects of disclosure on the adoptive triad must be "calculated to elicit the present desires of the parties."²⁰⁹ The probate court thus failed to meet the appropriate statutory standard. Current, timely, and independent information is essential for the court to properly apply legislative intent and to carefully evaluate the interests of all parties.²¹⁰

A North Carolina court of appeals appreciated the need for a balancing approach and commented: "[W]e think the judge should carefully weigh the interests of the child *and* the public, including the interests of the adoptive parents and the natural parents."²¹¹ In addition, the court must consider the importance of confidentiality to the entire adoption process. Despite potential adverse effects that an opening of the records would impose on natural parents,²¹² the court maintained that the best interest of the child remained paramount.²¹³ This court's application of the best interests rule required the adoptee to present the ultimate fact issue: whether release of the information is in the best interests of the child.²¹⁴ The court "weighed the totality of the circumstances,"²¹⁵ and rejected the notion that natural parents must receive summons and notice.²¹⁶

An alternative proposal would allow the adoptee access to records that falls short of revealing the identity of the natural parents after a showing of good cause.²¹⁷ If a court applies this approach, the judge determines the extent and nature of the revelations.²¹⁸

208. *Id.*

209. *Id.* at 2526.

210. *Id.*

211. *In re Adoption of Spinks*, 32 N.C. App. 422, 427, 232 S.E.2d 479, 482 (1977) (emphasis added).

212. *Id.* at 427, 232 S.E.2d at 483. The judge noted that protection of the natural parents' identity was a major state concern since a failure to protect the identity might offer unwed girls an abortion alternative rather than adoption as a solution for their problem.

213. *Id.*

214. *Id.* at 428, 232 S.E.2d at 483.

215. *Id.*

216. *Id.* at 425, 232 S.E.2d at 481.

217. *Application of Maples*, 563 S.W.2d 760, 766 (Mo. 1978).

218. *Id.*

V. CONCLUSION

Despite rejection of constitutional challenges,²¹⁹ courts remain willing, on a case by case basis, to consider whether adoptees should enjoy access to their files. The recognition by the court of the significance of this information to the adoptee is well documented.²²⁰ The court, however, must reach a decision that benefits both the adoptee and the natural parent.²²¹

The adoptee who seeks information short of the actual identity of natural parents may be most successful.²²² The courts seem receptive to a variety of causal arguments documented by evidence of emotional and psychological disturbance.²²³ In addition, most courts have required an intermediary to contact the natural parents and obtain their consent.²²⁴

The law in the area of adoptee's rights is developing slowly and cautiously. The courts, however, are willing to hear the adoptee's cause and respond positively if the natural parents receive no injury from recognition of the adoptee's rights to open files.

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219. See notes 127-69 *supra* and accompanying text.

220. See notes 58-76 *supra* and accompanying text.

221. See note 192 *supra* and accompanying text.

222. See notes 217-18 *supra* and accompanying text.

223. See notes 184-87 *supra* and accompanying text.

224. See notes 193-205 *supra* and accompanying text.

