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Recent Developments and Proposed Legislative Reform of the Illinois Adoption Act*

Diane Geraghty**

I. INTRODUCTION

Adoption patterns have changed significantly in recent years. Today it is estimated that 142,000 adoptions are finalized annually, 6,500 of these in Illinois.¹ The number of adoptions by nonrelatives in the decade between 1972 and 1982 declined by twenty-two percent.² During this same period, however, there was a slight rise in the number of related adoptions, largely the result of a trend toward adoption by stepparents.³

These statistics reflect important social, legal, and medical changes that have impacted substantially on the adoption process in the last several decades. The number of children available for adoption, for example, has decreased as a result of U.S. Supreme Court opinions legalizing abortion⁴ and the use of contraceptives.⁵ Additionally, the reduced stigma of bearing an out-of-wedlock child and the increased availability of public welfare support for mothers and children may have contributed to the trend toward more unmarried women keeping their babies rather than placing them out for adoption.⁶ Further, there has been a dramatic rise in the incidence of divorce and remarriage.⁷ The rights of putative

* This article draws heavily on the work of the Illinois Supreme Court's Study Committee on Adoption Law, chaired by the Honorable Francis Barth of the Circuit Court of Cook County. The author, who served as Professor-Reporter for the Committee, gratefully acknowledges the contribution of Committee members to the thoughts contained in this article.

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1. National Committee for Adoption, ADOPTION FACTBOOK: UNITED STATES, DATA, ISSUES, REGULATIONS AND RESOURCES 108 (1985) [hereinafter ADOPTION FACTBOOK].

2. *Id.* at 14.

3. *Id.* at 103.

4. See *Bellotti v. Baird*, 428 U.S. 132 (1976); *Roe v. Wade*, 410 U.S. 113 (1973), *reh'g denied*, 410 U.S. 959 (1973).

5. See *Carey v. Population Services International*, 431 U.S. 678 (1977); *Griswold v. Connecticut*, 381 U.S. 479 (1965).

6. ADOPTION FACTBOOK, *supra* note 1, at 19.

7. See generally Arendell, MOTHERS AND DIVORCE (1986). The national divorce

fathers, once nearly non-existent, have been expanded.⁸ Refinement of reproductive techniques such as artificial insemination has created a host of thorny legal and ethical problems, many of which recently surfaced in the highly publicized Baby M surrogate mother case.⁹

Despite these and other changes, the Illinois Adoption Act,¹⁰ originally enacted in 1867,¹¹ has not undergone comprehensive revision since 1959.¹² This Article examines recent developments in adoption law and makes several recommendations for legislative reform aimed at serving the needs of biological parents, adoptive parents and adopted children.

In assessing these proposals for legislative change, it is useful to keep in mind three underlying principles of adoption law and policy. The primary goal of an adoption is to serve the best interests of the adopted child. Unlike adoption policies in other societies, this has always been the basic focus of American adoption law.¹³ The Illinois Adoption Act expressly provides that "[t]he welfare of the child shall be the prime consideration in all adoption proceedings."¹⁴

A second principle governing adoption policies and practices is the presumption that a child's best interest normally is served by maintaining and strengthening the biological family unit.¹⁵ For that reason Illinois law provides that the parent-child relationship may be ended legally only when the biological parent consents to an adoption or is found unfit.¹⁶

The third overriding objective of all adoption statutes is to as-

rate doubled between the years 1970 and 1980. There are now more than one million divorces annually. *Id.* at 1. The upward trend in related adoptions stems from an increase in remarriages with stepparents formally adopting the children of their new spouse. ADOPTION FACTBOOK, *supra* note 1, at 103.

8. See *Caban v. Mohammed*, 441 U.S. 380 (1979); *Stanley v. Illinois*, 405 U.S. 645 (1972). But see *Lehr v. Robertson*, 463 U.S. 248 (1983); *Quilloin v. Walcott*, 434 U.S. 246 (1978); ILL. REV. STAT. ch. 40, para. 1515 (Supp. 1987).

9. *In re Baby M*, 14 Fam. L. Rep. 2007 (1988).

10. ILL. REV. STAT. ch. 40, paras. 1501-1529 (1987).

11. 1867 Ill. Laws 133.

12. 1959 Ill. Laws 1269.

13. See generally Comment, *The Best Interest of the Child—The Illinois Adoption Act in Perspective*, 24 DE PAUL L. REV. 100, 100-109 (1974); Presser, *The Historical Background of the American Law of Adoption*, 11 J. FAM. L. 443, 446 (1971).

14. ILL. REV. STAT. ch. 40, para. 1519 (1987); *Lingwall v. Hoener*, 108 Ill. 2d 206, 213, 483 N.E.2d 512, 516 (1985).

15. ILL. REV. STAT. ch. 37, para. 801-2 (1987); *In re Jennings*, 32 Ill. App. 3d 857, 859, 336 N.E.2d 786, 788 (2d Dist. 1975), *aff'd.*, 68 Ill. 2d 125, 368 N.E.2d 864 (1977).

16. ILL. REV. STAT. ch. 40, para. 1501(E) (1987); *Stanley v. Illinois*, 405 U.S. 645 (1972); *In re Custody of Peterson*, 112 Ill. 2d 48, 52, 491 N.E.2d 1150, 1152 (1986).

sure a permanent, stable family relationship for the adopted child.¹⁷ Traditionally, this goal has been accomplished by erecting a wall of complete separation between the biological parent and the adoptive family and child. In recent years, however, policymakers have suggested that a lifting of the veil of total confidentiality may serve the child's best interests in certain circumstances.¹⁸

II. EFFECT OF SIGNING A CONSENT OR SURRENDER

The current Adoption Act contains apparently contradictory provisions concerning the duration of the legal relationship between biological parent and child in an adoption proceeding. In the definitional section of the Act, the definitions of "related child" and "parent" suggest that all parental rights and responsibilities end when a consent or surrender is signed or when a court enters an order involuntarily terminating parental rights.¹⁹ This interpretation is reinforced by section 1513 which provides that, once signed, consents and surrenders are irrevocable.²⁰ Section 1521 of the Act, however, states that a parent is deprived of all rights and relieved of all responsibilities "[a]fter the entry of either an order terminating parental rights or the entry of a judgment of adoption"²¹

This confusion over when the parent-child relationship ends has two important implications. One is the question of when a biological parent's duty of support ends.²² The other is the question of the status of the biological family unit if a surrender is signed but the adoption never takes place. In the first area, the issue is whether the duty of parents to provide for their children ceases when a parent executes a consent or surrender, or whether it continues until such time as an adoption is finalized.

In *Bodine v. Bodine*,²³ the court ruled that a biological father had an ongoing obligation to support his children notwithstanding the fact that he had signed an irrevocable consent to the adoption of the children by his former wife and her new spouse. Relying on

17. See *In re Roger B.*, 84 Ill. 2d 323, 331, 418 N.E.2d 751, 754 (1981).

18. See *infra* notes 136-60 and accompanying text.

19. ILL. REV. STAT. ch. 40, para. 1501(B), 1501(E) (1987).

20. *Id.* at para. 1513.

21. *Id.* at para. 1521.

22. A biological parent's duty of support normally begins at the child's birth and continues during the child's minority. *Leland v. Brower*, 28 Ill. 2d 598, 192 N.E.2d 831 (1963) (quoting *Kelley v. Kelley*, 317 Ill. 104, 147 N.E. 659 (1925)).

23. 127 Ill. App. 3d 492, 468 N.E.2d 1004 (3d Dist. 1984).

the principle in *Dwyer v. Dwyer*²⁴ that a biological parent may be required to support a child even after an adoption if the adoptive parents are unable to do so, the court concluded that "[s]ince this is the present law with regard to completed adoptions, no less can be said for the mere signing of a consent to an adoption."²⁵

The *Bodine* case was decided correctly, at least with respect to the signing of a consent. As a West Virginia court recently explained, "[i]f the execution of consent was alone sufficient to release a responsible parent from the obligation to make support payments, unilateral consent could be fraudulently granted solely in order to avoid paying child support."²⁶ Further, if a biological parent's obligation to support a minor child were to cease with the signing of a consent, no one would have a duty to support the child. That responsibility, therefore, would be transferred to the state.

It is not so clear, however, that the same policy of ongoing support should apply when a biological parent executes a surrender rather than a consent. When a parent surrenders a child to an agency, he or she agrees to "entrust the entire custody and control" of the child to the agency, authorizing it to take any and all measures that the agency considers to be in the best interest of the child.²⁷ Correspondingly, the agency assumes full responsibility for the child, including the obligation to provide fully for its support.²⁸ In these circumstances, even if an adoption is never accomplished, the child's needs will be met by the agency. To require a parent to continue supporting a child after full relinquishment of all rights and responsibilities to an agency could have the unwanted effect of discouraging placement of children with agencies for adoption.

A related concern that arises from the Adoption Act's ambiguity concerning the duration of the legal relationship between parent and child is the status of the biological family unit if a consent or

24. 366 Ill. 630, 10 N.E.2d 344 (1937). See *infra* notes 58-65 and accompanying text.

25. *Bodine*, 127 Ill. App. 3d at 496, 468 N.E.2d at 1007. In a second appeal the reviewing court held that the biological father could raise an equitable estoppel defense in an action to collect unpaid child support when the father had signed the consent and relinquished visitation in exchange for an agreement by the former wife to forego support, when the proposed adoption was never finalized, and when the mother did not inform the father that the adoption did not take place. *Bodine v. Bodine*, 141 Ill. App. 3d 21, 489 N.E.2d 911 (3d Dist. 1986).

26. *Kimble v. Kimble*, 341 S.E.2d 420, 424 (Sup. Ct. App. 1986).

27. ILL. REV. STAT. ch. 40, para. 1512 (1987).

28. See generally ILL. REV. STAT. ch. 23, paras. 2211-2230 and paras. 5001-5039 (1987).

surrender is signed but an adoption never takes place. The court's decision in *In re Custody of Mitchell*²⁹ suggests that the answer may depend partially on whether a parent has signed a consent in anticipation of an adoption by known parties or has surrendered a child to an agency for adoption by unknown persons.

In *Mitchell*, a biological father signed a consent with the understanding that his minor son would be adopted by his relatives.³⁰ Although the adoption never materialized, the circuit court terminated his parental rights on the theory that the father had executed an irrevocable consent which had the effect of terminating his legal relationship with his son.³¹ The reviewing court reversed, relying on the fact that the Adoption Act contains separate forms for execution of a consent and a surrender.³² The court reasoned that, by providing for different forms, the legislature intended to imply a distinction between the effect of signing a consent in anticipation of a related adoption and surrendering a child to an agency for subsequent placement for adoption by "strangers."³³

The outcome in *Mitchell* can be criticized because it undermines the clear statutory policy in favor of making both consents and surrenders absolutely irrevocable in the absence of fraud or duress.³⁴ On the other hand, the court's reasoning in *Mitchell* is consistent with the Illinois Supreme Court's recent decision in *Lingwall v. Hoener*,³⁵ which recognizes that there are important differences between adoption by relatives and adoption by unknown persons which can justify different policies with regard to these two categories of adoptions. The result in *Mitchell* is attributable only in part to the fact that the father signed the wrong form. *Mitchell's* result primarily is based on the underlying recognition that a biological parent who signs a consent in anticipation of a related adoption does so with an entirely different set of expectations than the parent who forever relinquishes all parental rights and responsibilities to an agency, not knowing whether, when, or under what circumstances the agency will consent to an adoption.

One way to solve the problem raised in *Mitchell* would be for the

29. 115 Ill. App. 3d 169, 450 N.E.2d 368 (5th Dist. 1983).

30. *Id.* at 170-71, 450 N.E.2d at 369.

31. *Id.* at 171, 450 N.E.2d at 369-370.

32. *Id.* at 172, 450 N.E.2d at 370.

33. *Id.*

34. See ILL. REV. STAT. ch. 40, para. 1513; *Regenold v. Baby Fold, Inc.*, 68 Ill. 2d 419, 369 N.E.2d 858 (1977); *Kathy D. v. Counseling Family Services*, 107 Ill. App. 3d 920, 438 N.E.2d 695 (3d Dist. 1982).

35. 108 Ill. 2d 206, 213-14, 483 N.E.2d 512, 516 (1985). See *infra* notes 109-24 and accompanying text.

legislature to adopt a new consent form to be used only in the case of related adoptions. The form would specify the parent's understanding that his or her child was to be adopted by a named individual, and would provide that the consent would expire if the envisioned adoption did not take place within a specified period of time. This would eliminate the possibility that a child would be placed in legal limbo without parents if an anticipated adoption did not materialize and would emphasize that the parent's support obligation does not cease until an adoption is final.

Although the Adoption Act is unclear about when the parent-child relationship ends after voluntary release of a child for adoption, paragraph 1521 of the Act appears unambiguously to provide that, in the case of an involuntary termination of parental rights, the legal rights of biological parents are extinguished permanently at the time the order terminating parental rights is entered.³⁶ A recent appellate level decision, however, appears to create an exception to the general rule that entry of the termination order after a finding of unfitness marks the point at which the parent-child relationship ceases.

In *In re Estate of Griffin*,³⁷ the child who was the subject of the adoption petition was born with severe brain damage.³⁸ The following year the child's biological parents divorced and the mother remarried.³⁹ Shortly after her remarriage, the child was awarded nearly four million dollars in a suit brought in connection with injuries he suffered at birth.⁴⁰ Subsequently, the child's biological mother and her husband filed a petition to adopt the minor child, alleging unfitness on the part of the child's biological father. After a contested hearing, the trial court found the father unfit and entered an order terminating his parental rights.⁴¹ Shortly thereafter, the petitioners in the adoption action divorced and the minor child died.

The child's biological father then moved to have the still-pending adoption petition dismissed.⁴² The motion was allowed and the father filed a notice of appeal from the interim order that had terminated his parental rights. He also appealed the trial court's deci-

36. ILL. REV. STAT. ch. 40, para. 1521 (1987). See also ILL. REV. STAT. ch. 40, para. 1501(B), 1501(E).

37. 160 Ill. App. 3d 670, 514 N.E.2d 31 (5th Dist. 1987).

38. *Id.* at 672, 514 N.E.2d at 32.

39. *Id.*

40. *Id.* at 672, 514 N.E.2d at 33.

41. *Id.*

42. *Id.* at 672-73, 514 N.E.2d at 33.

sion that, by virtue of the termination order, he was no longer an heir to his child's estate.⁴³ The father argued that because the adoption never was finalized and the adoption petition was dismissed, the interim order terminating parental rights was vacated automatically.⁴⁴

In response, petitioners cited paragraph 1521 which provides that "after the entry either of an order terminating parental rights or the entry of a judgment of adoption, the natural parents . . . shall be deprived of all legal rights as respects the child"⁴⁵ The petitioners also relied on *Gray v. Starkey*,⁴⁶ a Fifth District opinion which held that a father who was found unfit in the course of an adoption proceeding that never was finalized had no right to a second determination of fitness in a subsequent adoption proceeding brought by different petitioners.

In *Griffin*, the reviewing court vacated the interim order terminating parental rights and reversed the order denying the biological father's claim to heirship. The court noted that in *Griffin*, the biological father had challenged the interim order terminating his parental rights upon dismissal of the adoption proceeding. The court ruled that the effect of the dismissal was to vitiate any interlocutory orders which had been entered during the course of the adoption proceeding.⁴⁷ The court distinguished *Gray* on the grounds that the father in that case had appealed the trial court's initial determination of unfitness and that the decision had been upheld on review and made final before the main adoption proceeding was abandoned and ultimately dismissed.⁴⁸ The court also cited *In re Workman*⁴⁹ for the proposition that paragraph 1521 must be read as providing that an interim order terminating parental rights severs the parent-child relationship after the expiration of petitioner's right to appeal the order.⁵⁰

Currently, the law provides that a biological parent whose rights are terminated in the course of an adoption proceeding may appeal that finding either after entry of the interim order terminating parental rights or at the time the adoption is finalized.⁵¹ After *Grif-*

43. *Id.* at 673, 514 N.E.2d at 33.

44. *Id.*

45. ILL. REV. STAT. ch. 40, para. 1521 (1987).

46. 41 Ill. App. 3d 555, 560, 353 N.E.2d 703, 707 (5th Dist. 1976).

47. *Griffin*, 160 Ill. App. 3d at 676-77, 514 N.E.2d at 35.

48. *Id.* at 675, 514 N.E.2d at 34.

49. 56 Ill. App. 3d 1007, 373 N.E.2d 39 (3d Dist. 1978), *aff'd*, 76 Ill. 2d 256, 390 N.E.2d 900 (1979).

50. *Griffin*, 160 Ill. App. 3d at 676, 514 N.E.2d at 35.

51. *Davis v. Bughdadi*, 120 Ill. App. 3d 236, 458 N.E.2d 177 (5th Dist. 1983).

fin, biological parents whose rights are terminated in the course of a pending adoption proceeding would apparently fare better by waiting to appeal the termination after final disposition of the adoption petition than by appealing the interim order at the time of its entry. If, for whatever reason, the adoption is not finalized and the petition is withdrawn, under the rule in *Griffin*, all interlocutory orders, including the finding of unfitness, would be set aside.

One can question, however, the wisdom of applying the general rule that dismissal of a legal proceeding operates to dissolve the effect of interim orders entered therein in the context of a termination of parental rights adoption case. In the absence of a voluntary relinquishment of parental rights, a biological parent must be found unfit within the meaning of paragraph 1501 of the Act. The effect of the holding in *Griffin* is to resurrect parental rights for a parent whom a court has determined to be an unfit parent. In the case of a living child, of course, unfitness could be alleged and parental rights terminated in a subsequent related adoption petition if the child's custodial parent and his or her spouse chose to bring such an action. In the case of a deceased child, however, once the adoption petition is dismissed, the "unfit" parent becomes legally "fit" with the dismissal of the adoption proceeding if he or she waits to appeal the interim order until after the dismissal.⁵²

III. DUTY TO SUPPORT AFTER ADOPTION

After entry of an adoption order, paragraph 1521 of the Act deprives biological parents of all rights and relieves them of all responsibilities with respect to an adopted child.⁵³ These parental rights and responsibilities shift to the adoptive parents.⁵⁴ Although adoption often is said to sever completely the legal bonds between parent and child, there are two longstanding exceptions to this rule. The first is that a child may inherit from his biological parents after adoption.⁵⁵ The second is that the biological parent's duty of support continues after adoption in those circumstances in which the adopting parents are unable to meet their support

52. *Griffin*, 160 Ill. App. 3d at 676-77, 514 N.E.2d at 35.

53. ILL. REV. STAT. ch. 40, para. 1521 (1987).

54. Illinois is the only state without an express statutory provision which transfers to the adoptive parents the rights and duties of parenthood upon adoption. See Zablotsky, *To Grandmother's House We Go: Grandparents Visitation After Stepparent Adoption*, 32 WAYNE L. REV. 1, 3-4 (1985). The case law makes it clear, however, that parental rights and responsibilities are assumed by adoptive parents. See *Willey v. Lawton*, 8 Ill. App. 2d 344, 132 N.E.2d 34 (1st Dist. 1956).

55. *In re Estate of Tilliski*, 390 Ill. 273, 61 N.E.2d 24 (1945).

obligations.⁵⁶

This continuing duty of support first was referred to in dicta in a 1907 case, *McNemar v. McNemar*.⁵⁷ In 1937, in *Dwyer v. Dwyer*,⁵⁸ the Illinois Supreme Court expressly held that a biological parent remains ultimately responsible for a child's support after adoption.⁵⁹ Since *Dwyer*, Illinois courts have cited the opinion on several occasions, usually in dicta to support the conclusion that the Adoption Act does not sever completely a child's relationship with a biological parent.⁶⁰

Despite this tradition of support, one may question whether the *Dwyer* principle is sufficiently consistent with the objectives of the Adoption Act to justify its ongoing validity. The *Dwyer* court itself provided little in the way of explanation for its holding other than to cite the common law rule that "[t]he duty of a parent to support his minor child arises out of the natural relationship."⁶¹ Although under the Adoption Act that duty shifts to the adoptive parents once the adoption takes place, the court felt constrained to construe narrowly the scope of the adopting parents' statutory responsibility because the Adoption Act was adopted in derogation of the common law.⁶² Applying principles of strict construction, the court found that biological parents could be called upon to perform their common law duty to support their children even after adoption if the adoptive parents were unable to do so.⁶³

It has been suggested that the outcome in *Dwyer* was influenced both by its unique facts and by the exigencies of the Depression, which required that all those who could financially afford to support a child be held responsible for doing so.⁶⁴ A policy which seeks to safeguard public funds has obvious value, even in a post-Depression era. Nonetheless, any benefit to be derived from the rule in *Dwyer* may be outweighed by its potential negative effect on the adoption process. The policy of residual support, for example, may deter a biological parent from voluntarily relinquishing a child for adoption if the parent knows that one day he or she may

56. See *Lingwall v. Hoener*, 108 Ill. 2d 206, 213, 483 N.E.2d 512, 515-16 (1985).

57. 137 Ill. App. 504 (3d Dist. 1907).

58. 366 Ill. 630, 10 N.E.2d 344 (1937).

59. *Id.* at 634, 10 N.E.2d at 346.

60. See, e.g., *Lingwall v. Hoener*, 108 Ill. 2d 206, 213, 483 N.E.2d 512, 515-16 (1985); *Anderson v. Anderson*, 320 Ill. App. 75, 85-87, 49 N.E.2d 841, 846 (1st Dist. 1943).

61. *Dwyer*, 366 Ill. at 634, 10 N.E.2d at 346.

62. *Id.*

63. *Id.*

64. Lutterbeck, *The Law in Illinois Pertaining to the Adoption of Children*, 8 DE PAUL L. REV. 165, 192 (1959).

have to resume support of a child without any of the other benefits of the parent-child relationship, including visitation or the right to inherit from the child. Further, the *Dwyer* rule appears to undercut a basic premise of adoption law that, at least in the case of nonrelated adoptions, total severance of the legal relationship between parent and child after adoption is in the child's best interests. It reinforces the notion that children continue to have a set of shadow parents after adoption and contradicts the understanding that an adoption places an adopted child on an equal footing with a family's biological children. Finally, the obligation the court in *Dwyer* felt to construe narrowly the Adoption Act has been supplanted by an express statutory command that the Adoption Act be construed liberally and that the rule that statutes in derogation of the common law must be construed strictly not apply.⁶⁵ For these reasons it is suggested that the Adoption Act be amended to provide that an adoption extinguishes permanently a biological parent's duty to support his or her natural offspring.

IV. CONTESTED ADOPTIONS

The right to custody and care of one's child is a fundamental right subject to interruption only under compelling circumstances.⁶⁶ For that reason, under Illinois law a child cannot be made available for adoption unless biological parents consent or are found unfit.⁶⁷ The grounds for parental unfitness are detailed in paragraph 1501 of the Act.⁶⁸

The Adoption Act, however, does not prescribe clearly the procedure for conducting a contested adoption hearing. Illinois courts have held that the trial court in contested adoption proceedings must segregate the issues of a parent's unfitness and the child's best interest.⁶⁹ Only after the court makes a determination of unfitness may it consider evidence on the best interest of the child.⁷⁰ This bifurcation of issues avoids the danger that the trial court "may be tempted to find that it is in the best interest of the child to find the

65. ILL. REV. STAT. ch. 40, para. 1524 (1987).

66. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

67. ILL. REV. STAT. ch. 40, para. 1510 (1987); *In re Adoption of Mantzke*, 121 Ill. App. 3d 1060, 1069, 460 N.E.2d 80, 85-86 (2d Dist. 1984).

68. ILL. REV. STAT. ch. 40, para. 1501(D)(a)-(p) (1987).

69. *Perkins v. Breitbarth*, 99 Ill. App. 3d 135, 424 N.E.2d 1361 (3d Dist. 1981); *In re Adoption of Burton*, 43 Ill. App. 3d 294, 356 N.E.2d 1279 (5th Dist. 1976).

70. *Perkins*, 99 Ill. App. 3d 135, 424 N.E.2d 1361.

parent unfit.”⁷¹ It also recognizes that there is a different standard of proof to be applied to the two issues. Unfitness must be proven by clear and convincing evidence.⁷² The question of best interest is measured by a preponderance of the evidence standard.⁷³

Although case law uniformly requires that the issues of unfitness and best interest be treated separately, at least one case suggests that consideration of these issues actually must be accomplished in separate hearings.⁷⁴ This requirement would appear to be an unnecessary prolongation of the adoption process, particularly in non-Juvenile Court proceedings when an immediate adoption normally is anticipated. A better alternative would be to permit the termination decision and best interest decision to be made in two stages at a single hearing. The court could continue the best interest phase if additional evidence is required on the proper disposition of the case after termination. The following represents a proposed amendment to paragraph 1516 of the Act that would clarify the procedures to be used by the court in conducting a contested proceeding:

If, after notice and hearing on a petition alleging parental unfitness, the evidence is clear and convincing that a nonconsenting parent is an unfit person within the meaning of Sec. 1, Paragraph D., the court shall enter an order terminating parental rights and declaring the child a ward of the court. After entry of such an order, the parent or parents whose rights have been terminated shall no longer have standing to participate as a party in the adoption proceeding. If the court finds that unfitness has not been proved by clear and convincing evidence, the petition for adoption shall be dismissed.

After entry of an order terminating parental rights, the court may immediately proceed to hear evidence to determine if it is in the best interest of the child that the adoption be granted. On its

71. *Freeman v. Settle*, 75 Ill. App. 3d 799, 805, 393 N.E.2d 1385, 1389 (5th Dist. 1979) (Moran, J., dissenting).

72. ILL. REV. STAT. ch. 40, para. 1510 (1987); *Santosky v. Kramer*, 455 U.S. 745, 769 (1982).

73. The Code of Civil Procedure and Rules of the Supreme Court govern all issues unless the Adoption Act provides otherwise. ILL. REV. STAT. ch. 40, para. 1524 (1987).

74. In *Freeman v. Settle*, 75 Ill. App. 3d 799, 393 N.E.2d 1385 (5th Dist. 1979), the majority suggests that the Adoption Act and case law permit the issues of unfitness and best interest to be tried in a single hearing in the case of a related adoption, but mandates separate hearings on these issues in all other cases. As Justice Moran notes in dissent, the majority's reading appears to conflict with the clear language of section 13 of the Act, ILL. REV. STAT. ch. 40, para. 1516. *Freeman*, 75 Ill. App. 3d at 806-07, N.E.2d 1389-90. The case law clearly does require a bifurcation of the issues of unfitness and best interest, with the unfitness question settled before any evidence regarding best interest is allowed in the record.

own motion, or that of any remaining party, the court may adjourn the hearing for thirty days to receive reports or other evidence, and in such event, shall make an appropriate order for the temporary custody of the child. If, after hearing evidence, the court determines that it is in the best interest of the child that the adoption be granted, the court may order the child placed in the custody of an authorized agency or other competent person, including the petitioners, pending the entry of the final order of adoption. If the court finds that it is not in the best interest of the child that the adoption be granted, the court may enter such other orders as it deems necessary and advisable.⁷⁵

Paragraph 1516 also should be amended to provide for the right to counsel in contested adoption proceedings. There is no constitutional right to counsel under either the federal or state constitutions.⁷⁶ In termination of parental rights proceedings originating under the Juvenile Court Act, however, parents have a statutory right to representation and to court-appointed counsel in the case of indigency.⁷⁷ Under the current Adoption Act, only those who allegedly are unable to discharge their parental responsibilities because of mental impairment have a right to counsel.⁷⁸

Parents in termination proceedings face permanent loss of all rights with respect to their children regardless of whether those proceedings take place under the Juvenile Court Act or the Adoption Act. Given the seriousness of the consequences of a termination proceeding, it seems inherently unfair to accord one set of parents the right to counsel and to deny another similarly situated set of parents this same procedural guarantee solely because of the forum in which the issue of parental unfitness is tried.⁷⁹

V. PARENTAL VISITATION AFTER ADOPTION

Every state's adoption laws provide that a biological parent's rights terminate at the time of adoption.⁸⁰ These "effect-of-adop-

75. This amendment was proposed by the Report of the Supreme Court's Study Committee on Adoption Law, 35, March 1987 (unpublished).

76. See *Lassiter v. Dept. of Social Services*, 452 U.S. 18 (1981); *People v. Lackey*, 79 Ill. 2d 466, 405 N.E.2d 748 (1980). But see *In Interest of Harrison*, 120 Ill. App. 3d 108, 458 N.E.2d 146 (4th Dist. 1983).

77. ILL. REV. STAT. ch. 37, para. 801-5 (1987); *In re Adoption of Sotelo*, 130 Ill. App. 3d 398, 474 N.E.2d 413 (3d Dist. 1985).

78. ILL. REV. STAT. ch. 40, para. 1516(B)(c) (1987).

79. For an argument supporting appointment of counsel in all termination proceedings, see *Hershkovitz, Due Process and the Termination of Parental Rights*, 19 FAM. L.Q. 245, 264-65 (1985).

80. See *Zablotsky*, *supra* note 54, at 4-5 (listing the effect-of-adoption provisions of each state).

tion" statutes are premised on a longstanding assumption that complete severance of a biological parent's rights is in the best interests of the adopted child.⁸¹ A recent Illinois case reaffirms the principle that a biological parent has no residual rights, including the right to visitation, after adoption.⁸²

In *In re T.G.*,⁸³ a biological mother whose rights involuntarily were terminated challenged the constitutionality of the Illinois statutory scheme governing the termination of parental rights.⁸⁴ She argued that the law swept too broadly, cutting off not only the parent's right to custody, but also fundamental noncustodial rights such as visitation. These rights, she contended, may be discontinued only upon a showing by the state that total severance of the parent-child relationship is the least restrictive means available to protect the welfare of the child.⁸⁵

The court rejected this argument and denied the mother's request for a hearing on the termination of her noncustodial rights.⁸⁶ The court noted that if a child is found neglected, abused, or dependent, under the Juvenile Court Act the court may remove the child from the custody of his or her parents.⁸⁷ During the period the child is outside the home, the parents retain residual rights and duties, including the right to visitation, the right to make major decisions affecting the child's life and the obligation to support the child.⁸⁸ There is a statutory presumption that it is in the child's best interest to return to his or her home at the time the conditions which led to the child's removal are ameliorated.⁸⁹ If, however, it is determined to be unlikely that the child will be able to return to his or her home in the foreseeable future, it is then presumed to be in the child's best interest to find a substitute permanent family for the child.⁹⁰ Adoption is the mechanism by which this is accomplished.

According to the court in *T.G.*, once a determination of unfitness

81. See Klibanoff, *Genealogical Information in Adoption: The Adoptee's Quest and the Law*, 11 FAM. L.Q. 185, 196-97 (1977).

82. *In re T.G.*, 147 Ill. App. 3d 484, 498 N.E.2d 370 (3d Dist. 1986).

83. 147 Ill. App. 3d 484, 498 N.E.2d 370 (3d Dist. 1986).

84. Termination proceedings are governed both by the Juvenile Court Act, ILL. REV. STAT. ch. 37, paras. 801-1 to 807-1 (1987) and the Adoption Act, ILL. REV. STAT. ch. 40, paras. 1501-1529 (1987).

85. *In re T.G.*, 147 Ill. App. 3d at 487, 498 N.E.2d at 372.

86. *Id.* at 488, 498 N.E.2d at 373.

87. See ILL. REV. STAT. ch. 37, para. 802-21(2) (1987).

88. ILL. REV. STAT. ch. 37, para. 801-2 (1987).

89. ILL. REV. STAT. ch. 37, para. 801-2(1) (1987).

90. See ILL. REV. STAT. ch. 40, para. 1501(D)(m), 1501(D)(n) (1987). See also *In re J.R.Y.*, 157 Ill. App. 3d 396, 510 N.E.2d 541 (4th Dist. 1987).

is made, all aspects of the biological family relationship, including residual rights such as visitation, must end.⁹¹ This policy of total severance is seen as essential in assuring adopting parents that they will have the same right to direct the care, control, and upbringing of their adopted child that birth parents enjoy vis-a-vis their biological children. Additionally, divesting birth parents of all legal rights after adoption emphasizes to the child that he or she has only one family and thus promotes integration of the child into the adopting family unit.⁹² As the court stated in *T.G.*, "there must be finality and a new beginning for the children whose parents' relationship with them has terminated."⁹³

In cases such as *T.G.*, the adopting parents object, or are presumed to object, to ongoing contact between biological parents and their children. There are occasions, however, when adopting parents are willing to enter into a pre-adoption agreement with biological parents that they will be permitted to maintain some degree of contact with their children after adoption. Traditionally, courts have refused to recognize the validity of these "open adoption" arrangements.⁹⁴ In the last decade, legal commentators and others have questioned the need for permanent severance of the relationship between birth parents and their adopted children in all cases.⁹⁵ These critics argue that a blanket policy of closed adoptions reduces the number of children available for adoption, perpetuates foster care placement for many children, cuts off important relationships in the child's life, and thwarts an adoptee's attempt to develop a sense of self.⁹⁶

Some authors argue that an open adoption arrangement may best serve the needs of all parties to an adoption in certain situa-

91. *In re T.G.*, 147 Ill. App. 3d 484, 488, 498 N.E.2d 370, 373 (3d Dist. 1986).

92. *Id.* at 490, 498 N.E.2d at 373. See also *In re Workman*, 56 Ill. App. 3d 1007, 373 N.E.2d 39 (3d Dist. 1978), *aff'd.*, 76 Ill. 2d 256, 390 N.E.2d 900 (1979), *cert. denied* 44 U.S. 992 (1979) (a biological parent is barred from petitioning for custody after an adoption is finalized).

93. *In re T.G.*, 147 Ill. App. 3d at 490, 498 N.E.2d at 375.

94. See, e.g., *Street v. Huber*, 141 Ill. App. 3d 871, 491 N.E.2d 29 (1st Dist. 1986) (an oral visitation agreement between biological and adoptive parents is unenforceable); *In re Custody of Atherton*, 107 Ill. App. 3d 1006, 438 N.E.2d 513 (1st Dist. 1982) (written agreement).

95. See, e.g., W. FEIGELMAN AND A. SILVERMAN, *CHOSEN CHILDREN: NEW PATTERNS IN ADOPTIVE RELATIONSHIPS* 193 (1983).

96. See, e.g., Stoxen, *The Best of Both "Open" and "Closed" Adoption Worlds: A Call for the Reform of State Statutes*, 13 J. OF LEGISLATION 292, 300-01, (1986); Levin, *The Adoption Trilemma: The Adult Adoptee's Emerging Search for His Ancestral Identity*, 8 BALT. L. REV. 496, 497-501 (1979).

tions.⁹⁷ They suggest that court-approved contact between parent and child may be desirable, for example, when a biological parent refuses to consent to adoption but cannot be proved unfit by clear and convincing evidence.⁹⁸ This situation might occur in the case of a proposed stepparent adoption when the biological parent is reluctant to relinquish all contact with a child with whom he or she may have close emotional ties. The biological parent may see benefits to the child's being adopted by a stepparent and may welcome release from support obligations, but may not be willing to let the adoption proceed if all ongoing contact with his or her child will be extinguished by law.

Another area in which an open adoption option may be beneficial is foster child adoptions. The plight of children caught in the foster care web, moved from home to home with little prospect of permanency, has been a source of ongoing concern to child welfare workers and has recently captured the attention of the public as well.⁹⁹ One of the most serious impediments to permanency has been the inability to free children in foster care for adoption. Even when the state is able to prove the biological parents unfit, the process of terminating parental rights may be lengthy. Some biological parents would agree to an immediate adoption of a child in foster care if they were allowed some type of ongoing contact with the child after adoption. Likewise, some foster parents and other potential adoptive parents would be willing to consent to such an arrangement if an adoption could be finalized.

Acknowledging the potential benefits of open adoption in areas such as these, the 1980 version of the Model State Adoption Act proposed the following provision:

Nothing in this Act shall be construed to prevent the adoptive parents, the birth parents and the child from entering into a written agreement, approved by the court, to permit continuing contact of the birth relatives with the child or his adoptive parents.¹⁰⁰

Under such a provision, an agreement between the parties would

97. Amadio and Deutsch, *Open Adoption: Allowing Adopted Children to "Stay in Touch" with Blood Relatives*, 22 J. FAM. L. 59 (1983). But see Schur, *The ABA Model State Adoption Act: Observations from an Agency Perspective*, 19 FAM. L.Q. 131, 132-33 (1985).

98. Amadio and Deutsch, *supra* note 97, at 60.

99. See Smith, *Adoption—The Case for More Options*, 1986 UTAH L. REV. 495, 514 (1986); KFOURY, *CHILDREN BEFORE THE COURT: REFLECTIONS ON LEGAL ISSUES* 29-38 (1987).

100. Model State Adoption Act and Model State Adoption Procedures, 45 Fed. Reg. 10622, 10654 (1980), reprinted in 19 FAM. L.Q. 105-29 (1985).

be presented to the court for approval.¹⁰¹ The court would be asked to determine whether ongoing contact between the birth family and child served the child's best interests. A guardian ad litem would be appointed to ensure that the child's interest was represented adequately.¹⁰² If the court approved the agreement, it would be incorporated into the judgment of adoption. Once approved, the agreement would be legally enforceable, although the adoption itself would not be subject to attack even if the agreement were breached by the adopting parents.¹⁰³ The court that entered the adoption would have ongoing authority to modify the contract agreement if the child's interest so required.¹⁰⁴ The Illinois General Assembly should consider amending the Adoption Act to allow both the court and the parties to an adoption the flexibility to choose some form of court-approved contact after adoption when it would be in the best interests of the child to do so.

VI. GRANDPARENTAL VISITATION

At common law, absent a showing of special circumstances, grandparents had no legally enforceable right to visitation with their grandchildren.¹⁰⁵ In cases in which a parent's biological rights were terminated, it was assumed that severance of the legal relationship between parent and child also extinguished the rights of all members of the biological parent's family.¹⁰⁶ In recent years, however, the vast majority of state legislatures have enacted statutes which permit grandparental visitation in certain circumstances.¹⁰⁷ Although the scopes of these visitation statutes vary,¹⁰⁸ together they represent an evolving view that there are situations in which ongoing contact with grandparents may be in the best interest of the adopted child.

In a recent decision, *Lingwall v. Hoener*,¹⁰⁹ the Illinois Supreme Court ruled that adoption does not always preclude grandparental

101. See Amadio and Deutsch, *supra* note 97, at 86-87.

102. *Id.* at 86.

103. *Id.*

104. *Id.*

105. See, e.g., *Chodkzo v. Chodkzo*, 66 Ill. 2d 28, 360 N.E.2d 60 (1976); *Boyles v. Boyles*, 14 Ill. App. 3d 602, 302 N.E.2d 199 (3d Dist. 1973); *Lucchesi v. Lucchesi*, 330 Ill. App. 506, 71 N.E.2d 920 (1st Dist. 1947).

106. See *In re Adoption of Schumacher*, 120 Ill. App. 3d 50, 52, 458 N.E.2d 94, 96-97 (2d Dist. 1983), *rev'd* in *Lingwall v. Hoener*, 108 Ill. 2d 206, 483 N.E.2d 512 (1985).

107. See Zablotsky, *supra* note 54, at 1 (forty-nine states have adopted legislation authorizing grandparental visitation in certain situations).

108. *Id.* at 9-14.

109. *Lingwall v. Hoener*, 108 Ill. 2d 206, 483 N.E.2d 512 (1985).

visitation. *Lingwall* involved three consolidated cases with nearly identical facts. In each, the child's biological parents had divorced, the parental rights of the noncustodial parent subsequently were terminated, and the child was adopted by the new spouse of the child's biological mother. The adopting family objected to ongoing contact with the child's biological paternal grandparents and the grandparents asked the court to intercede and order visitation.

In response to the grandparents' petitions, the adopting parents argued that the relationship between grandparent and child after stepparent adoption is governed by the Adoption Act,¹¹⁰ rather than by the Marriage and Dissolution of Marriage Act.¹¹¹ Section 607(b) of the Marriage Act gives grandparents a right to petition the court for visitation after dissolution of their child's marriage.¹¹² The court may grant the petition if it finds that ongoing contact with a biological grandparent is in the child's best interest.¹¹³

Unlike the Marriage Act, the Adoption Act contains no grandparental visitation provision. Further, section 1521 of the Act permanently severs the legal relationship between the adopted child and his or her biological parents.¹¹⁴ The adopting parents in *Lingwall* argued that the effect of this section was to make child a "stranger" to all biological relatives, including grandparents.¹¹⁵ They also cited the Illinois Probate Act¹¹⁶ to support their contention that grandparents have no post-adoption visitation rights. The Probate Act provides that grandparents may be granted visitation when both the child's biological parents are deceased and the child has not been adopted by one who is not a close relative.¹¹⁷ The parents argued that this language evidenced a legislative intent to allow grandparental visitation only when the child has not been adopted.¹¹⁸

The Illinois Supreme Court rejected these statutory arguments, holding that the Marriage Act governs the issue of grandparental visitation after a dissolution of marriage and a subsequent stepparent adoption.¹¹⁹ The court based its decision on the fact that both the Adoption Act and the Marriage Act share a common goal of

110. ILL. REV. STAT. ch. 40, paras. 1501-1529 (1987).

111. ILL. REV. STAT. ch. 40, paras. 101-802 (1987).

112. ILL. REV. STAT. ch. 40, para. 607(b) (1987).

113. *Id.*

114. *Id.* at para. 1521 (1985).

115. *Lingwall v. Hoener*, 108 Ill. 2d 206, 483 N.E.2d 512 (1985).

116. ILL. REV. STAT. ch. 110½, paras. 1-1 to 30-3 (1987).

117. *Id.* at para. 11-7.1.

118. *Lingwall*, 108 Ill. 2d at 211-12, 483 N.E.2d at 514-16.

119. *Id.* at 213, 483 N.E.2d at 517.

providing for the best interest of a child after disruption of a biological family relationship.¹²⁰ It noted that, unlike the Probate Act, section 607(b) of the Marriage Act contains no limitation on visitation after adoption. The court concluded that the absence of such language in the latter statute indicated an intent to permit courts to award grandparental visitation on a case-by-case basis, consistent with the need of the child to maintain established relationships.¹²¹

The court in *Lingwall* recognized that when a child is adopted by strangers, the best interest of the child dictates that there be a total severance of the ties between the adopted child and all members of his or her biological family. As the court explained, "[i]n adoptions involving strangers, the primary policy concern has traditionally been with maximizing the pool of potential adoptive parents by guaranteeing, through the termination of the rights and responsibilities of the natural parents, that the adoptive parents will have the opportunity to create a stable family relationship free from unnecessary intrusion."¹²²

The assumption that termination of all contact with biological grandparents is in the best interest of the child does not operate when the adoption is not by strangers but by the child's own biological parent and his or her new spouse. In these circumstances, the *Lingwall* court reasoned, the need to integrate the child into a wholly new environment is not present and a court should be free to determine if ongoing contact with grandparents serves the best interests of the child.¹²³

Although the court acknowledged that the adopting parents' resistance to visitation is one factor to be considered in assessing best interest, that factor alone should not govern whether a relationship with a grandchild should continue. The court listed other factors that should be taken into account, including the length and nature of the relationship between grandparent and child, the child's age and need for continuity, and the effect of termination on the biological parent's contact with the child.¹²⁴

The Illinois Supreme Court recently decided a case that empha-

120. *Id.* at 213, 483 N.E.2d at 516.

121. *Id.* at 212, 483 N.E.2d at 515.

122. *Id.* at 214, 483 N.E.2d at 516 (quoting *In re Roger B.*, 84 Ill. 2d 323, 331, 418 N.E.2d 751, 754 (1981)).

123. *Id.* at 214-15, 483 N.E.2d at 516.

124. *Id.* at 215, 483 N.E.2d at 516-17. On the same day that *Lingwall* was decided, section 607(b) of the Marriage Act was amended to provide expressly for grandparental visitation after a stepparent adoption.

sizes the narrowness of its holding in *Lingwall*. In *Bush v. Squelati*,¹²⁵ the child in question was adopted by his great aunt and uncle with the consent of his biological parents who subsequently divorced.¹²⁶ The child's biological maternal grandparents petitioned the court for visitation under section 607(b) of the Marriage Act,¹²⁷ arguing that section 607(b) creates a statutory right to petition for grandparental visitation in all cases in which a biological grandchild is adopted by relatives.¹²⁸

The Illinois Supreme Court rejected the petitioner's reading of the Marriage Act. Citing an obligation to construe statutes in derogation of the common law strictly, the court held that section 607(b) authorizes grandparental visitation after adoption only when the child is adopted by a stepparent.¹²⁹ Because the child in *Bush* had not been adopted by the new spouse of a biological parent with legal custody of the child, and because the grandparents failed to show special circumstances that would have triggered a common law right to visitation,¹³⁰ the court affirmed the appellate court's dismissal of the visitation order.¹³¹

The court's narrow and literal interpretation of section 607(b) may be technically correct. Nonetheless, it is difficult to discern any principled distinction which would permit grandparents to petition for visitation when a biological grandchild is adopted by a stepparent but would deny this same opportunity to grandparents when the child is adopted by a relative. The Illinois General Assembly, through amendments to the Marriage and Probate Acts, has concluded that continuation of an established relationship between grandparent and child may, in some circumstances, be in the best interest of the child. The absence of a statutory provision for grandparent visitation in the Adoption Act, however, has led to confusion over the precise scope of a grandparent's right to petition for visitation.¹³² The legislature should amend the Adoption Act to include an express grandparental visitation provision that would permit courts to decide grandparent visitation petitions on a case-

125. No. 65224 (Ill. S. Ct. April 25, 1988) (LEXIS, States library, Ill. file).

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. After *Bush*, for example, it is unclear whether a court would have jurisdiction to entertain a grandparent's visitation petition if a grandchild were born out of wedlock and subsequently adopted by the new spouse of the child's biological mother.

by-case basis after adoption by relatives.¹³³ Any such amendment should also include criteria similar to those now contained in the Marriage Act¹³⁴ and in the foster parent preference provision of the Adoption Act¹³⁵ to guide the court in the exercise of its discretion.

VII. ACCESS TO ADOPTION RECORDS

Nearly every state has laws that severely restrict access to adoption records.¹³⁶ In Illinois, a child's original birth certificate is sealed upon entry of a judgment for adoption and issuance of a new birth certificate.¹³⁷ Further, a court must impound the file of an adoption proceeding upon the request of any party.¹³⁸ State laws also impose a confidentiality requirement on private and public agency records.¹³⁹

Once sealed, these records may be opened only by court order.¹⁴⁰ Although courts are vested with the authority to issue such an order, currently there are no legislative guidelines to aid them in the exercise of that discretion. As a result, Illinois courts have had to fashion their own *ad hoc* procedures and substantive standards when responding to increasingly frequent requests to unseal adoption records.¹⁴¹

In *In re Roger B.*,¹⁴² for example, the Illinois Supreme Court

133. In a dissenting opinion in *Bush* at the appellate court level, Justice Heiple called *Bush* "a pitiful case involving a child of tender years who suffers from cerebral palsy," implying that an interpretation of the Marriage Act that precluded grandparental visitation was not necessarily compatible with the emotional needs of the adopted child. *Bush v. Squellati*, 154 Ill. App. 3d 727, 731, 506 N.E.2d 972, 975 (3d Dist. 1987).

In *Loveless v. Michalak*, No. 3-87-0412 (Ill. App. Ct. April 22, 1988), the Third District distinguished *Bush* and affirmed the trial court's award of visitation rights to the paternal grandparents of a child who was adopted by his maternal grandparents. The court held that the case involved the following special circumstances: (1) the child's natural parents abandoned him; (2) the paternal grandparents' love and affection might overcome the child's sense of rejection; and (3) both the paternal and maternal grandparents agreed that visitation was in the child's best interests.

134. ILL. REV. STAT. ch. 40, para. 607(b) (1987).

135. ILL. REV. STAT. ch. 40, para. 1519.1(b) (1987).

136. For a listing of these laws, see Simanek, *Adoption Records Reform: Impact on Adoptees*, 67 MARQ. L. REV. 110, 110-11, n.4 (1983).

137. ILL. REV. STAT. ch. 111½, paras. 73-17(2)(a) and 73-17(4) (1987).

138. ILL. REV. STAT. ch. 40, para. 1522 (1987). In Cook County this is done in every case by court order.

139. ILL. REV. STAT. ch. 23, para. 2225 (1987).

140. ILL. REV. STAT. ch. 111½, para. 73-17(2)(a) (1987); ILL. REV. STAT. ch. 40, para. 1522 (1987).

141. On the growing movement to ease access to adoption records, see Crane, *Unsealing Adoption Records: The Right to Know Versus the Privacy Right*, 1986 ANN. SURV. AM. L. 645.

142. 84 Ill. 2d 323, 418 N.E.2d 751, *appeal dismissed*, 454 U.S. 806 (1981).

construed the impoundment provisions of the Adoption Act and Vital Records Act to require a showing of good cause as a basis for issuing an order authorizing access to sealed records. The court viewed the good cause standard as one which protects the privacy rights of birth and adoptive parents, and allows for information to be released to petitioners who can demonstrate a genuine need for access to their adoption files. Applying this standard, the court held that an adult adoptee's desire to discover his genealogical roots alone did not satisfy the good cause requirement.¹⁴³ In dicta, the court cited physical or psychological medical need as a possible basis for a showing of good cause.¹⁴⁴ In the only other Illinois case on point, the appellate court in *Aimone v. Finley*¹⁴⁵ ruled that the mere fact that an adoptee has a statutory right to inherit from birth parents was an inadequate justification to permit examination of sealed adoption records.¹⁴⁶

These cases appear to contemplate that a court which is asked to issue an inspection order will balance the interests of all parties to the adoption on a case-by-case basis.¹⁴⁷ As the law now stands, however, there are many unanswered questions about how this process is intended to work. Is good cause determined solely on the basis of evidence provided by the petitioner, or can a showing of serious need for access be outweighed by a birth parent's interest in anonymity? Should the court seek to discover the views of birth parents by attempting to contact them? Alternatively, should the court appoint a surrogate to contest petitioner's assertion of good cause or to represent the interests of parties who are not before the court? Other unanswered questions relate to the scope of the good cause requirement. What type of evidence will suffice to meet the good cause standard? In *Roger B.*, the court referred to psychological need as a possible basis for opening adoption records.¹⁴⁸ Courts in other jurisdictions, however, have been far from uniform in response to requests to unseal adoption records based on psychological need.¹⁴⁹

143. *Id.* at 331, 418 N.E.2d at 757.

144. *Id.* at 336, 418 N.E.2d at 757.

145. 113 Ill. App. 3d 507, 447 N.E.2d 868 (1st Dist. 1983).

146. *Id.* at 509, 447 N.E.2d 870.

147. In *In re Roger B.*, 84 Ill. 2d 323, 333, 418 N.E.2d 751, 755 (1981), the court stated: "The statute, by providing for release of adoption records only upon issuance of a court order, does no more than allow the court to balance the interests of all the parties and make a determination based on the facts and circumstances of each individual case."

148. *Id.* at 336, 418 N.E.2d at 757.

149. See, e.g., *In re Dixon*, 116 Mich. App. 763, 323 N.W.2d 549 (1982) (court rejected psychiatrist's opinion that suicidal tendencies would be alleviated by access to birth

In addition to unresolved issues concerning substantive grounds for granting access to files, Illinois courts also lack guidance on important procedural issues. One such issue is the degree of formality required before a court will entertain a request to open a sealed record. Currently, some Illinois counties require that a petition be filed; others will respond to a letter addressed to the court.¹⁵⁰ There are policy considerations that support both positions. Informal procedures provide an inexpensive, expeditious avenue for petitioners. More formal requirements, on the other hand, discourage mere curiosity-seekers, create a record for appellate review, and eliminate the risks inherent in *ex parte* proceedings.

The absence of statewide uniform procedures and substantive standards regarding sealed records inevitably leads to forum shopping, with petitioners free to file requests in county after county, hoping to uncover one with relaxed requirements for access.¹⁵¹ The Illinois General Assembly should follow the trend in a growing number of states that recently have amended their adoption laws to specify the procedures and standards to be used by a court in deciding whether to grant a request to open sealed records.¹⁵²

In addition to adopting a uniform rule for access to adoption records, the Adoption Act should be amended to require agencies to gather nonidentifying information as part of the adoption pro-

records); *In re Application of Maples*, 563 S.W.2d 760 (Mo. 1978) (claim of psychological need to know insufficient absent biological parents' consent); *Backes v. Catholic Family and Community Services*, 210 N.J. Super. 186, 507 A.2d 283 (Ch. Div. 1985) (no showing of psychological problem of pathological dimension); *Mills v. Atlantic City Department of Vital Statistics*, 148 N.J. Super. 302, 372 A.2d 646 (Ch. Div. 1977) (psychological need to know one's origins may constitute good cause); *Linda F.M. v. Department of Health*, 52 N.Y.2d 236, 418 N.E.2d 1302, 437 N.Y.S.2d 283 (1981); *Bradey v. Children's Bureau of South Carolina*, 275 S.C. 622, 274 S.E.2d 418 (1981) (ability to lead stable life undercut argument that petitioner's need to know was the source of his emotional problems).

150. This conclusion is drawn from the result of a questionnaire submitted to all Chief Circuit Judges in the State of Illinois by the Study Committee on Adoption Law, 1987.

151. Letter from Judge Charles E. Glennon to Judge Joseph Schneider (Mar. 21, 1986). See also paragraph 73-17(2)(a) of the Vital Records Act, ILL. REV. STAT. ch. 111½, para. 73-17(2)(a) authorizes inspection of adoption records "upon order of the circuit court" The Vital Records Division of the Illinois Department of Public Health interprets this to mean that release may be ordered by "any court of competent jurisdiction." Letter from Faye Bruns, Division of Vital Records, to Judge Joseph Schneider (June 5, 1986).

152. See, e.g., CONN. GEN. STAT. ANN. §§ 45-68 (West 1981 & Supp. 1985); MINN. STAT. ANN. § 259.49 (West 1982 & Supp. 1988); OHIO REV. CODE ANN. § 3107.41 (Page's Supp. 1987); WIS. STAT. ANN. § 48.433 (West 1987).

cess.¹⁵³ Additionally, there should be some provision for updating or correcting such information, with birth parents informed of the procedures for doing so.¹⁵⁴ Another change that should be made relates to the effect of a biological parent's decision to object affirmatively to disclosure of identifying information in sealed adoption records. As the Illinois statute now reads, a parent's objection appears to deprive courts of authority to make a good cause assessment of an adoptee's request for disclosure.¹⁵⁵ Although it is fair to assume that a petitioner would have a heavy burden to overcome in the face of an express declaration of nonconsent by a biological parent, the court should be able to hear the petitioner's claim and to balance it against the competing interests in favor of nondisclosure.

Finally, Illinois should consider provisions in other state laws that create a presumption of access at the time an adoptee reaches adulthood,¹⁵⁶ which address the right of siblings to gain access to adoption files,¹⁵⁷ which authorize state agencies to search for biological parents and/or siblings to obtain consent for release of identifying information,¹⁵⁸ or which appoint an intermediary for the purpose of ascertaining a birth parent's views on a petition to unseal records.¹⁵⁹ These provisions are premised on the assumption that sealed records laws have too long been tilted in favor of preserving privacy interests of biological parents, thus denying adoptees of valuable information about their origins, when a biological parent in fact may have no objection to the requested disclosure.¹⁶⁰

VIII. CONCLUSION

All adoptions involve a basic reordering of the family unit, with

153. See, e.g., WIS. STAT. ANN. § 48.425(1) (West 1987).

154. See, e.g., OHIO REV. CODE ANN. § 3107.12 (Andersen Supp. 1985), discussed in Comment, *Breaking the Seal: Ohio's Revised Adoption Law*, 20 AKRON L. REV. 769, 771 (1987).

155. ILL. REV. STAT., ch. 40, para. 1522 (3)(c) (Supp. 1984), noted in Comment, *Severed Roots: The Sealed Adoption Records Controversy*, 6 N. ILL. L. REV. 103, 122 n.132 (1986).

156. See, e.g., MICH. COMP. LAWS ANN. § 710.68 (West Supp. 1987).

157. See, e.g., CAL. CIV. CODE § 230.8 (West Supp. 1986); MICH. COMP. LAWS § 710.68 (West Supp. 1985); OHIO REV. CODE ANN. § 3107.41 (Page's Supp. 1987).

158. See, e.g., CONN. GEN. STAT. ANN. § 45-68(c) (West 1981 & Supp. 1985); PA. STAT. ANN. tit. 23, § 2905 (Purdon Supp. 1985); TENN. CODE ANN. §§ 36-1-139 to 141 (1984 & Supp. 1985).

159. See, e.g., WIS. STAT. ANN. § 48.433(7)(a)-(f) (West 1987).

160. See Crane, *Unsealing Adoption Records: The Right to Know versus the Right to Privacy*, 1986 ANN. SURV. AM. L. 645, 666.

biological ties severed and a new family relationship created to serve the needs of the child. Because of the profound consequences of an adoption on all parties, it is essential that laws governing the process be coherent, fair, and workable. Already difficult, the challenge is becoming even greater, with the dwindling supply of babies placing unparalleled pressures on the adoption system and technological advances in reproductive science threatening to outstrip the development of social policy concerning the family. This Article has suggested but a few of the areas in which the Adoption Act might be modified to better serve the interests of those involved in the adoption process.