Loyola University Chicago Law Journal

Volume 6
Issue 3 *Summer 1975*

Article 3

1975

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John L. McCormack
Assist Prof., Loyola University School of Law

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*JOHN L. McCORMACK

THE ILLINOIS ADOPTION STATUTE

In Illinois, natural parents, by the execution of an appropriate form, may make their child available for adoption. The form for consent to adoption is prescribed by statute and contains the following language:

> I understand such child will be placed for adoption and that I cannot under any circumstances, after signing this document, change my mind and revoke or cancel this consent or obtain or recover custody or any other rights over such child . . . .
>
> I have read and understand the above and I am signing it as my free and voluntary act.[1]

However, another section of the Illinois Adoption Act provides that consents to adoption "shall be irrevocable" unless they are obtained by "fraud or duress."[2]

The present Illinois Adoption Act expresses the legislative judgment that the best interests of potential adoptees requires stabilization of their environments by finalizing their availability early in the adoption process.[3] Under former Illinois law, such finalization was not possible since consent to adoption could be revoked at any time prior to the entry of an order of adoption.[4] Upon the execution of a revocation, the child would be taken from the adopting parents and returned to the natural parents. Consequently, the adopting parents would suffer the anguish of losing a child they had grown to love and furthermore,

* Assistant Professor of Law, Loyola University of Chicago School of Law; B.S., 1964, J.D., 1968, the University of Wisconsin.

1. ILL. REV. STAT. ch. 4, § 9.1-10 (1973).
2. *Id.* § 9.1-11.
3. *See* People *ex rel.* Drury v. Catholic Home Bureau, 34 Ill. 2d 84, 93-94, 213 N.E.2d 507, 512 (1966); *In re* Wojtkowiak, 14 Ill. App. 2d 344, 349, 144 N.E.2d 760, 762 (1957).
4. *See In re* Thompson v. Burns, 337 Ill. App. 354, 86 N.E.2d 155 (1949).

the child would have to adjust to a new environment. Apparently, such pre-decree revocation of consent and its negative consequences motivated the legislature to change the law, requiring that consents to adoption be irrevocable unless obtained by fraud or duress.[5]

It is submitted that the present Illinois Adoption Act has a serious deficiency in that it does not contain adequate assurance that parents executing consents to adoption will actually understand the finality of their act. The only substantial assurance now provided[6] is the requirement that the consent state that it is irrevocable. However, this assurance is inadequate. To inform people that certain consequences will follow from their actions does not necessarily assure that people grasp the significance of the consequences.[7] The Illinois legislature went further in the direction of finality than was necessary to alleviate the negative consequences caused by pre-decree revocation of consent. The legislature, following the lead of other jurisdictions and the Uniform Adoption Act, could have provided that consents would be revocable only at the discretion of the court upon a finding that revocation would be in the best interests of the child.[8] Alternatively, the legislature could have provided that consents would be irrevocable only after the expiration of a brief cooling-off period.

Tennessee law incorporates both of these alternatives. In Tennessee, a consent, which is called a surrender, becomes irrevocable 30 days after its execution, if given to any adoption agency. Consents given to others become irrevocable after the expiration of 90 days.[9] As added protection, Tennessee courts have the discretion to refuse a revocation if the best interests of the child so require, even if the attempt to revoke was exercised within the applicable time period.[10]

A number of commentators have argued for, and a number of jurisdictions have adopted, a discretionary rule governing revocation of consent.[11] For example, the Wisconsin statute, taken from the Uniform Adoption Act, grants the court discretion to allow withdrawal of

5. H.B. 457 [1953] Ill. Laws 1481.
6. The Act also provides that consents by mothers must be taken after the expiration of 72 hours from the birth. Fathers who consent before the birth of the child may revoke the consent within 72 hours of the birth. ILL. REV. STAT. ch. 4, § 9.1-9 (1973). These provisions function to protect parents from making rash or uninformed consents.
7. *See* Mechem, *The Requirement of Delivery in Gifts of Chattels and of Choses in Action Evidenced by Commercial Instruments*, 21 ILL. L. REV. 341, 348 (1926).
8. *See* Comment, *Revocation of Parental Consent to Adoption: Legal Doctrine and Social Policy*, 28 U. CHI. L. REV. 564, 571 (1961) [hereinafter cited as Comment].
9. TENN. CODE ANN. § 36-117 (Supp. 1974).
10. *Id.*
11. *E.g.*, Comment, *supra* note 8, at 571 & n.56.

consent "if it finds that the best interests of the child will be furthered thereby . . . ."[12] Of course, it is possible that the court, guided only by the broad "best interests of the child" standard, might abuse its discretion.[13]

The present Illinois rule prohibits revocation of consents to adoption except when obtained through fraud or duress. This appears to provide ample protection for both the interests of children and adopting parents, while protecting natural parents from the loss of parental rights through fraud or coercion. But the Illinois procedure does not contain sufficient safeguards to impress the fact of finality of the execution of consents on those making them. Lacking this safeguard, the statute has produced tragic litigation in which natural parents have tried to prove that their consents were obtained through fraud or duress.[14]

Since consents were made irrevocable in 1953, nine Illinois cases in which natural parents attacked their consents to adoption on fraud or duress grounds have reached the appellate level. In three of these cases, the attacks were successful.[15] In these cases, the natural parents claimed that they did not really appreciate the finality of their actions, that they were under the mistaken idea that the waiting period between placement and final decree was a period during which the consents could be revoked, and finally, that their decision to consent was made under difficult and trying circumstances. Under the influence of a belief in the primacy of natural over adoptive parenthood, the judges who decided these cases may have granted relief where they thought that consent was mistakenly executed[16] or where their notions of justice

12. WIS. STAT. ANN. sec. 48.86 (West 1957).

13. It is interesting to note that since section 48.86 was enacted in Wisconsin in 1955 and until March 1975, the date of this writing, no reported case arising under this section has reached the Wisconsin Supreme Court (the only appellate level court in Wisconsin). Apparently, the exercise of discretion by Wisconsin trial court judges in consent revocation cases has not motivated anyone to seek appellate review. By contrast, the Illinois statute on revocation has generated nine appellate level cases since it was enacted in 1953; see Note 16 *infra*. Of course, the population difference between Wisconsin and Illinois may in part account for the disparity.

14. At the time of the trial of Huebert v. Marshall, 132 Ill. App. 2d 793, 270 N.E.2d 464 (1971), this writer was associated with the firm of Sidley & Austin, Chicago, Illinois, counsel for the natural parents, the Marshalls, and was present at the trial. The great emotional suffering being experienced by both sets of parents and some of the other participants was readily apparent.

15. Successful attacks on consents: People *ex rel.* Buell v. Bell, 20 Ill. App. 2d 82, 155 N.E.2d 104 (1959); People *ex rel.* Karr v. Weihe, 30 Ill. App. 2d 361, 174 N.E.2d 897 (1961); and Huebert v. Marshall, 132 Ill. App. 2d 793, 270 N.E.2d 464 (1971). Unsuccessful attacks on consents: *In re* Petition of Balota, 7 Ill. App. 2d 178, 129 N.E.2d 234 (1955); *In re* Wojtkowiak, 14 Ill. App. 2d 344, 144 N.E.2d 760 (1957); People *ex rel.* Filipowski v. Gusterine, 16 Ill. App. 2d 336, 148 N.E.2d 1 (1958); *In re* Simaner, 15 Ill. 2d 568, 155 N.E.2d 555 (1959); Cohen v. Janic, 57 Ill. App. 2d 309, 207 N.E.2d 89 (1965); and People *ex rel.* Drury v. Catholic Home Bureau, 34 Ill. 2d 84, 213 N.E.2d 507 (1966).

16. Mistake is not a ground for revocation. ILL. REV. STAT. ch. 4, § 9.1-11 (1973).

supported revocation under the guise of applying fraud or duress concepts. Thus, some judges are apt to apply rather broad concepts of fraud and duress in order to void consents. Before looking at the three cases, it may be helpful to review the doctrines of fraud and duress as they are generally applied.

FRAUD AND DURESS

The various species of fraud and duress operate to void acts caused by the conduct of wrongdoers. For his conduct to constitute actual fraud, the wrongdoer must either knowingly misrepresent material facts or fail to disclose material facts where he is under a positive duty to do so. To constitute moral duress or undue influence, the wrongdoer must apply pressure beyond morally acceptable bounds. To constitute actual duress, the wrongdoer must apply pressure in a form prohibited by law, forcing the subject of the pressure to take or to refrain from action. An obvious example of actual duress is forcing someone to act at the point of a gun. Actual duress has been defined as follows:

> Duress has been universally defined as a condition which exists where one is induced by the unlawful act of another to make a contract or perform or forego an act under circumstances which will deprive him of the exercise of his will. There must be such compulsion affecting the mind as shows that the execution of the contract or other instrument was not the voluntary act of the maker. Such compulsion must be present and operate at the time the instrument was executed. The burden of proving such duress is on the person asserting it.[17]

The heart of the doctrine of duress is an act, or threat to perform an act, which deprives another of his freedom of choice. In actual duress, the act or threat must be unlawful; in moral duress, the act or threat must be immoral or unconscionable.

Fraud has been defined as follows:

> Fraud includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression

17. Stoltze v. Stoltze, 393 Ill. 433, 442, 66 N.E.2d 424, 428 (1946). *See also* People *ex rel.* Drury v. Catholic Home Bureau, 34 Ill. 2d 84, 93, 213 N.E.2d 507, 511 (1966) ("Mere advice, argument or persuasion does not constitute duress . . . if the individual acts freely when he executed the questioned documents though the same would not have been executed except for the advice, argument or persuasion."); and *In re* Simaner, 16 Ill. App. 2d 48, 52-53, 147 N.E.2d 419, 421-22 (1957) *aff'd* 15 Ill. 2d 568, 155 N.E.2d 555 (1959) ("Mere annoyance or vexation will not constitute duress. . . . The fact alone that . . . [a person] was mentally disturbed at the time, as all . . . [people] would be under similar circumstances, does not constitute duress."). *See also* Doose v. Doose, 300 Ill. 134, 133 N.E. 49 (1921); Mills v. Forest Preserve District, 345 Ill. 503, 178 N.E. 126 (1931); People *ex rel.* Chicago Bar Ass'n v. Gilmore, 345 Ill. 28, 46, 177 N.E. 710, 717 (1931).

> of truth or the suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth or by look or gesture . . . . If fraud be proved, it vitiates all transactions touched by it . . . .[18]

The term "fraud" often embraces species of constructive fraud such as undue influence. Acts procured by undue influence are invalidated on the theory that such acts are not really the actor's, but are the person's who is exercising the influence.[19] Advice, argument or persuasion do not constitute undue influence if the individual acts freely when he performs the questioned act though such act would not have been performed but for the advice, argument or persuasion. Also, undue influence "may be the result of activities of third persons as well as result of activities of the direct beneficiaries."[20] Furthermore, receipt of a benefit by one in a fiduciary relationship with another may raise a presumption that the benefit was procured by undue influence:[21]

> [w]here a party stands in confidential relations to another, such as that of a parent and child, guardian and ward, attorney and client, priest and penitent, etc., if the dominant party receives the benefit or donation during the existence of such relation, the party imposing the confidence on seasonable application to a court of equity, may obtain relief from the burdens and duties imposed simply by showing the transaction and the confidential relation; the presumption of the law being that as long as the relation lasts the transaction is the result of undue influence, and to make the transaction good in law there must be a severance of such relation, at least for the time being, and the party reposing the confidence must have competent and independent advice. In such cases the burden of proof rests upon the party claiming the benefit under the transaction to repel the presumption thus created by the law by showing a severance of the relation, and this must be done by the interposition of competent and independent advice. And it is no answer to say that the party making the donation knew the effect of it, or that he approved the transaction, if the confidential relation be not severed by independent advice by some disinterested, competent person.[22]

Illinois Revocation Cases

Buell v. Bell

The first case which arose after consents were made irrevocable in which a natural parent succeeded in proving fraud or duress in the pro-

18. Sterling v. Kramer, 15 Ill. App. 2d 230, 236, 145 N.E.2d 757, 760 (1957).
19. *Id.*
20. Swenson v. Wintercorn, 92 Ill. App. 2d 88, 102, 234 N.E.2d 91, 98 (1968).
21. *Id.* at 101, 234 N.E.2d at 97.
22. McQueen v. Wilson, 131 Ala. 606, 609-10, 31 So. 94, 95 (1901).

curement of her consent was *People ex rel. Buell v. Bell.*[23] Upon her divorce, Mrs. Buell was granted custody of her four children. Approximately six months later she became pregnant. Her former husband told her that she would lose the other children if she kept the unborn child, and suggested that a former fellow-employee and his wife would be interested in adopting the child. Apparently, Mrs. Buell agreed to allow them to adopt the child and they agreed to pay Mrs. Buell's medical expenses. Mrs. Buell signed the consent to adoption two days after the birth of the child, while still in her hospital bed. She testified that she did not read the consent and that it was not read to her. The attorney who had given her the consent form to sign testified that he had explained it to her.

Two days after signing the consent, Mrs. Buell changed her mind. A nurse came into the room, found Mrs. Buell in tears and told her that there was a 6-month period in which she could reclaim her child. This statement was repeated to Mrs. Buell on the same day by a physician who asked of Mrs. Buell, "Who is going to pay your bills?"

The trial court found that the consent was procured by the duress of the physician and made solely by Mrs. Buell to obtain her release from the hospital.[24] However, since the exchange between Mrs. Buell and her physician took place 2 days after the consent was executed, the court's reasoning is specious, since the exchange could not possibly have caused or in any way affected the execution of the consent. The court also determined that the comments of Mrs. Buell's former husband regarding possible loss of her children were fraudulent.

The appellate court affirmed this decision. After reviewing the evidence, the court placed special emphasis on Mrs. Buell's weakened condition and need for money to pay her medical bills at the time she signed the consent. To explain the decision, the court invoked the doctrine of moral duress, stating that:

> "[M]oral duress" consists in imposition, oppression, undue influence, or the taking of undue advantage of the business or financial stress or extreme necessities or weakness of another, and relief is granted in such cases on the basis that the party benefiting thereby has received money, property, or other advantage which in equity and good conscience he should not be permitted to retain . . . .[25]

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23. 20 Ill. App. 2d 82, 155 N.E.2d 104 (1959).
24. *Id.* at 85, 155 N.E.2d at 106.
25. *Id.* at 95, 155 N.E.2d at 111. Apparently, the agreement to pay the medical bills was characterized as "moral duress." It might as reasonably have been characterized as "charity."

The court's view of the case was undoubtedly influenced by a belief that natural parents are somehow better for a child than adoptive parents. The court said:

> The rights of the petitioner, Beulah M. Buell, mother of this child, to the custody of the child are superior to those of any other person, when she is a fit person to have custody . . . . Adoption, which affects the course of inheritance, deprives the child of the place in which it was placed by nature, and by force of law thrusts the child into another relationship . . . .[26]

Perusal of a number of judicial opinions involving disputes between natural and adoptive parents or agencies reveals that the belief in the primacy of the rights of natural parents in their children is widely held in the United States.[27] However, recent cases and legislation suggest that the strength and pervasiveness of this belief is fading.[28] As long as this belief remains entrenched in the minds of the Illinois judiciary, the tendency to overextend the concepts of fraud and duress in consent revocation cases will persist.

Karr v. Weihe

The second case in which a consent was set aside was *People ex rel. Karr v. Weihe*.[29] After Mrs. Karr conceived the child, her husband told her that they could not afford the baby. They went to an adoption agency where they spoke to a clergyman. The Karrs inquired about temporary placement. The clergyman said that temporary placement would cost more than they could afford and suggested adoption. The day following the birth of this child, Mrs. Karr's clergyman visited her. She told him that she hoped to get the baby back and would have a year to do so. This clergyman left the hospital and told the clergyman who worked for the agency what Mrs. Karr had said. The clergyman who worked for the agency replied that Mrs. Karr could not get the baby back. Mrs. Karr's clergyman then telephoned Mr. Karr and told him that his wife was misinformed. At trial, Mr. Karr testified that he did not tell his wife that she was misinformed because it would make it easier for her to sign if she didn't know.

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26. *Id.* at 92, 155 N.E.2d at 109.
27. *See* Comment, *supra* note 8, at 569.
28. *See, e.g.*, Oregon *ex rel.* Tanzer v. Williams, 502 P.2d 596 (Ore. 1972); Kane v. United Catholic Social Services of Omaha, Inc., 187 Neb. 467, 191 NW.2d 824 (1971); *In re* Adoption of Child by P, 114 N.J. Super. 584, 277 A.2d 566 (1971); and H. CLARK, LAW OF DOMESTIC RELATIONS, § 18.4 (1968). *But see* People *ex rel.* Scarpetta v. Spence-Chapin Adoption Service, 28 N.Y.2d 185, 269 N.E.2d 787, 321 N.Y.S.2d 65, *appeal dismissed*, 404 U.S. 805 (1971).
29. 30 Ill. App. 2d 371, 174 N.E.2d 987 (1961).

Ninety-six hours after the birth, the clergyman from the adoption agency took the consent forms to the hospital for Mrs. Karr's signature. He did not tell Mrs. Karr about his conversation with her clergyman. "He testified, however, that he told both parties that the papers were final and both parties read them, or he read the papers to them."[30] Mrs. Karr testified that she did not remember any discussion about the consent being final.

The trial court refused to set aside Mrs. Karr's consent. The appellate court reversed, holding that the knowing failure of the clergyman and Mr. Karr to correct Mrs. Karr's misunderstanding that she had a year to get the baby back was sufficiently fraudulent to void her consent:

> It is apparent that although she read this surrender or consent and was told that it was final, she did not know or adequately understand or comprehend the drastic final effect of signing the same.[31]

As in *Buell*, the court emphasized that Mrs. Karr was in a weakened condition at the time she signed the consent.

The reasoning of the court is inconsistent. The court said that the clergyman did nothing to correct Mrs. Karr's misunderstanding that she had a year to revoke, but admitted that he explained to her that the consents were irrevocable. To be guilty of fraud, one must intentionally mislead or deceive another. It is difficult to see how the clergyman's conduct could be characterized as the cause of Mrs. Karr's misunderstanding, let alone as intentional deception. A failure to appreciate the irrevocability of a consent to adoption by one making it is not a statutory ground for revocation.[32]

Admittedly, the decision could have rested on the behavior of Mr. Karr in failing to correct his wife's misinformation, if one were to conclude he had a duty to do so. But, instead the court again stretched the concept of fraud to cover facts not normally within its ambit. The real basis for the court's decision is suggested by the following statement in the opinion: "The interests and welfare of the child are presumed to be best served in the custody of the natural parent . . . ."[33]

Heubert v. Marshall

The most recent case which set aside a consent to adoption is *Heu-*

30. *Id.* at 369, 174 N.E.2d at 901.
31. *Id.* at 373, 174 N.E.2d at 903.
32. ILL. REV. STAT. ch. 4, § 9.1-11 (1973).
33. People *ex rel.* Karr v. Weihe, 30 Ill. App. 2d 361, 374, 174 N.E.2d 897, 903 (1961).

bert v. Marshall.[34] Eight days after the birth of the Marshall's second child, Sara, Mr. Marshall announced that he was thinking of leaving Mrs. Marshall and Chicago. Mrs. Marshall testified that she became hysterical. Three days later, she went to talk to a friend named Julie Brown. Brown tried to calm Mrs. Marshall, told her that she should never have had the baby and said that she knew of a couple that would be good adoptive parents for Sara. At this time, Mrs. Marshall did not know that her husband and Brown were emotionally involved and had discussed the possibility of meeting in California. Within a few days, an attorney representing the potential adoptive parents telephoned Mrs. Marshall to inform her that he had made an appointment for the Marshalls at the Cook County Department of Public Aid for the next day. Mr. Marshall was informed by the attorney in a subsequent conversation that a 6-month waiting period must elapse before the adoption became final. However, it seems that the attorney was referring to the waiting period between placement and final decree, and not to the period when the consent would become final.

The Marshalls were subsequently interviewed separately by an employee of the Department for approximately 15 to 20 minutes. Both Marshalls were then taken to the office of another employee for the execution of their consent to the adoption. This employee explained the finality of the action before the consent was signed. No alternative suggestions for dealing with the Marshall's problems were made during the interview.

The Marshalls subsequently changed their minds and filed a petition to have their consent set aside. The trial court upheld the consent; the appellate court reversed. The decision emphasized both the existence of a fiduciary relationship between Brown and Mrs. Marshall, arising out of their friendship, and Brown's deceit in telling Mrs. Marshall that she knew the adopting parents would make good parents when she actually knew little about them. The court emphasized the speed at which the adoption was effected, and the weakened physical and emotional condition of Mrs. Marshall. Finally, the court pointed out that the adopting parents' attorney had contributed to the Marshalls' confusion by stating that the adoption would not be final for 6 months.[35]

Perhaps in response to the *Marshall* case, the legislature amended the Adoption Act in 1973 to provide that the fraud or duress required for revocation must be on the part of the adopting parents or their

34. 132 Ill. App. 2d 793, 270 N.E.2d at 464 (1971).
35. *Id.* at 798-99, 270 N.E.2d at 467-68.

agents or on the part of the person taking the consent.[36] If the Act as amended had been applied to the *Marshall* case, Brown's alleged fraud could not have been used as the basis for revocation unless Brown could have been found to be an agent of the adoptive parents. It is submitted, however, that the outcome of the case would have been the same regardless of whether the amendment had been applicable. The judicial bias favoring natural parents over adoptive parents, coupled with the haste and emotional atmosphere surrounding the decision to consent could have supported a finding that Brown was the adoptive parents' agent. Alternatively, the court could have found that the conduct of the adoptive parents' attorney was fraudulent.

In summary, it appears that the cases voiding consents exhibit a tendency by some judges to broadly apply the concepts of fraud and duress in order to allow revocation. This tendency may be motivated by a belief that the relationship between natural parent and child has great social value and by a desire to exercise discretion in cases where the judge's sense of justice seems to require it. Finally, while mistake itself is not a statutory ground for revocation, it is possible that the courts in *Buell, Karr* and *Marshall* were influenced by the contentions that the consents were executed under mistaken notions of their effect, during a period in which the natural parents were subject to physical or emotional stress.[37]

CONCLUSIONS

The provisions of the Illinois Adoption Act governing revocation of adoption consents should be modified. A modification could take the form of: (1) providing that the voiding of consents to adoption is within the discretion of the court; or (2) changing the procedure for taking consents to increase the probability that those giving them will appreciate and understand the significance of their acts.

While the discretionary rule has much to commend it, its practical application may involve severe, preventable emotional suffering of either adopting or natural parents. It would seem preferable to continue the present policy of irrevocability with modifications that would

36. Ill. P.A. 78-854 (1973) Ill. Laws 2616, 2629 *amending* ch. 4, § 9.1-11.

37. One might conclude that the courts in *Karr* and *Marshall* were influenced by the fact that the children involved were legitimate. While the sample is too small to safely support a broad generalization, legitimate children were involved in only two of the six cases denying revocation. *See*, People *ex rel.* Filipowski v. Gusterine, 16 Ill. App. 2d 336, 148 N.E.2d 1 (1958); Balota v. Handlon, 7 Ill. App. 2d 178, 129 N.E.2d 234 (1955).

tend to increase the probability that the persons giving consent appreciate the finality of their actions. At present, the only statutory provisions working in this direction are the requirement that the consent be taken on a form expressly stating that the consent is irrevocable, and the provision prohibiting the taking of a consent from a mother until 72 hours after birth.[38] Concomitantly, the Adoption Act could be modified to prevent courts from granting extra-legal discretionary revocations under the guise of finding fraud or duress. This could be done by requiring that the courts apply a narrow statutory definition of fraud or duress in consent revocation cases.

There are a number of possible ways in which those giving consent could be impressed with the significance and finality of their actions. The law could require that consents be given before a judge in court; the law of Tennessee, for example, requires this formal procedure.[39] However, this procedure has been criticized on the ground that it would congest court calendars and embarrass unwed mothers.[40] But there is no reason for requiring the proceedings to be public, and the congested court problem cannot be solved by keeping matters out of court that belong there.

A brief cooling-off period between the execution of a consent and its finalization may also help impress the finality of a consent upon natural parents, by allowing them time to grasp the significance of their acts. New York law, for example, so provides.[41] If there had been such a cooling-off period in Illinos, the *Marshall, Buell* and *Karr* cases might never have reached the courts. In all three cases, the natural parents expressed a desire to revoke their consent within a few days of its execution. Although the adopting parents in those cases would have suffered some anguish, this anguish would have been slight in comparison to the anguish they suffered after losing the children following protracted litigation.

Another alternative is to provide for formal, mandatory counseling of those who propose to consent to the adoption of their children.[42] This counseling should stress the finality of the act of consenting and the available alternatives to adoption.

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38. ILL. REV. STAT. ch. 4, § 9.1-9 (1973).
39. TENN. CODE ANN. § 36-114 (Supp. 1974).
40. *See* Comment, *supra* note 8, at 571, and authorities cited therein.
41. N.Y. DOM. REL. L. § 115-b (McKinney Supp. 1972-73); N.Y. SOC. SERV. L. § 384(5) (McKinney Supp. 1972-73). The cooling off period is 30 days.
42. Before accepting consents, agencies often provide prolonged counseling. *See, e.g.*, People *ex rel.* Drury v. Catholic Home Bureau, 34 Ill. 2d 84, 213 N.E.2d 507 (1966).

The Illinois Adoption Act does not contain sufficient safeguards to assure that parents executing consent to adoption will appreciate the finality of their acts. Several modifications to the Act have been proposed which might increase the probability that finality will be appreciated: (1) increased formality in the taking of consents; (2) provision for a cooling-off period; or (3) mandatory counseling for those giving consent. Of course, other alternatives may be available. But the selection of an alternative or alternatives will not occur unless the legislature first recognizes that there is a weakness in the consent provisions of the Adoption Act. The generation by the Act of nine appellate level cases is at best some indication of such a deficiency.

Loyola University Law Journal

Published three times a year by the Students of the Loyola University School of Law
Loyola University
41 East Pearson Street
Chicago, Illinois 60611